



# Civil Resolution Tribunal

Date Issued: November 30, 2022

File: VI-2021-000623

Type: Motor Vehicle Injury

Category: Fault & Damages

Civil Resolution Tribunal

Indexed as: *Hutton v. Pelletier*, 2022 BCCRT 1288

BETWEEN:

TIFFANY HUTTON

**APPLICANT**

AND:

ELIZABETH PELLETIER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on May 21, 2019 in Prince George, British Columbia.

2. The applicant, Tiffany Hutton, was undisputedly rear-ended by the respondent, Elizabeth Pelletier. Ms. Hutton says she suffered severe injuries as a result of the accident and seeks \$50,000 in non-pecuniary (pain and suffering) damages. Liability for the accident is not in dispute.
3. The respondent denies the severity of the injuries claimed and the extent of their impact on Ms. Hutton. The respondent argues Ms. Hutton is only entitled to \$12,000 to \$15,000 in non-pecuniary damages.
4. Ms. Hutton is self-represented. The respondent is represented by her insurer, Insurance Corporation of British Columbia (ICBC).

## **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)(b) of the CRTA gives the CRT exclusive jurisdiction over the determination of whether an injury is a “minor injury” under the *Insurance (Vehicle) Act* (IVA). Section 133(1)(c) of the CRTA and section 7 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over the determination of liability and damages claims, up to \$50,000.
6. At the time Ms. Hutton filed her CRT dispute, there was an ongoing legal challenge about whether sections 133(1)(b) and (c) of the CRTA were constitutional. The British Columbia Supreme Court (BCSC) had ordered that those sections were unconstitutional and no longer in effect. The British Columbia Court of Appeal (BCCA) then granted a partial stay of the BCSC decision, which allowed the CRT to continue resolving claims under these CRTA sections while the challenge was heard at the BCCA.
7. On May 12, 2022, the BCCA overturned the BCSC's decision. This means that the CRT retains jurisdiction to resolve claims under section 133(1)(c) of the CRTA, and exclusive jurisdiction to resolve claims under section 133(1)(b). However, given Ms.

Hutton already consented to continuing her dispute at the CRT, nothing turns on the BCCA's decision.

8. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
9. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 in the interests of justice. 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.
10. Section 42 of the CRTA 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 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.

### ***Late evidence***

11. Ms. Hutton provided late evidence after the parties provided their initial submissions. The late evidence consisted of various pre-accident photos, some employment-related information, and medical information. The respondent was provided with an

opportunity to review and provide submissions on this late evidence, though she decided not to do so. I find there is no prejudice in allowing this late evidence. In any event, I note that my decision does not turn on the late evidence.

## **ISSUE**

12. The issue in this dispute is whether Ms. Hutton is entitled to \$50,000, or some other amount, as compensation for personal injury damages.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, the applicant Ms. Hutton bears the burden of proof on a balance of probabilities, meaning “more likely than not”. While I have read all of the parties’ voluminous evidence and extensive submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
14. As noted, it is undisputed that the respondent is 100% responsible for the May 21, 2019 accident. There is also no dispute that Ms. Hutton suffered various injuries as a result of the accident. The dispute is about the duration and extent of Ms. Hutton’s claimed injuries, and their impact on Ms. Hutton’s life.
15. CRT staff advised me that during facilitation the parties agreed Ms. Hutton’s injuries do not fall within the definition of “minor injuries” set out in section 101 of the IVA. Additionally, the parties agree Ms. Hutton is entitled to at least \$12,000 in non-pecuniary damages, which is greater than the “minor injury cap”. Given this, I find I do not need to determine whether Ms. Hutton’s injuries are “minor injuries” or not.
16. The details of the accident are not significantly in dispute. Ms. Hutton was stopped at a red light in a rented 2019 Chevy Silverado truck when she was struck from behind by a 2009 Ford Focus driven by the respondent.

