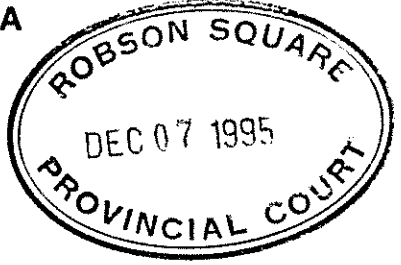


IN THE PROVINCIAL COURT OF BRITISH COLUMBIA  
CIVIL DIVISION



<b>Between:</b>	)	
	)	
<b>ZOE JIRIK</b>	)	<b>REASONS FOR JUDGMENT</b>
	)	
<b>Claimant</b>	)	<b>OF THE HONOURABLE JUDGE</b>
	)	
<b>And:</b>	)	<b>J.F. WERIER</b>
	)	
<b>SHIRLEY CHUEYMOY WONG</b>	)	
<b>and DAVID WONG</b>	)	
	)	
<b>Defendants</b>	)	

**Appearances:**

<b>P. Kent-Snowsell</b>	<b>Counsel for the Claimant</b>
<b>M. Holman</b>	<b>Counsel for the Defendants</b>

<b>Date of Trial:</b>	<b>November 9, 1995</b>
<b>Date of Judgment:</b>	<b>December 7, 1995</b>

**Introduction**

This case involves a low velocity motor vehicle accident which occurred between cars driven by the Claimant, Ms. Jirik and the Defendant, Mr. Wong on April

In addition to the symptoms such as the headaches, stiffness, limited mobility, pain and spasm described by Ms. Jirik in her evidence she has also testified about a flare up of her temporal-mandibular joint problem. She testified that she had initially experienced this condition as a result of a previous motor vehicle accident. She indicated to the Court that these symptoms had subsided for approximately nine months before the April, 1994 accident occurred.

A medical report dated August 22, 1994 and filed on behalf of Ms. Jirik supported her evidence under oath with regard to the description of her injuries. The physician concluded that Ms. Jirik had experienced a mild cervical sprain injury as a result of the motor vehicle accident. He was unable to conclude whether her increase in the temporal-mandibular joint problem was causally related to the accident. He noted that by July 15, 1994 Ms. Jirik had essentially recovered from the accident, with an expectation that she might have recurrent symptoms for another year or so. He indicated in his report that Ms. Jirik's symptoms may have been prolonged due to injuries sustained by her in a previous motor vehicle accident. This appeared to be confirmed by Ms. Jirik's own evidence.

A physiotherapist who treated Ms. Jirik also testified as to the objective findings of muscle spasm which she observed when regularly treating Ms. Jirik.

### **Argument**

The Defendants called an expert witness in an attempt to demonstrate that the force of the collision in this case could not result in the injuries alleged by Ms. Jirik. I accept that in this instance Ms. Jirik did experience the pain that she described during her testimony, which was confirmed by the objective evidence of both the medical report as well as the physiotherapist. As stated by Mr. Justice Curtis in the case of

12, 1994. The Defendant, Mr. Wong, agreed to an assessment that he was 100% responsible for this accident. The issue to be tried was what if any damages should be payable to the Claimant for the injuries which she testified that she sustained as a result of this motor vehicle accident.

### **Facts**

Ms. Jirik testified as follows with regard to the accident and the consequent injuries: Ms. Jirik was stopped at a red light in her 1981 Honda Civic, facing south on Cambie Street, when she was "rear ended" by a Porsche driven by Mr. Wong. Mr. Wong estimated that he was travelling at between 7 to 10 miles per hour just prior to the impact. Ms. Jirik testified that she had turned her head just before the impact, saw that she was about to be hit, and tensed her body. Upon impact she recalled a rocking motion back and forth of both the car and herself. Immediately after the accident she and Mr. Wong examined their vehicles together. There was no visual damage to her car, and only a minor wrinkling to the bumper of Mr. Wong's car.

About 20 minutes later Ms. Jirik began to feel a burning sensation down her neck. She went home, her muscles began to tighten, her head began to hurt, and she had a very restless sleep. She went to see her Doctor the next day and he prescribed a muscle relaxant and an analgesic. The pain progressed from a severe stiffness to a dull pain and finally to a sharper pain. She felt continually stiff and had headaches almost daily for the first two weeks after the accident. Her mobility was limited and she suffered from sleeplessness. She missed three days of work as a result of the accident, although she was paid by her employer for the days that she missed work. On the advice of her physician she began to attend physiotherapy. She attended physiotherapy almost weekly from May 1994 until October 1994. Her leisure activities such as baseball and cycling were curtailed for approximately four months at which time she began to participate, but continued to experience some discomfort.

Young v. Huber, a British Columbia Supreme Court unreported decision dated March 15, 1994 at page 4:

"The net result is that whether or not Ms. Young was injured in the collision cannot be determined from a study of the nature of the impact. While the nature of the collision makes it less likely that she would have suffered significant injury it does not determine whether she did or not, that falls to be decided on the basis of her evidence, the medical opinions and other surrounding circumstances."

Counsel for Ms. Jirik submits that Ms. Jirik is entitled to be compensated to the maximum of this Courts jurisdiction, or \$10,000 for the pain, suffering, and loss of enjoyment experienced by her as a result of this accident. Counsel for the Defendants conceded in argument that the type of injuries complained of by Ms. Jirik, if caused by the motor vehicle accident, ought to be compensated by a general damage award of approximately \$3,000 to \$4,000.

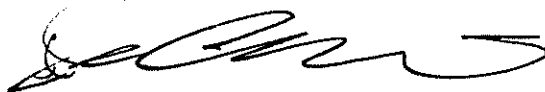
### **Conclusion**

Ms. Jirik, now 24 years of age, suffered a mild cervical sprain injury as a result of this motor vehicle accident. Her recreational activities were somewhat curtailed for a period of approximately four months, after which time she resumed them with some continued mild discomfort. There is no objective evidence before the court that Ms. Jirik's temporal-mandibular joint problem has reoccurred as a direct result of this motor vehicle accident. It appears that in all other respects Ms. Jirik has had a gradual recovery from the accident, as was confirmed by the medical report filed.

In assessing the appropriate quantum of damages in a mild whiplash case such as this, I must exercise caution and examine all of the evidence carefully so as to arrive at a fair and reasonable damage award. Previously decided cases are of some help,

but are of somewhat limited assistance, as obviously every case is different. (*Price v. Kostryba and B. & B Trucking Ltd.*, (1982) 70 B.C.L.R. 397 at pp 397-398).

Considering all of the evidence in this case, I have determined that an appropriate general damage award should be \$5,000. Special damages are assessed at \$164.14, as claimed, plus Court Order Interest from August 11, 1994 to today's date. The claimant shall also receive her filing fee of \$100.00, service fees of \$64.20, and other reasonable charges that directly relate to the conduct of the proceeding to include the medical report, attendance of the physiotherapist, and photocopying charges of \$809.56 for a total of \$973.76 in expenses.



The Honourable Judge Jodie F. Werier  
Provincial Court Judge

December 6, 1995