



Civil Resolution Tribunal

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Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Dion v. ICBC*, 2024 BCCRT 377

B E T W E E N :

GRAZZEL PABILONA DION

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. On June 8, 2022, Ghislain Dion died in a motorcycle accident. He was 50 years old. He left behind two young children and a wife, the applicant Grazzel Pabilona Dion. This dispute is about Mrs. Dion's entitlement to benefits from the respondent

Insurance Corporation of British Columbia (ICBC). Mrs. Dion represents herself in this dispute. ICBC is represented by an adjuster.

2. The primary question turns on whether Mrs. Dion was Mr. Dion's "spouse" as that word is defined in the *Enhanced Accident Benefits Regulation* (EABR). ICBC says Mrs. Dion was not Mr. Dion's spouse because even though they were legally married, they were not residing together when he died. Mrs. Dion says that ICBC's argument ignores the complexity of her relationship with Mr. Dion. She maintains that they were spouses and that she should receive a spousal death benefit accordingly. ICBC says the spousal death benefit is \$380,000.
3. Mrs. Dion also claims benefits for grief counselling and funeral expenses, which ICBC says it has paid as required.
4. For the reasons that follow, I find that Mrs. Dion was Mr. Dion's spouse at the time of his death and is therefore entitled to the spousal death benefit. I dismiss her claims about grief counselling and funeral expenses.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(a) gives the CRT jurisdiction over the determination of entitlement to accident benefits.
6. CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT's mandate also includes proportionality. In resolving disputes, the CRT must apply principles of law and fairness.
7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I considered whether an oral hearing was necessary. The stakes for Mrs. Dion are high and the outcome turns significantly on Mrs. Dion's and other witness's evidence

about Mr. and Mrs. Dion's relationship in the months before he died. An oral hearing would potentially give Mrs. Dion an opportunity to provide more detailed evidence and would give ICBC an opportunity to cross examine her on that evidence. It would also give ICBC an opportunity to cross examine the witnesses who provided written statements.

8. I decided against an oral hearing for several reasons. First, neither party asked for one. While it is up to me to decide the form of hearing, party requests are a relevant consideration because the parties ultimately decide whether to take advantage of the additional procedures in an oral hearing. ICBC did not suggest that Mrs. Dion or any witness was being untruthful, which suggests that ICBC did not want to cross examine them. Also, while the stakes are high for Mrs. Dion, they are not high for ICBC. ICBC concedes that it has to pay the spousal death benefit to someone. The only question is who. This is because *Insurance (Vehicle) Act* (IVA) section 158 says that if a deceased person has dependent children but no spouse, the spousal death benefit is paid to the children. So, ICBC has no financial stake in the outcome. Finally, insofar as an oral hearing would have given Mrs. Dion an opportunity to provide more detailed evidence, I determined she was Mr. Dion's spouse on the written evidence before me, so she suffered no prejudice. Bearing this in mind, and having reviewed the evidence and applicable law, I decided an oral hearing was not necessary.
9. CRTA section 42 says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. Section 42 also allows the CRT to ask questions of the parties, which as noted below, I did.

ISSUES

10. The issues in this dispute are:
 - a. Was Mrs. Dion the spouse of Mr. Dion at the time of his death?
 - b. If so, what remedy is appropriate?

- c. Is Mrs. Dion entitled to grief counselling or funeral benefits?

BACKGROUND

11. In a civil claim such as this, Mrs. Dion as the applicant must prove her claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. Mr. Dion was in a motorcycle accident on June 8, 2022. This dispute is about what accident benefits Mrs. Dion is entitled to. These benefits do not depend on whose fault the accident was, so I will not describe the accident any further. All that matters here is that, sadly, Mr. Dion died at the scene. His children were two and seven years old at the time. He and Mrs. Dion had been legally married since 2014. They were not living in the same residence at the time of his death. I will discuss the parties' relationship more below. First, I will set out the applicable law about spousal death benefits.
13. IVA section 156 says that when a person dies in an accident, their spouse is entitled to a lump sum death benefit. Section 155 says that the word "spouse" has a specific definition when deciding whether someone is entitled to the death benefit.
14. This definition is in EABR section 45, which says:

"Spouse", in relation to a deceased, means a person

(a) Who was married to and residing with the deceased on the date of death,
or

(b) Who lived in a marriage-like relationship with the deceased for at least 2 years immediately preceding the date of death.

