



# Civil Resolution Tribunal

Date Issued: October 31, 2023

File: AR-2022-008869

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Scovell v. ICBC*, 2023 BCCRT 934

B E T W E E N :

HARVEY BRIAN SCOVELL

**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, Harvey Brian Scovell, was in a motor vehicle accident on June 7, 2022. Mr. Scovell says the respondent insurer, Insurance Corporation of British Columbia

(ICBC), incorrectly determined responsibility for the accident. ICBC held Mr. Scovell 100% responsible, but Mr. Scovell disagrees and says he should be found less responsible. ICBC says it acted reasonably and correctly determined responsibility.

3. Mr. Scovell represents himself. ICBC is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. 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.

## **ISSUES**

7. 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. Scovell responsible for the accident?

## EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant Mr. Scovell must prove his claims on a balance of probabilities (meaning “more likely than not”). Under the ACR, to succeed in his claim against ICBC, Mr. Scovell must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to him. Second, Mr. Scovell must prove he is less responsible for the accident than ICBC assessed.
9. Further to section 10 of the ACR, **both** parts of the test described above must be proven. This means that even if Mr. Scovell 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. I note that Mr. Scovell did not provide final reply arguments, despite having the opportunity to do so.
10. On June 7, 2022, Mr. Scovell was driving southbound on North Road in Burnaby, BC when his vehicle collided with a vehicle driven by a third party. Both drivers reported the accident to ICBC and gave statements. While the drivers agreed the accident occurred as traffic was merging into one lane due to construction, their descriptions of the accident differed. Mr. Scovell reported that he was in the middle of 3 southbound lanes and was attempting to merge into the left lane when the third party’s vehicle, which had been behind him, suddenly changed lanes into the left lane and accelerated to pass him. The third party, on the other hand, reported that they were established in the left lane when Mr. Scovell merged into their vehicle.
11. Both drivers reported that Mr. Scovell’s vehicle sustained damage on the front driver side door and the third party’s vehicle was damaged on the front passenger side fender. It is undisputed that emergency services did not attend, and there was no witness information or dash camera footage available.

12. ICBC held Mr. Scovell 100% responsible for the accident, because it said that he was the only driver who admitted to changing lanes, and he had not met the onus to prove that he had done so safely. Mr. Scovell says ICBC did so improperly or unreasonably. Mr. Scovell makes 2 arguments about why he believes ICBC's investigation was improper or unreasonable. First, he says ICBC did not inspect the damage to his vehicle, which would have supported his description of the accident. Second, he says he was not able to speak with his ICBC claims adjuster despite his attempts to contact them.

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

13. 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. Scovell must prove ICBC acted improperly or unreasonably in assigning him sole responsibility for the June 7, 2022 accident. Merely disagreeing with ICBC's decision does not mean ICBC acted improperly or unreasonably.

*Vehicle inspection*

14. Mr. Scovell argues that ICBC should have inspected his vehicle, as he says this would have supported his description of the accident. Specifically, he says that the damage would show that the accident occurred at a very low speed and was not a direct collision as a result of him "cutting off" the third party.

15. ICBC provided damage photos that it says the third party provided to it on June 10, 2022. They show damage to Mr. Scovell's driver door, and to the third party's front passenger wheel well. ICBC also provided more detailed material damage photographs of Mr. Scovell's vehicle, but does not say whether it received these before making its determination about responsibility.

16. ICBC says it is not standard practice for it to complete a material damage review on every claim. Further, ICBC says that I should place no weight on Mr. Scovell's argument about what the damage would have shown about the cause of the accident, because it is outside of ordinary knowledge and would require expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). I agree. I find the third party's damage photographs are generally consistent with both drivers' descriptions of the accident. Mr. Scovell has provided no evidence to show that an in-person inspection of his vehicle would have shown something different than the photographs, or would have supported his description of the accident more than the third party's. So, I find Mr. Scovell has not proven that ICBC acted improperly or unreasonably by failing to inspect his vehicle damage.

#### Communication with adjuster

17. As noted, Mr. Scovell also argues that he was not able to speak to his adjuster about the accident, despite leaving two voice messages for them. ICBC does not dispute that Mr. Scovell left messages for his adjuster and so I accept that he did so. However, Mr. Scovell provided no further details about these voice messages, such as when he left them or what he said.

18. ICBC says that Mr. Scovell initially reported the accident to it on June 7, 2022, and provided a detailed statement the same day. It provided the initial report and the statement in evidence. The initial report does not identify the staff member Mr. Scovell spoke with, and the statement indicates it was not taken by Mr. Scovell's adjuster.

19. The evidence shows that Mr. Scovell then emailed his adjuster on June 8, 2022, and provided some diagrams he created to show his description of the accident. I infer that he argues that if he had an opportunity to explain these diagrams to his adjuster, ICBC would have concluded that the third party was responsible for the accident.

20. Mr. Scovell says that he received a voice message response stating there was no need for him to speak directly with the adjuster as they already had enough information to reach a decision. ICBC disputes this, and provided a file note from Mr.

Scovell's adjuster dated June 17, 2022. In it, the adjuster says that they called Mr. Scovell and that he hung up on them after they advised that he had been found 100% responsible for the accident. So, I find Mr. Scovell has not proven that he received the voice message he describes.

21. Lastly, an August 15, 2022 file note from a manager says that they spoke with Mr. Scovell by phone and further explained the decision, which Mr. Scovell indicated he did not agree with. I note that both this discussion and the June 17, 2022 call occurred after ICBC had already reached its decision about responsibility for the accident.
22. As ICBC provided no file notes showing that Mr. Scovell spoke directly with his adjuster by phone before ICBC made its decision about responsibility for the accident, I accept Mr. Scovell's submission that he was not able to do so. However, this does not necessarily mean ICBC acted improperly or unreasonably. This is not a situation in which Mr. Scovell was not able to speak with anyone at ICBC about the accident. He was able to provide his initial report, a detailed statement, and diagrams of the accident. The diagrams are straightforward and are consistent with Mr. Scovell's detailed statement, so I find Mr. Scovell has not proven that they required further explanation by way of a phone conversation. I find there is no evidence that a direct discussion with the adjuster would have affected ICBC's decision.
23. In the circumstances, I find that ICBC reasonably obtained statements from both drivers and considered them, along with the damage photographs and Mr. Scovell's diagrams, before making a decision about responsibility. While I acknowledge that as an ICBC customer, Mr. Scovell may have preferred to speak with his adjuster directly by phone, I find he has not shown that ICBC's failure to accommodate this preference was improper or unreasonable with respect to its investigation of the accident.
24. On balance, I find Mr. Scovell has not proven ICBC acted improperly or unreasonably in investigating the accident and assigning responsibility. So, I find Mr. Scovell has not satisfied section 10(a) of the 2-part test. It follows that Mr. Scovell's claim must fail.

25. Given this, I do not need to consider whether Mr. Scovell 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.

## **FEES, EXPENSES AND INTEREST**

26. 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. Mr. Scovell was not successful, so I dismiss his claim for reimbursement of CRT fees. ICBC was successful and so I find Mr. Scovell must reimburse its \$25 in paid CRT fees. Neither party claimed dispute-related expenses.

## **ORDERS**

27. Within 30 days of the date of this decision, I order Mr. Scovell to pay ICBC \$25 as reimbursement of CRT fees.

28. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*.

29. I dismiss Mr. Scovell's claims.

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