



# Civil Resolution Tribunal

Date Issued: November 24, 2023

File: VI-2021-003151

Type: Accident Claims

Category: Liability & Damages

Civil Resolution Tribunal

Indexed as: *Wong v. Fong*, 2023 BCCRT 1020

BETWEEN:

YOKO WONG

**APPLICANT**

AND:

HEI MAN FONG

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This decision is about a motor vehicle accident that took place on February 19, 2020. The applicant, Yoko Wong, was a passenger in a vehicle that was rear-ended by the respondent, Hei Man Fong<sup>1</sup>. Ms. Wong suffered injuries as a result of the accident.
2. Ms. Wong has had to pay out-of-pocket for various treatments due to her accident injuries, for which she seeks reimbursement. She seeks \$4,111.20 for past traditional Chinese medicine (TCM) treatments, \$1,814 for past and future massage therapy treatments, \$5,500 for future TCM treatments, and \$50,000 generally to cover ongoing treatment costs.
3. The respondent says Ms. Wong has been reimbursed for her TCM expenses, is not entitled to reimbursement for the massage therapy treatments, and that she has not proven any entitlement to future care costs.
4. Ms. Wong represents herself. The respondent is represented by an authorized employee of their 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)(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.

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<sup>1</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person’s gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. As mentioned, Hei Man Fong is represented by ICBC. ICBC did not provide their pronouns or title. Because of this, I will refer to Hei Man Fong as the respondent and will use gender neutral pronouns for them throughout this decision, intending no disrespect.

6. 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.
7. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. I find that an oral hearing is not necessary in the interests of justice.
8. 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.

### ***Pause Request***

9. In her submissions, Ms. Wong requested either a 2-year pause of this dispute to "allow further medical investigations" or \$50,000 in damages to cover her ongoing treatment. Specifically, Ms. Wong submits if this dispute will negatively impact her entitlement to accident benefits directly from ICBC, then she wants to pause it or be paid \$50,000. The respondent opposes the pause request.
10. I find pausing this dispute at this late stage, after the parties have provided all their evidence and submissions, would be inconsistent with the CRT's mandate to provide accessible, speedy, economical, informal, and flexible dispute-resolution processes. Further, I note Ms. Wong's claim for entitlement to accident benefits from ICBC is a separate and distinct issue. Nothing in this decision precludes Ms. Wong from requesting accident benefits from ICBC, or bringing a future claim against ICBC at the CRT if ICBC denies any requested benefits.

## ***Deductions***

11. During the CRT's tribunal decision process, on the respondent's behalf, ICBC advised CRT staff that it intended to claim a deduction from Ms. Wong's damages award under the *Insurance (Vehicle) Act* (IVA). The IVA prohibits a party from telling the tribunal member details about any deduction until after the tribunal member has assessed damages. CRT staff informed me that ICBC intended to claim a deduction, but not the type of deduction or the amount.
12. After reviewing the evidence and submissions about damages, I advised the parties through CRT staff of my damages assessment and asked for evidence and submissions about the claimed deductions and the basis for those deductions, which were provided. I have reviewed and considered those submissions and evidence in my decision below.

## **ISSUES**

13. The issues in this dispute are:
  - a. Whether Ms. Wong is entitled to reimbursement for past TCM treatments,
  - b. Whether Ms. Wong is entitled to reimbursement for massage therapy "user fees", and
  - c. Whether Ms. Wong is entitled to future care costs and, if so, how much.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

14. In a civil claim such as this, the applicant Ms. Wong must prove her claims on a balance of probabilities, meaning "more likely than not". While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
15. On February 19, 2020, Ms. Wong was the front seat passenger of a vehicle that was rear-ended by the respondent. Both vehicles were considered total losses. The

respondent was undisputedly responsible for the accident. As a result of the accident, Ms. Wong says she suffered injuries to her chest, neck, shoulder, back, head, and left ear. The respondent does not dispute the nature or extent of Ms. Wong's injuries.

16. As noted, Ms. Wong claims \$4,111.20 for past TCM treatments, \$1,814 for massage therapy "user fees", and a combined \$55,500 in damages for future care costs. Ms. Wong expressly agreed to limit her claimed damages to \$50,000, the CRT's monetary limit in accident claims damages disputes.

### ***Special Damages***

17. Out-of-pocket expenses are known as "special damages". Ms. Wong's claims for reimbursement for TCM treatments, massage therapy "user fees", and parking, are all claims for special damages.

### **Past TCM Treatments**

18. Ms. Wong seeks reimbursement of \$4,111.20 for 42 TCM treatments between September 2020 and July 2023. Ms. Wong says she paid a total of \$4,954.90 for 49 treatments, but acknowledges ICBC reimbursed her \$843.70 for the first 7 sessions. So, she seeks the \$4,111.20 balance from the respondent. Ms. Wong provided receipts for the amounts claimed.
19. The respondent says ICBC already reimbursed Ms. Wong for her claimed TCM treatments, so this aspect of her claim should be dismissed. I disagree. ICBC clearly paid for Ms. Wong's first 7 sessions, but there is no indication it paid for anything beyond that. The respondent does not dispute that the TCM treatments were reasonable and necessary for the treatment of Ms. Wong's accident injuries, so I accept that they were. I find Ms. Wong has proven she is entitled to reimbursement of \$4,111.20 for her past TCM treatments, subject to any proven deduction.
20. In its submissions on deductions, ICBC argued it has reimbursed Ms. Wong a total of \$892 for past TCM treatments. As noted, Ms. Wong agrees ICBC has already reimbursed her \$843.70. In support of its submissions, ICBC provided a screenshot

of a \$5,548.29 payout it made to Ms. Wong on March 12, 2021 for “full and final settlement”. ICBC says \$48.29 of that payment was for past TCM treatment. However, I find there is nothing in the evidence to indicate what that \$48.29 was for, as the only notation provided for the amount says “Third Party Injury – Yoko Wong”. I find ICBC has not proven the \$48.29 should be deducted from Ms. Wong’s award for past TCM treatment. Additionally, I have already deducted the \$843.70 ICBC undisputedly paid. So, I find Ms. Wong is entitled to the full \$4,111.20 claimed for past TCM treatments.

