

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Insurance Corporation of British Columbia*
v. Liang,
2026 BCCA 263

Date: 20260616
Docket: CA50646

Between:

Insurance Corporation of British Columbia

Appellant
(Third Party)

And

Yuan Kuo “Michael” Liang

Respondent
(Plaintiff)

And

Fahim Faysal and SM Fahim Faysal

Respondents
(Defendants)

Before: The Honourable Justice Griffin
The Honourable Justice Winteringham
The Honourable Justice Riley

On appeal from: An order of the Supreme Court of British Columbia, dated
April 10, 2025 (*Liang v. Faysal*, Vancouver Docket S215089).

Counsel for the Appellant:

R.C. Brun, K.C.
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Counsel for the Respondent, Yuan Kuo
“Michael” Liang:

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Place and Date of Hearing:

Vancouver, British Columbia
May 1, 2026

Place and Date of Judgment:

Vancouver, British Columbia
June 16, 2026

Written Reasons by:

The Honourable Justice Griffin

Concurred in by:

The Honourable Justice Winteringham

The Honourable Justice Riley

Summary:

The Insurance Corporation of British Columbia (“ICBC”) appeals from a jury’s award of damages to Mr. Liang for past and future loss of earning capacity after Mr. Liang was seriously injured in a vehicle accident in 2019. ICBC says the judge made a number of errors, all arising from the judge’s admission into evidence of documents that Mr. Liang said he received from Chinese tax authorities documenting his income in China from 2014–2017. ICBC applies to introduce as new evidence on appeal an opinion from an accountant that Mr. Liang would have been considered a Canadian tax resident and required to report the Chinese income on his Canadian tax returns, which he did not do. Both parties also seek to introduce new evidence of procedures and communications pre-trial.

Held: Appeal dismissed.

The only objection made by ICBC at trial regarding admission of the Chinese documents was as to authenticity, but Mr. Liang testified receiving the documents from Chinese tax authorities. ICBC’s arguments on appeal are new procedural and hearsay objections, and complaints about the judge’s jury charge, all in relation to the admission of the Chinese documents. It would not be in the interests of justice to entertain these new objections on appeal. Mr. Liang and his wife, Ms. Liang, each testified at trial as to Mr. Liang’s income earned in China, which ICBC did not challenge, and there was circumstantial evidence regarding Mr. Liang’s spending that was consistent with their evidence. This evidence supported the jury award.

Cross-applications to introduce evidence of pre-trial communications are allowed, as the evidence reveals that Mr. Liang’s Chinese earnings were disclosed in the discovery process well before trial, as was the fact that he did not include that income in his Canadian tax returns. ICBC’s application to introduce new evidence of the opinion of an accountant regarding Mr. Liang’s possible Canadian tax reporting obligations is dismissed. It is not in the interests of justice to permit ICBC to raise this new issue on appeal.

Reasons for Judgment of the Honourable Justice Griffin:

[1] The appellant, the Insurance Corporation of British Columbia (“ICBC”), appeals from a jury’s award of damages to the respondent, Mr. Yuan Kuo “Michael” Liang, based on injuries he sustained in a motor vehicle accident that occurred in 2019. Mr. Liang was a passenger in a vehicle stopped at a red light when another driver drove into the vehicle at high speed. ICBC defended the claim as a third party insurer.

[2] Mr. Liang's position at trial was that his injuries from the accident were so serious he would unlikely be able to work in the future. ICBC's position was that his prognosis was somewhat better than this and he might some day be able to attempt part-time work.

[3] The grounds of appeal arise from the judge's admission into evidence of a group of documents, and their translation, relating to Mr. Liang's income that he claimed he earned in China from 2014 to 2017 (the "Chinese Documents"). His Chinese income was relevant to his claims for past and future loss of earning capacity.

[4] ICBC brings an application to adduce additional evidence on appeal. In response to ICBC's arguments on appeal, Mr. Liang brings an application to adduce additional evidence on appeal that he did not adduce at trial, regarding pre-trial communications and procedures, to which ICBC consents.

[5] As I will explain, I would dismiss the appeal.

[6] I would allow Mr. Liang's application to adduce additional evidence, as this evidence establishes that Mr. Liang's Chinese income and the Chinese Documents were revealed to ICBC in the discovery process before trial. I would allow ICBC's application to adduce additional evidence to the extent it relates to pre-trial communications between counsel and pre-trial procedures.

[7] However, I would not allow ICBC's application to adduce expert opinion evidence as additional evidence on appeal. This additional evidence does not go to trial fairness but to an argument that ICBC did not make at trial, namely, that Mr. Liang was required to report his Chinese income on his Canadian tax returns. I would not permit it to raise this new issue on appeal.

