



Civil Resolution Tribunal

Date Issued: February 13, 2026

File: SC-2024-003471

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barajas v. ICBC*, 2026 BCCRT 257

BETWEEN:

ALBERTO GABRIEL GONZALEZ BARAJAS and TERESA SZEFLER

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Nyhuus

INTRODUCTION

1. This dispute is about a motor vehicle accident that happened on November 24, 2023, in Coquitlam, British Columbia. The applicant, Alberto Gabriel Gonzalez Barajas, was driving a Toyota SUV owned by the applicant, Teresa Szefler. Mr. Barajas was turning left at an intersection when he collided with a Mercedes sedan driven by a third party, TP.

2. The respondent insurer, Insurance Corporation of British Columbia (ICBC), determined Mr. Barajas was 100% responsible for the accident. The applicants say ICBC incorrectly held Mr. Barajas fully responsible for the accident. They say that TP was equally responsible because they were distracted and speeding. They seek an order that ICBC change Mr. Barajas' responsibility assessment to 50%.
3. In the Dispute Notice, the applicants also claim \$4,485.13 for the costs of repairing Teresa Szeffler's vehicle. However, in submissions, the applicants acknowledge that ICBC paid for the vehicle repairs, less a \$500 deductible. So, I find the applicants seek damages equal to the \$500 deductible.
4. ICBC says it correctly determined that Mr. Barajas was 100% responsible for the accident. ICBC also argues that the applicants' claim for an order that ICBC change its responsibility determination is injunctive relief and is not within the CRT's small claims jurisdiction.
5. Mr. Barajas represents the applicants. An employee represents ICBC. For the reasons I set out below, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

6. The Civil Resolution Tribunal (CRT) has general jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*.
7. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
8. The CRT conducts most hearings by written submissions, but it has discretion to decide the hearing's format, including by telephone or videoconference. Here, I find I can properly assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.

Order to Change Responsibility Assessment

10. As I noted above, the applicants request an order that ICBC change its assessment that Mr. Barajas was 100% responsible for the accident. ICBC argues that the CRT cannot grant this relief under its small claims jurisdiction.
11. There are two ways a person can challenge ICBC's accident responsibility decision at the CRT. They can file a dispute either through the CRT's small claims jurisdiction or through its accident responsibility jurisdiction. The applicants filed this dispute under the CRT's small claims jurisdiction.
12. Where an applicant claims damages of \$5,000 or less arising from ICBC's responsibility assessment, the CRT can consider that claim within its small claims jurisdiction over debt and damages. This is because ICBC has a statutory obligation to indemnify insured parties on the basis of having correctly determined accident responsibility. Where ICBC has incorrectly determined liability, it may be required to pay damages for its breach of that obligation. So, I find the applicants' claim for damages falls within the CRT's jurisdiction under CRTA section 118(1)(a).
13. However, I agree with ICBC that in a small claims dispute like this one, I do not have authority to order ICBC to change its responsibility assessment. That would be an "injunctive order", which means an order to do something specific (other than pay money). This remedy is not available in CRT small claims disputes.
14. This remedy is available, however, in the CRT's accident responsibility jurisdiction. CRTA section 133(1)(d) and *Accident Claims Regulation (ACR) Part 2* allow the CRT to order ICBC to change its responsibility determination. Given the CRT's mandate, which includes flexibility, I find a party is not always prohibited from requesting an order that ICBC change its responsibility assessment within a dispute

categorized as small claims. I explained my reasoning for this in *Placek v. ICBC*, 2025 BCCRT 1748.

15. However, I find nothing turns on this jurisdictional question in this dispute. As I explain below, I find the applicants have not proved that Mr. Barajas was less than 100% responsible for the accident. This is a required element for a successful claim in either jurisdiction. So, I would not order ICBC to change its responsibility assessment, even if I found I had the authority to do so.

ISSUE

16. The issue in this dispute is whether the applicants are entitled to damages as a result of ICBC's allegedly incorrect liability assessment.

EVIDENCE AND ANALYSIS

17. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means "more likely than not". I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision. I note that the CRT provided the applicants with the opportunity to provide reply submissions, but they chose not to.
18. The accident happened at about 2:00 pm on November 24, 2023, at the intersection of Creekside Drive and Heath Crescent in Coquitlam. At the intersection, Creekside runs east-west and intersects with the southbound lane of Heath at a T-intersection. Traffic on Creekside must stop at the intersection with Heath before turning either left (northbound) or right (southbound). Traffic on Heath is not required to stop at this intersection. Both streets have a single lane in each direction. This is a residential area.
19. Moments before the accident, Mr. Barajas was driving east on Creekside and TP was driving south on Heath. Mr. Barajas says he stopped at the stop sign and prepared to turn left onto Heath. He says that after stopping, he crept forward

because tall hedges impacted his visibility of Heath. He says he looked left and right and saw no vehicles, so he started to make his turn. He says TP's car suddenly appeared, driving very quickly towards him. He says there was no room to accelerate or avoid the collision and that he did not have time to blow his horn or brake. TP's front right bumper hit Mr. Barajas' front left bumper and headlight.

