Tribunals Ontario | **Tribunaux décisionnels Ontario**

Licence Appeal Tribunal | Tribunal d'appel en matière de permis

Citation: CAA Insurance Company v Tong, 2026 ONLAT 25-010927/AABS

File Number: 25-010927/AABS

In the matter of an application pursuant to subsection 280(2) of the Insurance Act, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

CAA Insurance Company

Applicant

and

Simon Tong

Respondent

DECISION AND ORDER

ADJUDICATORS:	**Matthew M. Létourneau, Vice-Chair** **Nadia Mauro, Member**
APPEARANCES:	
For the Applicant:	Dilenthi Warakaulle , Counsel Madelyn Shefchyk, AB Adjuster
For the Respondent:	Sareena Samra, Counsel Simon Tong, Respondent
Court Reporter:	Guido Riccioni
Interpreters(Mandarin language)	Minshu Xie (August 4, 2026) Jing Tao (August 5, 2026) Yajun Wang (August 6 and 7, 2026)
HEARD:	**August 4, 5, 6, and 7, 2026 by video conference**

OVERVIEW

[1] Simon Tong, the respondent, was involved in an automobile accident on November 6, 2019. He sought and was paid income replacement benefits ("IRBs") pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "*Schedule*") due to his inability to perform his work duties as a manager at Facility Janitorial Service ("FJS").

[2] The applicant, CAA Insurance Company ("CAA"), seeks repayment of the IRBs paid to the respondent due to alleged misrepresentations by the respondent in seeking these IRBs. The applicant seeks repayment in the amount of $88,000.00 from the respondent for the period of November 20, 2019 to January 26, 2024.

[3] The applicant wrote to the respondent on November 20, 2024, advising him that repayment was being claimed in accordance with s. 52 of the *Schedule*. The applicant's Application to the Licence Appeal Tribunal ("Tribunal") claims that the respondent "willfully misrepresented the material facts of his employment status and income on the OCF-3, OCF-2 an (sic) OCF-1".

[4] The respondent's position was that he did not return to work at FJS or elsewhere during the period of claimed repayment, nor willfully misrepresented his situation in a way that would disentitle him to the IRBs he received.

[5] After hearing the parties' evidence at a hearing on the issues, the Tribunal dismisses the applicant's Application requesting repayment of $88,000.00 in IRBs paid to the respondent for the period of November 20, 2019 to January 26, 2024. This is because the Tribunal does not agree that the respondent willfully misrepresented his situation to the applicant.

ISSUES IN DISPUTE

[6] The issues in dispute are:

1. Is the applicant entitled to a repayment of $88,000.00 relating to its payment of IRBs for the period of November 20, 2019 to January 26, 2024?

2. Is the applicant entitled to interest on any overdue payment of benefits?

[7] The repayment period is incorrectly dated on the Case Conference Report and Order dated, January 9, 2026. The evidence indicates that the applicant is seeking repayment for the period of November 20, 2019 to January 26, 2024, as reflected above.

RESULT

[8] The applicant is not entitled to the repayment of $88,000.00 in IRBs paid to the applicant between November 20, 2019, to January 26, 2024, nor interest.

PROCEDURAL ISSUES

The applicant's request for additional witness information

[9] At the outset of the hearing, the applicant brought a motion seeking an Order for the respondent to provide the name and complete contact information of at least one coworker from FJS to identify as a possible witness.

[10] The applicant submitted that this contact is relevant to the respondent's post-accident employment activities.

[11] The respondent submitted that the first time the applicant requested this information was in June 2026, which was a month before the subject hearing. The respondent submitted that this request is prejudicial and that it should not be up to him to make the applicant's case.

