

CANADA / JUDGMENT

Ahluwalia v. San-Aye

2025 BCSC 1715

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Supreme Court of British Columbia

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2025 BCSC 1715 Ahluwalia v. San-Aye

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ahluwalia v. San-Aye,

2025 BCSC 1715

Date: 20250904

Docket: M179024

Registry: Vancouver

Between:

Rupinder Kaur Ahluwalia

Plaintiff

And

Adam San-Aye, Trudy Chamberlain and Sandra Jayne Chamberlain

Defendants

And

Insurance Corporation of British Columbia

Third Party

Before: The Honourable Justice Schultes

Reasons for Judgment

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Place and Date of Trial:

New Westminster, B.C.

January 8-12, 15-19, 22-26 and

February 29, 2024

Place and Date of Judgment:

Vancouver, B.C.

September 4, 2025

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Introduction

- [1] The plaintiff Rupinder Ahluwalia was involved in two motor vehicle accidents in 2016. There is no dispute that the defendants[1] are liable for those accidents, or that Ms. Ahluwalia suffered injuries as a result of them. However the parties differ markedly about what injuries were actually caused by the accidents and the effects of those injuries on her life.
- [2] Ms. Ahluwalia claims that the accidents caused a significant number of new injuries and conditions, most significantly a serious chronic pain condition, which in totality, have been completely disabling.
- [3] The defendants' position is that she suffered soft tissue injuries that are now of mild to moderate severity, and a disorder that causes her to focus to an inordinate degree on her physical condition. Beyond those injuries, they say that an intervening autoimmune condition that she developed several years after the accidents was the cause her subsequent difficulties. They also contend that she has not taken reasonable steps to mitigate the effects of those injuries that she has in fact suffered.
- [4] Other areas of dispute include the level of employment and income that she would have attained if these accidents had not occurred, in particular whether she would have been able to qualify as a lawyer in Canada, and the amount of compensation that is appropriate to address her loss of capacity in the domestic realm (and the efforts of her family to supplement it), and her ongoing care needs.

- [5] The parties have helpfully agreed that the defendants are jointly and severally liable on the basis that the injuries from the two accidents are indivisible. Another helpful efficiency achieved by counsel was a document agreement that avoided the necessity of calling care providers to prove contradictory entries in their records when Ms. Ahluwalia did not distinctly admit them.

Evidence

Overview

- [6] Ms. Ahluwalia is 52 years old. She and her husband were married in 1998 and have two children, who are now 25 and 19 years old.
- [7] She was born and grew up in India. After obtaining an arts degree and a law degree she achieved the equivalent of being called to the bar there in 1998. She worked as a lawyer until two or three months before her son's birth in October 1999. She did not return to work as a lawyer after his birth.
- [8] She immigrated to Canada with her husband and son in 2004 and they settled in Surrey.
- [9] She initially obtained a manual labour job, after which she was employed as a security guard and then as a cashier in a gas station. In 2009 she was hired by Scotiabank as a customer service representative. She worked in a part-time capacity in that job until 2016. For most of her time at the bank she had four set days at a specific branch per week, with the opportunity to work an additional day at any branch that required a fill-in.
- [10] The first accident occurred on January 13, 2016. The vehicle she was driving was rear-ended by one driven by Mr. San-Aye while she was stopped at a traffic light on the Fraser Highway. Her vehicle was still driveable afterwards and she went home on her own.
- [11] Her hours at the bank were reduced after the first accident as a result of a company-wide initiative that was unrelated to her personal situation. In response to this reduction, she took another part-time job in May 2016 - at Morrison Windows, a manufacturing and sales company where her husband worked. She carried on with both jobs until the second accident.
- [12] That accident, on June 20, 2016, was also a rear-end collision on the Fraser Highway. She was taken to the hospital by paramedics but discharged the same day. She did not return to either of her part-time positions after this accident.
- [13] She remained off work until 2018, when she completed a certificate in interpreting in community settings, utilizing her fluency in languages in addition to English. She then worked on an on-call basis for Archway Community Services Society, an agency that provides interpreters for activities such as medical appointments. She did this work from approximately September 2018 to November 2019. Her earnings from it were quite modest - just over \$3000 in total for 2018 and 2019.

- [14] With the assistance of a vocational rehabilitation specialist, she applied successfully for a temporary part-time contract position with DIVERSEcity, a community resource agency in Surrey. Her position was as a settlement worker for new immigrants. She was employed in that role from December 2019 to March 2020, when her contract expired.
- [15] During her first stint at the agency she developed symptoms of an autoimmune disorder - oral pemphigus vulgaris - that she attributes to the accidents. The most disruptive symptom of this condition was painful sores in her mouth.
- [16] She was re-hired at DIVERSEcity at the beginning of September 2020 and continued until the end of October 2021, when she was unable to continue and began receiving disability benefits. She was receiving long-term disability benefits in relation to that position as of the trial dates, and had not been employed in any other capacity since leaving it.
- [17] The agreed statement of facts sets out the considerable number of treatment providers whom Ms. Ahluwalia has seen since the accident. They encompass the fields of psychiatry, psychology, counselling, neurology, neurosurgery, physical medicine, audiology, otolaryngology, occupational therapy, chiropractic, physiotherapy, kinesiology, and massage therapy. In some cases, such as physiotherapy, she saw multiple providers within the same field. Some of these treatments were for conditions that she is not currently claiming, most notably post-concussion syndrome and auditory processing issues.

Injuries

Ms. Ahluwalia's Narrative

Previous health

- [18] She described her physical and psychological health as being "good" before the first accident. Previously she only had "normal physical problems". Although she acknowledged that "life is a roller coaster" and that "there are good days and bad days", after any previous issues she would "bounce back like a normal person".

Symptoms following the first accident

- [19] She testified that her initial physical symptoms after the first accident were feeling "a stretch" on the left side of her neck and shoulder, numbness and pain in her head and a feeling that it was "heavy", as well as tiredness and sleepiness.
- [20] In what I took to be a reference to the ensuing period, she described the sleepiness continuing, leading to an incident in which she fell asleep while driving. Her neck began to hurt increasingly, and she developed frequent headaches, which she had not experienced to that extent before the accident. At one point she described the "stretch" in her shoulder moving to her neck and then causing the headaches.

- [21] She also experienced difficulties with her memory, which became apparent when she had to recall information for her job at the bank.
- [22] With respect to the effect of the accident on her mood, she said that she felt anxious and sad. The sadness was due to her memory problems at work.
- [23] She received physiotherapy and saw her family doctor regularly in relation to these symptoms.

Symptoms and treatment efforts following the second accident

- [24] Immediately after the second accident occurred, she was crying, confused, and had difficulty breathing. Based on her later experiences with episodes of this nature, she now knows that she was experiencing a panic attack.
- [25] Her immediate physical symptoms were severe neck pain and, when the paramedics helped her out of the vehicle, a "very bad pain" in the left side of her back. She was also not able to put weight on her left leg.
- [26] She said that she spent three weeks at home resting after this accident, taking painkillers and spending a lot of time sleeping. Her longer-term symptoms were pain in her neck, left shoulder, arm and leg, and back. She described the pain in her neck as being "like a nail" and said that her neck would also feel tight. In addition to the pain in her left arm it felt heavy, and at times the pain in it would extend down to her little finger.
- [27] She described a mechanism whereby lifting something with her left arm would cause a feeling of "stretching" and pain, eventually leading to headaches that felt like a tight band around her eyes and forehead. The duration of these headaches would range from three days to three weeks.
- [28] The headaches caused her to be sensitive to noise, and not to be able to "think straight". Physiotherapy would provide some relief from them.
- [29] Physiotherapy would also make the shoulder pain a little bit better, but using her arm to lift would cause the same symptoms to return.
- [30] Another physical symptom, which was provoked by stressful situations, was a sensation that needles were poking her neck and arm, which sometimes included her back and the back of her head.
- [31] She referred to suffering from "frozen shoulder" - a condition that prevented her from lifting it above a 45-degree angle. This was initially in her left shoulder, but in 2018-19, because of her resulting over-reliance on her right shoulder, she developed the condition in that shoulder as well.

- [32] In addition to continuing to have problems with her memory and experiencing sadness and anxiety, as she had described in relation to the first accident, she had problems with comprehending what she was reading and what people were saying to her (in the latter case especially if there was any other noise around her), difficulty thinking and focusing, and constantly feeling fatigued and sleepy.
- [33] Although she did not identify their specific onset, she also testified that as a result of the accidents she suffers from tinnitus, stomach and pelvic pain, issues with her digestion, and rashes on her body.
- [34] She said that while she was working at DIVERSEcity it was difficult for her to eat and digest her food (due to the mouth sores from her autoimmune condition) and stomach aches (from excess acid).

Current symptoms

- [35] As of the trial dates the only symptoms that had largely resolved were her frozen shoulders. Otherwise, she continues to suffer from neck pain and headaches, pain in her left shoulder, arm, side, lower back and leg (with severe pain in her lower back) and tinnitus.
- [36] She continues to attend for physiotherapy, and has also found massage useful. She plans to continue with them in the future if possible, along with the pain management treatments that were proposed by Dr. Lau, a pain specialist who provided an expert report on her behalf.
- [37] After previously attempting to manage her pain with prescription medication, which caused problems, she had more recently begun to take only a basic combination of Tylenol and Advil. She resorts to additional pain management techniques like self-massage, putting oil on the affected areas, hot baths, and meditation.
- [38] With respect to her mood and cognitive symptoms, she said that anxiety and panic attacks are easily provoked, even by minor events. She will get a headache that interferes with her plans, which will start what she described as a "vicious circle" of hopelessness, sadness and then anger. Getting upset emotionally, which happens frequently, prevents her from being able to sleep, and if she sleeps in late to compensate for it, that prevents her from keeping to her essential daily schedule. She will feel sad for days, then cry frequently. Stressful situations continue to require her to take medication - Lorazepam (a tranquilizer that is known by the trade name of Ativan), although in general she tries to avoid taking it for panic attacks, preferring to pursue self-management strategies such as going outdoors and attending to her place of worship.
- [39] She also misses information when people speak quickly, and has difficulty reading.

- [40] She has gained weight since the accidents because her lifestyle has changed. Her "system is messed up", so that sometimes she overeats due to stress and other times does not eat. Because of her depression, she sometimes does not feel like doing anything for weeks at time.
- [41] Her perspective is that these symptoms are getting worse with time, although in recent months her management of them, through changes in her thinking, had improved.

Effect on testimony

- [42] She explained that her symptoms of fatigue, lack of mental clarity and anxiety also had an effect on her presentation as a witness. By the end of her first day of her testimony she was "unable to think", and her anxiety (as a result of the courtroom setting, I took it) caused tightness in her chest and feeling like she could not breathe. This is one of the stressful situations for which her doctor has prescribed her Lorazepam. She had taken it before the first day that she testified, but she is only able to take it every 12 hours.
- [43] She later explained that at certain points she was testifying with her eyes closed, because otherwise she became distracted and forgot what she was talking about.
- [44] Several breaks were required during her testimony to allow her to manage these difficulties.

Pre-accident Health

- [45] The defendants sought to demonstrate in cross-examination that some of Ms. Ahluwalia's complaints following the accident were continuations or aggravations of pre-existing symptoms, and that her general health before the accidents was already precarious enough to have triggered the pain condition of which she now complains.

Neck

- [46] Although she had testified that she did not recall having had any neck pain in the year and a half before the accident, in November 2014 she told her family doctor that she had been experiencing a few weeks of left-side neck pain, which was worse upon waking and also became worse with movement. He recommended massage and physiotherapy, but she could not recall if she had pursued them at that time.
- [47] Her explanation in her evidence for this complaint, which she applied to several others that she made to her doctor in the two years before the accidents, was that she had been experiencing a difficult family situation in 2014. Her husband had been diagnosed (mistakenly as it turned out) with a brain tumour, and she was required to work more, in addition to her other family responsibilities and her concerns about his health.

Headaches

- [48] In a December 2014 appointment with her family doctor, she described a unilateral (one-sided) headache, along with irritation in both ears, causing the doctor to query whether it was a "migraine", and to note "dizziness" as well. She also complained of headaches during a March 2015 appointment. In April of 2015 she presented with "dizziness and headache".
- [49] Despite these entries, she was not prepared to agree that headaches were a problem for her before the accident. She explained once again that because of her difficult family situation in 2014 she became tired and developed a headache. She was not responsive to the question of whether she had discussed the possibility that her headaches were migraines with her doctor. Her position was that "we all get headaches once in a while", and that it was possible that she had a migraine at the time and then it was "over". She added that she just got headaches "like normal people", and that perhaps she was seeing the doctor about them out of an abundance of caution, in light of her husband's diagnosis.
- [50] An audiologist to whom she was referred in October 2016 recorded that she suffered from "migrainous" headaches, sometimes accompanied by vomiting. She had also complained of "migraine-type" headaches to her counsellor the following month.
- [51] She explained that she used the term "migraine" to describe "continuous" headaches, in contrast to those that ended if she took medication. She later added that when she heard that they were migraine headaches (from doctors, I infer) she just kept calling them that.
- [52] She denied the statement attributed to her in the report of Dr. Makin, an orthopedic surgeon who assessed her on behalf of the defence, that when she was 16 or 17 she would occasionally have severe headaches that were accompanied by vomiting. Dr. Makin also quoted her as saying that an ambulance would be called in those situations, and that the paramedic would administer "a Gravol injection" to her, although she would usually not end up being taken to the hospital. She responded that the town that she was living in in India at that time did not have an ambulance service, and speculated that Dr. Makin had misunderstood her references to having headaches in 2016 and 2017 as references to her age at the time that she experienced them.

Pelvic and abdominal pain (with urinary problems)

- [53] She was a long-term sufferer from fibroids (growths in the uterus) before the accidents. The defendants sought to link this condition to her post-accident complaints of pelvic pain. The gynecologist to whom she was referred for fibroid surgery indicated in May of 2015 that she continued to have pelvic pain, which had been bothering her for "over two years".
- [54] She maintained that any such pain before the accidents was related only to her fibroids. In August 2015 she complained of continuous pain "follow-up" (in relation to that surgery, I took her to mean).

- [55] She denied that she felt any stress from the bleeding that was caused by the fibroids, but acknowledged that she was "feeling really low some days", although she did not have time to "sit and rest" in response to it.
- [56] Her doctor provided her with a letter indicating that she was unable to work from June 7 to August 8, 2015 for "medical reasons". The only reason for such an absence that she could recall would have been following the surgery that she had for her fibroids that year. In re-examination however she referred to a medical investigation that had to be carried out when it was briefly suspected that she had stomach cancer.
- [57] She agreed that she missed quite a bit of time from work in 2015 because of medical issues, but pointed out that after those absences she did not miss any further work until the first accident.
- [58] She also complained to her family doctor of abdominal pain and pain when urinating (and increasing urinary frequency) in 2014 and 2015.

Tinnitus

- [59] Although she had testified that she did not suffer from tinnitus before the accidents, she told an otolaryngologist in July 2015 that she "only" experienced it in quiet settings.

Mood

- [60] In November 2014 she complained to her doctor of feeling low in energy and "having stress" at home, and requested to see a counsellor. In February 2015 she provided her doctor with a history of "significant stress due to complex family situation" and advised that her mother was ill. In her testimony she explained that it was painful for her not to be able to see her mother, who was in India, and that "maybe" she felt helpless. During that visit the doctor prescribed her an antidepressant medication, but she could not remember whether she had tried it.
- [61] She agreed that she was finding work very stressful in 2015. Her doctor recommended that she take two weeks off in March of that year, after she presented with a history of "significant stress at work", in addition to headaches, insomnia and fatigue, and she took his advice. His assessment of her during that examination was of an "acute anxiety state".
- [62] In her examination for discovery, she had advised that there was "pressure" at work due to shifts being cut and an increased workload.
- [63] She maintained that her only work stress during that period arose from an episode in which a co-worker persisted in wearing perfume even though it aggravated her cough, which caused her to throw the co-worker's perfume bottle in the garbage. Her supervisor and the offending co-worker were friends, and as a result her supervisor sided with the co-worker against her and wrote a negative assessment of her behaviour. When she returned to work after two weeks off the incident had been dealt with. This was the only time during her

career at the bank in which she had not gotten along with a co-worker.

Gap in symptoms

- [64] In re-examination she emphasized that, despite these various complaints, in the two months before the first accident she was not bothered by any headaches, dizziness, neck pain, stress, or mood issues.

Other pre-accident health issues

Dizziness

- [65] At various points in her cross-examination she attributed the references in her family doctor's records to dizziness, which frequently accompanied her complaints of headaches, to being tired and stressed from having to work a lot due to her husband's health, longstanding problems with her thyroid (for which she took medication), bleeding from her fibroids, and anemia.
- [66] Regardless of its cause, she said that dizziness did not restrict her activities in the home or at work before the accidents, and agreed with the suggestion that dizziness has not been a problem for her since the accidents.

Acid reflux

- [67] She had been having issues with GERD (stomach acid flowing back into her esophagus) since 2008. She complained about it in visits to her doctor in June, September and October 2014. She eventually received a referral to a specialist to check her stomach "with a camera", which led to the ultimately unfounded concern that she might have cancer.
- [68] The burning sensation behind her sternum that she reported at her June visit led her doctor to perform a cardiac examination as well.
- [69] She expressed the overall position that her only pre-accident health issues were with respect to her "stomach" (that is, GERD) and the bleeding and pain caused by her fibroids.

Breathing

- [70] During her discovery she had referred to "my personal breathing problems" when she was describing her health issues before the accident. When that description was put to her, she was unable to say what she had meant by it. In re-examination she said that it might refer to her difficulties in breathing when she has panic attacks, and that she had used the term "personal" because she had been describing how her mother's health issues were causing her stress. She did not explain why she attributed them to the pre-accident period.

Post-accident progress of symptoms and attribution to other causes

- [71] Ms. Ahluwalia was cross-examined on statements she had made to care providers since the accidents in which she indicated that her symptoms (1) had declined in severity from what she was describing at trial, (2) had developed in a way that was inconsistent with that narrative, or (3) were attributed by her to a cause other than the accidents.

General improvement

- [72] In June 2016, shortly after the second accident, she told her counsellor that her "walking is fine" and in November she told him that she was going to the gym three or four times per week (for her rehabilitation exercises).
- [73] In the spring and summer of 2017, she told the person who was treating her at a rehabilitation centre that she was feeling better and that her pain was decreasing.
- [74] In June 2019 she told a gastroenterologist to whom she had been referred that she typically walked on an elliptical trainer for 30 minutes, and had resumed doing so for the previous month, after undergoing a hysterectomy in April. However, she maintained in cross-examination that she has never been able to go for more than 15 minutes on that device.

Pain in neck, shoulder, and extremities

- [75] She agreed with the suggestion that her neck pain had improved since the accidents, although it could still be aggravated in various situations, and that it was "more of a moderate nature" as of the trial dates. She defined "moderate" as a situation in which the pain was "not that bad" and she did not have to undergo physiotherapy (she initially added that it involved not having to "do a painkiller", but then retracted that aspect of her description). When she was asked for what period her pain is moderate, she explained that it is after a visit to physiotherapy, and until it is aggravated again by picking something up, being in a stressful situation, or being exposed to some other trigger.
- [76] She agreed that her right shoulder problem lasted for a matter of months and is "no longer a problem".
- [77] She also agreed that her low back pain is now mild, but added that it now travels down her left leg. She could not remember when that leg pain had started, but she said that it is also mild. Despite these concessions, in re-examination she asserted that the pain in her leg is not mild, is always present, and gets worse when she has to bend down and hold that position for a period of time. She also has to manage it at night in order to be able to sleep.
- [78] She reported some apparently new problems in these parts of her body a considerable period after the accident.

- [79] She provided the neurosurgeon who saw her at the end of December 2018 with a history of left arm and leg weakness "for one month", and told that doctor that it had been progressively improving.
- [80] Along the same lines, she told an orthopedic surgeon to whom she was referred in May 2019 that she had begun to suffer left shoulder pain in October of the previous year (which would be more than two years after the accidents), and that there was no history of trauma associated with it. She agreed with the suggestion that she started a physiotherapy program to address it because she had "brand-new, sudden left shoulder discomfort". She did not follow up with this doctor and explained that her "range came back" in that shoulder. There was no mention of the accidents in either of these reports, although she claimed to have told these doctors about them. She clarified in re-examination that what had been resolved in her left shoulder was the severe pain (which I took to be the pain associated with frozen shoulder), but that she continued to experience pain in the area to a lesser degree after that.

Headaches

- [81] In October 2016 she told her family doctor that her headaches were no longer constant but rather intermittent, or "coming and going".
- [82] In April of 2018 she told a "chiropractic doctor", that her headaches were reduced to 2 - 3 out of 10 on the pain scale. She agreed that the treatments that he was providing to her, which included changes to her diet, were beneficial, but could not say how long they lasted after each treatment. As with all treatments, once she picks up something heavy or encounters a stressful situation, it triggers further headaches.
- [83] A neurosurgeon to whom she was referred to in that year described her headaches as "more migraine type".
- [84] She declined a suggestion by a neurologist in 2018 that she take Botox treatments to reduce her headaches (his report indicated that it was also intended to address her neck symptoms), because she was worried that side effects could leave her completely disabled.
- [85] In 2020 she told her family doctor that she associated her headaches with stomach problems. She acknowledged in cross-examination that "maybe" at that time they were related to those problems. She added that oral steroid medication that she took for her autoimmune condition made her headaches worse.
- [86] In 2022, she told her family doctor that her "migraines" had been more severe than previously.

Tinnitus

- [87] Although she told an audiologist in October 2016 that she would soon be undergoing "tinnitus retraining therapy", she had no recollection of ever having gone on to do so. She described her tinnitus to an audiologist in 2017 similarly to how she had before the accidents

- that it mainly bothered her in quiet settings. In her testimony she added that she notices it more when she is anxious and, more importantly, that it has gotten worse since 2017. She agreed however that she has gotten used to it, and that now that she uses a CPAP machine (which makes a noise of its own) for sleep apnea, she cannot hear anything in relation to it.

Pelvic pain

- [88] When she complained about pelvic pain in the summer of 2017, she said that she had been suffering from it for about two years (its origin would therefore pre-date the accidents). In November of that year, she told her family doctor that she experienced such pain on 20 days out of each month. That same month she told the doctor to whom she had been referred to perform a hysterectomy that this pain was affecting her work and lifestyle.
- [89] Although she continued to experience pelvic pain after her hysterectomy, she said it was of a different kind - the previous one was related to "pressure and bleeding" whereas after the surgery it was a pain in the pelvic area in corresponding spots on the front and back of her body. (This latter type of pain is what she says was caused by the accidents).
- [90] In July 2021 the pelvic pain was so severe that she went to the hospital. She was found to have an ovarian cyst, but no treatment was required.
- [91] She said that when the pelvic pain is severe, such as from a cyst, she has to lie down, as opposed to still being able to sit (unlike the pelvic pain that she attributes to the accidents).

Mood, alternative causes of depression, and cognition

- [92] She saw a psychiatrist in June 2016, who prescribed medication for her depression. This medication did not "agree with" her, so the psychiatrist prescribed her a different one, but she did not fill the prescription. She said that she suffered adverse effects from the first medication, including extended sleep problems and an inability to speak for several days, and that in general her body "does not accept medicines easy". In response to the suggestion that she did not fill the prescription because she did not need it, she explained that as a result of seeing a psychologist she was feeling better, which led her to consider returning to work. In re-examination she indicated that the psychiatrist had encouraged her to pursue counselling, and added that she has had adverse reactions to several different kinds of medications. Her doctor tries to start her with low doses of any medication in order to gauge her reaction.
- [93] In a counselling session in August 2016 she described herself as a "sympathy seeker". When this statement was put to her she said she did not know why she would have described herself in that manner, because that was not her state of mind during that period.
- [94] In November 2017 she reported an improvement in her depression and anxiety symptoms.

- [95] She was involved in a minor vehicle accident in November 2017, in which her vehicle and another touched mirrors while she was attempting a lane change. The other driver behaved aggressively towards her after they pulled over so she called the RCMP. She agreed that her anxiety had been aggravated by this incident.
- [96] In one of her initial sessions with Dr. Parattukudi, a psychologist who provided an expert report on her behalf, she said that she had been "feeling good" for the last six months of 2017, but then her sister died in January 2018, which changed the situation. She responded that because she already suffered from anxiety and depression "maybe [that death] affected me more". She also attributed the positive period that she had described to the effects of the sunny summer months on her outlook, and to all of the efforts that she was making to rehabilitate herself and get back to work.
- [97] After a few sessions with Dr. Parattukudi she told him that she was having "better days" and that she had "better energy" and no complaints of pain. She clarified that she was never entirely without pain, but that on better days it would be mild. In May 2018 she told him that she was better able to manage bad days because of the skills and insights that she had developed.
- [98] The negative mood symptoms that she disclosed to Dr. Parattukudi in 2018 were attributed by her to events unrelated to the accident - verbal abuse by her husband, her belief that he was romantically interested in a neighbour, other problems in their relationship, being treated disrespectfully at a naturopath's office, and her son's involvement in a car accident. In her testimony she attributed the issue of the relationship with her husband to the difficulties that her family had in realizing that she was "not the same person" as she had been before the accidents.
- [99] In a session with him in March 2018, she told him that she had "always been an anxious person".
- [100] Late in 2018 she told Dr. Parattukudi that her main worry at the time was her husband's anger issues, and how they affected her and her children. In her testimony she elaborated that her husband is a perfectionist and that he had difficulties adjusting to her inability to perform her former roles because of the accident. Her injuries also led her to feel insecure about him no longer wanting to be with her. When it was pointed out to her that she had told Dr. Parattukudi that her husband's anger issues were "from his young days" she still maintained that the issue arose because of her injuries.
- [101] In the summer of 2018, she told Dr. Parattukudi that she had been experiencing "overall good health". She qualified that response by adding that after a month she was back in the "same cycle" again.

- [102] After her mother died later that year she told him that the deaths of two close family members so close together had put her into "a difficult grieving place with depression". She responded that she was already subject to depression and that symptoms that she experienced after her mother's death (crying, difficulty sleeping, and over-eating) were the ones that she always experiences in that situation.
- [103] From the spring of 2018 to January 2019 she did not mention the accidents in her sessions with Dr. Parattukudi. I understood her explanation for this to be that he was asking her only about the specific issues that arose for her "from day to day", in order to assist her in dealing with them - in other words, that the effects of the accident were not a topic of discussion.
- [104] In October 2019 she told an occupational therapist that she had returned to spending time with family and friends.
- [105] She resumed her sessions with Dr. Parattukudi in January 2022. When she did so she told him that the break since their last sessions in 2019 had been because she felt "pretty okay" during that period. She explained that she was working during that time, was using all of the life skills that she had, and that she did not have time to pursue any other assistance.
- [106] It was put to her that the areas of her life in relation to which she was seeking assistance when she resumed their sessions were her relationships with her husband and son. She explained that these specific complaints were elicited when Dr. Parattukudi asked her at the start of each session how her previous week had been - she was just telling him about that specific period. Once again, she attributed her complaints about her relationship with her husband, which were ongoing in the sessions, to his difficulties in coping with her accident symptoms.
- [107] When she saw Dr. Parattukudi in the spring of 2023, she told him that she had been taking medication to address panic attacks that were caused by her mother-in-law's death.
- [108] During examinations by her family doctor in January 2017, March, April and June 2018 and the summer of 2021 her memory was found to be "normal". She distinguished between the kinds of inquiries that were made by her doctor to make that finding, and having to remember past events that she is not prepared for, which continues to be a difficulty for her. She agreed however that the 2021 observation was made while she was working at DIVERSEcity.

Effects of autoimmune disorder

- [109] In February 2020, in appointments two days apart, she complained to her family doctor of pain and swelling in her joints. This was the start of the symptoms that would eventually be diagnosed as the autoimmune condition.

- [110] She denied that it caused her to have sore throats, despite her reports to doctors in March and May 2020 that it did so.
- [111] Even though, as I have described, her position is that she developed problems with her right shoulder from overusing it to avoid the pain in her left, when she was describing the autoimmune condition to an internal medicine specialist in June 2020, she listed right shoulder pain as one of the symptoms that she had developed. During that meeting with the specialist she did not describe any of the other symptoms that she attributes to the accidents.
- [112] Also in the summer of 2020 she went to the hospital complaining about shortness of breath, which she told the hospital personnel had been going on for a month. She also told them that she had been diagnosed with an autoimmune disease and had started steroids that same day.
- [113] As of August 2020 she reported that there had been minimal improvement with the use of topical steroids, and that an attempt to treat it with prednisone had to be abandoned because that medication caused her to have panic attacks (although she had had them before for other reasons).
- [114] In September 2020 she told the internal medicine specialist who was dealing with her autoimmune condition that the medication that she was taking for it was causing her anxiety at higher doses. She clarified in her testimony that it was adding to the anxiety that she already had, but then went on to say that she could not differentiate between the effects caused by the medication and by the accidents. Finally, she agreed that she experienced those symptoms at higher doses of the medication.
- [115] In February and October 2021, she told her occupational therapist that she was unable to drive because of blurry vision caused by medication for the autoimmune condition. However as of both of those dates she was working at DIVERSEcity, and testified that she was driving to work. Her position is that difficulties with her vision alone arose when she received a "vaccine" (by which she seemed to be referring to steroid medication), and that she did not receive one after June or July 2020 (although she agreed, based on her Pharmanet records, that she had received at least one medication that she acknowledged as a steroid later in 2020). She continues to have such vision problems when she is in a state of high anxiety.
- [116] In March 2021 she described feeling "baseline anxiety" relating to the management of that "new" autoimmune disorder.
- [117] In September 2021, in the context of a history of "multiple painful sites" and the autoimmune disorder, she complained of fatigue, weakness and poor concentration. These symptoms were not attributed to the accidents.

- [118] In October 2021 she told her family doctor that she had been feeling more anxious and depressed since the diagnosis of her autoimmune disorder, although she explained in her testimony that it "added to what I had before". On the same visit her doctor also noted that she had not been continuing with her previous counsellor and psychiatrist. Although her response to that entry being put to her was not clear, she seemed to suggest that her psychiatrist had given her the necessary techniques to manage her condition, and that she was taking a break until she needed help again. With respect to Dr. Parattukudi, she said he had moved to another province but that she saw another psychologist remotely during COVID until Dr. Parattukudi returned (although she could not recall his name).
- [119] In November 2021 she told her family doctor that she had been "very depressed lately" and that "much of her anxiety and depression is rooted in her [autoimmune condition]". Once again, her explanation was that it added to the mood symptoms that she was already experiencing.
- [120] In February 2022 she received a refill of Lorazepam. She told her family doctor that she had been having more panic attacks recently (as well as feeling more tired), and that she was "still very depressed about her diagnosis". She denied that the diagnosis that her doctor was referring to was of the autoimmune disorder.
- [121] In February of 2023, when she went to the hospital because of "chest pressure and breathlessness" she advised the hospital personnel that she had "a bad autoimmune disorder". During her testimony she described her situation on that day as a panic attack, but agreed that she had not attributed any anxiety symptoms to the accidents when speaking to the hospital personnel.
- [122] In March 2023, she told her doctor that she had begun taking ayurvedic medication from India in relation to the autoimmune condition. In response, she maintained that it was for problems with panic attacks and concentration, and that the autoimmune condition was caused by the stress that she was under.
- [123] In April she told an occupational therapist who prepared a report for this litigation that she continued to struggle with the autoimmune condition. She rejected that proposition in her testimony, advising that it is now just something that "comes and goes", and that it does not require special treatment or affect her ability to do her work.

