



# Civil Resolution Tribunal

Date Issued: July 5, 2022

File: SC-2021-007734

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Li v. ICBC*, 2022 BCCRT 771

BETWEEN:

ALICE LI

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. The applicant, Alice Li, who asked to be referred to as Dr. Li, was involved in a motor vehicle accident on December 30, 2019. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally determined that Dr. Li was 25% liable for the accident, and the other driver, JM, was 75% responsible. JM filed a dispute with the Civil Resolution Tribunal (CRT), arguing that Dr. Li was solely liable

for the accident. An ICBC employee represented Dr. Li in the CRT dispute. In an August 20, 2020 decision, the CRT found that each driver was 50% liable.

2. Dr. Li says that ICBC's initial investigation of the accident and assessment of fault was biased and unfair. She also says ICBC was negligent and acted in bad faith while representing her during the CRT process, and she alleges ICBC "tampered" with evidence. Dr. Li claims \$5,000, for partial refunds of past and future insurance premiums and aggravated and punitive damages. While Dr. Li says her claim far exceeds \$5,000, she expressly abandons her claim to any amount over \$5,000 to bring it within the CRT's small claims monetary limit.
3. ICBC says it reasonably and appropriately investigated the accident. It denies breaching any contractual or statutory duties owed to Dr. Li, and says it properly defended Dr. Li against JM's claims pursuant to its obligations under the *Insurance (Vehicle) Regulation (IVR)*. ICBC says Dr. Li has not proven she is entitled to the claimed damages, and it asked that this dispute be dismissed.
4. Dr. Li is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT's formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. 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 the dispute's parties that will likely continue after the CRT process has ended.
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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where

there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

7. 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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. In submissions, Dr. Li raised concerns about ICBC's conduct in defending her against a BC Supreme Court action about the accident filed by a passenger in JM's vehicle. However, this issue was not raised in Dr. Li's Dispute Notice, so I find it is not properly before me, and I decline to make any findings about it.
10. After the parties completed their submissions, ICBC advised CRT staff that it believed Dr. Li used the space for submissions on CRT fees to continue to her submissions on the main claim, to bypass character count restrictions. ICBC says Dr. Li's extra submissions should not be considered. Given that I find in ICBC's favour below, I decided it was unnecessary to make any findings about whether Dr. Li exceeded the CRT's allowable character count for submissions.

## ISSUES

11. The issues in this dispute are:

- a. Did ICBC breach its statutory obligations or contract of insurance in investigating the accident and assessing fault?
- b. Was ICBC negligent or did it act in bad faith while representing Dr. Li in the previous CRT dispute?
- c. What is the appropriate remedy, if any?

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Dr. Li must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.

13. The undisputed circumstances of the December 30, 2019 accident were as follows. Dr. Li was driving north on Carleton Avenue in Burnaby, BC, while JM was driving east on Forest Street. Eastbound traffic on Forest Street must turn right at Carleton Avenue. JM failed to come to a complete stop for the stop sign at Carleton Avenue, as Dr. Li made a left turn to proceed west on Forest Street. The 2 vehicles collided in the intersection.

### ***Did ICBC breach its statutory or contractual obligations in investigating the accident and assessing fault?***

14. ICBC owes Dr. Li a duty of good faith, which requires ICBC to act fairly, both in how it investigates and assesses the claim, and in its decision about whether to pay the claim: see *Bhasin v. Hrynew*, 2014 SCC 71 at paragraph 22, 55, and 93. As noted in the Continuing Legal Education 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 *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283.

15. In determining whether ICBC breached its statutory obligations or its contract of insurance, or both, the issue is whether ICBC acted “properly or reasonably” in administratively assigning Dr. Li 25% responsibility for the accident: see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322.
16. Dr. Li says that based on the accident circumstances, ICBC’s guidelines required it to assess JM 100% at fault. She says that ICBC manually overwrote its internal computer system to arbitrarily assign part responsibility to her.
17. ICBC agrees with Dr. Li’s submission that it initially assigned 100% liability for the accident to JM because JM had left a stop sign and Dr. Li did not have a stop or yield sign. However, ICBC says this initial assignment was made before ICBC had received any statements, photographs, or dashcam footage. It is undisputed that on January 7, 2020, ICBC advised Dr. Li that it had found her 25% liable for the accident.
18. Dr. Li relies on a screenshot from the ICBC website that shows an example of an accident where one vehicle is turning left, and another vehicle leaves a stop sign and collides with the left-turning vehicle in the intersection. In that example, the website suggests the vehicle leaving the stop sign is 100% liable.
19. While ICBC may have general guidelines about attributing fault in certain scenarios, I disagree with Dr. Li’s suggestion that ICBC should be unable to adjust the default liability assessment when provided with additional information. In other words, accident-specific details and context matter. I find the example Dr. Li relies on above assumes not only that the left-turning driver had the right-of-way, but also that their actions were not otherwise negligent.
20. Here, ICBC’s file notes show it based its liability determination on Dr. Li’s dashcam footage, which showed Dr. Li cut the corner on her left turn, and on photos that showed her vehicle almost entirely in the eastbound lane at the time of impact. So,

