



# Civil Resolution Tribunal

Date Issued: December 21, 2023

File: SC-2023-006160

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Blow v. ICBC*, 2023 BCCRT 1129

B E T W E E N :

BRAYDEN WESTON BLOW

**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. The applicant, Brayden Weston Blow, was involved in motor vehicle accident on July 22, 2022 in Campbell River, BC. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures Mr. Blow.

2. ICBC held Mr. Blow 100% responsible for the accident. Mr. Blow disagrees with ICBC's liability determination and says the other driver should have been held fully responsible. Mr. Blow claims \$3,000 for increased insurance premiums, a "missing refund" of insurance premiums, and stress. He did not provide a breakdown of his claim. Mr. Blow is self-represented.
3. ICBC says it acted reasonably in investigating the accident, and that it correctly determined Mr. Blow was 100% responsible. ICBC also says that Mr. Blow has failed to prove his claimed damages, and so this dispute should be dismissed. ICBC is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

4. These are the 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). 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.
5. 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. 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.
6. 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.
7. 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.

## ISSUES

8. The issues in this dispute are:
  - a. Did ICBC breach its duty of good faith?
  - b. Who is responsible for the July 22, 2022 accident?
  - c. What is the appropriate remedy?

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Blow must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. The July 22, 2022 accident occurred in the intersection of Dogwood Street and Island Highway. Mr. Blow was traveling west on Island Highway, and a third party, K, was traveling north on Dogwood Street. Mr. Blow says he had a green light as he entered the intersection, and that K had a red light. Mr. Blow also alleged that K was speeding when the collision occurred.
11. As noted above, ICBC found Mr. Blow 100% responsible for the accident. Mr. Blow says that ICBC failed to adequately investigate liability. Specifically, he says that ICBC should have obtained the event data recorder (“black box”) from his truck, which was undisputedly written off. Mr. Blow also says ICBC should have obtained video surveillance footage from a nearby business and that it unreasonably took ICBC 3 months to determine liability. Finally, Mr. Blow says that ICBC’s assessment was wrong, and that K should have been found fully liable.
12. Section 172 of the *Insurance (Vehicle) Act* (IVA) generally prohibits drivers from bringing damages claims against other vehicle owners and drivers for accidents that happened on or after May 1, 2021. However, this ban does not preclude drivers from bringing an action against ICBC, as their insurer, which Mr. Blow has done here.

13. In this claim against ICBC, I find that Mr. Blow must establish that ICBC breached its statutory duties or its contract of insurance.

***Did ICBC breach its duty of good faith?***

14. I find that Mr. Blow's allegations that ICBC's investigation was inadequate is essentially an allegation that ICBC breached its duty to act in good faith.
15. Insurance contracts include an implied duty of good faith on the part of the insurer. This means that ICBC must act fairly, both in how it investigates and assesses claims, and in its decision about whether to pay the claim. See *Bhasin v. Hrynew*, 2014 SCC 71. It is well established that an insurer is not expected to investigate a claim with the skill and forensic proficiency of a detective. Rather, 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.
16. ICBC denies that its investigation was inadequate or that it took unreasonably long to complete. I consider each of Mr. Blow's allegations about how ICBC's investigation was deficient below. I turn first to the investigation timeline.
17. Mr. Blow initially reported the accident to ICBC on the day it happened. ICBC's file notes state that Mr. Blow reported he had a green light when K ran a red light at high speed and t-boned Mr. Blow's vehicle, causing it to spin completely around twice. Mr. Blow advised ICBC that K claimed to have had an amber light, but Mr. Blow maintained it was red for K. Mr. Blow also reported that the police ticketed K for not displaying their "L" license, and for driving without a qualified supervisor.
18. K did not immediately report the accident. ICBC sent K letters on July 24 and July 28, 2022, requesting that they make a report. K finally called ICBC on August 26, 2022. There is no evidence about why K waited over a month to report the accident. In any event, ICBC's file notes state that K reported being on Dogwood Street and that their light changed to yellow after they had already entered the intersection. K stated that Mr. Blow went through the intersection on a red light and collided with K.