Sleep

- [124] In 2018 she told Dr. Robinson, the neurologist who prepared an expert report on her behalf, that she was able to get to sleep without difficulty. She explained that it may have been the situation at the time she spoke to him, because she had begun using a CPAP machine to deal with her sleep apnea, but the situation is variable and she continues to experience difficulty sleeping, including at the time of trial. She also told that doctor that she wakes up at night due to factors such as stress and a long-standing problem with abdominal pain.

Driving

[125] She returned to driving within two-to-three weeks after second accident. She drove her daughter to extracurricular activities, if her husband and son were not available, until a year before her December 2018 discovery. Although she feels anxious when other motorists are driving badly, she is able to drive "locally" as required.

Use of prescriptions for other conditions

[126] The defendants' counsel also sought to show that Ms. Ahluwalia's use of prescription medication in the post-accident period was frequently linked to conditions that were not related to the accidents.

[127] For example, Lorazepam, which is used for the short-term treatment of anxiety, was prescribed to her by her family doctor in relation to her grief over the death of her mother. It was also prescribed to her by the specialist who performed her hysterectomy, and by the internal medicine specialist who was treating her autoimmune condition. She appeared to suggest that the specialists were simply refilling that prescription for her to use it for all purposes. When her family doctor saw her in July 2019 for a complaint of abdominal pain, he prescribed her an antidepressant/anti-anxiety medication.

[128] A doctor who was treating her for migraines prescribed a painkiller to her in February 2022, and on her next appointment with him that month he prescribed Lorazepam at her request. In that later appointment she told him that she was anxious about her diagnosis. As of those appointments she had been off work for over three months.

[129] In August of that year she was prescribed a steroid and an immunosuppressant, on the same day she saw the migraine specialist and he noted that a lot of her anxiety "is related to her prior accident and associated injuries and chronic pain". She explained that these medications were to treat her eczema, and that she was also prescribed a low dose of an anti-depressant because her anxiety was severe.

Other post-accident health problems

[130] In June of 2017 she suffered a rash on her scalp and other parts of her body, which was found to be eczema. Despite initially subsiding after treatment, she has continued to suffer from this rash since 2018, and treats it with a steroid.

[131] Also in the spring and fall of 2020 she complained of having developed painful warts on her feet, and what she described as "hell pain" in her right foot in the summer of 2022 because of a growth inside of it.

- [132] She suffered from chest pains in the summer of 2020 that required her to attend the hospital. Twice in 2021 she told her family doctor that she suffered from chest pain when "going upstairs". That problem, which she attributed to the medication that she took to cope with testifying, was continuing as of the trial dates.
- [133] She has a lifetime problem with low blood pressure, which required her to spend a night in hospital in August 2021. The following month she fainted as a result of it while she was having dinner with her family. In March of the following year she reported a "fall without any loss of consciousness" to an internal medicine specialist, which she described as another fainting episode.

Surveillance

- [134] The defendants submitted surreptitious video recordings of Ms. Ahluwalia's activities from October 30-November 3, 2017 and on October 12, 2023.
- [135] The 2017 videos showed her backing her vehicle out of the driveway of her home, sitting in it for extended periods while it was parked, and shopping at a produce store, a mall and a supermarket.
- [136] Actions by her in the videos that could arguably be relevant to her level of disability were turning her head to each side and behind her when backing up her vehicle, carrying full shopping bags and other grocery items in her right hand, and reaching above shoulder height with that hand to carry out various tasks, including lifting full bags into her SUV over the tailgate and through the unrolled back window.
- [137] Less overt but still discernible, she appeared to walk stiffly at times, and to have somewhat of a flat affect.
- [138] With respect to her use of her right hand in the videos, she emphasized that there was only a specific period of time in which she experienced a frozen shoulder on the right side, and that it was her left side that gave her problems after the accidents. More generally, she pointed out that what was captured in these videos were some of the few days on which she felt well enough to go out, which her care providers were always telling her to do.
- [139] In the 2023 video she was captured leaving a hair salon and getting into her vehicle and, after sitting in it for a short period, reversing out of the parking space and driving away. Once again, she was able to turn her head to the left as part of her safety check when reversing out.
- [140] As her counsel pointed out in re-examination, some of the extended periods in which she was observed sitting in her stationary vehicle, were consistent with her description of taking breaks, including naps in some cases, after exerting herself. With respect to her actions inside the supermarket, the relatively small number of items that she bought contrasted markedly with the large amount of shopping that she would do for the family before the accidents, and she believed that the extended periods of time in which she was

seen deciding which items to buy could have been examples of the lack of mental focus that she complained of in her testimony. The pace at which she carried out her shopping was also a reflection of her post-accident state, she said.

Medical and Psychiatric Explanations

Soft tissue injuries and headaches

Dr. Cheema - Family Medicine

- [141] He has been Ms. Ahluwalia's family doctor since 2004. In his report, which was prepared in 2023, he diagnosed Ms. Ahluwalia with mechanical neck and back pain, which he also called "Axial Back(neck) Pain Syndrome". In his opinion it was likely caused by the accidents, which caused deceleration and rotational forces that applied pressure and trauma to her spine. This caused strain to the ligaments, tendons and muscles of her neck and upper back.
- [142] His findings of consistent tenderness in the affected areas (which he described as the neck and "lower" back) were consistent with chronic pain of the type he has diagnosed. He prescribed anti-inflammatory medication and, because of Ms. Ahluwalia's dislike of oral medication, tried topical medication for pain control.
- [143] He agreed that in November 2014 she had presented with trapezius musculoskeletal pain, and described "head and general muscle aches and pains for [the] last months to years."
- [144] He described her suffering from tension headaches - around the head with a gripping band-like effect - that are secondary to her neck pain, and coupled in intensity with them. He distinguished them from other types of headaches, which he also diagnosed.
- [145] The pain in her left shoulder that she complained about after the accidents was also likely due to it - from a jolting force that applied pressure within the shoulder joints, damaging their internal anatomy. As is typical for this type of injury, she experienced pain when raising that shoulder above 90 degrees. He expected that she will continue to experience problems with arm movements over her head.
- [146] He agreed that she did not make any complaints about her shoulders to him immediately following either accident, although he said it is common for patients to focus initially on the main issues that are concerning them, and that this complaint first arose in May 2019, when she was referred to an orthopedic surgeon. Despite the gap in time before she complained of it, he was not prepared to agree that this definitely meant that the injury was not the result of the accidents. He explained that the inflammation from soft tissue injuries can persist for a long period and can present later on. (In re-examination it was brought out that she referred to shoulder pain in visits at the end of January and in August of 2016.)

- [147] He also diagnosed post-concussion syndrome, post traumatic stress syndrome (neither of which are being pursued by Ms. Ahluwalia as part of her claim, and major depressive disorder.
- [148] An additional complication that he attributed to these injuries was dizziness, which he described as "cervico-discogenic vertigo syndrome due to whiplash". He believed that post-concussion syndrome was also a factor in this condition, and further noted that she had been diagnosed with cochlear dysfunction (a condition that was ruled out by one of the expert reports on behalf of the defendants), which was apparently responsible for dizziness in addition to her tinnitus.
- [149] In his view, before the accidents Ms. Ahluwalia was actively involved in work and family responsibilities and had "a positive outlook on life". In his testimony he said that she saw him "for minor issues from time to time nothing really major" (he thought that "once or twice" she had had "some anxiety issues") and that she had been a "happy person".
- [150] According to his report, she now finds herself unable to work, or even carry out basic daily activities, without pain. The need for consistent help with her lifestyle has placed a "reverberating strain" on her and her family, which he has documented in their appointments.
- [151] He noted that seven years after the accident she was still experiencing significant pain and "resultant debilities". He considers her prognosis for further recovery from these injuries to be guarded. He has supervised her care during the entire recovery period and has seen no meaningful improvement. Instead, he has seen a very significant change in her personality, her mood and her function".
- [152] He also described her as "not fit for gainful employment at any level of work", due to her barriers to prolonged standing, "seated work" and the reduced number of hours she is able to work on a given shift or on a given week. Although he mentioned it in the context of her shoulder injury, he believes that in general any requirement for repetitive physical labour will aggravate the underlying soft tissue injuries.
- [153] For ongoing care, he recommends massage therapy and chiropractic, and that she attend a gym to maintain conditioning of, and strengthen the injured areas, aided by monitoring every four to six months by a kinesiologist.
- [154] In his opinion, her PTSD was triggered by one of the accidents, as a "terrifying event", resulting in ongoing fear when riding in a vehicle, and hypervigilance that leads to stress and anxiety. This may in turn have contributed to her developing major depressive disorder, which she suffers from as a result of the toll her symptoms have taken on her "work, sleep and happiness". In addition, she complained of short and long-term memory problems and displayed a "poor and flat affect" during her appointments. He said that she has been referred to a psychiatrist with minimal success, despite trying multiple anti-depressant medication. It will be necessary to monitor her vigilantly for any worsening of

these symptoms. Given the lack of any resolution of them to this point, he found it likely that they will continue to hinder her functioning.

- [155] He was not prepared to agree that Ms. Ahluwalia had a pre-existing mood disorder, although accepted that there was "some element of anxiety and stress" present. In re-examination he emphasized that there were "no major issues" in that respect before the first accident. He did agree that grief over the deaths of her sister and mother, and stress from her own complex family situation contributed to her mood disorder after the accidents.
- [156] Since Ms. Ahluwalia did not ultimately claim to have suffered from a concussion in the accidents, there is no need to summarize his opinion on that issue.
- [157] Also testifying in his capacity as a treating physician, Dr. Cheema confirmed that the complaints by Ms. Ahluwalia in 2014 and 2015 of ailments similar to those that she attributes to the accidents - headaches, fatigue, dizziness, stress at work and neck pain - were not the subject of further appointments until after the accident (in fact, her complaints during visits in March and April 2015 both included headaches, although they were combined with different additional symptoms in each visit).
- [158] He did not think that her post-accident autoimmune disorder was the result of the accidents. He also did not think that it had an effect on her ability to function, which was mainly affected by her depression and pain management arising from the accidents. However it was possible that the condition had exacerbated her depression. In a somewhat digressive follow up answer, he did acknowledge at the end that worry about having an autoimmune disorder can cause depression, but that does not mean that the disorder is the "sole" cause of it.
- [159] He confirmed that Ms. Ahluwalia had a difficult time tolerating anti-depressants. His plan was to arrange for a new psychiatric consultation for her after she could no longer see the first psychiatrist. As it turned out, she did not see any further psychiatrists, and he was the one who ended up having to prescribe antidepressants to her.
- [160] In that regard, he agreed, based on a review of Ms. Ahluwalia's Pharmanet records, that antidepressant medications were prescribed to her infrequently in the post-accident period - five times between May 2018 to March 2023. He stressed that however infrequently Ms. Ahluwalia was receiving this medication, she was still pursuing assistance from psychotherapists.
- [161] Despite this, he agreed that there is "absolutely" room for improvement if she takes antidepressant medicine and receives CBT therapy. However, he pointed out that there are side effects from the medication, such as dry mouth and fatigue, and that taking it will complicate her situation further in light of her overall condition, which is "not clearly focused on one thing". He was not willing to agree that there are types of antidepressants that have fewer side effects for all patients - it depends on the individual.

Dr. Robinson - Neurology

- [162] His clinical practice is devoted entirely to the management of headache disorders. He examined Ms. Ahluwalia in September 2018, closer to the accident dates than any other expert witness in the trial.
- [163] Like Dr. Cheema, he concluded that she sustained soft tissue injuries to her neck, shoulders and back in both accidents. He did not believe that there was any damage to her nervous system from either of them. "Most probably" her ongoing pain in those areas, as well as in her left leg, are myofascial in nature and related to the soft tissue injuries. She has some degenerative changes in her cervical and lumbar spine, but these did not appear to be the cause of her symptoms. He agreed with the suggestion of a previous neurologist who saw her that she be referred to a physical medicine specialist, and he would defer to such a specialist with respect to "further assessment, causation, management and prognosis" of the symptoms.
- [164] He also believed that Ms. Ahluwalia experienced an increase in headaches as a result of the accidents, and wrote that her history and examination were consistent with "persistent posttraumatic headaches" which are also called cervicogenic headaches. Patients meet the criteria for persistent posttraumatic headache if they experience headaches that are temporally related to soft tissue injury to the neck for more than three months. He explained in his testimony that he does not usually use the term "cervicogenic" and in retrospect he would not have included it in his report.
- [165] He also described himself as "being remiss" in not addressing what Ms. Ahluwalia's pre-accident headaches consisted of - in fact, it was quite probable that they reflected a predisposition to migraines. It would have been more accurate to say that the accidents, especially the second one, aggravated that pre-existing condition, rather than saying that they met the criteria for posttraumatic headaches based on only the soft-tissue injuries.
- [166] He did not have sufficient history to agree with the suggestion that when she saw him she was experiencing a continuation of pre-accident migraines. He considered it more probable that there was an aggravation of her pre-existing headache disorder, and the overlay of "cognitive and psychological phenomena" could be acting as persisting aggravators. In other words, it was probable that she was worse than before, but it is possible that she was "back to pre-accident baseline".
- [167] The information that she is alleged to have provided to Dr. Makin as a teenager about experiencing headaches with vomiting does not really change his conclusion. The question, in his view, is whether the current headaches reflect an aggravation related to the accidents.

- [168] She was experiencing fewer severe headaches by the time he saw her. A headache diary that she provided to him showed that she was medicating for them relatively infrequently in June and July of 2018, using Ibuprofen. He agreed with the suggestion that her headaches were "not all that bad" during this period, and that this was not an "incapacitating" headache disorder.
- [169] In a list of the factors that could increase her headaches that Ms. Ahluwalia provided to him, she did not include neck pain. In a checklist that is focused on migraine headaches, she selected some factors that are associated with that type of headache, but Dr. Robinson emphasized that that was not a basis on which to diagnose migraines.
- [170] He was not able to say whether the headache symptoms that Ms. Ahluwalia presented to Dr. Cheema with in December 2014 and March 2015 were migraines - there was too little information available in the clinical notes, in particular whether her accompanying symptoms were only present when she had the headaches. Further the fact that Ms. Ahluwalia described herself as suffering from migraines during her meeting with a counsellor in November 2016, rather than neck tension headaches, was not indicative of their nature. Many patients call more severe headaches migraines, even if they do not fit the medical definition. Similarly, the fact that Dr. Heran, a neurosurgeon, called them migraine-type headaches in March 2018 does not support such a diagnosis in the absence of a fuller history.
- [171] He could find no "central [nervous system] abnormality" that could explain her dizziness and tinnitus. He recommended that she be referred to an otolaryngologist for assessment of those disorders. He did say that it was common for patients with soft tissue injuries to the neck to report these symptoms, but they are not thought to be related to abnormalities in the central nervous system.
- [172] Her feelings of sleepiness may have been related to sleep apnea, which she was addressing with the use of a CPAP machine "with some improvement as of the time of their interview". A specialist in sleep medicine or a sleep disorders clinic could assess the situation further.
- [173] He noted that Ms. Ahluwalia had experienced considerable psychological distress since the accidents, especially since the second one. He believed that this distress was "significant in the aggravation of her posttraumatic headaches and probably many of her other symptoms [,] particularly cognitive dysfunction". In this regard he thought that the extensive investigations and medical attention she had been undergoing (including with a chiropractor who engaged in the "pseudo-science of functional neurology") were "doing her a disservice".
- [174] During his extensive interactions with her he did not identify any cognitive difficulties, only that she looked anxious. He does not apply any formal mental status examinations, because cognitive issues will inevitably surface during the interactions.
- [175] He did not believe that she suffered a concussion in the accidents.

- [176] Based on Ms. Ahluwalia's report of her symptoms he believed that she was disabled from her occupation, which he clarified meant only the position at the bank that she was then unable to return to. He offered no opinion on whether she was disabled from other occupations. Given the length of time since the accidents there was "a definite risk of persisting disability that may be indefinite".
- [177] He believed that she could be managed most effectively in a multidisciplinary pain clinic where she could be educated about chronic pain. While he believed that further interventions may be counterproductive, he would defer to a medical chronic pain specialist on that point.
- [178] He made the suggestion about a multidisciplinary pain clinic because while her headaches in themselves were something she could function with, there was much more to her condition, such as her myofascial pain and the psychological aspects, that was outside of his expertise. He considered her an extremely complex patient, whose management would be outside of any individual specialist's abilities, so it would be better for her to receive care in a setting where all of the necessary specialties were represented, as well as related therapeutic disciplines.
- [179] If one could divorce her physical symptoms from her behavioural and psychological feelings, the former were "not that bad", he said. She was an example of the mismatch that occurs between disability and the actual physical injury, which is understood in pain management to be part of the condition of central sensitization.

Contrary Opinion: Dr. Makin - Neurology

- [180] He saw Ms. Ahluwalia in October 2020. He prepared his draft report in 2021 but a final copy was not requested from him by the defendants until 2023. He did not know the reason for that gap in time. He conceded the obvious point that he could give a better prognosis if he saw her again as of the trial dates.
- [181] As I have previously described, an important piece of information that she provided to him, as part of her medical history, was that when she was "16-17" she suffered from "severe headaches with vomiting". She is also said to have told him that "[t]ypically, an ambulance would be called and the paramedics would administer a Gravol injection, without taking her to hospital."
- [182] He maintained, in the face of the suggestion that he had not recorded her comments accurately, that he had notes of the conversation. He did not consider it significant that other medical professionals who had addressed her headaches had not elicited it, than the neurologist whom she had seen previously, who should have asked about her previous history.

- [183] In light of her more recent pre-accident headaches the earlier occurrences do not make a critical difference to his diagnosis in any event, he said. He relied on her being a lifelong headache sufferer, based on her having told him that "normally everyone has a headache" in reference to her experiences before the accidents. In addition, she could not distinguish the features of her pre- and post-accident headaches, other than saying that the earlier ones responded to acetaminophen (and implicitly at least that they are more frequent). In addition, numerous features and triggers of the post-accident headaches that she described are features of migraines.
- [184] In his report he had recorded her as indicating the pre-accident headaches were "different", although she could not describe them qualitatively or quantitatively. He had the impression that after he zeroed in on the pre-accident headaches she did not want to answer any more questions about them. He was unable to obtain more information from her to distinguish them from the current ones.
- [185] He does not dispute that she has had more frequent and severe headaches since the accident, which is consistent with a diagnosis of migraines.
- [186] He framed the question as being what the diagnostic probabilities are in a patient who presents with both headache and neck pain, as Ms. Ahluwalia does. His probabilistic analysis, based on the relative frequency of migraines and neck pain as the presenting complaints, is that patients are more than four times as likely to have migraine than cervicogenic headaches. From there, the practitioner must consider such matters as the presence of any specific diagnostic features of migraine and cervicogenic headaches, any history of migraines (which favours a current diagnosis, as do undiagnosed past headaches, since migraines are much more common), non-specific neck pain in conjunction with headaches that sound like migraines, and neck pain that relates to one of the known cervicogenic pain indicators.
- [187] Based on this analysis, his opinion is that the teenage headaches were most likely migraine, her pre-accident ones definitely were, and the ones after the accidents most likely are. Given that her teenage headaches appear to be migraines and Dr. Cheema and Dr. Robinson only described her pre-accident headaches minimally, they favour that diagnosis. In contrast, her soft tissue injuries do not reveal any cervicogenic pain generators, so the probability of Dr. Robinson's diagnosis of persistent headache attributable to a traumatic head injury (which Dr. Makin points out is not equivalent to cervicogenic headaches) is low compared to migraine, and is further undermined by Ms. Ahluwalia's history.
- [188] His further opinion is that her predisposition to migraines is not due to the accidents and is more likely "a continuation and/or exacerbation of her longstanding migraine". Nevertheless, he accepted that the migraines she experiences now "could be" related to the accidents, and that "something related to the accident may have played a role". It was also "possible and likely" the accident caused her depression and the depression made her headaches worse. In addition, he accepted that soft tissue pain in the days and weeks after

the accident might have aggravated her headaches. It would help to have a pain specialist deal with the effects of whatever longer-term pain resulted from the accident (which he was reluctant to call soft tissue in that context) on her headaches.

- [189] He finds it likely that Ms. Ahluwalia is also suffering from depression, and that it accounts for her cognitive and emotional problems (like the majority of the experts who dealt with this issue, he is not satisfied that she suffered a concussion). He would defer to a forensic psychiatrist on the cause and prognosis of her depression, although he pointed out that it is something that neurologists encounter frequently and need to be able to recognize and deal with. He also expressed the view that it is generally resolvable with treatment.
- [190] His treatment recommendations are that she be offered migraine treatments (both to stop them from occurring and to prevent them in the future) and "more aggressive" treatment for her depression. Her prognosis is similar to that of the usual patient who has combined migraine and depression, who "tend to respond to treatment and live normal lives". He finds it illogical to assert that her condition is permanent because she has had untreated headaches for more than two years.
- [191] He found no evidence of a problem with balance, or with a central hearing problem, but he defers to the otolaryngologist Dr. David on the latter point.
- [192] He was not swayed by the fact that other specialists diagnosed cervicogenic headaches, because they were not based on any actual evidence relating to the structure that generate such headaches. Further, she complains of bilateral headaches, which are not cervicogenic.

Pain conditions and mood disorders

Dr. Lau - Pain medicine

- [193] She is an anesthesiologist who also has a subspecialty in pain medicine. Among her qualifications, she helped establish pain medicine as a recognized subspecialty in Canada and is the medical director of an interdisciplinary pain management clinic, which she co-founded in 2013.
- [194] She met with Ms. Ahluwalia in February 2022. They had a two-hour interview, followed by a physical examination, but about ten minutes into that examination Ms. Ahluwalia appeared to have a panic attack. Despite Dr. Lau's efforts to calm her down, she was unable to continue with the examination.
- [195] The most relevant information that Dr. Lau was able to gain during the brief physical examination that she was able to carry out was that Ms. Ahluwalia felt mid-cervical pain when flexing her neck (bending it forward) but was within the normal range of motion when bending it backwards and rotating it to each side. She also expressed tenderness to touch in the upper left back area, which was as far as Dr. Lau was able to get in palpating the areas in question.

- [196] In overview, Dr. Lau's opinion is that the accidents caused Ms. Ahluwalia's neck, shoulder and back injuries and materially contributed to her headaches, mental health problems, and cognitive problems. Most significantly, she believes that they materially contributed to Ms. Ahluwalia developing central nervous system sensitization. "Central sensitization" as she went on to refer to it, is at the heart of Ms. Ahluwalia's claim.
- [197] She explained that this disorder is understood to involve multiple mechanisms in the body. In essence, it occurs when the normal inflammatory response to an injury or infection, which usually recedes after the problem has been dealt with, remains at the heightened level. This affects the glial cells - the cells in the brain and spinal cord that are the "housekeepers" of the nerve system, and they send out signals to the body that can lead to a wide variety of effects, including cognitive difficulties, fatigue and pain spread throughout the body. When the glial cells cause an inflammatory response themselves, it is known as neuroinflammation.
- [198] Central sensitization is an umbrella term that describes the mechanism of widespread body pain, affecting the tissues and especially the processing of nerve signals. It "underpins" many patients with chronic pain, whether from whiplash-associated injuries as in Ms. Ahluwalia's case, or due to other conditions. Crucially, it requires a trigger of some kind, at which point "the genetics get activated".
- [199] She described Ms. Ahluwalia as presenting with whiplash-associated disorder ("type II") after the first accident, which included neck and shoulder pain and headaches. Ms. Ahluwalia also demonstrated symptoms that were related to these injuries, such as concentration and memory issues, dizziness, and what may have been early-onset tinnitus.
- [200] The second accident exacerbated all of these symptoms, and added the additional ones of left low back and leg pain. She described Ms. Ahluwalia's condition immediately after this accident fitting the "working diagnoses" of post-traumatic headaches involving cervicogenic (caused by a problem with the neck) components, "migraine features", aggravation of her previous whiplash-associated disorder, and nonspecific mechanical neck and low back pain. In her opinion, Ms. Ahluwalia also demonstrated the clinical signs of concussion immediately following that accident, although she is not diagnosing post-concussion syndrome.
- [201] Most importantly, the complex further health issues that Ms. Ahluwalia developed after the second accident demonstrate central sensitization. On the Central Sensitization Inventory, a tool that was created to bring more objectivity to these findings, Ms. Ahluwalia demonstrates 22 out of the 25 listed symptoms that are "known to be highly associated with central sensitization syndromes." Each of the symptoms is to be rated from one to four based on its severity, and Ms. Ahluwalia rated each of her symptoms at the highest level, for a total of 88 out of a possible 100 score. A person with a score above 40 is considered to be significantly disabled.

[202] Dr. Lau found it significant that in 2020 Ms. Ahluwalia's level of a protein that is released by the liver as part of an inflammatory response in the body was three times the normal level, and in 2021 it was six times the normal level.

[203] She noted that the treatments that Ms. Ahluwalia has received so far were directed to a specific part of her anatomy or to a specific syndrome, rather than addressing her condition as a whole. Most of them have either been ineffective or made the situation worse, and the multiple medical instigations that have been carried out have come back with normal results despite the problems that she experiences. She said that her widespread problems have also meant that her direct injuries from the accidents were not given priority, and have been undertreated, which exacerbates the mental health, cognitive and other problems that they cause, as well as the overall deterioration of her health in the form of her lengthy list of other health concerns. The management and treatment that she is recommending for Ms. Ahluwalia addresses her conditions as an overall complex and interrelated system.

[204] In addition to the soft tissue injuries and mood disorders that were caused by the accidents, Dr. Lau said that the additional symptoms that the accidents played a role in as part of central sensitization were:

4. Hearing difficulties and tinnitus linked to cochlear outer hair cell dysfunction slowed central auditory processing.
5. Various side effects from treatments (For example, hearing treatments worsened her headaches, or prednisone worsened mental health).
6. Nonspecific bilateral jaw pain, numbness to the bottom lip and chin and diagnosed with facial paresthesia.
7. Frontal and maxillary pain and pressure diagnosed as nasal obstruction, septal deviation, inferior turbinate hypertrophy and mucosal edema.
8. Marked incontinence, urinary urgency, and early interstitial cystitis.
9. Eczema and possible food allergies
10. Lower pelvic pain requiring fibroid embolization and hysterectomy but not resolving symptoms.
11. Ongoing severe fatigue, weakness, headaches inability to concentration and memory issues and phonophobia diagnosed as part of post-concussive syndrome, vestibulo-cerebellar dysfunction, and ponto-mesencephalic dysfunction.
12. Pain progressed into the upper left thigh, right back, buttocks and right leg, and left lower leg leading to difficulties in walking and driving.
13. Sleep apnea and she was treated with a CPAP machine.

14. Chest discomfort, atypical chest pain, presyncopal episodes and shortness of breath not yet diagnosed.
15. Dyspepsia, GERD, IBS, and benign rectal blood loss.
16. Ongoing joint pains and swelling not yet diagnosed.
17. Painful swallowing and lesions and diagnosed with oral pemphigus vulgaris
18. Tested COVID positive in early January 2022 with resulting fatigue.

- [205] It emerged during cross-examination that this list was of the various symptoms that Ms. Ahluwalia's doctors have "picked out" since the accidents. In other words, they are all the things that have occurred medically after them. Dr. Lau explained that her job is then to understand which symptoms would not have occurred without them or, as she put it "I just wanted to, myself, make sense of, wow, there's all these things that have just shown up after the car accidents". For example, she was not asserting the accidents caused Ms. Ahluwalia to contract COVID, although there was an overall issue of immune suppression. Other than the tinnitus and the pelvic pain, she would not have expected Ms. Ahluwalia to develop this constellation of symptoms otherwise. She gave the example of the jaw issues, which most neurologists do not consider when dealing with headaches. She is not surprised Ms. Ahluwalia would develop them as a result of grinding and clenching her teeth due to unremitting pain.
- [206] She elaborated on this process, explaining how headache and neck pain after an accident can cause further problems, such as disturbed sleep, leading to metabolic, blood sugar and/or mood disturbances. This leads to the ultimate cascade of inter-related issues. For some people "it's like a tipping point of reaching a cliff and then a whole host of things just start that would never have ensued if the initial problems had resolved". The logic underlying the analysis seems to be that it is unusual for a person in their "normal trajectory" to suddenly develop all of these other issues, hence central sensitization is understood as a "constellation" or "umbrella" of symptoms.
- [207] The only pre-existing condition that she said had not been made symptomatic by the accidents was Ms. Ahluwalia's GERD. If the accidents had not occurred, she did not expect that any of those other pre-existing conditions would have produced the effects that Ms. Ahluwalia is currently experiencing.
- [208] She agreed with the suggestion that if Ms. Ahluwalia had chronic pain for a period of years that began before the accidents and continued after them, that could have provided the necessary trigger. Specifically, the two years of pelvic pain that Ms. Ahluwalia complained of before the first accident could be chronic pain that leads to central sensitization. However, she found it significant that the apparent "cascade of symptoms" did not occur until later, after the accidents. Based on her experience, if pelvic pain was the trigger she would have expected to see the other symptoms within about a year.

