



# Civil Resolution Tribunal

Date Issued: January 10, 2019

File: SC-2017-006263

Type: Small Claims

Civil Resolution Tribunal

Indexed as *Krahn et al v. Insurance Corporation of British Columbia (ICBC) et al*, 2019  
BCCRT 45

Default decision – non-compliance

**BETWEEN:**

David Krahn and Donna Marie Krahn

**APPLICANTS**

**AND:**

Insurance Corporation of British Columbia (ICBC)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal) about an issue of non-compliance. My September 13, 2018 summary decision finding the applicants non-compliant was communicated to the parties by email.
2. On October 20, 2016, the applicants' dog, Duke, was hit by a car driven by Deanna Podolsky.
3. This dispute is about who is responsible for the repairs to Ms. Podolsky's car's bumper, and the costs of Duke's veterinary treatment.
4. While they participated in the process, the applicants David Krahn and Donna Marie Krahn were self-represented. The respondent Insurance Corporation of British Columbia (ICBC) was initially represented by employee Tammy Huh, and later Shelly Beagle.
5. Deanna Podolsky was not properly served with the Dispute Notice. I have removed her name from the style of cause. ICBC effectively provided Ms. Podolsky's defence. Given that I have dismissed the applicants' claim, nothing turns on whether Ms. Podolsky was a properly named respondent.
6. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
  - a. hear the dispute in accordance with any applicable rules.
  - b. make an order dismissing a claim in the dispute made by the non-compliant party, or

- c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
7. The applicants are the non-compliant parties in this dispute and have failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite several attempts by the facilitator to contact them.
8. The facilitator has referred the applicants' non-compliance with the tribunal's rules to me for a decision as to whether I ought to refuse to resolve this dispute or dismiss it.
9. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 118 of the Act. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
10. For the reasons which follow, I dismiss the applicants' dispute.

## **ISSUES**

11. The issue in this dispute is whether I should dismiss the applicants' claim, hear the applicants' claim, or refuse to resolve the claim or the dispute.

## **BACKGROUND AND EVIDENCE**

12. The key difference between a dismissal order and a refusal to resolve under section 36 of the Act is that, subject to cancellation, disputes that are dismissed may not be re-filed with the tribunal, another tribunal or a court at a later date. Claims or disputes that the tribunal refuses to resolve may be re-filed with leave of the tribunal, subject to any applicable limitation period.

13. In the November 6, 2017 Dispute Notice, the applicants made two claims against the respondent ICBC. First, the applicants claimed \$2,500 for veterinary bills from when Duke was hit. Second, they asked the tribunal to reverse ICBC's finding that Donna Krahn was responsible for repairs to the car totaling \$2,356.34.
14. In their Dispute Response submitted April 16, 2018, ICBC explained that it found Duke's owner's negligent for failing to keep a domestic animal off the roadway. ICBC says there was no evidence of negligence on behalf of Ms. Podolsky. The liability decision was made against Duke's owner. On that basis, ICBC said that neither it nor Ms. Podolsky were responsible for the veterinary bill.
15. While both the applicants and respondent ICBC exchanged evidence, the applicants did not provide submissions when requested and stopped communicating with the case manager as required.
16. On June 22, 2018 the case manager emailed the applicants requesting written submissions on or before June 29, 2018. The applicants did not respond.
17. On July 7, 2018 the case manager sent the applicants a reminder, requesting their submission by July 9, 2018. They did not respond.
18. On July 12, 2018, the case manager spoke with Ms. Krahn by phone. Ms. Krahn said she would provide submissions by July 13, 2018. She did not do so.
19. On July 26, 2018, the case manager emailed the applicants indicating that their submissions had not been received.
20. On August 24, 2018, the case manager left a voice mail and emailed the applicants, warning them that if they failed to respond, their dispute would be referred to a tribunal member who may dismiss or refuse to resolve their claim, without their further participation.