Background

[8] Mr. Liang was born in China and came to Canada as an international student in 2003. He received a Bachelor of Arts in Economics from Simon Fraser University

in 2011. For a few years after graduation he worked as a realtor's assistant, earning approximately \$40,000 per year. He obtained his real estate licence in BC in 2012.

[9] In 2013, Mr. Liang married. He and his wife subsequently had two children, born in 2016 and 2021 respectively.

[10] Mr. Liang was introduced to people who were involved in a business venture in China, and he became involved in it for four years from 2014–2017. This business was in importing and selling maternity and baby products and children's clothing.

[11] Mr. Liang had Chinese tax records referring to the income he earned in China during the years 2014–2017, and the taxes he paid to the Chinese authorities, the Chinese Documents. Over those four years, he earned a total equivalent to approximately \$1,411,056 CAD, or \$352,764 on average per year.

[12] During the years he worked in China, Mr. Liang also earned modest fees in Canada for referring Chinese real estate buyers to the realtor with whom he had previously worked.

[13] In 2017, Mr. Liang left the import business in China and returned to Vancouver with his wife to raise their daughter. He decided to start a high-end children's clothing store in Vancouver (the "Business"), which opened in 2018. Just before the accident, he was in the early stages of the Business and worked six days a week at it, but it was not yet profitable. His long-term plans were to open franchises of the store in Canada and China.

Pre-Trial Discovery and Production of Expert Reports

[14] Mr. Liang applies to adduce additional evidence on appeal that he did not adduce at trial, relating to his counsel's pre-trial production of documents and expert reports for use in the litigation.

[15] This evidence has only become necessary to refute ICBC's arguments, which rest on the premise that it was taken by surprise by the Chinese Documents at trial. The evidence therefore goes to procedural fairness issues. ICBC consents to

Mr. Liang's introduction of the documents. In these circumstances, I would admit the additional evidence proposed by Mr. Liang.

[16] I would also admit the additional evidence relating to pre-trial process submitted by ICBC on appeal, as it too goes to the trial fairness issue.

[17] The additional evidence establishes that Mr. Liang first produced the Chinese Documents in a list of documents dated October 20, 2022. They were described as "China Income Tax Returns", dated 2014–2017. These were in Chinese script and not translated.

[18] On May 11, 2023, ICBC examined Mr. Liang for discovery. Among other topics, ICBC questioned him about the Chinese Documents. Mr. Liang's evidence was that these were assessments given to him in China after he paid taxes on his Chinese earnings. He was asked whether he had the original tax returns, and he explained that his accountant had sent the tax returns to the government. ICBC requested that he try to locate the 2015 tax return that related to the Chinese Documents. He agreed that he had not earned anything from trading, which is how he described his Chinese business activities, since 2017.

[19] The next day, on May 12, 2023, counsel for Mr. Liang informed ICBC by letter that the Chinese Documents stated the income earned by Mr. Liang in China in the years 2014–2017. The letter set out the annual income earned in each of those years in Chinese Yuan.

[20] Thus, nearly two years before the jury trial (which began on March 31, 2025, and ran for nine court days), ICBC had Mr. Liang's evidence as to his income in China and his position that the Chinese Documents documented that income. ICBC also had Mr. Liang's Canadian tax returns, which reported income well below what he claimed to have earned in China.

[21] Prior to trial, ICBC could have pursued testing of the evidence regarding Mr. Liang's income earned in China through further examination for discovery,

demands for production of additional evidence, or applications in court upon non-compliance with such demands.

[22] ICBC did not bring any applications for production of additional information regarding the Chinese Documents or Mr. Liang's income earned in China.

[23] By letter dated January 3, 2025, Mr. Liang served on ICBC an economist report by economist Darren Benning in support of his loss of earning capacity claim. The approach in that report was not based on Mr. Liang's past earnings. Rather, Mr. Benning provided opinions based on the statistics for annual earnings of males with certain educational or professional qualifications: namely, as a realtor, or as holding a business degree. Mr. Benning's report also provided two multipliers that the jury could use if they assessed Mr. Liang's loss of future earning capacity on a per-year basis.

[24] In early March 2025, the parties were in the process of exchanging lists of intended exhibits at the impending trial.

[25] In a letter to Mr. Liang's counsel dated March 21, 2025, ICBC objected to the inclusion of the Chinese Documents as an exhibit without formal translation and proof of their authenticity. In particular, the letter stated:

... Further, the Third Party objects to the inclusion of the Chinese Tax Returns as an exhibit at trial. These tax returns have not been certificated or formally translated. Until proof of the Chinese Tax Returns' authenticity is provided, along with a formal English translation, the Third Party objects to them being entered as an exhibit.

[26] Soon thereafter, Mr. Liang produced a formal translation of the Chinese Documents in an amended list of documents as of March 28, 2025. They were described as "Translated China Income Tax Returns", dated 2014–2017.

