



# Civil Resolution Tribunal

Date Issued: September 17, 2025

File: AB-2024-001837

Type: Accident Claims

Category: Accident Benefits

Civil Resolution Tribunal

Indexed as: *Sawkins v. ICBC*, 2025 BCCRT 1299

BETWEEN:

SHARON MARIE SAWKINS

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about entitlement to accident benefits.
2. The applicant, Sharon Marie Sawkins, a former care aide, was injured in a motor vehicle accident on May 16, 2023. Ms. Sawkins suffered a bicep tendon injury, for

which they say they will “need help forever”. They claim health care, rehabilitation, and related benefits, income replacement, caregiver, and loss-of-studies benefits, and permanent impairment compensation. Ms. Sawkins values these at \$70,000.

3. ICBC says to the extent Ms. Sawkins seeks damages for the bodily injuries they sustained in the accident, they are prevented from doing so under the *Insurance (Vehicle) Act* (IVA). ICBC also says Ms. Sawkins has not proven they are entitled to further health care, rehabilitation, or related benefits, and has not provided evidence to support their claims for income replacement, caregiver, or loss-of-studies benefits. Finally, ICBC says it properly calculated and paid Ms. Sawkins permanent impairment compensation. ICBC asks that I dismiss Ms. Sawkins’ claims.
4. Ms. Sawkins is self-represented. ICBC is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over accident claims brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(a) of the CRTA gives the CRT jurisdiction over determining entitlement to accident benefits.
6. CRTA section 2 says 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
7. CRTA section 39 says the CRT has discretion to decide the hearing’s format, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find 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 an oral hearing is not necessary in the interests of justice.

8. CRTA section says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

### ***Preliminary issue – tort claim***

9. Ms. Sawkins claims \$70,000, and says they have suffered extreme hardship, including never being able to work as a care aide again. ICBC says this is essentially a tort claim for pain and suffering damages. IVA sections 114 and 115 impose a “tort ban” on accidents that happened after May 1, 2021, like this one. While Ms. Sawkins included a lump sum in the Dispute Notice that suggests they are seeking a remedy based in tort law, they also make it clear they are seeking benefits and compensation under the IVA and its regulations. ICBC’s submissions show it understands Ms. Sawkins’ claims to be based on this legislation. Given the CRT’s mandate to provide dispute-resolution services flexibly, I have considered Ms. Sawkins’ claims for accident benefits under the IVA and its regulations.

## **ISSUES**

10. The issues in this dispute are:
  - a. Is Ms. Sawkins entitled to further health care, rehabilitation, and related benefits?
  - b. Is Ms. Sawkins entitled to income replacement, caregiver, or loss-of-studies benefits?
  - c. Is Ms. Sawkins entitled to further permanent impairment compensation?

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil claim, Ms. Sawkins must prove their claims on a balance of probabilities, meaning “more likely than not”. I have read all of the parties’ evidence and submissions, but I have only addressed information I consider

necessary to explain my decision. Ms. Sawkins did not provide final reply submissions, despite being given the chance to do so.

## ***Background***

12. On May 16, 2023, Ms. Sawkins was involved in a motor vehicle accident while maneuvering their motorcycle around a parking lot.
13. After speaking with a general practitioner, Dr. Calin Van Rooyen, on May 18, Ms. Sawkins attended the hospital for x-rays and an ultrasound. Dr. Riaan Nieman, Ms. Sawkins' family physician, found the ultrasound results showed a distal biceps tendon tear in their right arm. Dr. Nieman referred Ms. Sawkins to an orthopedic surgeon, Dr. Geoff Jarvie, who saw them on May 31, and confirmed the ultrasound results. Dr. Jarvie discussed treatment options with Ms. Sawkins, including surgery. Ms. Sawkins wanted a second opinion, so they saw another orthopedic surgeon, Dr. Ronald Jason O'Brien, on June 13. Dr. O'Brien also confirmed the tendon tear, and again talked through treatment options. As Ms. Sawkins is relatively "low-demand" with regard to use of their right arm, they opted for non-surgical treatment.
14. Between May and December 2023, ICBC funded \$6,255.54 in health care and rehabilitation benefits. ICBC also approved the activities of daily living benefit from May 23, 2023 to January 1, 2024.