[12] We declined to grant an Order requiring the respondent to provide the name and contact information of a coworker at FJS because it was a broad request that did not appear relevant, nor material. We also found that it is untimely pursuant to Rule 8.2 of the Licence Appeal Tribunal Rules (the "Rules"). The respondent and two other witnesses for FJS were already scheduled to appear at the hearing. Requiring the respondent to nominate an unidentified additional employee did not appear material in a way that would mitigate the potential prejudice. Allowing this witness would be prejudicial as it could delay the hearing, which would cause prejudice to both or either party due to lost preparation time, calling responding witnesses, and other delay in preparation. As such, the matter continued based on the oral testimony from the respondent and any other witness that had been duly summonsed for the scheduled hearing.

The applicant's motion to compel the respondent to comply with a prior Order

[13] The applicant also sought an Order from the Tribunal to compel the respondent to comply with a prior Order, dated March 11, 2026, by producing all credit or financing applications relating to the lease of a 2023 Mercedes Benz and a 2024 Tesla Model Y, and providing reasons for redactions in the bank statements for the period November 6, 2019, to November 19, 2024, in addition to identifying the source of all redacted deposits and e-transfers.

[14] The applicant submitted that it has made several requests for the respondent's credit and financing applications for the luxury vehicles but only received a loan payment website estimator printout. The applicant submitted that the unredacted bank statements are necessary to identify the claimed sources of income or funding submitted as part of

the loan applications as it is relevant to any post-accident income not disclosed to the applicant.

[15] The respondent submitted that he has completed a wholesome search for the lease information with respect to the luxury vehicles, and everything in his possession has been provided to the applicant. The respondent submitted that any other information with respect to the vehicles would be third-party requests.

[16] The respondent provided the unredacted bank statements shortly before the commencement of the parties' opening statements.

[17] The Tribunal noted that the applicant was examined under oath prior to the hearing and bank statements were part of the issues examined. As such, the Tribunal directed that there would be no further order compelling bank, credit, and financing documents beyond what was produced. The Tribunal considered that the respondent had knowledge of this information, could be cross-examined by the applicant on what was produced, and the failure to produce any relevant document could be open to drawing adverse inferences. Any ruling on adverse inference with respect to the non-compliance of producing the leasing/financing documents of the luxury vehicles was reserved until the ability to assess the issue in context and after hearing the evidence.

The applicant's motion to include new evidence

[18] At the outset of the hearing, the applicant also sought leave to rely on the following documents:

1. 10754170 Canada Inc. Articles of Incorporation

2. 10754170 Canada Inc. Certificate of Incorporation - May 3, 2018

3. 10754170 Canada Inc. Form 2 Initial Registered Office Address & First Board of Directors

4. FJS File Summary

5. Notice of Assessment – 2020

6. Income Tax Return Information – 2021

7. Notice of Assessment – 2021

8. 10754170 Canada Inc. T2 Corporation Income Tax Return - May 1, 2022 to April 30, 2023

9. 10754170 Canada Inc. T2 Corporation Income Tax Return May 1, 2023 to April 30, 2024

10. Order Agreement RN121376380 (Tesla)

11. Offer to Lease (Mercedes Benz) – May 25, 2024

12. Signed Statement, dated January 9, 2020

13. IE Functional Abilities Evaluation (John Leparulo, kinesiologist), assessment July 16, 2020

14. IE Psychological Assessment (Dr. Ian Smith, psychologist), assessment September 16, 2020

15. Tesla Payment Estimator

16. Transcript from Examination Under Oath on March 16, 2023

[19] The applicant submitted that this information is directly relevant to the respondent’s post-accident employment and income. The applicant submitted that the majority of this information came from the respondent, who has been in possession of

same for at least six years. Therefore, that applicant submitted that admitting this information as relevant would arguably not cause any prejudice to the respondent.

[20] The respondent submitted that the application was filed in 2025, a case conference summary was never provided to him, and the document exchange has already taken place. The respondent took the position that all the documents were in the power of the applicant since the outset of the claim, yet the applicant – a sophisticated insurer – is attempting to rely upon same at the eleventh hour.

[21] In reply, the applicant submitted that these documents are relevant and would assist the Tribunal in obtaining a complete picture of the claim and argues that to not include same would be prejudicial.

