



Civil Resolution Tribunal

Date Issued: July 10, 2025

File: SC-2023-010554 and
AR-2023-010576

Types: Small Claims and
Accident Claims

Civil Resolution Tribunal

Indexed as: *Benwick v. ICBC*, 2025 BCCRT 931

B E T W E E N :

ROBIN BENWICK

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This dispute is about accident responsibility.

2. On January 11, 2023, the applicant, Robin Benwick, was in a motor vehicle accident with a third party, AN. Ms. Benwick's mirror hit AN's open door while AN was parked parallel to a roadway. AN is not a party to this dispute.
3. ICBC initially held AN 100% responsible for the accident. It later changed its assessment and held Ms. Benwick 100% responsible. Ms. Benwick disagrees with ICBC's revised assessment and says she should be 0% responsible. Ms. Benwick is self-represented. ICBC disagrees and says it correctly determined liability. An employee represents ICBC.
4. In SC-2023-010554, Ms. Benwick claims damages of \$223.04 which she paid for repairs, which would require me to find she was not liable for the accident. In AR-2023-010576, Ms. Benwick asks me to determine whether ICBC acted improperly or unreasonably when deciding responsibility for this accident. These two disputes involve the same parties and issues, so I have written one decision for both disputes.
5. For the reasons below, I dismiss Ms. Benwick'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 the *Civil Resolution Tribunal Act* (CRTA) section 118. The CRT has jurisdiction over accident claims brought under CRTA section 133. CRTA section 133(1)(d) and *Accident Claims Regulation* (ACR) Part 2 give the CRT jurisdiction over accident responsibility determinations.
7. CRTA section 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
8. CRTA section 39 says the CRT has discretion to decide the hearing's format. While this dispute has credibility issues, neither party requested an oral hearing. The advantages of an oral hearing must be balanced against the CRT's mandate to resolve disputes in an accessible, speedy, economical, informal and flexible manner

(see *Downing v. Strata Plan VR2356*, 2023 BCCA 100, at paragraph 47). In this case, the amount claimed is small and both parties provided documentary evidence to support their respective claims. 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.

9. CRTA section 42 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.
10. In the Dispute Notice in AR-2023-010576, when identifying herself as the applicant, Ms. Benwick included in her name that she was the owner and driver of her vehicle at the time of the accident. I have exercised my discretion under CRTA section 61 to amend the style of cause above so that only Ms. Benwick's name is included.
11. Neither party provided a copy of ICBC's CL722 letter which sets out reasons for its responsibility assessment. However, ICBC provided its file notes and clear submissions which set out its position. Given my conclusion below that Ms. Benwick has not proven her claims, the CL722 would not change the outcome of this decision. Bearing in mind the CRT's mandate that includes the speedy resolution of disputes, I did not request a copy of the CL722 letter from the parties.

ISSUE

12. The issue in this dispute is whether ICBC correctly assessed responsibility for the accident.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant Ms. Benwick must prove her claims on a balance of probabilities. 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.

The Accident

14. While Ms. Benwick and AN's accounts of the accident differ, the background facts are not disputed. Ms. Benwick was driving east on Imperial Street in Burnaby. AN was parallel parked on the side of Imperial Street with their rear driver-side door open. Ms. Benwick's passenger-side mirror hit AN's open door as she passed AN's vehicle.
15. Ms. Benwick says that she could not see AN's open door because AN was standing in front of it. She says AN is responsible for the accident because they left their door fully open when there was oncoming traffic.
16. AN's statement to ICBC said they were getting their children out of the car at the time of the accident. They said they opened the door when there was no oncoming traffic. They said they saw Ms. Benwick approaching fast, so they got in the car and closed the rear door as much as possible.
17. AN described the parties' post-accident interactions in her statement to ICBC. Ms. Benwick disagrees with that description. ICBC argues that a party's reaction after an accident is not relevant to determining accident responsibility. I agree with ICBC's submission and find that Ms. Benwick and AN's post-accident conduct is not relevant to this dispute.
18. ICBC initially held AN 100% responsible for the accident. AN requested a review. ICBC's file notes from its internal review say that typically a driver is 100% liable for leaving their door open, however, in this case AN was allowed to have an open door to unload their children. So, ICBC held Ms. Benwick 100% responsible because she saw AN in front of their vehicle, did not see the open door, and failed to drive with appropriate caution.

The Legal Test

19. Ms. Benwick brought dispute AR-2023-010576 under the CRT's accident claims jurisdiction. Under ACR section 10, to succeed in her claim against ICBC, Ms.