### ***Non-pecuniary damages***

17. Ms. Hutton is 47 years old and was 43 at the time of the accident. She is single and was working as a restaurant server. Ms. Hutton says that prior to the accident she was very active and liked to bike ride, hike, play baseball, and play with her young nephews. As a result of the accident, Ms. Hutton alleges she suffered several significant, life altering injuries, including constant pain and discomfort in her neck, shoulders and back, daily debilitating anxiety, sleep issues, and headaches, all as a “direct result” of the accident. She also argues she has chronic fatigue syndrome and ADHD, which she says she has self-diagnosed.
18. The parties provided several, yet incomplete, medical records, including from Ms. Hutton’s 4 rotating general practitioners (Dr. MacNicol, Dr. Kelly, Dr. Textor, and Dr. Key, who operate using a “shared care model”), as well as some records from her physiotherapist, chiropractor, registered clinical counsellor, and two psychiatrists.
19. Ms. Hutton first advised Dr. Kelly of the accident on May 27, 2019. Dr. Kelly noted Ms. Hutton complained of “a bit of low back pain right away” which got worse as time went on. Dr. Kelly diagnosed a musculoskeletal strain and recommended heat, ice, and stretching.
20. Over the next month, Ms. Hutton continued to complain to her family doctors about her back pain, headaches, and increasing anxiety. She underwent a sleep study and was diagnosed with obstructive sleep apnea. In July 2019 clinical records, Dr. MacNicol noted Ms. Hutton was reporting quite a few symptoms of fatigue, low energy, irritability, and anxiety from the accident. She continued to complain of back and neck pain. During this time, Ms. Hutton undisputedly missed 4 days of work (May 25, August 8, August 9 and August 14, 2019) due to her accident-related injuries. Otherwise, the medical and employment records in evidence indicate she was working full time (although her “full time” was 20-30 hours per week) and full duties until October 2019, when she left her position. She has not returned to work since.

21. Ms. Hutton says she had to quit her job due to her accident injuries causing too much pain to work. However, the evidence shows that Ms. Hutton was complaining of ongoing bullying and harassment at work. In a March 11, 2020, telephone call with an ICBC employee, Ms. Hutton advised that quitting her job “had a lot to do with the accident, but other issues too”.
22. The medical evidence also shows Ms. Hutton's registered clinical counsellor, Dahne Harding, recorded Ms. Hutton quit her job due to cumulative stress from the accident and “harassment and bullying for the last 15 years”. Additionally, Dr. Jani, a psychiatrist, documented Ms. Hutton left her job due to pain and anxiety and bullying. Dr. Textor noted Ms. Hutton left work due to interpersonal conflict.
23. Ms. Hutton acknowledges the ongoing bullying and harassment she experienced and spoke about it in length in her submissions but denies telling any medical professional that was the reason she quit her job. Ms. Hutton says she left work solely due to her accident injuries. I find it unlikely that multiple different health professionals from separate offices would document the same reason for leaving her job without Ms. Hutton telling them that. On balance, I find Ms. Hutton has not proven she was unable to continue her job due to her accident injuries. As noted, Ms. Hutton continued to work full time, full duties after the accident until she resigned, approximately over 4 months later.
24. In any event, Ms. Hutton says that over time she has attended over 280 appointments with her doctors and for physiotherapy, massage, and chiropractic treatments. Ms. Hutton's family doctors have diagnosed her with chronic myofascial pain to her neck and back and an “inadequately treated” generalized anxiety disorder. Additionally, Ms. Hutton's chiropractor, Dr. Rondeau, diagnosed her with post-concussion syndrome.
25. Ms. Hutton argues all of the issues she faces stem from the May 21, 2019 motor vehicle accident. She says her life has been completely altered and she is unable to participate in any of the activities she once did.

