

**IN THE MATTER OF AN ARBITRATION PURSUANT TO
the *Arbitration Act*, SBC 2020 c2
and s. 148.2(1) of the *Insurance (Vehicle) Regulation*, BC Reg 447/83**

BETWEEN:

T. S.

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

**IN THE MATTER OF AN ARBITRATION PURSUANT TO
the *Arbitration Act*, S.B.C. 2020, c. 2
and s. 148.2(1) of the *Insurance (Vehicle) Regulation*, B.C. Reg. 447/83**

BETWEEN:

G.M.

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

**IN THE MATTER OF AN ARBITRATION PURSUANT TO
Section 148.2(1) of the *Revised Regulations to the Insurance (Vehicle) Act*
(BC Reg 447/83) and the *Arbitration Act*, RSBC 2020, c 2**

Between:

D.K.

Claimant

And:

INSURANCE CORPORATION OF BRITISH COLUMBIA

Respondent

**IN THE MATTER OF AN ARBITRATION PURSUANT TO
Section 148.2(1) of the *Revised Regulations to the Insurance (Vehicle) Act*
(BC Reg 447/83) and the *Arbitration Act, RSBC 2020, c 2***

Between:

J.T.

Claimant

And:

INSURANCE CORPORATION OF BRITISH COLUMBIA

Respondent

**IN THE MATTER OF AN ARBITRATION PURSUANT TO
the *Arbitration Act, SBC 2020 c2*
and s. 148.2(1) of the *Insurance (Vehicle) Regulation, BC Reg 447/83***

BETWEEN:

Q.P.

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

Counsel for the Claimants,
T.S. and Q.P.

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J. Derek James

Arbitrator:

Simon B. Margolis, K.C.

Hearing dates:

August 10 – 14, 2026

Place of hearing:

Vancouver, B.C.

Date of Award:

October 2, 2026

Final Arbitration Award except as to costs

Executive Summary

1. The claimants, all five of whom were RCMP officers in British Columbia at the relevant times, were denied underinsured motorist protection coverage following motor vehicle accidents occurring while each was on duty and an occupant of an RCMP vehicle.
2. The claims were denied by ICBC on the basis that pursuant to Section 43 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c.231 (the "Act"), an occupant of a vehicle owned by the Government of Canada is in an exempt vehicle and underinsured motorist protection coverage is therefore not available.
3. The claimants challenge that position and assert that as each held a personal owners' certificate, they are entitled to underinsured motorist protection coverage even though they were occupants of exempt vehicles at the time of the collisions.

4. In the alternative, the claimants, T.S., Q.P. and D.K., assert that in the particular circumstances of their cases, ICBC is estopped from denying UMP.
5. For the reasons that follow, I conclude that the claimants are each entitled to UMP coverage.
6. If I am wrong in this conclusion, I find that ICBC is not estopped from denying UMP coverage to the claimants T.S., Q.P. and D.K.

Overview

7. Pursuant to section 148.2(1) of the Insurance (Vehicle) Regulation, B.C. Reg.443/87 (the "Regulations"), "...any dispute as to whether the insured is entitled to compensation or as to the amount of the compensation shall be submitted to arbitration under the *Commercial Arbitration Act*."
8. Pursuant to section 25(4) of the *Arbitration Act*, SBC 2020, c.2, the arbitrator may consider equitable remedies under the applicable law.
9. By agreement of the parties, these arbitrations were heard together on the sole issue of entitlement to UMP coverage.
10. It is agreed that each of the claimants were occupants of RCMP vehicles owned by the Government of Canada at the relevant times.
11. It is further agreed that each had the benefit of an owners' certificate on personal vehicles which included UMP coverage.

12. As the particular circumstances of each claim are not necessary for the determination of entitlement to UMP coverage, I do not intend to set out any further facts of each claim, save for necessary additional facts with respect to the estoppel claims of T.S., Q.P. and D.K.
13. The applicable legislative framework is as follows:

Section 43 of the Insurance (Vehicle) Act RSBC 1996, c 231

43 (1) This Act and the regulations do not apply to vehicles owned, leased or operated by Canada or the government of another province, territory or state, but apply to vehicles owned and operated or leased and operated by the government of British Columbia and their drivers.

