



# Civil Resolution Tribunal

Date Issued: March 12, 2024

File: AR-2023-006748

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Jawanda v. ICBC*, 2024 BCCRT 250

B E T W E E N :

GAGANJEET KAUR JAWANDA

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (CRT), dismissing the applicant's claims.

2. This dispute is about accident responsibility. The applicant, Gaganjeet Kaur Jawanda, was involved in a motor vehicle accident on April 9, 2023. The respondent insurer, Insurance Corporation of British Columbia (ICBC), found the applicant 50% responsible for the accident.
3. The applicant says that ICBC misapprehended her statement and witness evidence about how the accident happened. The applicant asks the CRT to determine whether ICBC acted improperly or unreasonably and whether the applicant's responsibility for the accident is less than what ICBC assessed.
4. ICBC says the applicant cannot bring this dispute under *Civil Resolution Tribunal Act* (CRTA) section 133(1)(d) because she did not comply with section 148.8 of the *Insurance (Vehicle) Regulation* (IVR). Specifically, ICBC says the applicant failed to request or receive ICBC's detailed responsibility assessment (CL722) within the required time. So, ICBC says this dispute should be dismissed.
5. The applicant is represented by a lawyer, Tabitha Ewert. ICBC is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT's formal written reasons. The CRT has jurisdiction over accident claims brought under section 133 of the 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.
7. CRTA section 2 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
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 are:

- a. Can this CRT dispute proceed without a CL722?
- b. If not, should the CRT pause this dispute and direct ICBC to conduct an internal review and provide a CL722 so that this dispute can proceed on its merits?

## EVIDENCE AND ANALYSIS

10. In making this decision, I have reviewed the Dispute Notice, the Dispute Response, the parties' submissions on this issue, and their submitted evidence.

### ***Applicable Legislation and Regulations***

11. The IVR was enacted under the *Insurance (Vehicle) Act* (IVA), and it addresses accident responsibility claims at the CRT. Specifically, IVR section 148.8 says:

(1) A person must not start a CRT claim under CRTA section 133(1)(d) unless:

- a. ICBC has issued a notification of responsibility (CL281) notifying the person of ICBC's accident responsibility assignment,
- b. The person has made a written request, in the form and manner established by ICBC, for a detailed responsibility assessment in relation to an accident, and
- c. The person has received the detailed responsibility assessment (CL722).

12. A written request referred to in section (1)(b) must be received by ICBC within 90 days after the notification of responsibility (CL281) issued under section (1)(a).

13. ICBC must, as soon as practicable after receiving a written request for a detailed responsibility assessment under subsection (1)(b), issue the detailed responsibility assessment (CL722) to the person.

14. ACR section 9(1) and CRTA section 13.5 together say that a party may not ask the CRT to resolve an accident responsibility claim, “more than 90 days after” ICBC makes a detailed assessment of responsibility. ACR section 9(2) says the date ICBC makes a detailed assessment of responsibility is on the date it issues a CL722 for the accident under section 148.8(3) of the IVR.
15. In short, IVR section 148.8 sets up a process for ICBC to assess accident responsibility, which consists of an initial assessment (CL281), followed by a detailed assessment (CL722), if requested by a party to the accident. Then, under CRTA section 13.5, a person has 90 days after receiving the CL722 to start a CRT dispute under CRTA section 133(1)(d).
16. In its Dispute Response, ICBC says the applicant has not met the IVR section 148.8(b) and (c) requirements, and so the applicant cannot bring this CRT dispute under CRTA section 133(1)(d).

### ***Relevant Chronology***

17. It is undisputed that the accident happened on April 9, 2023.
18. On May 16, 2023, ICBC sent the applicant 2 written letters, advising that it had determined the applicant was 50% responsible for the accident. The letters are identical, and so it is unclear why ICBC sent 2 letters. In any event, the letters are both titled “Notification of Responsibility”, and they are labelled “CL281B” in small type at the bottom left corner. I find the May 16, 2023, letters are the CL281 notification of responsibility ICBC is required to provide under IVR section 148.8(1)(a).
19. The May 16, 2023, letters specifically say the applicant can dispute the accident responsibility decision by contacting ICBC to request a review within 90 days, and that the applicant “can do this by emailing [responsibility.review@icbc.com](mailto:responsibility.review@icbc.com)”. It is undisputed that the applicant did not request a review.
20. Instead, the applicant hired a lawyer to represent her. The parties’ email evidence shows that on June 6, 2023, the law firm emailed ICBC to request its file materials

relating to the accident. ICBC responded that it was reviewing the liability resolution process and would confirm when that was concluded. The law firm asked ICBC to clarify what that meant. On June 13, 2023, ICBC advised that when there is a dispute about liability, ICBC's first step is to review the rationale behind its determination, including the accident details, scenario, location, evidence, and statements to determine whether to maintain or change its decision. ICBC asked if the applicant was going to wait for ICBC's review or proceed with starting a legal action right away. The law firm confirmed it was commencing an action, and so ICBC provided the other driver's contact information. I note that the applicant's lawyer, Tabitha Ewert, was copied on all of the law firm's emails. I infer that ICBC ultimately did not proceed with its internal review because the applicant had not requested a review.