The General Rules of Statutory Interpretation

15. ICBC says that tribunals like the CRT must consider legislation's purpose when interpreting it, relying on *British Columbia (Employment Standards) v. Kwok*, 2022 BCCA 196. This principle comes from the long-standing general rule of statutory interpretation, which is that the legislature's chosen words 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". See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC).
16. Related to this, section 8 of the *Interpretation Act* says that "every enactment must be construed as remedial, and must be given such a fair, large and liberal construction and interpretation as best ensures the attainment of its objects".
17. I must also consider that section 45 of the EABR is, in effect, a term in an insurance policy that provides coverage. So, alongside these general rules of statutory interpretation, I must bear in mind that terms in insurance contracts that provide coverage must be given a broad interpretation. This applies to situations like this where a regulation (like the EABR) acts as a term in an insurance policy. See *Felix v. Insurance Corporation of British Columbia*, 2014 BCSC 166, at paragraph 58.
18. ICBC says that the purpose of the EABR, as part of the insurance scheme under the IVA, is to provide universal and compulsory benefits to British Columbians who are injured, or to the dependants of those who are killed, in motor vehicle accidents. With respect to death benefits specifically, ICBC argues that the legislature intended to provide compensation to different dependants depending on their financial reliance on the deceased. I agree that this is the EABR's purpose.
19. In summary, I find that the rules of statutory interpretation mean that I must interpret the words in section 45 broadly and liberally, and in the manner that best furthers the EABR's purpose.

What does “or” mean?

20. The parties disagree about what effect the word “or” has in the EABR’s definition of “spouse”. On its plain meaning, “or” is ambiguous. It can be inclusive or exclusive. There is no general rule one way or the other. Instead, determining what “or” means in a statute depends on the normal rules of statutory interpretation. See *Rooney v. ArcelorMittal S.A.*, 2016 ONCA 630.
21. ICBC argues that the “or” in section 45 is exclusive, such that married people are only spouses if they meet the section 45(a) definition and cannot rely on the section 45(b) definition. So, ICBC says if Mrs. Dion did not meet the definition of spouse under section 45(a), that is the end of the inquiry. Mrs. Dion argues that the “or” is inclusive, making the two definitions are complementary, such that a married person can be a spouse if they meet either definition.
22. Below, I will discuss in detail my interpretation of section 45’s two definitions of “spouse”. Here, it is only necessary to say that two things. First, the section 45(a) definition only applies to legally married couples, but the section 45(b) applies more broadly to any couple in a marriage-like relationship. Second, the section 45(a) definition includes a requirement that a couple “reside” together, but the section 45(b) definition does not. As discussed below, two people can “live with” each other in a marriage-like relationship without residing in the same place.
23. With that, I find interpreting “or” as exclusive would not further the EABR’s purpose. This is because an exclusive interpretation would mean that married people who lived apart but had not separated would not be “spouses”. I find that married people in this situation are just as likely to be financially interdependent than married people living together. It therefore does not further the EABR’s purpose to subject married couples to stricter requirements than unmarried couples. I also find that Mrs. Dion’s interpretation of “or” is the broader and more liberal interpretation in that it expands the scope of insurance coverage under the EABR. For these reasons, I find that the two definitions of “spouse” are complementary. This means Mrs. Dion is entitled to the spousal death benefit if she meets either definition.

Was Mrs. Dion “residing with” Mr. Dion when he died?