26. First, the sleep issues and headaches. Ms. Hutton initially said she “never ever before like this” had sleep issues or headaches. In her reply submissions, Ms. Hutton said she has actually “always felt a little bit tired daily”, but never felt or suffered any side effects from it.
27. The evidence shows that earlier in May 2019, before the accident occurred, Ms. Hutton reported to Dr. Textor that she was having disturbed sleep for 6 months, problems staying asleep and not feeling rested despite a full night’s sleep. Dr. Textor also recorded Ms. Hutton complained of waking with headaches and suffering from daytime sleepiness. Ms. Hutton was referred to a respiratory therapist and underwent a sleep test. The therapist provided a report to Dr. Textor on May 13, 2019 which noted Ms. Hutton complained of poor sleep, irritability, and daily headaches, among other things. The respiratory therapist stated Ms. Hutton’s clinical signs and symptoms suggested obstructive sleep apnea. Ms. Hutton underwent another sleep study in July 2019, after the accident, and the sleep apnea diagnosis was confirmed.
28. On balance, I find the medical records are not consistent with Ms. Hutton’s assertion that her sleep issues and headaches are specifically related to the accident. I find she was suffering with these issues in the months and weeks leading up to the accident and was undergoing active investigations for them at the time. There is also no medical evidence to suggest the sleep apnea was caused by the accident.
29. Next, as mentioned above, Dr. Rondeau, Ms. Hutton’s chiropractor, diagnosed her with post-concussion syndrome in April 2022. However, Dr. Rondeau did not provide any basis for this diagnosis. There is no evidence before me about whether Dr. Rondeau is qualified as a chiropractor to diagnose post-concussion syndrome. Additionally, there is no evidence Ms. Hutton struck her head or otherwise suffered any injury to her head during the accident. There is no mention of any concussion symptoms or complaints in the weeks and months after the accident, and the accident was relatively minor, which is discussed in more detail below. On balance, I do not find it more likely than not that Ms. Hutton suffered a concussion or a “serious brain injury” from the accident as she alleges. Although I appreciate, she complains of

many of the same symptoms as found in post-concussion syndrome, I find the evidence does not prove they are a result of an accident-related concussion.

30. Next, Ms. Hutton's anxiety is undisputedly her most significant ongoing symptom. Each of Ms. Hutton's treating health professionals' states that she is unlikely to get better without more adequate treatment of her anxiety. Ms. Hutton says she immediately began to experience anxiety symptoms after the accident which have worsened over time. Ms. Hutton says her mental health issues "shut down" her body and she gets too overwhelmed. She says all of these issues are from the accident and denies ever experiencing anxiety before.
31. I find Ms. Hutton's position is inconsistent with the medical records. Although she denies experiencing any anxiety before the accident, her treating physicians regularly and consistently noted otherwise. A January 23, 2020, record from her counsellor Dahne Harding documents Ms. Hutton as stating she had a "history of anxiety for some time". Similarly, records from her family doctors on each of October 26, November 20, and December 1, 2020 note she had a pre-accident history of anxiety.
32. In a March 24, 2021, record, Dr. Kelly noted that Ms. Hutton's anxiety was primarily around her accident, but given her "underlying history of anxiety", things were complicated. In April 2021, Ms. Hutton saw Dr. Jani, a psychiatrist. In an April 28, 2021 report, Dr. Jani stated Ms. Hutton's symptoms fit a diagnosis of post-traumatic stress disorder (PTSD). Dr. Jani also noted that Ms. Hutton denied any history of depression or anxiety before the accident.
33. In an October 22, 2021 clinical record, Dr. Textor acknowledged Dr. Jani's PTSD diagnosis, but noted that Dr. Jani was unaware of Ms. Hutton's pre-existing anxiety. Dr. Textor also recorded that Ms. Hutton was "always reluctant to treat" her pre-existing anxiety, and Dr. Textor stated she had not engaged in meaningful counselling. Dr. Textor said inadequately treated generalized anxiety disorder was the greatest issue facing Ms. Hutton.

