



# Civil Resolution Tribunal

Date Issued: October 29, 2020

File: SC-2020-000963

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wong v. The Chinese Canadian Historical Society of B.C.*,  
2020 BCCRT 1220

B E T W E E N :

WENDY WONG

**APPLICANT**

A N D :

THE CHINESE CANADIAN HISTORICAL SOCIETY OF B.C.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a total of \$2,418.45 in refunds for a trip and 2 research reports.
2. The applicant, Wendy Wong, booked a historical guided tour for her and her mother, arranged by the respondent society, The Chinese Canadian Historical Society of B.C.

(CCHSBC). Ms. Wong says that 9 days before the tour started, she and her mother decided not to go, for personal reasons. CCHSBC gave Ms. Wong a partial refund of what she paid for the tour. Ms. Wong seeks a refund of the remaining \$1,356.52 she paid.

3. Ms. Wong also says that she paid CCHSBC an additional \$1,061.93 for 2 genealogical research reports, which she found unsatisfactory. Ms. Wong seeks a full \$1,061.93 refund for the 2 reports.
4. CCHSBC says that Ms. Wong cancelled the tour late and is not entitled to any refund according to its cancellation policy. In any event, CCHSBC says that it offered Ms. Wong a partial refund, which she accepted, and this constituted a binding settlement of Ms. Wong's refund claim. Further, CCHSBC says that Ms. Wong signed a waiver that applies to this dispute.
5. CCHSBC also says it cannot give Ms. Wong a refund for the research reports because it was not a party to the contract for the reports' preparation.
6. Ms. Wong is self-represented. CCHSBC is represented by its president, Sarah Ling.

## **JURISDICTION AND PROCEDURE**

7. 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). 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.
8. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

9. 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.
10. 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.

## **ISSUES**

11. The issues in this dispute are:
  - a. Is there a binding settlement agreement about Ms. Wong's refund claims?
  - b. Did Ms. Wong sign a waiver that precludes her refund claims?
  - c. If Ms. Wong's claims can proceed:
    - i. Were the research reports deficient?
    - i. If so, is CCHSBC responsible for issuing any refund owed?
    - i. Does CCHSBC's cancellation policy apply precluding Ms. Wong's claim for a tour refund and, if not, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, the applicant Ms. Wong bears the burden of proof on a balance of probabilities. 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.

### ***Background***

13. From the emails and other documentary evidence filed, I make the following findings:

- a. CCHSBC advertised and coordinated attendance for a guided historical tour in China, scheduled to take place from October 14 to 24, 2019. CCHSBC arranged for participants' accommodation, transportation and other expenses for the tour's duration.
- b. The tour cost \$3,000 per participant. Ms. Wong paid a \$500 deposit for each of her and her mother on June 3, 2019 and paid the \$2,500 balance for each her and her mother on September 4, 2019. Ms. Wong made these payments through CCHSBC's website.
- c. CCHSBC also offered separate home village visits during the tour, for an additional cost. On October 1, 2019, Ms. Wong paid \$1,061.93 for 2 home village visits, which included preparation of 2 research reports. She made this payment through CCHSBC's website.
- d. On October 5, 2019, Ms. Wong advised CCHSBC by email that for personal reasons she felt she had to cancel the trip for her and her mother. She asked what the refund policy was and how to go about getting one.
- e. CCHSBC responded the next day, noting that the tour payment was "promoted as being non-refundable", and given the tour was only one week away and all bookings had already been made, the CCHSBC board would decide at its next meeting about any available refund.
- f. On October 10, 2019, CCHSBC advised Ms. Wong by email that despite its stated policy of no refunds after September 1, 2019, it decided to make an exception and offer her a partial refund of \$4,043.48. It was broken down as: \$1,700 each for the tour cost, a \$200 each subsidy for flight penalties (incurred for redirecting flights due to civil unrest in Hong Kong), and a 20% refund for the home village visits (\$243.48 after a "processing fee").
- g. Ms. Wong asked for a higher refund, so CCHSBC also offered to waive its own handling fee, which had been "built in" to the program cost, of \$300 per person.

- h. On October 15, 2019, Ms. Wong confirmed by email that she would take the offered refund. CCHSBC subsequently provided Ms. Wong with a \$4,643.48 refund cheque, which Ms. Wong cashed on October 28, 2019.
- i. On October 31, 2019, CCHSBC sent Ms. Wong 2 research reports, prepared even though Ms. Wong did not go on the tour because the research had already been completed.

14. I will first deal with whether the parties entered a binding settlement about the refund.

***Did the parties enter a binding settlement agreement?***

15. As noted above, CCHSBC says that its offer to provide Ms. Wong with a \$4,643.48 refund constituted a settlement offer, which Ms. Wong accepted by cashing the refund cheque it provided. So, it says there is a binding settlement and Ms. Wong cannot now claim a further refund. Ms. Wong says that she did not intend to be bound to the partial refund by cashing the cheque. She argues that she never signed a release preventing her from advancing these claims.
16. The question of whether there was a binding settlement agreement is determined according to the ordinary rules of contractual interpretation (see *Roumanis v. Hill*, 2013 BCSC 1047). Here, I find CCHSBC made Ms. Wong an offer, which was clear and unambiguous, and that Ms. Wong accepted the offer.
17. CCHSBC's October 10, 2019 email sets out the basis for the refund it was prepared to offer Ms. Wong, despite its position that its cancellation policy stated there was no refund available. In its October 11, 2019 email, CCHSBC told Ms. Wong that the only other support it could offer was to waive its \$300 handling fee, adding another \$600 to her total partial refund, which it would pay her directly.
18. As noted above, Ms. Wong confirmed on October 15, 2019 that she would accept the refund. There was further communication between the parties about the method of issuing the refund. On October 20, 2019, Ms. Wong confirmed that a cheque was acceptable for the refund payment.