24. I will first deal with the section 45(a) definition, which again only applies to legally married couples like Mr. and Mrs. Dion. As noted above, to be a “spouse” under this definition, Mrs. Dion must have been “residing with” Mr. Dion when he died.
25. Mr. and Mrs. Dion resided together in the family home for several years until January 2022. Then, Mrs. Dion moved into a rental apartment with her brother, HP, in the same community. As discussed in more detail below, Mrs. Dion says that they decided to live apart for a while because they thought it would benefit their marriage, not because they had any intention of separating permanently.
26. Mrs. Dion argues that she continued to reside with Mr. Dion despite getting her own apartment. She argues that she had two residences after January 1, 2022. I agree that it is possible that a person could reside in more than one place under EABR section 45, given that the definition of a spouse is entitled to a broad interpretation. See *Royal & Sun Alliance Insurance Company of Canada v. Araujo*, 2012 BCSC 1203, at paragraphs 30 to 34.
27. Still, I find that Mrs. Dion was not residing in the family home when Mr. Dion died. Mrs. Dion’s evidence and submissions on this point focus on the nature of their relationship, not where she resided. I address those issues below because I find them more relevant to the question of whether they were living in a marriage-like relationship with each other. Based on Mrs. Dion’s evidence, I find that she was residing solely in the apartment while making plans to move back into the family home in the future. She spent very little time in the family home, especially in the first few months after she moved out. Most of Mr. and Mrs. Dion’s interactions during these months were at the apartment or in public. While Mr. Dion often visited Mrs. Dion and the children at the apartment, it is also clear that he continued to reside in the family home. I find that Mrs. Dion does not meet the section 45(a) definition of a spouse.

What is a “marriage-like relationship”, and when does one end?

28. The section 45(b) definition does not include an explicit requirement that the couple “reside” together. However, ICBC argues that the same strict residency requirement exists under section 45(b).
29. ICBC relies on section 3 of the *Family Law Act* (FLA), which defines a spouse as including someone who “has lived with another person in a marriage-like relationship” with for at least two years. ICBC says the words “lived with” have the same effect as “resides with”, relying on a dictionary definition of the word “with”.
30. I agree with ICBC that the FLA provides the appropriate legal framework to assess whether people are living in a marriage-like relationship. I say this because the EABR does not define the term “marriage-like relationship” and family law is where it has received the most judicial attention. However, ICBC refers to the text of the FLA without considering any court cases interpreting it. Contrary to ICBC’s assertions, I find that the court has consistently held that a contextual analysis is necessary to determine whether a marriage-like relationship exists and when it ends.
31. As part of that, the court has long recognized that spouses’ living arrangements are not determinative of whether they have formed or ended a marriage-like relationship. Since Mr. and Mrs. Dion undisputedly had lived with each other since 2014, they were clearly in a marriage-like relationship before January 2022. I find that the question is whether they separated at any time between January 2022 and Mr. Dion’s death. This is because, once formed, a marriage-like relationship continues to exist unless and until the spouses separate. So, I will focus my analysis on family law cases about separation.
32. The FLA recognizes that living arrangements are not determinative evidence of separation. Section 3(4)(a) says that “spouses may be separated despite continuing to live in the same residence”. The reverse is also true: a marriage-like relationship may persist even if the parties live separately. The question is whether the “marriage-like” quality of the relationship ended. See *Kelly v. Kelly*, 2014 BCSC 2033, at

paragraph 96, and *Quirion v. Lovett*, 2022 BCSC 1693, at paragraph 62. This reflects the reality that couples may live in different places for any number of reasons, such as work or academic pursuits (*Ishebabai v. Temu*, 2015 BCSC 132), incarceration (*Arcand v. Arcand*, 2023 BCSC 747), health difficulties (*Thompson v. Floyd*, 2001 BCCA 78), or to work on their relationship (*Mach v. Mach*, 2021 BCSC 1655). As Mrs. Dion says, all marriage-like relationships are different.

