

CANADA / JUDGMENT

Cindrich v. Martini

2025 BCSC 963

COURT

Supreme Court of British Columbia

DECIDED

26 May 2025

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2025 BCSC 963 Cindrich v. Martini

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cindrich v. Martini,

2025 BCSC 963

Date: 20250526

Docket: M173262

Registry: Vancouver

Between:

Deanna Cindrich

Plaintiff

And

Thomas Martini, Vitrum Industries Ltd. and Marie Nelson

Defendants

Before: The Honourable Mr. Justice Crossin

Reasons for Judgment

Counsel for the Plaintiff:

M. Hoogbruin

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J. MacIver

M. Dong

Place and Dates of Trial:

Vancouver, B.C.

November 27-30, 2023

December 1, 4-6, 8, 11-13, 2023

January 9-11, 22-26, 2024

March 7, 2024

October 2-3, 2024

November 14-15 & 21, 2024

Place and Date of Judgment:

Vancouver, B.C.

May 26, 2025

Introduction

- [1] The matter before the court arises from a motor vehicle accident that occurred May 28, 2015 in Langley, British Columbia. Liability is not an issue. The plaintiff is now 56 years of age.
- [2] Ms. Cindrich was stopped at an intersection when her vehicle was struck from behind. The vehicle that struck her from behind had, in turn, been struck in the rear by a pickup truck.
- [3] The police and fire department were summoned.
- [4] Ms. Cindrich exited her vehicle at the scene.
- [5] Ms. Cindrich testified that while in pain and disoriented she felt she could drive as she was just a few blocks from her home.
- [6] The vehicle that had struck her vehicle, a Volkswagen Beetle, was pried loose from her vehicle and, indeed, Ms. Cindrich ultimately drove her vehicle home.
- [7] It has been almost 10 years since the accident. There is no disagreement between the parties that Ms. Cindrich continues to struggle since the accident. The issue is the nature of that struggle; and the degree to which the accident contributes to that ongoing struggle.
- [8] Ms. Cindrich married shortly out of high school. There are two children of that marriage; both now young adults. That marriage ended some years ago. She is currently married to Mr. Richard De Graauw, which marriage took place in July 2014.

- [9] The plaintiff says the difficulties she points to as providing the foundation for damages, past, present and future are all, or mostly all, the lingering problems associated with the injuries suffered as a result of the accident.
- [10] The defendants disagree. The defendants submit the evidence in support of the damages claim largely rests on accepting the evidence of the plaintiff. The defendants say, in many respects, the court ought to find the evidence of the plaintiff unreliable. Indeed, the defendants submit the determination of the reliability of the plaintiff's evidence is 'essential' in assessing the appropriate damage award.
- [11] Counsel on behalf of the defendants took some care in couching the position concerning the evidence of the plaintiff as an exclusive issue of reliability, not credibility. This may or may not have been for strategic reasons, but, the fact is, the submissions clearly raise issues of credibility, in addition to reliability.

Credibility and Reliability

- [12] Credibility and reliability are different notions. Credibility concerns the veracity of a witness; to be blunt, an assessment of whether the witness is lying. Reliability is an analysis of the accuracy of the evidence of the witness. These two concepts may be, but are not necessarily, connected. It is unlikely a witness who is not credible is nevertheless found to be reliable, in the absence of independent corroborative evidence. It is not axiomatic however that a credible witness provides accurate evidence and is therefore a reliable witness. A credible witness may in fact not provide reliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (C.A.) at 526.
- [13] The determination of veracity and accuracy requires consideration of a number of factors and inquiries.
- [14] It may be a witness did not have an optimum opportunity to hear or see matters unfold. Importantly, the condition of the witness at the time may be a relevant consideration. In addition, the memory of a witness may be faulty for one reason or another, including the passage of time. The trauma of an event can impact the ability of a witness to accurately recall. The stress and anxiety sometimes associated with providing evidence in a formal way in an unfamiliar environment, for instance a hearing, an examination for discovery, or a courtroom, can sometimes inhibit the ability to say precisely what one wants to say, and in the way one wants to say it.
- [15] There will be circumstances, like the case at bar, where it is submitted a witness has given previous statements that are inconsistent with the current evidence. Certainly where a witness has provided inconsistent evidence on a previous occasion under oath, the Court will proceed with caution before accepting an invitation to find that person is a witness of truth.

- [16] As well, an analysis of whether a witness has remained internally consistent in providing evidence is often a factor that is telling. Inconsistencies in the witness's own evidence at trial, or with other witnesses, calls for an assessment on the "totality of the evidence to assess the impact of the inconsistencies in that evidence on questions of credibility and reliability pertaining to the core issue in the case": *F.H. v. McDougall*, 2008 SCC 53 at para. 58.
- [17] When presented with conflicting testimony, the Court should assess the evidence with a view to determining whether a particular version of events is the most consistent with the "preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at 357. The Court must bring experience to bear in assessing when that evidence of the witness accords with common sense and can live comfortably with the independent evidence that has been accepted by the Court: see also *Bradshaw v. Stenner*, 2010 BCSC 1398.
- [18] The tone and manner of the witness in providing his or her evidence remains properly a factor to be considered in assessing credibility and reliability. Frankly, I found this aspect helpful in the overall consideration of matters, but care must be exercised concerning the weight to be afforded to what is generally referred to as an assessment of the demeanour of the witness.

The Pre-Collision Circumstances of the Plaintiff

- [19] Ms. Cindrich grew up on a hobby farm in Langley, British Columbia. She has two siblings. The family was hard-working, active, and self-reliant. Her father happened to be a handyman around the home and taught Ms. Cindrich many of those skills. There was, and is, a family cabin where the family would retreat from time to time in the winters and summers. The active lifestyle of the family would continue in this regard where Ms. Cindrich fished, snowmobiled, and learned to ride a motorcycle.
- [20] The plaintiff attended high school in Langley. She was an honour roll student and developed an interest in giving back to her community. She volunteered through the years at the 'feed a family program' around Thanksgiving and Christmas. She volunteered at the local hospital to assist in long-term care patients. Following her graduation from high school in 1986, she initially worked as a weld grinder and, subsequently, for Finning Tractor in the shipping and receiving manufacturing division. Between 1991 and 1994 she was employed by Sauder Industries working her way up the ladder to credit manager. It was during this time she married her first husband, Mr. Bradley French.

- [21] It was while at Sauder Industries she once again rekindled her interests that she had developed in high school. She registered for night classes at Douglas College in a two-year program entitled Therapeutic Recreation. She obtained that diploma 1996. She then worked for Surrey Mental Health and Addictions as a Recreational Therapist on a part-time basis in 1996 and 1997; and at Peace Arch Hospital in 1996 to 1998.
- [22] While at Peace Arch Hospital, Ms. Cindrich worked on the extended care unit and applied for, and received, a new position that was created in the hospital. The hospital had just opened a generic assessment and treatment unit. It was a short stay acute care unit for older adults that were recovering from illness or injury. She was tasked with opening the unit, establishing the assessment protocols, and working with the interdisciplinary team that involved the pharmacy, nursing, medical, and various other aspects of care. She assisted people transitioning from the hospital to home or into acute or long-term care. In addition, while at the hospital, she chaired the South Fraser chapter of her professional association; the BCTRA and ultimately was president of that organization.
- [23] Ms. Cindrich organized many community events earning her, at one point, the volunteer of the year award.
- [24] During this time she continued a lifestyle of physical activity including road biking, hiking, dirt biking, canoeing, water skiing, dancing and, as Ms. Cindrich testified, her passion: volleyball.
- [25] In 1998 however she gave up her career at the hospital and moved to Kelowna to accommodate her husband's career. Her first child was born in 1998; and her second in 2001. While raising her children in Kelowna she worked part-time for the Interior Alzheimer's Society.
- [26] In 2002 the family moved back to Langley. Ms. Cindrich almost immediately obtained part-time employment as a Leisure Access Counsellor for the Township of Langley. This required 25 hours per week. In addition she was employed by the Township driving the passenger van related to various activities that took up an additional approximately three to four hours per week.
- [27] Her employment as a Leisure Access Counsellor entailed acting as a liaison person between the Recreation Culture and Parks Division and the Langley Mental Health Center. She would receive clients referred by the mental health centre for the purpose of facilitating their re-entry in the community. The clients often were leaving long-term hospital stays due to self-destructive behaviour relating to alcohol and drug abuse. In addition clients were received from stays in psychiatric wards. Ms. Cindrich would assess the needs of the person and develop a long-term plan in partnership with the mental health centre. This plan included recreational needs and assisting clients with re-socialization.
- [28] Ms. Cindrich held this position at the time of the accident.

