



# Civil Resolution Tribunal

Date Issued: April 16, 2024

File: SC-2023-002603

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wieler v. ICBC*, 2024 BCCRT 358

BETWEEN:

VERNON WIELER

**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. This small claims dispute is about an accident between a driver and a cyclist.
2. Vernon Wieler was turning right into his driveway from the road when his vehicle collided with a third party cyclist going straight through. The cyclist is not a party to this dispute. Mr. Wieler's insurer, the Insurance Corporation of British Columbia

(ICBC), found Mr. Wieler 100% responsible for the accident. He disagrees with ICBC's assessment and says he should have been found 0% responsible. Mr. Wieler claims reimbursement of \$1,271.05, the amount he paid ICBC for the cyclist's insurance claim.

3. ICBC says it acted "properly or reasonably" in assigning liability for the accident. ICBC also says Mr. Wieler did not suffer any direct financial loss because of the third party's claim, since ICBC did not require him to pay a deductible. ICBC says Mr. Wieler's voluntary \$1,271.05 payment for the cyclist's claim was his choice to a) protect his accident forgiveness status in the event he has another at-fault accident, or b) have the claim removed from his driver's abstract. So, ICBC says this dispute is really about liability for the accident, and does not fall within the CRT's small claims jurisdiction. ICBC asks that I dismiss Mr. Wieler's claims.
4. Mr. Wieler is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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.
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 that I am properly able to assess and weigh the documentary evidence and submissions before me, without an oral hearing.
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 court. 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.

### ***Preliminary issues***

9. First, I was unable to open several pieces of Mr. Wieler's evidence. Through CRT staff, I asked him to re-submit them in an accessible format. ICBC was given the opportunity to comment on the re-submitted evidence, but it chose not to. The evidence was security camera footage that ICBC says in submissions it already had. So, I find there is no unfairness in considering the re-submitted evidence, and I have done so in coming to my decision.
10. Next, ICBC says this dispute is outside the CRT's small claims jurisdiction because it is fundamentally a claim for injunctive relief, which is ordering someone to do something or to stop doing something. Injunctive relief and declaratory relief (for example, an order declaring a person is not responsible for an accident) are both outside the CRT's small claims jurisdiction, except where permitted by section 118 of the CRTA. There are no relevant CRTA provisions that would permit me to grant the injunctive or declaratory relief ICBC says Mr. Wieler seeks.
11. Mr. Wieler asks for reimbursement of the \$1,271.05 he paid ICBC to satisfy the third party cyclist's insurance claim. So, I find he is out-of-pocket that amount as a result of ICBC's assessment that he was solely responsible for the accident. The reason for Mr. Wieler's payment does not matter, and it is undisputed ICBC did not decline the payment. If Mr. Wieler can prove he suffered his claimed damages because ICBC did not properly or reasonably assess his claim and assign fault, an award for those damages is within the CRT's small claims jurisdiction.

### **ISSUES**

12. The issues in this dispute are:
  - a. Did ICBC breach its statutory obligations or its contract of insurance?

- b. Who is responsible for the accident?
- c. What, if anything, are Mr. Wieler's damages?

## **EVIDENCE AND ANALYSIS**

13. As the applicant in this civil proceeding, Mr. Wieler must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence, but I only refer to information I find necessary to explain my decision.

### ***Did ICBC breach its statutory obligations or its contract of insurance?***

14. On April 4, 2022 around 6pm, Mr. Wieler was driving west on McKee Road in Abbotsford. He crossed McKinley Drive and began turning right into his driveway, which was just beyond the intersection. While he was completing his right turn, a cyclist going straight through collided with the rear right side of his Jeep.

15. As noted above, ICBC found Mr. Wieler 100% responsible for the accident. To succeed in his claim against ICBC, I find Mr. Wieler must establish ICBC breached its statutory obligations or its contract of insurance, or both. As the accident was between a cyclist and one vehicle, section 174 of the *Insurance (Vehicle) Act* requiring ICBC to indemnify an insured for damage or loss where an accident involves two or more vehicles does not apply. Instead, the test is whether ICBC acted "properly or reasonably" in assigning sole responsibility for the accident to Mr. Wieler (see *Singh v. McHatten*, 2012 BCCA 286).

16. Insurance contracts generally include an implied duty of good faith on the part of the insurer. This 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 paragraphs 22, 55 and 93). 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. 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, at paragraph 249).