Insurance (Vehicle) Regulation, B.C. Reg.443/83:

Part 4 — Driver's Certificates

42 In this Part:

"insured" means

- (a) a resident named on a driver's certificate other than a person driving a vehicle that is exempted under section 43 or 44 of the Act, or

49.3 (1) In addition to indemnity under section 49, a driver's certificate evidences that an insured who is not in default of premium payable under section 45 has

- (a) coverage under Part 7, and
- (b) coverage under section 148. and
- (c) coverage under Division 2 of Part 10.

50 (1) If a driver's certificate and an owner's certificate or vehicle liability policy evidence third party liability insurance coverage for the same occurrence, the third party liability insurance coverage evidenced by the owner's certificate or vehicle liability policy is primary insurance.

Part 6 — Third Party Liability Insurance Coverage

65 (1) In this section, "**insured**" means

- (a) a person named as an owner in an owner's certificate,
- (b) a member of the owner's household,

...

(2) Subject to section 77, indemnity under this Part is extended to an insured operating a motor vehicle not described in an owner's certificate issued to the insured, unless

...

- (e) the motor vehicle is exempted under section 43 or 44 of the Act, ...

Part 7 — Accident Benefits

"**insured**" means

- (a) a person named as an owner in an owner's certificate,

...

- (d) an occupant of a vehicle that
 - (i) is licensed in the Province and is not exempted under section 43 or 44 of the Act, or

96 The corporation is not liable to pay benefits under this Part in respect of the injury or death of a person

...

- (b) who, at the time of the accident, is
 - (ii) the occupant of a vehicle exempted under section 43 or 44 of the Act, whether or not the vehicle is operated by a person named in a driver's certificate, ...

Division 2 — Underinsured Motorist Protection

148.1 (1) In this section:

"**insured**" means

- (a) an occupant of a motor vehicle described in the owner's certificate,
- (b) a person who is
 - (i) named as the owner or renter in the owner's certificate where that person is an individual,...
 - (ii) a member of the household of a person described in subparagraph (i)

148.1 (3) No coverage is provided under underinsured motorist protection to an insured who is

- (a) the occupant of a vehicle that is in fact not licensed under the [Motor Vehicle Act](#), the [Commercial Transport Act](#) or similar

legislation of another jurisdiction, unless the insured has reasonable grounds to believe that the vehicle is licensed,

(b) an operator of, or a passenger in or on, a vehicle that the operator or passenger knew or ought to have known was being operated without the consent of the owner, or

(c) the occupant of a vehicle which is exempt under section 43 or 44 of the Act, whether or not the vehicle is operated by a person named in a driver's certificate,

148.4 Coverage under this Division shall not apply to an owner's certificate issued to a vehicle while such vehicle is being used as a bus, taxi or limousine use vehicle.

Issues

14. Are the claimants entitled to UMP coverage?

15. If not, is ICBC estopped from denying UMP entitlement to claimants T.S., Q.P. and D.K.?

Are the claimants entitled to UMP coverage?

Positions of the parties

ICBC

16. Because each of the claimants at the time of their respective accidents was an occupant of an RCMP vehicle owned by the Government of Canada, ICBC argues the claimants do not fall within the UMP provisions entitling them to coverage.

17. ICBC says the legislation is unambiguous. Pursuant to section 43 of the Act, an occupant of a vehicle owned by the Government of Canada is in an exempt vehicle and UMP coverage is not available.

18. While the Act and Regulations are part of scheme of universal compulsory insurance, the exemption in the scheme found in Section 43 is consistent with the principle that a province may not legislate extraterritorially. Accordingly, ICBC may not provide coverage contrary to the legislative scheme as it would be ultra vires.
19. ICBC further asserts that it is clear from the language in section 148.1(1)(3)(c) that no coverage is provided to an insured regardless of the source as distinct from section 148.4 where the exemption on coverage is restricted to the owner's certificate on the bus, taxi, or limousine and only when used as such.
20. Further it argues that third party coverage under Part 4 and 6 and first party coverage under Part 7 and UMP coverage under Part 10 are distinct coverages with different rules and are governed by separate enactments within the overall scheme.
21. Accepting the claimants' argument that the restriction on UMP coverage in section 148.1(3)(c) does not apply to the occupant holding an owner's certificate on another vehicle would render the different language used in the various divisions of the Regulations superfluous.