[27] In the same amended list of documents, Mr. Liang produced an amended version of Mr. Benning's report. The amendment did not change the expert's approach, who continued to base his opinions on statistics rather than on Mr. Liang's

past earnings. The only change was that Mr. Benning used statistical earnings for males with an economics degree instead of a business degree.

[28] The amended list of documents dated March 28, 2025, also produced many new documents from Mr. Liang's accountant related to the Business. ICBC brought an application for short leave to bring an adjournment application, on the basis that counsel needed more time to review the new documents. As part of that application, ICBC did not make a complaint about the recently produced translation of the Chinese Documents. Rather, the focus of the complaint was on the new documents related to the Business.

[29] ICBC was unsuccessful on its short leave application and did not again pursue an adjournment of the trial.

Trial

[30] As noted, the trial commenced on March 31, 2025.

[31] Mr. Liang's wife, Ms. Liang, testified prior to her husband. Among other things, she was asked about her husband's work history. She gave evidence about the work he did in China in 2014–2017, including that he earned approximately \$300,000 to \$350,000 per year during that time. She said that he also earned some referral fees in Canada when he referred clients to a realtor he knew. She said she helped him prepare his Canadian tax returns, in which he declared the income he made in Canada (i.e., the referral fees). She said he declared his Chinese income in China and his Canadian income in Canada.

[32] Ms. Liang also testified that when she became pregnant, they decided to move back to Canada in 2017. She said at that time Mr. Liang purchased a Lamborghini car, his dream car, for about \$300,000 as a reward for his hard work over the years and because they were confident he would continue to make good money in the future.

[33] ICBC did not challenge Ms. Liang on this evidence in cross-examination. Indeed, in cross-examination, counsel for ICBC had Ms. Liang confirm her evidence that her husband had earned \$300,000 to \$350,000 in China. Further, ICBC did not suggest to her that she or Mr. Liang knew Mr. Liang ought to have reported his Chinese income on his Canadian tax returns.

[34] On the second day of trial, during Mr. Liang's examination in chief, his counsel advised the judge that there was an evidentiary issue relating to the Chinese Documents. He explained that he intended to put a binder of financial records to Mr. Liang that included the Chinese Documents, to which ICBC had objected. The jury was excused early for a lunch break while counsel made submissions on the admissibility of the Chinese Documents.

[35] Counsel for ICBC then made submissions as follows:

Your Honour, our concern is that these are foreign tax documents provided by the plaintiff. There's been no independent authorization -- authentication of their form or contents, and we have no way to do so. We have no issue with the plaintiff speaking to his income in China, but we do have an issue with these documents being entered as an exhibit. We have heard anecdotally that it is possible to get authentication done by an embassy or some other resource, that might be able to verify that this is what these returns should look like, and that their form and contents are to be what's expected.

[Emphasis added.]

[36] Counsel for ICBC did not complain to the judge that it did not have enough notice of the translated Chinese Documents.

[37] The judge reviewed the Chinese Documents over the lunch break. When they returned, again in the jury's absence, counsel for Mr. Liang explained that he understood his client received the documents from the Chinese government. He stated his position that if his client identified the documents, he did not need an official certification from the Chinese government. He offered to have his client testify about the origins of the Chinese Documents in a *voir dire*.

[38] The judge suggested that a *voir dire* was unnecessary if Mr. Liang could explain the documents and testify that he earned the recorded income, so long as

ICBC was not suggesting the documents were fraudulent. The judge stated that if after hearing the evidence ICBC was still concerned about authenticity, it could object, and the judge could then rule on it.

[39] It was clear that the trial judge was open-minded about the right way to proceed and was simply making suggestions in her discussions with counsel. The trial judge asked ICBC's counsel whether they had "[a]ny issues with that approach". ICBC's counsel stated they did not and that they were "happy to start with that process".

[40] Thus, the Chinese Documents were put to Mr. Liang in his examination in chief. He testified that they were tax receipts from the Chinese tax authorities, showing his earnings from 2014 to 2017 when he worked in China. He was directed to places on the documents, and he identified his Chinese earnings and the tax payable for each year.

[41] Counsel for Mr. Liang asked to have the Chinese Documents marked as an exhibit. The judge asked Mr. Liang some additional questions to clarify his evidence, and Mr. Liang confirmed that he received the documents from the Chinese tax authorities after submitting the equivalent of a tax return.

[42] The judge then asked ICBC's counsel about their position on the Chinese Documents being admitted into evidence. This exchange followed:

THE COURT: ... What is the position of [ICBC] with respect to these documents being admitted into the – as evidence?

CNSL I. WHITAKER [for ICBC]: We object.

THE COURT: Pardon me?

CNSL I. WHITAKER: We object.

THE COURT: And the basis of the objection?

CNSL I. WHITAKER: Questioning the authenticity of the records.

THE COURT: Do you have any further submissions to be made in respect of that?

