



# Civil Resolution Tribunal

Date Issued: January 28, 2026

File: AR-2024-004231

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Fairall v. ICBC*, 2026 BCCRT 142

BETWEEN:

ROBERT BRADLEY FAIRALL

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. On December 11, 2023, the applicant, Robert Bradley Fairall, was involved in a motor vehicle accident with a pedestrian, BJ. BJ is not a party to this dispute. The respondent insurer, Insurance Corporation of British Columbia (ICBC), held Mr.

Fairall 100% responsible for the accident. Mr. Fairall disagrees with ICBC's assessment, and says he should be held 0% responsible.

2. ICBC says it correctly determined accident responsibility, and acted reasonably in its investigation. ICBC asks me to dismiss Mr. Fairall's claim.
3. The applicant is self-represented. ICBC is represented by an 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 gives the CRT jurisdiction over accident responsibility determinations.
5. CRTA section 2 says 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.
6. CRTA section 39 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 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 an oral hearing is not necessary in the interests of justice.
7. CRTA section 42 says that the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

## ISSUES

8. The issues in this dispute are:
  - a. Did ICBC act improperly or unreasonably in determining accident responsibility?
  - b. If so, was Mr. Fairall less responsible for the accident than ICBC assessed?

## BACKGROUND, EVIDENCE, AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Fairall must prove his claims on a balance of probabilities, meaning “more likely than not”. Under the *Accident Claims Regulation* (ACR) section 10(a), to succeed in his claim against ICBC, Mr. Fairall must first prove ICBC acted improperly or unreasonably in assigning responsibility for the accident to him. Second, under ACR section 10(b), Mr. Fairall must prove he is less responsible for the accident than ICBC assessed.
10. Mr. Fairall must prove **both** parts of the test described above. This means even if Mr. Fairall can prove he is less responsible for the accident than ICBC assessed, he will not be successful if he cannot also prove ICBC acted improperly or unreasonably. I have read all of the parties’ evidence and submissions, but I only refer to information I find necessary to explain my decision.

### ***The accident***

11. On December 11, 2023, between 7:15 and 7:45am, Mr. Fairall was travelling west along Skeena Drive in Comox. It was dark and wet. Mr. Fairall approached the intersection of Skeena Drive and Pritchard Road, and stopped at the stop sign. There were trees and parked cars blocking his view of Pritchard Road, so he inched forward to see around them, about  $\frac{3}{4}$  of the way into the crosswalk. Mr. Fairall saw headlights approaching northbound on Pritchard Road, so he waited for 2 vehicles to clear the intersection.

12. Mr. Fairall and BJ's accounts of what happened next differ, as I explain further below. In short, though, as Mr. Fairall proceeded through the crosswalk, his vehicle came into contact with BJ, who was walking their dog. Mr. Fairall and BJ did not exchange contact information, nor did they call the emergency services. BJ carried on walking, and Mr. Fairall proceeded to work.
13. The following week, BJ reported the accident to ICBC, after recognizing Mr. Fairall's vehicle in the neighbourhood. ICBC opened an investigation.

***Did ICBC act improperly or unreasonably in determining accident responsibility?***

14. Since it was issued on February 2, 2024, the CRT has regularly cited the non-binding decision in *De Paras v. ICBC*, 2024 BCCRT 106 to explain the legal analysis required in accident responsibility disputes under ACR section 10(a).
15. The tribunal member in *De Paras* found that in assessing the reasonableness of ICBC's responsibility determination, the CRT must consider whether it was logically justified and supported by the available evidence and the applicable law. The tribunal member also found the ACR requirement for ICBC's accident responsibility determinations to be proper refers to ICBC's investigation and process, rather than the outcome. The tribunal member said a proper investigation does not require ICBC to endlessly investigate all accidents, and should be proportional. I agree with the reasoning in *De Paras*, and I apply it here.

***Was ICBC's investigation proper?***

16. ICBC obtained 2 statements each from Mr. Fairall and BJ.
17. On December 14, 2023, ICBC spoke with BJ. BJ said they were walking south on Pritchard Road when the driver of a truck slowed down to allow them to cross Skeena Drive. BJ waved in thanks, but as they were walking through the crosswalk, the driver accelerated and hit them. BJ said the driver did not stop, but only rolled down the window to apologize and then drove off. In their second statement on

December 28, 2023, BJ elaborated, saying they had bounced off the truck and rolled when it hit them.