Claimants

22. In contrast, the claimants assert that ICBC's interpretation is too narrow. They say the Act and Regulations must be considered in the context of the legislative scheme to "provide a universal, compulsory insurance program... and access to compensation for those who suffer "losses" from motor vehicle accidents." As the legislation is benefits conferring legislation it must be interpreted in a broad and generous manner where any doubt arising from difficulties in language should be resolved in favour of the claimants.

23. Section 43(1) of the Act deals with the exemption from coverage of certain government vehicles and provides that the Act and Regulations do not apply to vehicles owned, leased or operated by Canada or other excluded governments. This section codified that those government vehicles did not have to be licensed and insured within the compulsory insurance scheme administered by ICBC.
24. It does not provide for the forfeiture of first party insurance benefits personally available to an insured under a separate certificate or endorsement.
25. It is in this context that the claimants assert that section 148.1(1) (c) of the Regulations must be read. Its function is to prevent an exempt vehicle from being the source of UMP coverage but not to extinguish entitlement to UMP protection available to a person under a separate certificate.
26. They argue had the legislature intended the broad forfeiture of coverage as urged by ICBC, it could have done so directly as was the case in Section 148.4 where the drafter clearly provided that coverage would not apply under Part 10 to an “owner’s certificate issued to a vehicle while such vehicle is being used as a bus, taxi or limousine use vehicle.
27. In sum, the UMP provisions are part of British Columbia’s compulsory insurance scheme and are benefits conferring provisions. Any difficulty interpreting the legislation should be resolved in favour of the claimants.

Analysis

28. While ICBC argues that the words of sec 148.1(1)(c) are clear and unambiguous, it is in my view necessary first to consider the provisions in question in their entire context and in a manner harmonious with the scheme and object of the legislation.

29. Iacobucci J. in *Rizzo & Rizzo Shoes Ltd.* [1998] 1 S.C.R.at paragraph 21, stated that “statutory interpretation cannot be found on the wording of the legislation alone”, and adopted the statement by Elmer Driedger in *Construction of Statutes* (2nd ed.1983) at page 87 of his book as follows:

“...the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.”

30. At paragraph 27, Iacobucci J. emphasized that:

It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, *supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes, supra*, at p. 88).

31. If there is any doubt regarding the meaning of a statutory provision establishing and governing coverage, and there are multiple possible meanings that accord with the principles of statutory interpretation, the one more favourable to the insured should be applied. (See *SCK Motor Co. v. Insurance Corp of British Columbia*, 2016 BCCA 337 at para 21).

32. In this case, at all material times, ICBC administered what it called a “universal compulsory vehicle insurance scheme for residents of British Columbia.

33. The nature of the scheme and the purpose of the Act and Regulations was canvassed extensively in *Neidermeyer v. Charlton* 2014 BCCA 165. In that case the

court considered whether a release executed by the plaintiff in order to participate in a zip line activity applied to injuries sustained by her while riding in a bus operated by the zip line company enroute to the zip line site.

34. At paragraph 84, the court noted:

That the legislature intended to make the statutory scheme universal seems incontrovertible. Part 1 of the *Insurance (Vehicle) Act* is titled “Universal Compulsory Vehicle Insurance”. Section 2 of Part 1 states:

Corporation to provide universal compulsory vehicle insurance

2. If, under the Insurance Corporation Act, the Lieutenant Governor in Council authorizes the corporation to operate the plan of universal compulsory vehicle insurance, the corporation must operate the plan of universal compulsory vehicle insurance in accordance with this Act and the regulations.

35. At paragraph 87, the court stated:

Notably, only vehicles owned, leased or operated by the government of Canada or the government of another province are expressly exempted from the scheme: Insurance (Vehicle) Act, s. 43. The reason for this exemption is that those vehicles are insured or self-insured by the appropriate level of government.