- [209] Although GERD is not a central sensitization symptom, she noted that Ms. Ahluwalia has made other gastrointestinal complaints (dyspepsia, irritable bowel syndrome and benign rectal blood loss) that are "more in line" with the disorder.
- [210] When it was put to her that Ms. Ahluwalia's numerous other health symptoms before the accidents - also including her other gastrointestinal complaints and her painful urination - could have been what triggered central sensitization, she responded that one needs to look at the point where the person's function is affected. That is where the "tipping point" is, she said.
- [211] She gave a guarded prognosis for recovery, because of the length of time that these conditions have continued since the accidents. The root causes of Ms. Ahluwalia's central sensitization have only been minimally addressed so far, with some psychological and psychiatric support. A further reason for a guarded prognosis at this point is that recovery can be limited by the complex contribution of the patient's specific genetic makeup. So in this case, while the recommended therapies may decrease the intensity of the central sensitization, she is concerned that some of Ms. Ahluwalia's conditions (such as her autoimmune condition and sleep apnea) may not be reversible.
- [212] More generally, she considers it highly likely that other medical conditions and health problems will develop in the future. Undiagnosed or untreated problems with each area of the body exacerbate other problems, leading to "a cascading decline of health over time".
- [213] She was not prepared to concede that the lack of a full physical examination of Ms. Ahluwalia diminished the thoroughness of her report. The abbreviated examination provided information about Ms. Ahluwalia's range of motion, some of her cognitive processes and, based on her inability to continue, how much effort she is able to tolerate. All of the opinions that she did provide were sourced in the information that she had been able to obtain, and it is in the nature of medicine that new information may lead to the formulation of a different plan.
- [214] Although she was satisfied that Ms. Ahluwalia met three of the four criteria for a concussion from the second accident (a physical injury, effect on mood and effect on cognition) and a diagnosis of it could be made, these symptoms overlapped with the other conditions that she had identified, and it did not make any difference to her recommendations (and, as I have said, Ms. Ahluwalia's counsel did not ultimately seek a finding that a concussion had been sustained by her).
- [215] She would defer to the opinion of a neurologist that Ms. Ahluwalia's migraines are a continuation of her pre-accident ones.
- [216] The fact that Ms. Ahluwalia showed a normal range of neck motion in her examination, and was found to have similar results in examinations conducted by other specialists in 2018, 2019 and 2020 does not persuade her that neck pain is not a significant factor in her overall condition. She explained that range of motion is not linked to the level of disability or the

"mechanism of action" (by which I took her to mean the mechanism that causes the pain). This is shown by the extent of the pain that she demonstrated in the palpation of her upper back area. The only way to accurately diagnose the cause of the pain is to target a specific area and see if the procedure undertaken relieves the pain.

- [217] When it was put to her that Ms. Ahluwalia's description to her of her neck and shoulder symptoms was not of "severe" pain, she explained that her definition of severity is based on the persistence of the pain beyond the normal stage of healing, its constant presence, and the fact that it is disabling. Similarly, she agreed that based on Dr. Robinson's assessment in 2022, Ms. Ahluwalia's lower back pain was "mild," but stressed that it is the way that a symptom interferes with a person's function that is significant to her opinion, not the intensity of their pain.
- [218] She conceded that Ms. Ahluwalia had complained of tinnitus (in certain situations) before the accidents, and corrected her assertion that it had developed as a result of them. It was its exacerbation as a result of the accidents and the confirmation that it is the result of cochlear hair dysfunction that were significant, in her view.
- [219] Counsel pursued the fact that the only complaint of jaw pain in Ms. Ahluwalia's records was a single incident in which she went to emergency in December 2016, complaining of such pain for the previous three weeks. Dr. Lau emphasized that a lack of documentation in the notes does not denote an actual lack of symptoms, and that it does not change recommendations, although she added that Ms. Ahluwalia's disability "is not related to [the jaw pain], that I can see".
- [220] If Ms. Ahluwalia had only worked as a lawyer for one and a half years instead of the four that she described during their interview, Dr. Lau accepted that one of several interpretations is that she is an unreliable historian. She also failed to tell Dr. Lau that she had taken two and half months off for medical issues in the year before the accidents, instead denying that she had taken "excess time off", although Dr. Lau would need to know whether it was a situation in which she was off of work because she could not perform her duties, as opposed to for specific medical purposes.
- [221] The fact that Ms. Ahluwalia understated the length of her employment with DIVERSEcity by about a year in their interview did not concern her, because the relevant point from her perspective is that Ms. Ahluwalia attempted to return to work but could not sustain it. This informed the important question of whether she has the capacity to be competitively employed. There is no correlation between simply returning to work and there being an actual improvement in her condition.
- [222] When she wrote that Ms. Ahluwalia "did not have a history" of anxiety, depression of post-traumatic stress disorder before the accidents, she meant a long-standing history of treatment for those mental health diagnoses, such as hospitalization and follow up with a psychiatrist.

- [223] Although she was not aware that in the weeks before she met with Ms. Ahluwalia that there had been significant conflicts with her husband and son, she was looking at Ms. Ahluwalia's entire history of mood disorders, including the involvement of her family physician and the interventions and medications that she had received. The questionnaires that Ms. Ahluwalia completed as part of the interview process validated the intensity of her symptoms and raised the concern about whether she was getting the help that she needed.
- [224] She agreed that depression was "not necessarily" a new problem for Ms. Ahluwalia if she was prescribed an anti-depressant in February 2015, but noted that if such medication is truly for that condition, it should be used for at least four to six months. The assessment by her family doctor of mild depression in June 2014 was not as meaningful in her view, because it did not appear that any medication was prescribed.
- [225] She was also not prepared to accept that Ms. Ahluwalia only filling one prescription of antidepressant medication after the accident reflected the severity of that depression. There are other reasons, such as side effects, that patients stop taking prescribed medication. Importantly from her perspective, depression is also a function of inflammation.
- [226] Based on her experience with chronic pain patients, the fact that Ms. Ahluwalia spoke of other life stressors during many of the interventions for her mood disorders after the accidents did not necessarily indicate that other issues, most significantly her accident injuries, were not also important to her. She also resisted the suggestion that it is possible to say that Ms. Ahluwalia's accident-related mood symptoms resolved and were replaced by symptoms based on other stressors. In either case her symptoms are influenced by the underlying problems caused by the accident, such as undertreated pain, sleep disorder and issues with cognitive processing.
- [227] Dr. Lau's report indicated that further investigation for Addison's disease (adrenal insufficiency) will need to be done, because some of Ms. Ahluwalia's symptoms, which are also found in those suffering from that disease, had been worsening in the months before the assessment. She was also suffering from swelling and joint pain, which are signs of both Addison's disease and autoimmune disorders. However she clarified that Addison's disease is included in the cascade of symptoms that results from central sensitization. Dr. Lau agreed that the conditions that were being investigated could affect Ms. Ahluwalia's ability to carry out housework.
- [228] She recommended that Ms. Ahluwalia be referred to a functional medicine specialist for an assessment of the genetic factors that explain her multiple symptoms.
- [229] She recommended the following treatments:
- For the pain from neuroinflammation, a trial of glial cell modulators (oral medication that has been shown to reduce the inflammation messages being sent by these cells);

- If those medications are not helpful, a trial of cannabis therapy, to stabilize joint pain, normalize sleep and reduce anxiety;
- To address the quality of Ms. Ahluwalia's sleep and her mood, a trial of transcranial magnetic stimulation, which Dr. Lau explained "may have a role" in reducing depression and pain, as suggested by recent Canadian Psychiatric Association guidelines (This is for depression that has been resistant to other forms of treatment. She would defer to the psychiatrists who provided recommendations on treatment of Ms. Ahluwalia's depression and anxiety);
- For the same purposes, a short course of ketamine infusion therapy. Ketamine blocks a specific pain receptor within the body that is associated with nerve pain;
- For the management of the central sensitization, pain infusion therapy, using lidocaine (a local anesthetic), or a longer course of ketamine;
- For the management of head, neck and back pain from her facet joints (that is, the soft tissue injuries of which she complains), nerve blocks to confirm that is the source of the pain, followed by radiofrequency lesioning (burning the nerve so it does not transmit pain);
- If that procedure is unsuccessful, then prolotherapy, which stimulates the regeneration of injured ligaments;
- If glial cell and infusion therapies are unsuccessful, an additional therapy called caudal pulsed radiofrequency, which was not further defined;
- Botox injections for migraines (blocks for headaches could also be considered after cervicogenic causes have been ruled out).
- Long-term guided rehabilitation to assist with factors related to Ms. Ahluwalia's movement, core stability, and weight loss (in Dr. Lau's opinion such rehabilitation will have limited success until the central sensitization is addressed);
- Assistance to help rehabilitate her colon microbiome, which has been found to have a significant connection with the central nervous system, would also help improve her gastrointestinal and other symptoms;
- Vocational training, even for community work, will enhance her overall rehabilitation and specifically her sense of self-worth;
- Taxi vouchers to address her current inability to drive long distances;
- A defensive driving course to increase her confidence and reduce her driving anxiety (Dr. Lau agreed that if Ms. Ahluwalia only stopped driving for two or three weeks after the second accident and was able to drive to locations in Surrey and New Westminster for interpretation jobs in 2018-19, this course would not be required, but that if she was unable to drive longer distances it still would be);

- An ergonomic assessment of her home activities and sleep supports, to improve her energy and stamina;
- Housekeeping support (although Ms. Ahluwalia told one of the experts that she was performing the bulk of the housework in 2018, Dr. Lau maintained that she did not have "full capability" to carry out this task "without a bit of extra help");
- Peer support from groups in the chronic pain community; and
- Psychological support for her family to assist them in dealing with the physical and emotional stressors of her condition.

[230] She agreed that it was normally important to begin with the least invasive form of treatment for Ms. Ahluwalia's condition, and that there were numerous therapies, for example cognitive behavioural therapy, that she had not tried yet. However she explained that Ms. Ahluwalia had spent the seven years since the accidents stuck at the first layer of treatment, without effect, so she would recommend proceeding to the so-called middle layer - the glial cell modulators and the pain infusion therapy.

[231] She also agreed that if Ms. Ahluwalia had gastrointestinal and urinary symptoms, chemical sensitivities and a genetically-based autoimmune condition before the accidents then she would be recommending treatments to address them regardless of those accidents. Glial cell modulation would be used if these symptoms are more widespread, leading to a concern that there is an overall problem beyond the problems with each specific system.

[232] Based on the tension and discord that Ms. Ahluwalia described, she would also have recommended family counselling even in the absence of the accidents, but if the conflict arose because of difficulties in dealing with Ms. Ahluwalia's accident-based limitations, it would be required specifically in the context of those injuries.

[233] As an assessor rather than a treating doctor, it was not open to her to share the recommendations in her report with Ms. Ahluwalia, and she was not aware whether those recommendations had been passed on to her.

Dr. Lu - Psychiatry

[234] He is a forensic psychiatrist whose practice includes the assessment and treatment of complex pain. His focus is on the psychological elements and physical treatment of such pain, rather than on the underlying conditions that have produced it. He assessed Ms. Ahluwalia in May 2023.

[235] In his opinion as of the date of the first accident there was no clinical indication that Ms. Ahluwalia had a major psychiatric illness and she had, at worst, an average psychiatric risk of developing one.

- [236] He considers that constellation of pain and other physical symptoms that Ms. Ahluwalia has experienced since the two accidents to be chronic pain, in that it has lasted more than six months and has become more than a manifestation of the underlying disease processes. He explained that chronic pain and psychiatric problems have a mutually reinforcing relationship - the pain causes mood problems which in turn increase the person's experience of the pain. Further, the "secondary losses" in the patient's life due to their pain, such as family problems, make the psychiatric impact worse.
- [237] As Dr. Lau had, Dr. Lu referred to central sensitization as leading to the development of more widespread pain and increased pain intensity, and highlighted that psychological distress is an integral part of the central sensitization process. In his view, that condition has increased Ms. Ahluwalia's pain, lowered her pain threshold, and increased her risk of developing psychiatric symptoms. He said that based on the progress of her pain and related disability, Ms. Ahluwalia has the "salient features" of central sensitization.
- [238] In his opinion, she meets the criteria for major depression as well. The litany of factors that demonstrate this include her frustration with her chronic physical symptoms, significant depressed mood, anxiety (which he described as "prominent"), cognitive symptoms, reduced energy and sleep changes. She also engages in avoidant behaviour and is socially isolated. In general, "[h]er intense preoccupation with her chronic physical symptoms is consistent with the mutual aggravation of her chronic pain and her major depression".
- [239] She also meets the criteria for somatic symptom disorder, with "predominant pain". He explained that this diagnosis is made when a person's response to the pain from a physical condition plays a central role in how the person experiences that condition. It results in a preoccupation and obsessive rumination on how their pain affects them on a day-to-day basis. He added that SSD can be self-perpetuating, in that even if the underlying medical condition is improved the disorder will still fuel distress related to physical symptoms. It is interrelated with central sensitization and its effects combine with Ms. Ahluwalia's major depression to lead to more severe symptoms and a higher degree of functional impairment.
- [240] Crucially, it is his opinion that "the 2016 MVAs pla[y] a direct and contributing role in the onset and maintenance of her major depression and her [SSD]". He believes that these conditions would have caused significant occupational disability even without the underlying physical injuries.
- [241] At the time that he saw her, Dr. Lu found Ms. Ahluwalia to have "moderately severe to severe" symptoms of these disorders. He identified her as being at a "highly critical" period in her life, in which she is retreating from the basic demands of living.

- [242] On the positive side, he found that she has some insight about her difficulties and has benefitted from her past psychological treatment. Since her chronic pain cannot be cured, addressing these disorders is more likely to increase her functional capacity. Without comprehensive treatment, she will remain disabled, with a risk of increase in her level of disability.
- [243] With respect to that treatment, he found her to be "on an appropriate antidepressant[2]", which he expected she would continue with for at least two years after an improvement in her condition and may require indefinitely, but suggested that she be cautioned about the dangers of long-term use of her anti-anxiety medication, Lorazepam.
- [244] Given the importance of sleep to her overall function, she should also do a trial of the anti-insomnia drug Lemborexant.
- [245] In his opinion, she requires "high-intensity personalized management" to address the complexity of her symptoms, and aggressive treatment to avoid her becoming entrenched in her current state and being left with permanent disability. This would include occupational or rehabilitation therapy to increase her activity level, personal training to increase her physical tolerance (and re-start physical activity without injuring herself) and "a few sessions" of family therapy. He agreed that he would be recommending family therapy even in the absence of the accidents, although he "highly doubts" she would have needed it without them. He went on to compare the unlikelihood of her having taken such counselling to her unwillingness to take antidepressants.
- [246] He considered the likelihood of her returning to full-time work low - she will have to re-establish a daily routine and then try working in a "highly flexible" part-time position.
- [247] Overall her prognosis is guarded, he concluded. It is rare for chronic pain that has lasted for more than two years to remit, and her central sensitization weighs against that possibility, as do the uncertainties in her physical capability. The longer she goes without an enhanced structure in her life, the more likely it is that her depression and SSD will worsen, and the longer she has those disorders, the more likely it is that her function will decline even more. Even with a full remission she has a 30% chance of a relapse within five years, and over her lifetime she will likely experience a waxing and waning of her chronic pain and mood symptoms.
- [248] He conceded that if Ms. Ahluwalia had not been ambivalent about taking medication recommended by her psychiatrist, her condition could have improved sooner. While it is common for people who are prescribed antidepressants to stop taking them (the rate of compliance for more than two years is less than 50%), for example due to the stigma of being on them and the side effects, if Ms. Ahluwalia had taken that medication consistently since the accidents it was likely that she would be in a better position than she was.

- [249] He provided a supplementary report that took into account his review of the notes of Dr. Parattukudi, Ms. Ahluwalia's psychologist. While he acknowledged that family relationship challenges had formed part of the subject matter of those sessions, and that such challenges play a role in psychiatric conditions, he said it was highly unlikely that she would have developed major depression and SSD in the absence of her chronic pain and loss of capacity.
- [250] He did not review the records of Ms. Ahluwalia's family doctor before he prepared his reports. He reviewed them later and testified that they contain some information that differs from what she told him. The pre-accident complaints to her doctor on which she was cross-examined were put to him and he agreed that those additional complaints about her health would have been important for him to know. He declined to characterize her as being a poor historian or disingenuous as a result, preferring to leave that finding to the court, although he did concede that she probably had more pre-existing vulnerability or susceptibility to developing these disorders than he thought when he wrote his reports, which "highlights the elements of central sensitization".
- [251] He agreed that based on those pre-accident complaints it is possible that she had pain sensitization before the accident. If everything in the records as it was put to him by counsel then "there will be elements of chronic pain", he said. Specifically, he agreed that it was "entirely reasonable" that her GERD and pelvic pain complaints are a continuation of her pre-accident conditions, although he did not make the same concession about her neck pain, because he defers the diagnosis of her underlying physical pain complaints to the appropriate specialists.
- [252] When he was asked whether it was possible that Ms. Ahluwalia would have suffered chronic pain due to her pre-existing conditions or the ones that developed in 2020 even if the accidents had not occurred he said "yes there is a separate element", and gave an example of another contribution to her pain - her cervical spine radiculopathy (pinched nerve) that was not previously identified.
- [253] He also agreed that Ms. Ahluwalia might have had "elements" of SSD in relation to her pre-existing conditions, if she was very concerned about them before and after the accidents. While he emphasised that the ability to maintain function is key in making such a diagnosis, he said that he "can accept that she has vulnerability, susceptibility and possibly elements of that [i.e. SSD] that make her much more vulnerable to additional insults [in the medical sense]."
- [254] When Ms. Ahluwalia's pre-accident mood-related complaints as disclosed to her family doctor were put to him, he agreed that he would have wanted to know about them, and that in light of them he would characterize her as being at a moderate psychiatric risk before the accidents, although her ability to work in that period does show resilience on her part, and work is considered a "protective factor" in relation to a disability of this kind.

- [255] Once again, while she may have had "elements" of depression before the accident, he thought it was unlikely that she met the full diagnosis of major depression. If she did it would have been "the mildest spectrum of the condition" but he could not rule it out "one hundred percent". In the same way, while he conceded that she had described "growing up with anxiety" to Dr. Parattukudi, but noted that there had been no pre-accident diagnosis of chronic anxiety disorder. He returned to the theme of functionality, and questioned how bad her anxiety could have been if she was able to engage in challenging tasks such as completing law school and immigrating to Canada. Insufficient parental love as a child, as reflected in her additional comments to Dr. Parattukudi, could be a factor in the development of her mental health, he agreed.
- [256] He was not prepared to isolate Ms. Ahluwalia's autoimmune conditions (which he was aware of but did not know she had been formally diagnosed with) from the rest of her issues, because stress plays a role in triggering autoimmune symptoms. He did agree that if she had developed a number of symptoms in early 2020 (when the autoimmune condition surfaced), he would not be able to say where those symptoms came from. If they continued for more than six months they could be described as chronic, he agreed, and if they continued for "a period of time" they could play a role in pain sensitization.
- [257] In re-examination, Ms. Ahluwalia's counsel put the additional facts to him that her pre-accident neck pain complaints did not require any follow-up from her doctor or from physiotherapy, her work-related stress complaints were not repeated and a portion of her time off in 2015 was because of fibroid surgery, and that she was handling the bulk of the household duties for the family. In his view, these facts reinforced his general position that a patient's functionality prevails over hypothetical questions about the potential affects of various stressors. If Ms. Ahluwalia was able to maintain a good level of functioning despite them before the accidents, then that points to the accidents as a significant cause of her deterioration. Her pre-accident difficulties show vulnerabilities, but vulnerabilities require external forces to act on them (to produce a diagnosable condition, I understood him to mean).
- [258] He thought her grief over her sister's death in March 2018 could have had an additive effect in relation to any pre-existing depression, but accepted it as reasonable that some people will experience depression as a result of such a bereavement. He also accepted that the fact that she told Dr. Parattukudi that she had been "good" for the six months preceding her sister's death as supporting the role in her condition played by her sister's death.
- [259] Addressing her statements to Dr. Parattukudi in April 2018 about having "good days", with improvements in the amount of her pain, her energy, and her connection to her family he said it was normal for people with chronic pain to have "fluctuations". It would not make sense for someone to be at the same high pain level every day.

- [260] He agreed that he would have wanted to know about the comments that she made to Dr. Parattukudi about being able to manage her symptoms better, and about a bad day caused by her husband verbally abusing her, when he interviewed her (although he had access to the interview notes when he was concluding his report).
- [261] He characterized another batch of non-accident related life concerns that she narrated to Dr. Parattukudi in August 2018 as the kind of internal/external stressors he had been explaining (which Ms. Ahluwalia is less able to cope with because of her overall condition). The same was true of the negative effects she related following the death of her mother close in time to her sister's death, and the concerns she expressed about things happening to her, as well as the nightmares she was having about her husband leaving her for another woman, and how her husband's anger issues were affecting her and the children. The concerns about her husband's potential infidelity and the difficulty of raising it with him, as well as catastrophizing about her upcoming surgery would also have been important to know about when he was interviewing her, although he considered her catastrophizing about surgery to be consistent with physical concerns and anxiety that is found in SSD.
- [262] As to the absence of reference to accident symptoms in these exchanges, he found it unlikely that a patient in this situation would focus on pain symptoms when she had treating physicians for that purpose, and stressed that the session is not meant to be "a list of grievances". In fact, this is an example of how a person with major depression has reduced capacity to deal with stressors, like the fear of a spouse's infidelity or the deaths of close family members. He found it speculative to try to determine how she would have managed those stressors in the absence such depression and chronic pain.
- [263] Finally in terms of interactions with her psychologist that were unknown to him when he interviewed her, he still would have liked to know about her complaints in 2020 and 2021 about the increase in her anxiety and depression due to her autoimmune condition, and her description of feeling triggered by her husband's behaviour. Despite these additional stressors, his opinion that the accident remained a direct and contributing cause of Ms. Ahluwalia's major depression and SSD remained unaltered. He made the "assumption" that the accidents "at least play some role" in her pain, and explained that the contributions of these various different factors to her condition cannot be separated from each other.
- [264] After hearing about the additional stressors that she faces, and considering them in light of the periods of increased activity that she has been able to achieve since the accidents, his conclusion is that they essentially balance each other out, and that his guarded prognosis, including with respect to a return to work part-time, remains.

Contrary Opinion - Dr. Riar - Psychiatry

- [265] He was the defendants' expert witness on these issues. Like Dr. Lu, he is a forensic psychiatrist. In addition to conducting independent medical assessments, he has a private psychiatric practice, is the director of the provincial youth forensic program and also has a sexual medicine practice at Vancouver Hospital. He readily conceded that he is not a chronic pain specialist, and that Dr. Lu is in a better position to comment on a chronic pain issue.
- [266] He interviewed Ms. Ahluwalia in August 2020.
- [267] Like Dr. Lu, his opinion is that she has SSD. At the time of their interview, it was of a moderate to severe degree. She was focused on her physical symptoms more than her emotional ones, and while she was "well versed" in describing those physical symptoms, she had difficulty in expressing "the real meaning" of them, he said. She believed, despite the passage of time and the various treatments she has received, that they were getting worse.
- [268] His further opinion, based on her pre-accident history of nonspecific health complaints, that she was vulnerable to developing SSD. Some people tend to worry about trivial or mild symptoms, and will be vulnerable to develop the disorder if there is a triggering event. The intensity of her symptoms increased after the accident, and they likely played a part in the disorder's emergence. Her anxiety and depression and the various social stressors to which she was subjected also "played a significant part in perpetuating and aggravating" the SSD.
- [269] The diagnosis of SSD is based on the distress that the patient experiences, and the dysfunction associated with it, rather than any underlying physical problem, so he did not accept the suggestion that the chronic pain and central sensitization that she experiences should be added to the considerations that make her prognosis more difficult. He agreed however, that "physical medical doctors" were the experts when dealing with such factors.
- [270] His additional diagnoses were that she has generalized anxiety disorder and either persistent depressive disorder or major depressive disorder. Her depression was moderate to severe at the point he interviewed her.
- [271] He thought that her anxiety and depression existed to some extent before the accidents, although they were not formally diagnosed. They were aggravated by the accidents, although the accidents were not the sole cause of her deterioration. The social stressors that affected her SSD also played a significant role in these disorders. In his view, Ms. Ahluwalia's anxiety and depression "lingered around" due to the lack of psychiatric interventions, and being on steroids since 2020 due to the autoimmune condition also affected them negatively.
- [272] He noted her reluctance to engage in medical or psychiatric treatment and her reference to "unusual" effects of having taken antidepressants (such as being unable to speak for three days). He explained that there are ways of addressing difficulties with taking this

medication - there is a wide variety of different antidepressants, and they can begin at a very low dosage that is then increased. He did not consider it appropriate for a patient to simply stop taking medication because of such difficulties. It is necessary to exhaust all of the approaches "over the years", and if her condition cannot be improved, then it should at least be maintained. His limited access to medical records is not a barrier to the opinion that her treatment thus far has not been sufficient - no matter what has been tried, she is not getting better. He was convinced by Dr. Lu's report (which is more current) that proper treatment has been lacking. He considers it the family doctor's job "to find a better psychiatrist" if the existing treatment is not working.

- [273] In his view Ms. Ahluwalia's complaints of cognitive problems, the change in her demeanour, and her panic attacks arise from these disorders, rather than being the result of stand-alone ones. He noted that at some point it had been mistakenly suggested to her that she had suffered a concussion in the second accident, and that this had led to her to receive treatment for such an injury, which was detrimental to her situation.
- [274] He believed that her anxiety in connection with driving is also part of her generalized anxiety.
- [275] On the issue of treatment, he considered it "paramount" that she receives psychotherapy (in the form of 14-16 sessions of cognitive behavioural therapy) and psychotropic medications (that is, anti-depressants). This should be provided by a psychiatrist or psychologist, rather than a counsellor. He believed that her reluctance to take medication can be overcome by support from her family doctor or a psychiatrist.
- [276] He also believed that involving her in physical exercise would be beneficial, as well as her securing volunteer work or a part-time job, or attending a group program for anxiety and depression. He clarified the purpose of these activities was to distract her from focusing excessively on her problems. He agreed with the suggestion that volunteering would be preferable to part-time work, to avoid her having to meet deadlines of work according to someone else's schedule.
- [277] He considered her short-term prognosis to be guarded, but believed that the recommended interventions can improve the course of her illness and her functioning. His long-term prognosis was that after six months she could achieve remission and become functional again. An improvement in her anxiety and depression would lead to "much" improvement in her SSD. Nevertheless, the likelihood of such a recovery depends on how she responds to treatment. Her prognosis is more difficult because she has three separate disorders. They aggravate each other to make her situation worse, and successfully dealing with one of them does not eliminate the others.
- [278] He said that she is currently resigned to being disabled, and any expectation that she can do more than she is currently doing will be counterproductive (in the sense of making her symptoms worse) until she receives encouragement and ongoing psychotherapy.

- [279] Like Dr. Lu, Dr. Riar prepared a second report that took into account a review of Dr. Parattukudi's notes of interviews with Ms. Ahluwalia. Considering the themes explored in those interviews, which mainly had to do with family issues, grief over the death of family members and feeling unloved, he concluded that she has had a pervasive pattern of dissatisfaction with her life over many years, and that there has been perpetual conflict with her husband and at times with her children. In his view her social situation, which has little to do with the accidents, has a great influence over her depression and anxiety. He also she believed she had to "step out" of viewing herself as a victim, which can be difficult, but psychiatric care and psychotherapy, in which family and relationship issues are addressed, will be beneficial in that process.
- [280] He acknowledged that a person with SSD is likely to have interpersonal problems, and that it would have played a role in Ms. Ahluwalia's relationships with her family. In addition, the psychiatric disorders that she suffers from would influence the way that she perceives the world.
- [281] While he agreed that the antidepressants escitalopram and duloxetine, which have previously been provided to her, can have side effects such as nausea, constipation, drowsiness and stomach pain, they are not common to all users and they can be managed. Duloxetine actually has more of a tendency to cause sleepiness, he explained. There are some rarer side effects that require the medication to be discontinued immediately.
- [282] He agreed that there can be other side effects that are not typical. He has never heard of not being able to speak for three days as a result of taking these medications, but agreed that what Ms. Ahluwalia described to him would have been a frightening experience.
- [283] He also agreed that his assessment, having been conducted in 2020 "might be a bit stale". While he was only provided with medical records for Ms. Ahluwalia up to 2018, based on their interview he was satisfied that not much had changed since then. He did agree that when he prepared his additional report in 2023, it would have been helpful to have her medical records since 2018, and that those records could have had a significant impact on his report. He agreed that her family doctor would have more understanding of what was going on in her life based on the frequency of their contact, but he would not defer his diagnoses to the family doctor on that basis.

Dr. Parattukudi - Counselling

- [284] He is a registered clinical counsellor - his Ph.D. is actually in education. In addition to the expert opinion set out in his report, he also gave some evidence of the treatment that he provided to Ms. Ahluwalia.
- [285] He began seeing her in 2018. The initial presenting issue was her sister's death, accompanied by sleep disruption, overeating and panic attacks. She also displayed heightened anxiety, grief and fatigue, as well as describing a problem with auditory processing that she felt could not be resolved. In subsequent sessions they dealt with the

accidents - the psychological effects of the insensitive behaviour of other drivers after the first accident, and the effects on her wakefulness and cognitive functioning of the second one.

- [286] In cross-examination he described his purpose as being to address whatever was blocking her from recovering from the accidents. This would include depression and anxiety, "which were definitely there strongly".
- [287] Her sister's death and her mother's serious illness destabilized some improvements that she had described after the initial injuries in the last six months of 2017, and her mother's death in November 2018 worsened her situation in that regard, although she reported some improvement at the end of the year. By January 2019 she was describing suffering from frozen shoulder and focusing on concerns about death and dying.
- [288] There was a gap in his sessions with her from January 2019 to January 2022. During that time he was in Alberta but was still seeing patients virtually, on a part time basis.
- [289] In 2022 he found her "mainly depressed and negative", having been unsuccessful in returning to work and struggling during the pandemic. In 2023 she was much the same, with "environmental factors" impeding her recovery. At that point he asked her to explore medication for depression, if she found it helpful. In his testimony he elaborated that during this phase he was trying to get her to accept her mental and physical condition and be able to move on with her life.
- [290] His opinion is that it is "very possible" that the accidents "significantly triggered unaddressed traumatic themes of the past and caused deterioration in coping with life events". The fact that she did not address those themes may have affected her recovery.
- [291] In his experience, dormant past stressors or "unsafe patterns" of living can have significant influence when they reoccur in a stressful environment like a motor vehicle accident. He was unable to say whether there was a risk that Ms. Ahluwalia's pre-existing issues would have caused her difficulties in the absence of the accidents.
- [292] Although he agreed that "not a lot" of the matters discussed with Ms. Ahluwalia related to the accident complaints, he qualified that by saying that although the immediate effects of the injuries can disappear, the trauma of it can continue to trigger the person's depressive tendencies, which will influence subsequent experiences. As a result, her continued difficulties are indirectly related to the accidents.
- [293] He was not able to offer an all-encompassing definition of what he meant by "trauma" - it depended on how the person experiences. He described the death of Ms. Ahluwalia's close family members in 2018 as serious loss in her life, rather than a trauma.
- [294] In light of what he described as her "complex nature of trauma and treatment history, environmental pressures, [and] physical and social challenges" he believed that she would "take a rather prolonged route to recovery", although he could not specify the duration.

- [295] He recommended ongoing psychotherapy, which is trauma-focused and comprehensive. He believed that 12 to 18 such sessions would "bring good results". He thought that this litigation should be concluded before she engaged in it, because "stressors and environmental pressures" can influence its effectiveness.