17. Mr. Wieler says ICBC acted unfairly by failing to appreciate the accident circumstances, and by incorrectly applying the *Motor Vehicle Act* (MVA). He says ICBC did not properly consider the cyclist’s speed or the fact that the cyclist was riding on the sidewalk where they should not have. Mr. Wieler also says ICBC unreasonably found he breached sections 144 (careless driving) and 167 (turning right other than at an intersection) of the MVA.
18. The cyclist’s father reported the accident on April 6, as the cyclist was a minor. The only evidence from the cyclist is ICBC’s record of their father’s initial report of the accident. The CRT routinely accepts adjusters’ notes of phone calls because they are sufficiently reliable despite being hearsay. I accept the adjuster’s notes accurately reflect what the cyclist’s father told ICBC after the accident.
19. The notes reflect the following account. The cyclist was in the bike lane riding westbound on McKee Road. Mr. Wieler was driving westbound in single-lane traffic when he moved into the bike lane and stopped in front of his driveway. The cyclist moved from the bike lane toward the curb to avoid impact with the Jeep. Mr. Wieler suddenly turned right to enter his driveway causing the cyclist to stop. However, the cyclist ended up skidding underneath the Jeep’s right side. There was a witness at the scene.
20. Mr. Wieler also reported the accident on April 6, 2022. I accept the adjuster’s notes accurately reflect what Mr. Wieler told ICBC on April 6 for the same reasons as above, and because Mr. Wieler does not dispute them. They say the following. Mr. Wieler was traveling westbound in single-lane traffic on McKee Road, and began turning into his driveway right next to the bike lane. A cyclist was also travelling westbound “potentially” on the sidewalk. Mr. Wieler then heard a bang and felt “something weird” on the rear right section of his Jeep. He heard yelling and stopped. He saw a “kid” through his rear right window gesturing at him to back up, so he did. There was

another “kid” with a bike at the scene, but by the time Mr. Wieler had gotten out of his vehicle they were both gone. Security camera footage was available.

21. On April 7, 2022 Mr. Wieler made a further statement to ICBC over the phone. When he received the typed version of his statement in the mail for signature, Mr. Wieler says it was “grossly inaccurate, incomplete of facts, and required a full revision.” Mr. Wieler provided a revised written statement on May 20, 2022. However, ICBC advised Mr. Wieler of its liability assessment before that, on May 9, 2022.
22. Mr. Wieler’s spouse applied for a claims assessment review (CAR) after the May 9 liability assessment. An external arbiter completed the CAR process around July 12, 2022. The arbiter confirmed Mr. Wieler was 100% responsible for the accident. Since the CAR process was independent of ICBC, I have not considered the arbiter’s review in deciding whether ICBC acted properly or reasonably in assigning sole responsibility for the accident to Mr. Wieler.
23. Mr. Wieler only submitted two pages of ICBC’s five-page CL722 detailed responsibility assessment letter, and ICBC did not submit the letter at all, despite parties being told to submit all relevant evidence during the CRT process. The submitted pages say ICBC determined MVA sections 165(1) (turning right at intersections) and 167 applied to the accident. They do not mention section 144. In submissions, ICBC says section 165 was applied in error and section 144 applies.
24. In the parts of the letter provided, ICBC acknowledged the adjuster made the liability assessment without Mr. Wieler’s revised May 20, 2022 statement. Further, it is undisputed the adjuster knew Mr. Wieler was attempting to submit his security camera footage to ICBC for consideration, but that the adjuster made their decision before Mr. Wieler was able to do so. There is no evidence ICBC told Mr. Wieler he had to provide the footage within a particular timeframe. Finally, there is no evidence ICBC attempted to contact the witness at the scene, though the CL722 says “ICBC relies on objective evidence from sources like independent witnesses or dash cameras to assess responsibility.” Based on this, I find ICBC breached its duty of good faith in investigating the accident, and did not act properly or reasonably in

assigning sole responsibility for it to Mr. Wieler. In these circumstances, I find it is necessary to make my own determination of who is responsible for the accident.

***Who is responsible for the accident?***

25. Footage from security cameras on Mr. Wieler's property shows what happened just before the accident and the accident itself. As Mr. Wieler's Jeep left the intersection of McKee Road and McKinley Drive, it was already beginning to move into the bicycle lane to its right, which was clear. As the car travelling immediately behind the Jeep entered and left the intersection, the cyclist can be seen coming up on the car's right, gaining on the car until it was alongside it just past the intersection. From another angle, Mr. Wieler can be seen beginning his right turn into his driveway, having activated his right indicator. As Mr. Wieler continued the turn, the car behind went around him in the road and the cyclist, who at that point was on the sidewalk, slid under the Jeep's rear right wheel.
26. I find that before the accident, the cyclist had left the bike lane and mounted the sidewalk. I say this because the footage shows that as the cyclist gained speed on the car travelling behind Mr. Wieler's Jeep, the bike's height clearly changed relative to the car. That is, when the car was about to leave the intersection, the bike's handlebars were below the car's windows, and then when the car had cleared the intersection, the handlebars were visibly higher up. I find this is inconsistent with the cyclist's father's statement to ICBC about when the cyclist moved from the bike lane toward the curb. Also, contrary to what the cyclist's father reported, I find Mr. Wieler did not stop and then suddenly turn right into his driveway. The footage clearly shows Mr. Wieler did not stop at any point during his right turn until after the accident.
27. For his part, Mr. Wieler says he shoulder and mirror-checked before starting his turn. In his April 6 report to ICBC, he said there were no objects, cyclists, or vehicles around at the time, and in his May 20 revised statement he said he kept an eye on traffic around him. However, I find it unlikely Mr. Wieler shoulder and mirror-checked, because if he had, he would have seen the cyclist travelling along the sidewalk, even

at speed. There is no evidence Mr. Wieler's view of the bike lane or sidewalk was obstructed.