18. For his part, on January 4, 2024, Mr. Fairall told ICBC he was stopped at the stop sign, facing west on Skeena Drive, at the intersection with Pritchard Road. After inching ahead and allowing northbound traffic to clear the intersection, Mr. Fairall said he began moving forward again, but a hand struck the front of his truck. Mr. Fairall rolled down his window to speak to BJ and apologize. He said he offered to call an ambulance, but “everything was good” and he and BJ went their separate ways. Mr. Fairall told ICBC he believed BJ had come out from behind a hedge, which was part of the reason he did not see them.
19. When Mr. Fairall spoke with ICBC a second time on January 8, 2024, he added that BJ was not wearing reflective gear, he did not see them on the sidewalk, and the 2 of them did not make eye contact before the accident. He also explained BJ did not fall down. Instead, Mr. Fairall’s truck “pushed” BJ forward.
20. There were no witnesses to the accident, or dashcam or other video footage.
21. Mr. Fairall questions the accuracy of BJ’s statements, and says ICBC did not do enough to establish BJ’s “path of travel”. I infer Mr. Fairall’s position is that if ICBC had looked into this further, it would have come to a different conclusion.
22. It is not clear to me what more ICBC could have done to investigate BJ’s route across the intersection. In both statements, BJ said they waved at Mr. Fairall when he stopped at the stop sign, and then proceeded across Skeena Drive. Mr. Fairall says BJ was “crossing from behind a stopped vehicle”. I find this confusing given Mr. Fairall admitted his truck pushed BJ forward. In any case, based on *De Paras*, and as noted in the Continuing Legal Education Society of BC’s *‘BC Motor Vehicle Accident Claims Practice Manual’*, an insurer is not expected to investigate a claim with the skill and forensic proficiency of a detective. An insurer must bring “reasonable diligence, fairness, an appropriate level of skill, thoroughness, and

objectivity to the investigation and the assessment of the collected information”. See *McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283.

23. Mr. Fairall also says ICBC did not accept his photos of the accident’s location. He says while they are from a different date, they show an accurate picture of the entire area. ICBC says it accepted Mr. Fairall’s photos, but they did not assist in determining responsibility for the accident.
24. ICBC also says that while the photos do not show the accident or its aftermath, they do show the road is well lit and there is a path of “unobstructed sight lines for any pedestrians, cyclists, and/or any other potential hazards that may be approaching on the sidewalk” from the left or right. I agree this is what the photos show. While there are tall trees and shrubs that could potentially interfere with a driver’s view of Pritchard Road from behind the stop line on Skeena Drive, there appear to be clear sight lines once a vehicle moves forward a little bit.
25. Finally, Mr. Fairall says ICBC sent him 3 letters about BJ’s report in 2 days, which shows it was disorganized. ICBC says the letters were system-generated after BJ made their report. I find the fact that these letters were auto-issued in short succession does not mean ICBC’s investigation was flawed.
26. Overall, I find Mr. Fairall has not proven ICBC’s investigation was improper.

*Was ICBC’s determination reasonable?*

27. On April 17, 2024, ICBC issued its detailed responsibility assessment letter, or CL722. In it, ICBC found Mr. Fairall 100% responsible for the accident. ICBC relied on sections 175, 179, 181 and 186 of the *Motor Vehicle Act* (MVA) to reach its conclusion.
28. Section 175 says the driver of a vehicle that is about to enter through a highway must first stop in compliance with section 186. The driver must yield to traffic in the intersection on the through highway, or to traffic that is so close as to constitute an immediate hazard, and can then proceed with caution.

29. Section 186 says if there is a stop sign at an intersection a driver must stop a) at the stop line, b) before entering the crosswalk on the intersection's near side, or c) if neither of those is present, at the point nearest the intersecting highway from which the driver has a view of approaching traffic on that highway.
30. Section 179(1) says a driver must yield to a pedestrian where there are no traffic control signals when the pedestrian is crossing in a crosswalk and is in the half of the highway on which the vehicle is travelling, or is so close that they are in danger.
31. Finally, section 181(a) says a driver must exercise due care to avoid colliding with a pedestrian on the highway.
32. ICBC does not dispute that Mr. Fairall first stopped at the stop line just in front of the stop sign on Skeena Drive at Pritchard Road. So, I find there is no evidence he breached MVA section 186.
33. However, I find ICBC's determination that Mr. Fairall was 100% responsible for the accident, based on his breaches of MVA sections 175, 179(1), and 181(a), is reasonable as it is supported by the evidence.
34. Mr. Fairall's main argument is that BJ was contributorily negligent based on "unsafe pedestrian acts", including being dressed in dark clothing, not wearing reflective gear, and not having lights. Taking steps to increase their visibility likely helps keep pedestrians safe on dark, wet winter mornings. However, Mr. Fairall pointed me to no law that provides they must do so. I also do not find BJ owed Mr. Fairall a duty of care at common law, or that if they did, BJ breached the applicable standard of care for a pedestrian using a crosswalk. Proof of both of these is required to establish BJ's negligence and make them partially responsible for the accident.
35. It is Mr. Fairall who was responsible for yielding to BJ at the crosswalk, and for exercising due care to avoid colliding with them. I find this included keeping a particular lookout for pedestrians who might not be clearly visible in the inclement weather conditions.

36. In these circumstances, and based on the evidence available, I find Mr. Fairall has not proven ICBC's determination that he was 100% responsible for the accident was reasonable.

## **CONCLUSION**

37. Since Mr. Fairall did not meet the first part of the ACR section 10 test, there is no need for me to consider whether he is less responsible for the accident than ICBC assessed.

## **CRT FEES AND DISPUTE-RELATED EXPENSES**

38. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to recover their CRT fees and dispute-related expenses. Mr. Fairall was not successful, so I dismiss his claim for reimbursement of his CRT fees. ICBC was successful and paid \$25 in fees. However, ICBC explicitly says it does not seek reimbursement of its fees. Neither party claims dispute-related expenses. So, I make no order for reimbursement of fees or dispute-related expenses.

## **ORDER**

39. I dismiss Mr. Fairall's claims.

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Megan Stewart, Tribunal Member