### User Fees

21. Ms. Wong claims \$1,814 for past and future expenses for massage therapy. She explains that ICBC only covers a certain percentage of her massage therapy, and she is out-of-pocket \$28.35 for each massage therapy treatment.
22. 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 massage therapy. These prescribed amounts are what ICBC must pay 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”.
23. Section 82.2 of the IVA says that, in an action for damages, a person may not recover more than the amount established for the particular health care loss under the IVR. I find the effect of this section is that applicants such as Ms. Wong are not entitled to claim “user fees” as damages, as the legislation provides they are limited to recovery of only the prescribed amount. Ms. Wong does not dispute ICBC paid the prescribed amount for her massage therapy treatments. So, I find Ms. Wong is not entitled to further reimbursement for the remaining “user fees”, whether already paid or in the future.

### Parking

24. Ms. Wong submitted \$25.25 in receipts for parking costs. I find \$11.90 of the parking receipts were for treatment or medical appointments related to her accident injuries. It is unclear what the remaining \$13.35 parking fees were for, so I do not allow them.
25. ICBC argues it already reimbursed Ms. Wong \$4.35 for parking, so this amount should be deducted. However, I find the evidence shows the \$4.35 ICBC already paid was not for the parking expenses included in this dispute. So, I decline to make any deduction. I find the respondent must reimburse Ms. Wong \$11.90 in parking fees.

### **Future Care Costs**

26. An award for cost of future care is usually based on evidence about the various anticipated costs of providing adequate care for an injured party over their lifetime (see: *Townsend v. Kroppmanns & Currie*, 2002 BCCA 365 at paragraph 33). As noted above, Ms. Wong seeks \$5,500 for future TCM treatments, and an additional \$50,000 for future care costs generally. The respondent argues Ms. Wong has not proven any entitlement to future care costs.
27. For the TCM treatments, Ms. Wong says she based the \$5,500 figure on what she has paid for TCM treatments to date, since the accident. The records indicate that after the February 19, 2020 accident, Ms. Wong attended 25 TCM treatments in 2020, 20 TCM treatments in 2021, 3 in 2022, and 1 in 2023. There is no supporting evidence before me that Ms. Wong is still regularly attending TCM. Additionally, there is no statement from her TCM provider, or any other health practitioner, that indicates further TCM treatment is necessary or recommended for Ms. Wong's accident injuries.
28. For the general paramedical future care costs, the most recent medical evaluation in evidence is a July 14, 2023 GP Reassessment Medical Report. In that report Dr. Ho Seung Kim noted Ms. Wong was improved, but still suffering ongoing vertigo and back pain. Dr. Kim recommended Ms. Wong continue with physiotherapy, active rehab, massage, acupuncture, and chiropractic treatments.

29. As a result, ICBC undisputedly approved further acupuncture and active rehab treatments to September 30, 2023, further physiotherapy treatments to October 30, 2023, and further massage therapy to December 30, 2023. In this dispute Ms. Wong does not request any specific treatment, and notes ICBC “renews the approvals” for her ongoing treatments every 3 months. There is nothing in the medical evidence before me to indicate any treatment or investigations have been recommended for Ms. Wong at this time.
30. In order to receive an award for future care costs, Ms. Wong must establish what costs are reasonably necessary, and must provide medical evidence to support her claim (see: *Aberdeen v. Zanatta*, 2008 BCCA 420 at paragraphs 41 and 42). I find Ms. Wong has not proven she is entitled to any award for future care costs. I dismiss this aspect of her claim. However, as noted above, nothing in this decision precludes Ms. Wong from requesting accident benefits from ICBC as needed.

## **SUMMARY**

31. In summary, I find the respondent must reimburse Ms. Wong \$4,111.20 for past TCM treatments and \$11.90 in parking fees. I decline to make any further deductions.
32. I dismiss the remainder of Ms. Wong’s claims.
33. Pre-judgment interest and reimbursement for tribunal fees and dispute-related expenses are also payable to Ms. Wong, as discussed below.

## **FEES, EXPENSES AND INTEREST**

34. The *Court Order Interest Act* applies to Ms. Wong’s orders for reimbursement, which is an award for special damages. Under section 1(2) of the *Court Order Interest Act*, interest on special damages must be calculated from the end of each 6-month period after the cause of action arose, which I find is February 19, 2020, the accident date. This equals \$236.83.



35. 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. Wong and the respondent were each partially successful, I find they are each entitled to reimbursement of half of their paid tribunal fees. The net effect is that Ms. Wong is entitled to reimbursement of \$60 for paid tribunal fees. Neither party claimed dispute-related expenses.

## ORDERS

36. Within 21 days of the date of this decision, I order the respondent to pay Ms. Wong a total of \$4,419.93, broken down as follows:

- a. \$4,123.10 in damages,
- b. \$236.83 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$60 in tribunal fees.

37. Ms. Wong is also entitled to post-judgment interest, as applicable.

38. 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