contrary to Dr. Li's submission, I find ICBC's assessment was not based on a hypothetical situation. Dr. Li may disagree with the relative weight those factors should be given. However, I find there was nothing arbitrary or improper about ICBC adjusting its liability determination based on additional information it received about the accident circumstances.

21. Further, I disagree with Dr. Li that an internal message exchange between 2 ICBC staff shows they had to manually overwrite the system to improperly attribute 25% fault to her. I accept ICBC's explanation that an inexperienced staff member was simply seeking assistance with filling out a certain form to reflect ICBC's liability determination. I acknowledge Dr. Li's submission that there are some regrettable comments in the exchange where the staff appear to ridicule her persistence in following up on the liability determination. However, I find the comments do not establish that ICBC acted improperly or unreasonably in their assignment of fault for the accident.
22. Overall, I find Dr. Li has not proven that ICBC breached its statutory or contractual obligations in investigating the accident and assessing fault. I dismiss this aspect of Dr. Li's claim.

***Was ICBC negligent or did it act in bad faith while representing Dr. Li in the previous CRT dispute?***

23. Dr. Li makes several allegations about how ICBC acted in bad faith and "interfered with her rights" while representing her in the previous CRT dispute.
24. First, Dr. Li alleges that ICBC intentionally waited to advise her that JM had filed a CRT dispute to prevent her from filing a counterclaim. For the following reasons, I find the evidence does not support Dr. Li's allegation.
25. The evidence shows that the CRT served ICBC with JM's Dispute Notice in a January 27, 2020 email. ICBC's file notes indicate that a manager advised Dr. Li on February 12, 2020 that her next step to dispute the liability assessment was to file a CRT claim, and that JM had already started the CRT process. Further, a February 19, 2020 file

note shows Dr. Li discussed JM's CRT dispute in detail with her adjuster. Based on this timeline, I do not accept Dr. Li's submission that ICBC attempted to hide JM's CRT dispute from her or failed to tell her about the dispute until after the 30-day time limit to file a counterclaim expired.

26. However, even if ICBC failed to promptly advise her about JM's dispute, which is not proven on the evidence, I find the decision about whether to file a counterclaim was not Dr. Li's to make. This is because under section 74.1 of the IVR, when ICBC assumes the defence of an action (or CRT dispute) brought against an insured, ICBC has exclusive conduct and control of the defence of the action. So, subject to ICBC's duty of good faith to Dr. Li, I find ICBC alone was entitled to decide how to defend JM's dispute, including the decision about whether to file a counterclaim.
27. I also note that ICBC's file notes show ICBC advised Dr. Li several times that while she could not file a counterclaim to JM's dispute, she could file her own CRT dispute about liability, which would allow her to participate in the process. Overall, I find that informing Dr. Li that she was unable to file a counterclaim was not a demonstration of bad faith, but a function of her policy of insurance with ICBC.
28. Second, Dr. Li says ICBC initially refused to provide her with any of the submissions or evidence the parties submitted for JM's CRT dispute. She says ICBC only sent her JM's evidence and submissions about 4 weeks before the CRT released the final decision, and she did not receive the evidence ICBC submitted on her behalf until after the final decision, none of which ICBC disputes.
29. Dr. Li says this shows ICBC failed to follow the CRT's rule that requires represented parties to be fully informed and to provide direct input in the dispute (currently rule 1.16(2)). However, I find this rule does not necessarily apply here, as ICBC's involvement in Dr. Li's defence was governed by statute (the IVR), which as noted, gives ICBC complete control over the defence of any litigation, including a CRT dispute.