36. While the court noted that none of the provisions referred to on their own invalidated the exclusion clause at issue in the case, at paragraph 90 the court stated:

The public policy embraced by the legislative scheme is to provide a universal, compulsory insurance program as part of the legislature’s efforts to ensure safety on the roads and access to compensation for those who suffer losses when those measures fail.

37. At paragraph 101, the court noted:

The legislature was concerned with a pressing public safety problem – the dangers presented by motor vehicles – and the consequences to its citizens and social programs when those dangers were realized. In response it created, amongst other things, a public statutory regime of comprehensive universal automobile insurance. Commentators have fairly characterized automobile insurance in this context as “a product with a decidedly public purpose, a social contract”: Erik S. Knutsen, “Auto Insurance as Social Contract: Solving Automobile Insurance Coverage Disputes through a Public Regulatory Framework” (2011) 48:3 Alberta Law Review 716 at 717.

38. At paragraph 106, Garson J.A. stated that in her view, “the scheme must be considered in a manner that is consistent with the public policy interest it was designed to address.”

39. In my view, applying these principles, ICBC’s argument extinguishing UMP coverage to individuals with an independent certificate or endorsement simply because they are occupants of a vehicle owned by the Government of Canada would lead to an absurd result, be contrary to generally accepted principles of statutory interpretation and inconsistent with the public policy interest the insurance scheme was designed to address.

40. In subparagraphs (a) of section 148.1(3), UMP coverage is only denied to an insured who is an occupant of an unlicensed vehicle if the insured did not have reasonable grounds to believe the vehicle was licensed.

41. Similarly, in subparagraph (b) of section 148.1(3) UMP coverage is only denied to operators or passengers in vehicles if they knew or ought to have known the vehicle was being operated without the consent of the owner of the vehicle.

42. The “knowledge” provisions make sense and can be justified when considering the social contract and the purposive approach to statutory interpretation. Individuals undertaking these activities are engaged in “anti social behaviour” that breaches the social contract and justifies the exclusion of UMP in those circumstances.
43. In contrast, ICBC’s strict reading of subparagraph (c) of Section 148.1(3) would result in forfeiture of coverage to otherwise innocent insureds who just happened to be occupants of an exempt vehicle, of which they may not have any means of knowing, and in circumstances where those individuals had UMP coverage purchased separately and in no way connected to the exempt vehicle.
44. In my opinion, the better reading of subparagraph (c) is that its purpose is to prevent an exempt vehicle from becoming the source of UMP coverage. The subparagraph simply confirms that UMP coverage is unavailable through a driver’s certificate held by the operator of the exempt vehicle. It does not automatically extinguish every source of UMP an insured may have had. Had the drafter intended the result urged by ICBC, it could easily have done so by providing that no insured was entitled to UMP coverage under any owner’s certificate, driver’s certificate or excess endorsement if an occupant in a vehicle exempt under section 43 or 44. It did not do so.
45. I am also of the view that the strict interpretation urged by ICBC would lead to an absurd result. For example, despite having no knowledge of the ownership or insurance status of an exempt vehicle, with no reason to know it would impact their coverage and without the ability otherwise to protect themselves, an insured otherwise entitled to UMP coverage pursuant to an owner’s certificate would be denied UMP coverage if injured simply while riding as a passenger in an exempt vehicle. In the specific case of an RCMP vehicle, where, for example, an individual

was offered a ride by an RCMP officer for whatever reason or where an individual was riding with the RCMP as a volunteer.

46. I therefore conclude that the claimants are entitled to UMP coverage.

47. If I am wrong in this conclusion, I deal next with the estoppel arguments raised with respect to the T.S., Q.P. and D.K. claims.

If the claimants are not entitled to UMP coverage, is ICBC estopped from denying UMP coverage to T.S., Q.P. and D.K.?

48. It is argued that even if ICBC's interpretation of the legislation is accepted, it is nevertheless estopped from denying UMP coverage in the particular circumstances of the T.S., Q.P. and D.K. claims.

49. It is argued that ICBC is estopped on the basis of one of three types of estoppel – estoppel by convention, promissory estoppel or estoppel by representation.

50. The aspect common to all three types of estoppel and, in my view, the key to the analysis in this case is that the party must have relied on the representation and acted on it or relied on it to their detriment in circumstances where it would be unjust to allow the other party to resile from the representation.