Hearing

- [296] The defendants retained Dr. David, an otolaryngologist (ear, nose and throat specialist) to evaluate any causative relationship between the first accident and Ms. Ahluwalia's hearing and balance complaints. He examined her in February 2020. Her counsel did not require him to attend for cross-examination.
- [297] He found that there was no evidence of a post traumatic inner hearing or balance injury due to that first accident. In particular she did not fulfil the criteria to causally connect her self-report of tinnitus to either accident, and her test results were inconsistent with post-traumatic tinnitus. In addition, she had complaints of dizziness and tinnitus before the first accident, and anemia and hypothyroidism, conditions she suffered from in the pre-accident period, are both commonly associated with tinnitus. She also does not fulfil the criteria for a central auditory processing disorder, and such a diagnosis was also inconsistent with her continuing ability to work as an interpreter.

Observations of Treatment Providers

- [298] As I understand it, this evidence was led on Ms. Ahluwalia's behalf to show her positive attitude towards her own rehabilitation, her contemporaneous psychological condition during the years since the accident and, in certain limited situations, objective indications of her injuries. The defendants' counsel also mined this evidence for indications of an improvement in her function since the accident, and attribution of her symptoms to the autoimmune condition.

Kristina Sheridan

- [299] She was Ms. Ahluwalia's occupational therapist, referred by ICBC, from 2017 to 2023. She was involved in case management (setting up treatment and liaising with treatment providers) and return to work planning.
- [300] The treatments and services that she arranged for her covered a wide range of difficulties, including cognitive assessments, cognitive behavioural therapy, strategies for pain management, sleep hygiene, and driving anxiety, physiotherapy, concussion treatment, psychology, orthotics, massage therapy, vocational rehabilitation and audiology.
- [301] With respect to assisting Ms. Ahluwalia in returning to work, she engaged the vocational consultant for her, who in turn arranged courses and helped her develop her resume.

- [302] At the point that Ms. Ahluwalia ceased work at DIVERSEcity in October 2021 her limitations were such that Ms. Sheridan did not think it was appropriate for her to return to work, so she arranged further physiotherapy and psychology sessions, as well as other treatment.
- [303] Her observations of Ms. Ahluwalia during their contact were that she had a lot of fatigue, demonstrated cognitive limitations (which was based on testing), had limited strength and testing during functional tasks and suffered from low mood.
- [304] She nonetheless described Ms. Ahluwalia as "very motivated and driven" as a client - she completed all of the tasks that Ms. Sheridan required of her and was active in seeking out new treatment when certain clinicians were not working well for her.
- [305] She also observed some fluctuations in Ms. Ahluwalia's overall condition - from periods where there would be some improvement in her conditions to increases in her pain, headaches and concussion symptoms. It appeared that her cognition was worsened by stress.
- [306] Ms. Sheridan was cross-examined on entries in her notes that suggested positive functioning on Ms. Ahluwalia's part at certain times, such as:
- In April and June 2017: requiring only over the counter pain medication and being largely independent in numerous aspects of self-care and in carrying out household duties.
 - In June 2017 her return to work at Scotiabank was described as being delayed by the availability of necessary audio equipment (for her perceived audio processing issues), although her cognitive limitations would have had an impact on her ability to return as well, Ms. Sheridan said.
 - As of April 2018 her list of symptom complaints were reduced from what she had described the previous June. They were now confined to tinnitus, pain in the left side of her low back, auditory processing disorder (which required the equipment) and ongoing headaches (which were improving with vestibular rehabilitation). Ms. Sheridan confirmed that Ms. Ahluwalia had made improvements.
 - In October 2019 Ms. Sheridan reported that she had ongoing headaches to the left side of her head, which had been "daily since [her] stomach problem" and that she was undergoing investigation for "GI bleeding" by means of a colonoscopy/endoscopy. Ms. Ahluwalia also told her at that time that she had taken three computer classes at a local school, and Ms. Sheridan had the impression that she had completed them successfully. Ms. Sheridan also recorded the completion of a course called "General insurance level 1", but since it was arranged through the vocational consultant, she could not comment on its duration.
 - In addition she told Ms. Sheridan that she enjoyed spending time with friends and family.
 - In December 2019 she told Ms. Sheridan that she had received three job offers and was deciding which one to take.

- In January 2020 she told Ms. Sheridan that she was having "good days and bad days" and was able to manage her tasks.
- In October 2020 she described a decreased range of motion in her left arm and hand and the right side of her upper extremity "due to steroids". Ms. Sheridan also reported that Ms. Ahluwalia was experiencing limited lifting and carrying tolerance with her left arm and hand, and that she was "deconditioned due to illness". She was now unable to complete her cooking and cleaning due to the side effects of her medication, which was also causing blurred vision that affected her ability to drive. A further limitation that Ms. Sheridan noted was with respect to sustained standing. Ms. Ahluwalia told Ms. Sheridan that she was unable to work due to autoimmune disease and significant decline in health.
- In December 2021 she reported that Ms. Ahluwalia had been taken off of work in October of that year due to "increased symptoms", which Ms. Sheridan thought were the autoimmune ones. That same month she told Ms. Sheridan that she had been managing work until "everything increased again" which Ms. Sheridan thought were the left side pain, headaches and depression that she had referred to earlier the same conversation.

Maureen Montealegre

- [307] She provided Ms. Ahluwalia with services as an occupational therapist in 2023, also funded by ICBC. Her plans for treating Ms. Ahluwalia were to re-engage her in function, set goals for active rehabilitation and increase her independence in her daily activities. Returning to work was more of a long-term goal, she said.
- [308] After determining the previous assistance that Ms. Ahluwalia had received in these areas, Ms. Montealegre worked on setting weekly goals and looking at Ms. Ahluwalia's day to day routine, specifically her energy levels in light of the activities she was engaging in.
- [309] She performed a screening exercise to assess Ms. Ahluwalia's range of motion, which revealed limitations in left lateral flexion, but also in her ability to follow instructions and to identify the areas in which she was experiencing discomfort.
- [310] Although Ms. Ahluwalia was a pleasant client to treat, Ms. Montealegre noticed that she had difficulty sustaining attention for long periods (for example, becoming distracted in a noisy setting) and in becoming fatigued, requiring a rest break during their sessions.
- [311] Ms. Ahluwalia complained to her of low mood, increased anxiety and frequent panic attacks. She also became emotional and showed signs of agitation when discussing her loss of function and independence. Ms. Montealegre agreed that it would have been important for her to know at that point that Ms. Ahluwalia had recently complained to her doctor about panic attacks that arose from the death of a close relative, and that she had been prescribed Lorazepam to address them.

- [312] She reported to Ms. Montealegre that she had stayed at a community event for five hours, although she had been quite tired afterwards. She reported going on regular walks as well.
- [313] She also described feeling underappreciated by her family, experiencing grief at the death of a loved one, having had nightmares for the past three months, and experiencing fear of death and of loved ones dying.
- [314] Ms. Ahluwalia questioned why she was receiving additional occupational therapy. Her familiarity with the strategies that were being used meant that there was no sense of novelty with them, which Ms. Montealegre said had an impact on her motivation.
- [315] She described Ms. Ahluwalia's case as being "quite complex".

Bhuv Atwal

- [316] He is trained in both physiotherapy and kinesiology. He said that Ms. Ahluwalia was referred to him at a point when she was in a "helpless situation" and did not believe that anyone could assist her with her symptoms. He saw her from February to September 2022.
- [317] She expressed a particular concern about not having the independence to engage in the activities of daily living. Specific physical problems had to do with her neck, shoulder and lower back.
- [318] At the time he understood that some of her symptoms related to a concussion. She also referred to her ongoing panic attacks.
- [319] She mentioned an auditory processing issue, and he noticed that it took her some time to grasp what he and his colleagues were saying.
- [320] After his initial assessment, he began a course of physiotherapy treatment that was intended to increase her general pain-free movement and reduce inflammation, focusing on the deep muscles that sit close to the spine in her neck and lower back.
- [321] As part of the assessment process Mr. Atwal engaged in exercises that were intended to provoke pain symptoms in the areas that Ms. Ahluwalia was complaining about. Those tests were positive, in the sense that they reproduced her symptoms, for nerve pain in her upper and lower limbs, and for pain in her pelvic area. A cluster of positive results indicates that the patient has some sort of pain or dysfunction in that area. His testing also indicated that she had a very restricted range of motion in her neck and her mid and lower back.
- [322] He found it surprising to be informed that shortly before their first session Dr. Lau had noted that Ms. Ahluwalia's neck extension and bilateral rotation of her neck were within normal ranges, particularly since his testing involves physically moving the person's neck to ensure that it lines up with their claimed range.

- [323] Contrary to her comments to Dr. Lau that her frozen shoulder issues had resolved, she told Mr. Atwal that issues with respect to them had been lingering, and he found that in his assessment she could not raise them higher than 90 degrees. It was something he noted as part of her history, not as something that was related to the accidents. He notes down everything that the client has gone through since the accidents, to show how they have been progressing since then.
- [324] He would have found it helpful to be aware that she told a treater at another rehabilitation facility in December 2022 that decreases in the mobility in her left shoulder and arm and "upper right side extremity" because of steroids she was taking for her autoimmune conditions, although it would not have changed the course of her treatment. Further, he agreed that it would have been important to be aware of her previous statements that she was unable to complete her cooking and cleaning tasks because of the effects of the medication that she was taking.
- [325] He agreed that it was accurate to describe her autoimmune condition as a barrier to her recovery, in addition to the effects of the accidents.
- [326] Over the time that he saw her, she was able to increase the number of different exercises she could do, and the number of repetitions of each exercise. These improvements were not as significant as he might expect to see in other clients, but they were significant in her situation.
- [327] There were "lots of ups and downs" in how she presented herself during the sessions. She appeared to be looking forward to them, but at times her mood would be depressed, she would have difficulty understanding the instructions, and she would panic very easily. She complained of headaches as well.
- [328] She was compliant with his directions, but her motivation to engage in the process was variable - depressed or teary at times. Once she got settled into the exercises, she would follow his lead.
- [329] He believed that by the end of their sessions she had gotten to a level of tolerance in which she could carry out the exercises at home really well. However they had also hit the limit of how much she could do in a session, and her headaches continued to be an issue. She did however tell him that there were some things that she could now do for herself at home.
- [330] In an attempt to give her further assistance, he referred her on to his colleague Venkat Ramachandran, a physiotherapist who specializes in vestibular and temporomandibular joint problems.
- [331] He also provided her with four or five sessions of kinesiology, the goal of which was to increase her tolerance for cardiovascular exercise, and added strengthening exercises to address the areas of her body in which she was experiencing pain. Only marginal gains were achieved.

Venkat Ramachandran

- [332] He is an experienced physiotherapist with areas of specialization that include temporomandibular joint issues, vestibular therapy and concussion. He saw Ms. Ahluwalia from January to November 2023.
- [333] The treatment was funded by ICBC, but it was interrupted at various points, and was unable to continue past November, because the insurer required additional information to approve the treatment plan (it was not clear what the specific problem was in obtaining this information). There was also a gap in the fall of 2023 because she suffered from a bout of pneumonia.
- [334] Ms. Ahluwalia's main concern when she saw him was her tinnitus, but he also attempted to assist her with pain and tightness in her jaw, and her neck pain. He had some success with her jaw, in that the pain decreased and she was able to open it more easily. Her neck, and mid- and lower back problems remained in place.
- [335] During his treatments he made certain observations of Ms. Ahluwalia's physical condition. These were (1) a limited range of motion in her neck, which he identified by having her perform certain movements to it, and (2) tightness to her sub-occipital and trapezius muscles and tenderness in her temporomandibular joint, which he identified by palpating them. He attempted to release the muscles behind her ear by massaging them, and when he did so he noticed that the area was "a little bit thick and tight" and that there were knots in the muscles.
- [336] In February she told Mr. Ramachandran that she was feeling "a little better" - her jaw pain was "a bit less", but the tinnitus was still present.
- [337] In March he recorded that there had been a 60% improvement in her neck condition, and that she had tolerance for activities such as sitting, standing, walking and overhead movement.
- [338] When he saw her in May 2023, with a gap following her previous appointment in March due to funding issues, he found an increase in the tightness and stiffness in her neck and back muscles, which once again he identified through palpation. In general, following a gap in his sessions with her there would be an increase in the tightness of her muscles and the limitations in her movement.
- [339] During an appointment in October 2023 she told him that she felt "a little bit better", and that she was able to move her neck much more. She expressed the situation as that "she wasn't having that much of her discomfort for the last few days". Her only complaints in that regard were that the muscles were still "stiff and tight".

[340] In November she complained of pain and tightness in the neck, back and hips, but that it was "on and off" and that "some days are good and some days are bad". He said during his examination he identified tightness and tenderness in her trapezius along her shoulder blades and in the mid-back, as well as in her lower back.

Effects of Injuries

Ms. Ahluwalia's narrative

Resuming her legal career

[341] Ms. Ahluwalia testified that her motivation to become a lawyer was to advance women's equality. In addition, there were other lawyers in her family and in their social circle, which I took to be a further motivation for her to pursue such a career.

[342] Her plan after the birth of her son was to go back to working as a lawyer once he started school.

[343] She did well in her position at Scotiabank, to the extent her manager was prepared to pay for additional training if she wanted to progress within the bank. She said that was not her goal - she wished to remain in a customer service position, which provided her with the necessary flexibility to attend to her family's requirements and was "a good fit" - so she did not pursue this additional training. She maintained that her goal continued to be to return to a legal career.

[344] Despite the demands of work and family, she kept in touch with friends from her law class who had qualified to practice in Canada, and made inquiries of any lawyers she encountered in her work about the procedure for qualifying. She also borrowed a criminal law textbook to study that topic.

[345] By this point her planned timeframe to qualify, which involved writing up to five examinations administered by the National Council on Accreditation, was constrained by the fact that money was "very tight" in her family and she could not work and study at the same time. As a result, she planned to pursue qualification when her daughter reached the age of 12, and would need less of her time.

[346] Ms. Ahluwalia was challenged in cross-examination on the actual effort she had put toward becoming a lawyer in Canada and actions by her that were said to be inconsistent with that intention. These included:

- Failing to submit her documents to the NCA to find out how many qualification exams she would have to write. She explained that there were "big fees" to do so (there was other evidence that the cost was \$500), she was waiting for her husband to get a good job before she did it, and she was very busy with the children;

- Traveling to India for three-week vacations in the years leading up to the accident, at significant cost, rather than devoting the funds to the cost of qualification. Her position was that her parents "were not going to live forever" and she did not want to deny her children the opportunity to see them;
 - Similarly, purchasing a large house in 2015, which included a rental suite, instead of living in a more modest one and spending the difference on the qualification process. She said that she and her husband made that move because their previous house was not in good condition, the children hated it, and in her cultural community having a comfortable clean home is seen as important;
 - Telling Scotiabank in 2015 that she planned on staying there for the next three years, and that she wanted to job shadow more advanced positions and high-level training to move forward within the bank. In her view there was no other answer that she could have provided than that she was staying; and
 - Perhaps most significantly, she conceded that before the accident she was considering other employment opportunities besides law, and that she had "moved past the law" and "set [her] sights elsewhere" (when her counsel sought to re-examine her on this comment, she appeared to be unable to grasp the meaning of his question).
- [347] It was pointed out to her that she had told various experts and care providers that her legal career in India was longer than the year and a half that she had testified to in her direct evidence.
- [348] Avita Sharma, the vocational rehabilitation consultant reported that she had done so for four years, which Ms. Ahluwalia thought had perhaps been a miscommunication, although she added that she had helped her brother in law, who is also a lawyer, after the birth of her son, so she had been indirectly practising during that period.
- [349] A counsellor had recorded that after her legal "apprenticeship" she had "started practice with someone, less than one year", but she did not accept that her career had only been of that duration. In re-examination her counsel referred her to the notes in question, in which the specific phrase "less than one year" is below the reference to her legal practice, but above her description of the dates of her engagement and marriage, which were in February and December 1998 respectively. A plausible alternative inference is that she was referring to the latter events occurring over such a period.

Classmate

- [350] To support the viability of practising law in Canada as a potential career for Ms. Ahluwalia if the accidents had not occurred, her counsel called Arvind Sapra, who is now a lawyer in Ontario.

- [351] He and Ms. Ahluwalia were together for all three years of their law school program. In the state where they took their training a bachelor of laws degree can be obtained after two years, but in order to practice law one must complete the three-year program, he explained. He rejected the suggestion that Ms. Ahluwalia was only there for two years.
- [352] There were two sections of 40-50 students each year in their year and Ms. Ahluwalia was in his section for at least two of those three years, and possibly all three, he recalled. Except for two courses in third year for which there was a choice, everyone had the same required classes.
- [353] He and Ms. Ahluwalia were able to graduate in three years, whereas "quite a bit" of the class took longer. He described her as an above average student, and said that she had a very balanced personality. Later he said that while she was not "the brightest of the brightest", she was "way above average".
- [354] After graduating they were required to article for one year, then apply to the bar council for a licence to practice.
- [355] They lost touch after law school, until they re-established contact through a WhatsApp group that was established for members of their class. He believed that was in 2010-11.
- [356] He moved to Canada in 2004 and submitted the documents showing his legal education in India to the NCA in 2006. He was required to pass ten or 11 challenge exams in order to be qualified here (the alternative is taking those courses at a law school in Canada). This includes exams in five subject areas that all foreign-trained lawyers have to write. Each exam takes three hours and requires a 50% mark in order to pass.
- [357] The process of the NCA assessing his Indian qualifications took three or four months. He found it a tedious process, because he had to obtain a copy of his law school syllabus in addition to his transcripts, but in retrospect he regards it as having been straightforward.
- [358] It took him until 2011 or 2012 to complete the required exams. One of the reasons that it took that amount of time was that he was the primary wage earner for his family (by which I took him to mean that he had to earn an income rather than focus solely on studying for the exams). His jobs during that period were in a warehouse, driving a truck, at Tim Hortons, and finally in a bank. He also had two major surgeries, and for one of them was directed to avoid stress during the lengthy recovery period.
- [359] He wrote and passed the Ontario bar exams in 2016 and was called to the bar in 2018. Because of the length of time he had practiced in India, he was not required to article in order to be called.
- [360] He now practices as a real estate lawyer.

- [361] Once they re-established contact, Ms. Ahluwalia and other members of the WhatsApp group would ask him questions about the NCA and the process of qualifying as a lawyer in Canada. In particular, Ms. Ahluwalia told him that she would like to become a lawyer when her "kids are grown up" and asked questions about the process, such as which exams he was taking, how he prepared for them and how difficult they were. She would also message him a few days after he had written each of the exams to ask him about the content.
- [362] They did not meet in person as part of this process, but in addition to the messaging they have sometimes spoken over the WhatsApp video function. The frequency of their communication was random - sometime repeatedly for a short period, and then nothing for an extended period.
- [363] He was aware that she had suffered the accidents that are the subject of this case, which he understood were in 2015-16. In contrast to her bubbly personality in law school, during their conversations she is always stressed and very emotional. He often finds her forgetful of things that he has previously told her.
- [364] He has personal knowledge of five or six lawyers from India who have qualified to practice in Canada after "some delay". One of their classmates has recently done so, a lawyer who practices next door to him qualified at the age of 54, and Mr. Sapra's ex-wife completed the NCA process in 2023 and was scheduled to write her bar exams in March 2024. She obtained her law degree in India in 2001 but was delayed in the qualification process by her childcare responsibilities in their family. She only practiced for about a year in India.
- [365] During the 2015-17 period he told Ms. Ahluwalia that the exams were "pretty tough" and that it was necessary to work hard in order to pass them. This was around the time he was preparing to write his bar exams, and he also talked about that with her.
- [366] Mr. Sapra described carrying on a "leisurely practice" - picking and choosing the cases he takes, letting his staff "pretty much run the show" and going home by 5:00. Despite this approach he is still able to earn an income of over \$100,000 per year.

Jobs in Canada

Initial stages and position at Scotiabank

- [367] Ms. Ahluwalia testified that when she and her husband immigrated to Canada they struggled to adapt to the new environment and establish themselves economically. As a result, she took any job she could find.
- [368] Acting on the advice of an official of an agency that assists immigrants to Canada find employment, she listed herself in her resume and her application to the bank as having been a legal assistant in India, rather than a lawyer, from 1997 to 2004. The official had advised her that she was overqualified for the kind of customer service banking jobs that she was seeking, so it would be beneficial to describe her background in this way.

- [369] Contrary to the suggestion made to her in cross-examination, she maintained that there was nothing wrong with downgrading her qualifications in this manner, in light of her struggles to gain employment and the lack of intention to cause any harm to the bank. She agreed however that including reference to the law degree in her application meant that there could not have been much concern about being overqualified.
- [370] Similarly, she saw nothing wrong with describing her legal career as lasting seven years in India, rather than the one and a half years she described in her direct evidence. In her view what the prospective lawyer was really wanting to know was what she had been doing before she came to Canada.
- [371] She described herself as doing "great" at the bank before the first accident, and referred to her largely positive performance reviews for 2015. Although she was written up for poor judgment and disrespect to her coworkers in relation to the perfume incident that she had discussed with her family doctor, it was not suggested that this affected her long-term prospects at the bank.
- [372] She recalled that she was working "maybe" 18.75 hours per week before the bank-wide reduction. In September 2015 her appointment letter for the position she obtained that year referred to her working 15 regular hours per week, but that did not include additional hours she would pick up at other branches.
- [373] Rita Bhinder, who was in charge of customer service at the branch where Ms. Ahluwalia was working at the time of the accidents, said in a pretrial deposition in 2022 that Ms. Ahluwalia's performance was "good" and that she did not have any issues. Ms. Bhinder went on to say that she could not "give you exact, whether she was good, or if she was bad, but as I can remember she was a good employee". However, she later said that as a teller she was "doing great, service-wise" and recalled her wanting to move up to a supervisory position. In her 2015 assessment, her performance was rated as "DI" for "distinguished" throughout. This referred to her referrals, which were not further explained but which I assume were referrals of customers to purchase other bank services, and the fact that she was "not making too many mistakes".

Morrison Windows

- [374] She said that her husband was earning a good income at the window company as a product advisor, and an opportunity arose for her there.
- [375] She aspired to a product advisor position like her husband's, but the position she was initially hired for was as his assistant. Her job was to call builders of homes that were likely to require windows of the quality that the company manufactured and, if the builder was interested, book an appointment for them in the showroom. If the builder was interested in ordering windows, she would prepare a quote, which would then be confirmed by a "senior" product advisor, she explained.

- [376] However during her discovery she had described her role as being "just to prepare, print and hand [the quotes] over to [her husband]". She also agreed that she was not dealing directly with clients, although she then added that during her training period she would show the products to any walk-in customers to the office.
- [377] The attractions of the position were greater flexibility, in that all of the calls to builders could be made from home and she only had to be in the office to show them the products, and what she described as three times the income of her bank position. The main form of compensation was commission of five to six percent on sales, plus an allowance. For the three pay periods that she worked there she earned a total amount of just over \$6000 before taxes and other deductions.
- [378] In the short period that she was employed at this company leading up to the second accident, she worked three days per week, plus her remaining 11 hours at the bank.
- [379] Navdeep Dhillon is in charge of the company, which she co-owns with her husband. She confirmed that Ms. Ahluwalia began working there in the biweekly pay period that ended on May 27, 2016. They had previously hired her husband based on a strong reference from an existing employee.
- [380] She said that although Mr. Ahluwalia was good at closing sales, he was not as good at completing the underlying paperwork. When they discussed this problem, he asked her if he could have some assistance with it from the company office. In addition to the need for such assistance, she discussed with the entire sales team the fact that potential customers would call frequently with questions, and that it would be beneficial to have someone who could speak to them initially, with the salesperson then getting involved once it was confirmed that the customer was going to be "closing the deal with us". She stressed that hiring Ms. Ahluwalia was not done as a favour for her husband, but to assist the company in closing more sales. Her position would not take away income from him, because they would each be earning income based on their own activities.
- [381] Factors that influenced her to hire Ms. Ahluwalia were her fluency in both English and Punjabi, her experience in dealing with high-pressure situations at the bank, and her strong personality. Her husband also told Ms. Dhillon that she had already been helping him with his work.
- [382] Her position involved calling the builders on the "green sheet", which was an ongoing list of what she described as the "tenders coming out from city hall", by which I took her to mean the government approvals for construction on particular lots. In addition to those calls, Ms. Dhillon's husband, who had been in the window industry for 25 years, would receive ten to 15 "contacts" (potential clients) per month, which he would also pass on to Ms. Ahluwalia to follow up on. She would then speak with the potential clients, provide them with product information, invite them to the showroom and have an initial meeting with them, which could last two or three hours. There could also be follow-up meetings required. As a result of these efforts, there would be "everything ready on [the] plate" for the product advisors

(salespeople) to finalize, in addition to the product advisors' own efforts to generate sales.

- [383] Her training, which was provided by another sales person, took place in the company office, between 8:00-4:30 pm. The "intense" portion of the training was for at least the first two weeks, but Ms. Ahluwalia could still ask for help after that when she was working from home.
- [384] The salary for the position was quite low - \$350 bi-weekly - plus commission of 5.87% on any sales and a gas allowance. The income that she was able to earn in her three pay periods in addition to that minimal pay was based on some sales that she was able to close herself. Ms. Dhillon recalled that Ms. Ahluwalia was good at doing that, and that "she had the trust", by which I took her to mean that she and her husband trusted her. Based on the way that she "picked up the work", Ms. Dhillon's expectation was that she would have earned more for the rest of the year.
- [385] Ms. Dhillon said that more of the referrals that Ms. Ahluwalia received came from her husband than from anyone else, although she could not recall the exact numbers, and explained that there can be split commissions if more than one person is involved in achieving the sale.
- [386] According to Ms. Dhillon, the long-term plan was that Ms. Ahluwalia would become a product advisor herself. She said that product advisors can easily make \$100,000 per year and that the person who gave Mr. Ahluwalia a reference was making \$300,000. In essence she described it as being up to the product advisor how much they want to make. She envisioned the time frame for that transition being within a few months, after Ms. Ahluwalia had completed her three-month probationary period.
- [387] The company has grown very significantly since its formation, and in 2023 it was able to achieve over \$50 million in sales. It currently has seven full-time product advisors. Their commission has remained the same, but the base salary has increased to \$2500 per month. Except for one instance, which was not very productive, they have not had any part-time product advisors.
- [388] With respect to the physical demands of a product advisor position, in some cases the measurements for the windows that were purchased would be obtained by the product advisor by reading the builder's plans, but in other cases they would have to go to the building and measure themselves. Ms. Ahluwalia was trained in how to do measurements. Ms. Dhillon's understanding was that in most cases those windows can be accessed from within the house, and that there is no need to climb ladders to take the measurements.

Community Interpreter

- [389] Ms. Ahluwalia testified that after a significant period of inactivity due to her accident symptoms, she pursued the interpreter position because her family and others suggested that it would be good for her to do something outside of the home. She was looking for something light, and interpreting in the community would not be as intense as it would be in police interviews or court proceedings.
- [390] In April of 2018, before she began working as an interpreter, her family doctor wrote her a note indicating that her accident-related conditions had sufficiently healed and that she was able to return to work.
- [391] When she started the position she was happy, because she had found sitting at home painful. Unfortunately what did not become clear to her until she started doing the job was that when someone begins to speak more quickly and she has to focus more, that causes a headache (she added that this occurs whenever she has to think or grasp any information at a faster pace). She would also get extremely tired if the appointment was a long one, to the point that she would have a nap in her car after it had completed.
- [392] The work was assigned on an on-call basis. To manage it she only took jobs that were assigned in advance of the day that they would be taking place, and only one job per day. Her approach was that if she was feeling better she would take the job, whereas if she was in "depression mode" (in which she would not feel like getting up or attending to her hygiene) she would refuse. On average she ended up working about two days per week.
- [393] She decided to leave interpreting work because "the income was not great" (she recalled approximately \$25 per hour, with a minimum of 1.5 hours paid for a call out) and she was limited by her symptoms to one job a day, whereas her colleagues could put together multiple jobs. More generally, she wanted to "try more" (than that level of employment, I took it), and that doing it did not represent how she wanted to live her life.

Settlement Worker

- [394] With the assistance of her vocational counsellor she applied for numerous positions, but was granted only a few interviews as a result. At first, she disclosed her accident-related disabilities and need for accommodation in her applications, but she eventually decided to begin applying for jobs as a person without any physical limitations.
- [395] She did not recall having received three job offers as a result of her efforts, as Ms. Sheridan described, and believed that Ms. Sheridan must have misunderstood her.
- [396] The position that she eventually succeeded in obtaining with DIVERSEcity was a maternity leave replacement. She was required to work four days (a total of 28 hours) per week, between 9:00 am and 4:30 pm, at the agency's office. Her role was to connect new immigrants with support and services for all of their required needs, such as employment, housing and medical care, and including difficulties with their immigration status, mental

health, or the risk of domestic violence. She generally saw two clients per day, for up to an hour each, and then had tasks related to the assistance that they needed.

- [397] She felt good about obtaining this position because it made use of her experience as an immigrant and with mental health struggles, as well as her language skills. She also saw it as a way to give back to the community.
- [398] She said that she was fine during her training period, but once she had actual clients her limitations started bothering her. After a month in the position she was struggling and could not keep up with her tasks. She would move to the lunchroom if she had an important task to carry out (to avoid distractions, I took it) and would sit in her car during breaks because she did not have the energy to talk to anyone. Once she got home, she did not have the energy to do anything but sleep. She described herself as "like a dead person" after work.
- [399] She did not share her situation with her employer, explaining that she felt she had to pretend to be a normal person with no conditions. She took painkillers and covered up the situations in which she was crying due to depression and anxiety by saying that she had a headache or a stomach ache. She also did not reveal her situation to any of her co-workers and said that they would not have been in a position to observe it.
- [400] As I mentioned previously, it was during this period that she experienced the first symptoms of what turned out to be an autoimmune condition, in the form of painful mouth sores, for which she sought treatment by antibiotics. The sores inhibited her ability to eat, and she was also experiencing stomach aches, which she appeared to relate to a long-term difficulty she had with stomach acid.
- [401] The first COVID-19 lockdown took place in March 2020, and from that point to the end of her contract she worked from home. At her employer's request she agreed to extend the contract by one week, from March 18 to 25. She said that she did so even though she was struggling at that point, in order to be helpful and also if any other similar positions came up in the future.
- [402] Mary Roman, who was the assistant manager at that time (she left for a new organization in October 2020), testified that on some days Ms. Ahluwalia did not have enough "stamina or energy", and that she looked fatigued. However Ms. Ahluwalia did not disclose any specific health problems to her and she could not recall receiving any request for accommodations. She said that Ms. Ahluwalia's performance during her first stint there had been "quite satisfactory". As best as she could recall, there were also no issues with her attendance.
- [403] With respect to her opportunity to observe Ms. Ahluwalia's condition, Ms. Roman described herself as being meticulous at work and said that she paid a lot of attention to the details of employee performance. She had "lots of interactions" with the members of her team, including Ms. Ahluwalia. Overall she supervised about 35 people.

