



# Civil Resolution Tribunal

Date Issued: January 30, 2024

File: AB-2023-001427

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Armstrong v. ICBC*, 2024 BCCRT 90

BETWEEN:

TREVOR ARMSTRONG

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This dispute is about entitlement to income replacement benefits. The respondent insurer, Insurance Corporation of British Columbia (ICBC), administers income replacement benefits under the *Insurance (Vehicle) Act* (IVA).

2. Trevor Armstrong is a high school teacher who was in a motor vehicle accident on April 3, 2022. Mr. Armstrong was off work as a result of the accident. Mr. Armstrong claims \$10,000 for income replacement benefits related to a deck construction project they say they were unable to start because of the accident.
3. ICBC says Mr. Armstrong was not employed to build the deck at the time of the accident, so it does not owe Mr. Armstrong any income replacement benefits related to the deck construction project.
4. Mr. Armstrong is self-represented, and ICBC is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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**

9. The issue in this dispute is whether Mr. Armstrong is entitled to \$10,000 in income replacement benefits in relation to the deck construction project.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. As the applicant in this civil claim, Mr. Armstrong must prove their claims on a balance of probabilities, meaning more likely than not. Mr. Armstrong had the opportunity to provide reply submissions but chose not to do so. I have read all the parties' evidence and submissions, but I address only what I find relevant to explain my decision.
11. Mr. Armstrong was involved in a motor vehicle accident on April 3, 2022. At the time of the accident, Mr. Armstrong was working full-time as a high school teacher. As a result of the accident, Mr. Armstrong was off work until September 6, 2022, when they started a gradual return to work program.
12. On April 29, 2022, Mr. Armstrong applied to ICBC for enhanced accident benefits under part 10 of the IVA.
13. On May 13, 2022, Mr. Armstrong's colleague asked them if they built decks and installed composite decking. Mr. Armstrong responded that they were off work as a result of the accident, and suggested someone else who may be able to complete the work. The colleague said they had received quotes for the project between \$10,000 and \$12,000.
14. On June 28, 2022, ICBC notified Mr. Armstrong that they were not eligible to receive income replacement benefits for employment they may have had in the summer of 2022, because they did not hold that employment at the time of the accident.

***Is Mr. Armstrong entitled to \$10,000 in income replacement benefits in relation to the deck construction project?***

15. Mr. Armstrong says that as a full-time teacher they do not teach in July and August each year and are not paid in those months. Mr. Armstrong says they perform manual labour in the summer months to earn additional income. Mr. Armstrong says a colleague asked them to build a new deck in the summer of 2022, but they were unable to accept the offer because of the injuries they sustained in the accident. Mr. Armstrong says they should not be precluded from claiming future income loss.
16. ICBC says that because Mr. Armstrong was not employed to build the deck at the time of the accident, they are not entitled to income replacement benefits for that work. For the following reasons, I agree.
17. Under IVA sections 131 and 133, ICBC must calculate the income replacement benefits for full-time, temporary, and part-time earners in accordance with the regulations. The applicable regulation is the *Income Replacement and Retirement Benefits for Students and Minors Regulation* (IRB).
18. IVA section 113 defines a “full-time earner” as an insured who, at the time of the accident, held regular employment on a full-time basis. IRB section 1 defines “full-time basis” in respect of employment as an insured who was employed for 28 or more hours in each week of the year preceding the accident date, not including overtime hours. Since Mr. Armstrong was undisputedly working more than 28 hours per week as a full-time high school teacher at the time of the accident, I find they were a “full-time earner” for the purposes of determining entitlement to income replacement benefits under the IVA and IRB.
19. Under IVA section 131(1)(a), subject to the IRB, if a full-time earner is unable to continue their full-time employment because of their bodily injury, they are entitled to an income replacement benefit. Under IVA section 131(1)(b), subject to the IRB, if a full-time earner is unable to continue any other employment they held in addition to the full-time employment they held at the time of the accident, they are entitled to an income replacement benefit.

20. Under IRB section 4(a), if a full-time earner was a salaried worker at the time of the accident, their entitlement to income replacement benefits is based on their gross yearly employment income from the employment. Under IRB section 4(c), if a full-time earner held more than one employment at the time of the accident, their entitlement to income replacement benefits is based on their gross yearly employment income from all employment they are unable to continue because of the accident.
21. Based on the wording of the relevant IVA and IRB provisions, I find that to be entitled to income replacement benefits for the deck construction project, Mr. Armstrong was required to have held that employment at the time of the accident. They undisputedly did not. The evidence shows they did not receive the request from their colleague about building the deck until May 13, 2022, more than a month after the accident. Also, as ICBC notes in its submissions, the messages Mr. Armstrong received from their colleague were an inquiry about services Mr. Armstrong provided, not an offer of employment. There is no evidence that Mr. Armstrong held any other employment aside from their full-time teaching job at the time of the accident.
22. Mr. Armstrong argues that they should not be precluded from claiming future income loss. However, I find ICBC is bound by the relevant IVA and IRB provisions when administering income replacement benefits. On the evidence before me, I find it did so.
23. I dismiss Mr. Armstrong's claim.

## **FEES AND EXPENSES**

24. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to recover their CRT fees and dispute-related expenses. Since Mr. Armstrong was unsuccessful in this dispute, I find they are not entitled to reimbursement of their CRT fees. ICBC is entitled to reimbursement of the \$25 it paid in CRT fees. Neither party claimed any dispute-related expenses.

## ORDERS

25. Within 30 days of the date of this decision, I order Mr. Armstrong to pay ICBC \$25 as reimbursement of its CRT fees.
26. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.
27. I dismiss Mr. Armstrong's claims.
28. 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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Sarah Orr, Tribunal Member