51. As each of the estoppel arguments rely on the particular facts of each claimant, I deal with each in turn:

Q.P.

52. Q.P. is currently an RCMP inspector.

53. On April 24, 2012, Q.P. sustained injuries while on duty driving an unmarked Hyundai Sonata police vehicle when it was struck by a vehicle driven by David Bolton, now deceased, who had stolen the vehicle from a Dueck dealership.
54. He could not recall whether he owned a vehicle at the time of the accident, but his wife owned an SUV. In any event, whenever he purchased insurance, he always purchased excess UMP coverage. With respect to his wife's vehicle, they always discussed insurance and made sure that she purchased excess UMP coverage.
55. At all material times, the basic autoplan insurance included \$1 million of UMP coverage. At the time of the accident, Q.P. also had excess UMP coverage for a total amount available of \$2 million.
56. Q.P. filed a Notice of Civil Claim against the driver Bolton and Dueck Downtown Chevrolet Buick GMC Limited. On September 12, 2017, following a liability trial, liability was apportioned 85% to the driver and 15% to Dueck.
57. On July 3, 2018, following a damages trial, Q.P. was awarded \$461,142.29.
58. On September 12, 2018, Q.P. received \$180,000 as partial payment pending the appeal of both liability and damages which represented his share of the \$200,000 statutory limits.
59. On March 12, 2020, the finding of liability against Dueck was reversed on appeal (2020 BCCA 86).
60. In the reasons for judgment at paragraph 36, the court referred to Dueck's argument that there were policy reasons negating a duty of care with respect to Dueck. The court referred to Dueck's argument that the trial judge failed to

consider the fact that “the law already provides a remedy to insured drivers” under the Insurance (Vehicle) Act and the regulations and that “(T)he fact that the law already provides a remedy should operate as a policy reason against recognizing a duty of care.”

61. Counsel for Q.P. also referred to a case summary by counsel for Dueck in a publication called Take Five following the appeal in which he stated that they argued that even if Dueck owed a duty of care, the court should not “find liability on the basis of public policy. Essentially that was that we have Underinsured Motorist Protection in BC and of course uninsured coverage as well.”

62. On April 23, 2021, the Court of Appeal vacated the damages award for past wage loss reducing the total judgment to \$424,147.29.

63. In his affidavit, Q.P. said that he always thought UMP coverage protected the entire household regardless of whether he was driving his vehicle, his wife’s or a work vehicle.

64. The first time he learned that ICBC took the position that he was not entitled to UMP coverage was when ICBC raised it as a defence in this arbitration.

65. Further, had he known that he would not have access to UMP coverage, he would have told his lawyers to settle the case and not proceed with the many trials and appeals.

T.S.

66. T.S. is now retired but at the time of the collision on November 21, 2014, he was an on duty RCMP officer driving an unmarked 2011 Toyota Venza RCMP vehicle when it was rammed by Daniel Monaghan, driving a stolen Dodge Ram pickup truck.

67. Prior to the collision, he purchased excess UMP coverage of \$1 million from ICBC on top of the \$1 million UMP coverage included as part of his basic ICBC coverage.

68. He always thought that his UMP coverage protected him regardless of whether he was driving his personal vehicle, an RCMP vehicle or riding his bike.

69. On March 9, 2016, T.S. filed a Notice of Civil Claim against Monaghan.

70. On June 23, 2016, ICBC filed a Response to Civil Claim pursuant to s. 20(7) of the Act and assumed conduct of the action throughout.

71. On May 10, 2016, counsel appointed by ICBC to defend the tort claim wrote to counsel for T.S., stating in part:

“...Mr. Monaghan obviously rammed the police car with an intention to get away, so it appears that there will be no insurance issue, and Mr. Monaghan will be defended in his own name, rather than ICBC as a third party. This will of course mean that there is a maximum of \$200,000 available, and you have advised that you will be seeking UMP coverage. We look forward to discussing the magnitude of your client’s claim...”

