



# Civil Resolution Tribunal

Date Issued: July 3, 2024

File: AR-2023-002159

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Naccarato v. ICBC*, 2024 BCCRT 636

BETWEEN:

JAMIE NACCARATO

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

### INTRODUCTION

1. This dispute is about accident responsibility.
2. On December 21, 2022, the applicant, Jamie Naccarato, was in a motor vehicle accident on the Lions Gate Bridge near the Capilano entrance. The front left wheel of

her Jeep struck the right rear wheel, and quarter-panel of a third party's (BP) Tesla. The respondent insurer, Insurance Corporation of British Columbia (ICBC), determined Ms. Naccarato was 100% responsible for the accident. Ms. Naccarato says ICBC incorrectly determined responsibility for the accident, and that she should be held 0% responsible.

3. ICBC says it properly and reasonably determined Ms. Naccarato was fully responsible for the accident. It asks me to dismiss Ms. Naccarato's claims.
4. Ms. Naccarato represents herself. An authorized employee represents ICBC.

## **JURISDICTION AND PROCEDURE**

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over accident claims brought under *Civil Resolution Tribunal Act* (CRTA) section 133. CRTA section 133(1)(d) and *Accident Claims Regulation* (ACR) Part 2 give the CRT jurisdiction over accident responsibility determinations.
6. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. CRTA section 39 says that the CRT has discretion to decide the hearing's format, 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. CRTA section 42 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, Ms. Naccarato is responsible for the accident.

## BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ms. Naccarato, as applicant, must prove her claims on a balance of probabilities, meaning “more likely than not”. Under the ACR, to succeed in her claim against ICBC, she must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to her. Second, she must prove she is less responsible for the accident than ICBC assessed.
11. Further to ACR section 10, Ms. Naccarato must prove **both** parts of the test described above. This means that even if Ms. Naccarato can prove she is less responsible for the accident than ICBC assessed, she will not be successful if she 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.
12. In the non-binding CRT decision in *De Paras v. ICBC*, 2024 BCCRT 106, a vice chair described the legal test under ACR section 10(a) when determining whether ICBC acted properly. The vice chair found this refers to ICBC’s investigation and process, rather than the outcome. The vice chair stated a proper investigation does not require ICBC to endlessly investigate accidents, but that it should be proportional.
13. The vice chair also considered ICBC’s obligations under ACR section 10(a) to be reasonable when it assesses responsibility. The CRT must review ICBC’s detailed responsibility letter, called a CL722, alongside the evidence ICBC had at the time and consider whether ICBC’s decision was logically justified and supported by the

available evidence and the applicable law. However, the vice chair found it is not appropriate for the CRT to defer to ICBC's assessment of the law or its application to given facts.

14. I agree with the reasoning in *De Paras* and apply it here.

### ***Accident***

15. As I set out above, on December 21, Ms. Naccarato was driving a black Jeep on the Lion's Gate Bridge near the Capilano entrance. Dashcam footage from each of BP and an independent witness show Ms. Naccarato driving in the right lane, and BP driving in the left lane. It is undisputed that shortly ahead of the vehicles, the right lane ended, so vehicles were merging from the right lane into the left. Despite snow in the area, the roads were clear.

16. The drivers moved forward at a very slow speed, stopping occasionally as other traffic merged while they both approached the merge point. At one point, their vehicles were alongside each other. BP drove further forward so that Ms. Naccarato's front tire was alongside BP's rear tire. Both drivers briefly came to a full stop. Both drivers then began to move forward again. As they did, Ms. Naccarato's driver side front tire rubbed BP's rear tire and quarter panel. BP's Tesla jerked to the side. BP stopped their Tesla and got out. Ms. Naccarato changed her Jeep's angle, drove around them in the right lane, merged, and continued to drive forward.

17. The independent witness's dashcam view from behind the vehicles is centered over the dashed line dividing the lanes. The footage shows BP's Tesla is driving straight, slightly over the dashed line immediately before the lanes begin to merge. Ms. Naccarato's Jeep is within her own lane but driving on an angle towards the left lane and extremely close to BP's Tesla.

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

18. ACR section 10(a) says that to succeed in her claim, Ms. Naccarato must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident.

**ICBC's Investigation**

19. Ms. Naccarato argues ICBC acted improperly, since she did not receive any form of communication requesting her statement and was not given an opportunity to provide her explanation of or perspective on the accident.

20. On December 22, BP reported the accident to ICBC. ICBC sent Ms. Naccarato 2 letters in December, asking her to report the accident. She did so on January 7.

21. There are notes in evidence from ICBC's claims adjustor and a manager outlining ICBC's communication with Ms. Naccarato. The January 12, 2023 note includes statements from ICBC's adjustor that they contacted Ms. Naccarato, provided dashcam footage by email, and made the initial decision that she was 100% responsible. ICBC communicated its initial decision in a letter called a CL281, which provides a party ICBC's initial determination and information on how to dispute it.

22. On January 25, Ms. Naccarato gave statement a to ICBC after speaking with a manager. She sets out, in detail, her view on what happened. Ms. Naccarato reported that she had not yet started her merge when the vehicles collided. She said she stayed in her lane the whole time, was moving straight, and following the vehicle ahead of her. She blamed BP for swaying into her lane and causing the accident.