- [29] During this time Ms. Cindrich was also raising her family. This became more time-consuming when, in and around 2008, she and Mr. French separated and the plaintiff took on more responsibility for her two children. She testified she received little help from Mr. French in this regard.
- [30] In addition, Ms. Cindrich's daughter required extra time and care as she was challenged by a learning disability having been diagnosed with severe ADHD. Ms. Cindrich's daughter experienced depression and anxiety and was diagnosed to be on the Autism spectrum.
- [31] In these circumstances, following the separation, Ms. Cindrich testified that she was determined to become more financially independent and pursue her passion of higher education in her chosen field. She began evening classes at Douglas College working towards a Bachelor of Arts in the leadership field with a view to continuing to pursue a career in the healthcare space.
- [32] While attending Douglas College she discovered that one could seek acceptance for a master's degree program at Royal Roads University in Victoria without the necessity of first completing the Bachelor of Arts program. Such an application was to be determined by the University board based on a number of factors, including one's resume and recommendations from professors.
- [33] Ms. Cindrich applied. She underwent an interview and provided a letter of recommendation. She was accepted at Royal Roads and began the master's program in 2011. It was a two-year master's program working towards a Master of Arts degree in leadership with a health specialization. It was a program that was created to accommodate working professionals. Indeed, over the course of these two years, Ms. Cindrich continued with her employment with the Township of Langley, as the program was offered online; coupled with two two-week stints on campus. Students were required to complete a thesis at Royal Roads referred to as a project. This ultimately required an evaluation by an external reviewer; and defended before reviewers at Royal Roads.
- [34] Ms. Cindrich tackled her studies during the week in the evening, after her children gone to bed. She would devote the weekends when the children were with their father to her studies. She graduated with a master's degree in 2013. Her transcripts reflected A and A- grades in eight courses.
- [35] It was also while attending Royal Roads when she met her current husband. They were married in 2014.
- [36] Unfortunately, after her graduation from Royal Roads, Mr. De Graauw was diagnosed with cancer that ultimately required significant treatment. This created additional worries for Ms. Cindrich, along with the ongoing attention her daughter required with her daily living, and in particular her schooling.

- [37] Ms. Cindrich testified that, while upon graduation she had aspirations to pursue more ambitious goals in the health care space, she determined that she would "bide her time". She did so due to the fact that her husband was undergoing cancer treatment and she was determined to give the care her daughter required to ensure she graduated from high school.
- [38] That said, she stated she did apply for one position in this time frame; as a Director of Clinical Education at the Fraser Health Authority. This application was at the urging of her friend Ms. Corrie Irwin. Ms. Irwin's career was well underway in the healthcare space. Ms. Cindrich testified that she in fact did interview for the position but the funding for the position ultimately did not materialize.
- [39] In and around the summer of 2017, again, at the urging of her friend Ms. Irwin, she applied for a position with Vancouver Coastal Health. In this regard she sent her resume to Ms. Irwin's colleague Mr. Sean Parr. Soon thereafter however Ms. Cindrich had to concede to herself she did not have as yet the cognitive ability or energy to pursue this employment. Indeed at this time she testified she was still engaged in significant rehabilitative efforts following the accident, including dealing with anxiety and depression.

Ms. Cindrich's Pre-collision Health

- [40] This was touched on primarily by the defence for obvious reasons.
- [41] She reported to her dentist in 2004 that she had severe headaches. Why this was so was not explored.
- [42] Ms. Cindrich reported in 2008, on a visit to her optometrist that, she had suffered a blow to her left temple. Again, the significance of this, if any, was not pursued. She also reported to the optometrist, some years later, in 2012, that she was experiencing intermittent flashing lights after having fallen from her bike.
- [43] The plaintiff testified that she had been involved in two motor vehicle accidents prior to May 2015.
- [44] The first accident was in approximately 1989 when she was 21 years of age. She had little current recollection of the accident although she confirmed she "had whiplash" and fractured ribs.
- [45] The second accident occurred possibly a decade before the current accident, in 2006. She agreed this occasioned "massive headaches". It also caused neck tension and a sore right shoulder. Little other helpful detail was elicited.
- [46] The plaintiff testified that she had surgery in 2011 to repair a rotator cuff in her right shoulder.

- [47] Ms. Cindrich testified that since childhood she has suffered from night terrors and, sleepwalking. She testified, at least at the time of trial, the night terrors no longer occur. In addition Ms. Cindrich has had hiatal hernia since childhood.
- [48] The plaintiff confirmed that in 2012 there was an occasion when she had to bring her passenger bus to an abrupt halt which caused a sore neck and knots in her shoulders. This incident however did not cause her to miss work.
- [49] In the spring of 2013 she complained to her general practitioner, Dr. Myers, that her right knee had been bothering her for a couple of years; "it grinds going up and down stairs". She was advised by Dr. Myers that she had osteoarthritis in her right knee. While she remained active throughout this period of time she testified it was painful.
- [50] Ms. Cindrich testified that during her time at Royal Roads she experienced high levels of stress and anxiety that impacted her sleep.

The Accident and Aftermath

- [51] The plaintiff testified that following the collision, at the scene, she immediately experienced disorientation and a sore shoulder. The ambulance attendant told her to contact her doctor. The fire personnel inquired whether she thought she could drive home once the Volkswagen van was decoupled from the back of her vehicle.
- [52] By the evening, her symptoms had worsened. The soreness in her right shoulder worsened. She began to experience soreness in her neck and lower back. She developed a headache. She recalled from previous experience being advised by her doctor to try and keep doing normal activities in circumstances like this. She testified she attempted to do just that in the week following the accident. She tried riding her bike but could not do so due to the stiffness in her neck. She attempted volleyball but had to give it up after a few minutes. Her symptoms worsened during the week. Her shoulder became more painful. She developed pain in her neck, lower back and left hip. She began physiotherapy treatments. Her symptoms worsened. Her headaches became migraines. She stated she experienced increased pain in her left shoulder, as well as tingling and numbness in both hands. She developed pain on both sides of her neck and 'stabbing' pain in her back.
- [53] In this context, Ms. Cindrich described her efforts to return to work.
- [54] Ms. Cindrich testified her patients demand a good deal of physical activity, as well as organization. The programs required her, for instance, to assist clients in the weight room, travelling to and from sporting activities, and going on hikes. This all required planning monthly event calendars and coordinating activities for her client roster of approximately 20 persons. The clients were demanding, often suffering from mental illness, addiction or both. In addition, Ms. Cindrich states she was also attempting to work around her own treatment plans concerning various medical appointments. Her inability to cope made her anxious and depressed. She was always in a great deal of pain. She tried going back to work

for half days; then full days, and then back to half days. She found her anxiety after the accident prevented her from driving; particularly a bus full of passengers. Her family doctor "took her off" work. She tried to go back to work but while undertaking these efforts she was advised that the funding for her annual contract, that had been in place for the last 20 years, had been discontinued. Her employment with the Township ended January 15, 2016.