19. The police undisputedly attended the accident scene, though neither party provided a copy of the police report in evidence. I infer that the police report included contact information for an independent witness, J. ICBC's file notes show that it first attempted to call J on August 18, 2022, though J did not answer. ICBC later obtained a telephone statement from J on September 21, 2022.
20. ICBC's notes of J's statement are in the first person and include a confirmation that the statement was read back to them and was true. J stated they were the only vehicle at the intersection, and they were stopped facing a red light. J said that Mr. Blow was facing them, going in the opposite direction, and so Mr. Blow also had a red light. J said that K was on the street going perpendicular to J, and so K would have had the green light. J stated that as K was travelling through the intersection, Mr. Blow ran the red light and collided with K. J did not mention the speed of either vehicle before the impact.
21. Mr. Blow provided ICBC with a more detailed telephone statement on September 22, 2022. Again, ICBC's notes indicate the adjuster read the statement back to Mr. Blow and he confirmed it was true. Mr. Blow stated he was in the right lane of 2 through lanes heading west on Island Highway. He said when he came to the intersection with Dogwood Street, it was a green light and he continued straight through. Mr. Blow stated he did not see K's vehicle before the impact.
22. Based on J's statement that Mr. Blow ran a red light, ICBC found Mr. Blow 100% responsible. ICBC advised Mr. Blow of its liability determination on October 5, 2022.
23. An insurer's obligation to act in good faith also includes a duty of prompt performance. See *Heran v. Insurance Corporation of British Columbia*, 2018 BCSC 344, at paragraphs 23 to 26. As noted, Mr. Blow argues that ICBC's investigation was unreasonably long. I disagree. I find ICBC acted reasonably in attempting to contact K for a statement, and that it was not within ICBC's control to obtain the statement sooner. Once ICBC had K's statement, which contradicted Mr. Blow's account about the colour of the light, I find that ICBC reasonably waited to determine liability until it obtained a statement from the independent witness. ICBC finalized its liability

assessment less than 2 weeks after it received J's statement, which largely supported K's version of the accident. Overall, I find ICBC did not breach its duty of prompt performance by taking 2.5 months to investigate and assess liability, given the conflicting stories.

24. I note that Mr. Blow also says his adjuster failed to return his calls and emails and did not provide requested updates. However, I find that allegation is not supported in the evidence before me.
25. I turn to the black box data. As noted, Mr. Blow's vehicle was written off after the accident. He says he asked ICBC to retrieve the black box from his vehicle because he says it would prove K was driving far in excess of the speed limit. Mr. Blow submits that the black box should be the "cornerstone" of any accident investigation.
26. In contrast, ICBC says that it was Mr. Blow's responsibility to obtain the black box from his vehicle, if he wanted it. ICBC says that it typically only obtains black box data in cases involving catastrophic loss or fatalities, as it is otherwise cost prohibitive. In this case, ICBC argues that the black box data would not have assisted its liability determination in any event because it would not include information about the light's colour as Mr. Blow entered the intersection, which ICBC says was the main issue.
27. I agree with ICBC that Mr. Blow has not established how the black box data would have assisted with the liability investigation. I find that expert evidence is required to prove the black box data would show K was speeding and attempting to "beat the yellow light", as Mr. Blow submits. Mr. Blow did not provide any expert evidence about what the black box data could have established about K's actions.
28. As noted, ICBC is not required to investigate accidents with the proficiency of a detective. I find the black box likely would have provided very limited relevant information about liability. Under the circumstances, I find that ICBC acted reasonably and proportionately in declining to incur the costs of obtaining the black box from Mr. Blow's vehicle.