21. On June 29, 2023, the applicant applied for CRT dispute resolution to determine accident responsibility under CRTA section 133(1)(d), and the CRT issued the Dispute Notice on August 1, 2023. Based on information the applicant provided, the Dispute Notice indicates that she received the CL722 on May 16, 2023. However, as noted above, that was the date ICBC provided the CL281. More on this below.
22. ICBC filed its Dispute Response on August 17, 2023. In the Dispute Response, ICBC raised IVR section 148.8, and that the applicant filed her CRT claim before ICBC had completed its secondary review of liability and issued the CL722.
23. The applicant says this was the first time she learned about the requirement for a CL722, and so she advised the CRT on September 14, 2023, that she did not have the CL722. The email evidence shows the applicant asked ICBC to provide a CL722 on September 19, 2023. ICBC responded that its Responsibility Resolution Team (RRT) is responsible for providing a CL722, and it did not prepare one because the applicant did not request it before filing her CRT dispute. While the applicant then tried to obtain the CL722 through the RRT, ICBC advised on November 2, 2023, that its internal dispute process was no longer available because the applicant had already started her CRT dispute. I note that the applicant's request was also made more than 90 days after the CL281.

24. In short, the applicant essentially admits that she did not comply with IVR section 148.8(b) and (c), as she undisputedly started this CRT dispute before she had made a written request for and received a CL722. Further, the applicant's first request for the CL722 was on September 19, 2023, which was more than 90 days after ICBC issued the CL281, contrary to IVR section 148.8(2).
25. ICBC says that because the applicant did not meet the criteria under the IVR to bring a CRT dispute, the applicant's claim should be dismissed. The applicant says this would be unfair. She requests that I pause this dispute and direct ICBC to conduct its internal review and provide a CL722 so that this dispute can proceed on its merits.

***Should the CRT pause this dispute and direct ICBC to provide a CL722?***

26. The applicant argues that she should not be prevented from pursuing her claim against ICBC due to a simple misunderstanding of the process. She says that ICBC failed to tell her that obtaining the CL722 was a necessary step before commencing a CRT dispute, and now refuses to provide it. So, she says the CRT should pause this dispute and direct ICBC to provide the CL722.
27. I start with ICBC's obligations. I find that ICBC complied with its obligation under IVR section 148.8(1)(a) to issue a notification of its accident responsibility assignment by sending the applicant its May 16, 2023, CL281 letter. I also find that ICBC properly advised the applicant in that letter that she could dispute ICBC's responsibility decision by requesting a review within 90 days.
28. The applicant argues that ICBC never explicitly mentioned the CL722 to her. That is true. However, I find it is not ICBC's role to provide the applicant with that kind of legal advice. As noted, the applicant hired a lawyer immediately after receiving the CL281. I find the lawyer did not ask ICBC to inform her about the process for bringing a CRT dispute. I also find that ICBC did not mislead the applicant or her lawyer about that process.
29. Specifically, I disagree with the applicant's submission that ICBC represented she had the option to *either* pursue an "undefined internal review" of ICBC's accident

responsibility or pursue a dispute at the CRT. I infer the applicant is referring to ICBC's June 13, 2023, email. As noted above, ICBC asked the applicant's lawyer in that email if they were going to wait for ICBC's more detailed review of liability or proceed directly to legal action. Contrary to the applicant's submission, I find that question does not amount to a representation that the applicant could proceed with a CRT claim about ICBC's responsibility determination without completing ICBC's internal review process and obtaining the CL722.