- [55] Subsequently the plaintiff testified her physical difficulties continued. Her left lower back pain worsened, notwithstanding physiotherapy. She testified the pain would radiate from the left lower back, across her left hip, and into her pelvis area. She began to experience pain in both legs and feet. The pain, stated Ms. Cindrich, was more or less constant. She testified it exhausted her.
- [56] She tried cortisone shots for her left shoulder but it did little to alleviate the pain. It was ultimately determined that it was a labral tear. Ultimately surgery was performed repairing a rotator cuff and the tear.
- [57] It became challenging to drive. She had anxiety attacks on bridges and tunnels. It was then challenging to drive to various treatment appointments and her husband took on this responsibility some of the time.
- [58] In the spring of 2016 her ex-husband lost his job. Consequently he ceased support payments. This was an additional stressor in her life.
- [59] Ms. Cindrich testified concerning the ongoing challenges to simply navigate the normal physical and mental vicissitudes of daily living.
- [60] Showering became difficult. Her ability to deal with the usual housekeeping tasks became exceedingly challenging. She could not vacuum or wash floors. She could not manoeuvre to deal with lower shelving or upper shelving. In particular Ms. Cindrich found washing out the bathtub or the floors around the toilets or the base of the toilets was too difficult as she had to squat or kneel. These positions aggravated her pain. She could do some laundry but could not carry the laundry up and down stairs. Even grocery shopping became a task as the cart would become too heavy for her to push.
- [61] Ms. Cindrich testified that one of her joys in life was cooking and cooking sit-down dinners for her family. This became a painful exercise. She also enjoyed keeping up appearances generally in her home and garden. This became difficult and in some respects impossible. Ms. Cindrich testified she used to love mowing the lawn, painting the trim of the house and pressure washing the driveway. All of this she could no longer accomplish. Often her husband and children pitched in.
- [62] A somewhat unique feature of the collateral effect of this was the impact it had on the relationship between Ms. Cindrich and her daughter. The ability of Ms. Cindrich to assist her daughter with school, and life generally, diminished much to the regret of the plaintiff and her daughter.

- [63] In addition, the physical and sporting activities of Ms. Cindrich that had played a significant role in her life since childhood, were substantially curtailed.
- [64] Ms. Cindrich gave evidence she could no longer ride her snowmobile or motorbike. She could not participate in the usual watersports at the family cabin. She could not handle the pounding of her boat on the water. She could no longer drive to the family cabin. Simply put, she could participate in very little of the family activities when at the cabin.
- [65] Prior to the collision Ms. Cindrich was an avid volleyball player. After the collision she had to stop.
- [66] The relationship with her husband changed. Prior to the collision Ms. Cindrich testified that it was a happy, outgoing, joyful relationship with much laughter. She derived great enjoyment from sharing the various physical activities with her husband.
- [67] Subsequent to the collision, although Mr. De Graauw remained caring and supportive, she suddenly became dependent on him emotionally and financially. Rather than sharing in physical activities, they shared a couch watching TV. Following the collision Ms. Cindrich was in too much pain and exhausted to be intimately involved with her husband.
- [68] Ms. Cindrich testified, at the time of this trial, she continued to suffer from migraines, blurry vision, ringing in her left ear, jaw joint pain, pain in the front and back of her neck, tightness and pain across her chest and shoulder blades, left shoulder pain and stiffness. She states she has limited range of motion in her left shoulder, pain and strain that goes from the left bicep area under the pectoral muscles on the left, stiffness and pain throughout the left rib cage, stabbing pains, tightness and clicking in the left sacroiliac joint and low back area.
- [69] In addition at the time of trial, Ms. Cindrich testified she still suffered from extreme fatigue so on certain days she finds it difficult to even get out of bed. Sometimes she is able to shower another day she does not have the energy to shower. Her sleep is poor, she is wakeful throughout the night because of pain, and once awake she finds it difficult to go back to sleep.
- [70] That said, to her credit, she testified she has improved over the years. She is trying different medications. She has managed vacations but not without difficulty. She has, as testified, "managed okay". Within some years of the accident, in the fall of 2018, she was able to drive to Fort St. John to visit her daughter.
- [71] Approximately five years after the accident, Ms. Cindrich testified that she was able to garden in the spring, something she had very much enjoyed before the accident. In fact in and around this time she attempted to pursue somewhat of a gardening design venture beginning with designing a garden for a friend. In this regard, in the fall of 2020, Ms. Cindrich could manage some shopping for materials, with the assistance of her husband, and attended nurseries with her friend Heather; all in pursuit of garden design.

- [72] In cross-examination, Ms. Cindrich agreed that in September 2020 she was on a tandem bike, with her husband, on the paved road outside their cabin.
- [73] Ms. Cindrich testified that it was around the end of 2020 that she began to formulate an idea for a business that she might be able to navigate physically; with the help of her husband. Essentially it began as a hobby whereby she and her husband would produce lamps from iron pipes. A modest business evolved. It was home-based, out of their garage, and also included some woodworking. They produced lamps and charcuterie boards and as well certain furniture. Her husband had the use of some woodworking machinery at the place of his employment. The goods were put up for sale at artesian markets and as well the couple set up an ETSY account to sell items online. Ultimately they named the business RADD Resin and Pipe Design.
- [74] During this time, and in particular 2021, she was also involved in litigation with her ex-husband concerning support payments.
- [75] At the time of trial, the couple had attended only a few artesian markets. There was some evidence that the business produced no net income but all-in-all the evidence was somewhat unclear. The division of labour between her husband and herself appears to fall on the husband for the heavy lifting and upon Ms. Cindrich for the lighter tasks. The evidence reveals the business might take up to 2-20 hours a week. She testified in particular that her tasks in relation to the business included the designing and cutting wood for small items; mixing resins and staining, cutting and charcuterie boards. Her husband took the responsibilities for the larger projects.
- [76] Ms. Cindrich also testified that she had the responsibility of preparing a good deal of the paperwork that was necessary to submit to obtain approval to participate in various craft sales.
- [77] In addition, by May 2022, some seven years after the accident, she travelled to Maui and engaged in certain physical activity. She testified in fact since the accident, she had been working towards walking up to five kilometers. She accomplished this on the trip to Maui. She testified that the route however was fairly flat, with only a little bit of a hill. She did attempt a path that was "more hilly" but could not do it.
- [78] Ms. Cindrich stated that she managed a trip, along with her family, to Scotland in the summer of 2023.
- [79] The defendant led evidence of video surveillance that the Insurance Corporation of British Columbia (ICBC) had collected concerning Ms. Cindrich coming and going from a craft fair, and in addition capturing Ms. Cindrich tending to her booth at the fair. The evidence was created by a person hired by ICBC to surreptitiously track Ms. Cindrich, and secretly videotape her activities.

- [80] Ms. Cindrich continues to undertake a variety of treatments. The details will be addressed to the extent required, but generally Ms. Cindrich testified to an array of treatments and prescribed medications.
- [81] She undergoes psychological counselling and works closely with Crystal Mayfield, an occupational therapist. Ms. Cindrich has been prescribed a variety of medications over the years relating to pain, anxiety, and depression. That said, she is medication sensitive. She cannot consume any narcotic based pain medication. Currently the medications she takes are Effexor in treatment for depression; Meltrexone for sleep; and Dexilant for treatment of gastroesophageal reflux.
- [82] She has ongoing Botox injections from Dr. Chu for her migraines and pain in her jaw and temple. She has undergone Cortisone injections and, as previously referenced, has had surgery on her left shoulder. Ms. Cindrich continues to have anxiety in anticipation of the injections because of the pain.
- [83] She has undertaken a good deal of physiotherapy and kinesiology exercises over the years. The evidence, at least as at the fall of 2023, documents approximately 200 physiotherapy treatments; although some were pre-collision; 250 massage therapy treatments from September 2015; and approximately 70 rehabilitation treatments since the late fall of 2015.

Additional Witnesses

- [84] The plaintiff called certain witnesses testifying to aspects of the life of Ms. Cindrich.