[22] Pursuant to ss. 15(1) of the *Statutory Powers Procedure Act,* R.S.O. 1990, c. S.22 (“SPPA”), the Tribunal may admit as evidence at the hearing any document relevant to the subject-matter of the proceeding and may consider such evidence.

[23] The Tribunal’s Rules state that when there is a failure to comply with the rules – such as not disclosing a document to be relied on in advance of the hearing – the Tribunal will hear submissions from the party to determine if documents can be used at the hearing. As per Rule 9.3 of the Rules, the Tribunal may consider any relevant factor, including,

a. “the reasons for non-compliance;

b. whether a party will be prejudiced by the admission or exclusion of the evidence and the extent to which that prejudice can be mitigated by any other order;

c. the extent to which the substance of the information or testimony lies within the knowledge of the other party;

d. whether the other party opposes the admission of the evidence or testimony; and

e. the relevance of the document, thing, or testimony to an issue in dispute in the proceeding."

[24] Having considered the submissions of the parties, the Tribunal will admit as relevant and material all of these items, but we declined to grant leave for the applicant to rely on the IE reports listed above at item 13 and 14. We understand that the medical record is part of the context, but are not satisfied by the applicant's arguments that these expert reports are relevant and material to the issues in dispute given that they do not tend to prove or disprove whether the applicant has misrepresented his return to work or other work duties. More concerningly, we found that admitting the reports at this stage would prejudice the respondent by precluding his ability to cross-examine the authors and arrives late in the proceedings as to create an unfair element of surprise. At no point had the applicant listed or requested the presence of any medical assessors as witnesses.

[25] We found the remaining documents sought to be admitted and relied upon by the applicant were material to the representations by the respondent of work performed and alternative forms of remuneration that may or may not have been received due to him working. The remaining documents requested were found to be highly relevant in establishing the respondent's post-accident income – of which is the nexus of the issues in dispute. While we acknowledged that trial by surprise can be prejudicial to parties, we were satisfied that the respondent had knowledge of all this information well in advance of this hearing and was available personally to provide testimony about this information. We found that the probative value of the documents, save the IE reports, outweighs any perceived prejudicial impact. Any prejudicial element of surprise was mitigated when the Tribunal provided additional time before the start of the hearing to review these documents again. It is important to have the full record of relevant information and the remaining documents sought to be included are therefore admitted as relevant.

[26] We granted leave for the applicant to rely on the additional documentation, with the exception of the IE Functional Abilities Evaluation (John Leparulo, kinesiologist), assessment July 16, 2020 and the IE Psychological Assessment (Dr. Ian Smith, psychologist), assessment September 16, 2020, for the reasons noted above.

ANALYSIS

Background and the law

[27] The applicant is seeking repayment of IRBs totalling $88,000.00, paid for the period of November 20, 2019, to January 26, 2024 by alleging that the respondent willfully misrepresented material facts with respect to his employment, income, and ability to work during this time period. The applicant contends that the respondent misrepresented that he only worked as a janitorial manager at FJS and believes that he held other employment roles for which he obtained income during the four-year period during which IRBs were paid. The applicant relied on the respondent's information regarding his role at FJS in paying IRBs and sought repayment when it came to believe that the respondent was performing and being remunerated for undisclosed director or management roles at FJS and other companies. The applicant believes that surveillance of the respondent's activities and inconsistencies in his income during these periods demonstrates that he misrepresented the basis for receiving IRBs.

[28] The respondent's position is that he was not working while receiving IRBs, and that the applicant's allegations are speculative and based on misapprehensions without any evidence of misrepresentation.

[29] To resolve this dispute, the Tribunal considered s. 52 of the *Schedule* which sets out the respondent's liability for the repayment of benefits. Under s. 52(1)(a), a person is liable to repay to the insurer any benefit that is paid to the person as a result of an error on the part of the insurer, the insured person or any other person, or as a result of wilful misrepresentation or fraud. The applicant's position relates to this liability provision for

repayment in submitting that the respondent obtained the IRBs through reckless or willful misrepresentation.

