



# Civil Resolution Tribunal

Date Issued: January 5, 2024

File: AR-2023-000983

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Bristow v. ICBC*, 2024 BCCRT 14

B E T W E E N :

DAVID CHARLES BRISTOW

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Peter Mennie

## INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, David Charles Bristow, was in a motor vehicle accident on November 3, 2022. Mr. Bristow says the respondent insurer, Insurance Corporation of British

Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC held Mr. Bristow 25% responsible, but Mr. Bristow says he should be found 0% responsible instead.

3. ICBC says it acted reasonably in finding Mr. Bristow 25% responsible for the accident.
4. Mr. Bristow 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 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 Mr. Bristow responsible for the accident?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, the applicant Mr. Bristow 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. Bristow must first prove that ICBC acted improperly or unreasonably in assigning 25% responsibility for the accident to him. Second, Mr. Bristow must prove he 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 Mr. Bristow 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.

### ***The Accident***

12. The accident occurred on November 3, 2022. Mr. Bristow was driving to a park. A third party was parked at an angle in a gravel parking area next to the road. Mr. Bristow brought his vehicle to a stop and began reversing past the third party vehicle into an available parking spot. While Mr. Bristow was reversing, the third party reversed their vehicle and its bumper collided with Mr. Bristow's passenger side doors. None of this is disputed.
13. Mr. Bristow says that the third party vehicle was parked and its lights were off when he began to reverse his vehicle. He says he began reversing when it was safe to do

so. He says the third party reversed when he was directly behind them and that he did not have time to honk or get out of the way.

14. The third party reported to ICBC that they were reversing their vehicle from a parked position when the accident happened. They reported that they did not see Mr. Bristow's vehicle before the collision.
15. On January 9, 2023, ICBC issued a CL722 finding Mr. Bristow 25% responsible for the accident. ICBC relied on section 193 of the *Motor Vehicle Act* (MVA) which says that a driver must not cause their vehicle to move backwards unless the movement can be done safely. ICBC held that both Mr. Bristow and the third party had an opportunity to avoid the collision but were unaware of the other driver's maneuver. The CL722 notes that section 169 of the MVA states that a person must not move a parked vehicle unless it can be done safely. ICBC decided that section 169 made the third party more liable and found them 75% responsible for the accident.

***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). Merely disagreeing with ICBC's decision does not mean ICBC acted improperly or unreasonably.
17. Mr. Bristow was reversing from the roadway into a parking spot when the third party vehicle reversed from a parked position towards the roadway. ICBC admits that Mr. Bristow commenced reversing when it was safe to do so, but says Mr. Bristow should have observed the changing conditions during his reverse maneuver so that he could avoid the collision or alert the third party driver by honking.
18. Mr. Bristow says the third party vehicle hit him in the middle of his passenger side which shows he was in the process of backing up when the accident happened. He says the plain wording of section 193 of the MVA is that a person must not move a

vehicle backwards unless it can be done safely. Mr. Bristow argues that he reversed when it was safe to do so while the third party reversed when his vehicle was an immediate hazard. He argues that ICBC was unreasonable in interpreting section 193 of the MVA and finding him 25% responsible for the accident.

19. I agree with Mr. Bristow's submission that ICBC acted unreasonably in finding that he was 25% responsible for the accident. Section 193 of the MVA imposes a high standard of care on reversing drivers, however it does not require perfection. A driver backing up must guard against hazards which are reasonably foreseeable, but does not need to guard against every conceivable eventuality (see *Kope v. Tse*, 2019 BCSC 1197 at paragraph 48). It is undisputed that Mr. Bristow began reversing when it was safe to do so. He was entitled to proceed on the basis that the third party would obey sections 169 and 193 of the MVA. His vehicle was directly behind the third party vehicle and was there to be seen. I find that the third party vehicle reversing into Mr. Bristow's vehicle was not reasonably foreseeable and there was no basis for ICBC to find Mr. Bristow negligent.
20. So, I find that Mr. Bristow has satisfied the first part of the 2-part test. I turn to part 2.

***Who is responsible for the November 3, 2022 accident?***

21. Section 10(b) of the ACR says that Mr. Bristow must show that he is less responsible for the accident than ICBC assigned him. As noted, ICBC held Mr. Bristow 25% responsible and Mr. Bristow argues he should be held 0% responsible.
22. Courts have held that a reasonable and prudent driver understands that something might cross into the vehicle's path and takes time to look behind them when reversing (see *Araujo v. Vincent*, 2012 BCSC 1836 at paragraph 35). While Mr. Bristow commenced reversing when it was safe to do so, the third party began reversing when Mr. Bristow's vehicle was directly behind them. The third party's statement to ICBC was that they did not see Mr. Bristow's vehicle. This indicates that they did not look behind them before reversing. I find this was a clear departure from the standard of care of a reasonable and prudent driver and that this was the cause of the accident.

23. As noted above, I find that Mr. Bristow was not negligent in reversing into the parking spot when there was no immediate hazard behind him. So, I find that the third party was 100% responsible for the accident and that Mr. Bristow was not responsible for the accident.

## **CRT FEES AND EXPENSES**

24. 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. Bristow is entitled to reimbursement of the \$125 in CRT fees he paid. ICBC was unsuccessful and is not entitled to reimbursement of its CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

25. Within 14 days of this decision, I order ICBC to amend its internal responsibility assessment to reflect that Mr. Bristow is 0% responsible for the November 3, 2022 accident.

26. Within 21 days of this decision, I order ICBC to pay Mr. Bristow \$125 as reimbursement for CRT fees.

27. Mr. Bristow is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

28. 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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Peter Mennie, Tribunal Member