The Evidence of Dr. Angela Lee

- [85] Dr. Lee is an optometrist and has known the plaintiff for 20 years. They met through volleyball and became part of a group of friends playing volleyball and often socializing in each other's homes. Dr. Lee testified that prior to the accident Ms. Cindrich would often host social gatherings and was described as a person that was very social, outgoing, active, and particularly passionate about playing volleyball. Dr. Lee testified that her and Ms. Cindrich, and often with another friend Karrie Williams, would go on long walks and regularly have coffee together.
- [86] Dr. Lee was particularly touched by her friendship with Ms. Cindrich with regard to Ms. Cindrich's efforts of support reaching out to Dr. Lee after Dr. Lee suffered the tragic loss of her infant child in 2015.
- [87] Following the accident Dr. Lee saw less of Ms. Cindrich. The habit of long walks stopped. The coffee gathering continued to a degree but Dr. Lee testified that Ms. Cindrich found it difficult to sit for more than 15 or 20 minutes at a time. Consequently arrangements were made to meet Ms. Cindrich at her home which was better, but still she could not really participate for more than half an hour. At the time of trial Dr. Lee was seeing Ms. Cindrich much less, perhaps twice a year. Ms. Cindrich does not attend parties or social functions as before.

The Evidence of Ms. Karrie Williams

- [88] Ms. Williams is a constable with the Royal Canadian Mounted Police stationed in Kelowna. Ms. Williams met the plaintiff when both resided in Langley approximately 20 years ago and became good friends through volleyball. The two, along with others, socialized for many years thereafter. Ms. Williams and the plaintiff played golf together and even travelled together.
- [89] Ms. Williams, up to the accident, would often be invited to the plaintiff's family cabin and participated in the many outdoor activities along with Ms. Cindrich. In 2008 Ms. Williams moved to Chilliwack. The friendship continued although with somewhat less interaction. They continued to travel together, play golf and go on camping trips.
- [90] Prior to the accident, Ms. Williams describes the plaintiff as energetic, with a big heart and always on the go; more often than not hosting get-togethers at the home of Ms. Cindrich.
- [91] Ms. Williams testified that following the accident, "things have changed". The physical activities and vacations came to a halt. Ms. Williams testified "our interactions have definitely come down to more coffee visits and the occasional walk on generally flat ground. Her energy levels are definitely not what they had been earlier. She is unable to do physical activity; she is in chronic pain. Even just giving her a hug became difficult because she had extremely sore shoulders and neck. She didn't want to be touched anymore we saw each other regularly enough [and] when the occasion called for it, it soon became apparent that it was touch, but very carefully and gingerly."
- [92] Ms. Williams has, subsequent to the accident, continued to join the plaintiff and family at the family cabin. Ms. Williams states however that Ms. Cindrich does not participate in the activities and must content herself with resting inside the cabin.

The Evidence of Alisha French

- [93] Ms. French is the daughter of the plaintiff. She was 16 years of age at the time of the accident. She graduated from high school in 2016; a year after the accident.
- [94] Following her parents' separation she largely resided with her mother. She continued to reside with her mother into 2017, until she found work and moved to Fort St. John. She now resides and works in Prince George.
- [95] Ms. French confirmed that her childhood was marked by a good deal of activity and was full of fun; including the whole family participating in martial arts. She describes her mother, prior to the accident, as "full of life, happy, energetic and quick-witted".
- [96] Ms. French described her high school years as difficult and traumatic. She was diagnosed with ADHD in grade 7. She experienced bullying. She testified, in essence, her mother devoted her free time to the welfare of Alisha; regarding all manner of life skills; in addition spending two hours every night helping Ms. French with her homework.

[97] She testified that following the collision her mother simply could not carry on in the same way; or really at all. She was tired, groggy and anxious. The active lifestyle ceased.

The Evidence of Mr. Richard De Graauw

[98] The plaintiff and Mr. De Graauw met in 2013 and were married in July 2014. He is a production manager at a furniture manufacturing company.

[99] Mr. De Graauw testified that shortly after meeting the plaintiff, in around December 2013, he was diagnosed with cancer and underwent treatment for some months. He was off work for those months.

[100] Mr. De Graauw testified that life with the plaintiff prior to the accident, and subject to the difficulties associated with his treatment, was very active and socially engaging. Mr. De Graauw testified that Ms. Cindrich arranged social activities at her home and it was Ms. Cindrich that undertook the cooking, cleaning and gardening requirements of the family and property. Mr. De Graauw stated that while he chipped-in from time-to-time, a good deal of his free time was taken up with caring for his elderly parents at the parents' home.

[101] Following the accident, Mr. De Graauw says that life changed. The active life of the plaintiff diminished, as did intimacy with Mr. De Graauw. He described the plaintiff for some time as tired, moody, anxious and suffering day-to-day pain. He and her son Dale have taken over the cooking responsibilities, gardening and washing the dishes. They have now arranged for a cleaner who comes in every two weeks for a couple of hours and cleans the floors and the bathrooms.

The Evidence of Mr. Joe Cindrich

[102] Mr. Cindrich is the father of the plaintiff. He is 82 years of age. He continues to dabble in business. He arranges second mortgages. I pause to observe it was apparent where the plaintiff came upon her vigorous embrace of life as a young woman. Mr. Cindrich appears to be still going strong.

[103] In any event, Mr. Cindrich confirmed the fact that the family played hard and worked hard; together. For instance, aside from the activities in and around the home and the family cabin, he and the plaintiff would often go on annual fishing trips together on the west coast of Vancouver Island, adventuring 25 miles offshore for halibut.

[104] Following the accident Mr. Cindrich testified that the plaintiff simply could not participate in these activities that they habitually undertook at the home and at the cabin. In addition she cannot go fishing. Mr. Cindrich testified she cannot sit in the car for any length of time and her patience and temperament is fragile; he assumes due to the pain. Mr. Cindrich does not see his daughter as often. She does not come to his home as often as she did prior to the collision, rather contenting herself with phone calls.

[105] It was apparent the plaintiff's father very much missed the daughter he had prior to the accident. And as he testified, he does not have that many years left.

The Evidence of Ms. Corrie Irwin

[106] Ms. Irwin is currently employed as the Director of Operations with Burnaby General Hospital as part of the Fraser Health Authority. She has an extensive history of managerial employment in the healthcare industry. She is currently charged with responsibilities directed at managing the support for four portfolios; namely surgical, critical care, emergency, and cardiac services. She is responsible for recruitment and hiring of program managers and other managers that are charged with various responsibilities within those four portfolios.

[107] Ms. Irwin and the plaintiff met while both were attending Royal Roads. She testified about her insights into the capabilities and potential of the plaintiff. She stated that she came to know the plaintiff well during the two-year program at Royal Roads and viewed the plaintiff with high regard. She testified the plaintiff certainly had the overall qualities of someone that Ms. Irwin would hire for a role in clinical operations. (Remuneration apparently between approximately \$75,000 and \$120,000 per annum).

[108] Indeed, a couple of years after the accident, Ms. Irwin recommended the plaintiff for a position within the project management of the Vancouver Coastal Health Authority.

[109] Ms. Irwin indeed made the recommendation to Mr. Parr who was then the Associate Vice President of Corporate Services with Vancouver Coastal Health. Ms. Irwin testified that, in her view, the plaintiff had all the qualities that would impress someone like Mr. Parr.

[110] Ms. Irwin testified however that after advice and discussions with the plaintiff it was agreed Ms. Irwin would put in abeyance her efforts to help Ms. Cindrich with employment applications. This was on the advice of Ms. Cindrich that, on reflection, she simply was not up to the task.

The Evidence of Mr. Sean Parr

[111] Mr. Parr is the Associate Vice President of Corporate Services for Vancouver Coastal Health. He is directly responsible for approximately 2,000 employees. He, like Ms. Irwin, has extensive experience in the healthcare industry. In mid-2017 he was tasked with implementing a new clinical project at Lion's Gate Hospital. The personnel required in managing various aspects of the project were discussed at a senior team meeting. Ms. Irwin was present. Ms. Irwin then recommended to Mr. Parr that he interview Ms. Cindrich as someone she thought would "fit the bill".

[112] Mr. Parr testified that in assessing Ms. Cindrich he would place a good deal of weight on the fact that she was recommended by Ms. Irwin. In his view, that weight would be "very high".

[113] The fact is however Mr. Parr testified he never did interview Ms. Cindrich as she withdrew her interest.