[30] The Tribunal has defined “misrepresentation” as “any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts.” The Tribunal has also held that “silence or a failure to report” can constitute wilful misrepresentation, see: *17-000272 v. T.T.,* 2017 CANLII 87539 (ON LAT).

[31] The onus rests on the insurer to prove an overpayment of benefits, on a balance of probabilities.

[32] This decision explains why the IRBs claimed by the applicant for repayment are not payable by reason of wilful misrepresentation or for any other reason.

The applicant did not meet its burden to prove the respondent willfully misrepresented material facts

[33] Based on the evidence provided by both parties and testimony of the witnesses, we find that the applicant did not meet its burden to prove, on a balance of probabilities, that the respondent willfully misrepresented material facts with respect to his application for IRBs.

[34] The applicant submits that the respondent received approximately four years and two months of IRB payments based on his representations concerning the nature of his employment, his business activities, his income, and his alleged inability to perform the essential tasks of his employment.

[35] The applicant submits that the respondent did not disclose, at any point during his application for IRBs or while receiving them, that he was a director of FJS, nor did he disclose his directorships or ownership interest in other businesses – 10754170 Canada Inc. for which he testified was an employment agency (“the Employment Agency”) and 100002856 Ontario Ltd, a nail salon (“Lily Spa”) owned by his wife, Mrs. Ying Hu. The

applicant submits that this information was material in establishing eligibility for IRBs. The applicant also submits that there are material inconsistencies between what the respondent reported to his various assessors and the evidence at the hearing. The applicant submits that the evidentiary balance weighs in favour of a finding that the IRBs were paid as a result of wilful misrepresentation.

[36] The respondent submits that the applicant has not provided any evidence to suggest that he has continued to work over the period he received IRBs. The respondent submits that the applicant is relying on inconsistencies and its case is speculative. The respondent takes the position that a series of inconsistencies relied on by accident benefits adjuster, Ms. Madelyn Shefchyk, does not equate to misrepresentation. The respondent submits that he provided over 2000 pages of information to the applicant, and has complied with every request, every attendance to a number of Insurer Examinations ("IEs"), and every Examination Under Oath ("EUO"). The respondent submits that he answered all of the applicant's questions and attended this hearing with clean hands. The respondent relies on the Tribunal decision in *Security National Insurance Company v Weng, 2026 CanLII 74048 (ON LAT)* ("*Weng*") wherein it was held that suspicion is not sufficient to meet the legal test for willful misrepresentation.

The respondent's inability to work

[37] For the reasons that follow, we find the respondent did not wilfully misrepresent his ability to work.

[38] The applicant paid the respondent IRBs on the basis of him representing that prior to the accident, he worked as a manager at FJS earning approximately $770.00 per week and that he did not return to work after the accident due to accident-related injuries. The respondent testified that his job duties included managing 55 to 60 employees who work at around 18 properties inclusive of shopping malls, such as The Denison Centre. The respondent also testified that part of his responsibilities included occasionally picking up small orders from Olympia Wholesale, a supplier of FJS.

[39] The applicant submits that, during the IRB payment period, the respondent was observed engaging in these same employment duties that he had identified as his employment responsibilities during the period he was receiving benefits. The applicant also submits that there were undisclosed duties due to roles held with other companies that were not disclosed as part of the application for IRBs.

[40] The applicant alleged undisclosed work activities at FJS include visiting a location of which he managed while working, checking in on employees, entering private work areas related to FJS client sites, reviewing work binders, and accessing restricted areas to speak with FJS cleaning staff. In support of this, the applicant relies on surveillance footage that was conducted by Intrepid Investigations on September 18, September 19, December 19, 2022; January 17, March 16, April 5, April 6, April 7, April 8, and April 9, 2023; and November 28, December 8, and December 21, 2023.