- [404] Ms. Roman did not recall having asked Ms. Ahluwalia to stay on for an additional week at the end of that contract, and believed that it was unlikely to have occurred, since the funding for the position from the federal government is terminated as soon as the maternity leave that was being covered ended.
- [405] Ms. Ahluwalia said that her rehiring by DIVERSEcity for September 2020 came about after her manager told her that they "would love to have her back". She disclosed some of her afflictions to her manager - that she had "a concentration issue and headaches", as well as her recent experience with mouth sores. Her manager responded that since the staff were all working remotely, she could call the clients during the day and do the rest of the associated work at her convenience, taking breaks as required.
- [406] Ms. Roman explained that the person whom Ms. Ahluwalia had been replacing on maternity leave obtained a different position upon her return, so she contacted Ms. Ahluwalia and offered her the opportunity to return to the position she had been filling, now as a permanent indefinite position. One of the reasons that she recalled her for the new position was her satisfactory job performance previously.
- [407] She confirmed that when she offered her the job Ms. Ahluwalia expressed some concern about her physical capabilities, and that she offered her flexibility in her schedule, which involved working from home via laptop, to accommodate those concerns. Ms. Roman's main concern was the quality of service that was being provided to their clients, so other than a morning online meeting and making herself available as required she was not monitoring how her staff carried out their duties during this period.
- [408] Kelsey Hordyk, a current employee at DIVERSEcity, produced Ms. Ahluwalia's human resources file under subpoena. Based on its contents she was able to confirm that only one performance evaluation was carried out for Ms. Ahluwalia, in December 2020, and that it set out that she met expectations. It contained no concerns about her performance.
- [409] Ms. Hordyk confirmed that Ms. Ahluwalia remains a DIVERSEcity employee, and that if her disability case manager indicates that she is ready to return to work, she will be able to, pursuant to a return to work plan that will be developed. There is no formal policy for accommodations that employees may require, and Ms. Hordyk said they need to know what an employee's specific restrictions or limitations are, "to see how we can best accommodate them". In the case of an employee on long-term disability, the necessary accommodations will be communicated by the disability manager.
- [410] The settlement worker position at DIVERSEcity is currently a hybrid one, meaning that the workers work some days in the office and others from home. Ms. Hordyk said that there would be opportunities for a settlement worker to progress to a management position, which would be based more on acquiring experience than on additional education.

- [411] Ms. Ahluwalia said that some aspects of the arrangement during her second stint at the agency were beneficial - she could sleep later, make her calls in the morning and then rest before performing the related tasks like data entry. She was also able to eat better, take more frequent breaks and avoid disturbing levels of noise around her.
- [412] Despite these benefits, she described her symptoms getting worse, aggravated by listening to Zoom calls and typing on her laptop, which lead to headaches, and the emotional intensity of dealing with her clients' issues, which drained all of her energy and led to panic attacks (she also referred to it causing her "a fever").
- [413] She began to make mistakes, which eroded her confidence. Her depression was increasing in severity and she was not sleeping or eating properly, the latter of which affected her blood pressure. This deterioration culminated in a fainting episode that led her to be taken to the hospital.
- [414] She did not describe her specific health issues to her employer at this point, only that she was not feeling well and was unable to continue. She then began to receive disability benefits, which continued as of the trial dates.
- [415] She agreed that she did not decrease her hours of work because of her accident-related symptoms at any point during this 11-month period of work with DIVERSEcity.
- [416] Because of the autoimmune condition she had developed, she was considered to be at high risk during COVID. In September 2021 DIVERSEcity required all of its employees to begin working in the office at least one day per week. Ms. Ahluwalia asked the employer to make an exception for her, but they were unable to do so.
- [417] At one point she explored a return to work at Scotiabank, but said that it was not able to accommodate her need for a quiet room to work in, which was necessary because of her issues with auditory processing. She told her vocational counsellor about this opportunity in April 2020.
- [418] When it was put to her that in 2018 Scotiabank officials had told her, as part of a discussion about the possibility of her returning to work there, that she could work in a quiet environment, either as a financial advisor or selling VISA cards, she maintained that this suggestion was made before the accident, in relation to her career advancement. She added that working as a financial advisor was actually more intense than the teller job that she had been doing before the accidents.
- [419] The portion of disability benefits that were based on her time with the bank were cut off in 2017, on the basis that her condition did not preclude her from working in such occupations as telemarketer, call centre agent or data entry clerk.
- [420] Despite the fact that she was able to work from home and the job was not physically demanding, she did not seek to be rehired at Morrison Windows because of the pressure that was attached to doing it and how demanding it was.

- [421] As her occupational therapist Ms. Sheridan described, around the same time that she returned for her second stint at DIVERSEcity, at Ms. Sheridan's suggestion she took three computer courses at a small private institution in Surrey. They are based on self-study and are graded on a pass/fail basis, and she passed them. She also completed a general insurance course during this period, in which she received a grade of 87%. She took that course because she was trying all options in order to find a flexible job to suit her situation.
- [422] She said that in 2018 she had borrowed a textbook that dealt with becoming a mortgage broker and studied from it whenever she was able to, but her vocational counsellor eventually advised her that such a position would be too much for her.

Current situation

- [423] She testified that she does not have any future work plans at this point. In the nearly eight years since the accidents she has "tried everything" and pushed her limits (in an effort to return to work, I took it), and it simply made everything worse. She now wants to live her life without expectations, and manage her health so as not to be a burden. Her view of the current state of her health is that she is not even capable of the relatively light duties that are involved in her former interpreting position.
- [424] Her most recent tax return in evidence (from 2022) showed her earning approximately \$16,000 in business income, but she clarified that this related to a private lending business operated by her son, which made use of equity drawn from the family home. Some of the interest earned was then paid to her and her husband. She and her husband had since recovered the equity that was used in this lending business, and because of the unstable financial environment did not plan to invest it further.

Effect on Household Responsibilities

- [425] Ms. Ahluwalia testified that before the first accident occurred she had the main responsibility for child care (including taking the children to school and daycare), meal and school lunch preparation, and other household chores. Her husband was working long hours.
- [426] After the first accident she and her husband began sharing the housework, because of her frequent headaches and shoulder problems, and the time that she had to spend attending appointments with her doctor and for physiotherapy.
- [427] Following her second accident her husband and children had to do the housework themselves, although she would help with whatever she could - for example, doing a small amount of preparation for their cooking if she was feeling well enough.

- [428] She said that this shifting of responsibilities led to ongoing arguments with her husband. He is a perfectionist and became tired of doing all the extra work. She would become annoyed with him and spend most of her time in her room. Their son eventually became mature enough to help them see each other's positions, which improved the situation.
- [429] Although the children understood her situation, there was also pressure on them from their added responsibilities and having to see her "sitting in a chair crying in a dark room".
- [430] During her second stint working for DIVERSEcity her son took time off from school to stay home and assist her, because her symptoms were getting worse.
- [431] After she left that position her family relationships continued to be affected by her condition. Arguments were more frequent, she would become stuck in negative thinking and be bothered by minor incidents, her self-esteem was very low, and she did not even enjoy the company of her children.
- [432] Her current capabilities are carrying out a small household task after she wakes up (which lifts her mood). If she is feeling good, she will cook dinner three times per week, but will not cook at all if her symptoms are bad. Other than dusting, which she is able to do, her husband and children share the inside chores and her husband does the ones for the exterior of the house.
- [433] She is able to do her own laundry if someone carries the basket for her, and she is capable of doing her own grocery shopping.
- [434] Her involvement in activities outside the home has also become extremely limited, as she no longer gets any pleasure out of them and they drain her of energy for several days afterwards.
- [435] Ms. Ahluwalia agreed that when she saw her occupational therapist in 2017, she was able to carry out her personal grooming, bathing, and dressing independently, and was also able to climb stairs and prepare meals. However in her testimony she added that she had to sit in a chair to dress, experienced pain while climbing stairs, and had difficulties with certain tasks of meal preparation when her frozen shoulders were bad.
- [436] She also told Dr. Robinson during the preparation of his report in 2018 that for the most part she was able to function at home with her accident-related conditions, and that other than carrying the laundry basket she was able to carry out "the bulk" of the household chores.
- [437] In October 2020 she told her occupational therapist that she was having difficulty cooking and cleaning because of the side effects of the autoimmune medication that she was taking.

Observations of family members

Ravjit Ahluwalia - Spouse

- [438] He was trained as a mechanical engineer in India, specializing in trucks and tractors. At the time that his marriage to Ms. Ahluwalia was arranged, he viewed his wife-to-be's law degree as a positive factor and was aware of her intention to continue with it, rather than to "stay at home". He described her as ambitious in relation to her career as a lawyer.
- [439] He recalled that she continued working as a lawyer until about three months before their son's birth. The plan was for her to return to work when their son was old enough to go to school.
- [440] Following the family's immigration to Canada in 2004, he worked in a warehouse, then as a security guard, a truck driver, bus driver and a taxi driver. He said that when he was a taxi driver he tried to work weekends to assist Ms. Ahluwalia, who worked during the day, with managing the children.
- [441] Despite the fact that their professional credentials were not directly applicable in Canada, Ms. Ahluwalia's goals were the same as they had been before - at the point that she felt "comfortable with the family" and had the time to upgrade her education, she intended to pursue her credits for legal qualification in Canada.
- [442] He confirmed that beginning in 2013 or 2014 he was misdiagnosed with a brain tumour, and that it took "a couple of months" of going to medical appointments to resolve the situation, although he could not remember the specific length of time involved. He was not able to work during that period, and until he was medically cleared it was a very stressful situation for the family.
- [443] Other than the stress from that situation, he did not recall Ms. Ahluwalia experiencing stress from any other cause in the years leading up to the accident. In particular he did not remember her having taken any time off of work in 2015.
- [444] He also could not remember her having any health problems during that period, other than "one small surgery". He believed that it was in relation to fibroids and that that condition may also have had an effect on her stomach. He also did not remember her having any long-term health conditions that required her to take medication on an ongoing basis or that caused her to have low energy. Nor did he remember her suffering from dizziness that required her to see her family doctor. As to urinary problems, he said that they "might be sometimes", but he was not aware that they dated back to the birth of their children.
- [445] He thought that she might have been anxious during the time when she was believed to have cancer, but not as a chronic problem. He did not believe that she suffered from any sort of depression before the accidents, but added that terms like "depression" and "stress" were not used in India. In particular, he was not aware of her taking medication for depression or anxiety.

- [446] When prompted in cross-examination, he was able to recall Ms. Ahluwalia being given a cancer diagnosis and being told that she had three months to live. Like his diagnosis, it turned out to be mistaken.
- [447] In that same year the family upgraded from an 1800 square foot house to one that took up 4000 square feet and had two rental suites. Mr. Ahluwalia explained that they were able to accomplish this despite the economic impact of his health scare because they obtained a price for their old house, which he described as "a really good deal" - only \$20,000 less than they had to pay for the much larger new one. They also received financial assistance with the purchase from his family in India.
- [448] He was hired by Morrison Windows in 2014. He had no experience in the window industry before that, and was able to learn the required sales skills on the job. He denied that his experience in India as a workshop manager for Honda, which included some involvement in sales, had played any role in his being hired. Other than the fact that he is able to read construction plans, his training in engineering played no role in his getting the job either. He earned his income there on a straight commission basis - six percent of whatever business he brought in, which was paid once the invoice was generated.
- [449] He disagreed with the suggestion that working in window sales involves any meaningful mobility requirements, so that Ms. Ahluwalia would have had a barrier to pursuing it. Most of the time the purchasers can be dealt with over the phone, based on the building plans, and when it is necessary to attend a job site the framing has already been done and there are internal stairs to use if necessary.
- [450] He later switched to a position at a different window company in order to receive a salary in addition to commission. He initially suggested that his commission in the new position is higher, but later clarified that it is also six percent, plus a gas allowance. The benefit of a salary is that it partially insulates him from sales downturns such as the one that occurred during COVID. His current salary for his managerial role is \$70,000 per year.
- [451] He said that Ms. Ahluwalia's interest in working at Morrison Windows was triggered by the reduction of her hours at Scotiabank. Her motivation was to earn more and have a flexible work schedule, while pursuing her legal training at the same time. His position was that the company was hiring sales advisors and that was the position that she applied for. When it was suggested that she was hired only as his assistant he maintained that she was there to help all of the sales representatives by "doing whatever needed to be done" with respect to them. The frequency of her attendance at the office depended on what work was given to her. His own attendance depended on whether the clients wanted to see the windows in the showroom setting. The rest of the time he would either be speaking to clients from his home office or going to their sites to speak with them.

- [452] He described Ms. Ahluwalia before the accidents as "active" and "motivated" - able to work and take care of the children and the household. During the pre-accident period Ms. Ahluwalia was "doing everything" in terms of housework, although he made certain contributions when he was able. He described her mental health in that period as also being very good, with particular emphasis on her ability to remember dates.
- [453] Their relationship with each other was in a positive state before the accidents, including their level of communication.
- [454] He said that after the first accident Ms. Ahluwalia described feeling tired and also that she was experiencing some neck pain. In the ensuing months before the second accident, she complained of pain in her neck and left shoulder. She was still performing the bulk of the household duties, but was "slowing down" in managing them, and he was attempting to assist her.
- [455] His observations after the second accident was that she was "sleeping too much" in comparison to her pre-accident requirements, and was tired and nauseous. He observed her stretching her body and inferred from those actions that she was in pain. She was not feeling good for a month or a month and a half, he said, and was not able to do the day-to-day work at home.
- [456] More generally, from the time of the second accident to her beginning work as an interpreter, she was struggling with pain and depression. The depression manifested itself in her repeatedly crying, making negative statements such as that she was never going to get well, and sitting at home doing nothing. As an example, he described that she would begin cooking, stop the task to take a nap, and then be unable to complete it. He also described her getting confused and suffering from panic attacks. "A couple of times" her failure to breathe properly during panic attacks caused her blood pressure to drop to a point at which an ambulance had to attend.
- [457] She began this period attempting to continue with her household responsibilities, but as it became apparent that she was not able to do anything, he began to assume these responsibilities himself. Their son also attempted to help them once he reached grade 12 and began to see her limitations. Their son had a strong relationship with his mother and was solicitous of her wellbeing.
- [458] This change in her abilities entailed some adjustments, he explained, and in the course of making those adjustments he and Ms. Ahluwalia had some arguments. He said that he had to do more work in order to understand her limitations. His position was that despite this issue, their relationship remained good.
- [459] He denied experiencing difficulties with anger during the post-accident period, or yelling at Ms. Ahluwalia frequently. He emphasized that such behaviour was "not [an] everyday thing".

- [460] His understanding was that her position as an interpreter came about at the suggestion of her occupational therapist, who thought it would be good for her to get some exposure to life outside the home, rather than remaining there and focusing on her pain. He said that she was excited to do this work, and enjoyed being in a position to help others. Her health remained the same, but she was learning how to manage it, in terms of understanding what she was and was not capable of doing.
- [461] In his observation she loved working at DIVERSEcity. He disagreed that she had taken on that position because her condition had improved from when she was doing the interpreter work. Once again, obtaining it was at the suggestion of her occupational therapist and doctors, as an alternative to remaining at home and focusing on her pain.
- [462] Although she was able to manage that job for a month to a month and a half, after that she began to complain that she was not able to finish her work, and to show signs of stress and fatigue, including needing to sleep after work. He also described her having difficulty going to work in the morning.
- [463] For one or two months his job was also done from home because of COVID, which gave him a greater understanding of her work challenges. He observed that she became very tired working with clients and would need to take frequent breaks. She had to work long hours in order to complete her work. She also did not communicate much with other members of the family. He would provide her with meals and drinks. At times he would have to tell her to stop working at the end of the day, and leave it for the next day.
- [464] He and their son would attempt to communicate with her in an encouraging way, but she continued to demonstrate stress, pain and fatigue, and would also suffer from panic attacks. His relationship with her remained good however, with the turning point having been his opportunity for first-hand observations of her limitations.
- [465] He did the majority of the housework during this period as well. Their son also began to do some cooking at that time.
- [466] At the point that she stopped working at DIVERSEcity her stress level was very high, she had more frequent panic attacks, and having to sit in front of the computer was aggravating her pain and headaches.
- [467] As of the time that he testified he described Ms. Ahluwalia's physical condition as "worse", but that "she is now able to manage herself". He and their children are "helping her a lot however" and they are trying to "manage things better" than during the 2016-2023 period.
- [468] To manage her symptoms, she sleeps in later if necessary, and does the stretching, light exercise and meditation that she has discussed with doctors.
- [469] Most of the housework is divided between him and their son, but Ms. Ahluwalia helps them, by making a single dish on some weekends. He described her as pushing herself to do something for the family, in order to maintain "full involvement".

- [470] Her ability to do housework is limited to light tasks such as dusting. The heavier tasks are done by him in the morning before work. Their son was a full-time student at that point, and his schedule required him to be out of the house too early for him to assist.
- [471] In addition to taking on the housework, his other responsibilities as a result of Ms. Ahluwalia's condition include driving her to appointments when she is feeling too anxious to do so herself, or when she is required to drive outside of Surrey, and helping her calm down at home when she is on the verge of having a panic attack. He also covers those household tasks that she attempts to take on but is not ultimately able to do, such as laundry. He was not able to provide an estimate of the amount of time that he spends carrying out tasks for her - it depends on the specific task involved.
- [472] Ms. Ahluwalia's injuries have impacted his own work, because she will call him at his office in a tearful condition and he will have to take the time to counsel her and help her clam down. If he is not immediately available to take her calls she will begin to panic. If his efforts on the phone are unsuccessful he will have to leave the office and come home to help her further. He is currently in a managerial position, and he has to make up the time he loses for these family purposes by extending his hours of work.
- [473] He said that caring for Ms. Ahluwalia affected his employment at Morrison Windows, because he was not able to devote sufficient time to all of his potential clients and "might" have been losing some of them as a result.
- [474] In re-examination he added that other former employees of Morrison Windows purchased a window company that he could have purchased himself, and that he had missed an opportunity to make "millions of dollars" due to Ms. Ahluwalia's accidents, which he did not explain further.
- [475] He finds himself tired because of the additional responsibilities that he has had to take on since the accidents.
- [476] During the trial he had to attend with her daily, in order to support her in withstanding its emotional effects.
- [477] While they have been able to maintain their marital sexual relationship, its frequency is less than before the accidents because of her physical limitations. Before the accidents he considered the frequency of their sexual relations to be "normal". They now maintain separate bedrooms because she has difficulty sleeping and he has to get a certain amount of sleep in order to be able to work, and because she has a variety of medical support equipment, such as her CPAP machine and blood pressure monitor, in her sleeping area.

- [478] Addressing her statements to care providers about suspicions that he was interested in other women, he denied any such interest or having been unfaithful to her at any time. Aside from having no time for such activities, he wishes to be a role model for his children, which of course would preclude him from engaging in them. He denied that Ms. Ahluwalia has discussed getting a divorce with him on multiple occasions since 2017.
- [479] He agreed that his wife had some suspicions about his involvement with their neighbour (whom he referred to as "that weird lady"), which she confided to their son. With their son's assistance the matter was sorted out.
- [480] They took a vacation to Europe that was booked for them by their son as a surprise for their 25th anniversary. He said that although Ms. Ahluwalia was grateful for their son's gesture, she was concerned about whether she would be able to cope with the demands of such a trip. As it turned out, her son had arranged for a three hour break between their flights, so that she would have a chance to rest in between them.
- [481] The trip was for five nights. He said that they found it a good break. They were able to manage her symptoms by starting later in the morning, going out for four or five hours, and then relaxing at the hotel. On one of the days she did not feel well, which caused them to stay close to the hotel, and on the way back to Canada she suffered a panic attack that was so severe that she almost had to disembark from the plane before it departed - a situation that she was able to avert by taking a tranquilizer.
- [482] He was aware of her autoimmune condition having its onset during COVID, while she was undergoing a lot of stress, and that its effect was to give her painful blisters in her mouth. Once she was prescribed medication for it he was not aware of it troubling her any further, at least in the form of complaints by her about it. For example, he did not recall that she also developed warts on other parts of her body, or that she developed swelling in her joints. He did remember having a minor problem with her feet, which was dealt with by an over-the-counter remedy.
- [483] He did not remember the medication that she took for the autoimmune condition initially worsening her other conditions, such as increasing her panic attacks and causing insomnia, chest tightness and shortness of breath, and blurred vision. He denied that she continued to take medication for it into 2022.
- [484] He professed to be unable to remember how many times he had been to India since 2020, although he could remember having gone in 2023 because his father was ill.

Sahibjot Ahluwalia - Son

- [485] He described himself as being involved in commercial finance, which he also described as being a mortgage broker, but at the time he testified he was in training to become a registered massage therapist.

- [486] He believed that he was in Grade 11 or 12 when the accidents occurred.
- [487] When he was growing up, his parents had what he described as traditional family roles.
- [488] His mother was responsible for the housework in the home, including meal preparation and school lunches. The contribution from the rest of the family was to "focus on what we needed to do for ourselves". She kept the home to a high standard of cleanliness. He observed her having all of the necessary physical capabilities to fulfil her role, such as bending down to clean and carrying laundry, and described her in general as a very active person. Her cognition was also good during that period - she was able to explain his school work to him as required and played a role in handling the family finances. She was also largely responsible for driving him and his sister to and from their activities, which by the time of the accidents consisted of tae kwan do and tutoring for him and tutoring, dance and swimming for his sister.
- [489] His father on the other hand, was "more on the sidelines", but had some involvement in helping them with schoolwork. The yard work was done by him and his father.
- [490] As of a few years before the accidents, his father worked longer hours, whereas their mother took them to school and then went to work.
- [491] His parents' respective parenting roles were that their father was very stern and focused on their education, while his mother provided them with emotional support.
- [492] From his observation, the relationship between his parents was good before the accidents.
- [493] He did not pay much attention to his mother's physical condition at the time of the accidents. He was busy with his own life, but looking back he realizes that his mother was less involved in household tasks and that his father began to assume them.
- [494] He said that his mother "aged very abruptly", as though she had gained twenty years. She became confused, and would lose her train of thought. She also lost her self esteem and confidence, and began doubting herself. He referred to her being in constant pain, and to being unable to adapt to last-minute requests for assistance from him or his sister. He began to notice these changes once he began attending post-secondary studies, and was at home more during the day. He referred to her lack of activity when she woke up in the morning and lack of fluidity in her movements when she was walking down the stairs.
- [495] With respect to her mental health, he observed her having panic attacks and crying when even a slight amount of stress was applied to her. The panic attacks would involve her hyperventilating and "zoning out" (not paying attention to what people around her were saying). This lack of attentiveness to her surroundings had caused family members to call an ambulance for her multiple times throughout the years.

- [496] He noticed her panic attacks from after the time that he completed high school up to the present. He was not sure about before the beginning of that period, because he "wasn't around those times".
- [497] Her more fragile mental state meant that he and the other family members would only tell her good news, and he would not go to her to discuss any hardships that he was experiencing. He had learned through experience that she was not capable of coping with that kind of situation.
- [498] His relationship with his mother changed, although it has remained close, because their roles reversed and he became the person to whom she confided her problems. In contrast, his sister has become somewhat desensitized to his mother's plight, and asks him to deal with the situation when their mother is having a symptom-related issue.
- [499] He said that his parents' relationship did get "a little bit rocky", due to his father having to take on all of his mother's responsibilities, before he began helping his father with them. After the "initial amount of recovery time" had gone by, his father would raise the concern that she was not assisting with her former tasks. After a few years his father began to realize that her condition is something that the family has to adapt to, rather than expecting her to recover.
- [500] He agreed that he has seen his father yell at his mother multiple times. He and his sister have also had to intervene in these arguments between their parents.
- [501] After he began to help his father with these tasks, he would also mediate the conflicts between his parents, explaining to his father the extent of the challenges that his mother was experiencing. He said that as of the trial dates his parents had reached a better understanding with each other, his father was able to provide her with support, and there were no longer issues of this kind.
- [502] He flatly denied that his father had any interest in other women, stressing that he is simply too busy with his work and home responsibilities.
- [503] The kinds of tasks that he observed his father taking over were picking him up and dropping him off for activities such as tutoring and swimming classes (although his activities were reduced as he got older), cleaning around the house, and doing laundry. In addition, his father was telling him and his sister to fold their own laundry after he had washed it, and clean up their own rooms. Addressing his need for rides despite being an older teenager, he explained that he obtained his driver's licence a little bit later than usual, although he did not know the exact time frame - he was "guessing" that it was when he was 19.
- [504] He described this change in responsibilities as "a pretty abrupt shift".

- [505] There was only a brief period in which his sister would do some cooking and baking, but as she had gotten into her senior high school years she no longer assisted with household duties because of the demands of her schoolwork and a part-time job.
- [506] Instead the task of helping his father cover the responsibilities that were formerly covered by his mother fell to him. He described it as taking some responsibilities away from his father so that he would have time to focus on his work. This consisted of cooking, cleaning, yard work, walking the family dog, maintaining the family vehicles and, at times, grocery shopping. He and his father now split those tasks equally, with his daily responsibilities being carried out before and after his day of classes and larger tasks being attended to on weekends or Friday afternoons.
- [507] He resisted the suggestion that once he turned 18 and became an adult, he would have wanted to help around the house in any event. He said that he had been pampered throughout his childhood, and if his mother had not been injured, he would have been focused on his school and career, as his sister currently is. While he would have learned to cook eventually, he found cooking for the family stressful when he had his own "stresses going on".
- [508] His mother assists with cooking occasionally, if they are having a traditional dish. In the month before the trial she did so three or four times. Her own meals require minimal effort and she is able to prepare them for herself. She also mops once every two weeks, usually because the dog has dirtied the floor or someone has tracked mud in.
- [509] He recalled that when his mother was working at DIVERSEcity she became overwhelmed by dealing with the problems of others, because in her condition she could not handle her own stresses. As a result, she isolated herself from the family and he was the only person she really kept close to her, offloading her stresses to him throughout the day. He in turn attempted to boost her confidence.
- [510] The only measure he saw her being able to take to manage her condition was to take on less work.
- [511] The main assistance that he provides her on an ongoing basis is emotional support and encouragement. Although he is there for her in one-on-one situations, he emphasized that he is not there "to babysit", and needs to focus on his massage therapy program and maintaining his existing clientele in his finance business. That was why he was unable to recall whether his mother had accompanied his father for a trip to India in 2023, following the death of his grandfather.
- [512] To address concerns about what would happen to his mother if she were left alone at home while in the throes of an anxiety attack, he changed career paths and became a mortgage broker, which is a self-driven career that he could carry on from home. He said that since embarking on that career he had only gone into the office once or twice, so he could maintain "my closeness with my mom at all times".

- [513] He claimed that since he was child he had wanted to go into corporate law, and had entered a criminology program in order to get higher grades for admission to law school, but had to make a complete change in order to fit her health concerns into his schedule, until he was satisfied that it was safe for her to be left on her own, or someone else could supervise her.
- [514] Even as of the time he testified he was not that confident in leaving her at home, even though "the area" in which his massage therapy school is only a five- or six-minute drive from their home (he then said he can be on time for his classes if he leaves home fifteen minutes beforehand). On one occasion he has gone home at lunch time in order to address a panic attack or her "feeling upset". He appeared to be saying that even though his school has a more onerous program than some others, he chose it because of its proximity to the family home. In re-examination he said that while his mother's condition has not improved, she is not complaining about it as much recently, which means she has fewer panic attacks. This has enabled him to focus on his massage therapy program more.
- [515] The current family home is 4300 square feet on three levels and contains two rental suites and a home theatre.
- [516] He considered that his mother's condition has been about the same from the time he finished high school onwards. He was not aware of any change to her condition in 2020 (the auto-immune disorder) and explained that during these years he had been progressing his career and did not have time to take in "every little detail". All he was able to say about what she suffered as a result of the accidents was that she was "going through stuff" and that she does not go into detail about "every little ache and pain that she has". In essence she is not able to move, think and act in the manner that she used to. Other than being asked to massage her feet and head she has not gone into detail about "exactly what hurts".
- [517] He denied that there were periods of time in which his mother was not speaking with him because he had been yelling at her - she has not gone more than "maybe a day" without doing so. The only time he has yelled at her was during an incident in which he felt that she had overstepped her bounds in relation to his girlfriend.
- [518] He went to Simon Fraser University to study criminology after graduating from high school in 2017, but could not remember how long he attended there before withdrawing and attending Kwantlen College, even whether it was for six months or a year. He said that his life has "progressed pretty quickly" since then and so he has not paid attention to all the details. He took time off before beginning business studies at Kwantlen but once again could not be sure when he began them.

Functional Capacity and Cost of Future Care

Kimberley Dimayuga

- [519] She is an occupational therapist who conducted a functional capacity evaluation of Ms. Ahluwalia over two days in April 2023. The second day was in Ms. Ahluwalia's home. Her report also addresses the cost of the future care items that were recommended by the medical experts. She prepared a supplemental report that incorporated Dr. Lu's recommendations, which she did not have when she wrote her first one.
- [520] The ongoing symptoms that Ms. Ahluwalia reported during this evaluation were largely the same ones that she has described in her testimony, except that she was more specific about her leg and pelvic pain, locating the former in her calf and the latter in her gluteal muscle and her left groin and calf. When describing her headaches, Ms. Ahluwalia told her that they occur daily, but that she has "better days", on which the pain is less acute.
- [521] As part of the evaluation, the subject's effort is measured in order to determine how accurately each test measures their function. Ms. Ahluwalia's effort in the testing ranged from high to guarded, with the latter representing about 10 to 15% of the tests, in areas such as grip strength and general mobility. This lesser amount of effort occurred when Ms. Ahluwalia's symptoms were aggravated by the tests, or she was concerned that they would be.
- [522] Ms. Dimayuga's opinion is that Ms. Ahluwalia will require assistance with mental health and pain management in order to be capable of greater effort in those areas. She drew a distinction between effort that is guarded for these reasons and low effort in general, but agreed that secondary gain can be a reason for low effort.
- [523] Ms. Ahluwalia's self-reports of her abilities matched the objective measures of them, and were considered reliable, except in the area of her sitting capacity. Her reports of the effect of pain on her function were also "generally" reliable, except for a tendency to overstate her limitations when she was in emotional distress. In other words, in certain situations she had "altered perceptions of her pain and disability", which is an aspect of her SSD. In that regard she showed indications of "psycho-emotional factors" during the assessment - for example, tearfulness, anxiety-related behaviors such as hand wringing, and becoming distracted and looking unfocussed.
- [524] During the home visit on the second day of the evaluation, Ms. Ahluwalia reported being extremely tired, as well as nauseous, and rated her neck and headache pain and her fatigue as being very high. She also appeared tired and unfocused to Ms. Dimayuga.
- [525] Based on the testing, Ms. Dimayuga's opinion was that Ms. Ahluwalia is unable to work "durably" (meaning sustained performance over time) in her former occupation as a bank teller, either full or part time. She has limitations for prolonged sitting and standing, and reduced overall endurance, because of her physical and mood complaints and her fatigue. There were also limitations bending her neck and assuming stopped postures in situations where her workstation cannot be modified ergonomically. Important cognitive limitations

are with respect to attention, memory and solving problems in time sensitive situations, which would likely make her slower and more prone to errors, as well as maintaining attention in a noisy background or if the interaction with the customer increases her anxiety.