CNSL I. WHITAKER: Not at this time, Justice.

THE COURT: Well, I'm persuaded that these are documents that should be admitted into evidence. They are documents received from the

Chinese tax authorities [by] the plaintiff. He's identified them as documents he's received with respect to the taxes he's paid, and so they can go into evidence.

[Emphasis added.]

[43] ICBC's limited objection was to the authenticity of the Chinese Documents, and it did not explain why the documents could not be entered into evidence after Mr. Liang had identified them. The judge ruled that Mr. Liang had adequately identified the Chinese Documents, and therefore they were marked as an exhibit.

[44] ICBC never resumed the objection, expanded upon it, or made further submissions about the admissibility of the Chinese Documents.

[45] Counsel for ICBC cross-examined Mr. Liang on a number of issues related to his income and earning capacity, including on the figures in the Chinese Documents. Mr. Liang's review of the documents revealed some confusion because one year's total was different from another despite the same monthly payment, but the confusion cleared up when it was pointed out that one statement recorded only 10 months.

[46] In ICBC's cross-examination of Mr. Liang, ICBC did not suggest to him that he did not earn the income in China that he claimed to have earned or that the Chinese Documents were inauthentic.

[47] There was indirect evidence consistent with Mr. Liang's evidence that he had made a good income in China, namely, that his savings from his income earned in China were used, in the form of a sizeable shareholder loan, to start the Business in Canada and to help support the couple after the accident, plus the evidence that he purchased a Lamborghini after that period of Chinese earnings. As mentioned, Mr. Liang's wife also testified as to his income in China.

[48] In his closing address to the jury, counsel for Mr. Liang argued that Mr. Liang had suffered past loss of earning capacity of \$1,075,000 from the date of the accident to trial and future loss of earning capacity of \$6,250,000 based on projected earnings of \$300,000 per year until the age of 70. The theory was that the Business

would have become profitable, and had it not, he would have become involved in a real estate venture with his college friend, who testified to the same effect. He also testified he could have pursued other opportunities in China.

[49] In its address to the jury, ICBC downplayed Mr. Liang's likely earning capacity had the accident not occurred. ICBC argued that: he had no proven track record as a realtor; Mr. Liang's evidence about the Chinese business was vague, and it did not sound like he had any particular business acumen or track record. ICBC also cast some doubt on the significance of the Chinese Documents, suggesting that Mr. Liang could not adequately explain them. ICBC submitted that even if the jury accepted that Mr. Liang made those earnings in China, what happened in China was not transferrable to what he was planning in Vancouver.

[50] ICBC's position was that Mr. Liang's past loss of earning capacity should be based on \$40,000 per year for three years (the time between the closure of the Business in 2022 and the trial) for a total of \$120,000. This was based on the salary he had earned as a realtor's assistant, prior to his earnings in China. ICBC submitted the jury should award \$300,000 in total for loss of future earning capacity.

[51] The judge produced a written draft jury charge for consideration by the parties and discussed it with counsel in the absence of the jury. There was some discussion about the exchange rates she used to convert the Chinese currency in the Chinese Documents to Canadian dollars, but once that was settled with the parties there was no other issue raised about the Chinese Documents. In other words, ICBC took no issue with the fact that in her draft charge the trial judge proposed to refer to the Chinese Documents and the income indicated therein when instructing the jury on loss of earning capacity.

[52] In her charge to the jury, the judge reviewed the evidence regarding Mr. Liang's earning history. Among other things, she referred to the testimony of Mr. Liang and his wife as to his earnings in China in 2014–2017. She added that Mr. Liang's evidence "was supported by" the Chinese Documents, which she described as tax clearance documents, and then she set out the income indicated

for those years. She instructed the jury to consider all of the facts and real and substantial possibilities, which included Mr. Liang's employment and earnings history. All of these instructions were consistent with the draft written charge the trial judge had earlier reviewed with counsel.

[53] In the post-charge discussion, counsel suggested some minor changes to the charge. The judge called the jury back in to make those changes.

[54] ICBC again made no objection to the jury charge in relation to the judge's reference to the Chinese Documents as supporting Mr. Liang's evidence as to his earnings history.

[55] Among other awards, the jury awarded Mr. Liang \$509,000 for past loss of earning capacity and \$3,111,150 for future loss of earning capacity. In responding to this appeal, Mr. Liang submits that reverse engineering these numbers suggests that the jury may have considered that but for his injuries, Mr. Liang could have earned up to \$150,000 per year in the future. If averaged on an annual basis, the award for past loss of earning capacity would be just over \$92,000 per year in the 5.5 years between the accident and trial.