[41] The respondent points to the testimony of the applicant adjuster, Ms. Shefchyk, who confirmed that it was a psychological impairment that led to the IRBs being paid. It was uncontested by the parties that the IRBs ceased effective January 24, 2024 as the respondent was no longer medically entitled but had a psychological impairment from the time of being awarded IRBs to the time of ceasing these benefits.

[42] The respondent takes the position that a ‘psychological case’ is based on memory, depression, and phobia, and if there was a period of inconsistencies in being physically observed at the shopping centre between 2019 and 2024, it does not equate to wilful misrepresentation.

[43] Having reviewed the surveillance evidence, we find it to be unreliable in showing that the respondent willfully misrepresented any work duties. We assign little weight to the surveillance for the following reasons.

[44] As noted above, the uncontested evidence supports that the respondent was medically entitled to IRBs as a result of a psychological impairment. In our view a

psychological injury is silent in nature, and as such, not the type of injury that is overtly captured by video surveillance alone.

[45] We are live to the applicant's argument that the surveillance footage captures the respondent driving despite indicating that he had not after a subsequent motor vehicle accident in December 2023. In our view, this inconsistency in and of itself is not sufficient to establish the respondent as not credible in his representations about his ability to work. In any event, the respondent testified that despite being fearful of driving, he was urged by his medical professionals to resume this activity and he did so accordingly. Without more, this alone does not show that he was wilfully misrepresenting his ability to work.

[46] Moreover, we find that the evidence of the respondent visiting the Denison Centre and Olympia Wholesale intermittently is not enough on its own to establish, on a balance of probabilities, that the respondent made wilful misrepresentations about his ability to work. We also find that that his presence at the work sites contrasts with the consistent testimonies of Ms. Wilma Laguador, an employee of FJS, and Mr. Fajarito, former president and current accountant of FJS, who confirmed that the respondent has not worked at FJS and had not received a wage during the IRB payment period.

[47] We find that intermittent surveillance of the respondent driving a vehicle or attending the shopping mall where his work took place is not reliable in demonstrating that he was performing work duties. It is circumstantial evidence at best that does not negate the respondent's overall psychological impairment. Nor does the surveillance overcome the credible statements by the employees of FJS that the respondent was not working, nor being paid for any work.

[48] We find the conclusions drawn by the applicant as a result of the surveillance footage to be speculative and unreliable as it related to him performing any duties for Lily Spa, his wife's nail salon. The applicant submits that the surveillance footage captures the respondent loading and unloading garbage at Lily Spa despite him denying any involvement with the business. The respondent testified and the evidence supports

that Lily Spa is a commercial/residential building with a residential unit above, and commercial unit below. As such, we find that the surveillance footage of the respondent's handling of garbage to be circumstantial given that the respondent testified that he and his partner, Mrs. Hu, live in the unit above Lily Spa. In other words, we find that it does not support he, in some way, misrepresented his ability to work by handling garbage at a location where he resides.

[49] What is more, despite the applicant's submissions, we find that the video surveillance does not show the respondent "reviewing binders" at the Denison Centre. The surveillance report dated December 8, 2023 indicates that at 12:54 p.m. the investigator "entered the Denison Centre and immediately observed the subject in a private office located within the corridor. He appeared to be looking at a binder and conversing with an unknown female." However, the accompanying video surveillance does not include this footage as the timestamp jumps from 12:52 p.m. to 12:56 p.m. It is also unclear what the applicant means by "restricted areas" as the video surveillance shows a number of patrons of the Denison Centre entering and exiting the same corridors and doors as the respondent. We also note that the surveillance footage on December 8, 2023, shows the respondent generally walking in the mall and speaking with retail employees in the presence of unidentified people, and attending on some occasions with his wife.