- [526] Ms. Dimayuga reached essentially the same conclusions with respect to Ms. Ahluwalia's former occupation as an administrative assistant (at Morrison Windows).
- [527] Overall she concluded that Ms. Ahluwalia has "reduced vocational options and reduced competitive employability".
- [528] Ms. Dimayuga observed that despite the considerable number of different kinds of treatments she has received, Ms. Ahluwalia's psychiatric care and any rehabilitation tailored to her specific pain and mental health conditions have both been limited. Not only has her progress been limited, but her condition has actually deteriorated through the emergence of new symptoms (related to the autoimmune disorder).
- [529] She did not know, and agreed that it would have been helpful to know, that Ms. Ahluwalia had reported a "flare" of her autoimmune symptoms to her family doctor in February 2023, a few months before the assessment, although in re-examination she clarified that she had Dr. Cheema's records until 2022, so she was aware of how the autoimmune condition had "transpired".
- [530] More generally, she was not able to comment more specifically when Ms. Ahluwalia's reported improvement in her symptoms in 2018, seeking out more days of work with the positions at DIVERSEcity and being able to continue in it for 13 months, other than to acknowledge that there must have been some improvement in her position. However even if there was a peak in her functional improvement, Ms. Dimayuga had to consider the overall peaks and valleys over time to see if there has been an overall improvement. In re-examination she added that the DIVERSEcity position was still not durable for Ms. Ahluwalia in the long term, and if her symptoms were better when she was not working, that spoke further to the issue of her durability.
- [531] With respect to treatment needs, Ms. Dimayuga said that as a threshold issue intensive and regular treatment to address Ms. Ahluwalia's depression and anxiety is necessary in order to implement the recommendations of the medical experts, and to support her in benefitting from them. Specifically, she requires intensive rehabilitation with an occupational therapist and a rehabilitation assistant, in conjunction with psychological counselling and psychiatric monitoring, to establish more functional routines and structure. This would be done on the staged basis recommended by Dr. Lau, with three months of "up front" activation, followed by a 12-month maintenance and support phase while she participates in the recommended medical treatments. Next would be a long-term community-based rehabilitation focused on her SSD and then a brief transition to functional activation and rehabilitation in the home, to establish her independence and health routines. Ms. Dimayuga assumed that 12 months would be required for the

rehabilitation and three months for the transition. Any gains in the rehabilitation phase would commensurately reduce her requirements for medical treatment and homemaking support.

[532] In the case of all of the care recommendations by the medical experts, Ms. Dimayuga had simply costed them out in her report. She is the person responsible for recommending the necessary rehabilitation (psychological, occupational, physical, vocational and with respect to driving) and home support services.

[533] In response to the suggestion that an occupational therapist could handle the necessary vocational rehabilitation services for Ms. Ahluwalia, so that a specialist in that field would not be required, she explained that while occupational therapists are sometimes asked to provide those services, a vocational rehabilitation specialist will have much better contacts for involving the client in volunteer work, particularly when they need accommodations.

[534] Despite Ms. Ahluwalia being able to do some driving, Ms. Dimayuga questioned her ability to drive home from longer appointments during which she had received treatments, as well as her ability to withstanding travelling to and from such appointments on public transit.

Contrary Opinion - Sheila Branscombe

[535] She is also an experienced occupational therapist. She provided a responsive report identifying concerns with certain features of Ms. Dimayuga's.

[536] Ms. Branscombe's main concerns were that:

- Not enough data was provided about the types of tests that had been administered in the functional capacity evaluation, which meant that she could not give an opinion on the methodology that had been used to carry it out;
- The effect of Ms. Ahluwalia's mental illness on her performance on some of the cognitive tests had not been taken into account;
- Ms. Ahluwalia was not assessed for altered perceptions of pain and disability;
- Some of the tests should have been repeated at the end of the evaluation process, to see if the testing process itself was having any effect on her function;
- Ms. Dimayuga did not provide details about the specific difficulties that Ms. Ahluwalia had with the tests, which could have provided useful information about her capacity;
- Ms. Ahluwalia provided estimates of the amount of housekeeping that she is able to do that were out of sync with her self-rating of her overall function, which leads to concerns about her reliability;

- The pain tests that Ms. Dimayuga used cannot correlate reports of pain to the subject's behaviour and cannot determine function, because they are based on the subjective impressions of the person who is being evaluated; and
 - While Ms. Ahluwalia could not be considered "durable for employment" based on her presentation during the evaluation, numerous non-accident related factors, including her auto-immune conditions, have contributed to her lack of durability in employment. Her actual capacity after the accidents but before the onset of these difficulties is best shown by her ability to return to and remain and work for an extended period during them.
- [537] Despite her comments about Ms. Dimayuga's methodology, she agreed that there was nothing about it that was significant enough to recommend that a second functional capacity evaluation be carried out.
- [538] She was only provided with the expert reports, not any of Ms. Ahluwalia's clinical records. In her initial response, when she was under the impression that she had the clinical records, she agreed that it would have been helpful to her to have them when providing her report. Once it was established that she did not, she clarified that she often finds such records lacking in the kinds of specific information she requires, although the ones from previous occupational therapists might have contained some useful information in forming her opinion.
- [539] She agreed that her ability to comment on the period in which Ms. Ahluwalia was able to return to work, in terms of its impact on her ability to return to work now, was "very much hindered" by not having the details of what the consequences to Ms. Ahluwalia of working were. She also agreed that the concept of durability takes into account how working impacts other areas of the subject's life, including "potentially" how it affects family relationships.
- [540] When Ms. Ahluwalia's counsel asked her to assume that there were such consequences - aggravation of her pain and mood symptoms and isolation from her family - she conceded that in the case of a reliable subject who was not suffering from SSD and other mental health disorders, it was possible that her previous return to work was not an indication that she can work now. Nevertheless, she clung to the position that Ms. Ahluwalia's post-accident employment had some significance in the analysis, as I understood it because it departs from the symptomology described by Dr. Lau in her report.
- [541] When reaching her conclusions on the significance of intervening factors following the accident, she assumed that Ms. Ahluwalia's psychological diagnoses were not made until three years after the accidents, which is not borne out by the actual evidence. She also accepted that a person with SSD would demonstrate some variability in effort testing, and that their perception of their own level of function may not be completely accurate.

[542] More broadly, she agreed that having the opportunity to evaluate the subject personally would be the best way to determine the effects of their mental health conditions on their function. She also agreed that a person's perception of their pain can limit their function.

Vocational Rehabilitation

Avita Sharma

[543] Ms. Sharma, a vocational rehabilitation specialist, prepared a report in May 2023, based on her review of the relevant reports of Drs. Lau, Lu and Riar and Ms. Dimayuga, an interview with Ms. Ahluwalia, and the results of the vocational testing that she administered to her.

[544] Ms. Ahluwalia did poorly in the testing, but in light of the level of post-secondary education that she attained, Ms. Sharma attributed that performance to the effects of her physical, cognitive and mood symptoms.

[545] She had previously provided vocational rehabilitation services to Ms. Ahluwalia between January 2019 and April 2020, after Ms. Ahluwalia requested a change from her previous vocational counsellor. The services that she provided were job search support and resume preparation. Their relationship ended when Ms. Ahluwalia obtained the DIVERSEcity position.

[546] She confirmed that in December Ms. Ahluwalia had sent her text messages seeking her advice because she had received three job offers, one of which was the DIVERSEcity position. She could not recall the nature of the other two positions that had been offered.

[547] Also significant from the defendants' perspective was a phone conversation that they had in April 2020. During it Ms. Ahluwalia described the onset of her immune symptoms after a few weeks in that position - headaches and anxiety, after which she developed infections, "her immune system crashed" and she had lesions in her mouth. This was at the start of the pandemic, and Ms. Ahluwalia expressed fear of COVID because of the state of her immune system. She told Ms. Sharma that she had been loving the position and that various aspects of it were "perfect for her". She did not think that she could get in touch with her occupational therapist, because she did not think that it was "related to her case". She also mentioned the possibility of a part-time position with Scotiabank, and that she was going for a functional assessment with respect to it.

[548] Ms. Sharma's predecessor had made inquiries about positions at other financial institutions, but by the time that Ms. Sharma became involved, she was operating on the basis that the cognitive demands of dealing with the public in a frontline capacity would not be feasible. Ms. Sharma elaborated that Ms. Ahluwalia applied for some insurance positions but did not "interview [for] or secure any". Ms. Ahluwalia inquired with Ms. Sharma about doing higher levels of insurance training, but she was advised against it (presumably by Ms. Sharma) because of the increased physical, cognitive and psychosocial demands involved.

- [549] In July 2019, which was their last in-person meeting before the assessment, Ms. Ahluwalia told her that "[s]ymptoms worsened last few months since surgery, especially cognitive declined." She understood that the surgery in question had been a hysterectomy.
- [550] When she saw Ms. Ahluwalia again in 2023, she observed a decline from when she had last seen her. Ms. Ahluwalia had "the same symptom profile but magnified".
- [551] Ms. Sharma found Ms. Ahluwalia to be an excellent client from a vocational rehabilitation perspective, in that she was reliable, performed all of the tasks required of her, and was motivated and had ideas of areas of employment that she would like to pursue. She also persisted despite complaints of anxiety, fatigue, cognitive difficulty and impaired mood.
- [552] She explained that the computer courses that Ms. Ahluwalia took in 2019 were self-paced, and the schedule that she arranged with the school for the three courses was two hours per day, four days per week. Ms. Sharma was unsure whether Ms. Ahluwalia had completed those courses. She passed the level one insurance broker's course, that does not require any classroom attendance, by using the notes of a friend who had previously taken it to study for the exam, obtaining a mark of 87%.
- [553] Her opinion is that Ms. Ahluwalia cannot be considered competitively employable, "given the impact of her accident-related physical, cognitive, psychological and functional limitations". A relevant aspect of this situation is that Ms. Ahluwalia's pain and distressed psychological state, have led to "a disruption in her demeanour" and she "presents as highly disabled".
- [554] Her further opinion is that if the accidents had not occurred Ms. Ahluwalia could have continued to "acquire employment in various semi-skilled and skilled occupations" while working towards her long-term career goal of becoming a lawyer in Canada, and upholding her responsibilities at home. Her important attributes in this respect are her linguistic abilities, her university education, and her ability to adjust to Canada as an immigrant in both the employment and family realms.
- [555] Instead, her limitations mean that she can no longer work in her pre- or post accident positions on a "reliable or durable basis". Ms. Sharma describes this as a "loss of vocational opportunity" in light of how Ms. Ahluwalia had previously been able to establish herself in the Canadian labour market.
- [556] Dealing specifically with Ms. Ahluwalia's plans for a legal career, Ms. Sharma confirmed the process for a person who received their legal training in another country to become qualified here. As Ms. Ahluwalia and Mr. Sapra described, the NCA assesses the education and experience of applicants and determines the extent to which they need to take Canadian legal training through self-study or attending law school in Canada and which qualification exams they will need to write.
- [557] Ms. Sharma expressed her opinion on the effects of the accidents in this way:

I cannot predict with certainty whether Ms. Ahluwalia would have been successful at qualifying as a Canadian lawyer, how long she would have taken to fulfill the requirements for the equivalency process or have gained admission to one of the 24 Canadian law school programs. However, Ms. Ahluwalia was 43 years old at the time of both accidents, and based on her pre-accident vocational background, health and functional abilities, it is my opinion that, in the absence of the accidents, she would, more likely than not, have been better equipped to tolerate the varying demands involved with training for and qualifying for a career in the legal industry.

[558] Ms. Sharma says that in her current situation, pursuing this process is not a feasible option.

[559] As I have mentioned, Ms. Sharma is one of the experts of treaters to whom Ms. Ahluwalia indicated that she had practiced law for four years in India. She agreed that if the duration had actually been shorter, it could affect her opinion about Ms. Ahluwalia's employability in that capacity if the accidents had not occurred.

[560] To address the possibility that Ms. Ahluwalia would have pursued a position related to law that did not have as onerous a qualification process, Ms. Sharma included in her report the median and "high" incomes in the lower mainland not only for lawyers, but for other professional legal support operations: notary public, legal assistant, court clerk, mediator and court reporter/transcriptionist. She said that like pursuing a career as a lawyer, these related alternatives are no longer a realistic consideration for Ms. Ahluwalia.

[561] Ms. Sharma also canvassed a variety of non-legal occupations that Ms. Ahluwalia's testing identified an interest in and that would have been reasonable for her to consider, in terms of their training and skill requirements, if the accidents had not occurred. They include positions such as insurance agent, human resources officer, dental assistant, teacher's assistant and 911 operator. She provided the range of median earnings that are available for these positions, but stressed that they are not an exhaustive list of everything that Ms. Ahluwalia could have done if the accidents had not occurred.

[562] She has been unable to identify any other viable employment options for Ms. Ahluwalia, and observes that in her current state, with her overt manifestations of pain and tearfulness, she would not present well in an interview setting. She said that when she dealt with Ms. Ahluwalia in 2019, she believed that administrative positions like the one she had at Morrison Windows were within the scope of work she could do.

[563] Looking ahead, Ms. Sharma recommended that Ms. Ahluwalia focus on the recommended treatment programs outlined by the medical experts. In the interim, she would benefit from eventually participating in a volunteer work so that she can "connect with her community, engage in a purposeful activity, and enjoy the social and emotional benefits that come from this work". Having offered this recommendation, she went on to caution that even with the lessened demands and greater flexibility of volunteer work, she is not convinced that Ms. Ahluwalia can even be reliable in that capacity. She recommends that a vocational consultant be provided to assist her in identifying and obtaining a suitable volunteer position.

- [564] She said that if accompanied by treatment to address Ms. Ahluwalia's current disabling conditions, this volunteering could assist her in eventually returning to the workforce. When the opposing vocational expert Mr. Willis's opinions that work in itself can be therapeutic and a large number of people with depression are able to work with assistance was put to her, she explained that work is not a curative response to depression, and that in any case Ms. Ahluwalia's disabling factors go beyond that single factor (including the autoimmune disease).
- [565] Ms. Sharma also rejected the suggestion that Ms. Ahluwalia's ability to become competitively employable post-accident was an indication of a more optimistic prognosis. In her view, the DIVERSEcity position was not a competitive position, in that Ms. Ahluwalia was accommodated in her ability to work from home. She could not have been reliable and durable at a work site. Similarly, the interpreter work was sporadic, on-call, and involved a limited number of hours.

Contrary Opinion - Clae Willis

- [566] He is also an experienced vocational rehabilitation specialist. He provided a report responding to Ms. Sharma's report.
- [567] He explained that from a vocational assessor's perspective, the key questions are how a person's medical conditions actually interact with the required tasks of their employment, and what specific evidence-based treatment may be more effective in reducing those barriers. This applies to both physical and psychological symptoms.
- [568] Mr. Willis was critical of Ms. Sharma for not providing more information about what specific treatments were applied previously and their degree of success, and how the specific treatments that have been recommended would impact on Ms. Ahluwalia's "vocational trajectory". However, he conceded that Ms. Sharma had access to clinical records that set out all of Ms. Ahluwalia's past treatments, and that the records would provide her with a better sense of those treatments than asking her.
- [569] He identified an "incongruity" with respect to Ms. Ahluwalia's ability to engage in competitive employment, which is based on her ability to work between the two accidents and obtain the interpreting and DIVERSEcity positions after the second one. Her length of time with DIVERSEcity "may or may not demonstrate sustainability within the occupation", and a closer examination should be made of the complaints that she said led her to give up the employment. Her ability to complete some education after the accidents is also relevant on this point.
- [570] He agreed that important aspects of sustainability, in addition just the duration in a job, were its negative effects on family relationships, psychological health and the ability to engage in any other activities besides working.

- [571] He concurred with Ms. Sharma's opinion that it was difficult to say with certainty whether Ms. Ahluwalia could have qualified as a lawyer in Canada, but that without the accidents she would have been better equipped to tolerate the challenges of doing so. He also concurred that she could have pursued various legally-related positions, and that she would have continued to function in her employment, working towards her professional goal, and in her home responsibilities.
- [572] He did not agree that she can no longer work in any of her pre- or post accident positions, since this expresses a finality that is not warranted, although he did accept that her "immediate situation" may be that she is not employable. In his view Ms. Sharma fails to consider the ability of evidence-based vocational reintegration therapy on improving her situation to the point where she can work.
- [573] Finally he endorses the concept underlying Ms. Sharma's recommendation that Ms. Ahluwalia do volunteer work to reactivate herself in that setting and move on from the depressive cycle that she is stuck in with respect to regular employment, but he reiterated the importance of addressing the depression in the context of regular employment, with "specific lifestyle habits, effective therapy and medical care."

Value of losses

Darren Benning

- [574] He is an economist who frequently provides opinions in personal injury cases.
- [575] He calculated Ms. Ahluwalia's loss of income as a result of the accident, both before trial and in the future. He also calculated the present value of her costs of future care.
- [576] The scenarios for which he calculated her income loss were that if the accidents had not occurred she would have:
- Continued her employment at both Scotiabank and Morrison Windows to the end of 2016, worked only at Morrison Windows for the next two years, articulated for a year and then practiced as a lawyer beginning in 2020, continuing until she reached 65;
 - Continued her employment at both Scotiabank and Morrison Windows to the end of 2016, worked only at Morrison Windows until the end of 2018, then become a notary public and worked in that capacity until she reached 65; or
 - Continued her employment at both Scotiabank and Morrison Windows until June 30, 2017, then worked as an administrative assistant until she reached 65, for the first five years at the median wage level and then at the high end of wages for that position.
- [577] These calculations can potentially involve the application of contingencies, to allow for future events that could modify the amount of income earned. On the instructions of Ms. Ahluwalia's counsel, Mr. Benning applied the contingencies of the usual rates of unemployment and the likelihood of a worker becoming disabled, but not the possibilities

of her working part-time, or full-time for parts of years - in other words, of her voluntary withdrawal from the workforce. He was not able to address the fact that her income tax information in the two years before the accident potentially indicates that she was doing part-time work.

- [578] The process then involves using census data for the incomes of the professions that she does not have a history of working at yet, applying the non-wage benefits that she would have received in addition to these earnings, and deducting the employment insurance premiums and income that she would have to have paid. The statistical likelihood that she will die in each year for the future period until she reaches 65 must also be taken into account.
- [579] For unemployment rates he used data that is based on Ms. Ahluwalia's education level, rather than for her projected occupations, because a person with a law degree will have a lower unemployment level, even if there are using that degree to work in another field that has a different rate of unemployment. He also noted that the occupation-based unemployment figures in the 2021 census, which was the latest one conducted, which may reflect the effects of the pandemic, and education data is adjusted based on a ten-year average.
- [580] Finally the present value of her earnings for each year - the amount that if paid now would result in that amount of income in that year - is calculated. This can be done by using the actuarial multiplier, which only takes into account the discount rate (annual percentage that the future payment is reduced to get its present value) and the likelihood of Ms. Ahluwalia dying prematurely. This is done if contingencies have already been taken into account for the value of the loss in question. The alternative is the economic multiplier, which also takes economic contingencies into account.
- [581] For past loss of income, the amounts that she was actually able to earn following the accidents must be deducted from her projected earnings if they had not occurred, to show her actual loss during that period. Similarly, the income tax that she actually paid has to be deducted from the amount for taxes that gets taken off of her projected earnings.
- [582] He did not use any of the other legally-related occupations that Ms. Sharma had proposed besides Ms. Ahluwalia becoming a notary public.
- [583] He did not assume that Ms. Ahluwalia had any residual earning capacity.
- [584] He agreed that her earnings at Morrison Windows over the short period that she worked there were quite variable, and that predicting her ongoing employment there may underestimate or overestimate what her actual earnings would have been.
- [585] Mr. Benning also provided the present value of Ms. Ahluwalia's recommended future care costs.

Contrary Opinion - Judy Ren

- [586] She is also an experienced economist. In her reply report she raised several concerns with the assumptions that underlie Mr. Benning's opinions.
- [587] With respect to Ms. Ahluwalia's stated goal of qualifying as a lawyer in Canada, Ms. Ren questioned whether the time frame in Mr. Benning's scenario allows for the steps that would actually have been necessary to complete that process. She also pointed out that Ms. Ahluwalia's age at the time of qualifying under that scenario would be 47, which is two years older than the median age of lawyers in Canada, and suggested that in light of her pre-accident mood disorders, the probability of her ability to complete the program even with accidents should form part of the analysis.
- [588] Similarly, it was unclear to her whether the timeline for becoming a notary public (18 months to acquire a master's degree in applied legal studies) had been taken into account by Mr. Benning. She also found it necessary to consider the average earnings and rates of unemployment for all of the legal support occupations that Ms. Sharma had referred to, not just a notary. She provided a weighted average of all of the specific potential earning levels in this legal support field. The weighting is driven by the number of people who work in each occupation, and she agreed with the suggestion that this could result in greater weight being given to lower-paying law-related jobs, such as court clerk, that are easier to get into.
- [589] Other adjustments that needed to be made to Mr. Benning's calculations, in her opinion, included adjusting the likelihood of Ms. Ahluwalia becoming disabled to reflect the statistics for women with law degrees rather than a generic statistic from the insurance industry, and weighing her actual health issues to some extent when weighing that likelihood (although she did not provide any calculations for the second of these contingencies).
- [590] More generally, she said that Mr. Benning's exclusion of part-time or part-year work in his projections has the potential to overstate the lifetime earnings significantly. She chose to use only disability-based absence from the workforce for the period between the qualification date as a lawyer and the trial, on the basis that in the initial years of her career she would be focusing on establishing herself. But for future income she applied the usual rates at which lawyers work part-time, since she had no basis to make any contrary assumptions for that period. She agreed with the suggestion that working part-time as a lawyer in the early years of a conventional legal career might reflect time out for having children, which of course Ms. Ahluwalia would not need to take.
- [591] To allow for the uncertainty about which particular legal support occupation Ms. Ahluwalia would have entered if the accidents had not occurred, Ms. Ren prepared projections based on various percentage likelihoods of those various occupations being pursued.

Issues

Credibility, Reliability and Essential Findings of Fact

Positions

Plaintiff

- [592] Ms. Ahluwalia's counsel submit that a practical, common-sense view of the evidence as a whole clearly demonstrates that her life and function were changed significantly as a result of the accidents, and that the defence approach of picking apart individual pieces of evidence does not present an accurate picture of the situation. They say that in spite of the conditions from which she is clearly suffering currently, and the seven days she had to spend testifying, she was a credible witness overall, one who readily conceded the accuracy of suggestions that were made to her in cross-examination when it was appropriate to do so, but stood her ground when the suggestions were unfounded.
- [593] Counsel's submission is that the evidence put forward to contradict Ms. Ahluwalia's credibility was not persuasive. For example, she only downplayed her legal experience on the advice of a support person who had expertise in job searches by immigrants, the surveillance showed nothing that she had claimed she was unable to do and in fact showed a demeanour and a need for breaks that supports her self-description, and the familial tensions that she described to her counsellor are consistent with their inability to adjust to her reduced capacity for housework.
- [594] Instead, the evidence from her care providers over the years was that she was a person who wanted to get better and pursued every avenue for doing so. Her attempts to work at DIVERSEcity should be seen as a demonstration of the effects of attempting to work beyond her capacity and eventually becoming overwhelmed by the ongoing effects of her central sensitization. Ms. Dimayuga's observations of her depleted state after a day of functional testing is a more recent example of the limits in her capacity.
- [595] Counsel submit that her pre-accident complaints were of a minor nature - troubling enough to prompt her to see her doctor but not interfering with her function in any meaningful way. Dr. Cheema, who was in the best position to assess the nature of those complaints, confirmed that view of her pre-accident situation. The gap in time between her last complaints of them and the accidents is also telling. Notably, Dr. Riar conceded that the indications of anxiety and depression that were present did not amount to diagnosable disorders.
- [596] I should not put any weight on Dr. Makin's opinion that she suffers from migraines that predate the accident, it is argued, because of the delays in submitting his report and the likelihood that he misunderstood or misremembered her statements about migraines as a teenager, and his aggressive advocacy on behalf of the parties who retained him.

[597] Dr. Lau's opinion is the one that makes sense of the situation, counsel argue. Like so many of the patients she described, Ms. Ahluwalia was seeking diagnoses and treatment from a wide variety of care providers, none of whom were able to view her condition as a whole. It took a pain management specialist to recognize her cascade of symptoms as the result of central sensitization. Dr. Lu, the only other witness in the trial who has actual expertise in dealing with chronic pain, supports that conclusion.

[598] While the autoimmune condition was a result of the central sensitization identified by Dr. Lau, it did not turn out to be a serious condition in any case, and should not be characterized as having a significant effect on Ms. Ahluwalia's function.

[599] Thus I am asked to find that the accidents caused:

- Soft tissue injuries to Ms. Ahluwalia's neck, shoulders and low back, as well as left hip/pelvic pain;
- Post traumatic cervicogenic headaches, or alternatively, migraines;
- Bilateral frozen shoulders, worse in the left shoulder;
- Tinnitus;
- Major depression, anxiety disorder and SSD;
- Central sensitization; and
- The additional cascade of symptoms described by Dr. Lau as resulting from central sensitization.

Defendants

[600] In contrast, the defendants' counsel submits that the numerous contradictions in Ms. Ahluwalia's versions of events over time are meaningful, and have the effect of undermining her credibility and reliability. In addition to the points that I have referred to under her counsel's submissions, the defendants' counsel point to such additional contradictions as her statements about the length of time that she practiced law in India, her career aspirations at Scotiabank, and the extensive and ongoing health complaints that she presented to her doctor before the accidents, which clearly show that "she had a lot of things going wrong medically".

[601] More importantly, the defendants say that the chronology of Ms. Ahluwalia's actions following the accidents shows that her condition improved, she successfully sought out productive employment and was succeeding in it, until she was waylaid by the autoimmune disorder, which had nothing to do with the accidents. They do not deny her original injuries from the accidents, but say that they had healed significantly before unrelated problems overtook her.

- [602] Important pieces of evidence on this issue are her willingness and ability to work an additional week on her first DIVERSEcity contract, which is inconsistent with being completely worn out by her condition, and the relationship between her departure from the ongoing position and the requirement that employees work mainly from the office while she was still immunocompromised. Also important from the defence perspective is her use of her extensive sessions with Dr. Parattukudi to talk about her family relationships rather than any impediments to her function arising from chronic pain.
- [603] In short, the defendants' position is that the accidents aggravated Ms. Ahluwalia's pre-existing neck condition and that it is now a mild to moderate concern. They also caused low back pain, which is also intermittent and mild. Finally, they aggravated pre-existing conditions of depression and anxiety, and caused SSD.
- [604] Counsel submit that Dr. Lau's opinion about central sensitization should be rejected, because of her truncated opportunity to assess Ms. Ahluwalia and the absence of a full clinical history, which for example led her to attribute the onset of tinnitus and treatment for GERD to the post-accident period. Dr. Lu's supporting assertion that central sensitization is present is also said to be lacking, in this case because he does not describe any mechanism by which it arises. And despite Dr. Lu's assertion that it would not make any difference to his opinions, it is difficult to see how Ms. Ahluwalia's failure to broach her accident symptoms in numerous sessions with Dr. Parattukudi cannot undermine the suggestion that chronic pain was an ongoing concern for her during that period.
- [605] Even if Ms. Ahluwalia has central sensitization, which the defendants' do not concede, the defendants submit that the decline in her health before the accidents is equally likely to have triggered it.

Discussion

- [606] Of the factors that have been recognized as having an impact on the assessment of credibility and reliability (see, for example, the helpful summary in *Allison v. Radtke*, 2014 BCSC 1832 at paras.119-121), the ones that apply to the greatest extent here are the manner in which Ms. Ahluwalia responded to questions on cross-examination, the extent to which her version of events was contradicted by previous statements and, more broadly, whether what she claimed had occurred was consistent with what a reasonable person would expect to find in such circumstances.
- [607] I would not put much weight on her demeanour when testifying, both because demeanour must be relied on with caution at the best of times, and because there is no dispute that she suffers from a mental disorder - SSD - that affects her experience of pain and interacts with her depression (and, if Dr. Riar's opinion is accepted, her anxiety disorder as well). In those circumstances it would be unsafe to draw any distinction between what she may actually have been experiencing physically and mentally when she testified and any conscious choice she may have made about how to present herself in court.

- [608] Focusing first on Ms. Ahluwalia's credibility and reliability, I would say first that in her responses to cross-examination she repeatedly sought to minimize her pre-accident health conditions, and indeed anything else that could interfere with a direct line being drawn between the accident and her current condition. This problem was particularly acute on the questions of her pre-accident headaches, such as her quibbling about when she used the term "migraines", and the stress that she was obviously experiencing at home and work in the pre-accident period. If headaches and a sore neck were actually being caused by having to work more because of her husband's health condition, which I do not find very likely, I would have expected it to appear in her descriptions to Dr. Cheema, which otherwise contained a lot of detail about what was going on in her life during that period. Of course, the frequency with which patients resort to their family doctors vary, but Ms. Ahluwalia's reluctance to admit the obvious fact that she had several health complaints that were similar to her post-accident ones, and that went well beyond the trivial, came across as rather strategic.
- [609] An even greater concern arises from the numerous inconsistencies between her previous statements and her current version of events[3]. I have kept in mind the usual caution that applies to statements found in clinical records - they are only snapshots of specific interactions and are not meant to capture all facets of a patient's health at that time. I also accept that from early on in this process Ms. Ahluwalia was searching widely for a solution to her symptoms, in the course of which she seems to have pursued several dead ends that did not end up assisting her. But even with those qualifications, the number of inconsistencies and the range of areas that they cover are troubling. Particular difficulties are posed by her statements about improvements in her condition, and about pain and mood symptoms that preceded the accident, began or increased in severity well after them, or were associated by her with her auto-immune condition or her family situation. Once again, her reluctance to accept that there were clearly various contributing causes to her negative life situation in addition to her accident symptoms shows a single-minded focus on linking everything to the accidents that requires caution when assessing her evidence.
- [610] The surveillance was certainly not any kind of a smoking gun on the issue of her credibility. It showed Ms. Ahluwalia being active outside the home to a certain extent, which is contrary to her general depiction of her post-accident life, and she certainly did not look like the frail figure who appeared in court. On the other hand, she still moved in a fairly slow and deliberate manner (with the flat affect that I have previously described), and the majority of the lifting and carrying it showed was done with her right arm, the shoulder of which she claims was only incidentally and temporarily compromised by the overuse of the other shoulder. It is possible that the extended period of time that she was shown sitting in her vehicle at one point was the type of resting after exertion that she claims her condition requires, and the minimal degree of self-care that it shows her engaging is not really inconsistent with her overall description of her post-accident. At the end of the day, I found it ambiguous, and certainly not a basis in itself to reject her version of events.

