



# Civil Resolution Tribunal

Date Issued: October 6, 2022

File: AB-2022-001221

Type: Motor Vehicle Injury

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Bate v. ICBC*, 2022 BCCRT 1100

BETWEEN:

SIMON-MATTHEW BATE

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about entitlement to permanent impairment compensation. The applicant, Simon-Matthew Bate, was in a motor vehicle accident on November 30, 2021. He says he suffered various injuries in the accident that have had a negative impact on his quality of life, and that he needs to be compensated for that. He says

the respondent insurer, Insurance Corporation of British Columbia (ICBC), should pay him permanent impairment compensation, but does not claim a specific amount.

2. ICBC says Mr. Bate does not meet the criteria under the *Insurance (Vehicle) Act* (IVA) to qualify for permanent impairment compensation.
3. Mr. Bate is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over accident claims brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(a) of the CRTA gives the CRT jurisdiction over the determination of entitlement to accident benefits.
5. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.
7. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

### ***Withdrawn claims***

8. In his Dispute Notice, Mr. Bate initially also claimed for healthcare and rehabilitation benefits and income replacement benefits. CRT staff informed me that the parties settled these claims during facilitation, so Mr. Bate withdrew them. As a result, I have not considered those claims in this decision.

### **ISSUE**

9. The issue in this dispute is whether Mr. Bate is entitled to permanent impairment compensation and, if so, how much.

### **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant Mr. Bate must prove his claims on a balance of probabilities, meaning “more likely than not”. While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. Mr. Bate spent some time in his Dispute Notice and submissions criticizing the introduction of Enhanced Accident Benefits. Despite Mr. Bate’s opinions about the legislative scheme, the CRT’s role is to make decisions about the legislation drafted and duly enacted by the government. So, I have not otherwise addressed Mr. Bate’s comments about the fairness of the enacted legislation.
12. As noted, Mr. Bate was involved in a motor vehicle accident on November 30, 2021 in Vancouver, British Columbia. At the time, Mr. Bate was self-employed as a Nurse Practitioner, which he continues to be today.
13. As a result of the accident, Mr. Bate suffered severe left sided neck, shoulder, and upper central back pain, along with mental health concerns. Mr. Bate argues his injuries have reduced his function and his ability to work as he did pre-accident. As noted above, he says this negative impact on his quality of life needs to be compensated as a permanent impairment.

14. ICBC says Mr. Bate reduced his workload for reasons unrelated to the accident. As noted, ICBC further says that Mr. Bate does not qualify for permanent impairment compensation under the IVA.
15. Part 10, sections 113 to 169, of the IVA, Enhanced Accident Benefits and Limits on Actions and Proceedings, applies to accidents that occur on and after May 1, 2021, which includes Mr. Bate's accident. Specifically, section 115 bans any action related to bodily injury from a motor vehicle accident, including non-pecuniary (pain and suffering) damages.
16. Section 129(1) of the IVA says if an insured suffers a permanent impairment from an accident, the insured is entitled to a lump sum payment for the permanent impairment. Section 129(2) requires ICBC to calculate and determine the compensation an insured is entitled to, according to the regulations.
17. The applicable regulation is the *Permanent Impairment Regulation* (PIR). Section 10(1) of the PIR says an impairment is "permanent" when, following a "period of time sufficient for optimal tissue repair", the impairment has become static, has stabilized, or is unlikely to change significantly with further therapy. Section 10(2) says ICBC must not pay compensation until the impairment is permanent.
18. In essence, I find Mr. Bate seeks pain and suffering damages in the form of permanent impairment compensation. Mr. Bate acknowledges his injuries are non-catastrophic. However, he says they impair his ability to perform his activities of daily living and his ability to function socially.
19. The problem for Mr. Bate is that, in the evidence before me, no medical professional has given the opinion that Mr. Bate's physical or mental condition is static, stable, or unlikely to improve with further treatment.
20. In fact, Mr. Bate attended an Independent Medical Examination (IME) with Dr. Michael Berger, a physical medicine and rehabilitation specialist, in March 2022. In Dr. Berger's March 3, 2022 Comprehensive Medical Assessment Report, he stated that Mr. Bate had not had any meaningful treatment for his physical injuries, and that

with a course of active rehabilitation there is “no reason why he could not improve substantially, if not fully resolve this issue”. Additionally, Dr. Berger acknowledged Mr. Bate’s significant mental health complaints and his “strongest recommendation” was for a referral to psychiatry and clinical psychology for medication management and cognitive behavioural therapy.

21. There is no indication Mr. Bate has participated in active rehabilitation treatment for his physical injuries. As for his mental health, Mr. Bate is admittedly on a waitlist for psychology services, and ICBC says it is in the process of arranging a psychiatric IME for him. Other than medication adjustments from his family doctor, Dr. Jamil Hirji, Mr. Bate has not received any treatment for his ongoing mental health concerns.
22. Dr. Hirji’s clinical records and GP assessment reports provided to ICBC also recommend active rehabilitation and psychiatric and psychology assessments. In the latest GP assessment report dated August 18, 2022, Dr. Hirji stated the “functional goal” was to “continue working on improving mental health to achieve a better quality of life”.
23. As noted, Mr. Bate, in order to successfully claim for permanent impairment compensation, must show that it is more likely than not that his injuries are “permanent” as defined by section 10(1) of the PIR. I find he has not done so. So, I dismiss his claim for permanent impairment compensation at this time. Nothing in this decision prevents Mr. Bate from reapplying for permanent impairment compensation if and when his injuries become permanent.

### ***Special damages***

24. Mr. Bate claims \$50 in dispute-related expenses for a “sick note due to being off work secondary to the motor collision”. This is actually a claim for special damages (out-of-pocket expenses), which is a substantive claim for damages, not a dispute-related expense. In any event, Mr. Bate provided no evidence or submissions in support of this claim, such as a receipt that he paid for the sick note. So, I dismiss this claim for reimbursement.

## **FEES, EXPENSES AND INTEREST**

25. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Mr. Bate was not successful, I dismiss his claim for reimbursement of tribunal fees. Because ICBC was successful, I find Mr. Bate must reimburse it the \$25 it paid in fees.

## **ORDERS**

26. Within 30 days of the date of this decision, I order Mr. Bate to pay ICBC a total of \$25 for reimbursement of tribunal fees.

27. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.

28. Mr. Bate's claims are dismissed.

29. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Andrea Ritchie, Vice Chair