The Evidence of Ms. Elaine Watson

- [114] Ms. Watson is currently the Director of Workforce NHS Tayside; one of the national health service organizations in Scotland. Ms. Watson provided her evidence via video from Scotland. Her organization provides the health services to the area of Tayside; a population of approximately 500,000. She is responsible for human resources and the health and safety of the organization. An organization consisting of approximately 14,000 employees. Once again, it was clear from her evidence Ms. Watson is a seasoned and experienced professional that has been engaged in the healthcare system for over a decade.
- [115] She only recently returned to Scotland in 2023. Her main body of work took place in Canada; primarily in Alberta in those similar capacities as she now undertakes in Scotland.
- [116] She too met the plaintiff while attending Royal Roads. Both were completing a Master of Arts in leadership with a health specialization. While Ms. Watson did not reside in Vancouver, she stayed in touch with Ms. Cindrich over the years.
- [117] Ms. Watson testified she observed immediately at Royal Roads the plaintiff to be 'charismatic'; a smart, articulate person; and fun to be around. Ms. Watson thereafter would often visit the plaintiff from Calgary. She assisted Ms. Cindrich in applying for leadership positions. That is, positions to manage health professionals; whether it be nurses, physiotherapists, occupational therapists or the like.
- [118] Ms. Watson testified that she was very experienced in this area including her obligations of preparing job descriptions for management roles, shortlisting candidates, and hiring candidates for these positions.
- [119] Ms. Watson testified that in her experience Ms. Cindrich had all of the qualities, in terms of skill and education, that Ms. Watson looks for in leadership in management positions.
- [120] Ms. Watson was asked, during direct examination, her opinion on whether the background of Ms. Cindrich would have been 'attractive' generally to organizations in healthcare. Counsel on behalf of the defendant objected to this evidence taking the position that it was evidence that could only be proffered in the usual way through expert opinion evidence. Counsel agreed that the issue of admissibility would be dealt with in these reasons.
- [121] In particular the highlighted evidence below is the subject matter of the objection:

Q And so when Ms. Cindrich graduated from Royal Roads with her background and her master's in leadership and her experience, was she someone that would have been attractive as a frontline manager or front line leadership role to healthcare authorities or - organizations in healthcare?

A Yes. The provinces of Alberta and British Columbia in particular use the master's in leadership with Royal Roads as their go-to qualification for leaders. So yes it would have -and which is the reason I did it. And that would have been the qualification that would have brought her well beyond a frontline leader position.

[Emphasis added.]

[122] I first note that the answer above is not particularly responsive to the question. The question seeks to elicit evidence that probably should only come from someone qualified as an expert. The question requires an assessment of the background and expertise of Ms. Cindrich; including the fact of her Master's degree, and seeks an opinion whether that combination would make her an 'attractive' candidate for leadership roles in healthcare organizations.

[123] The substance of the evidence in response is much narrower. The gravamen of the evidence of Ms. Watson is that, in particular, a Master's degree is viewed in Alberta and British Columbia as a 'go-to' qualification for leadership positions.

[124] I do not interpret the evidence of Ms. Watson as offering an opinion whether the background and experience of Ms. Cindrich, coupled with her degree, would generally make her an attractive candidate. In my view the evidence of Ms. Watson simply speaks to her own experience concerning the importance that authorities in British Columbia and Alberta place on that feature of an application; namely, a Master's degree. I do not consider that evidence to be inadmissible.

[125] That said, my assessment of the possibility of the prospects of Ms. Cindrich does not particularly focus on this evidence.

[126] Finally, in cross-examination, Ms. Watson was asked a hypothetical. It was posed that if she were presented with two candidates with equal qualifications; except one had a history of part-time work, and the other full-time employment, whether it would be more likely she (Ms. Watson) would hire the candidate with full-time employment. Ms. Watson answered from her perspective: no.

[127] Regrettably, given her experience in the area, she was not given an opportunity to provide her reasoning for the answer. This is unfortunate because notwithstanding how it was left, the defendant implies this answer demonstrates a lack of professional integrity; and is evidence that is not credible. In particular, it is submitted that "it lacks common sense and demonstrates Ms. Watson was simply 'a friend trying to support a friend'." As I say, this is an unfortunate submission given the fact she was provided no opportunity to expand on her approach to the hypothetical.

The Evidence of Ms. Crystal Mayfield

- [128] Ms. Mayfield is a very experienced occupational therapist and has been treating the plaintiff since the fall of 2015. These treatments, to the date of trial, number approximately 150.
- [129] Ms. Mayfield was retained by the ICBC to assist and treat the plaintiff and prepare reports concerning Ms. Cindrich.
- [130] The focus of Ms. Mayfield was to coordinate and provide treatment for Ms. Cindrich with a view to allowing Ms. Cindrich to return to the workforce. The reports, which were referenced at trial, were directed at reporting to ICBC the nature of the physical, emotional and cognitive state of Ms. Cindrich; coupled with recommendations concerning ongoing treatment, rehabilitation and home assistance.
- [131] The sessions were undertaken largely at the home of Ms. Cindrich. Ms. Mayfield testified that the overall approach was to make observations concerning the capacity of Ms. Cindrich to perform certain functions; strategize concerning different treatment approaches; and address any ongoing issues or difficulties Ms. Cindrich was having in addressing her injuries; including providing Ms. Cindrich with cognitive exercises.
- [132] Ms. Mayfield was asked to provide an overview of her observations of Ms. Cindrich over the course of treatment; and as well her observations and progress up to the date of trial.
- [133] The observations of Ms. Mayfield have aligned with the evidence of Ms. Cindrich concerning her early struggles. In addition Ms. Mayfield testified concerning working with Ms. Cindrich over these years to assist Ms. Cindrich in finding some kind of employment. Ms. Mayfield testified that Ms. Cindrich for a short period of time assisted in the editing of a yoga instruction manual. Ms. Mayfield referenced Ms. Cindrich's attempts to create a gardening and landscaping endeavour, previously referenced, but testified the work was simply too heavy for Ms. Cindrich to deal with.
- [134] Ms. Mayfield also testified that she assisted Ms. Cindrich in relation to RADD. She states she did so because Ms. Cindrich was very anxious to try to do anything to make her more independent; particularly more able to contribute and take some of the burden from her husband. Ms. Mayfield acknowledged in this regard that since the accident, over these many years, the fact that Ms. Cindrich is attempting to pursue her craft-making is obviously a sign of progress since the accident. Ms. Mayfield testified however that over the course of these efforts Ms. Cindrich is in more pain during her woodworking attempts. She has become more emotional. She is more fatigued and consequently is demonstrating less ability to deal with stress. This, testified Ms. Mayfield, is some of the origins of her emotional fragility.

- [135] Ms. Mayfield reports that while Ms. Cindrich can lift the smaller pieces of wood regarding her craft-making; she cannot lift anything over 20 pounds. She becomes teary in remembering her past abilities. She still becomes overwhelmed with the paperwork required for the business and must take a good deal of time to accomplish anything in that regard.
- [136] Ms. Mayfield has tried to assist by providing height adjustable workstations, and orbital sander (rather than attempting to do it manually), and the use of antifatigue mats. Ms. Mayfield testified that nevertheless Ms. Cindrich continues to struggle.
- [137] In addition, in and around the approach to the trial, Ms. Mayfield observed Ms. Cindrich still exhibits a good deal of pain symptoms. She moves up and down stairs slowly with the use of the railing. She often squirms and must reposition herself in a chair. She walks with a limp that appears more noticeable.

The Evidence of Dr. Ansel Chu

- [138] Dr. Chu is a well experienced physiatrist and has been treating Ms. Cindrich regarding this accident continuously since November 2015. The nature of Dr. Chu's medical specialty is to treat people with musculoskeletal problems; often associated with chronic pain.
- [139] Dr. Chu had previously treated Ms. Cindrich following a motor vehicle accident that occurred in 2005. The subject treatment at that time was focused on pain in her left neck and shoulder, and as well facial pain and numbness.
- [140] In terms of current treatment, Dr. Chu administers trigger point injections and Botox injections.
- [141] The trigger point injections are intended to block the nerve signals and areas of pain. These are administered to the neck paraspinals, upper shoulders, mid-back, front of neck, chest and pectoral muscles, and jaw, of Ms. Cindrich. These are a series of 30 or so injections administered every six weeks. This remained the protocol as at the time of trial.
- [142] The Botox injections began in approximately 2018 in order to try and alleviate migraine headaches that were being experienced by Ms. Cindrich, occurring about 15 days a month. These injections are every three months and injected at 31 different sites in the body of Ms. Cindrich. Dr. Chu reports they are painful but helpful, and so long as Ms. Cindrich reports a benefit, Dr. Chu will continue the program.