29. As for the alleged video footage, Mr. Blow says he told ICBC that a bank located at the intersection had a camera, but that ICBC failed to obtain the footage.
30. ICBC says that Mr. Blow advised it of the potential footage for the first time in his September 22, 2022 statement, 2 months after the accident. I accept this is true, as Mr. Blow did not dispute it and there is no evidence to the contrary. I note that in his September 22, 2022 statement, Mr. Blow said that he had tried to get video from a bank but they would not provide it to him, and that he tried other businesses as well, but nothing was available. There is no evidence that Mr. Blow specifically requested that ICBC obtain potential footage from the bank.
31. ICBC says the video footage was no longer available when it learned about it from Mr. Blow, though ICBC provided no evidence that it attempted to obtain it. Even if ICBC made no attempt to contact the bank based on Mr. Blow's statement, I find ICBC reasonably assumed the bank would not keep surveillance footage for over 2 months.
32. Further, to the extent that Mr. Blow argues that ICBC has a duty to actively seek out potential video footage of accidents from nearby businesses, I do not necessarily agree. As noted, ICBC's duty is to act fairly and reasonably diligently in its investigation. There may be some circumstances where ICBC's duty includes making its own inquiries about available camera footage, such as with very serious crashes or where there are high monetary stakes. However, in the circumstances of this accident, I find ICBC was not obligated to search out potential video footage, either at the outset or 2 months later when Mr. Blow alerted it to the possibility that footage may have existed. Rather, I find that ICBC reasonably relied on statements from the drivers involved, and J's statement, as an independent witness to the accident.
33. Overall, I find Mr. Blow has not established that ICBC breached its statutory or contractual obligations by conducting an inadequate or unfair investigation.

### ***Who is responsible for the July 22, 2022 accident?***

34. As noted, Mr. Blow also argues that ICBC's liability assessment was incorrect, and that K should have been found fully responsible for the accident. Several CRT decisions have found that ICBC has a contractual obligation to correctly determine fault, so that it can fulfil its coverage responsibilities under its insurance policy. See for example *Carriere v. ICBC*, 2023 BCCRT 963. I agree with those decisions and find that Mr. Blow is claiming that ICBC breached the parties' contract by incorrectly determining fault for the accident.
35. The difficulty for Mr. Blow is that liability comes down to which driver had the right of way to enter the intersection. Mr. Blow says he had the green light, whereas K said they entered the intersection on a green light, and it turned yellow while they were in the intersection. I find the independent witness statement from J tips the balance in favour of K's version. Even if K was speeding, as Mr. Blow alleges, I find that does not prove K entered the intersection on a "late yellow" or red light.
36. Section 129 of the *Motor Vehicle Act* says a driver facing a red light must stop their vehicle before entering the intersection and must not proceed until a traffic control signal instructs the driver they are permitted to do so. Based on J's statement, I find it is more likely than not that Mr. Blow entered the intersection on a red light. So, I find Mr. Blow was unlawfully in the intersection and K had the right of way. Contrary to Mr. Blow's submissions, I cannot conclude that K was speeding based on photos showing the damage to Mr. Blow's truck. I find that expert evidence would be required to make that finding, and there is no expert evidence before me. Therefore, I find Mr. Blow has not proven K was negligent.
37. For these reasons, I find Mr. Blow's negligence was the sole cause of the accident.

### ***Remedy***

38. Given my findings above, Mr. Blow is not entitled to any damages resulting from the accident.



39. However, even if Mr. Blow had established that ICBC acted unfairly or that K was at fault, I would not have awarded his claimed damages. As noted, Mr. Blow provided no breakdown for the claimed \$3,000. In his final submissions, Mr. Blow agreed that ICBC has properly refunded all his insurance premiums. He provided no evidence about any increase in his future premiums. I acknowledge that a vehicle accident and the resulting insurance claims process can be stressful. However, Mr. Blow provided no medical or other supporting evidence that he suffered any serious or prolonged mental distress, which I find is required to be entitled to compensation for stress and anxiety. So, for these reasons, I would have dismissed Mr. Blow's claim in any event for a failure to prove his claimed damages.
40. 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 Mr. Blow was unsuccessful, I dismiss his claim for reimbursement of his paid CRT fees. ICBC did not pay any fees and neither party claimed dispute-related expenses.

## **ORDER**

41. Mr. Blow's claims, and this dispute, are dismissed.

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Kristin Gardner, Tribunal Member