- [611] As to the overall consistency the narrative with what one would expect to occur in this kind of situation, I accept, as shown by her wide-ranging search for assistance, that Ms. Ahluwalia herself did not have a framework for her post-accident experience, and that one has been superimposed on it only by the expert opinions obtained for this litigation. In other words, she does not seem to have had any real idea what was wrong with her, other than that it was chronologically linked to the accidents. However if I also accept, as the concurrence of the parties' psychiatric opinions indicates, that the accidents caused SSD, then what could be seen as an excessive reaction on her part to mild to moderate soft tissue injuries is not in itself damaging to her credibility, although her reliability must of course be looked at through the lens of the heightened experience of pain from those injuries. In fact, it shows an intention to improve her condition, however lacking in focus it may have been.
- [612] Likewise, her unsuccessful attempts to return to work are also consistent with her narrative of struggling against limitations that she did not fully understand at those points. Given the effects of her initial symptoms, it is more probable that a person who was seeking to leverage the accident for sympathy or financial gain would have simply remained in sick mode throughout the ensuing years, rather than seeking productive employment.
- [613] I did not find the testimony of her husband and son to offer any strong support for her evidence. Her husband was oddly vague on the details of his wife's pre-accident health condition, including the suspicion that she too had cancer, which I would expect a spouse to be intensely focused on, and he seemed evasive on matters of the extent of his anger management issues in the relationship and oddly, since nothing particular turned on it, how many times and when he has travelled to India in the recent past. Similarly her son seemed to draw an implausibly bright line between his initial obliviousness to the extent of her condition and his subsequent launch into an intensive emotional care role, despite which he had difficulty identifying the areas of her body in which she experiences pain. I did not understand Ms. Ahluwalia's own evidence to be that she is in any kind of physical danger when she is on her own, so her son's claimed focus on ensuring that she was not left alone or he was within range of a quick return in the event of an emergency seemed somewhat over the top, as did his claim to have altered his career path for that purpose.
- [614] As a result of these difficulties, I am satisfied that Ms. Ahluwalia's husband has stepped up to supplement her housekeeping role, and that her son has done so to a lesser extent, but in terms of their support for her descriptions of the nature and progress of her injuries and symptoms, I think they have only a general knowledge that it is something that causes her distress. Since that much can already be gleaned from the diagnosis of SSD, they do not add significant weight to the analysis. They lack the ability to support her account of the consistency of those symptoms over time or the significance of any intervening causes, which are the real matters in issue.
- [615] In contrast, I think the observations of her care providers do support her credibility and reliability to an extent, in the same way as her post-accident treatment and employment efforts do. From early on in the process there is a record of her seeking out effective

treatment and vocational assistance to return to a higher level of function, and the impediments to her progress reported by her treatment providers appear to be the product of her perceptions of her pain and disability, and the resulting feelings of hopelessness (which are within the scope of her diagnosed mental disorders), rather than an attempt to feign more serious limitations. In the case of Ms. Dimayuga, there is the addition of her expert opinion on the level of effort and degrees of disability that Ms. Ahluwalia demonstrated, and her observations of the subsequent negative effects on her of expending that amount of effort during testing.

- [616] Of course, the key to supporting Ms. Ahluwalia's narrative, and to making the findings of causation that are necessary to make out her case is the expert evidence that was tendered on her behalf.
- [617] I would not downgrade Dr. Lau's opinion because of the length of her physical examination of Ms. Ahluwalia. Her report and her oral testimony seemed to indicate that her diagnosis comes from the sequence of the cascade of symptoms in relation to the accidents and their consistency with the ones that are frequently associated with central sensitization. While a complete physical examination would no doubt have yielded more information, it would probably have continued to focus on her soft tissue pain which, other than its severity, is not really disputed. Nor do I find anything lacking in her general description of the mechanism of central sensitization, which is clearly a mainstream diagnosis in appropriate cases. She is obviously an authority with respect to it.
- [618] Instead, the problem I find with her opinion is that it does not account for the descriptions of improvements or interruptions of symptoms that Ms. Ahluwalia has provided throughout the time that central sensitization was supposedly in place. As Dr. Lau described it, the process of increasing pain and related conditions is a progressive one, and she did not account at all for improvement of symptoms within that process, or her attribution of her distress to causes unrelated to the accidents. She used the specific analogies of a "tipping point" and "cliff" after which the cascade of symptoms begins to be set in motion. Unless I disregard Ms. Ahluwalia's various descriptions of her situation over the years since the accident, that is simply not the situation that she experienced. According to her, things got better or worse for various periods of time, and the autoimmune disorder (which I acknowledge is said to be part of the central sensitization process) and family strife replaced the soft tissue symptoms as her main concerns for other periods, without any reference to the rest of the cascade of symptoms, which should have at least remained in view if they were part of the cumulative process that Dr. Lau described.
- [619] Although that is my main concern, I would also say that beyond Dr. Lau's general assertions based on her expertise, the actual objective basis for her opinion is quite sparse, and was not really explained. The identification in a checklist of numerous factors that are highly associated with central sensitization is of course not proof of causation, and while I can accept as a matter of common sense that indications of inflammation in liver tests offer some circumstantial support for the presence of a condition that involves the body's

response to inflammation, in the limited way that it was explained it was far from conclusive. Of course many conditions do not lend themselves to diagnosis by means of testing - my point is that having found that Dr. Lau's attribution of post-accident symptoms to central sensitization is inconsistent with the actual progress of those symptoms, I do not have any other persuasive evidence of the existence of that condition to rely on.

- [620] Thus, based on Dr. Lau's evidence I would not say that central sensitization is the most plausible explanation for Ms. Ahluwalia's current conditions. Her opinion does not really account for Ms. Ahluwalia's numerous statements about her improvements in function or standalone ailments, during the very period in which she was supposedly subject to a cascade of accumulating accident-related symptoms.
- [621] Dr. Lu also found that Ms. Ahluwalia has the "salient features" of central sensitization. He did not delve into the mechanics of its operation, but focused on the mutually reinforcing relationship between her chronic pain and mood disorders, resulting in her current meaningful level of disability. He addressed the changes in her health complaints - explaining that fluctuations are normal in the case of patients with chronic pain, who do not experience the same level of it "every day". That makes sense as far as it goes, but Ms. Ahluwalia's inconsistencies are not about fluctuations of that nature - she described substantial periods of improvement, or in which the accident-related symptoms were supplanted by pain or emotional concerns of other origins.
- [622] In my opinion the undisputed diagnosis of SSD, which it is also agreed was caused by the accident, accurately accounts for Ms. Ahluwalia's experience. As Dr. Lu and Dr. Riar explained it, SSD makes her pain the central experience of her symptoms - as Dr. Lu put it, she has "intense preoccupation with her chronic physical symptoms". Virtually the entire post-accident narrative, both as she provided it and as it was documented by her care providers, shows her acting on the "altered perception of her pain and disability" that SSD causes, as Ms. Dimayuga described it, and being "much more vulnerable to additional insults" as Dr. Lu did. The role of her anxiety and depression in perpetuating her experience of her symptoms through SSD, as described by Dr. Riar, is also significant.
- [623] Dr. Lu also diagnosed major depressive disorder and Dr. Riar says that Ms. Ahluwalia suffers either from that or from persistent depressive disorder. Dr. Riar adds the further diagnosis of generalized anxiety disorder. I do not think that anything turns on these differences for the purposes of causation or damages. On any view of the evidence, she has a severe form of depression, and despite the absence of a formal diagnosis from him nothing in Dr. Lu's evidence suggested that her anxiety is not a meaningful obstacle to improvement as well. In fact, he listed it as an aspect of the major depressive disorder. Both were either caused or significantly aggravated by the accidents, in conjunction with her SSD, and both remain obstacles to her function.

- [624] Although they differ somewhat on Ms. Ahluwalia's pre-accident tendencies towards mood disorders, I do not think that much turns on that. Neither of them suggests that she met the criteria for a formal diagnosis of depression, anxiety or SSD before the accidents, or that they would have developed to that level in the absence of them occurring.
- [625] On the specific question of headaches, I prefer Dr. Robinson's careful and balanced opinion that it is probable that the accidents aggravated Ms. Ahluwalia's pre-existing headaches. As I have said, I found her minimization of those headaches unconvincing.
- [626] I also find it highly unlikely that Dr. Makin misunderstood such idiosyncratic details as the means by which ambulance attendants treated her migraines as a teenager, and I accept his record of her description of those migraines as accurate. In that regard I do not think anything turns on the gap in time before he submitted his report, since it was prepared much closer to the examination date and there was no realistic suggestion that he amended it later.
- [627] But, while I appreciate Dr. Makin's candour in describing the probabilistic analysis that he engages in, his assertion that the diagnosis of a particular condition in a patient is more likely because of its statistical frequency, while it may be helpful to him in the diagnostic process, is not meaningful from an evidentiary point of view. He also quibbled with a diagnosis of cervicogenic headaches that Dr. Robinson ultimately modified (in favour of the likelihood that the accidents aggravated pre-existing headache disorder). More basically, if, as Dr. Makin accepted, the accident caused her depression and her depression made her headaches worse, that is a sufficient degree of causation for our purposes. His categorical pronouncements and dismissive attitude towards cross-examination did not help matters, and viewing his evidence as a whole I reject his view that the accidents played no role in Ms. Ahluwalia's headaches.
- [628] As to her soft tissue injuries generally, which it is common ground she suffered as a result of the accident, it is difficult to gauge their objective severity beyond the baseline opinions provided by Dr. Cheema and Dr. Robinson. On all the evidence they seem to be mild to moderate, and since I am satisfied that their interrelationship with her SSD has been debilitating, their impact on her well-being for the assessment of damages is best dealt with collectively. (On the question of these physical injuries, Ms. Ahluwalia's efforts to distinguish her post-accident pelvic pain from what she experienced due to fibroids seemed to align, as a matter of common sense, with the lower back pain that the parties agree was caused by the accidents).
- [629] I agree that the autoimmune condition is not a pivotal issue on causation. It is apparent that its onset supplanted the soft-tissue injuries and related symptoms in her complaints to care providers for a period of time. Despite this, to argue, as the defendants do, that it completely interrupted the chain of causation ignores the fact that her SSD, which is agreed to have been caused by the accidents, would have rendered all of her pain symptoms more acute, including those that arose from other causes (as, having rejected Dr. Lau's opinion

on central sensitization, I have found the autoimmune disorder did). Dr. Riar diagnosed it in 2020 and there was no evidence that it has remitted in any way since then. Thus, her heightened pain experience with that new condition is also attributable to the SSD caused by the accidents - it is her increased sensitivity to pain that is the injury, which may manifest itself in a variety of situations, both accident- and non-accident related. Until and unless it has been resolved, I infer that any new physical conditions that she suffers will lead to a heightened experience of the pain they cause.

[630] Based on her numerous ongoing reports of distress arising from it, I also disagree with Ms. Ahluwalia's counsel's submission that the autoimmune condition resolved uneventfully and was not a significant matter for her in any case.

[631] I do not think the other experts add much to the credibility/reliability and causation issues. Dr. Cheema played the role of a supportive family physician, as one would expect, and my only concern about his evidence is that his overall minimization of Ms. Ahluwalia's pre-accident complaints, which to give him his due did not interfere with her function to anywhere near the extent that her accident symptoms do, tends to gloss over the level of distress that he captured in his clinical notes. Those notes show a patient with an ongoing pattern of health complaints in quite a variety of areas, including mood-related ones, but that was far from the tenor of his testimony.

[632] Similarly, Dr. Parattukudi is no doubt a capable therapist, but his expert opinion does not illuminate Ms. Ahluwalia's psychological condition as helpfully as the diagnoses made by the forensic psychiatrists, and it seems to be less rigorous in terms of its elements and structure. The chief value of his evidence was to record, and provide context for, the crucial interactions that took place in a time of significant emotional stress in her life.

[633] With respect to the prospect of improvement, in light of my findings that we are no longer concerned with addressing central sensitization, the relevant prognoses are therefore those of Dr. Lu and Dr. Riar, whose recommendations are geared towards improvement of her mental disorders. In this respect I find Dr. Lu's guarded prognosis to be more realistic, given the length of time that Ms. Ahluwalia has spent since the accidents entrenched in these disorders and his specific experience with treating pain disorders, and will apply it when assessing the seriousness of the harm that has been caused to her. Dr. Riar made some insightful comments about the situation that she is currently in and what will be needed in order to help her break free of the mindset that confines her, but his pivot from that to a relatively brief course of therapy did not seem realistic, in view of the length of time that these thought processes have been in place.

[634] To summarize my findings on the injuries caused by the accidents, I am satisfied, despite the limitations in her own evidence, that as a result of the accidents Ms. Ahluwalia suffered the soft tissue injuries that she complained of (except that, as she testified, her frozen shoulders have largely resolved), an aggravation of pre-existing headaches, major depressive disorder, generalized anxiety disorder and SSD. The soft tissue injuries and

headaches are mild to moderate in themselves, but in conjunction with her mood disorders and SSD she has experienced them as being more painful and disabling. Based on her pre-accident complaint of it, I cannot find that the accidents caused her tinnitus. I am also not satisfied that her autoimmune disorder was caused by the accidents, but I am satisfied that her SSD caused her to experience its effects as being more painful and disabling as well. Finally, in light of my findings with respect to central sensitization, I conclude that the litany of other symptoms that Dr. Lau attributed to it were not caused or contributed to by the accidents.

Non-pecuniary damages

Positions

- [635] Ms. Ahluwalia's counsel submit that an award of \$200,000 would be appropriate. They emphasize the serious effects of her injuries on her quality of life - as a result of them she has experienced chronic pain with only limited prospects for improvement, deterioration in her family relationships, and the loss of her independence and self-esteem.
- [636] They refer to relatively recent non-pecuniary damage awards that involved an overlay of serious mental health problems on soft tissue injuries:
- Gill v. Apeldoorn, 2019 BCSC 798: The 45-year-old plaintiff, formerly a longshoreman, suffered whiplash and a lumbar spine strain, along with psychological conditions that the expert witnesses described variously as major depressive disorder, generalized anxiety disorder, post-traumatic stress disorder and SSD. The prospects of his recovery from the psychological conditions were poor. He was unable to work and was severely affected in the other facets of his life. Award: \$200,000.
 - Moges v. Sanderson, 2020 BCSC 1511: The plaintiff was involved in three accidents over a three-year period. He was 25 years old at the time of the first one - a recent immigrant who was working several jobs and engaged in educational upgrading. The accidents left him with ongoing pain in various parts of his body, migraines, central sensitization, and "moderately severe" major depressive disorder, generalized anxiety disorder and SSD. Those injuries had in turn led to impairments in areas such as sleep and cognition. He was on disability benefits and had obtained some part-time work. The judge described his "mental suffering" as "profound". It was found to be unlikely that he could recover his pre-accident lifestyle and there was actually the possibility of his condition worsening. Award: \$200,000.
 - Gundarah v. Teves, 2023 BCSC 1540: The plaintiff was involved in two accidents, about five months apart. She was a 41-year-old single parent. Before the first accident she was a full-time customer service representative at a bank. She suffered ongoing pain from her soft tissue injuries and was disabled by some form of chronic pain syndrome. After attempts to return to work she had been unable to continue and the prognosis for recovery was poor. Diagnoses included depression, anxiety, SSD, fibromyalgia and chronic fatigue. The judge found that regardless of the specific condition, she had chronic pain and depression that

significantly limited her enjoyment of life. Award: \$200,000.

- Barsky v. Simons, 2023 BCSC 1826: The plaintiff was 45 years old at the time of the accident and working two jobs. She suffered chronic pain from soft-tissue injuries, a concussion, chronic headaches, a relapse of a previous major depressive disorder and cognitive impairment. Her prognosis was guarded. A particular concern of the judge was that the plaintiff's career progression, from which she derived much self worth, had been undermined by her injuries. Award: \$200,000.
 - Verma v. Friesen, 2024 BCSC 13: The plaintiff was in his early 50s at the time of the accident. His soft tissue injuries resolved within about 18 months, but he remained subject to "severe, persistent, disabling and likely permanent" symptoms of moderate to severe major depressive disorder, generalized anxiety disorder and PTSD, which "have been devastating to all aspects of his personal and vocational life". He had not worked since the year of the accident, and his prognosis was guarded or poor. Award: \$210,000.
- [637] Some of the authorities provided by the defendants are no longer applicable in light of my findings of fact, because they are examples of situations in which the plaintiff's post-accident condition was only marginally worse than his pre-existing one (*Khudabux v. McClary*, 2016 BCSC 1886, *aff'd* 2018 BCCA 234), the plaintiff had returned almost entirely to their pre-accident health situation by the time of trial (*Partridge v. Buskop*, 2019 BCSC 459), or their accident-based symptoms had resolved and ongoing pain was now solely due to an injury caused by a pre-accident condition (*Smith v. Basker*, 2019 BCSC 1459).
- [638] Closer to the present case, although still not as closely comparable as the plaintiff's authorities, are decisions in which there were meaningful injuries caused by the accident in addition to serious ongoing pre-existing ones (*Westergaard v. MacLean*, 2017 BCSC 772), or the accident aggravated a pre-existing non-disabling psychiatric condition which then became disabling (*Hrnic v. Bero Investments Ltd.*, 2018 BCSC 1880).
- [639] The decision of *Da Silva v. Pollard*, 2019 BCSC 2249, is of much greater assistance. The plaintiff in that case was injured in two accidents, which took place about two years apart, when she was in her early 30s. The chronic low back pain that she suffered from as a result of the accidents caused SSD and aggravated her pre-existing mood disorders, leading to moderately severe depressive disorder and a severe anxiety disorder. As a result of her situation, she was on indefinite leave from work. Her prognosis was guarded but not hopeless. As is the present case, the trial judge rejected the argument by the defendants that her pre-existing mood disorders would have become symptomatic even without the accident. The judge also found that the plaintiff's injuries had had a "substantial negative impact on the quality of her life". Awards: \$110,000 (the plaintiff's counsel had sought \$120,000).

Discussion

- [640] As I summarized in *Groeneveld v. Hissink*, 2023 BCSC 621:

176 The purpose of non-pecuniary damages is to compensate a plaintiff for "pain, suffering, loss of enjoyment of life and loss of amenities": *Jackson v. Lai*, 2007 BCSC 1023, at para. 134.

177 Among the factors that can influence the amount of the award are the age of the plaintiff; the nature of the injury; the severity and duration of the pain; and the degree of disability, emotional suffering and impairment of life experienced by the plaintiff, including impairment of their important relationships and lifestyle pursuits. Crucially, a plaintiff should not generally be penalized for their stoicism: *Stapley v. Hejslet*, 2006 BCCA 34, at para. 46.

178 The amount of the award is guided by what is required to ameliorate the condition of the plaintiff in their particular situation. Their need for solace may not necessarily correlate with the seriousness of their injury. Because of this need to recognize the specific circumstances, there can be no general "tariff" of awards: *Lindal v. Lindal*, [1981] 2 S.C.R. 629, at 637. That said, other decisions dealing with similar circumstances can serve as a guide in arriving at an award that is "just and fair" to both parties: *Kuskis v. Tin*, 2008 BCSC 862 at paras. 135-136.

[641] Although Ms. Ahluwalia's mental disorders have had the effect of disabling her, I do not think her condition is quite as severe as the plaintiffs in the authorities to which her counsel referred. There is no question that she is trapped in a cycle of depression, anxiety and over-focus on physical pain, and I do not take the effects on her lightly, but I would not describe her as experiencing profound mental suffering or devastating effects on all aspects of her personal and vocational life, as in some of those authorities. She also has a guarded rather than a poor prognosis, and despite Dr. Lu's view about the prospects of anything more than part-time work and the statistics on relapse, there is still a course of treatment available that can potentially improve her condition.

[642] I cannot really account for the award in *Da Silva*, which involved a plaintiff who was somewhat better off than Ms. Ahluwalia, other than to point to the low amount sought on that plaintiff's behalf and the comparable cases that her counsel chose to submit in support. It appears to be an outlier in relation to the cases that I have been provided with, and I would not rely on it to exert any downward pressure on the appropriate award.

[643] The distinction between the defendants' liability for having caused the injuries that I have found, as a matter of causation, and the potential reduction in damages for a risk that she would have suffered harm from her pre-existing conditions in any event was explained in *Sekhon v. Cruz*, 2025 BCCA 222:

45 In *Dornan [v. Silva]*, 2021 BCCA 228, this Court set out the framework for the contingency analysis where the question is whether damages should be reduced to account for the plaintiff's pre-existing condition. As explained in *Dornan*, when considering the impact of a pre-existing condition, it is necessary to distinguish between two legal concepts: causation and compensation. The causation principle, as set out in *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183 at paras. 32-35, is that tortfeasors must take their victims as they find them. Therefore, a defendant is fully liable for the unexpectedly severe injuries of a "thin skull" plaintiff: *Dornan* at paras. 40-41.

46 However, different principles apply in assessing damages. While a "thin skull" plaintiff is entitled to compensation for their injuries even when they are more severe than might ordinarily be expected, they are not insulated from "having to account for the consequences that may flow from that predisposition in any event": Dornan at para. 44. Put another way, if there is a measurable risk that the pre-existing condition would have detrimentally impacted the plaintiff in the future regardless of the defendant's negligence, this risk may be accounted for in assessing damages through a reduction of the award: Dornan at para. 45, quoting Athey at para. 35.

[644] Dornan also clarified that a contingency deduction can be made when the measurable risk arises from the interaction of the pre-existing vulnerability and some external event. However, the latter could not be any possible risk at large, as the court explained:

[77] In my view, [the circumstances in which this combination will give rise to a measurable risk] must depend on the facts of each case, but I would observe that the measurable risk must be based on a real and substantial possibility arising from the combination and interaction of the pre-existing condition and the external event. In the vast majority of cases, the risks commonly encountered on this rather dangerous planet will not suffice to establish a real and substantial possibility. People have accidents in cars and riding bicycles, people trip and fall, people are hit by falling branches, and are knocked over by inobservant drivers, pedestrians, skaters and cyclists. People wrench their knees playing recreational sports, and hurt their backs working out in their basements or digging in their gardens. Such events can happen to anyone, but, in the case of most individuals, are not predictable. Any affect they might have on the individual's pre-existing condition would be speculative, not real and substantial possibilities. As such, they would not give rise to a "measurable risk", at least in the absence of being combined with some extreme vulnerability.

[645] I am not satisfied that Ms. Ahluwalia's pre-existing mood issues would have reached their current disabling effects, or that she would have developed SSD, in the absence of the accidents due to their own inherent progression. I also conclude that there is no measurable risk of some future event, as envisioned in Dornan, activating them in a way that meaningfully impairs her function. Specifically, I am not satisfied that her headaches would have increased in frequency and disruptiveness to their current state without the accidents.

[646] Ms. Ahluwalia's attempts to minimize her pre-accident health certainly undermined her credibility, but the reality is that despite those challenges before the accident she was caring for her family and working and, leaving aside the length of time she was able to work at Morrison Windows, had sufficiently impressed that new employer that her career prospects at that company were apparently quite bright. The time she took off of work for stress after the workplace dispute shows that she is an anxious, sensitive person, but in itself it did not predict the development of a complete inability to work. Similarly, her visits to Dr. Cheema and her fibroid issues show that she was a person with quite a few nagging health concerns and family pressures, but she seemed to be able to carry on despite them, and it took the pain from the soft tissue injuries to trigger her inability to cope.

[647] Therefore, in light of the distinctions between the present circumstances and the comparable cases provided by Ms. Ahluwalia, in that she appears to have a slightly greater opportunity to improve her condition through treatment, I award her \$190,000.

Loss of past and future earning capacity

Positions

[648] Ms. Ahluwalia's counsel submits that while it cannot be said with certainty that she would have completed her legal training and qualified as a lawyer in Canada, it is a realistic possibility that needs to be taken into account and given weight. Mr. Sapra's experience shows that a lengthy period can be required to accomplish that goal, and she communicated her intention to do so to him at a much earlier time than she would have done simply to improve her position in this litigation. The alternatives of notary public, paralegal or legal assistant were also open to her in light of her previous training and experience and should be weighed in the analysis as well.

[649] More generally, the accidents took place at a point at which her children were older and she was able to do more, and as they continued to become more independent she would have progressively more time to concentrate on developing her career. She earned more in the six months of 2016 before the accidents than she had in the entire previous year (because of the addition of the Morrison Windows income), and while her income as an administrative assistant in window sales represents an admittedly small sample size, extrapolated to a year it is \$72,000, a figure that was likely to have increased as the future level of responsibility that her employer spoke of was placed upon her. Given her personal attributes her counsel submits that there is really no reason that she could not have progressed to the income that her husband was able to earn in that business, had she decided to stay in it. Further, while she would not necessarily have chosen a position that paid less than she could earn at Morrison Windows, an administrative or sales position elsewhere, or a refocus on her career in banking, were also realistic options.

[650] The average of her income to the first trial dates as calculated by Mr. Benning for the positions of lawyer, notary or administrative assistant (\$309,432, \$285,864 and \$251,108 respectively) average out to \$282,134.67, which is argued to be a reasonable approximation of her before-accident lost income. If her extrapolated yearly income at Morrison Windows is used instead, the loss would be \$369,720.

[651] Counsel takes the same approach to Ms. Ahluwalia's loss of future capacity. The most realistic possibilities that present themselves in a without-accident future would have been to qualify as a lawyer or a law-related field, or at least to pursue a further administrative position. Continuing to progress with Morrison Windows, with the expected increases in her income as experienced by her husband, also passes that threshold.

- [652] The defendants take a starkly different position. With respect to Ms. Ahluwalia's past losses, they say that the possibilities that she would have qualified as a lawyer or transitioned to significant employment at Morrison Windows do not rise above pure speculation. The gap in time since she had practiced, the lack of meaningful efforts on her part towards qualification in the interim, the obstacles that would have been posed by her temperament, and her expressions of interest in career advancement at the back all make it improbable that she would have qualified within the suggested timeframe. Even her own vocational expert Ms. Sharma did not strongly endorse the possibility. Mr. Sapra's long and arduous path to qualification shows what she would have had to persevere through.
- [653] It is also notable that even if she had begun articling according to the schedule she argued for, she would have been more than two years older than the median age for Canadian lawyers.
- [654] The defendants also question whether, in light of her various health challenges she would have been able to progress to a viable sales career at Morrison Windows, given the level of effort that success in sales requires. Despite the possibilities for advancement that Ms. Dhillon adverted to, the reality is that Ms. Ahluwalia was hired as an administrative assistant and a progression to sales had not supplanted those duties. They also stress that because of the brief period it represents, the income she was able to earn there before the accidents does not take into account the seasonal variations in the market for windows or the uncertainties that inevitably form part of a commission-based income.
- [655] Instead the defendants calculated Ms. Ahluwalia's loss from the second accident up to the time that she left DIVERSEcity (which, as I have summarized, they say was due to the intervening autoimmune disease) based on the wage figures gathered by Ms. Ren for a woman with Ms. Ahluwalia's educational qualifications "in any field excluding law". This totals \$323,517, which they submit should be reduced to reflect the likelihood that she would have worked part-time in such occupations at the same average percentage as she had been working at Scotiabank in the four years before the accident. The resulting figure is \$169,746.41.
- [656] The defendants' approach to loss of future earning capacity is more categorical: their position that Ms. Ahluwalia's ongoing disability is due entirely to the autoimmune disease means that there will be no loss in the future stemming from the accident. Therefore, no award to her based on such a possibility of loss should be made.

Discussion

- [657] The applicable principles were helpfully distilled in *Dhaliwal v. McCuish*, 2025 BCCA 142:

64 Generally speaking, an award for loss of past earning capacity compensates the plaintiff for the loss of the value of the work they would have, not could have, performed but were unable to, because of their accident-related injuries: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *Lamarque v. Rouse*, 2023 BCCA 392 at para. 29. In assessing the past loss, the court typically compares what the plaintiff would have earned but for the accident with their actual earnings.

65 Similarly, the central task in assessing loss of future earning capacity involves a comparison between the plaintiff's likely future working life if the accident had not occurred with their likely future working life after the accident: *Dornan v. Silva*, 2021 BCCA 228 at paras. 156-157; *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 7 [Brophy].

66 While past events must be proven on a balance of probabilities, the standard of proof for hypothetical events, past and future, is whether there is a real and substantial possibility that they would or will occur. This requires proof that is lower than a balance of probabilities but higher than something that is only possible and speculative: *Gao v. Dietrich*, 2018 BCCA 372 at para. 34; *Brophy* at para. 15. If a real and substantial possibility is established, the court determines the measure of damages by assessing the likelihood of the hypothetical event occurring: *Lamarque* at paras. 29-30.

67 Rab clarified there is a three-step approach to the assessment of damages for loss of past and future earning capacity, which Justice Grauer articulated in this way:

[47] ... The first is evidentiary: whether the evidence discloses a potential future event that could lead to a loss of capacity (e.g., chronic injury, future surgery or risk of arthritis, giving rise to the sort of considerations discussed in *Brown*). The second is whether, on the evidence, there is a real and substantial possibility that the future event in question will cause a pecuniary loss. If such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which step which must include assessing the relative likelihood of the possibility occurring ...

[Emphasis in original.]

68 *Brophy* recognized that in cases where the plaintiff is still unable to work at the time of the trial due to accident related injuries and has therefore clearly lost capacity and income, the first and second steps of Rab may well be foregone conclusions: at para. 11.

69 Valuing the future loss at the third step may involve either an earnings approach, typically where there is an identifiable or calculable loss of income, or a "capital asset approach", which is recognized as more suitable when the loss is less easily measured: *Rab* at paras. 28-31; *Perren v. Lalari*, 2010 BCCA 140 at para. 32. In *Pallos v. Insurance Co. of British Columbia* (1995), 100 B.C.L.R. (2d) 260, 1995 CanLII 2871 (C.A.), this Court described various approaches to "assigning a dollar figure" to the loss of capacity:

[43] ... One method is to postulate a minimum annual income loss for the plaintiff's remaining years of work, to multiply the annual projected loss times the numbers of year[s] remaining, and to calculate the present value of this sum. Another is to award the plaintiff's entire annual income for one or more years. Another is to award the present value of some nominal percentage loss per annum applied against the plaintiff's expected annual income. ...