20. In Mr. Barajas' statement to ICBC, he reported that just before the collision, he saw that TP's eyes were looking down and that their right hand was holding or searching for something. He also reported that TP was driving in the centre of the road.
21. ICBC took TP's statement about the accident. TP reported that they had been parked outside their home moments before the accident and were driving slowly, at about 20km per hour, towards Creekside. They reported entering the intersection when they heard a loud honk, then noticed Mr. Barajas' car coming into the intersection. They reported that they applied the brake and tried to maneuver out of the way but could not avoid the collision.
22. After the accident, the drivers exchanged information and took pictures of the scene. There were no other witnesses. The police attended the scene and issued a traffic violation ticket to Mr. Barajas for failing to yield at a stop sign. Both vehicles sustained damage in the accident.
23. The parties agree that *Motor Vehicle Act* section 175 applied to the accident.
24. MVA section 175 contains 2 parts. The first part, section 175(1), applied to Mr. Barajas as the vehicle stopped at an intersection preparing to turn onto a through street. It required Mr. Barajas to yield the right of way to traffic that was approaching so closely that it constituted an "immediate hazard" to his vehicle. Once he had yielded, section 175(1) permitted him to proceed onto Heath with caution.
25. The second part, section 175(2), applied to TP, who drove the vehicle already traveling on the through street. If Mr. Barajas entered the highway in compliance with MVA section 175(1), then section 175(2) required TP to yield the right of way to

Mr. Barajas while they turned onto Heath. So, the movement of Mr. Barajas' vehicle onto Heath, in the absence of an immediate hazard, would give Mr. Barajas the right of way over TP. See *Currie v. Taylor*, 2012 BCSC 1553 at paragraph 65 (affirmed 2014 BCCA 51).

26. For the following reasons, I find the applicants have not proved that Mr. Barajas moved onto Heath in the absence of an immediate hazard, here TP's vehicle.
27. Mr. Barajas provided photographs of the 2 vehicles taken after the accident. Since the vehicles are still touching each other, I find it likely that the drivers did not move the vehicles after the accident and before taking pictures.
28. Mr. Barajas says the photographs show that TP's car is invading the opposite traffic lane. I agree that TP's car appears to be in the middle of the road and angled slightly towards the left. However, there is no painted centre line on Heath. ICBC says that in these circumstances, on a residential street like Heath, the centre of the laneway shifts depending on the location of traffic and parked vehicles. ICBC says this may mean that a driver is allowed to drive in the middle or on the other side of the road, depending on the context. I agree. I find the photographs do not show that TP was driving on a prohibited part of the road.
29. Mr. Barajas claims that he saw TP looking down at something moments before the accident. He speculates that they were looking at their phone. I find the photographs do not support Mr. Barajas' assertion that TP was distracted. I find the angle of TP's car supports TP's statement that they saw Mr. Barajas drive into the intersection and tried to maneuver away from them. I find this shows that TP was likely paying attention to traffic.
30. I also find that the applicants have not proved that TP was speeding. They say that TP's car was driving fast enough that it dragged Mr. Barajas' car 3 or 4 meters away from the point where the vehicles made contact. They say that a photograph shows a skid mark on the road that proves their allegation. They argue that TP's lighter car

could not have dragged Mr. Barajas' heavier SUV if TP was only driving 20km per hour.

31. I disagree that the photograph proves that TP's car dragged Mr. Barajas'. I find it is difficult to tell, based on this photograph, whether there is a fresh skid mark. I find that other photographs show that the vehicles collided in the middle of the intersection, not 3 or 4 meters away from the middle.
32. In any event, determining a vehicle's speed before a collision usually requires expert accident reconstruction evidence, which the applicants did not provide. See *Bergen v. Guliker*, 2015 BCCA 283. Further, even if I accepted that TP was speeding, the court in *D'Amici v. Fahy*, 2020 BCCA 89, found that blameworthy conduct, such as speeding, does not lead to liability unless the speed prevented the driver from taking reasonable steps to avoid the collision. I find expert evidence is required to prove that TP could have avoided the accident if they had been travelling at a lower speed.
33. In summary, I find the applicants have failed to prove that Mr. Barajas yielded the right of way to TP or that TP was negligent. So, I find Mr. Barajas breached MVA section 175(1). Since the applicants have not proved TP was negligent, it follows that Mr. Barajas was solely responsible for the accident. So, I dismiss the applicants' claim for damages.
34. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the applicants were not successful, I dismiss their claim for reimbursement of CRT fees. ICBC was successful but did not pay any tribunal fees or claim dispute-related expenses.

ORDER

35. I dismiss the applicants' claims.

Peter Nyhuus, Tribunal Member