33. When determining whether a marriage-like relationship has ended, the court asks whether a spouse has communicated an intention to permanently separate and acted on that intention. The court also considers several factors, including whether the couple continues to reside in the same home, remains sexually intimate, carries on activities in public as a couple, shares financial resources, and shares significant family events. See *Quirion*, at paragraphs 66 and 72. I find that these are the factors I should consider when determining whether Mr. and Mrs. Dion's marriage-like relationship continued until Mr. Dion died.
34. I recognize that my conclusion that a marriage-like relationship under EABR section 45(b) continues unless a couple separates is arguably inconsistent with the definition of a "dependant" under EABR section 3(2)(a). This provision defines a dependant as including "spouses who are not residing with an insured". On its face, this definition of a dependant is based on residency for married and unmarried couples, and makes no distinction between them.
35. I am not persuaded that the definition of dependant means that I should read in the word "resides with" to the definition of a spouse for death benefits. I say this for several reasons. First, this definition of dependant is more general, applying to any claim under Part 10 of the IVA. The definition of spouse in EABR section 45 is restricted to death benefits. I find that the more specific definition should take precedence. Also, the legislature did not include the words "resides with" in section 45(b) like it did in section 45(a). The legislature is presumed to choose its words carefully and intentionally, so I must give meaning to the legislature's choice not to say "resides" in section 45(b). Finally, to the extent these definitions create ambiguity,

that ambiguity should be resolved in favour of extending coverage, based on the general principles of statutory interpretation discussed above.

Was Mrs. Dion living in a marriage-like relationship with Mr. Dion when he died?

36. Mrs. Dion does not deny that her marriage to Mr. Dion was not perfect. She says that she moved out in January 2022 because they had decided to “take some time away from each other” to benefit themselves and their marriage. She says that they needed personal space to work on their relationship. Specifically, she says she wanted Mr. Dion to appreciate her more, and for him to feel the need to “court” her back to the family home. She says they always intended to remain married and for her to return to the family home after their relationship improved.
37. Mrs. Dion says they made the decision that she would live elsewhere together. She says Mr. Dion helped her set up and maintain the apartment, such as by installing furniture and appliances to make it comfortable.
38. Mrs. Dion says they continued to see each other at least three to four times a week. She says he spent a lot of time in her basement suite, where they talked about their relationship. While there is not much evidence about their finances, Mrs. Dion says they continued to share a credit card. Shortly before Mr. Dion died, Mrs. Dion arranged for a technician to fix the family home’s furnace, which she paid for initially and then Mr. Dion paid her back.
39. Socially, Mrs. Dion says they carried on as a couple and a family unit. She says they went on family trips and celebrated special events with family and friends. She provided a video of her, Mr. Dion, and their children at an aquarium in February 2022. She provided another video of the family going together at a ski hill, playing at a playground, and swimming during a family trip in March 2022. She says they spent Easter together at Harrison Lake. She provided a photo of cake and flowers he gave her for Mother’s Day. She provided a photo of her and Mr. Dion, arms around each other, at their daughter’s birthday party in May 2022.