## ***Health care, rehabilitation, and related benefits***

### ***Health care and rehabilitation benefits***

15. IVA section 123 requires ICBC to pay or reimburse an insured for reasonable expenses for necessary health care, prescribed services, and prescribed equipment, medication and other things, due to their accident injuries. Section 19 of the *Enhanced Accident Benefits Regulation* (EABR) says an insured is entitled to certain pre-approved paramedical treatments within 12 weeks of an accident. After that, EABR section 19(3) says ICBC only needs to cover treatment if it will facilitate

the insured's recovery or address a decline in their physical or mental function from their accident injuries.

16. Until late December 2023, when it ended Ms. Sawkins' health care and rehabilitation benefits, ICBC funded:
  - a. 2 family physician sessions,
  - b. 4 chiropractic sessions,
  - c. 5 occupational therapy sessions,
  - d. 2 massage therapy sessions,
  - e. 17 physiotherapy sessions, and
  - f. Travel expenses, medication, and medical equipment.
17. In their Dispute Notice, Ms. Sawkins says they need therapy to keep their injured tendon "mobile and usable". However, they do not say what kind of therapy they are requesting. Based on what ICBC previously funded, I have considered whether Ms. Sawkins has proven they are entitled to additional therapy treatments.
18. Ms. Sawkins' chart summary records that Dr. Nieman saw Ms. Sawkins in clinic on December 8, 2023, and noted they should continue with physiotherapy. However, around December 21, 2023, ICBC had a care plan meeting with Dr. Nieman. ICBC's file notes record Dr. Nieman's opinion that Ms. Sawkins' shoulder had reached maximum medical recovery, and was unlikely to improve further. This is consistent with Dr. Nieman's January 10, 2024 range of motion reports for Ms. Sawkins' shoulder and elbow, which indicate the same thing.
19. In his December 22, 2023 range of motion reports for Ms. Sawkins' shoulder and elbow, Brady Zappone, a physiotherapist, came to a different conclusion. In his opinion, Ms. Sawkins had not reached maximum recovery and would benefit from continued physiotherapy. Brady Zappone's opinion appears to have been based at

least in part on the fact that Ms. Sawkins is a smoker, and had been attending physiotherapy infrequently. He also recorded “yellow flags re: stress/anxiety”.

20. I note Ms. Sawkins’ copies of Brady Zappone’s reports record a tick in the “yes” box, and the handwritten words “has now” next to the question “has the client reached maximum recovery?” The tick in the “no” box is scratched out. It is unclear when these changes were made, or even if Brady Zappone made them, as Ms. Sawkins did not provide any explanation. So, I place little weight on Ms. Sawkins’ versions of Brady Zappone’s range of motion reports.
21. ICBC’s January 2, 2024 file notes indicate it intended to have a care plan meeting with Brady Zappone given the apparent discrepancy between his opinion and Dr. Nieman’s most recent one. There is no indication this happened. So, based on the evidence before me, I find there were diverging professional opinions about whether Ms. Sawkins’ injury had reached maximum recovery. In these circumstances, I am unable to conclude Ms. Sawkins has proven additional therapy treatments would facilitate their recovery or address a decline in their physical or mental function from their accident injuries. I dismiss Ms. Sawkins’ claim for more therapy.

*Activities of daily living benefit*

22. Ms. Sawkins also asks for additional amounts under the activities of daily living benefit, which is a benefit related to health care and rehabilitation benefits.
23. IVA section 125(1) says if an insured is unable to perform activities of daily living without assistance because of their accident injuries, they are entitled to payment or reimbursement of reasonable and necessary expenses they incur to have someone help them with those activities. Activities of daily living are defined in IVA section 1 and EABR section 2. EABR sections 28 to 31 describe how to calculate an insured’s entitlement to the activities of daily living benefit, including through the use of an assessment tool.
24. The assessment tool in EABR section 31 is used to gauge an injured person’s ability to perform different activities of daily living to provide a total weighted score.

Briefly, the tool is used to categorize activities of daily living into different levels (1-3) depending on how challenging they are to perform. The assessor also allocates the insured a dependency class (1-4) based on how much assistance they need for each activity. If the total weighted score is less than 9, the insured is not entitled to the benefit.

