



# Civil Resolution Tribunal

Date Issued: October 19, 2023

File: AR-2022-008741

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Woo v. ICBC*, 2023 BCCRT 889

B E T W E E N :

WINSTON KAR-SHING WOO

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Alison Wake

## INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Winston Kar-Shing Woo, was in a motor vehicle accident on October 23, 2021. Mr. Woo says the respondent insurer, Insurance Corporation of British

Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC initially held Mr. Woo 0% responsible for the accident, but later changed its determination to 100%. Mr. Woo disagrees with this, and I infer he argues he was 0% responsible.

3. ICBC says it acted reasonably in determining Mr. Woo was 100% responsible for the accident, and that this dispute should be dismissed.
4. Mr. Woo represents himself. 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 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 Mr. Woo responsible for the accident?

## EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Woo must prove his claims on a balance of probabilities (meaning “more likely than not”). I note that Mr. Woo provided evidence in this dispute but did not provide written submissions other than his Dispute Notice, despite having the opportunity to do so.
11. Under the ACR, to succeed in his claim against ICBC, Mr. Woo must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to him. Second, Mr. Woo must prove he is less responsible for the accident than ICBC assessed.
12. Further to section 10 of the ACR, **both** parts of the test described above must be proven. This means that even if Mr. Woo can prove he is less responsible for the accident than ICBC assessed, he will not be successful if he 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.
13. On October 23, 2021, Mr. Woo and a third party were involved in an accident on East Hastings Street near the Cassiar Connector in Vancouver, BC. Mr. Woo reported the accident to ICBC on October 24, 2021. I summarize Mr. Woo’s statement to ICBC as follows. He was driving westbound on East Hastings Street, in the middle lane of three straight-through lanes, when he stopped at a red light at the intersection with the Cassiar Connector. The third party’s vehicle, which was in front of him, began to

reverse and hit Mr. Woo's front bumper. The third party got out of their vehicle and explained that they had wanted to turn right in order to go to North Vancouver. The third party was apologetic but refused to provide their name or driver's license number to Mr. Woo, because they said there was no damage to either vehicle. When the third party left the scene, they crossed over the straight through right lane and made a right turn to go to North Vancouver, which was recorded on video by Mr. Woo's passenger. No emergency vehicles attended and there were no witnesses.

14. The third party undisputedly did not report the accident to ICBC. ICBC provided two letters to the third party in evidence, dated October 26 and 30, 2021. Both letters provided the accident details and asked the third party to contact ICBC to provide information about the accident. The October 30, 2021 letter advised that ICBC may determine responsibility for the claim based only on the information it had, and that this may impact the third party's driver factor and the policy holder's premiums.
15. On February 11, 2022, an ICBC adjuster emailed Mr. Woo and explained that the other driver had not cooperated to date. They asked Mr. Woo if he had a picture of the other driver or could describe them. No response from Mr. Woo is in evidence. However, in his Dispute Notice Mr. Woo says that he provided ICBC with a video of the third party getting out of the vehicle. ICBC provided this video as evidence in this dispute, along with the video taken by Mr. Woo's passenger of the third party driving away. So, I accept that Mr. Woo provided it to ICBC when asked.
16. On February 25, 2022, ICBC sent Mr. Woo a letter saying that it had resolved the responsibility portion of his claim, and that ICBC would pay for repairs to his vehicle and would waive his deductible. Mr. Woo had the vehicle repaired on March 31, 2022.
17. ICBC says it made contact with the third party on July 13, 2022, and obtained a statement from them on July 14, 2022. I summarize the third party's statement as follows. They were in the right lane of Cassiar and noticed a black object in the lane they were driving in. They "pulled over and stopped to take a look" and saw a big plastic bag in the lane to their left. They remained in the curb lane and then they were "hit from behind". They got out of the vehicle and did not see any damage to either

vehicle. They exchanged licenses with Mr. Woo and then got into their vehicle and left. The third party denied backing into Mr. Woo.

18. An ICBC adjuster's note dated September 1, 2022, says that the third party had advised that they did not reverse and that they were rear-ended, and that ICBC "will have to overturn liability". ICBC sent a letter to Mr. Woo the same day, advising that he had been held 100% responsible for the accident. ICBC did not explain the reason for the delay between receiving the third party's statement and issuing its revised decision. Although this letter says that Mr. Woo will have to pay his \$300 deductible to use his collision coverage, a second adjuster's note dated September 1, 2022, indicates that the adjuster explained to Mr. Woo by telephone that ICBC would keep his deductible waived but that his premiums may be impacted.
19. As noted, the first step of the test I must consider is whether ICBC acted improperly or unreasonably in assigning Mr. Woo 100% responsibility for the accident.

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

20. 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 his claim, Mr. Woo must prove ICBC acted improperly or unreasonably in assigning him sole responsibility for the October 23, 2021 accident. Merely disagreeing with ICBC's decision does not mean ICBC acted improperly or unreasonably.
21. Mr. Woo argues that because of the "nature of the accident" he would not have had his vehicle repaired if ICBC said in its February 25, 2022 letter that his claim was "still in preliminary stages". It is unclear to me whether Mr. Woo is arguing that preserving the damage would have assisted in proving that he was not responsible for the accident, or if he is arguing that because the damage was minor, he would not have used his collision coverage to repair it if he knew that he may still be held responsible

and have to pay a deductible and potentially increased insurance premiums. On the first point, ICBC provided photographs of the damage to Mr. Woo's vehicle and employee notes saying that the material damage only showed that an impact with another vehicle had occurred, but would be inconclusive to determine fault. I agree. I find the minor damage to Mr. Woo's front bumper would be consistent with either him rear-ending the third party, or the third party backing into him. So, I find preserving the damage would not have assisted Mr. Woo in proving that he was not responsible for the accident.