34. Ms. Hutton saw a second psychiatrist, Dr. Kennedy, in July 2022 as a locum for Dr. Jani. In her consult report Dr. Kennedy noted Ms. Hutton's "adamant denial" of any worries or anxiety prior to the accident. However, Dr. Kennedy noted that given Ms. Hutton's self-reported history there appeared to be "some anxiety prior to the accident", which Ms. Hutton denied. In any event, Dr. Kennedy acknowledged Ms. Hutton's assertion that her described "near death" accident started the anxiety, which was later exacerbated by financial instability, COVID-19 concerns, and cannabis use. Dr. Kennedy also noted Ms. Hutton catastrophizes. She diagnosed Ms. Hutton with PTSD, generalized anxiety disorder, panic disorder, and severe cannabis use disorder.
35. Ms. Hutton has undisputedly been on various medications for her mental health since the accident, though her family doctors note she tried some of these medications pre-accident for anxiety.
36. In response, Ms. Hutton denies the pre-accident medication was for anxiety, but says it was to help her quit smoking. Ms. Hutton also argues the only pre-accident anxiety she experienced was solely about trypanophobia, an extreme fear of needles. However, I note none of Ms. Hutton's practitioners describe the pre-existing anxiety as being related to trypanophobia, solely or at all.
37. Further, to the extent Ms. Hutton does not agree with the opinions of her treating health professionals, she argues they are wrong, mistaken, "unthorough and very unprofessional". At times she argues the various health professionals have essentially conspired against her when they mention similar findings in their individual clinical notes and reports. I find there is no merit to this argument.
38. Although I find errors in clinical records can and do happen, I am satisfied overall the evidence shows, on balance, Ms. Hutton suffered from anxiety before the May 21, 2019 accident. That being said, I accept Ms. Hutton suffered significant, persistent anxiety as a result of the accident, as well as PTSD. I find her underlying anxiety likely made her mental health response to the accident worse. I also find there are other factors that have significantly contributed to her anxiety since the accident. Ms. Hutton

admittedly suffered a lot of anxiety around COVID-19 restrictions and isolation, and a great fear of getting others sick. I find Ms. Hutton's work environment and experiences of bullying and harassment also contributed to her anxiety symptoms.

39. Ms. Hutton also still suffers from chronic pain in her neck and back. It is undisputed her mental health has had a negative impact on her ability to recover from her physical injuries. In May 2022, her physiotherapist wrote a letter stating that Ms. Hutton's physical symptoms are primarily influenced by significant psychosocial factors (her PTSD and anxiety).
40. Ms. Hutton refers to the accident as being extremely severe. She says the respondent "smashed" into her like a freight train and at an extremely high speed. Ms. Hutton says her vehicle was pushed forward at least 8-10 feet, though she did not strike the vehicle in front of her. As noted, Ms. Hutton characterizes the accident as "near death".
41. Although I acknowledge Ms. Hutton's feelings about the accident and their impact on her, I find her recollection of the accident's severity is inconsistent with the evidence, including photos of the vehicles' damage. I note that Ms. Hutton's truck required no repairs as only the trailer hitch was impacted, and the only damage to the respondent's vehicle was a hole in the front bumper, the exact size of the hitch. I find the accident was, in fact, a relatively minor accident.
42. That being said, the severity of an accident is not determinative of the extent of an injured person's injuries. It is well established law that just because an impact is minor, does not mean any resulting injury is minor. However, here, I find Ms. Hutton's claimed injuries are generally out of proportion to the minor impact of the vehicles. I also find Ms. Hutton's injuries and complaints have gone far beyond the "normal or usual recovery" period. As noted, I find this is likely due to Ms. Hutton's underlying, pre-existing anxiety. In any event, I accept Ms. Hutton still struggles daily with mild to moderate neck and back pain and an exacerbation of pre-existing anxiety symptoms. I find these injuries have been ongoing for the past 3.5 years.

43. Ms. Hutton argues she should be awarded \$50,000 in non-pecuniary damages. The respondent argues \$15,000 to \$20,000 is more appropriate.
44. The respondent relies on two cases. In the first, *Holt v. Hertzberg*, 2006 BCPC 0228, the plaintiff was involved in a low velocity rear end collision. The court found the plaintiff suffered a neck and low back strain which mostly resolved, with some residual pain and discomfort. The plaintiff was able to return to her regular work and social activities within a few months. The court awarded her \$12,000 in non-pecuniary damages.
45. In *Sidor v. Coulter*, 2013 BCPC 11, the plaintiff was also involved in a low speed rear end collision. The court found the plaintiff suffered neck and low back injuries which mostly resolved within 18 months, with some residual low back pain while participating in more physical activities. The court awarded \$18,000 in non-pecuniary damages.
46. I find neither the *Holt* nor *Sidor* cases are similar to Ms. Hutton's. Neither case deals with the significant mental health considerations present here. So, I find these cases are of little assistance.
47. I find *St. Germain v. Jemmott*, 2012 BCSC 1041, is a more relevant case. In *St. Germain*, the 31-year-old plaintiff was involved in a rear end motor vehicle accident and suffered low back pain that interfered with her ability to work as a hairstylist and take care of her home. The court found that Ms. St. Germain tended to link all her physical and emotional problems to the accident, but that she faced many other unrelated personal and financial issues that impacted her health and well-being. The court also found Ms. St. Germain failed to acknowledge the impact or contribution of her pre-existing anxiety and stress on her well-being. The court awarded \$35,000 in non-pecuniary damages, which would amount to approximately \$44,000 in today's dollars.
48. Here, I agree with Ms. Hutton's treating practitioners that her anxiety is her greatest limiting factor. As noted, Ms. Hutton has had limited participation in counselling