25. On June 25, 2023, an occupational therapist, Marina Flatman, conducted a personal care assistance (PCA) assessment of Ms. Sawkins, to determine their eligibility for the activities of daily living benefit. Marina Flatman noted that Ms. Sawkins' partner and daughter assisted with many activities involving tidying up or cleaning, due to Ms. Sawkins' limited range of motion and grip strength on their right side. Ms. Sawkins hired a yard company to rake leaves, garden, and prune their 0.5 acres of land, for the same reason. Ms. Sawkins required some assistance with personal care activities.
26. Based on Ms. Sawkins' total weighted score of 38.5, Marina Flatman recommended two 2-hour weekly visits for 12 weeks to assist them with homemaking. Using the EABR section 31 assessment tool, ICBC approved funding of up to \$2,177.20 per month. ICBC later decreased Ms. Sawkins' maximum monthly benefit entitlement to \$1,472.01, after Marina Flatman performed a second PCA assessment on December 10, 2023, and recommended one 3-hour weekly visit for 12 weeks, applied retroactively from October 1, 2023.
27. ICBC says neither Marina Flatman, nor any other health care provider, has submitted further PCA assessments. Ms. Sawkins does not address this. They submitted a February 25, 2025 letter from Dr. Nieman reporting that the tendon tear is "affecting her life on a daily basis" and has an impact on their ability to do physical tasks at work. They also submitted a similar letter dated October 28, 2024, about their physical limitations at work. However, I find these letters are insufficient proof of the need for assistance with activities of daily living, and Ms. Sawkins did not provide evidence from other medical or health care providers to support further

entitlement to this benefit. I dismiss Ms. Sawkins' request for additional amounts under the activities of daily living benefit.

### ***Income replacement, caregiver, and loss-of studies benefits***

#### **Income replacement benefits**

28. ICBC must determine an insured's entitlement to income replacement benefits under IVA sections 131 to 134, and 145, and the *Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation* (IRBR). Full-time earners, temporary and part-time earners, and non-earners are entitled to benefits if they meet certain criteria. The question is whether Ms. Sawkins fell into one of these categories.
29. IVA section 113 defines full-time, part-time, and temporary earners as insureds who hold regular employment at the time of the accident.
30. It is undisputed that Ms. Sawkins was not working before the accident, and had been on long-term disability benefits since June 17, 2021. There is no evidence they were attached to a job when they were injured.
31. Ms. Sawkins says they were planning on returning to work as a care aide at the time of the accident. ICBC's file notes indicate Ms. Sawkins told ICBC they had documents supporting their assertion that they would have been able to return to a care aide role. However, Ms. Sawkins did not provide any such documents in this dispute.
32. Based on the above, I find it unproven that Ms. Sawkins held regular employment at the time of the accident. So, I find they were not a full-time, part-time, or temporary earner when they were injured.
33. Was Ms. Sawkins a non-earner? Under the IVA section 113 definitions, a non-earner is an insured who does not hold employment at the time of the accident but is able to work. Since they were collecting long-term disability benefits when they



were injured, I find Ms. Sawkins was unable to work. So, I find they also did not qualify as a non-earner.

34. Even if Ms. Sawkins had fallen into 1 of the above categories, IVA section 145 says an insured that ICBC is satisfied was “regularly incapable” of holding employment before the accident for any reason other than age is not entitled to income replacement benefits. ICBC relies on this section in support of its position that Ms. Sawkins was not entitled to these benefits. Since Ms. Sawkins had not been working for nearly 2 years before the accident, I find ICBC reasonably concluded that they were “regularly incapable” of holding employment at that time.
35. For the reasons above, I find Ms. Sawkins is not entitled to income replacement benefits, and I dismiss this part of their claim.

#### Caregiver benefits

36. Ms. Sawkins says their daughter, who was 14 at the time of the accident, is unable to manage her nutrition and self-care due to cognitive disabilities. I infer Ms. Sawkins’ position is that they were managing these things for their daughter before the accident, but could not continue doing so afterwards. So, they should receive caregiver benefits.
37. IVA section 152(1) says an insured is entitled to caregiver benefits if their main occupation at the time of the accident was the unpaid care of a person under the age of 16, and the insured’s accident injuries left them unable to continue providing that care. Caregiver benefits are calculated under EABR section 43.
38. ICBC says Ms. Sawkins is not eligible for caregiver benefits because, among other things, the PCA assessments indicate Ms. Sawkins’ partner and daughter were helping them with many activities of daily living after the accident. ICBC also says there is no evidence Ms. Sawkins’ main occupation at the time of their accident was caring for their daughter.