22. On the second point, I note ICBC's February 25, 2022 letter says "nothing in this letter is or is to be construed as either an admission of liability on the part of ICBC or ICBC's insured or a waiver of or extension of any applicable limitation period." However, the letter does not explicitly state that ICBC's position about responsibility is subject to change if it receives a statement from the third party or other information, which I infer Mr. Woo is arguing would have induced him not to repair the vehicle and risk incurring the cost of his deductible or increased premiums. I find that I do not need to determine whether it was improper or unreasonable for ICBC to change its responsibility determination after advising Mr. Woo that it had resolved responsibility and that Mr. Woo's vehicle repairs would be covered, because I find ICBC acted improperly or unreasonably by not considering Mr. Woo's video evidence, as I will now discuss.
23. As noted, ICBC's September 1, 2022 adjuster note says that ICBC will have to overturn liability based on the third party's statement that Mr. Woo rear-ended them. Specifically, the note says that there is no dash camera or witness evidence to confirm otherwise, and that "without any other evidence" it would have to hold Mr. Woo 100% responsible for the accident.
24. I find that contrary to this note, there was other evidence for ICBC to consider. As noted, Mr. Woo provided ICBC with two videos taken after the accident. While I agree with ICBC that these videos do not show the accident itself, I find they offer objective evidence of the moments after the accident. As discussed in more detail below, I find the videos generally support Mr. Woo's description of how the accident happened.

25. I find ICBC acted improperly and unreasonably by failing to consider Mr. Woo's video evidence, and by finding Mr. Woo 100% responsible for the accident based solely on the third party's statement that Mr. Woo rear-ended them. So, I find Mr. Woo has satisfied the first part of the 2-part test under the ACR. I turn to part 2.

***Who is responsible for the October 23, 2021 accident?***

26. Section 10(b) of the ACR says that Mr. Woo must show he is less responsible for the October 23, 2021 accident than the 100% ICBC assigned him.

27. ICBC relies on section 162 of the *Motor Vehicle Act*, which requires a driver not to follow another vehicle more closely than is reasonable in the circumstances. ICBC argues that as the rear driver, Mr. Woo has the onus to prove the collision was not his fault. While the fact that a driver has collided with the vehicle in front of them can support an inference that the rear driver was negligent, it can be rebutted by a plausible explanation of how the accident could have occurred without the rear driver's negligence (see *Wright v. Mistry*, 2017 BCSC 239 at paragraphs 16 to 18, citing *Singleton v. Morris*, 2010 BCCA 48).

28. I find that here, Mr. Woo has given a plausible explanation of how the accident occurred. As noted, he said that the third party reversed into him while both vehicles were stopped at a red light, and that the third party explained that they wanted to turn right onto the Cassiar Connector to go to North Vancouver. I find this is supported by Mr. Woo's video evidence of the third party cutting sharply across the right lane to make the right turn following the accident.

29. Additionally, I find Mr. Woo's statement is more reliable than the third party's statement. Mr. Woo gave his statement to ICBC the day after the accident, when I find the accident was likely fresh in his mind. In contrast, the third party did not give their statement to ICBC until July 14, 2022, over 8 months after the accident. I find their recollection of the accident was likely affected by the passage of time, making their statement less reliable than Mr. Woo's.

30. I also find the third party's statement is less credible than Mr. Woo's, because it is inconsistent with the other evidence in 3 ways. First, and significantly, the third party stated multiple times that they were in the right (or curb) lane when the accident happened. In contrast, Mr. Woo's video evidence taken immediately after the accident clearly shows the third party's vehicle in the middle of three lanes. Second, the third party said they were driving on Cassiar, but the accident undisputedly occurred on East Hastings. Third, the third party said they "exchanged licenses" with Mr. Woo following the accident. I find this is inconsistent with Mr. Woo's statement that the third party refused to provide their driver's license, which is supported by ICBC's February 11, 2022 email to Mr. Woo asking him to provide a description or picture of the other driver so that it could determine their identity.
31. On balance, I find Mr. Woo's description of the accident is more credible than the third party's, because it is supported by the video evidence. I place significant weight on Mr. Woo's statement, and find it is more likely than not that the third party reversed into Mr. Woo's vehicle, rather than Mr. Woo rear-ending them. It follows that I find Mr. Woo is 0% responsible for the accident. So, because he has satisfied both parts of the test under the ACR, Mr. Woo's claim is successful.

## **CRT FEES AND EXPENSES**

32. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. I find Mr. Woo is entitled to reimbursement of the \$125 in CRT fees he paid. I dismiss ICBC's claim for CRT fees as it was unsuccessful. Neither party claimed dispute-related expenses and so I make no order for them.

## **ORDERS**

33. Within 14 days of this decision, I order ICBC to amend its internal responsibility assessment to reflect that Mr. Woo is 0% responsible for the October 23, 2021 accident.



34. Within 21 days of this decision, I order ICBC to pay Mr. Woo \$125 as reimbursement for CRT fees.
35. Mr. Woo is entitled to post-judgment interest under the *Court Order Interest Act*.
36. 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.

---

Alison Wake, Tribunal Member