Issues on Appeal

[56] ICBC raises several grounds of appeal. In summary, it submits:

- a) There was procedural unfairness in the way the Chinese Documents were admitted into evidence.
- b) The judge erred in admitting the Chinese Documents for an impermissible use, and in failing to properly instruct the jury on their permissible use.
- c) There are irreconcilable inconsistencies between the Chinese Documents and Mr. Liang's Canadian tax returns, which raise credibility concerns regarding Mr. Liang. This new issue that was not raised by ICBC at the trial should be permitted on appeal.

- d) The jury's verdict in terms of past and future loss of income earning capacity is perverse and reflects a misapprehension of the law and evidence based on the improperly admitted Chinese Documents.

[57] ICBC seeks an order setting aside the jury verdict and ordering a new trial.

[58] Mr. Liang submits that ICBC's grounds of appeal are without merit. He says ICBC advances new issues it did not advance at trial and it ought not to be permitted to do so.

[59] Mr. Liang submits that there was evidence to support the jury award, and it cannot be considered perverse.

Analysis

[60] ICBC's arguments raise new issues that it did not assert at trial. This Court will only permit a new issue to be raised on appeal in exceptional circumstances. The principles were summarized in *Mills v. O'Connor*, 2025 BCCA 34, as follows:

[71] This court's discretion to entertain a new issue on appeal will generally be exercised in exceptional circumstances "where the interests of justice require it and where the court has a sufficient evidentiary record and findings of fact to do so": *Quan v. Cusson*, 2009 SCC 62 at para. 37; *Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 51. As a general rule, a court of appeal should avoid considering new issues on appeal unless it is clear that, "had the question been raised at the proper time, no further light could have been thrown upon it": *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 at para. 32, citing *Lamb v. Kincaid* (1907), 28 S.C.R. 516 at 539.

[72] The test for determining whether a new issue should be considered on appeal has three components, as framed by Saunders J.A. in *Gorenshtein v. British Columbia (Employment Standards Tribunal)*, 2016 BCCA 457 at para. 45. The court should consider whether:

- a) The issue is truly "new";
- b) The evidentiary record is sufficient to decide the issue; and
- c) The interests of justice support granting an exception to the general rule against hearing new issues, considering the potential prejudice to the opposing party.

[61] Against this backdrop, I will now address ICBC's arguments on appeal.

Was There Procedural Unfairness?

[62] ICBC raises procedural fairness complaints about the manner in which the Chinese Documents were introduced at trial, as follows:

- a) The translation of the Chinese Documents was produced only five days before the commencement of trial; and
- b) The judge ruled on admissibility without holding a *voir dire* or giving ICBC's counsel the opportunity to cross-examine Mr. Liang on the reliability of the information in the documents or his understanding of it.

[63] There are two problems with these complaints. First, ICBC did not make them at trial, so they are new arguments on appeal. Second, ICBC has not demonstrated that it was in any way prejudiced by the timing of receipt of the formal translation of the Chinese Documents and the process followed at trial.

[64] The fact that ICBC did not raise any of these procedural objections in the trial court is a relevant factor on appellate review: *Swanson v. MacKinnon*, 2024 BCCA 95 at para. 47 [*Swanson*].

[65] As noted in *Brophy v. Hutchinson*, 2003 BCCA 21 at para. 52 [*Brophy*]:

... Where no objection is taken, the assumption is that the effect of any transgression could not have been seriously misleading or unfair and there would be no reason for suspecting injustice.

[66] In *Brophy* this Court noted that even in the absence of an objection, this Court could intervene where there is a “substantial wrong or miscarriage of justice”: at para. 54. However, none of ICBC's arguments rise to this level.

[67] ICBC's counsel received an unofficial translation of the important information in the Chinese Documents almost two years before trial, namely, the Chinese income earned by Mr. Liang, as set out in the letter from Mr. Liang's counsel dated May 12, 2023.

[68] The fact that a formal translation of the Chinese Documents was provided just before trial did not appear to cause ICBC any concern or hamper its ability to object. Indeed, during his closing address at trial, counsel for ICBC praised Mr. Liang's counsel as deserving credit because it had been "one of the most efficient, well-organized trials" that he had been involved in.

[69] It is also clear that ICBC's counsel at trial did not perceive anything unfair about the process for admission of the Chinese Documents. The judge proposed a process first and then asked ICBC's counsel for their views. Only upon counsel's agreement with the process did the judge then embark on it.

[70] This is unlike the situation in some cases, where the judge's incorrect intervention or direction may have created a difficult situation for counsel at trial, such as in *Brophy and Swanson*.

[71] ICBC's counsel did not request a *voir dire*. Instead, they indicated their agreement with having Mr. Liang first testify about the Chinese Documents in his direct evidence and then assessing whether they would object.

[72] ICBC did not ask to cross-examine Mr. Liang before the Chinese Documents were marked as an exhibit. ICBC did not propose any alternative process, such as one in which the documents were marked for identification until Mr. Liang could be cross-examined on them.