The Evidence of Dr. David Jackson

- [143] Dr. Jackson is the treating psychologist of Ms. Cindrich and has been so since 2019. Dr. Jackson assumed responsibility from Dr. Patal who had treated Ms. Cindrich since the accident. In total, to the time of trial, Ms. Cindrich has undergone 137 counselling sessions.

The Expert Witnesses

The Evidence of Dr. David Koo

- [144] Dr. Koo was qualified to provide expert opinion evidence in the area of physiatry.
- [145] Dr. Koo is a medical doctor and has specialized in physiatry since 2000. He is the attending physician at the GF Strong Rehabilitation Centre in Vancouver; a large centre that provides rehabilitation care to both inpatients and outpatients. He is part of an interdisciplinary team that services patients with a variety of neurologic and musculoskeletal conditions of trauma. Very often, if not always, those patients are suffering from chronic pain. In addition, Dr. Koo provides consultation in physiatry to Vancouver General Hospital. In this regard he undertakes various assessments and consultations in the same areas.
- [146] Dr. Koo provided two reports at the behest of the plaintiff. One dated June 28, 2021; the other dated August 24, 2023. Dr. Koo also provided viva voce evidence.
- [147] In his first report, Dr. Koo offered his opinion concerning the injuries and conditions that have likely resulted from the motor vehicle accident.
- [148] In brief he reported Ms. Cindrich suffered whiplash injuries to the cervical, thoracic and lumbar spine, left shoulder, and left hip with chronic myofascial pain syndrome. Ms. Cindrich has soft tissue pain and predominantly in the postural lateral muscles of the neck, upper and lower back, left periscapular region and left hip. The accident caused left thoracic outlet syndrome. The presence of numbness, tingling and forearm cramping, pain, made worse with the use of arms outstretched or away from her body; Dr. Koo has testified is consistent with posttraumatic thoracic outlet syndrome.
- [149] Dr. Koo advises that Ms. Cindrich suffers from posttraumatic headaches, cervicogenic and migraine. Her headaches are often associated with nausea and light sensitivity.
- [150] Dr. Koo reports that she suffered a left shoulder rotator cuff and labral tear which required surgery.
- [151] Dr. Koo has diagnosed Ms. Cindrich with adjustment disorder, with depression and anxiety. He reports that Ms. Cindrich advises of poor sleep, depression, anxiety, tearfulness, and psychosocial stressors of pain, insomnia, unemployment, financial stressors and increasing debt levels associated with the accident. Dr. Koo states that Ms. Cindrich has gained weight and reports to him of reduced self-esteem. She has gained 60 pounds. In the view of Dr. Koo the accident and its effects have likely significantly contributed to Ms. Cindrich's post-accident depression, anxiety and vehicular anxiety.
- [152] Dr. Koo advises Ms. Cindrich reports she has become significantly less active than she used to be and much more fatigued even with basic day-to-day tasks; like showering. She exhibits pain and restricted range of motion of the neck, left shoulder, lower back and left hip.

- [153] Dr. Koo offers the opinion that the chronic pain disorder with central sensitization of pain now meets the clinical diagnosis criteria for fibromyalgia. Dr. Koo testified Ms. Cindrich has 12 of 18 fibromyalgia tender points on clinical examination. He offered the view that more than 11 out of 18 is required for fibromyalgia diagnosis. Dr. Koo testified that she also meets the updated 2010 ACR criteria for fibromyalgia as evidenced by her widespread pain index and symptom severity scales. Dr. Koo reports that in his opinion, absent the accident in question, it would have been unlikely Ms. Cindrich would have developed fibromyalgia.
- [154] In the course of Dr. Koo's evidence he describes fibromyalgia as a medical syndrome that is characterized by generalized widespread bodily pain usually affecting all four quadrants of the body. There is often a process called central sensitization where things that are generally not painful become perceived as painful and can remain painful for an extended period of time. Dr. Koo states that people will generally complain of excessive fatigue, and non-restorative sleep.
- [155] He provided evidence concerning a feature he referred to as fibro fog where one's brain feels muddled and unclear. This is often coupled with depression and anxiety. It gets to the state, testified Dr. Koo that the body and the brain do not seem to handle the ability to suppress irritants the same way and one becomes hyper irritable to pain stimulation.
- [156] Dr. Koo testified that he has the advantage of an updated report prepared in August 2023 that allowed him to confirm his initial opinion and as well notes that Ms. Cindrich's level of disability continues to be severe.
- [157] Dr. Koo, in his evidence, addressed the circumstances of Ms. Cindrich pursuing her craft business. He is of the view that she is likely working at or near her maximum capability. He states however her general pain levels have not changed significantly since 2021. He offers the prognosis that maximal medical recovery has likely taken place with regard to Ms. Cindrich's motor vehicle accident related injuries, chronic pain disorder and fibromyalgia diagnosis. This is so, states Dr. Koo, given the duration of time since the accident, her comprehensive and ongoing treatment program, housekeeping supports, recurring Botox injections, trigger point injections, and comprehensive trials of various chronic pain and depressive medications.
- [158] Dr. Koo reiterated the benefit of seeing Ms. Cindrich in 2023 as it allowed him the opportunity to confirm that his projections, as contained in his earlier report, have been borne out. He reports that her fibromyalgia remains prevalent and if anything slightly worse. The fact is, reports Dr. Koo, the treatments in relation to pain reduction are not going to remove her underlying myofascial pain nor remove the underlying fibromyalgia; but at least it will allow her to live with less pain for the duration of those treatments and allow her to do a little bit more in her life.

- [159] In cross-examination Dr. Koo confirmed his direct evidence that fibromyalgia is a collection or constellation of related symptoms. Fibromyalgia has an identifiable cause in the sense it is known there are multiple factors that make up fibromyalgia; although Dr. Koo testified there is no single cause.
- [160] He testified that some risk factors in a person's history can be associated with fibromyalgia, including the fact there are some family associations with fibromyalgia and chronic pain; however no actual genetic or genomic sequencing has been associated with fibromyalgia.
- [161] Dr. Koo testified that it may be a certain family history increases one's risk of fibromyalgia, but the medical literature does not go so far as to say there is a genetic component. He was more comfortable testifying that family background could be relevant in determining one's risks of developing fibromyalgia. He points out however, for example, the fact that the mother or father had rheumatoid arthritis would not be something he would consider. It would not be relevant in assessing risk in someone like Ms. Cindrich.
- [162] He testified that some people can still carry on with employment having been diagnosed with fibromyalgia or chronic pain, however the nature, circumstances and data for this evidence was not explored or developed by counsel.
- [163] Dr. Koo confirmed he respects the views of Dr. Finlayson as he helped train her. (Dr. Finlayson is a psychiatrist called by the defendant.)
- [164] Dr. Koo is of the opinion Ms. Cindrich is not competitively employable. Dr. Koo explained that based on her current degree of pain, physical limitations and energy tolerances; she would be "poorly suited" for an employer that had requirements for any sort of consistent work or productivity.
- [165] Dr. Koo testified that employability (as opposed to competitive employability) is a different matter. Ms. Cindrich could, and has, pursued self-employment as described.
- [166] In the context of attempting to pursue the business of RADD, and dealing with limitations, he agrees it would be reasonable to consider hiring someone. Finally, Dr. Koo confirmed that at least a part of his opinion is based on information provided by Ms. Cindrich and agreed that if the information was wrong or erroneous it could impact his opinion. He also testified that whether in fact erroneous information would impact his opinion would of course depend on the nature of the incorrect information.

