



# Civil Resolution Tribunal

Date Issued: August 31, 2021

File: SC-2021-002814

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bokis v. Walin*, 2021 BCCRT 953

BETWEEN:

ANGELA BOKIS

**APPLICANT**

AND:

RICHARD SCOTT WALIN and INSURANCE CORPORATION OF  
BRITISH COLUMBIA

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This small claims dispute is about responsibility for a motor vehicle accident that occurred on April 3, 2020 in West Kelowna, BC. The applicant, Angela Bokis, says the respondent, Richard Scott Walin, backed his vehicle into hers. The respondent

Insurance Corporation Of British Columbia (ICBC) insures both drivers. Mrs. Bokis claims reimbursement for a \$300 insurance deductible paid to repair her vehicle.

2. Mr. Walin and ICBC disagree and say Mrs. Bokis rear-ended Mr. Walin. They says Mrs. Bokis is 100% at fault.
3. Mrs. Bokis represents herself. An ICBC employee represents both respondents.
4. For the reasons that follow, I dismiss Mrs. Bokis' claims.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

### ***The Claims against ICBC***

9. The CRT has consistently found that an insured has a right to claim against ICBC if they believe that ICBC did not meet its statutory or contractual obligations to reasonably investigate an accident. I agree with his approach. However, I find that the substance of Mrs. Bokis' claim is about who is at fault for the accident. She did not allege that ICBC breached any statutory or contractual obligation. Mrs. Bokis only requested her deductible refunded, which I find is a damages claim against Mr. Walin. For those reasons, I dismiss Mrs. Bokis' claims against ICBC.

### **ISSUE**

10. The issue in this dispute is who is at fault for the accident and what remedies, if any, are appropriate.

### **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Mrs. Bokis must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. I begin with the undisputed facts. As stated earlier, Mrs. Bokis' and Mr. Walin's accident occurred on August 3, 2020 in West Kelowna. Post-accident photos show their vehicles collided in the single eastbound lane of Last Road, where it formed a

T-intersection with Old Okanagan Highway. There was a stop sign at the intersection, facing the eastbound drivers of Last Road. Mrs. Bokis was behind Mr. Walin.

13. In the post-accident photos, the drivers' vehicles were still touching. There is no indication anyone moved them. The point of impact was the front driver side of Mrs. Bokis' vehicle and Mr. Walin's rear driver side bumper. Mr. Walin had turned his vehicle slightly northbound at the time. His vehicle was stopped partially in front of the stop sign but still in the eastbound lane of Last Road. From the photos I find Mr. Walin's car was not in the intersection at the time of impact.
14. Mrs. Bokis and Mr. Walin each had 1 passenger at the time. They did not provide any evidence in this dispute and there is no indication they provided statements to ICBC. There were no other witnesses to or video footage of the accident. ICBC internally determined that Mrs. Bokis was 100% at fault. Mrs. Bokis repaired her vehicle and paid the \$300 deductible as shown in a November 2, 2020 receipt.

***Who is at fault for the accident?***

15. Mrs. Bokis reported the accident to ICBC on August 4, 2020. She provided ICBC a telephone statement, an October 20, 2020 written statement, a post-accident video discussing the accident, plus a diagram. These statements, the diagram, the video, and her submissions allege the same following things. Mrs. Bokis was driving eastbound on Last Road and Mr. Walin was ahead of her. Mr. Walin began turning left onto Old Okanagan Highway and partially entered the intersection. This put him in the path of a southbound truck. Mr. Walin then stopped his car and reversed. Mrs. Bokis sounded her horn, but Mr. Walin did not stop and reversed into her. After the accident Mr. Walin told her that he did not hear the horn because he was playing loud music.
16. Mr. Walin spoke to ICBC on October 16, 2020. ICBC's emails indicate Mr. Walin failed to report the accident so I infer ICBC first contacted Mr. Walin by phone. He said the following. He was stopped at the stop sign, waiting for traffic to pass at the intersection. Mrs. Bokis then hit his vehicle. He denied ever reversing. On January

15, 2021, ICBC asked Mr. Walin by phone if he failed to hear Mrs. Bokis' horn because of loud music. Mr. Walin denied this and said he did not have a radio in his vehicle. He also said he saw Mrs. Bokis texting in his rearview mirror before the accident. He noted that his vehicle had suffered worse damage than Mrs. Bokis', but he had not yet taken it into a body shop for an estimate.

17. Section 193 of the *Motor Vehicle Act* (MVA) says drivers must not cause their vehicle to move backwards unless the movement can be made in safety. Case law states that a reversing driver is subject to a high standard of care. See, for example, *Chaube v. Neja*, 2017 BCSC 1415 at paragraph 27.
18. Section 162 of the MVA says a driver must not follow another vehicle more closely than is reasonable and prudent. Case law states that the rear-ending driver has the onus to prove the collision was not their fault. See, for example, *Wright v. Mistry*, 2017 BCSC 239 at paragraphs 16 to 18 and *Skinner v. Fu*, 2010 BCCA 321.
19. The respondents say that the onus falls on Mrs. Bokis to show the accident was not her fault, because she drove the following vehicle. This would be true if it were undisputed that Mrs. Bokis rear-ended Mr. Walin. However, the central issue in this dispute is whether the parties were in a rear-end collision or not. That said, I find Mrs. Bokis still bears the burden to prove her claims as the applicant in this dispute. For the reasons that follow, I find Mrs. Bokis has not proven her claims.
20. I find the photos and vehicle damage provide no assistance in determining fault. They appear consistent with either version of events. There is no expert evidence on the matter.
21. I also do not find Mrs. Bokis' description of the accident to be inherently more likely than Mr. Walin's. Based on the post-accident photos, I find Mrs. Bokis' version requires that Mr. Walin entered the intersection, reversed completely out of the intersection, and ignored Mrs. Bokis' horn until impact.
22. I acknowledge that Mrs. Bokis reported the accident the day after it occurred. Her passenger also photographed the aftermath of the accident and Mr. Walin's insurance

information. In contrast and as noted, Mr. Walin did not take the initiative to contact ICBC. While I find Mrs. Bokis' actions may be consistent with someone that believes they are not at fault, I do not find them to be proof of who caused the accident. For those reasons, I dismiss Mrs. Bokis' claims against Mr. Walin.

23. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The respondents did not pay any CRT fees or claim any dispute-related expenses, so I order none. I dismiss Mrs. Bokis' claims for reimbursement of CRT fees.

## **ORDER**

24. I dismiss Mrs. Bokis' claims and this dispute.

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David Jiang, Tribunal Member