40. Mrs. Dion says Mr. Dion gave her driving lessons in May 2022 to help her pass her driving exam. She says they enjoyed “romantic” meals together after each lesson. She passed her exam on June 2, and she says he took the family out for a surprise dinner afterwards and bought her a piece of cake. There is a photo from this dinner that shows Mrs. Dion with a piece of cheesecake with “Congrats” and a heart written in icing on the plate.
41. Mrs. Dion says she got sick in late May, and Mr. Dion stayed with her and cared for her on May 27 and 28. She says they discussed their relationship and began planning Father’s Day and a winter trip to the Philippines, where she was born. She says they decided to move back in together after renovating the family home and after the trip to the Philippines, after the one-year apartment lease expired. Mrs. Dion says they were intimate during this visit and were more physically affectionate after this. While she is not explicit, I infer from her word choices that she and Mr. Dion had resumed their sexual relationship.
42. Mrs. Dion also provided screen captures of their text messages in the days before Mr. Dion died. They show the mundane matters spouses discuss. In one, Mr. Dion asks Mrs. Dion if she thinks they should buy a particular couch. In another, Mrs. Dion sends Mr. Dion coupons for an oil change. Their last exchange was about their children’s upcoming medical appointments.
43. Mrs. Dion provided written statements from several people, which all corroborate her evidence. Mr. Dion’s mother, RD, gives the following account. Mr. Dion asked her to move in with him to help with childcare in December 2021 because his marriage was in trouble. At first, communication between Mr. and Mrs. Dion was “not going well”. Mrs. Dion left the house to “take a step back” so that Mr. Dion would realize that she “needed affection and attention” as a wife, not just a mother. Mr. and Mrs. Dion saw each other almost every day in February and did family activities in March and April “to get closer”. In late May, Mr. Dion asked her to watch the children for two days in a row so that Mr. and Mrs. Dion could talk. I infer this was May 27 and 28. After that, Mr. Dion was “happy and in good spirits” and he told RD that he thought Mrs. Dion

would move back soon. To that end, Mr. Dion started renovating the house to prepare for “a new start”.

44. Mrs. Dion also provided a statement from AB, Mrs. Dion’s relative who lived in the family home. AB says the following. Mr. and Mrs. Dion were a “happy family” but they argued sometimes. AB could tell Mr. and Mrs. Dion were trying to work on their relationship after Mrs. Dion moved out. Mr. Dion remained very involved in the family. After Mother’s Day, Mr. and Mrs. Dion spent more and more time together, including overnight. A couple of weeks before he died, Mr. Dion said Mrs. Dion was moving home and he was happy and excited.
45. Mrs. Dion provided a joint statement from two friends, BE and RE. They say the following. They went with Mr. and Mrs. Dion on their Family Day trip to the aquarium. Mr. and Mrs. Dion seemed happy together. They were also on the March trip, where their two families shared a townhouse. They always believed Mr. and Mrs. Dion were “reconciling their differences”. Mr. Dion told them he had been spending his nights with Mrs. Dion and they were “getting back together”. Mr. and Mrs. Dion went on numerous “dates”. Mr. Dion asked them about making Father’s Day plans for the two families to celebrate together.
46. Finally, Mrs. Dion provided a statement from HP, the brother she moved in with. He had lived in the family home before he and Mrs. Dion moved into the apartment. He says the following. He and Mrs. Dion moved into an apartment because Mr. and Mrs. Dion had “a problem in their relationship” and Mrs. Dion could not afford to live on her own. Mr. Dion was over often, both to visit the children and to talk to Mrs. Dion. He always understood that he and Mrs. Dion would return to the family home after their lease expired. Mr. and Mrs. Dion were going out a lot in May 2022 when he was giving her driving lessons.
47. I acknowledge ICBC’s submission that Mrs. Dion said in an August 10, 2022 written statement that she and Mr. Dion “separated” in January 2022. Later in the same statement, she described the separation as “temporary” and said that she never intended for their marriage to end. She described the work they did on their

relationship during that time and their shared intention for her to move back into the family home when some renovations were complete. She also added in handwriting at the bottom of the statement “we were not legally separated”. I find that Mrs. Dion used the word “separated” simply to indicate that they decided to live in separate residences for a time, not to indicate that their marriage had ended. This is consistent with Mrs. Dion’s June 30, 2022 application for accident benefits, where she listed her marital status as “married”, not “separated”.

48. I find that there is no evidence either Mr. or Mrs. Dion ever communicated to the other an intention to permanently separate. While they lived in separate residences, they continued to parent together, spend time together, and celebrate family events together. They travelled as a family. Their friends and family all considered them to be a couple who was still together and working on improving their relationship. There is little evidence about how they arranged their finances before or after January 2022, but there is no evidence the arrangements had changed. The evidence suggests they were not sexually intimate for a time but resumed that aspect of their relationship.
49. Based on this evidence, I find that Mr. and Mrs. Dion never separated. They were living with each other in a marriage-like relationship until his death and had been doing so for at least the preceding two years. Therefore, I find that Mrs. Dion was Mr. Dion’s “spouse” under section 45 of the EABR.