72. On April 25, 2018, counsel for Monaghan wrote again to counsel for T.S. noting that there were two claims stemming from the same accident- the T.S. claim and one by his partner, D.K. He noted again that there was a \$200,000 uninsured statutory limit which would apply to both claims. He concluded “In the unlikely event that these claims exceed those limits, obviously UMP will become an issue.”

73. By letter of July 25, 2018, counsel for Monaghan referred to a phone call with counsel "wherein you were inquiring as to whether we would be dealing with the UMP issues. We can confirm that we are. Dal Ahira is the ICBC adjuster who will be handling the UMP claim as well." Counsel concluded "I trust you will comply with the legislation requirement to instigate the UMP claim at some point."
74. By letter of January 31, 2019, counsel for Monaghan confirmed that as Monaghan was driving a stolen vehicle the limits available were \$200,000. As no claim had been made by the RCMP for vehicle damage the full \$200,000 was available however there would be "significant deductions for all the collateral benefits including any monies paid for income loss and medical care." Finally, he noted that "[A]fter the juries assess the quantum of these claims there will be an UMP arbitration procedure to determine the final numbers."
75. The matter proceeded to a jury trial and the order entered after trial required the defendant Monaghan to pay \$1,142,755 plus costs, prejudgment interest on the past wage loss and special damages and post judgment interest.
76. An appeal was filed on behalf of Monaghan with respect to the quantum of nonpecuniary damages but was dismissed as abandoned by order of Butler J.A. on November 27, 2020 (T.S. v. Monaghan 2020 BCCA 346).
77. On February 10, 2020, T.S. commenced the UMP arbitration.
78. On March 4, 2020, ICBC filed a Statement of Defence in the arbitration pleading that to the extent T.S. was eligible for payment of UMP funds, any such claim would be reduced by various deductions pursuant to section 148.1(1) of the Regulations.

79. On April 15, 2020, ICBC filed an Amended Statement of Defence in the UMP arbitration raising for the first time that T.S. was not entitled to any UMP coverage by virtue of the operation of section 43 of the Act and section 148.1(3) of the Regulations.

80. Had he known that there was only \$200,000 total including disbursements available to cover both his claim and the D.K. claim, he would have told his lawyers to settle the case and not gone to trial.

D.K.

81. D.K. was injured on November 21, 2014, in the same accident in which T.S. was injured.

82. At the time, D.K. was an on duty RCMP Corporal and was driving a 2009 Hyundai Sante Fe RCMP vehicle.

83. He sustained injury when his vehicle was struck by the stolen vehicle operated by Monaghan.

84. At all material times, D.K. was the named insured in an owner's certificate, and his coverage included the mandatory UMP coverage of \$1 million.

85. On March 11, 2016, D.K. filed a Notice of Civil Claim against Monaghan, John Doe and ICBC.

86. On April 18, 2018, the same counsel appointed to defend the T.S. claim filed a Response to the Notice of Civil Claim pursuant to section 20(7) of the Act on behalf of Monaghan and assumed conduct of the defence. D.K. then discontinued the proceedings against John Doe and ICBC.

87. On January 31, 2019, counsel wrote to counsel for D.K. stating in part:

“As you know, there is limited insurance coverage as a result of there being no coverage whatsoever. This was a stolen vehicle. The limits are \$200,000, including all of the vehicle damage. We understand that there was no claim made for the vehicles by the RCMP so the full \$200,000 is available. However there will be significant deductions for all of the collateral benefits including any monies paid for income loss and medical care. After the juries assess the quantum of these claims there will be an UMP arbitration procedure to determine the final numbers.”

88. On January 6, 2020, counsel wrote and advised in part “[We] understand your client has some UMP coverage so this will be at some point an UMP claim with an arbitration.

89. On June 4, 2020, counsel wrote again and suggested that counsel for D.K. contact counsel for T.S. and provide a “proposal of how you could agree to split the underlying \$200,000 statutory limit for uninsured claims.”

90. On June 25, 2020, counsel wrote again to counsel for D.K. as follows:

“This will confirm our telephone conversation on the morning of June 24, 2020. We note the trial of this matter is coming up at the end of October. As you are aware, we have already gone through another expensive jury trial with Corporal T.S.. There is not going to be much money left in the statutory limits, especially [sic] we go through another expensive jury trial with Corporal D.K.. We all agree that this would be counter-productive . . . It is our view that we should agree to adjourn the trial so that we don’t expend any resources in preparation. We understand that technically you are required to get a judgment, but again it is our intention to avoid that unnecessary waste of resources. We look forward to our discussions.”