The Evidence of Dr. Rhona Shucett

- [167] Dr. Shucett was qualified to provide expert opinion evidence in the area of internal medicine and in particular rheumatology.

- [168] Dr. Shucett has been practising internal medicine in rheumatology for approximately 25 years. Her current professional activities include her obligations as a clinical professor at the Department of Medicine at UBC where she oversees the undergraduate program in rheumatology.
- [169] Rheumatologic conditions include soft tissue pain, fibromyalgia, neck and back pain, and arthritic and other inflammatory collagen vascular disorders.
- [170] Dr. Shucett examined the plaintiff and prepared a report dated September 19, 2022. She also provided viva voce evidence.
- [171] Dr. Shucett concludes that as a result of the accident the plaintiff sustained musculoligamentous and myofascial soft tissue pain of the neck and shoulder girdle area, a left shoulder injury resulting in arthroscopy, myofascial pain related thoracic outlet syndrome (TOS) of the left upper extremity related to her whiplash injury, soft tissue neck pain, left sided lumbar sprain, left sacroiliac ligament strain, trochanteric bursitis, cervicogenic posttraumatic headaches, central sensitization syndrome (CSS) in her pain process and fibromyalgia. Dr. Shucett described fibromyalgia in a way consistent with, for instance, Dr. Koo.
- [172] Dr. Shucett concluded that given the passage of time; the fact that the plaintiff continues to struggle with symptoms, her prospects of recovery are "guarded". Dr. Shucett testified that Ms. Cindrich has likely attained maximum medical improvement.
- [173] Dr. Shucett was asked about the plaintiff's prospects concerning employment. She testified that Ms. Cindrich's employment prognosis is limited. Dr. Shucett testified the plaintiff really cannot manage tasks that require prolonged standing or sitting without built-in accommodation. Her ability to lift and undertake physical activity is not something, to a certain degree, she can manage. Dr. Shucett testified that Ms. Cindrich could take on, in this context, some adapted part-time work. Self-employment, Dr. Shucett testified, would be an option allowing for accommodation that was totally under the control of the plaintiff. Dr. Shucett testified she had become more familiar with the details of RADD; which endeavour was in its infancy when the report was prepared.
- [174] Dr. Shucett also stated in cross-examination that, in this context, continuing with the treatment programs can offer the plaintiff hope of improvement, but given the time frame within which the symptoms have persisted, the treatment may modulate the pain for a period of time, if effective, but her function would not be impacted.
- [175] Dr. Shucett testified that some persons suffering from fibromyalgia can indeed work full-time; but that the majority of her patients with fibromyalgia do not work and many are on disability.
- [176] Dr. Shucett, like Dr. Koo, was challenged in cross-examination concerning the diagnosis of fibromyalgia. Dr. Shucett, echoing Dr. Koo, conceded that certainly an aspect of the assessment relied on the accuracy of the information provided by the plaintiff. Generally,

Dr. Shucett was pressed with the proposition that it could not be concluded the accident and, the trauma associated with the accident was a causal factor of the fibromyalgia. Dr. Shucett conceded that there are probably other factors at play, but remained firmly of the view it is more likely than not the accident played a significant triggering role in her development of fibromyalgia, deconditioning, losing her ability to exercise, and working the way she used to.

- [177] Dr. Shucett testified that she was aware of the physical activities that are undertaken by Ms. Cindrich regarding her craft business; although was not asked during her evidence her views, concerning those activities in the context of her opinions.

The Evidence of Dr. Roy O'Shaughnessy

- [178] Dr. O'Shaughnessy is a forensic psychiatrist and provided expert opinion evidence in that area.
- [179] Dr. O'Shaughnessy produced three reports touching on his assessment of the plaintiff's difficulties. Those reports are dated January 23, 2017; February 3, 2020; and July 21, 2023. Dr. O'Shaughnessy also provided viva voce evidence.
- [180] Initially Dr. O'Shaughnessy diagnosed Ms. Cindrich with: (1) probable major depressive disorder; (2) adjustment disorder with anxiety and depressed mood; and (3) simple phobia (driving).
- [181] Some years later, in 2023, Dr. O'Shaughnessy concluded the following diagnoses: (1) major depressive disorder in fairly reasonable remission on medications; (2) driving phobia in good remission; and (3) somatic symptom disorder.
- [182] Dr. O'Shaughnessy testified there is clear evidence of psychological factors playing a role in the perception of pain on the part of Ms. Cindrich. In other words, for example, these factors emerge when one becomes excessively preoccupied with their health issues accompanied by excess preoccupation with negative events and excess appreciation of disability. Dr. O'Shaughnessy is of the view Ms. Cindrich does show these traits; hence the diagnosis of somatic symptom disorder.
- [183] Dr. O'Shaughnessy testified that if the plaintiff could improve physically, her psychological symptoms would continue to get better. Indeed, Dr. O'Shaughnessy observed some improvement in Ms. Cindrich on the last visit in 2023. That said, Dr. O'Shaughnessy is of the view the prognosis for Ms. Cindrich is "guarded". Meaning, testified Dr. O'Shaughnessy, she will likely continue to experience the same difficulties that she has been experiencing for the last number of years, and is unlikely to achieve significant remission.

[184] Dr. O'Shaughnessy was of the view, perhaps obviously, that once the current litigation is concluded, at least one stressor in her life would be removed. Dr. O'Shaughnessy also confirmed, again perhaps self-evidently, that the craft business has lifted her self-esteem and self-confidence. In his view, it could be sustainable on a part-time basis, but what was keeping her from the work was the chronic pain.

The Evidence of Ms. Lauren Yuen

[185] Ms. Yuen was qualified to provide expert opinion evidence in the area of occupational therapy.

[186] Ms. Yuen was retained by the plaintiff to provide a functional capacity report and a future cost of care assessment.

[187] The plaintiff submitted two reports of Ms. Yuen; one dated February 5, 2019 and the other February 19, 2020. Ms. Yuen testified as well. The functional capacity report is dated February 5, 2019; the cost of care assessment is dated February 19, 2020.

[188] Here I will provide an overview of the evidence of Ms. Yuen concerning her functional capacity report. I will deal with the February 19, 2020 report when I assess cost of future care. I do this in part because counsel provided the court with a more updated, and hence more relevant, costing assessment as a result of recent information received from Ms. Cindrich's treating professionals. This document is referenced as "Present Value of Costs of Future Care Update" as at September 1, 2023.

[189] In relation to the functional capacity assessment, Ms. Yuen performed various testing with Ms. Cindrich at the offices of Ms. Yuen and at the home of Ms. Cindrich for a total of almost 12 hours. Ms. Yuen was satisfied with the legitimate effort of Ms. Cindrich and concluded, in all the circumstances, Ms. Cindrich would not qualify for full-time work. It is to be observed however this assessment is some four years prior to trial.

[190] Ms. Yuen reported during the testing Ms. Cindrich at one point sat for almost an hour and at another point sat for about 20 minutes. Ms. Yuen states Ms. Cindrich had, at least at the beginning of the session, a full range of bending towards her toes; but this had slightly decreased by the end of the day. Similarly, at the beginning of the day, Ms. Cindrich could crouch and kneel; and manage, at one point, to ascend and descend two flights of stairs without the use of the handrail. Ms. Yuen reported concerning the results of her strength exercises and the scores in relation to those exercises.

[191] Ms. Yuen concluded the restrictions of Ms. Cindrich in just sitting, standing, walking, bending, crouching, kneeling, balancing, climbing, reaching, handling, and test of strength, rendered Ms. Cindrich non-competitively employable, and certainly unemployable at her previous positions as a driver and recreational therapist.

[192] Ms. Yuen cautioned in her evidence that her opinion was based upon physical testing and opined that psychological or psychiatric issues would impact these matters as well.

[193] Ms. Yuen addressed one of the issues in this particular case, namely the prospect of accommodated part-time work; much like her efforts concerning RADD. Ms. Yuen is of the view part-time work would require circumstances that are highly flexible, with the freedom to accommodate herself relating to hours, workplace conditions (such as an ergonomic set up for any sitting positions); and regular physical relief for extended standing or sitting.