19. In her October 20, 2019 email, Ms. Wong also questioned the amount CCHSBC was not refunding her. CCHSBC responded on October 23, 2019 with a further breakdown of its hard costs that had already been spent for the tour. I find that this email provided Ms. Wong with clarification about the basis for CCHSBC's offer. However, I find CCHSBC was clear that it was not prepared to refund anything further and it did not otherwise impact the offer made Ms. Wong's acceptance. CCHSBC also advised Ms. Wong in this email that her refund cheque was ready to be picked up.
20. It is undisputed that Ms. Wong cashed the refund cheque on October 28, 2019. There is no evidence before me that Ms. Wong indicated to CCHSBC that she did not agree the refund cheque represented a final offer before she cashed it.
21. On October 31, 2019, Ms. Wong emailed CCHSBC stating she still had some questions about the 'hard costs' and would be in touch. She did not follow up with CCHSBC again about her questions until a December 23, 2019 email. CCHSBC sent a letter to Ms. Wong dated January 8, 2020, which stated that given she cashed the refund cheque, it considered the matter closed.
22. While Ms. Wong now says she did not intend to be bound by accepting CCHSBC's refund offer, I find that she is. I find there was a meeting of the minds between the parties on October 15, 2019 that despite CCHSBC's position that Ms. Wong was not entitled to any refund, it offered her \$4,643.48 to settle her "request" for a refund, and that Ms. Wong accepted that offer. There was no need for Ms. Wong to sign a release, as that was not a stated term of their settlement agreement.
23. I find Ms. Wong's later requests to CCHSBC that it reconsider issuing a further refund amount to requests to undo or withdraw from the settlement. I find CCHSBC did not consent to these requests and there is no basis to otherwise undo the parties' settlement. Therefore, I find Ms. Wong is bound by the settlement she reached with CCHSBC and is not entitled to bring these claims for a further refund.
24. However, even if I had found there was no binding settlement, I find that Ms. Wong signed a waiver precluding these claims, as discussed below.

## **Waiver**

25. It is undisputed that CCHSBC provided Ms. Wong with a “Travel Waiver Form” for each of her and her mother by email on September 17, 2019, which they both signed on October 2, 2019.
26. At top of the form, in bold lettering, it says: “PLEASE READ CAREFULLY – By signing this legal document, you give up certain legal rights, including the right to sue.” The form includes sections about assumption of risks and assumption of responsibility during the tour, as well as a section titled “Release, Waiver and Indemnity”. It states:
- I hereby release and waive as against Chinese Canadian Historical Society of B.C., co-hosts, and agents (the “Released Parties”) any and all losses, damages, injuries including death, claims, demands, lawsuits, expenses including legal fees and disbursements, and any other liability of any kind, directly or indirectly arising out of or in connection with my participation in field study/academic research.
- I will indemnify and hold harmless the Released Parties from any and all losses, liabilities, damages or costs, directly or indirectly arising out of or in connection with my participation in field study/academic research.
27. At the bottom of the waiver form, in bold capital lettering, it states: “I have read this document carefully and I acknowledge my responsibilities and the effect of this liability waiver.”
28. I find it is reasonable that someone participating in a tour of this kind would expect that they might be asked to sign a waiver of liability in favour of the tour organizer(s). The waiver here is relatively short – less than 2 pages long. Ms. Wong says that she did not understand that signing the waiver meant she would not get a full refund if she cancelled the tour or was unhappy with the research reports. However, she had at least 2 weeks to review the form before she signed it, so I find she had the opportunity ensure she understood what she was signing. Further, there is no evidence that Ms.

Wong questioned anyone about the waiver or its effects, which very clearly state that by signing it, she is giving up legal rights. So, I find the waiver valid and enforceable.

29. CCHSBC says that in signing the waiver, Ms. Wong gave up the right to make a claim against it for a refund of the tour and the research reports. I agree. I find that the waiver's reference to "participation in field study/academic research" is a reference to both the tour and the home village visits (and included research reports). Further, I find that Ms. Wong's claims in this dispute arise or are connected directly or indirectly with her participation in the tour and home village visits.
30. I find Ms. Wong was precluded from bringing these claims against CCHSBC because she expressly released it from any losses, damages, demands, and "any other liability of any kind".
31. Given my findings above, I do not have to address Ms. Wong's arguments about the quality of the research reports and whether she is otherwise entitled to a further refund. I dismiss Ms. Wong's claims.

### ***Fees and expenses***

32. 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. As Ms. Wong was unsuccessful, I dismiss her claim for CRT fees. CCHSBC did not pay and fees or claim and expenses, so I make no order.

### **ORDER**

33. I dismiss Ms. Wong's claims and this dispute.

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Kristin Gardner, Tribunal Member