[50] In the same way, while the applicant asserts that the respondent is seen carrying garbage bags and bins at Olympia Wholesale, the surveillance footage is unclear. The surveillance report dated December 21, 2023 indicates that the respondent arrived at Olympia Wholesale at 1:02 p.m., however, the timestamp immediately jumps to 1:14 p.m. The surveillance report indicates that during this time the respondent loaded items into his truck along with an unknown male. However, the accompanying surveillance footage provided does not capture this encounter. Mr. Marvin Casino, investigator with Intrepid Investigations, testified that the items appeared to be 'stock'. In our view, any implications with respect to alleged items collected from Olympia are speculative without explicit evidence to corroborate same and could relate to personal use or otherwise and does not confirm any paid work. Again, this speculation as to performing duties is not

reliable on its own given that there was clear evidence from FJS that no remuneration for work duties was being paid at these times.

[51] The surveillance report also indicates that at 1:24 p.m., 2:41 p.m. and at 3:10 p.m. on December 21, 2023, the respondent was observed removing items from his vehicle and entering the Denison Centre. However, the surveillance tendered does not capture the respondent inside the Denison Centre at this time. Therefore, it is unclear where the items went, to whom they were given to, if anyone, or for what purpose. It is also unclear from the footage what the items were.

[52] Overall, the testimony of the applicant's witnesses, Mr. Fajarito and Ms. Laguador, as well as the respondent and the respondent's wife, Ms. Ying Hu, support that the applicant did not return to work at FJS during the period in question. In our view, the applicant intermittently attending a public shopping centre which he managed prior to the accident does not conclusively support that he was able to work or that the respondent misrepresented his ability to work. This is especially true in light of the fact that he received IRB based on a psychological impairment and the surveillance is limited and unreliable in what it demonstrates regarding that type of limitation.

[53] In other words, in reviewing the surveillance evidence, we find that it is not persuasive that there was work being completed by the respondent. We find that the respondent's testimony is largely corroborated by the totality of the evidence and therefore credible with respect to his representations about his ability to work.

[54] Accordingly, given the nature of the respondent's injuries being psychological and therefore 'invisible', and the supportive testimonies that he did not return to work, we find that the applicant has fallen short of meeting its burden to prove, on a balance of probabilities, that the respondent willfully misrepresented his ability to work during the period in question.

The respondent's business activities

[55] We find the respondent did not wilfully misrepresent his business activities with respect to his position as director for FJS and numbered companies, 10754170 Canada Inc. and 100002856 Ontario Ltd.

[56] The applicant submits that the respondent did not disclose, at any point during his application for IRBs or during the period in which he received IRB payments, that he was a director of FJS, nor did he disclose his directorships or ownership interest in other businesses – a numbered company 10754170 Canada Inc. for which he testified was the Employment Agency and 100002856 Ontario Ltd, Lily Spa, owned by his wife, Mrs. Ying Hu.

[57] With respect to the respondent's interest in his wife's business, Lily Spa, the applicant relies on the respondent's testimony wherein he stated that he helps Mrs. Hu with supply orders for Lily Spa given her limited English and assists with Lily Spa tax matters. The applicant also relies on the surveillance footage dated April 5, 2023, wherein the respondent was seen loading and unloading garbage at Lily Spa. The applicant further relies on the evidence of accountant, Ms. Huang, to support that the respondent was the only person who provided instructions concerning tax affairs with respect to both his business, the Employment Agency, and Lily Spa.

[58] The respondent submits that Ms. Hu confirmed that although he is listed as a director of Lily Spa, he has no involvement in the business, has never worked there, nor taken a wage. The respondent submits that accountant, Ms. Huang, confirmed the Employment Agency has never declared revenue. The respondent further submits that Mr. Fajarito confirmed that the respondent did not return to work during the period in question between 2019 and 2024 and Ms. Laguador testified that she had not seen the respondent in his employment during 2019 and 2024.

[59] We acknowledge that the respondent signed the tax forms for Lily Spa, however, the respondent testified that he strictly acted as an intermediary to send Lily Spa tax related information to Ms. Huang and her associates. We find that there is no evidence before the Tribunal of wages exchanged between Lily Spa and the respondent. The respondent testified that he does not participate in her business but helps Mrs. Hu sometimes with understanding English. Given that the spa is owned by the respondent's wife, the respondent and Mrs. Hu live above Lily Spa, and Mrs. Hu is limited in English, we find that his involvement with Lily Spa to be circumstantial, rather than a position of employment in exchange for wages. We find that the applicant has not established, on a balance of probabilities, that the respondent made wilful misrepresentations about his involvement with Lily Spa such that it would impact his eligibility for IRB during the period in question.

