



# Civil Resolution Tribunal

Date Issued: June 18, 2024

File: SC-2022-008935

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *WH (Litigation Guardian of) v. ICBC*, 2024 BCCRT 564

BETWEEN:

HH as Litigation Guardian of WH, minor

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Jeffrey Drozdiak

## INTRODUCTION

1. The minor applicant, WH, was involved in a motor vehicle accident on June 29, 2022 in Cowichan Bay, BC. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures WH.

2. ICBC determined WH was 100% responsible for hitting another vehicle driven by a third-party driver, MS. WH disagrees with ICBC's assessment and wants accident responsibility reassessed. WH claims compensation for the \$300 deductible he paid to ICBC under his insurance policy. ICBC says it properly determined responsibility for the accident and asks me to dismiss this dispute.
3. A litigation guardian, HH, represents WH. An ICBC employee represents ICBC.
4. As WH is a minor, I have anonymized the individual parties' names in the published version of this decision to protect WH's identity.
5. For the reasons that follow, I dismiss WH's claims.

## **JURISDICTION AND PROCEDURE**

6. 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). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
7. 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.
8. 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.
9. I note ICBC argues that it acted "properly and reasonably" in assigning fault. This language reflects the legal test for accident responsibility claims under CRTA section

133(1)(d). However, this is a small claims dispute based on a breach of contract. ICBC is contractually bound to indemnify WH after correctly deciding liability (see *Carriere v. ICBC*, 2023 BCCRT 963 at paras 12 and 14). So, this dispute comes in a different legal context than accident responsibility claims, and a different test applies. I have not placed any weight on ICBC's initial decision.

## **ISSUE**

10. The issues in this dispute are:

- a. Who is responsible for the accident?
- b. If WH was less than 100% responsible, is he entitled to a full or partial refund of his deductible?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, WH, as the applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). WH did not provide any evidence or submissions to support his claims even though CRT staff followed up with him multiple times. So, I have reviewed the Dispute Notice, Dispute Response, and ICBC's evidence and submissions. I refer only to the evidence and argument that I find relevant to provide context for my decision.

### ***The Accident***

12. The accident occurred on June 29, 2022 at the intersection of Cowichan Bay Road and Cherry Point Road in Cowichan Bay. WH was travelling westbound on Cherry Point Road and MS was travelling northbound on Cowichan Bay Road.

13. ICBC says vehicles traveling along Cowichan Bay Road have no traffic control devices or signage. Vehicles traveling along Cherry Point Road, in either direction, have a stop sign. Since WH has not provided evidence disputing this, I accept ICBC's description of the intersection.

### *What WH Says Happened*

14. Since WH did not provide any evidence or submissions, I must rely on the Dispute Notice and ICBC's evidence to understand WH's version of events.
15. ICBC provided WH's initial claim report made to ICBC on June 29, 2022. ICBC says WH filled out this report himself on the internet. Since I have no evidence before me disputing this, I accept WH completed the report.
16. In the claim report, WH says:
  - a. He made a complete stop at the stop sign and proceeded to go forward.
  - b. The van's driver saw WH and sped up, hitting WH's driver's side fender and causing damage.
  - c. The van's driver at once pulled over and ran to the people standing outside the thrift store.
  - d. After speaking with those people, the van's driver ran over to WH and began saying it was WH's fault.

ICBC acknowledges the van's driver was MS.

17. In the Dispute Notice filed on November 17, 2022, WH says in June 2022 he was at a stop sign and MS swerved their vehicle into his vehicle. The accident totaled WH's vehicle.
18. I find WH's two descriptions of the accident are inconsistent. The Dispute Notice describes the accident very differently to WH's initial claim report. WH now appears to say he did not travel into the intersection. Instead, he was at the stop sign and MS swerved their vehicle into WH's stopped vehicle. WH did not provide evidence explaining this inconsistency. Since WH's descriptions contradict each other with no reasonable explanation, I find WH's evidence is not credible. So, I reject WH's version of events.

### *What ICBC Says Happened*

19. The evidence provided by ICBC included internal notes and statements. There are no signed statements from MS, or M, a third-party witness. Normally, this evidence would be hearsay, meaning a statement made outside the CRT proceeding that a party asks to use to prove the statement's truth. The CRT has the discretion to admit evidence, such as hearsay, which would not be admissible in court proceedings.
20. In previous disputes, the CRT has accepted similar hearsay evidence from internal ICBC notes because ICBC receives and records oral reports from witnesses and parties as part of its standard investigation procedure (see *Petersen v. ICBC*, 2021 BCCRT 652 at para 14). Although not binding on me, I agree with this approach and accept ICBC's notes as a description of what ICBC says happened.
21. ICBC provided MS's initial claim report made on June 30, 2022 by telephone to ICBC staff. In the report, ICBC wrote:
  - a. MS was travelling north on Cowichan Bay Road.
  - b. WH was driving straight on Cherry Point Road and did not stop at the stop sign.
  - c. WH's vehicle continued to go straight and hit MS's vehicle.
  - d. The point of impact for MS's vehicle was the front passenger fender, bumper, and wheel.
  - e. The point of impact for WH's vehicle was the front left bumper.
22. ICBC also provided internal notes from October 24, 2022, which summarized a conversation ICBC staff had with M, the third-party witness. M told ICBC:
  - a. WH did not stop at the stop sign.
  - b. WH rolled through the stop sign and cut in front of MS's travel path.
  - c. MS tried to swerve around WH's vehicle to avoid the accident but was unable to do so.

23. ICBC did not provide any details about where M was standing when they saw the accident. I infer that M was one of the witnesses standing at the thrift store, as noted in WH's claim report.
24. ICBC provided a redacted police report about the accident. The police report confirms the specifics of the accident, and notes a person, M, saw the accident. I find the police report does not help decide who caused the accident.
25. I find ICBC's two descriptions of the accident are generally consistent. As noted above, WH must prove it happened as he says. I find WH did not provide sufficient objective evidence for me to draw that conclusion. Meanwhile, ICBC provided evidence from M, an independent witness. So, I accept ICBC's version of events that WH did not stop at the stop sign and travelled into the intersection.

### ***Who Is Responsible for the Accident?***

26. Section 186 of the *Motor Vehicle Act* (MVA) generally says if there is a stop sign at the intersection, the driver of a vehicle must stop. Since I find WH did not stop at the stop sign, WH breached section 186 of the MVA.
27. Section 175 of the MVA says if a vehicle is about to enter a through highway, such as Cowichan Bay Road, they must first stop at any stop sign in compliance with section 186. The driver must then yield the right of way to traffic that is either in the intersection, or approaching so closely to the intersection that moving forward would create an immediate hazard. Considering I have accepted ICBC's version of events, I find WH did not yield the right of way to MS. So, I find WH breached section 175 of the MVA.
28. Since I find WH breached sections 175 and 186 of the MVA, I find ICBC correctly assessed that WH was 100% responsible for the accident. So, I dismiss WH's claim for the return of his deductible.
29. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable

dispute-related expenses. However, neither party paid any tribunal fees, nor claimed any dispute-related expenses, so I award no reimbursement.

**ORDER**

30. I dismiss the applicant's claims and this dispute.

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Jeffrey Drozdiak, Tribunal Member