Benwick must prove both (1) that ICBC acted improperly or unreasonably in assigning responsibility for the accident and (2) that she is less responsible for the accident than ICBC assessed. In this analysis, the CRT considers whether ICBC's decision was logically justified and supported by the available evidence and the applicable law, and whether ICBC properly investigated the accident (see *De Paras v. ICBC*, 2024 BCCRT 106).

20. Ms. Benwick brought dispute SC-2023-010554 under the CRT's small claims jurisdiction. This is a claim for breach of contract, which means an applicant must have a claim for damages. Section 174 of the *Insurance (Vehicle) Act* (IVA) requires ICBC to indemnify an insured for their vehicle's damage to the extent the insured is not liable for an accident. Prior decisions in the CRT's small claims jurisdiction have found that this section requires ICBC to correctly determine liability (see, for example, *Carriere v. ICBC*, 2023 BCCRT 963 and *Ganev v. ICBC*, 2023 BCCRT 975). In this decision, I use the words responsibility and liability interchangeably, as they have the same effective meaning.
21. Ms. Benwick does not say anything about ICBC's investigation of the accident. Her claim focuses on ICBC's alleged failure to consider the circumstances of the accident and the proper application of the law. While the tests are different in each dispute, I find that I can determine these disputes by addressing one question: has Ms. Benwick proven that she is less than 100% responsible for the accident. I consider this below.

Has Ms. Benwick proven that she is less than 100% responsible for the accident?

22. Ms. Benwick argues that ICBC failed to properly apply *Motor Vehicle Act* (MVA) section 203 when assessing responsibility for the accident. MVA section 203(1) says that a person must not open the door of a motor vehicle on the side available to moving traffic unless it is reasonably safe to do so. MVA section 203(2) says that a person must not leave a door open on the side of a vehicle available to moving traffic for longer than is necessary to load or unload passengers.

23. I find that AN did not breach MVA section 203(1). AN's statement to ICBC says they opened their rear door when there was no oncoming traffic. Ms. Benwick does not dispute this, and only says that they could not see the open door. So, I find that AN opened their door when it was reasonably safe to do so.
24. I also find that AN did not breach MVA section 203(2). Ms. Benwick and AN's statements to ICBC both say that AN was in the process of unloading their children from the vehicle at the time of the accident. AN's statement said their children were 0 and 3 years old. While Ms. Benwick argues that no one was entering or exiting the vehicle as she approached, I find it obvious that it would take some time for AN to safely remove two young children from car seats. So, I find that AN's open door was necessary to unload their children from the vehicle.
25. Ms. Benwick also says that AN was parallel parked too far from the curb. However, the photos she provided appear to show AN's vehicle parked reasonably close to the curb. There is no evidence to show that AN breached MVA section 190 which required them to be parked within 30 cm of the curb.
26. ICBC says Ms. Benwick breached MVA section 144(1)(a) which says that a person must drive with due care and attention. I agree. Ms. Benwick's own evidence is that she saw AN next to their parked car on the side of the street, but did not see the open door until the last second. I find that Ms. Benwick should have been aware of the possibility that AN, standing next to their parked car, had either opened their door or was about to open the door. Ms. Benwick should have driven with more caution in these circumstances.
27. Ms. Benwick says that it was a dark and rainy night, so visibility was poor. ICBC points out that Imperial Street has streetlamps and the road appeared to be dry in Ms. Benwick's photos. Even if I accept Ms. Benwick's evidence, poor visibility was all the more reason to proceed carefully when Ms. Benwick saw AN but was unable to see whether their door was open. Again, Ms. Benwick should have proceeded with more caution.

28. I find that Ms. Benwick's failure to drive with due care and attention in these circumstances was a departure from the standard of care of a reasonably prudent driver. I found above that AN did not breach MVA section 203, and there is no evidence that AN acted negligently in any other way. So, I find that ICBC reasonably concluded that Ms. Benwick was 100% responsible for the accident. It follows that I dismiss Ms. Benwick's claims.

CRT FEES AND EXPENSES

29. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. ICBC was successful, so I order Ms. Benwick to reimburse it \$25 for its CRT fees. Ms. Benwick did not pay any CRT fees and neither party claimed any dispute-related expenses.

ORDERS

30. I dismiss Ms. Benwick's claims.

31. Within 30 days of the date of this decision, I order Ms. Benwick to pay ICBC \$25 for its CRT fees.

32. ICBC is entitled to post-judgment interest, as applicable.

33. This is a validated decision and order. Under CRTA section 58.1, 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.

Peter Mennie, Tribunal Member