[60] Similarly, the evidence of Ms. Huang indicates that the Employment Agency reported that no revenue, no expenses, and no dividends were paid for a period of 8 years spanning from 2018 to 2025. Ms. Huang also testified that the Employment Agency has been dissolved, and that all the T2 Corporate Income Tax Returns for the years 2018 to 2025 were filed in May 2025. The respondent testified that the Employment Agency has never operated. Accordingly, we find that, on a balance of probabilities, the applicant has not established that the respondent made any misrepresentations with respect to his involvement in the Employment Agency because the evidence supports it was an inoperative business and therefore immaterial to his eligibility for IRBs.

[61] In any event, the applicant has not pointed us to any authority that establishes being listed as a director on a numbered company's organizational documents implies employment, without more, or that failing to disclose same would rise to a level of wilful misrepresentation.

[62] More to this point, we find that the respondent not disclosing a directorship on the Application for Accident Benefits form ("OCF-1") does not rise to a level of wilful misrepresentation. This is because the OCF-1 does not specifically ask if an injured

person holds any ‘business interests’ or specifically, a directorship in a company. We find the respondent to be credible in his belief that his “employment” for the purposes of filing out the applicable OCF-1 form was as the supervisor/manager of FJS based on his consistent EUO evidence and testimony. This paid employment at FJS had been disclosed by the respondent.

[63] In summary, we find that the respondent’s involvement with Lily Spa and the Employment Agency circumstantial and the evidence relied on by the applicant in this respect is speculative and not persuasive. Therefore, we find that, on a balance of probabilities, the respondent did not willfully misrepresent his business activities.

The respondent’s income

[64] We find that the respondent did not wilfully misrepresent his employment income.

[65] The applicant submits that the respondent’s bank statements reveal numerous deposits, including repeated deposits in thousands of dollars, which he was unable to adequately explain. The applicant takes the position that the frequency, amount, and consistency of these deposits are inconsistent with casual financial assistance from friends. The applicant also submits that the respondent failed to disclose important information involving his financial records relating to luxury vehicle financing. The applicant relies on the Tribunal decision in *F.T. v The Co-operators Insurance Company*, 2022 CanLII 2807 (ON LAT) (“*FT*”) wherein it was held that there is no requirement in the *Schedule* that post-accident income is confined to what is reported to Canada Revenue Agency (“CRA”).

[66] The respondent submits that he has received financial assistance from friends and his daughter to help him through the struggle he has gone through since the accident. The respondent submits that Mr. Fajarito is a credible witness and confirmed that he did not pay the respondent during the period in question. The respondent also submits that Ms. Huang confirmed that she filed the Employment Agency corporate taxes and that no revenue was declared for this company.

[67] The applicant points to a series of financial transactions in the respondent's bank records to Ms. Laguardo and from Li Xinxin, employees of FJS, in various amounts between 2023 and 2024. The respondent testified that he provided these funds to Ms. Laguardo to help her as she is his friend. The respondent also testified that he received money from Li Xinxin as they were aware of the respondent's situation and offered help financially.

[68] Similarly, the applicant points to several deposits to the respondent's account from Superinie Hu and Li Wang during 2022 and 2024. The respondent testified that Superinie Hu is his daughter who helps him financially and contributes to the household as they live together. The respondent also testified the Li Wang is a friend he's known for decades, who is aware of his financial situation, and wanted to support him.

[69] The applicant also refers us to a series of deposits from Sharon McCalla in the amount of $1,616.00. The respondent testified that Ms. McCalla sends this amount to him every month as he collects rental income on behalf of a friend who lives in China. The respondent explained that this was an arrangement that existed prior to the accident.

