



# Civil Resolution Tribunal

Date Issued: October 13, 2023

File: AR-2023-000153

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *GG (Litigation Guardian of) v. ICBC*, 2023 BCCRT 869

B E T W E E N :

MG as Litigation Guardian of GG, minor

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, GG, was in a motor vehicle accident with a third party on October 17, 2022. ICBC held GG 50% responsible for the accident. GG disagrees, and says that

ICBC acted improperly or unreasonably in determining responsibility. I infer she argues the third party was 100% responsible.

3. ICBC says it acted reasonably in determining GG was 50% responsible for the accident, and asks me to dismiss this dispute. ICBC is represented by an authorized employee.
4. GG is a minor and is participating in this dispute through her litigation guardian, MG. Because GG is a minor, I have anonymized her name and MG's name in the published versions of this decision, to protect GG's identity.

## **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 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 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 GG responsible for the accident?

## EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant GG must prove her claims on a balance of probabilities (meaning “more likely than not”). Under the ACR, to succeed in her claim against ICBC, GG must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to her. Second, GG must prove she is less responsible for the accident than ICBC assessed.
11. Further to section 10 of the ACR, **both** parts of the test described above must be proven. This means that even if GG 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. 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 GG did not provide final reply submissions, despite having the opportunity to do so.
12. On October 17, 2022, GG was driving eastbound on St. Johns Street in Port Moody, BC, approaching Moody Street. The third party was also driving eastbound on St. Johns Street when their vehicles collided.

13. The parties agree that this section of St. Johns Street has 3 lanes. The 2 rightmost lanes continue straight through the light at Moody Street, and the leftmost lane is a left-turn only lane.
14. ICBC took verbal statements from both drivers. GG said that she was driving in the leftmost through lane (the middle of the 3 eastbound lanes) approaching the intersection, when the third party's vehicle moved into her lane from the left turn lane and struck her vehicle. In contrast, the third party reported that they were driving in the middle of the 3 eastbound lane when GG's vehicle, which was in the rightmost lane, moved into their lane and struck their vehicle.
15. Based on these statements, ICBC held each driver 50% responsible for the accident. In doing so, it applied section 151 of the *Motor Vehicle Act*, which prohibits a driver from changing lanes unless they can do so safely and without affecting other vehicles' travel. GG says ICBC acted improperly or unreasonably in assigning responsibility, specifically because she alleges it failed to look at all the evidence. ICBC says that it acted properly and reasonably in holding GG 50% responsible.

***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). As noted above, to succeed in her claim, GG must prove ICBC acted improperly or unreasonably in assigning her 50% responsibility for the October 17, 2022 accident. Merely disagreeing with ICBC's decision does not mean ICBC acted improperly or unreasonably. Similarly, even in a situation where I would have come to a different conclusion on the apportionment of responsibility, that does not mean ICBC acted improperly or unreasonably.
17. GG argues generally that ICBC did not fully consider the evidence before assigning responsibility. As noted, ICBC took verbal statements from each driver. There were

undisputedly no independent witnesses to the accident, and no dashcam footage. However, GG did have a passenger, AB, in the vehicle with her. In this dispute, GG submitted an undated witness statement from AB, which supports her position that she was driving in the middle lane, and the third party's vehicle moved into her lane from the left turn lane and hit her vehicle.

18. Previous CRT decisions have found that it is improper or unreasonable for ICBC to refuse to consider evidence from witnesses who have or have had a relationship with either driver: see for example *Sato v. ICBC*, 2023 BCCRT 324 at paragraph 19. While prior CRT decisions are not binding on me, I agree with the reasoning in *Sato* and find that it is improper for ICBC to ignore evidence that may be relevant to the accident investigation and fault assessment. However, in this case GG undisputedly did not provide the statement from AB to ICBC at any time during its investigation. Instead, she only provided it as evidence in this dispute. There is no evidence, and GG does not argue, that she provided or requested to provide this statement sooner and that ICBC refused to accept it. So, I find ICBC did not act improperly in failing to consider AB's statement.
19. GG also submitted 3 videos taken after the accident. Two of these videos, which the parties refer to as "live photos", are very brief and show the third party's vehicle in front and to the left of GG's vehicle. The third video is longer and is taken after both drivers had pulled over and gotten out of their vehicles. ICBC says, and GG does not dispute, that GG did not provide these videos to ICBC until December 16, 2022, which was after ICBC had issued its responsibility determination on November 15, 2022. In any event, ICBC says that it reviewed the videos when GG provided them, but they did not change its determination.
20. GG argues that the first 2 videos show the third party's vehicle in the left turn lane. I find the video footage is not entirely clear on this point as it does not show the lane markings. However, in any event, ICBC does not dispute that the third party's vehicle is in the left turn lane in the videos, but says that the third party stated they moved their vehicle into the left turn lane after the impact. ICBC provided a copy of the third

party's statement in support of this. As the videos do not show the impact itself, I find it was reasonable for ICBC to conclude that they do not assist in determining the vehicles' positions at the time of impact.

21. GG argues that in the third video, the third party admits to not seeing her before the accident. ICBC again does not dispute this, but says that this statement is not an admission of a lane change. I agree, and find the third party's statements in the video do not assist in determining responsibility. Similarly, I find that text messages from the other party suggesting that they settle the damages without ICBC are not an admission of responsibility for the accident. I also agree with ICBC that the fact that the third party's vehicle had previous damage on it does not mean that the third party is responsible for this accident.
22. GG also argues that her vehicle was equipped with safety technology including blind spot recognition and lane change sensors. However, there is no evidence that she provided ICBC with any information about this technology during its investigation, and she provided no evidence in this dispute about whether the technology would have prevented the collision.
23. Lastly, GG argues that the location of the damage to both vehicles supports her version of the events. The damage to GG's vehicle was to the driver's side front bumper and front door. The damage to the third party's vehicle was to the passenger side. I find ICBC reasonably determined that this damage is consistent with both drivers' descriptions of the accident and does not assist in determining responsibility.
24. Overall, I find ICBC reasonably considered the available evidence in assigning responsibility for the accident. On balance, I find GG has not proven ICBC acted improperly or unreasonably in investigating the accident and assigning responsibility. So, I find GG has not satisfied section 10(a) of the 2-part test. It follows that GG's claim must fail.
25. Given this, I do not need to consider whether GG should be held less responsible for the accident, which is part 2 of the test as set out in section 10(b) of the ACR.

26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As ICBC was the successful party, I order GG to reimburse ICBC \$25 in paid CRT fees. I dismiss GG's claim for reimbursement of CRT fees.

## **ORDERS**

27. I dismiss GG's claims.

28. Within 21 days of this decision, I order GG to pay ICBC \$25 as reimbursement of its CRT fees.

29. ICBC is entitled to post-judgment interest, as applicable.

30. 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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Alison Wake, Tribunal Member