[73] ICBC did not make any submissions to the trial judge as to why Mr. Liang's identification of the Chinese Documents was not sufficient evidence to support threshold authenticity and marking the documents as an exhibit. ICBC's trial submission that the objection was as to authenticity was so brief that it was unhelpful.

[74] Even on appeal, ICBC focuses on the hearsay use of the documents but not threshold authenticity. Establishing threshold authenticity is not onerous and may be accomplished through direct or circumstantial evidence, including evidence from the recipient of a document: *British Columbia (Securities Commission) v. Alexander*,

2013 BCCA 111 at paras. 64–66; *R. v. C.B.*, 2019 ONCA 380 at paras. 65–66; *Oswald v. Start Up SRL*, 2020 BCSC 205 at paras. 12–15.

[75] When ICBC cross-examined Mr. Liang, it did not suggest to him that the Chinese Documents were inauthentic, falsified, or that he overstated the income he claimed to have earned in China. Ms. Liang had already testified to this Chinese income, and as already noted, ICBC also did not suggest to her that she was exaggerating or overstating it.

[76] ICBC has shown no prejudice that flowed from the process of having the Chinese Documents admitted into evidence over ICBC’s objection as to authenticity. The objection was not fleshed out and lacked merit in any event.

[77] For these reasons, I would not accede to the procedural fairness grounds of appeal.

Was There Improper Use of the Chinese Documents?

[78] On appeal, ICBC advances a substantive complaint about the use of the Chinese Documents.

[79] ICBC says in essence that the Chinese Documents were improperly admitted for a hearsay use, and the judge improperly described them to the jury in a way that allowed for an improper hearsay use.

[80] ICBC submits that the Chinese Documents did not meet the common law requirements of the business records exception, nor the statutory business records exception set out in s. 42 of the *Evidence Act*, R.S.B.C. 1996, c. 124.

[81] However, this ground of appeal has the same problems as the procedural fairness ground of appeal. First, ICBC did not make these arguments at trial. Instead, ICBC affirmatively stated to the trial judge that its only objection was as to authenticity. Second, ICBC has shown no substantial wrong or miscarriage of justice.

[82] In *Lam v. Chiu*, 2014 BCCA 32, trial counsel did not object to the admissibility of notes made by one of the parties, which were used to support that party's evidence of an alleged loan. The appellant, who had denied the loan's existence, appealed from the judge's finding that the debt existed. The appellant argued that the notes should not have been admitted because they offended the rule against admission of a prior consistent statement. This Court did not accept the argument because it had not been made at trial. This Court held:

[47] If a party objects to the admissibility of evidence, then that objection should be made in a timely manner, namely at the time the evidence is tendered. This is particularly so in civil cases. As Chief Justice Macdonald stated in *Hall v. Geiger*, [1930] 3 D.L.R. 644 at 644 (B.C.C.A.), "The Court assumes that where no objection is taken to evidence, it is not regarded as of any prejudice to the defendant, the person who might have taken the objection." See also: *McBryde v. Womack*, 2013 BCCA 260 at paras. 52 - 57, 44 B.C.L.R. (5th) 209; *Bransford v. Yilmazcan*, 2010 BCCA 271 at para. 24, 320 D.L.R. (4th) 535; *Mallet v. Alberta (Motor Vehicle Accident Claims Act, Administrator)*, 2002 ABCA 297 at paras. 62 - 65, 15 Alta. L.R. (4th) 231. Indeed, this Court's jurisprudence reflects a reluctance to permit a party to raise an objection to a jury charge in a civil case for the first time on appeal: *Basra v. Gill* (1995), 99 B.C.L.R. (2d) 9 at para. 15 (C.A.), leave ref'd, [1994] S.C.C.A. No. 525, [1995] 2 S.C.R. v.

[48] Another consideration is that had a timely objection been taken, [the respondent] might have been able to establish a basis for admitting the notes.
...

[83] The last point in the preceding excerpt is not a trivial point. ICBC never objected to the Chinese Documents as inadmissible hearsay. Had that objection been made, there was potential for Mr. Liang's counsel to lay more groundwork regarding what the documents represented and their use.

[84] No one at trial directly stated that the Chinese Documents were independent proof of the truth of their contents. However, I appreciate that the judge's charge to the jury that the income reported in the Chinese Documents "supported" Mr. Liang's evidence arguably suggests a hearsay use.

[85] The judge's jury charge in respect of the Chinese Documents must be seen in light of ICBC's failure to object to the hearsay use or to the judge's draft jury charge.

[86] Further, the jury charge was in context that: Mr. and Ms. Liang had each testified as to his income earned in China; there was no suggestion put to either of them in cross-examination that they were being untruthful about his Chinese earnings; and Mr. Liang's spending after his time in China was consistent with him having made substantial earnings there, including his purchase of a luxury car, his investment in the Business, and ability to live on savings after the accident, all facts that were not challenged in cross-examination.