efforts, despite her doctors' recommendations. So, I find \$35,000 is an appropriate award for non-pecuniary damages in Ms. Hutton's circumstances.

### ***Income loss***

49. Ms. Hutton did not make any specific claim for past or future income loss. To the extent Ms. Hutton argues she is entitled to any income loss, I find this issue is not before me as she did not claim for any in her Dispute Notice. So, I make no findings on this issue.

### ***Special damages***

50. Ms. Hutton incorrectly claimed some special damages (out-of-pocket expenses) as dispute-related expenses in her submissions. First, Ms. Hutton claims \$40 for the difference between what she paid for a physiotherapist appointment on March 4, 2021 (\$126) and the \$86.10 ICBC undisputedly reimbursed her for this expense. This leaves a balance of \$39.90.

51. Section 88(1) and Schedule 3.1 of the *Insurance (Vehicle) Regulation* (IVR) set out the prescribed amounts for certain "health care loss" expenses, which includes physiotherapy treatments. These prescribed amounts are what ICBC is obligated to reimburse individuals for approved treatment under their first-party insurance, even if the treatment costs more than the prescribed amount. The amount paid over the prescribed amount is generally referred to as a "user fee".

52. Section 82.2(2) of the IVA says that a person may not recover an amount that is more than the amount established or determined for the particular health care loss under the IVR. I find the effect of this section is that applicants such as Ms. Hutton are not entitled to claim "user fees" as damages, as they are limited to recovery of only the prescribed amount. The prescribed amount for physiotherapy is \$79, and Ms. Hutton was undisputedly reimbursed \$86.10. I find Ms. Hutton is not entitled to any further reimbursement for the remaining "user fee".

53. Ms. Hutton also claims \$85 for a “form completion fee” by Dr. MacNicol. Ms. Hutton says this is what she paid to have Dr. MacNicol fill out her application for disability benefits. Given my conclusion above that Ms. Hutton has not proven her inability to work is due to her accident injuries, I find this expense is not accident-related. So, I dismiss Ms. Hutton’s claim for reimbursement of this amount.

## **SUMMARY**

54. I find Ms. Hutton is entitled to \$35,000 in non-pecuniary damages.

## **FEES, EXPENSES, AND INTEREST**

55. Further to section 2 of the *Court Order Interest Act*, pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury, or on costs (CRT fees and dispute-related expenses).

56. 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. As Ms. Hutton was generally successful, I find she is entitled to reimbursement of the \$175 she paid in tribunal fees. I dismiss the respondent’s claim for reimbursement of tribunal fees.

57. Ms. Hutton also claims \$203.27 in dispute-related expenses for “medical, photocopying and form production costs”. \$125 of this amount is properly a substantive claim for special damages, and I have addressed it above. Ms. Hutton provided an invoice for \$51.60 from Dr. Kelly and \$26.67 from Dr. Key for clinical records review and photocopying, which I find were both reasonable, and I allow them. I find Ms. Hutton is entitled to reimbursement of \$78.27 in dispute-related expenses.

## ORDERS

58. Within 30 days of the date of this decision, I order the respondent, Elizabeth Pelletier, to pay the applicant, Tiffany Hutton, a total of \$35,253.27, broken down as follows:
- a. \$35,000 in damages,
  - b. \$175 in tribunal fees, and
  - c. \$78.27 in dispute-related fees and expenses.
59. Ms. Hutton is also entitled to post-judgment interest, as applicable.
60. 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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Andrea Ritchie, Vice Chair