

CITATION: College of Traditional Chinese Medicine v. Yin, 2015 ONSC 7132  
COURT FILE NO.: CV-15-524551  
DATE: 20151118

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS  
AND ACUPUNCTURISTS OF ONTARIO, Applicant

**AND:**

SHERRY X. YIN a.k.a. XUEPING YIN, Respondent

**BEFORE:** Mr. Justice Graeme Mew

**COUNSEL:** *Jaan Lilles*, for the College

*C. MacLeod and Bianca Thomas*, for the Respondent

**HEARD:** In Writing

**SUPPLEMENTARY COSTS ENDORSEMENT**

[1] In my endorsement of 11 September 2015 (2015 ONSC 5613 (CanLII)) I indicated that I was presumptively of the view that the successful applicant should receive costs on a partial indemnity scale fixed in the amount of \$30,000 inclusive of HST and disbursements. However, I gave the parties an opportunity to make further written submissions in the event that they felt that my presumptive determination of costs (scale, by whom payable or amount) was inappropriate.

[2] The respondent submits that she was partially successful on the application in that of six breaches of statutory provisions which she was alleged to have committed; only five of those alleged breaches were upheld. She submits that the costs award should therefore reflect divided success.

[3] Noting that the yardstick for fixing costs is reasonableness (*Boucher v. Public Accountants Council (Ontario)*, 2004 71 O.R. (3d) 291 (C.A.) at paras. 24-26), the respondent also argues for a reduced award of costs on the basis that:

- (a) The respondent raised important matters requiring clarification under recently enacted legislation;
- (b) The issues involved were not overly complex;
- (c) The respondent's financial circumstances have been drastically impacted over the past two years as a result of the coming into force of the *Traditional Chinese Medicine Act*, 2004, S.O. 2006, C. 27.

[4] The fact remains that the applicant obtained the relief that it sought, albeit on the basis of my finding that there had been five violations of the Act, rather than the six alleged.

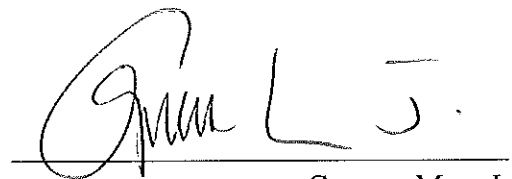
[5] In order for the inability of the party to pay costs to become a relevant factor in determining whether an adverse costs award should be made (and such circumstances will be rare), there should be evidence not only that the party does not currently possess the financial wherewithal to pay an award of costs but that it is most unlikely that she will ever acquire (or regain) the ability to meet a costs burden arising from this case: see *College of Traditional Chinese Medicine et al. v. Federation of Ontario Traditional Chinese Medicine Association*, 2015 ONSC 2262. I note in that regard that the respondent did not avail herself of the opportunity to register with the College, principally, it would seem, because the College has not yet introduced a "Doctor" class of membership.

[6] I would note also that the respondent is one of a number of individuals who have caused their opposition to the *Traditional Chinese Medicine Act*, 2006 to be brought to court (usually in the form of a compliance proceeding initiated by the College). As has been observed on a number of occasions, the grievance which people in the position of the respondent have is, essentially, a political issue. The legislation, whether the respondent likes it or not, is quite clear in its application.

[7] By reason of the foregoing, I am not persuaded that the factors enumerated by the respondent should result in a reduction of the costs award against her.

[8] I would, furthermore, note that the respondent, if successful, submitted a costs outline claiming partial indemnity fees and disbursements totaling \$38,018. Accordingly, it cannot be said that the award of \$30,000 in favour of the College is outwith the respondent's reasonableness expectations.

[9] By reason of the foregoing, I confirm that the costs of this application are fixed at \$30,000, inclusive of disbursements and applicable taxes, payable by the respondent to the applicant.

A handwritten signature in black ink, appearing to read 'Graeme L J.', is written over a horizontal line. The signature is cursive and somewhat stylized.

Graeme Mew J.

**Date:** 18 November 2015