



# Civil Resolution Tribunal

Date Issued: August 31, 2023

File: AB-2022-007878

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Nishimura v. ICBC*, 2023 BCCRT 748

BETWEEN:

KAREN CHARLOTTE NISHIMURA

**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 accident benefits. The applicant, Karen Charlotte Nishimura, was in a motor vehicle accident on November 24, 2021. She works in healthcare and undisputedly missed work as a result of the accident. During her time

off she used sick bank time. She says, if she had not used the sick bank time, she would be entitled to a payout of 40% of its value, or \$1,458.94, when she retires or otherwise leaves her position. She claims \$1,458.94 in income replacement benefits from the respondent insurer, Insurance Corporation of British Columbia (ICBC).

2. ICBC says it paid what Ms. Nishimura was entitled to under the relevant legislation and does not owe Ms. Nishimura any compensation for her used sick bank time.
3. Ms. Nishimura is self-represented. ICBC is represented by an authorized 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.

## **ISSUE**

8. The issue in this dispute is whether Ms. Nishimura is entitled to income replacement benefits for her used sick bank time and, if so, how much.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant Ms. Nishimura must prove her claim 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.
10. Ms. Nishimura was a passenger involved in a motor vehicle accident on November 24, 2021 in Surrey, British Columbia. Ms. Nishimura works in healthcare and was undisputedly off work for some time following the accident. The exact dates are not before me.
11. It is undisputed that after the accident, Ms. Nishimura first used her sick bank time, then collected Employment Insurance (EI), and finally used long term disability (LTD), until she returned to work. Ms. Nishimura says ICBC “topped up” her payments from EI and LTD, and she does not make a claim for any income replacement benefits from that time.
12. However, Ms. Nishimura disagrees she should have had to use her sick bank time to help her recover from her accident injuries. She says if she had not used that time, she would have been entitled to a payout of 40% of the unused sick bank balance’s value upon her retirement. Ms. Nishimura says she used a total of 138 hours of sick bank time, at \$26.43 per hour. So, she says she has lost the benefit of a \$1,458.93 payout. I note the records in evidence indicate she used 143.58 hours of sick bank time, but I find nothing turns on this difference, given my conclusions below.
13. ICBC argues it is only obligated to pay income replacement benefits after Ms. Nishimura exhausted her other compensation options, which it did. ICBC says it is not required to reimburse Ms. Nishimura for her used sick bank time.

14. Part 10 of the *Insurance (Vehicle) Act* (IVA), Enhanced Accident Benefits and Limits on Actions and Proceedings, applies to accidents that occur on and after May 1, 2021, which includes this accident. Part 10 includes entitlement to income replacement benefits.
15. Section 122(2) of the IVA says ICBC must not pay a benefit under Part 10 to a person who is entitled to other compensation for the same accident, unless the amount paid under Part 10 is higher than the other compensation. This means that if a person is entitled to other compensation, whether that person decides to collect that other compensation or not, ICBC is only required to pay the difference between the other compensation and the income replacement benefits the person would be entitled to under the IVA.
16. Section 122(1) defines “other compensation” as amounts paid or payable for a loss or expense similar to one covered under Part 10, including from a “prescribed compensation plan or scheme”. Section 18(2) of the *Enhanced Accident Benefits Regulation* (EAB) further defines a “prescribed compensation plan or scheme” to include compensation from employment or through a collective agreement.
17. Here, there is no dispute Ms. Nishimura’s sick bank time was earned through her employment or a collective agreement, and that the paid sick bank time covered her full wages. I find that the sick bank payments Ms. Nishimura was given through her employment are similar to income replacement benefits under Part 10 of the IVA, and falls under “other compensation” as defined above. So, under section 122 of the IVA and section 18 of the EAB, I find ICBC is not required to reimburse or otherwise pay Ms. Nishimura for the use of her sick bank time. This means that Ms. Nishimura cannot recover the payout value of her used sick bank time. On that basis, I dismiss her claim.
18. I acknowledge Ms. Nishimura’s submission that the legislated accident benefits scheme is “not fair” to accident victims. Although she argues that no matter what has been legislated, she should be made whole by receiving reimbursement for her sick bank time, I am bound by the legislation. I note the legislation does not require ICBC

to make Ms. Nishimura “whole”, but instead sets out ICBC’s obligations under its insurance policy. In this case, the legislation does not require ICBC to pay income replacement benefits when Ms. Nishimura had access to “other compensation” for the same loss. As noted, I am bound by the legislation, and therefore Ms. Nishimura’s claim is dismissed.

## **FEES, EXPENSES AND INTEREST**

19. 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 Ms. Nishimura was unsuccessful, I dismiss her claim for reimbursement of tribunal fees. For the same reason, I order Ms. Nishimura to reimburse ICBC \$25 for its paid fees. Neither party claimed dispute-related expenses.

## **ORDERS**

20. Within 30 days of the date of this decision, I order Ms. Nishimura to pay ICBC a total of \$25 as reimbursement of tribunal fees.

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

22. Ms. Nishimura’s claim is dismissed.

23. 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