## **ANALYSIS**

### ***Should the applicant's claim be dismissed, or should the tribunal refuse to resolve their dispute?***

21. Based on the case manager's attempts to contact the applicants, and given their lack of meaningful response, I find that the case manager made a reasonable number of attempts to contact them. Given that the case manager spoke with one of the applicants and conveyed the instructions verbally, I find that they were aware of the case manager's instructions and chose not to respond.
22. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
  - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
  - b. the stage in the facilitation process at which the non-compliance occurs;
  - c. the nature and extent of the non-compliance;
  - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
  - e. the effect of the non-compliance on the tribunal's resources and mandate.
23. Further, this claim only affects the parties involved in the dispute.
24. The applicants were unwilling to provide submissions or to respond indicating that they had no submissions. Given this, I find the nature and extent of the non-compliance is significant.
25. Having said that, because the applicants and respondent ICBC exchanged evidence prior to the non-compliance, I have considered the evidence.
26. The applicants made arguments to ICBC, in their email evidence, as follows:

- a. Duke was too small a dog to have caused the damage to the car's bumper,
  - b. The dog hair found in the car's bumper was too long to belong to Duke, and
  - c. Ms. Podolsky must have been driving too fast, since there is a 15 km/hour speed limit in the cul-de-sac where Duke was struck.
27. The applicants did not file evidence proving any of these arguments.
  28. ICBC provided evidence that the collision repair shop that fixed the car's bumper commented that the damage to the car was "consistent with loss type" and with "animal impact".
  29. I prefer the evidence of the respondent ICBC because it was recorded closer in time to the motor vehicle accident.
  30. As well, I draw an adverse inference against the applicants for failing to participate in the exchange of submissions as required. They did not provide evidence for their assertion that Duke could not have caused this damage, nor for their argument that Ms. Podolsky must have been driving too fast.
  31. The only evidence is that the car did strike Duke. He was taken for immediate veterinary care. On a balance of probabilities, I find that Duke did cause the bumper damage shown in the photographs filed in evidence.
  32. Given that no counterclaim was filed, I also see no prejudice to the respondent caused by dismissing the applicants' dispute.
  33. I find that in the circumstances of this case, it is appropriate to dismiss the applicant's dispute both on its merits and for the applicants' non-compliance. Although it is not a binding precedent, I agree with the tribunal's reasoning in *Grand-Clement v. The Owners, Strata Plan, KAS 2467*, 2017 BCCRT 45 that it is problematic to force unwilling applicants to pursue a dispute with the tribunal. I agree that to do so would go against the mandate of the tribunal and impair the

fairness of the process by creating an imbalance of the tribunal's fact finding and decision-making functions.

34. On the other hand, if I refuse to resolve the claim, there would be no finality to this dispute as it would be open to the applicants to make a further request for tribunal resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicants for failing to participate, which would be unfair to the respondent.
35. Finally, the tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the tribunal to continue applying its resources on a dispute where the applicants do not appear to want the tribunal's assistance in resolving their claim.
36. In weighing all of the factors, I find the applicants' claims in this dispute should be dismissed. Given that there is no counterclaim, the dispute is also dismissed.
37. In deciding to dismiss the claim rather than refuse to resolve it, thereby issuing a final order to resolve the dispute, I have put significant weight on the following factors:
  - a. the extent of the non-compliance is significant;
  - b. the respondent is not prejudiced if such an order is made;
  - c. the need to conserve the tribunal's resources; and
  - d. the merits of the dispute make refusing to resolve it impractical.

## **DECISION AND ORDERS**

38. I order that the applicants' claims, and therefore this dispute, are dismissed.

39. Under tribunal rule 131 the tribunal can make orders regarding payment of fees or reasonable expenses in the case of a withdrawal or dismissal. The respondent did not pay tribunal fees or claim expenses in this dispute. Therefore, I make no order as to the payment of tribunal fees or expenses.

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Julie K. Gibson, Tribunal Member