23. ICBC's CL722, dated February 23, 2023, includes Ms. Naccarato's January 25 statement to ICBC, but incorrectly identifies it as coming from her January 7 initial report. Despite getting the date of her statement wrong, I find its inclusion in the CL722 proves ICBC collected and considered Ms. Naccarato's position on the accident's cause.

24. The CL722 also includes BP's statement. BP says Ms. Naccarato came alongside them to try to go ahead then fell back. BP says Ms. Naccarato rolled down her window and told BP they "had [their] own lane," to which BP replied they were merging. BP says they continued straight forward when Ms. Naccarato turned her Jeep's wheel and bumped the back of their Tesla.
25. The CL722 noted there were available witnesses, which I interpret to mean the independent witness behind the drivers and their dashcam footage. It also included a general statement that it relies on witnesses and dash cameras, though it did not cite the specific footage it relied upon in its investigation. However, ICBC's notes show it raised the dashcam footage in its conversations with Ms. Naccarato. So, I find that ICBC's general reference to dashcam footage in the CL722 is enough to satisfy me that it considered the footage in making its decision. ICBC's representatives clearly discussed the footage with Ms. Naccarato, so she was aware that it formed part of its investigation and informed its decision.
26. Ms. Naccarato does not allege any other shortcoming in ICBC's investigation. I find ICBC properly investigated the accident. I turn to whether its decision assigning responsibility was unreasonable.

#### Application of the Motor Vehicle Act

27. In the CL722, ICBC cited *Motor Vehicle Act* (MVA) section 151. It provides that a driver must not drive from one lane to another when a broken (dashed) line exists unless the driver has determined they can do so with safety and without affecting the travel of another vehicle.
28. Other than citing section 151, ICBC does not explain how it applied the facts to MVA section 151.
29. Here, I find the dashcam footage from behind the drivers shows Ms. Naccarato's Jeep was clearly angled towards BP's Tesla as she drove forward. She was undeniably at least a full car length away from the merge point. But for hitting the Tesla, her Jeep

would have immediately crossed the dashed line. So, I find she violated MVA section 151.

30. I also find the footage shows BP's Tesla was, at least partially, in Ms. Naccarato's lane. This is a violation of a strict reading of MVA section 151. The merge point was nearly upon BP and the dashcam footage shows they were under one car length away. I understand why BP began to center their vehicle in preparation to join the new, single lane created by the two lanes merging, especially after they pulled ahead of Ms. Naccarato. But, by doing so, BP moved from one lane to another, which affected Ms. Naccarato's forward travel in her lane.

31. In the CL722, ICBC did not address Ms. Naccarato's argument that BP entered her lane. I find her position was reasonable and warranted comment and consideration. Since ICBC did not provide any reasons explaining how it applied MVA section 151, or why it did not consider BP's responsibility, I find it fell short of its obligation to explain its decision and logically justify its position. So, I find ICBC acted unreasonably, contrary to ACR section 10(a).

### Assessment of Responsibility

32. I turn now to whether Ms. Naccarato has proven she is less responsible than determined by ICBC.

33. In general, drivers are entitled to assume that other drivers will obey the rules of the road. However, drivers are not entitled to proceed blindly when another driver breaks these rules. They still must take reasonable care to avoid an accident if they can.<sup>1</sup>

34. Here, I find Ms. Naccarato's decision to move forward in her lane instead of stopping did not demonstrate reasonable care. Had Ms. Naccarato simply braked after her front tire fell level with BP's rear tire, the vehicles would not have collided. Instead, she chose to drive forward. In doing so, she contacted BP's vehicle, causing the

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<sup>1</sup> See *Pirie v. Skantz*, 2016 BCCA 70.

accident. The accident would not have occurred without Ms. Naccarato's forward movement.

35. To the extent BP was over the line, I find they were beginning to center their car immediately before the merge. This worsened the already-small amount of space between the vehicles and was in violation of the MVA. In the circumstances, I find that merging early was a breach of BP's MVA obligations.
36. So, I find both drivers were negligent. When 2 or more people are negligent, fault must be apportioned based on their relative blameworthiness for the accident. This requires an assessment of how much each person's driving fell below a reasonable standard.<sup>2</sup>
37. Here, I find Ms. Naccarato was mostly to blame for the accident. She was almost entirely behind BP when the accident occurred. She made the reckless decision to continue forward, reducing the amount of available space between the vehicles while angled towards BP. It was her forward motion that caused the vehicles to collide.
38. However, by beginning their merge early, BP is also partially to blame for the accident. They affected Ms. Naccarato's travel, in violation of MVA section 151, and brought their own vehicle towards the path of Ms. Naccarato's. Their conduct is less blameworthy than Ms. Naccarato's, but still falls below a reasonable standard.
39. On that basis, I find Ms. Naccarato is 90% responsible for the accident.

## **FEES, EXPENSES, AND INTEREST**

40. Under CRTA section 49, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Here, Ms. Naccarato was successful in changing responsibility, but fell far short of her position that she was 0% responsible. So, I find the parties had divided success, and order

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<sup>2</sup> See: *Chambers v. Goerz*, 2009 BCCA 358.



each party to bear their own costs. I dismiss the parties' claims for CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

41. I order ICBC to amend its internal responsibility assessment to reflect that Ms. Naccarato is 90% responsible for the December 21, 2022 accident.
42. I dismiss the parties' claims for CRT fees.
43. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. 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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Christopher C. Rivers, Tribunal Member