91. On September 14, 2020, the tort action was settled based on an assessment of damages of \$250,000 plus costs and disbursements eventually agreed at \$27,352.91 for the purposes of pro rata assessment of the \$200,000 limits with the T.S. claim. It

was agreed that the settlement did not “amount to a waiver of Mr. D.K.’ rights under UMP.”

The position of the claimants

Q.P.

92. ICBC is estopped from denying UMP coverage for the following reasons:

- a. Explicitly including in the response to civil claim in the underlying action on behalf of the driver, Bolton, that Q.P. was insured pursuant to the Act and Regulations and that he received or was entitled to receive benefits as a result;
- b. Including in the factum filed on behalf of Dueck that BC drivers already have a remedy against underinsured and uninsured motorists so that there was no need to find a duty of care in the circumstances against the dealership;
- c. Counsel for Dueck writing a published article referring to all BC drivers having underinsured and uninsured protection;
- d. Failing at any time throughout the underlying litigation to advise Q.P. of the bar to UMP coverage.

93. Properly characterized, Q.P. says ICBC knew of the material facts and allowed Q.P. to proceed through trial on the basis that UMP coverage would respond. Relying on the test for promissory estoppel as reiterated by the Supreme Court of Canada in *Trial Lawyers Association of British Columbia v. Royal & Sun Alliance Insurance Company of Canada* 2021 SCC 47, Q.P. says that ICBC by its conduct made a promise or assurance which was intended to be acted on and which caused Q.P. act on it or change his position. On that basis ICBC is estopped from relying on a coverage defence it failed to assert until the arbitration was commenced.

T.S.

94. ICBC is estopped from denying UMP coverage because:

- a. ICBC knew all the material facts from the outset and counsel represented that he would be handling both the tort and UMP aspects of the claim;
- b. Through counsel ICBC repeatedly communicated that UMP coverage was available;
- c. Because the \$200,000 limit is inclusive of costs and disbursements, ICBC knew that any amount spent by T.S. in pursuing the claim would erode the amount recoverable;
- d. It was only in the amended UMP arbitration defence that ICBC raised the operation of section 43 of the Act and section 148.1(3) of the Regulations as barring UMP recovery.

D.K.

95. ICBC is estopped from denying UMP coverage because:

- a. ICBC knew all the material facts from the outset and counsel represented that he would deal with both the tort and UMP aspects of the claim;
- b. He relied on the assurances of counsel and agreed on that basis to settle his personal injury claim and to accept a pro rata share of the \$200,000 statutory limit with T.S. who was injured in the same accident.

ICBC

96. With respect to each of the claims, ICBC asserts that equitable remedies such as estoppel may not be used to create an entitlement not provided in the legislation or to compel ICBC to provide coverage that is contrary to the legislative scheme as it would be ultra vires the insurer.

97. In *LaPrairie Crane Ltd. V. ICBC*, 2004 BCSC 473, ICBC issued a certificate of insurance for a mobile crane effective May 1, 1999. ICBC had originally provided the certificate setting out the same coverage in 1993 and had renewed it annually. Some minor claims under the comprehensive coverage were paid.

