

Who To Sue? ICBC Claims, Fault And Increased Insurance Premiums

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When collisions occur in BC typically ICBC is the insurer for all involved. After the collision ICBC internally decides who to blame and apportions the parties respective degree of fault. Depending on the decision some of the motorists insurance premiums may rise. If this happens to you and you disagree with ICBC who do you sue?

The conventional route is to sue the motorist alleged to be at fault for the crash. The theory being that if another motorist is found at fault in a negligence claim they will be ordered to pay the faultless party's accident related expenses including increased insurance premiums. When an injury lawsuit is started its easy to add this additional damage to the claim. In practice ICBC will honour a court decision respecting fault and overturn their internal decision if its inconsistent with the Court finding.

What if you are not making an injury claim and your only dispute is with ICBC and their apportionment of fault? Is the offending motorist the only party you can sue to address ICBC's decision? The answer, apparently, is no and this was recently discussed by the BC Court of Appeal in reasons for judgement released earlier this year.

In the recent case of Innes v. Bui the Plaintiff sued the Defendant for injuries. The case made it's way to the BC Court of Appeal. The appeal did not focus on increased insurance fees rather it concentrated on the legal doctrine of 'res judicata' ([You can click here to read my previous article discussing this issue and giving more background on the case](#)). Despite the alternate focus of the case, Mr. Justice Low provided the following commentary about the proper parties to a lawsuit over increased ICBC insurance premiums:

[6] In her hand-written Notice of Claim, Ms. Bui, with the assistance of a translator, described the collision from her point of view and added, in understandably inexact English, "later ICBC had decided that my fault but they didn't let me know until I renew my insurance, I think ICBC was unfair when they state that I at fault and I want to [contest against?] this decision". The claim was stated to be for "Extra money I had to pay for ICBC" and "return my 40% discount from my insurance - \$1095". Ms. Bui later amended the Notice and pleaded that "... ICBC put the fault on me, as the result my insurance was up. I wish to recover the money which ICBC made me pay". In completing the portion of the form which requires quantification of the claim, she wrote "Money I paid for ICBC - \$1095"....

[31] The reasons of the Small Claims judge fell well short of deciding the negligence question. That issue remains alive in the Supreme Court action. The res judicata arguments of both parties fail.

[32] The above is enough to allow this appeal. However, I would like to add a few more observations.

[33] In the Small Claims action, Ms. Innes was the wrong defendant. She certainly was not a necessary defendant. That action was not based in tort. It was either in contract or under statute, or both, and the only issue raised by the pleadings was whether ICBC acted properly or reasonably in administratively assigning responsibility for the collision to Ms. Bui alone. That was an issue only between Ms. Bui and ICBC.