[87] Further, in the closing address to the jury, ICBC suggested that it was up to the jury to decide whether to "accept" that Mr. Liang earned what was indicated in the Chinese Documents. In other words, it was up to the jury as to what weight they might give to the documents.

[88] Indeed, the thrust of ICBC's closing address to the jury was not to cast doubt on Mr. Liang and Ms. Liang's evidence about his earnings in China. Rather, ICBC's theory was that Mr. Liang's opportunity in China had been a specific, limited opportunity that did not reflect his earning capacity in Canada. ICBC emphasized that Mr. Liang had never earned anything close to \$300,000 per year in Canada, and not even the \$215,000 per year average for males with an economics degree.

[89] In my view, we do not need to decide whether the Chinese Documents were admissible for a hearsay purpose. Even if we were to assume that ICBC had objected to the documents being used for a hearsay purpose and they were nevertheless erroneously admitted for this purpose, that would not lead to the conclusion that this Court should interfere with the jury's verdict or order a new trial.

[90] Given the oral evidence of Mr. Liang and Ms. Liang and other circumstantial evidence as to Mr. Liang's earnings in China to which I have already referred, none of which was challenged, I am of the view that a properly instructed jury acting reasonably would necessarily have reached the same conclusion if the alleged evidentiary error had not occurred: see *Tsoukas v. Segura*, 2001 BCCA 664 at para. 75.

[91] In the circumstances, I would not accept that there was a substantial wrong or miscarriage of justice in how the Chinese Documents were admitted into evidence and referred to in the jury charge.

Should ICBC Be Permitted to Raise a New Issue Based on New Evidence on Appeal?

[92] In a second aspect of its fresh evidence application, ICBC has presented expert opinion evidence from an accountant, Mr. Tony Volpe, created after trial. ICBC relies on Mr. Volpe's evidence for the opinion that under Canadian income tax law, based on his significant ties to BC at the time he worked in China, Mr. Liang was likely a resident of Canada when he earned income in China and therefore should have reported his Chinese income on his Canadian tax returns. However, he would be permitted to deduct the taxes he paid to the Chinese tax authorities.

[93] ICBC submits that this evidence creates "irreconcilable inconsistencies" between the Canadian tax returns and the Chinese Documents that "raise credibility concerns regarding [Mr. Liang] that were not before the jury because of the last-minute production" of the Chinese Documents and the amended report of Mr. Benning.

[94] ICBC wants a new trial so it can pursue these new credibility concerns.

[95] Respectfully, the premise of this submission is simply not established. There was no "last-minute production" of information that caused ICBC to overlook the fact that Mr. Liang did not report his Chinese income on his Canadian tax returns. Mr. Liang's Chinese income, and his Canadian tax returns, were disclosed approximately two years before trial. It was evident then that he had not reported his asserted Chinese income on his Canadian tax returns.

[96] Likewise, Mr. Benning's opinions were not based on Mr. Liang's actual income, so the fact that Mr. Benning's report was amended just before trial has no relevance to this alleged credibility issue.

[97] Mr. Volpe provides no opinion that the Chinese Documents are inauthentic. On the contrary, he seems to assume they are authentic and reliable and that Mr. Liang earned income in China and paid Chinese taxes consistent with the Chinese Documents.

[98] If we allow ICBC to raise as a new issue the Liangs' knowledge of whether they had to report Mr. Liang's Chinese income on his Canadian tax returns, the evidentiary record is not sufficient for this Court to decide the relevance of the issue to Mr. Liang or Ms. Liang's credibility. Ms. Liang was not cross-examined about her evidence that she assisted in preparing Mr. Liang's Canadian tax returns based on his Canadian income only. The transcript of her evidence in this respect reads as guileless: she neither evades nor prevaricates about her approach to the Canadian tax returns. There is no hint that she might have thought the Canadian income tax filings were incorrect. Nor was this notion put to Mr. Liang in cross-examination.

[99] ICBC's position that it could not have thought of this issue at trial because of the last-minute production of information and that expert evidence is necessary is based on its submission that only a person familiar with Canadian taxation of foreign income would have identified the inconsistency between the Chinese Documents and the Canadian tax returns.

[100] ICBC fails to recognize that its position is internally inconsistent and at odds with its suggestion that the non-inclusion of the Chinese income in the Canadian tax return reflects poorly on Mr. Liang's credibility. There was no suggestion at trial that Mr. Liang is a person familiar with Canadian taxation of foreign income. There was no suggestion that Mr. Liang would have known that: (a) he was likely a resident of Canada for Canadian tax purposes despite the fact he was born in and working in China; and (b) despite paying taxes on that income in China, he would also be required to report his Chinese income and pay taxes on that income in Canada.

[101] The issues at trial did not turn on Mr. Liang's credibility about how he reported his income for Canadian tax purposes.

