



# Civil Resolution Tribunal

Date Issued: October 16, 2023

File: AR-2022-010172

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Babichev v. ICBC*, 2023 BCCRT 881

BETWEEN:

EVGENY BABICHEV

**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, Evgeny Babichev, and a third party, L, were in a motor vehicle accident on October 19, 2022. The applicant says the respondent insurer, Insurance

Corporation of British Columbia, incorrectly determined the applicant was 100% responsible for the accident. The applicant says they should be held 0% responsible instead.

3. The respondent says it acted reasonably in its liability assessment and determining the applicant was solely at fault. The respondent also says its liability assessment was correct and that the applicant is solely responsible for the accident.
4. The applicant is represented by a family member, who is not a lawyer. The respondent 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 the respondent acted improperly or unreasonably in assigning responsibility for the accident, and
  - b. If so, what extent, if any, the applicant is responsible for the accident.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant must prove their claim on a balance of probabilities, meaning “more likely than not”. Under the ACR, to succeed in their claim against the respondent, the applicant must first prove that the respondent acted improperly or unreasonably in assigning responsibility for the accident to the applicant. Second, the applicant must prove they are less responsible for the accident than the respondent assessed.
11. Further to section 10 of the ACR, **both** parts of the test described above must be proven. This means that even if the applicant can prove they are less responsible for the accident than the respondent assessed, they will not be successful if they cannot prove the respondent 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.
12. On October 19, 2022, the applicant and L were both traveling southbound on Highway 99 near exit 10 in Surrey, British Columbia. Highway 99 has 2 southbound lanes. The applicant was in the right travel lane and L was in the left, with the applicant slightly behind L.

13. The applicant says they were paying attention to L's vehicle while passing them, and did not notice the road in front of them turned to the right. The applicant's vehicle crossed over into the left lane and the 2 vehicles collided.
14. The applicant says the respondent improperly held them 100% responsible for the accident. Specifically, they say the respondent failed to obtain L's dash camera footage and failed to have both vehicles inspected at one of the respondent's locations. The applicant argues L is the one responsible for the accident.

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

15. Section 10(a) of the ACR essentially codified the existing case law about whether the respondent 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 their claim, the applicant must prove the respondent acted improperly or unreasonably in assigning them sole responsibility for the October 19, 2022 accident.
16. First, the dash camera footage. The applicant argues the respondent refused to obtain L's dash camera footage, which they argue would show L crossed into the applicant's lane before the applicant crossed into L's lane. The respondent says L advised they did not have a dash camera.
17. The respondent took a telephone statement from L on October 21, 2022. In that statement L advised they were driving in the left lane southbound on Highway 99 when the applicant crossed into their lane, striking their vehicle. The notes from that conversation indicate L advised the respondent's employee they did not have a dash camera.
18. The respondent also provided 38 photos of L's damaged vehicle dated October 26, 2022. I note the photos do not show any dash camera or dash camera mount in the vehicle. On the evidence before me, I find the applicant has not proven L had any

dash camera footage. So, it follows that the respondent did not fail to obtain evidence that may not exist.

19. Next, the applicant's argument that the respondent should have inspected the 2 vehicles in person. The applicant says such an inspection would have provided information about the vehicles' "trajectories on approach and during impact". The respondent says that because the applicant's and L's statements about the accident were consistent, and based on the applicant's dash camera footage, it did not require a material damage inspection as it would not have added any new information.
20. The respondent obtained 2 statements from the applicant, one by phone on October 21, 2022 and one by email on October 24, 2022. In the first statement, the applicant said they were driving in the right lane of Highway 99, slightly behind L who was in the left lane. The applicant said L's right rear brake light was broken and when L would brake, the colour "bothered" them. The applicant decided to "go faster" and pass L's vehicle. While doing so, the applicant said they did not know the road started to curve to the right and they suddenly felt an impact and when they looked up they noticed they were partially in the left lane.
21. In their October 24, 2022 statement the applicant expands on their explanation of the accident. They said as they were passing L's vehicle they looked over and could see that L was on their phone or paying attention to the car stereo. The applicant said the applicant's attention was focused on L's unsafe behaviour and that the vehicles were coming closer together until they collided. The applicant then noticed their vehicle was partially in the left lane and quickly swerved back to the right.
22. In their submissions in this dispute, the applicant argues it was L's distracted driving which was the "real cause" of the accident, and if the road had not curved to the right, the applicant would not have entered the left lane.
23. I find both drivers' statements are consistent with the applicant's dash camera footage which also shows L's vehicle to the left of the applicant's, the applicant overtaking L,

and then entering the left lane. The actual collision happens off-screen, but the applicant's vehicle is clearly in the left lane when the vehicle shakes due to the impact.

24. I agree with the respondent that given the statements and dash camera footage, no in-person inspection was necessary. I find the respondent did not act unreasonably or improperly by declining to perform such an inspection.
25. Based on the evidence before me, I find the applicant has not proven the respondent acted improperly or unreasonably in investigating the accident and assigning fault. So, I find the applicant has not satisfied section 10(a) of the 2-part test. It follows that the applicant's claim must fail.
26. Given this I do not need to consider whether the applicant should be held less responsible for the accident, which is part 1 of the test as set out in section 10(b) of the ACR. However, even if the applicant had succeeded in proving ICBC acted unreasonably, based on the evidence before me I would find the applicant solely responsible for the accident. I say this because it was the applicant's own failure to pay attention to the road that led them to drift into L's lane of travel.

## **FEES, EXPENSES AND INTEREST**

27. 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. The applicant was not successful, so I dismiss their claim for reimbursement of tribunal fees. For the same reason, I find the applicant must reimburse the respondent \$25 in paid tribunal fees. Neither party claimed dispute-related expenses.

## **ORDERS**

28. Within 30 days of the date of this decision, I order the applicant to pay the respondent a total of \$25 as reimbursement of tribunal fees.
29. The respondent is also entitled to post-judgment interest under the *Court Order Interest Act*.

30. I dismiss the applicant's claims.

31. 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