[70] Lastly, the applicant directs us to a deposit from 1071552 Canada Inc. The respondent testified that he doesn't remember this company, although it could be a friend of his sending money to support him financially. It is not clear from the evidence in what way this company is related to the respondent.

[71] We find the submissions that these transactions are wage-related to be speculative. The applicant has not pointed us to any deposit transaction in the applicant's bank statements that is directly from FJS, the Employment Company, or Lily Spa. We find that Mr. Fajarito, who has a fiduciary obligation to FJS as former president and current director and accountant, confirmed in his testimony that he did not pay the respondent a wage after the subject accident during the IRB payment period. Similarly, Ms. Huang, the respondent's accountant, also confirmed that the Employment Agency reported that no revenue, no expenses, and no dividends were paid. We are not bound

by Tribunal decisions; however, we agree with the reasoning in *Weng* that suspicion is not sufficient to meet the legal test for willful misrepresentation.

[72] With respect to the respondent's financing of luxury vehicles, the applicant tenders evidence with respect to the lease of a Mercedes Benz and purchase of a Tesla. We find that the evidence does not support the respondent had any financial involvement in the leasing of the Mercedes Benz. This is because the Offer to Lease proffered by the applicant is in Ms. Hu's name, Ms. Hu testified that she is the only named person on the vehicle, and the respondent testified that he was not required to provide any proof of income for the lease transaction.

[73] With respect to the Tesla, the applicant requests we make an adverse inference for the respondent's failure to provide the Tesla financing documents. The applicant also requests that we draw an adverse inference with respect to the respondent's failure to disclose or provide bank statements for EQ bank and his joint account with his wife. I accept that the respondent's failure to provide this information raises legitimate questions with respect to his financial transactions. However, even if we were to draw a negative inference from the failed disclosure and production of bank records, or the financing documents with respect to the Tesla, it does not overcome the supportive evidence that the respondent did not receive a wage between November 2019 and January 2024.

[74] The respondent's Notice of Assessments (NOAs) for tax filing years 2022, 2023, and 2024 report no income. The applicant has not directed us to objective evidence that indicates the respondent received monies from FJS, through the Employment Agency, or from Lily Spa. Again, Mr. Fajarito of FJS confirmed in his testimony that he did not pay the respondent a wage during the period in question. Ms. Huang also confirmed in her testimony that the Employment Agency did not report any revenue, expenses, or dividends.

[75] Lastly, we distinguish *FT* from the present matter because *FT* was based on the discrepancy in the calculation of the quantum of IRBs, and what documents were used to arrive at same, rather than willful misrepresentation. In the present matter, the respondent provided a number of financial documents in addition to CRA records to corroborate his post-accident income, or lack thereof.

[76] As a result, we find that the applicant failed to meet its burden to prove, on a balance of probabilities, that the respondent wilfully misrepresented his employment income.

Conclusion

[77] Accordingly, having considered the totality of evidence, we find that the applicant has not established that the IRBs were paid as a result of willful misrepresentation. We find that the overall evidence proffered by the parties is unsupportive of wilful misrepresentation. As a result, the applicant is not entitled to repayment of the $88,000.00 in IRBs paid to the respondent for the period of November 25, 2019 to January 24, 2024.

Interest

[78] Section 52(5) and (6) of the *Schedule* provide guidance on when an insurer may recover interest on repayment. As we have found that no repayment is owed to the applicant, no interest is payable.

ORDER

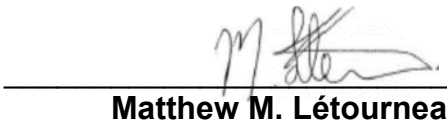
[79] We find that:

1. The applicant is not entitled to the repayment of $88,000.00 in IRBs paid to the respondent for the period of November 20, 2019 to January 26, 2024;

2. The applicant is not entitled to interest; and

3. The application is dismissed.

Released: November 5, 2026



Matthew M. Létourneau
Vice-Chair



Nadia Mauro
Member