39. An April 19, 2019 letter from Dr. J.C. Bellingham to the Disability Tax Unit indicates a person, SLH, who I infer is Ms. Sawkins' daughter, has "significant restrictions in eliminating, feeding, dressing and mental functions necessary for everyday life that is the equivalent of a marked restriction, since 2017". Dr. Bellingham also wrote that SLH has attention deficit hyperactivity disorder and poor impulse-control. More recently, a May 9, 2024 letter from Dr. Nieman says Ms. Sawkins told him they need to help SLH all the time with activities of daily living, like washing her hair and feeding. I place little weight on Dr. Nieman's letter as it appears to reflect what Ms. Sawkins told him, rather than record his own medical opinion.
40. Both PCA assessments identify activities Ms. Sawkins' daughter helped them with following the accident, including cleaning up after meal preparation, general tidying of the house, and vacuuming and washing floors.
41. Based on this evidence, I accept that around 2019, SLH had restrictions in certain physical and mental functions that meant she required regular help. The extent of those restrictions at the time of the accident and going forward is unclear given the more than 4 years between Dr. Bellingham's letter and Ms. Sawkins' accident, and the lack of any recent medical evidence about SLH's requirements.
42. In any case, Ms. Sawkins provided no evidence that their main occupation was caring for their daughter at the time of the accident. Even if it was, Ms. Sawkins has not shown their accident injuries prevented them from continuing to care for SLH. None of the chart notes, physician letters, or PCA assessments mention Ms. Sawkins was unable to care for SLH, even though these documents repeatedly mention work-related restrictions. The PCA assessments identified activities of daily living that Ms. Sawkins was able to perform largely independently, such as meal preparation.
43. Given the above, I find Ms. Sawkins has not proven that at the time of the accident their main occupation was caring for SLH, and that afterwards, they were not able to do this because of their injuries. I dismiss Ms. Sawkins' claim for caregiver benefits.

### Loss-of-studies benefits

44. Ms. Sawkins says they are entitled to compensation for retraining because they are no longer able to work as a care aide due to their accident injuries. While they do not specifically claim a loss-of-studies benefit, I find this is the most likely category that this type of claim would fall into.
45. Under IVA section 136, a student is entitled to a loss-of-studies benefit for the time they are unable to begin or continue their full-time studies due to their accident injuries. A student includes a person over the age of 19, who is attending secondary school or a post-secondary institution full-time at the time of the accident.
46. There is no evidence Ms. Sawkins was a full-time student at the time they were injured. So, I find they are not eligible for the loss-of-studies benefit, and I dismiss this part of their claim.

### ***Permanent impairment compensation***

47. Under IVA section 129, an insured is entitled to a lump sum payment for a permanent impairment they sustained because of the accident. The payment must be calculated and determined in accordance with the *Permanent Impairment Regulation* (PIR).
48. On February 15, 2024, ICBC wrote to Ms. Sawkins to advise them of their permanent impairment benefit, which it undisputedly paid them by direct deposit. ICBC said Ms. Sawkins was entitled to \$12,773.81 for 7% of the maximum \$182,483 payable for non-catastrophic injuries, calculated in accordance with the PIR schedule.
49. I infer Ms. Sawkins disagrees with the amount of the benefit, but they do not say that ICBC miscalculated the amount, or explain why they believe they are entitled to more. On my review of ICBC's permanent impairment calculation, I can see nothing obviously wrong with it. In these circumstances, I find Ms. Sawkins has not proven

they are entitled to anything more for permanent impairment compensation. I dismiss this part of their claim.

## **FEES AND EXPENSES**

50. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Ms. Sawkins was unsuccessful, but they did not pay CRT fees in any case. ICBC was successful, so I find it is entitled to reimbursement of \$25 for its fees. Neither party claims dispute-related expenses.

## **ORDERS**

51. I dismiss Ms. Sawkins' claims.

52. Within 30 days of the date of this decision, I order Ms. Sawkins to pay ICBC a total of \$25 for CRT fees.

53. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

54. This is a validated decision and order. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Megan Stewart, Tribunal Member