

**IN THE MATTER OF AN ARBITRATION PURSUANT TO  
Section 148.2(1) of the Revised Regulations to the Insurance (Vehicle) Act  
(includes amendments up to the BC Reg. 126/2014)**

**AND**

**Arbitration Act, RSBC 1996, c. 66**

**BETWEEN:**

**SN**

**CLAIMANT**

**AND:**

**INSURANCE CORPORATION OF BRITISH COLUMBIA**

**RESPONDENT**

---

**ARBITRATOR'S DECISION**

---

Counsel for the Claimant	Anu Khanna
Counsel for the Respondent	Derek James
Date of Decision	March 19, 2020

**INTRODUCTION**

1. This is a claim for compensation for injuries sustained by the claimant, pursuant to coverage afforded by the **Revised Regulations to the Insurance Vehicle Act**. It is set for a seven day hearing, which is to commence on April 20, 2020.
2. This proceeding was commenced on November 10, 2015. The motor vehicle accident which underlies the claim occurred on June 22, 2011.
3. The parties agreed at the pre-hearing meeting held on May 29, 2019 that the **BC Supreme Court Civil Rules** (the "Supreme Court Civil Rules") apply to this proceeding. However, this matter is not a Supreme Court action, nor is the hearing a Supreme Court trial. In my view both the **BCICAC Domestic Commercial Arbitration Rules of Procedure**, as revised on September 15, 2016 (the "BCICAC Rules"), and the Supreme Court Civil Rules, inform the manner in which the hearing is to be conducted.

4. In light of the current public health crisis caused by coronavirus pandemic, I solicited the views of counsel as to whether it was appropriate to hold the hearing with some or all of the attendees participating remotely by video conference. I have received, and have had an opportunity to consider, their submissions on behalf of their respective clients.

### **THE POSITION OF THE PARTIES**

5. The respondent says that the hearing should be adjourned for "3 to 4 months down the road when things will be back to normal". It says it would be "irresponsible" to proceed with a hearing in the usual manner. It opposes video conferencing on the basis that Supreme Court Civil Rule 12-5 (27), set out below, cannot form the basis of such an order. No other objection is proffered to proceeding in that manner.

6. The claimant opposes an adjournment, and says that the hearing should proceed by way of video conferencing.

### **THE BCIAC AND SUPREME COURT CIVIL RULES, AND THE EVIDENCE ACT**

7. The relevant BCIAC Rule is Rule 28 (5) (d) which provides:

(5) Subject to the direction of the arbitration tribunal

(d) a witness shall attend the hearing for oral examination if requested to do so not less than 2 days before the hearing, or by telephone, videoconference or other electronic media if directed by the arbitration tribunal,;

8. Two Supreme Court Civil Rules touch on the matter. Rule 12-5 (27), referred to by counsel for the respondent, provides:

(27) ***Subject to any enactment*** and these Supreme Court Civil Rules,

(a) a witness at a trial of an action must testify in open court, and

(b) unless the parties otherwise agree, the witness must testify orally.

(emphasis added)

9. Supreme Court Civil Rule 23-5 (3) provides:

(3) In case of urgency, or if the court or a registrar considers it appropriate to do so, the court or the registrar, as the case may be, may conduct a hearing and make an order or decision by telephone, video conference or other communication medium.

10. "Hearing" is not defined in the Supreme Court Civil Rules.

11. Section 73 of the **Evidence Act**, RSBC 1996, C. 124 is also relevant to the issue at hand. It provides:

**73 (1)** In this section:

"court" means the court, judge, justice or other presiding officer before whom a proceeding is held or taken;

"proceeding" means a proceeding in the Court of Appeal, the Supreme Court or the Provincial Court.

(2) A court may allow a witness to testify in a proceeding by means of closed circuit television or any other technology that allows the court, the parties and the witness to engage in simultaneous visual and oral communication, unless

(a) one of the parties satisfies the court that receiving the testimony in that manner would be contrary to the principles of fundamental justice, or

(b) the technology is not available for the proceeding.

(3) If a party objects to the court receiving evidence in the manner described in subsection (2), the court may consider any of the following circumstances:

(a) the location and personal circumstances of the witness;

(b) the costs that would be incurred if the witness had to be physically present;

(c) the nature of the evidence the witness is expected to give;

(d) any other circumstance the court considers appropriate.

## **DISCUSSION**

12. I agree with the respondent's submission that it would be irresponsible to proceed with the hearing in the usual way. In my view, the sole issues are whether it can and should proceed by way of video conference. If it is not to proceed by way of video conference, it must be adjourned.

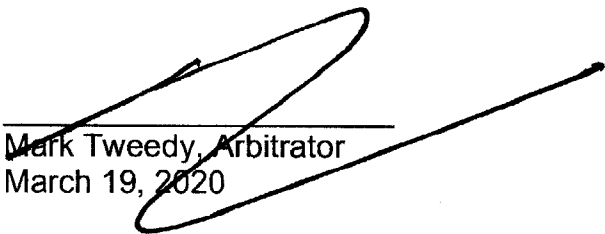
13. BCICAC Rule 28 (5) (d) expressly provides that witnesses may give evidence by video conference. Supreme Court Civil Rule 23-5 allows a "hearing" by video conference. Section 73 of the **Evidence Act** provides a trial judge with the discretion to allow witnesses to testify by video. On its face Supreme Court Civil Rule 12-5 (27), referred to by the respondent, must be read "subject to" section 73 of the **Evidence Act**.

14. Neither the BCICAC rule, nor the **Evidence Act**, places any restriction on the number of witnesses who may give their testimony by video conference.

15. I am satisfied that I have the discretion to order that this matter proceed by video conference. I am of the view that it should proceed in that manner, for the following reasons:

- (a) the lengthy period of time that has transpired since both the underlying accident, and the commencement of this proceeding;
- (b) the impossibility of the hearing proceeding in the usual manner at this time;
- (c) given the current public health crisis, the absolute uncertainty as to when it might be possible to hold the hearing in the usual manner; and,
- (d) the absence of any suggestion by the respondent that it would in any way be prejudiced by proceeding by way of video conference.

15. I accordingly direct that the hearing proceed on April 20, 2020 by video conference.

  
\_\_\_\_\_  
Mark Tweedy, Arbitrator  
March 19, 2020