



# Civil Resolution Tribunal

Date Issued: August 25, 2023

File: AR-2022-007707

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Meyers v. ICBC*, 2023 BCCRT 726

BETWEEN:

LAURA MEYERS

**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 accident responsibility.
2. The applicant, Laura Meyers, says the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly held her responsible for a motor vehicle accident

with a pedestrian on March 3, 2022. Although it is not entirely clear from the Dispute Notice or her submissions, Ms. Meyers appears to argue no collision occurred. She says she should not be held responsible for the accident.

3. ICBC says it acted reasonably in its accident investigation and when determining Ms. Meyers was at fault.
4. Ms. Meyers is self-represented. 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)(d) of the CRTA and Part 2 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over accident responsibility determinations.
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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Whether ICBC acted improperly or unreasonably in assigning responsibility for the accident, and
  - b. If so, to what extent, if any, is Ms. Meyers responsible for the accident?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant Ms. Meyers 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. I note Ms. Meyers chose not to submit any documentary evidence or submissions other than those contained in the Dispute Notice, despite being given the opportunity to do so.
11. In her statements to ICBC, Ms. Meyers describes the incident as follows. She says she was driving westbound on Rosedale Avenue when she noticed children on the right side of the roadway. To give them more space, she pulled her vehicle into the middle of the roadway. As she continued on, she heard a “bang” and looked in her left side mirror and saw a child standing in the road behind her vehicle. She said she immediately stopped her vehicle and questioned why the child hit her vehicle. She said the child shrugged. She reported there was no damage to her vehicle but there was a “clean spot in the dust”.
12. Ms. Meyers says ICBC improperly held her 100% responsible for a collision with a minor third party that I infer she is arguing did not occur. Specifically, Ms. Meyers says the “CL700/CL722” (which is a detailed responsibility letter from ICBC) refers to various dates that do not make sense, and that there are inconsistencies in the third party’s description of events. Ms. Meyers also suggests ICBC failed to obtain video footage from the police.

13. To succeed in her claim against ICBC, Ms. Meyers must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to her. Second, Ms. Meyers must prove that she is less responsible for the accident than ICBC assessed.
14. Further to section 10 of the ACR, **both** parts of this test must be proven. This means that even if Ms. Meyers can prove she is less responsible for the accident than ICBC assessed, she will not be successful if she cannot prove ICBC acted improperly or unreasonably.
15. I turn to the first part of the 2-part test.

***Did ICBC act improperly or unreasonably in assigning responsibility for the accident?***

16. Section 10(a) of the ACR essentially codifies the existing case law about whether ICBC acted “properly or reasonably” in administratively assigning responsibility for accidents (see: *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322). To succeed in her claim, Ms. Meyers must prove ICBC acted improperly or unreasonably in investigating the accident and assigning her 100% responsibility for it.
17. As noted above, Ms. Meyers argues the CL700 contains incorrect dates that do not align with the accident. She also says the third party’s statements are inconsistent, and that ICBC failed to obtain video footage possessed by the local police.
18. I note there are 2 incorrect dates in the CL700. First, in one part of the letter, the accident date is noted as May 27, 2016 instead of March 3, 2022. Second, the third party’s statement is noted as February 26, 2020 instead of March 3, 2022. While I acknowledge this indicates a lack of attention to detail in ICBC’s preparation of the CL700, I agree with ICBC that it does not, on its own, mean Ms. Meyer’s claim was improperly handled.

19. Other than the incorrect dates, it appears the statements and other details included in the CL700 were accurately recorded based on the originating documents. The CL700 indicates ICBC took statements from both Ms. Meyers and the third party, and referenced the relevant legislation. ICBC explains it also obtained the police report, which it provided in evidence and the attending officer noted “pedestrian hit on roadway”.
20. Although Ms. Meyers argues the police possessed some video footage, there is no evidence to support that allegation. ICBC says it contacted the police after Ms. Meyers provided a statement that the police had video, and was told there is no indication of any video footage in the police file. So, I find ICBC did not fail to obtain relevant video footage.
21. Further, I do not accept Ms. Meyers argument that the third party’s statements are inconsistent. In their first statement given to ICBC on March 3, 2022 they explained they were walking on the side of the street where there is no sidewalk. They said Ms. Meyers was traveling straight, in the opposite direction they were walking, when she swerved to their side of the road and struck their left arm with her vehicle. The third party said Ms. Meyers got out of her vehicle and yelled at them for “hitting her car”. Once the third party got home, they informed their parents who reported the incident to police.
22. In a later, more detailed statement emailed to ICBC on April 22, 2022, the third party explained they were walking eastbound on Rosedale Avenue towards Pleasant Valley Road when they saw a car drifting over to their side of the road. They said they turned their head to talk to a friend and the car hit their arm and they immediately felt pain. There was then a verbal altercation between Ms. Meyers and the third party until Ms. Meyers drove away and the third party went home and told their parents what happened.
23. ICBC says it did not initially obtain statements from the third party’s companions as they were not considered independent. It says it tried to contact the companions for statements in the course of this dispute, but that the companions are minors and their

parents or guardians have not provided ICBC with any statements, despite ICBC's requests. However, I find nothing turns on this as Ms. Meyers does not argue ICBC should have obtained statements from the companions as she argues the companions were "coaching" the third party to say they had been hit by her car in any event.

24. So, while I acknowledge Ms. Meyers does not agree with ICBC's conclusion about the accident or her responsibility for it, I find she has not proven ICBC acted improperly or unreasonably in investigating the accident and assigning fault. I find Ms. Meyers has not satisfied section 10(a) of the 2-part test. It follows that her claim must fail.
25. Given this, I do not need to consider part 2 of the test, set out in section 10(b) of the ACR.

## **FEES, EXPENSES AND INTEREST**

26. 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. However, neither party paid any tribunal fees or claimed reimbursement of any dispute-related expenses.

## **ORDER**

27. Ms. Meyers' claims, and this dispute, are dismissed.

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Andrea Ritchie, Vice Chair