[658] Brophy also provides guidance about when the capital asset approach should be used:

17 Where there has been no loss of income at the time of trial, as here, courts should generally undertake the capital asset approach. This approach reflects the fact that in cases such as these, it is not a loss of earnings the plaintiff has suffered, but rather a loss of earning capacity, a capital asset... Furthermore, the capital asset approach is particularly helpful when a plaintiff has yet to establish a settled career path, as it allays the risk of under compensation by creating a more holistic picture of a plaintiff's potential future.

[659] If that approach is used, a court should still make use of any economic evidence that may be available, as a mathematical anchor to ground the reality of the resulting award: *Knapp v. O'Neill*, 2017 YKCA 10 at para. 17.

[660] Properly understood, I think this is a case in which Ms. Ahluwalia had a career path of sorts, in the sense of an established pre-accident position with Scotiabank, which she sought to supplement with the administrative assistant position at Morrison Windows when her bank hours were reduced. In that sense it is possible to attribute lost earnings, at least in the pre-accident period, to known occupations. The limitations of relying on those situations to project her without-accident earnings are that her bank position had been reduced from what were part-time hours initially and the period in which she was at Morrison Windows was too short to identify how it would have progressed, or even whether her commission-based income in the position can safely be extrapolated to a full year.

[661] She also returned to work after the accidents in two positions, the first of which was not sufficiently well-paying to continue with, and the second of which I infer she was intending to carry on with for as long as she could sustain it in light of her condition. They are not part of her without-accident trajectory, but they provide helpful evidence of other occupations that were reasonably available to her in light of her qualifications in the immediate post-accident period.

[662] What she has also introduced into the analysis, in addition to these known occupations, are possibilities of a significant career change, based on having her foreign law credentials recognized in Canada, or using them to obtain a law-related position.

[663] What I think is probable, well above real and substantial possibility, is that without the accident she would have pursued similar types of work as she found in the bank and at Morrison Windows - requiring a level of skill, intelligence and judgment well above that of

a basic service worker, but not exhibiting highly specialized technical skills or working within a regulated profession. Ms. Sharma's catch-all non-legal category, which includes office managers, insurance agents, bookkeepers, human resources and recruitment officers etc., describes this type of occupation well.

- [664] While I accept that there is a possibility that Ms. Ahluwalia would have qualified as a lawyer, I do not think it is a real and substantial possibility. She took no meaningful steps towards it in the entire pre-accident period in Canada. I do not consider speaking to Mr. Sapra, borrowing a textbook or speaking to lawyers and notaries who came into the bank about their experience to be meaningful steps. She also conceded that while she was at Scotiabank she had moved beyond law as a career.
- [665] Even if it was her genuine intention to qualify, I do not think it was likely to succeed. Having taken none of the steps that Mr. Sapra described, she would have been faced with the entire process of having her credentials examined and studying for and passing the necessary exams, which took him the better part of a decade to complete, at the point that she considered her daughter to be sufficiently independent. Given the level of family strife that was caused by her husband having to do more around the house due to her injuries, I also question whether she had the support necessary to undertake such an onerous process even without the accidents. I acknowledge that Mr. Sapra's wife appears to have been capable of it, and that he identified a colleague who qualified in late middle age, but we do not know the timeline under which they were able to reach that point, and I am doubtful that it could be compressed into a viable one at the point that Ms. Ahluwalia would have been embarking on it.
- [666] There is no evidence that she ever considered becoming a notary as an alternative, and the inference that she would have does not necessarily arise from a situation in which qualifying as a lawyer proved too onerous, given that the role of a notary has its own relatively demanding educational and professional requirements. If she were going to become a legal assistant or paralegal, I think she would have taken that path relatively quickly upon arrival in Canada, given the much lower barriers to qualification.
- [667] I also do not think that I can attribute to her a likely career path in window sales at Morrison Windows of the kind that her husband was able to achieve. Ms. Dhillon's positive comments about her potential in that area are greatly to Ms. Ahluwalia's credit, but there is insufficient evidence of her actual sales abilities, which would be unlike any she had been called upon to demonstrate (or that she had ever sought the chance to develop) since her time in Canada. Inferring that she would have emulated her husband's apparently superior sales abilities (according to Ms. Dhillon) is purely speculative.
- [668] Unfortunately for the process of identifying the past lost earnings arising from these findings, Mr. Benning was instructed to restrict himself only to administrative assistants in the non-legal realm, although he built in a wage increase as she would have acquired seniority in the future.

- [669] Fortunately Ms. Ren has calculated the lost income for Ms. Sharma's "catch-all" category: \$352,069 in the pretrial period. However, in light of her primary role in managing the home and supporting her husband's ability to work long hours to earn a high income, I do not think it is realistic to believe that she would have begun to work full-time until her youngest child finished secondary school, which based on her daughter's year of birth, would have been in 2023. The defendants' calculation of her working 73% in the pre-accident period for which there is wage information seems reasonable, but to allow for the reasonable possibility of some increase in her part-time hours, I will increase that estimate to 80% in the loss period, and deduct 20%, for an award of \$281,655.
- [670] Obviously my finding that the disabling mental disorders due to the accident remain in place, and that in particular the continuing SSD is what enhanced Ms. Ahluwalia's negative experience of her autoimmune disorder, I cannot accede to the defendants' submission that there is no possibility of a future loss due to the accidents.
- [671] I think this is a case in which the first two stages of the Rab analysis are obviously satisfied, and we are engaged in valuing a future loss that Ms. Ahluwalia is certain to sustain. I also think that the valuation can safely be based on the likely earnings of the group of occupations that Ms. Sharma has identified and which formed the basis of Ms. Ren's projections. If I were to use the capital asset approach, I would initially anchor the loss of value to that asset in the earnings of the same band of likely future occupations.
- [672] I also agree that Ms. Ren's decision to include voluntary withdrawals from the workforce through part-time and part-year employment in those projections is appropriate. No further actual moderation for part-time work is required for the future, since both of her children are now young adults.
- [673] I conclude that Ms. Ahluwalia does have some residual earning capacity. Even with the prognosis of Dr. Lu that I have accepted, it is a reasonable possibility that she can receive the necessary therapy to return to the workforce, albeit with the restriction to part time work and the statistical possibility of relapse in the long term that he identifies. I appreciate Ms. Sharma's negative forecast on the issue of employability (Mr. Willis's contrary opinion is no more than an argument based on the remaining prospects of recovery), but since that is ultimately based on Ms. Ahluwalia's underlying conditions, the possibility allowed for by Dr. Lu on a fair reading of his prognosis should be given weight. I would assess Ms. Ahluwalia as having about a 25% chance of being able to return to part-time work during her remaining working years, with such work consisting of a 40% workload, so I would reduce Ms. Ren's projected future earning in that category of occupations in the following manner:
- 75% chance of complete loss as calculated: $\$609,425 \times .75 = \$457,068.75$
 - 25% chance of 60% loss: $\$609,425 \times .25 = \$152,356.25 \times .60 = \$91,413.75$
 - Total award for loss of future earning capacity: \$548,482.50

Loss of housekeeping capacity and in-trust claim

Positions

- [674] Ms. Ahluwalia's counsel point to the evidence that she performed the bulk of duties in the family home before the accidents. Because future housekeeping assistance is reflected under the heading of cost of future care, they seek only damages for her past loss of capacity to do so, which Ms. Dimayuga valued at \$8,500 per year for equivalent replacement services and Mr. Benning projected as a total of \$59,500 from the second accident to the first trial dates.
- [675] With respect to the proposed in trust claim, in addition to the testimony of both Ms. Ahluwalia's husband and son about the care that they provided to Ms. Ahluwalia, her counsel point to the opportunities that both described forgoing because of their responsibilities - in the father's case to curtail his hours and not take advantage of an opportunity to go in on the purchase of a window company, and in the son's case choosing not to attend law school and giving up a committed relationship because of his mother's needs. Her counsel submit that on a "rough basis", \$100,000 should be awarded.
- [676] The defendants did not address housekeeping capacity as a past issue, but it is relevant to that claim that they pointed out, in response to its inclusion in the cost of future care, that in 2018 Ms. Ahluwalia told Dr. Robinson that she had returned to performing the bulk of the housekeeping.
- [677] Their submission on the in-trust claim is that the credibility issues that arose with the testimony of her husband and son doom any reliance on their claim to have devoted significant time to her care. In particular, her husband's inability to recall details of her pre-accident health situation and his misunderstanding of her response to her auto-immune medication show a lack of meaningful knowledge and involvement in her health situation at any point in the process. Nor could her son comment on the areas of injury in relation to pain that allegedly required his ongoing involvement.

Discussion

- [678] With respect to loss of housekeeping capacity, for the sake of convenience I will repeat my summary from Groeneveld:

185 The nature of this claim was addressed in *O'Connell v. Yung*, 2012 BCCA 57, citing Cooper-Stephenson, *Personal Injury Damages in Canada*, 2d ed. (Scarborough: Carswell, 1996) at 315:

[65]...The claim for loss of homemaking capacity is for the loss of the value of work which would have been rendered by the plaintiff, but which because of the injuries cannot now be performed. The plaintiff has lost the ability to work in a manner that would have been valuable to her- or himself as well as to others. The claim is not the same as that under future cost of care, which is for the value of services that must now be rendered to the plaintiff.

186 As to how the loss should be compensated, *Kim v. Lin*, 2018 BCCA 77 explained:

33 ...[W]here a plaintiff suffers an injury which would make a reasonable person in the plaintiff's circumstances unable to perform usual and necessary household work -- i.e., where the plaintiff has suffered a true loss of capacity -- that loss may be compensated by a pecuniary damages award. Where the plaintiff suffers a loss that is more in keeping with a loss of amenities, or increased pain and suffering, that loss may instead be compensated by a non-pecuniary damages award. However, I do not wish to create an inflexible rule for courts addressing these awards, and as this Court said in *Liu v. Bains*, 2016 BCCA 374], "it lies in the trial judge's discretion whether to address such a claim as part of the non-pecuniary loss or as a segregated pecuniary head of damage": at para. 26.

187 Damages for loss of capacity to complete homemaking tasks are not dependent upon whether replacement costs are actually incurred, because what is being compensated is the loss of capacity itself: *O'Connell* at para. 67. Such awards are to be assessed rather than mathematically calculated, although a court can certainly rely on labour-market figures for the replacement cost of the lost capacity, if they are available: *Liu v. Bains*, 2016 BCCA 374 at para. 28.

[679] The principles to be applied in assessing an in-trust claim are set out in *Bystedt v. Hay*, 2001 BCSC 1735; *aff'd* 2004 BCCA 124:

[180] From a review of the[] authorities one can construct a summary of the factors to be considered in the assessment of "in trust" claims:

(a) the services provided must replace services necessary for the care of the plaintiff as a result of a plaintiff's injuries;

(b) if the services are rendered by a family member, they must be over and above what would be expected from the family relationship (here, the normal care of an uninjured child);

(c) the maximum value of such services is the cost of obtaining the services outside the family;

(d) where the opportunity cost to the care-giving family member is lower than the cost of obtaining the services independently, the court will award the lower amount;

(e) quantification should reflect the true and reasonable value of the services performed taking into account the time, quality and nature of those services. In this regard, the damages should reflect the wage of a substitute caregiver. There should not be a discounting or undervaluation of such services because of the nature of the relationship; and,

(f) the family members providing the services need not forego other income and there need not be payment for the services rendered.

[680] Like so many of her other statements to care providers, Ms. Ahluwalia's inconsistent statement to Dr. Robinson raises concerns - in this situation about the level of housework that she was actually able to do in the period before trial and what she is capable of in the future. However, Ms. Dimayuga's testing and observations indicate that there are genuine

impediments to performing the kinds of physical tasks that would be necessary for housework purposes, the other experts whose evidence I have accepted address an impairment of her ability to function that would also apply in that aspect of her life. Further, despite my concerns about aspects of her husband and son's testimony, I think it is sufficiently clear that at least her husband's need to supplement her capacity in the home was a serious area of contention between them.

- [681] With respect to the appropriate amount of compensation, a pecuniary award is certainly appropriate, but as in the case of her other statements to care providers, there appears to have been improvements in her situation during the post accident period, before the mood disorders in combination with SSD reduced her level in the period leading up to trial. To reflect the periods of better functioning that she described, I conclude that 75% of the amount sought should be awarded, which is \$44,625.
- [682] On the in trust claim, I agree with the defendants' submission. Neither Ms. Ahluwalia's husband nor her son offered a credible enough basis in their testimony to demonstrate that they have devoted any particular amount of time to caring for her personally, as opposed to replacing her household duties. Unlike those housekeeping contributions, of which there is at least some circumstantial evidence in the form of Ms. Ahluwalia's loss of capacity and the ensuing family discord, the claim of rendering personal care rests only on their generally unconvincing accounts. I would add that although Ms. Ahluwalia claimed that her son stayed home to look after her, her descriptions of her life once she was incapacitated were of quite a solitary and independent existence, and other than her vague descriptions of the lay counselling he provided to her for her emotional and family problems, it is not clear what she actually required of him on a day to day basis.

[683] As a result, I will not make an award in relation to that claim.

Cost of future care

Positions

- [684] Ms. Ahluwalia's submission tracks Ms. Dimayuga's second cost of future care report, which was for a total claim of \$430,413. It in turn built substantially on Dr. Lau's recommendations, which I have previously summarized. Her counsel emphasizes that this is not a "Cadillac" version, and that the items that are sought to be funded were carefully considered and are essential to address her accident-related health issues. Mr. Benning's report providing the present value of all of the recommended items, which was prepared before Ms. Dimayuga's second report, has a slightly lower present value - \$422,749.

[685] The defendants take the position that a much more modest set of care items, which have a total cost of \$32,733, can meet all of her legitimate needs. These were the ones recommended by Ms. Branscombe in her responsive occupational therapy report, or by Dr. Riar. For the most part they suggest shorter durations or lesser amounts of the items than what Ms. Ahluwalia seeks:

Item

Quantity and Comments

Cost

Cognitive Behavioural Therapy/Psychotherapy

14 - 16 one hour sessions

This was the number of suggestions suggested by Dr. Riar

\$2,500

Psychotropic Medication

Ongoing

\$1,000

Occupational Therapy

For 2 Years - the defendants submit that the extensive course of occupational therapy recommended by Ms. Dimayuga does not adequately recognize the likelihood of Ms. Ahluwalia's improvement with the recommended treatments

\$4,000

Case Management

For 2 Years - As above - the service is reasonable, but the duration does not allow for likely improvement

\$2,034

Rehab Assistant Services

For 1.5 Years - as above- the service is reasonable, but the duration does not allow for likely improvement

\$6,786

Home Support

Part-Time to Age 80 - the defendants argue that (1) as disclosed to Dr. Robinson, Ms. Ahluwalia had resumed the bulk of housekeeping tasks in 2018 and (2) doing some of the tasks herself will be therapeutic

\$10,145

Seasonal Housekeeping

On a short-term basis.

\$6,268

Total Cost

\$32,733

[686] They oppose numerous items recommended by Dr. Lau, but in light of my inability to find that central sensitization has developed, I will only be considering future care recommendations that arise from the diagnoses that I have accepted in any event. By the same token, I cannot consider the opposition to care recommendations that depend on submissions by the defendants that I have rejected, such as that the accidents played no role in Ms. Ahluwalia's headaches.

[687] With those matters excluded, the defendants oppose the following items:

- Functional medicine referral: the reduced diet that Dr. Lau refers to as one of her concerns when making this recommendation is a function of Ms. Ahluwalia's choice to pursue a vegetarian diet independent of her family;
- Family psychological support: this would have been required regardless of the accidents, because of the longstanding anger management problems demonstrated by Ms. Ahluwalia's husband.
- Vocational rehabilitation consultant: Ms. Ahluwalia has had extensive vocational rehabilitation, which she was able to turn into successful job opportunities, and in any event according to Ms. Branscombe these services can be provided by the occupational therapist whose services have been approved.
- Functional driving evaluation and on road treatment sessions: as the surveillance shows, Ms. Ahluwalia is well able to drive, her evidence on discovery is that she only ceased doing so for two weeks after the second accident, and once again this is work that the occupational therapist is well able to take on.
- Yard and lawn work: the evidence shows us that Ms. Ahluwalia's husband and son have taken on this work (so there is no loss on her part to supplement, I took them to mean).

- Hearing devices: Dr. David found that she does not have any hearing difficulties, despite the path she pursued under that belief after the accidents.

Discussion

[688] The applicable considerations were summarized in *Langille v. Nguyen*, 2013 BCSC 1460:

- [231] The plaintiff is entitled to compensation for the cost of future care based on what is reasonably necessary to restore her to her pre-accident condition, insofar as that is possible. When full restoration cannot be achieved, the court must strive to assure full compensation through the provision of adequate future care. The award is to be based on what is reasonably necessary on the medical evidence to preserve and promote the plaintiff's mental and physical health: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (B.C.S.C.); *Williams (Guardians ad litem of) v. Low*, 2000 BCSC 345 (B.C.S.C.); *Sphehar (Guardian ad litem of) v. Beazley*, 2002 BCSC 1104 (B.C.S.C.).
- [232] The test for determining the appropriate award under the heading of cost of future care is an objective one based on medical evidence. For an award of future care: (1) there must be a medical justification for claims for cost of future care; and (2) the claims must be reasonable: *Milina v. Bartsch* at 84.
- [233] Future care costs must be justified both because they are medically necessary and are likely to be incurred by the plaintiff. The award of damages is thus a matter of prediction as to what will happen in the future. If a plaintiff has not used a particular item or service in the past, it may be inappropriate to include its cost in a future care award: *Izony v. Weidlich*, 2006 BCSC 1315 (B.C.S.C.) at para. 74.
- [234] The extent, if any, to which a future care costs award should be adjusted for contingencies depends on the specific care needs of the plaintiff. In some cases, negative contingencies are offset by positive contingencies and a contingency adjustment is not required. In other cases, however, the award is reduced based on the prospect of improvement in the plaintiff's condition or increased based on the prospect that additional care will be required *Tsalamandris* at paras. 64-72. Each case falls to be determined on its particular facts: *Gilbert* at para. 253.

[689] I would add the additional points, which I summarized in *Warick v. Diwell*, 2017 BCSC 68:

206 The evidence with respect to the specific care required does not need to be provided by a medical doctor: *Jacobsen v. Nike Canada Ltd.* (1996), 19 B.C.L.R. (3d) 63 (B.C. S.C.), at para. 182. However, there must be some evidentiary link drawn between the physician's assessment of pain, disability, and recommended treatment and the care recommended by a qualified health care professional: *Gregory v. Insurance Corp. of British Columbia*, 2011 BCCA 144 (B.C. C.A.) at para. 39.

207 Damages for the cost of future care are assessed, not mathematically calculated: *Uhrovic v. Masjhuri*, 2008 BCCA 462 (B.C. C.A.) at paras. 28-31. There is an inherent degree of uncertainty and discretion in making such awards. Because awards are made "once and for all" at the time of trial, judges must "peer into the future" and fix the damages "as best they can". This includes allowing contingencies for the possibility that the future may differ from what the evidence at trial indicates: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 (S.C.C.), at para. 21.

- [690] Having reviewed Dr. Lau's recommendations with a view to the conditions that I have found, I do not see that any of the central sensitization-specific therapies (functional medicine specialist, glial cell modulators, cannabis therapy, ketamine infusion therapy, rehabilitation of her colon microbiome, etc.) will address the combination of SSD and mood disorders that have rendered her mild to moderate soft tissue injuries disabling.
- [691] Transcranial magnetic stimulation is said to deal with intractable depression, but the therapies recommended by Dr. Lu and Dr. Riar to address Ms. Ahluwalia's depression have not been tried yet, and Dr. Lau said that she would defer to those experts, who recommend psychotherapy, on treatment. In the same way, although Ms. Ahluwalia has soft tissue pain and headaches, it has not been suggested that without the interrelationship with the central nervous system and her soft tissue injuries that Dr. Lau posited facet joint treatment, prolotherapy or Botox injections would be necessary or beneficial.
- [692] In light of Dr. David's findings, the hearing devices that Ms. Dimayuga identified are not required.
- [693] The continuation of Ms. Ahluwalia's prescription (Lorazepam) and non-prescription (extra-strength Tylenol/Advil) is appropriate and should be funded.
- [694] As I have said when reviewing his opinion, I think that Dr. Riar, while insightful in many respects, has underestimated what will be needed in terms of therapy if Ms. Ahluwalia is to return to a decent level of function. I accept the high end of Ms. Dimayuga's recommended psychological treatment - 32 sessions in the first 15 months, one session every one to two weeks during the rehabilitation phase that she envisions, and six to eight future blocks of ten sessions that she can resort to in time of emotional need.
- [695] Dr. Lau's recommendation for psychological support for her family was premised on assisting them "in dealing with the physical and emotional stressors of [Ms. Ahluwalia's] condition". From Dr. Lau's perspective, that condition was central sensitization. However even with the credibility and reliability issues in her evidence and that of her family members that I have identified, it is clear that her loss of function due to the conditions that I have accepted do exist is a source of conflict within the family that will inhibit the possibility of recovery. I acknowledge that Ms. Ahluwalia described her husband's anger management problems as being longstanding in her discussions with her counsellor, but the proposed counseling is targeted to the effects on the family of her accident-related disability. While there may be some overlap in issues, I do not accept the submission that counselling of this nature would have been required in any event. I therefore accept the

higher end of the range of sessions of that therapy that Ms. Dimayuga has proposed is necessary.

[696] I accept Ms. Dimayuga's plan for implementing the rehabilitation services that have been recommended, which was clearly explained and sensible. I note that Dr. Lu recommended them specifically in the context of his diagnoses, so my inability to find the existence of central sensitization does not affect them. Unfortunately, Ms. Branscombe spent much of her responsive report arguing the defendants' case on causation, an area well outside of her expertise, and that tendency leads me to the concern that her areas of disagreement with Ms. Dimayuga are entirely strategic. As a result, I do not accept any of her opinions. I also think that the defendants' concerns that the duration of some of the recommended services does not take the likelihood of improvement into account are based on the more optimistic prognosis given by Dr. Riar, which I have not accepted.

[697] Therefore I accept that the following additional services are necessary:

- Three months of weekly OT support
- 12 months of case management
- Post-program OT treatment
- Rehabilitation assistant - activation stage
- Rehabilitation assistant - initial course of treatment
- Rehabilitation assistant

[698] Deducting the present value of items that I have not found to be justified from Mr. Benning's calculated present value results in a total award of \$115,058. Rather than undertake a recalculation based on the slightly higher amount sought pursuant to Ms. Dimayuga's second report, I will award the presently-calculated amount, but provide that counsel have liberty to perform a calculation based on the higher amount that was ultimately sought, minus the cost of items that I have not allowed, and that if they cannot agree there can be a reference to a registrar on that point, who will certify the results.

Special damages

Positions

[699] Ms. Ahluwalia seeks special damages of \$12,177. The claim addresses expenses for matters such as prescriptions, auditory assessments, physiotherapy, massage therapy and mileage. The available receipts have been attached to a schedule of costs in the usual way. She had reduced that claim because of her inability to provide details of certain "miscellaneous" expenses and the cost of several uber rides.

[700] The defendants argue that only \$4,651 in special costs is actually attributable to the accidents. Their objections relate to prescriptions, assessments and treatments that were either attributed at the time to concerns other than accident-related symptoms, or for which there is no basis in the evidence on which be satisfied of such a connection.

Discussion

[701] As is well known, the test for awarding special damages is whether they are reasonable: Chiu (Guardian ad Litem of) v. Chiu, [1999] B.C.J. No. 2082 (B.C.S.C.) at para. 59, varied 2002 BCCA 618. Obviously, a connection between the expense incurred and the injuries caused by the negligence in question is inherent in reasonableness.

[702] The majority of prescriptions that the defendants object to are Lorazepam and Escitalopram (an antidepressant) at times when the specific catalyst was complaint about a non-accident related condition or pending procedure. In my estimation, my findings on the effect of the accidents on Ms. Ahluwalia's mood disorders and their interaction with SSD show that regardless of the medical interaction in question, her anxiety and depression would have been more acute and disruptive because of the accidents. This includes an opioid that was dispensed when she attended the emergency department with complaints of chest pain, which I think was more likely than not to have been anxiety-related. The only deduction I would make in this category is for an anti-inflammatory drug that was prescribed in relation to her fibroid surgery (\$17.81). The anti-inflammatory drug that was prescribed in relation to her migraines relates to a condition that I have found was aggravated by the accidents, and should be allowed.

[703] I would not disallow the expenses related to Ms. Ahluwalia's attendance for audio assessments or for physiotherapy following the additional minor accident that she was involved in in 2018. I conclude that her ultimately unfounded belief that she has hearing problems and focus on physical symptoms from a slight collision are legitimately related to the hyper-awareness of her physical conditions that was brought on by the SSD. I also draw the inference that the ongoing physiotherapy visits from 2021-23 was a product of the same accident-provoked mindset, as were her massage therapy sessions, visits to a naturopath, ambulance calls and elastic stockings. These manifestations of her unguided search for symptom release all ultimately stem from the view of her symptoms and their effects on her life that the accidents produced.

[704] The award will therefore be \$12,159.19

Failure to mitigate

Positions

[705] The defendants submit that despite confirming as early as 2018 that psychotherapy had been helpful, and despite ongoing interactions with Dr. Parattukudi for a variety of situations that had affected her emotional state, she failed to pursue counselling from him

for the conditions that are the subject of her claim for damages, or to have her medication adjusted by a psychiatrist. On the latter point Dr. Riar expressed the view that her conditions had "lingered around" due to the lack of psychiatric interventions. Her claimed aversion to taking medication because of the side effects is argued to be inconsistent with the very large number of prescriptions she has obtained overall since the accident.

- [706] The defendants also argue that it was unreasonable for Ms. Ahluwalia not to have acted on Dr. Lau's recommendations, since she testified that she was in favour of them and they have been available since 2022.
- [707] Her counsel responds that the overall evidence shows that she was a good patient who was found by care providers to be dedicated to her rehabilitation. She testified to experiencing side effects from antidepressants and there is actually no evidence that she was medically advised to take them despite those reactions. Her counsel did not specifically address the alleged failure to use Dr. Parattukudi's assistance for accident-related problems or to implement any of Dr. Lau's recommendations.

Discussion

- [708] In order to obtain a reduction in a damages award as a result of the plaintiff's failure to mitigate their losses, a defendant must prove: (1) that the plaintiff acted unreasonably in eschewing the recommended treatment; and (2) the extent, if any, to which the plaintiff's damages would have been reduced had they acted reasonably: *Chiu v. Chiu*, 2002 BCCA 618, at para.57. It is a subjective/objective test: as a subjective/objective test, asking "whether the reasonable patient, having all the information at hand that the plaintiff possessed, ought reasonably to have undergone the recommended treatment" and "the extent, if any to which the plaintiff's damages would have been reduced by that treatment": *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144, at para.56.
- [709] Some of the language used in *Padgham v. Ram*, 2024 BCSC 72 at para. 19-21, a case cited by the defendants, might when looked at in isolation, suggest that a failure to mitigate could be found solely in the incongruity between the extent of the claims being advanced by a plaintiff and the extent of their efforts towards their own rehabilitation. When those paragraphs are read in their entire context however, I am satisfied that the requirements in *Chiu* that specific medical advice be rejected and that the rejection be the cause of some of the plaintiff's continuing symptoms were also required.
- [710] As Dr. Lu conceded, Ms. Ahluwalia would be better off if she had continued with antidepressants. She has also fallen into the unwise practice of addressing only the anxiety symptoms by resorting to Lorazepam, which Dr. Lu also points out is something she needs to be cautious of in the long-term.

- [711] However, I think her counsel is correct that other than prescribing them, there is no evidence that her family doctor or psychiatrist also recommended that she continue to take them in the face of her subsequent claims of an adverse reaction. I consider her aversion to be irrational, and her claimed side effects are unsupported by any objective evidence, but I do not see how that particular belief can be separated from her misguided overall approach to her recovery, which is unquestionably a product of her mood disorders and SSD.
- [712] Similarly, with the benefit of hindsight the therapy that Dr. Lu and Dr. Riar recommend could potentially have assisted her sooner if she had requested some version of it from Dr. Parattukudi. But once again there is no evidence that she received a recommendation to undertake it specifically for her accident-related mood disorders and SSD, and that she declined to do so with knowledge of that recommendation. Her symptoms were quite variable over the time that she saw him (which is one of the reasons I have doubted the credibility of her assertions that they were of continuous severity), and arguing that she should have discussed her accident-related mood problems and SSD with him assumes that she was capable of distinguishing them on that basis before the expert reports were provided, which I do not think is accurate.
- [713] Finally the suggestion that Ms. Ahluwalia should have acted on Dr. Lau's recommendations is not sustainable in light of my finding that the central sensitization that she diagnosed, and that her recommendations were geared to addressing, is not present.
- [714] As a result, I would not reduce the damages that have been awarded on the basis of any failure to mitigate them.

Summary

[715] Therefore, the awards are as follows:

Non-pecuniary damages: \$190,000

Loss of past earning capacity: \$281,655

Loss of future earning capacity: \$548,482.50

Loss of housekeeping capacity: \$44,625

Cost of future care: \$115,058

Special damages: \$12,159.19

Total: \$1,191,980.

- [716] Any other matters of mathematical calculation that are still required, and the correction of any mathematical errors that may be apparent based on the reasons, can be referred to a registrar, who will certify the results.

Costs

[717] Liability was admitted in this case and remedies were obtained by Ms. Ahluwalia, so in the absence of any other factors that would affect them, she is entitled to her costs. This is based on the principle that a plaintiff who establishes liability, even by means of an admission, is the successful party for the purposes of costs: *Loft v. Natt*, 2015 BCCA 418. These will be at the ordinary scale of difficulty.

[718] If there are matters that would affect entitlement to, or the scale of costs, counsel may arrange to make written submissions, according to whatever schedule for exchanging and filing them they find convenient.

"Schultes J."

- [1] The defendant Adam San-Aye, who was at fault in the first accident, did not file a response to civil claim, so the Insurance Corporation of British Columbia breached his coverage and is defending the claim against him as a third party. Since the defendants and the third party presented a joint defence, I will refer to them collectively as "the defendants" for the sake of simplicity.
- [2] Although the issue was not pursued, I think his use of the term "antidepressant" may have been a misstatement, since one of the issues in the case is Ms. Ahluwalia's general resistance to taking such medication. Fortunately, nothing ultimately turns on that particular recommendation.
- [3] These statements were elicited from a variety of sources in the evidence, but in assessing Ms. Ahluwalia's credibility, I have considered only those that were actually put to her in cross-examination.

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