28. MVA subsections 144(1)(a) and (b) require a driver to drive with due care and attention and with reasonable consideration for other people using the highway. Under section 167, a driver turning right from a road other than at an intersection must be as close as is practicable to the right curb or roadway edge. MVA section 183(1) says a cyclist has the same rights and duties as a driver, and under section 183(2)(a) must not ride on a sidewalk unless otherwise authorized. There is no evidence the cyclist in this dispute was authorized to ride on the sidewalk.
29. Based on the security camera footage, I find Mr. Wieler approached his turn having moved into the bike lane running parallel to the sidewalk, so he did not violate section 167. However, as I have found he likely did not shoulder or mirror-check before beginning his turn, I find he was not driving with due care and attention, contrary to MVA subsection 144(1)(a), which was negligent. I disagree with Mr. Wieler that the sidewalk was an entirely unexpected location for the cyclist to be in. I say this because Mr. Wieler acknowledges this particular sidewalk is in a school zone and is known to accommodate children on bicycles, and the cyclist was a minor. In *Deol v. Veach*, 2011 BCSC 1437, the court found a driver turning right out of a parking lot who collided with a cyclist was partly liable for the accident. The cyclist had approached the driver from the right, and although he was riding on the sidewalk against traffic, the court found he was there to be seen. Here, I find ICBC's assertion that Mr. Wieler owed a heightened duty of care to the cyclist because he likely passed them on McKee Road before the accident is speculative and unproven. Still, I find the cyclist was there to be seen.
30. As for the cyclist, I find they failed to take reasonable care for their own safety and their failure to do so was one of the accident's causes (see *Bradley v. Bath*, 2010 BCCA 10, at paragraph 27). While the fact that the cyclist was riding on the sidewalk contrary to MVA section 183(2)(a) does not automatically mean they were negligent, it is some evidence that they failed to take appropriate care (see *Orr v. Graemond*



*Holdings Ltd.*, 2022 BCCA 156, at paragraph 18). However, as noted above, the footage shows the cyclist was riding first on the road and then on the sidewalk comparatively faster than the speed of traffic. In these circumstances, I find the cyclist was not riding with the extra degree of care and attention required of a person riding on the sidewalk, which contributed to their inability to stop before colliding with Mr. Wieler's Jeep.

31. Where there is contributory negligence in an accident, as I have found there was here, liability is divided based on the relative blameworthiness of those involved (see *Okines v. Mr. Rent-A-Car (Downtown) Ltd.*, 2023 BCSC 2024, at paragraph 63). The cyclist was riding quickly on the sidewalk. Mr. Wieler failed to keep a proper lookout when executing his right turn. In these circumstances, I find neither the cyclist nor Mr. Wieler can be said to be more blameworthy than the other. So, I find Mr. Wieler and the cyclist were each 50% responsible for the accident.

### **Damages**

32. Mr. Wieler claims reimbursement of the entire \$1,271.05 he paid ICBC for the cyclist's insurance claim. ICBC did not submit a copy of its insurance contract with Mr. Wieler. However, in the CL722, it wrote "your policy have been assessed 100% responsible. This means that 100% of any resulting claim payments will be made under your policy" (reproduced as written). Since I have found Mr. Wieler was only 50% responsible, I find his damages are 50% of the amount he paid ICBC, which is \$635.53. I order ICBC to pay him this amount.

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

33. The *Court Order Interest Act* applies to the CRT. Mr. Wieler is entitled to pre-judgment interest on the \$635.53 damages award from the date he paid ICBC to satisfy the cyclist's insurance claim. It is unclear when this was, so I award interest from March 10, 2023, the date Mr. Wieler submitted his application for dispute resolution, to the date of this decision. This equals \$34.30.

34. 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. Wieler was partly successful, I find he is entitled to reimbursement of half his CRT fees, which is \$62.50. He did not claim any dispute-related expenses.

## **ORDERS**

35. Within 21 days of the date of this order, I order ICBC to pay Mr. Wieler a total of \$732.33, broken down as follows:

- a. \$635.53 in damages as reimbursement for his claim payout payment to ICBC,
- b. \$34.30 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 in CRT fees.

36. Mr. Wieler is entitled to post-judgment interest, as applicable.

37. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Megan Stewart, Tribunal Member