98. When the crane was significantly damaged by fire in October 1999, ICBC denied coverage on the basis that the comprehensive coverage was invalid in light of section 114 of the regulations in force at the time which provided that comprehensive coverage was not available for the mobile crane.
99. In dismissing the claim for coverage, the court at paragraph 40 held that it was not persuaded by any of the authorities cited that “any form of estoppel can create a contract of insurance for comprehensive coverage or otherwise provide a basis of relief where provision of comprehensive coverage for mobile cranes is ultra vires the insurer.” (see also *Blackburn v. Lattimore* 2023 BCCA 224 at paragraph 8).
100. In any event, with respect to Q.P., ICBC argues the claim of estoppel fails for the following reasons:
- a. Q.P. was represented by counsel throughout and knew any claim against the driver would be uninsured;
 - b. The “representations” referred to were made by counsel for Dueck, not counsel for ICBC;
 - c. ICBC was not a party in the underlying proceedings. Any comments made were by counsel for Dueck;
 - d. There is no evidence that any representation was made to Q.P. that would rise to the level of promise or assurance;
 - e. It is not credible to assert that Q.P. would not have pursued Dueck to judgment and appeal.
101. With respect to both T.S. and D.K., ICBC argues the claims of estoppel fail for the following reasons:
- a. Both T.S. and D.K. were represented by counsel throughout and knew any claim against Monaghan would be uninsured;
 - b. None of the comments made by counsel in the exchange of correspondence with counsel for either T.S. or D.K. amount to representations rising to the level of promise or assurance;
 - c. Section 148.2 (4)(b) provides that ICBC is entitled to either consent to a settlement or require the tort claim to proceed to

trial before considering an UMP claim. Accordingly, to suggest that ICBC was responsible for the tort action proceeding to trial in the T.S. matter or consenting to settle the D.K. provided the parties agreed to an apportionment of the statutory limits does not give rise to a claim that amounts to detrimental reliance.

Analysis

102. In my view, if my interpretation of the statutory provisions is determined to be wrong and pursuant to section 43 of the Act, the Act and regulations do not apply to a vehicle owned by the Government of Canada and any occupant thereof, the cases cited by ICBC and referred to above support the argument that estoppel is not available. To give effect to the argument would be to override the statutory provisions and would be ultra vires ICBC.
103. In any event, even if any of the statements made in any of the claims could amount to representations otherwise binding on ICBC, none of the three claimants relied on any of the statements to their respective detriments so as to make it unjust for ICBC to resile from them.
104. With respect to Q.P., suggesting representations were made by ICBC on which Q.P. was entitled to rely ignores the tri partite relationship between insured, insurer and defence counsel. Counsel for Dueck may have been retained by ICBC but he represented Dueck not ICBC in the underlying action.
105. Moreover, UMP coverage is one of last resort. If the damages awarded are paid by the underinsured motorist, or in this case paid or able to be paid by any other party who is legally liable for the damages, there is either no entitlement to UMP coverage or those amounts must be deducted (see definition of deductible amounts in Section 148.1(1)).

106. It was therefore incumbent on Q.P. to pursue all avenues of recovery. Indeed, if the initial liability finding against Dueck had been upheld, there would likely have been no shortage of insurance funds available to satisfy the judgment.
107. In my view, it can not be said that any representations made by ICBC caused Q.P. to alter his position to his detriment.
108. With respect to T.S., I also do not accept that he would have done anything differently in the litigation. It was always open to ICBC to require a judgment at trial in the tort claim before considering any UMP claim. This is particularly true here because out of the \$200,000 statutory limit available on the uninsured claim, any amount payable to T.S. would have to have been prorated with D.K. who was injured in the same accident. Absent an agreement between the parties on an apportionment of those funds, it would only be after a trial of both actions that a proper apportionment could be made.
109. With D.K., contrary to his assertion that he relied to his detriment and altered his position on the basis of counsel's representations, it was actually advantageous to him that ICBC agreed to settle his tort claim provided that he and T.S. agreed on an apportionment of the statutory limits as between them. Had ICBC not agreed, D.K. also would have been required to obtain judgment at trial at further expense and with diminishing returns.
110. For all these reasons, I do not accept the arguments that ICBC is estopped from denying UMP coverage to Q.P., T.S. and D.K. and therefore dismiss those claims.

Conclusion

111. The claimants are entitled to UMP coverage.

112. If I am wrong in that determination, ICBC is not estopped from denying UMP coverage to the claimants, T.S., Q.P. and D.K.

113. If there are any issues arising with respect to costs, I ask the parties to advise within 14 days and a schedule for dealing with any costs issues will be determined in consultation with counsel. Otherwise, in accordance with section 148.2 (4) of the Regulations, the claimants are entitled to their costs on a party and party basis.

Dated: 2026-10-02

A handwritten signature in black ink, appearing to read 'Sim', is positioned above a horizontal line.

Simon B. Margolis, K.C.
Arbitrator