30. The applicant's lawyer never specified what type of legal proceeding they intended to bring. As ICBC points out, there are other legal proceedings the applicant could have pursued that did not require a CL722, such as disputing ICBC's liability determination under the CRT's small claims jurisdiction. I find ICBC was not obligated to confirm whether the applicant was bringing a claim under CRTA section 133(1)(d), and if so, ensure her lawyer was aware of IVR section 148.8. Rather, I find ICBC reasonably assumed the applicant's lawyer knew the law.
31. I also note that the CRT's accident responsibility claim application form includes a section with a red exclamation point at the top of the first page, which states: "You can only make a CRT claim if you have a detailed assessment letter (CL722) from ICBC. You must make your CRT claim within 90 days from the date of ICBC's CL722 letter". Further, the application form's first fillable section asks applicants to provide the date of ICBC's detailed responsibility letter (CL722). The form specifically instructs applicants to check their letters from ICBC and notes the CL722 letter will have a subject line on the first page saying "CL722 Detailed Responsibility Assessment".
32. While not specifically argued on this preliminary issue, to the extent the applicant says the CRT should not have accepted her dispute application without the CL722, I do not accept that submission. Based on the information in the CRT's application form, I find the applicant knew or reasonably ought to have known about the requirement to have a CL722. The applicant indicated she had received one, and it was not the

CRT's obligation at the intake stage to make further inquiries to ensure the applicant knew what a CL722 was.

33. Given all the above, I agree with ICBC that the applicant (or her lawyer) should have been aware or should have informed herself about the requirements for bringing a CRT dispute. Specifically, even if the applicant was not represented by a lawyer, having already advised the applicant about the 90-day limit to request a detailed responsibility assessment, I do not accept that ICBC had to further inform her about the CL722 requirement before she started this dispute.
34. So, is ICBC obligated to provide a CL722 now? I find the answer is “no”. As noted, IVR section 148.8(2) says that a person has 90 days after receiving the CL281 to request a detailed responsibility assessment. The CL281 advised the applicant of that 90-day time limit, but the applicant undisputedly did not request the detailed responsibility assessment within 90 days.
35. I find that IVR section 148.8 effectively establishes a limitation period for people to dispute ICBC's responsibility assessment. Notably, section 148.8 is titled “**Accident responsibility claim – limitation**”. The courts have found that an applicant's error or ignorance of the law does not postpone the running of limitation periods. As noted by the Supreme Court of Canada in *Novak v. Bond*, [1999] 1 SCR 808 at paragraph 8, almost all applications of limitations statutes will seem harsh, but they are necessary to uphold the important principles of finality and expeditious dispute resolution.
36. I note that ICBC has previously provided a CL722 after an applicant started a CRT dispute. See for example *Swift v. ICBC*, 2024 BCCRT 181, in which ICBC voluntarily provided a late CL722 and chose not to take issue with the applicant's failure to request the CL722 before they filed their CRT dispute. I find it is within ICBC's discretion to agree to provide a CL722 if a person requests a detailed review more than 90 days after receiving a CL281. However, that does not mean it is appropriate for the CRT to order ICBC to do so.



37. Here, ICBC advised the applicant in a December 7, 2023 email that it would permit her to proceed through ICBC's internal dispute process and obtain a CL722, only if she first withdrew her CRT dispute. ICBC says it offered this option because it recognized the legislative changes governing ICBC's accident responsibility assessment process were relatively recent (they were enacted about 9 months before the applicant started this dispute). However, the applicant declined to withdraw her dispute because she said there was no guarantee the CRT would permit her to pursue a previously withdrawn dispute once she received a CL722, even though CRT staff confirmed this was an option for her.
38. I find ICBC is not bound by its offer to the extent that it must now provide a CL722 so that this dispute can proceed. The applicant was required to have a CL722 before starting a CRT dispute, and ICBC is not obligated to remedy the applicant's mistake. ICBC says it is no longer prepared to provide the applicant with a CL722. I find ICBC is entitled to rely on the limitation period in IVR section 148.8(2) requiring the applicant to have requested a detailed responsibility assessment within 90 days of the CL281.
39. I also find the CRT does not have the authority to order ICBC to waive a limitation period. Therefore, I decline the applicant's request to pause this dispute and direct ICBC to provide a CL722.
40. As the applicant failed to meet the IVR section 148.8 mandatory preconditions to bring a claim under CRTA section 133(1)(d), and the time for her to obtain a CL722 has now passed, I find that I must dismiss her claim.
41. Nothing in this decision prevents the applicant from filing a claim in the CRT's small claims jurisdiction for accident-related damages resulting from ICBC's responsibility decision, subject to any applicable limitation period.
42. 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. As the applicant was unsuccessful and declined to withdraw this dispute, I find she is not entitled to reimbursement of her CRT fees.

ICBC was the successful party but did not pay any fees or claim dispute-related expenses.

## **ORDER**

43. I dismiss the applicant's claims, and this dispute.

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Kristin Gardner, Tribunal Member