[102] I would add that while it is not necessary for this Court to rule on the question of the admissibility of Mr. Volpe's opinion evidence if it was attempted to be introduced at trial, in my view, its admissibility is by no means clear.

[103] Based on the circumstances of this case, I am of the view it would be highly prejudicial and contrary to the interests of justice to allow ICBC to raise this new issue on appeal. I would therefore also dismiss ICBC's application to introduce this new evidence on appeal.

Was the Jury Verdict Perverse?

[104] The last ground of appeal is that if the Chinese Documents were not in evidence, the jury verdict would be "grossly excessive" and "perverse".

[105] In *Wolber v. Ivanova*, 2024 BCCA 203, this Court emphasized the deferential standard of review from a jury award:

[33] Jury verdicts are entitled to a high degree of deference on appeal. As stated by the Supreme Court of Canada in *McCannell v. McLean*, [1937] S.C.R. 341 at 343:

The principle has been laid down in many judgments of this Court to this effect, that the verdict of a jury will not be set aside as against the weight of evidence unless it is so plainly unreasonable and unjust as to satisfy the Court that no jury reviewing the evidence as a whole and acting judicially could have reached it.

[34] *McCannell* has been cited and applied in this Court numerous times: see for example, *Melgarejo-Gomez v. Sidhu*, 2002 BCCA 19 at para. 9; *Moskaleva v. Laurie*, 2009 BCCA 260 at para. 112; *Bailey v. Jang*, 2011 BCCA 146 at para. 2.

[35] The standard of review for damages awards made by juries is even more deferential than the standard applied to judge-alone awards. An appellate court will interfere only where the award is "wholly disproportionate or shockingly unreasonable" or "so exorbitant or grossly out of proportion to the overall circumstances of the plaintiff's case": *McCliggot v. Elliott*, 2022 BCCA 315 at paras. 50–52.

[36] Despite this highly deferential standard, the issue of whether there is evidence to support a jury's verdict is a question of law, reviewable on a correctness standard, and an appellate court may intervene where it finds that there is *no* evidence to support the jury's verdict: *Rhodes v. Surrey (City)*, 2018 BCCA 281 at para. 15; *McKinley v. BC Tel*, 2001 SCC 38 at para. 60.

[106] More recently in *Niescierowicz v. Brookes*, 2026 BCCA 186, this Court again reinforced the high bar for appellate interference with a jury verdict:

[73] An appellate court must not interfere with a jury verdict unless the jury has come [to] a conclusion that no reasonable person could have arrived at: *Ferrill v. Cockburn*, 2024 BCCA 245, at para. 3, referring to *McCannell v. McLean*, [1937] 3 S.C.R. 341, 1937 CanLII 1. The question is “whether the jury’s verdict is supportable on *any* reasonable view of the evidence and whether proper judicial fact-finding applied to evidence *precludes* the conclusion reached by the jury”: *Albert v. Politano*, 2013 BCCA 194, at para. 36, citing *R v. H. (W.)*, 2013 SCC 22, at para. 2. Evidentiary conflicts are to be resolved in favour of the respondent: *Albert*, at para. 28.

[107] As I would not accede to arguments that the judge erred in allowing the Chinese Documents into evidence, this ground of appeal would also fail. Further, this ground of appeal ignores the fact that both Mr. and Ms. Liang testified as to his history of earnings in China, and their evidence was properly before the jury.

[108] The jury’s award of damages for past and future loss of earning capacity was considerably less than what Mr. Liang sought at trial and less than what Mr. Benning had identified as the average earnings for a male with an economics degree. It was also premised on considerably less earnings than Mr. Liang had earned in China. While the jury award was higher than ICBC’s suggested award, ICBC’s position put to the jury could well be seen as inordinately low given Mr. Liang’s young age, education, prospects before the accident, and injuries.

[109] The jury also awarded non-pecuniary damages of \$465,242. This suggests that the jury likely rejected or gave little weight to ICBC’s theory that Mr. Liang’s health could improve some day to the level that he might be able to work part-time. There was considerable evidence that Mr. Liang’s injuries were such that he was likely to remain unemployable.

[110] There was evidence capable of supporting the jury award. Taking the evidence and parties’ positions into account, the jury award is not disproportionate. Rather, it is consistent with the jury properly fulfilling its function of considering all the evidence of earning capacity and applying contingencies to its assessment of damages.

Disposition

[111] I would allow Mr. Liang's and ICBC's applications to introduce evidence of pre-trial process and communications between counsel. I would not allow ICBC's application to introduce additional evidence gathered after trial in the form of an expert opinion report from Mr. Volpe.

[112] I would dismiss the appeal.

"The Honourable Justice Griffin"

I AGREE:

"The Honourable Justice Winteringham"

I AGREE:

"The Honourable Justice Riley"