What remedy is appropriate?

50. The application for dispute resolution Mrs. Dion filed at the outset of this proceeding contained little detail. She simply asked for an order for “death, funeral, and grief counselling”. She put no dollar value on the order. In other words, she did not ask for an order that ICBC pay her a certain amount in death or other benefits. However, Mrs. Dion’s submissions made clear that she expected an order that ICBC pay the spousal death benefit if she was successful. ICBC’s initial submissions implied the same.

51. Given the CRT's flexible and informal mandate, I asked the parties for submissions about what order I should make. I asked this, in part, because ICBC said it had already sent Mrs. Dion a cheque for just over \$32,000 in death benefits after categorizing her as Mr. Dion's "dependant". Mrs. Dion said she had not "accepted" the cheque, which I found somewhat ambiguous. Mrs. Dion also had not commented on ICBC's calculation of the benefit.
52. As noted above, ICBC says the spousal death benefit at issue is \$380,000. This is based on Mr. Dion's age (50) and salary (\$95,000) at the time of his death. Mr. Dion's employer had provided ICBC with a letter confirming this salary, which Mrs. Dion does not dispute. A table in the EABR says that the spousal death benefit for a 50-year-old is four times their annual salary. Mrs. Dion objects to any formula that values life based solely on economic output and asks for the "maximum" benefit, without saying what that is. However, ICBC has no authority or obligation to pay a death benefit more than what the EABR requires. Based on the evidence before me, I find that ICBC's calculation is correct.
53. The parties also confirmed that Mrs. Dion did not cash the dependant cheque ICBC had sent her, and by now, it is stale dated. In answering my question about the appropriate order, ICBC agreed to pay the full spousal benefit. I therefore find no deduction is warranted, and I order ICBC to pay Mrs. Dion \$380,000.

Funeral and Grief Counselling

54. ICBC provided evidence showing it has paid all funeral and grief counselling expenses Mrs. Dion has claimed. ICBC says there is no evidence it has denied any benefits, and I agree. On that basis, I dismiss Mrs. Dion's claim for funeral and grief counselling, as ICBC has already paid for every claim Mrs. Dion has submitted.
55. However, I recognize Mrs. Dion's submission that she has further funeral expenses to claim and still needs counselling. This dispute is about whether ICBC has failed to pay for claimed expenses, not about whether ICBC must pay future claims. So, nothing in this decision prevents Mrs. Dion from claiming further funeral or counselling

expenses. If ICBC denies those claims, Mrs. Dion is free to bring another CRT dispute.

FEES AND EXPENSES

56. The *Court Order Interest Act* applies to the CRT. I find that Mrs. Dion is entitled to pre-judgment interest from June 30, 2022, the date she applied for the spousal death benefit, to the date of this decision. This equals \$27,084.11.

57. 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. Mrs. Dion was successful on the main issue before me, so I find that she is entitled to reimbursement of \$125 in paid CRT fees. She did not claim any dispute-related expenses. I dismiss ICBC's claim for reimbursement of its CRT fees.

ORDERS

58. Within 30 days of this decision, I order ICBC to pay Mrs. Dion \$407,209.11, broken down as follows:

- a. \$380,000 in spousal death benefits,
- b. \$27,084.11 in prejudgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

59. Mrs. Dion is also entitled to post-judgment interest under the *Court Order Interest Act*.

60. I dismiss Mrs. Dion's remaining claims. I dismiss ICBC's claim for CRT fees.

61. This is a verified decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. Once filed, a CRT order has the same force and effect as a court order.

Eric Regehr, Vice Chair