30. Further, I find the evidence does not establish that ICBC “refused” to provide the requested documentation, as alleged. In a March 25, 2020 phone call, a recording of which is in evidence, Dr. Li and ICBC discussed Dr. Li’s request for unspecified documents. ICBC told her she could make a Freedom of Information request to obtain ICBC’s entire file on the accident, or she could bring her own CRT dispute, where she would receive all documents submitted as evidence. Dr. Li then asked ICBC in a July 9, 2020 email how to request copies of JM’s evidence. In response, ICBC sent Dr. Li a July 24, 2020 letter enclosing JM’s evidence and submissions.
31. Dr. Li does not explain how any breach of the CRT rules or delay in obtaining the CRT documents caused her actual prejudice or affected the outcome of the dispute. Overall, I find ICBC reasonably responded to Dr. Li’s document requests, and Dr. Li has not established that ICBC acted in bad faith by withholding documents.
32. Third, Dr. Li says ICBC misrepresented her version of the accident and tampered with evidence during the CRT process. Specifically, Dr. Li says that ICBC submitted that her vehicle was almost entirely in the wrong lane on Forest Street when the impact occurred, even though Dr. Li says she never made that concession and ICBC had previously agreed with her statement that she was in the intersection at the time of impact. Dr. Li also says ICBC failed to provide the CRT with her accident scene photos, and it labelled photos taken by JM as Dr. Li’s photos instead.
33. From my own review of ICBC’s CRT submissions, I find that ICBC described the accident scene photos as showing Dr. Li’s vehicle “almost entirely in the eastbound lane on Forest Street when the collision occurred”. I find this description did not contradict Dr. Li’s position that the accident occurred in the intersection. Rather, it was an attempt to explain where Dr. Li’s vehicle was within the intersection. Further, ICBC submitted to the CRT that Dr. Li had the right-of-way and turned left as safely as possible, and that the accident would not have occurred if JM had stopped at the stop sign, so JM was “mostly or wholly” responsible for the accident. Overall, I find ICBC’s CRT submissions did not misrepresent Dr. Li’s version of the accident.



34. As for the photos submitted, ICBC's CRT evidence chart shows it provided 5 photos of the accident scene taken by JM and 3 photos taken by Dr. Li. However, the photos themselves are not before me, and I find there is insufficient evidence determine whether ICBC failed to submit Dr. Li's photos, as she alleges.
35. ICBC denies Dr. Li's submission that it intentionally labelled the photos incorrectly because Dr. Li's photos did not support ICBC's version of the accident. ICBC says any mislabeling of who took the photos was inadvertent and had no bearing on ICBC's argument or on the outcome of the CRT dispute. I agree that which party took the photographs was likely irrelevant, and there is no indication that the scene photographs ICBC submitted were inaccurate or misleading. On balance, I accept that any mislabeling of photos before the CRT was unintentional. Overall, I find Dr. Li has not proven that ICBC "tampered" with evidence during the CRT proceeding.
36. I note that Dr. Li refers to the BC Law Society's Code of Professional Conduct (Code), and she argues that ICBC breached these standards when defending her against JM's dispute. I find the Code applies only to lawyers, and it does not necessarily represent ICBC's duty to act in good faith to its insureds. So, even if Dr. Li had shown that ICBC misrepresented her position to the CRT, I would not have considered the Code.
37. Dr. Li also raises section 92 of the CRTA, which makes it an offence to provide the CRT with false or misleading information. However, the CRTA does not provide me with the authority to charge anyone with an offence. Under the *Provincial Court Act*, a judge of the BC Provincial Court has jurisdiction over offences under CRTA section 92 because conviction carries the possibility of imprisonment. So, even if Dr. Li had proven that ICBC tampered with evidence, I would have refused to consider CRTA section 92.
38. Overall, I find Dr. Li has failed to establish that ICBC was negligent or that it acted in bad faith in conducting its defence of JM's CRT dispute. I dismiss Dr. Li's claims. Given my conclusions above, I find it unnecessary to address Dr. Li's claimed damages.

39. 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. Dr. Li was unsuccessful, and so I dismiss her claim for CRT fees and dispute-related expenses. The successful party, ICBC, did not pay any CRT fees or claim any dispute-related expenses, so I make no order.

## **ORDER**

40. I dismiss Dr. Li's claims, and this dispute.

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Kristin Gardner, Tribunal Member