The Evidence of Ms. Cheryl Thompson

[194] Ms. Thompson is a vocational rehabilitation consultant and vocational expert. She assessed the vocational capacity of Ms. Cindrich. Her report is dated March 1, 2020.

[195] Ms. Thompson came to the view Ms. Cindrich participated to the best of her ability in the testing and assessment. Ms. Thompson made special note of the intellect of Ms. Cindrich; advising that her intelligence was probably the highest she had seen in her over 150 evaluations.

[196] The views of Ms. Thompson are probably best captured as follows:

It is likely any attempts to return Ms. Cindrich to gainful employment at this time would collapse, and return to work failure would likely result in further deterioration of her already compromised psychological functioning in my opinion. Ms. Cindrich's ability to return to some form of gainful employment in the future would remain dependent on substantial and sustained improvements in her symptoms. I suspect considering the complex and persistent nature of Ms. Cindrich's symptoms, her limited improvements over time, and her medical prognosis, that it is highly unlikely she would recover to the extent she regains the status of competitively employable in the future. Considering her reduced work pace (in relation to RADD) and anticipated reduced productivity, and her likely limitation to part-time hours, any small business endeavour is unlikely to generate a living wage for Ms. Cindrich and would remain more of a hobby for quality-of-life purposes in my opinion.

[197] Ms. Thompson confirmed in cross-examination that the testing of Ms. Cindrich was cut short on the first day due to Ms. Cindrich being exhausted. In addition, Ms. Thompson expressed the opinion, similar to that of Ms. Watson, that an employer seeking a full-time position would not find it particularly relevant whether one's history was full-time or part-time.

[198] Ms. Thompson reported that Ms. Cindrich advised that interacting with people would be a struggle; at least as matters stood in early 2020. Ms. Thompson also reported that Ms. Cindrich had advised that since the accident she had snowshoed; with the help of poles and on flat terrain. When in time this occurred, and how often, was not explored in the report.

The Evidence of Dr. Heather Finlayson

[199] As previously noted, Dr. Finlayson is a physiatrist called by the defendant.

- [200] Dr. Finlayson was qualified to provide expert opinion evidence in the area of psychiatry. She is a medical doctor and a registered specialist, since 2006, in physical medicine and rehabilitation. Dr. Finlayson is also a staff physician at GF Strong and a consultant with Vancouver General Hospital. She is a clinical assistant professor at the UBC Division of Physical Medicine and Rehabilitation.
- [201] Dr. Finlayson prepared two reports; October 24, 2019 and March 25, 2020. The report dated March 25, 2020 was in response to certain information Dr. Finlayson had received subsequent to her report of October 24, 2019. The new information she had received appears to have been a report from Ms. Cindrich's family doctor, Dr. Myers; a report of Ms. Cindrich's treating orthopedic surgeon, Dr. Samers; and the initial report of Dr. O'Shaughnessy dated February 3, 2020.
- [202] I observe that there is some hesitation concerning the usefulness of the responsive report of March 2020 due to the fact that the report of Dr. Myers and the report of Dr. Samers are not before the court in any event. In addition, Dr. Finlayson's report does not address the more recent and relevant report of Dr. O'Shaughnessy.
- [203] In any event, Dr. Finlayson diagnosed, in 2019, that Ms. Cindrich had probably suffered the kinds of injuries that have been documented in the many other reports. She diagnosed Ms. Cindrich with chronic myofascial pain syndrome as a consequence of the motor vehicle accident coupled with a diagnosis of chronic pain disorder. The pain in this regard originates in Ms. Cindrich's neck, shoulders, chest, and low back area. Similarly, Dr. Finlayson diagnosed Ms. Cindrich with cervicogenic headaches; leading to migraine. Dr. Finlayson is of the view these headaches were also the result of the motor vehicle accident; as was her injury and resultant surgery relating to her left shoulder.
- [204] Dr. Finlayson is also of the opinion that persons that suffer from chronic pain often experience the onset and/or worsening of psychiatric symptoms like depression and various forms of anxiety. It is also the opinion of Dr. Finlayson that Ms. Cindrich, at the point when she was assessed, had developed central sensitization due to her chronic pain.
- [205] Dr. Finlayson, at the time of her report, was more sanguine concerning the future prospects of Ms. Cindrich concerning employment. At that time, Dr. Finlayson thought that if Ms. Cindrich pursued her various treatments, medications, counselling and the like, while a complete resolution of all her symptoms would be highly unlikely, it would be probable she would at least partially improve such that she would be able to undertake part-time work. Dr. Finlayson was of the view this partial improvement could take place over the course of 6-12 months. In addition, depending on the benefits from treatment, Dr. Finlayson believed eventually Ms. Cindrich could return to full-time work. I observe, as previously referenced, Dr. Finlayson was not asked to assess matters in the context of the evolution of Ms. Cindrich's circumstances over the course of those ensuing years since the assessment.

- [206] Dr. Finlayson also commented concerning the issue of fibromyalgia. To be fair however, she approached the point in somewhat imprecise circumstances.
- [207] In her first report she alludes to her understanding that Ms. Cindrich's treating rheumatologist and family doctor had 'raised the possibility' of a diagnosis of fibromyalgia. Dr. Finlayson testified that it was unclear at the time of her report whether in fact that diagnosis had been made. In any event, Dr. Finlayson nevertheless offered the opinion that while Ms. Cindrich is, in fact, suffering from chronic pain and other symptoms as she set out in her report, if in the future a rheumatologist assessed Ms. Cindrich and determined Ms. Cindrich to have fibromyalgia, then, in the opinion of Dr. Finlayson, it would be her view that the trauma of the motor vehicle accident would not have contributed to the fibromyalgia.
- [208] In the second report of Dr. Finlayson she expressed the view, directed it appears at a note Ms. Cindrich's family doctor had made, that, again, if there was such a diagnosis of fibromyalgia it is highly unlikely to have developed as a direct consequence of trauma or injury suffered in the motor vehicle accident.
- [209] Again, I pause to observe, in fairness to Dr. Finlayson, she was not asked to comment concerning the assessment, reasoning and particulars of the actual diagnosis made and outlined by Dr. Koo and Dr. Shucett in coming to their view concerning the presence and cause of fibromyalgia.
- [210] In addition there is a report presented by the plaintiff authored by Dr. John Armstrong, addressing some of the points raised by Dr. Finlayson. It is appropriate to deal with Dr. Armstrong's report here.

The Evidence of Dr. John Armstrong

- [211] Dr. Armstrong was qualified as a medical doctor able to provide expert opinion evidence concerning the assessment and management of complex chronic pain. Dr. Armstrong has been retired from his practice since 2012.
- [212] Dr. Armstrong produced a report dated November 3, 2020. He also provided viva voce evidence. Dr. Armstrong expressed the opinion that fibromyalgia can indeed be caused by trauma.
- [213] In addition, he raised what might be considered a difficulty, at least in his view, with the logic of Dr. Finlayson's report. He explained as follows:

Dr. Finlayson stated that Ms. Cindrich's chronic pain was caused by a myofascial disorder that had resulted from the MVA. That is to say, Ms. Cindrich had chronic nociceptive pain caused by the MVA. Alternatively, Dr. Finlayson asserted that, if FMS were to be the cause of her chronic pain, then it would be unlikely to have been caused by the MVA. In fact, it appears to me from Dr. Finlayson's report that Ms. Cindrich's chronic pain, not present during the two years before the MVA, clearly arose from the MVA and had been ongoing for nearly 4.5 years when Dr. Finlayson

assessed her. In the circumstances, Dr. Finlayson appears to have been correct in that Ms. Cindrich's chronic nociceptive pain, was, more likely than not, caused by the MVA. However, in keeping with the concept of central sensitization as endorsed by her, Dr. Finlayson appeared to contradict herself in stating that, if Ms. Cindrich had FMS, it was not a complication of her chronic nociceptive pain that Dr. Finlayson attributed to the MVA

As noted by Dr. Finlayson, Ms. Cindrich had myofascial (nociceptive) pain. If she had FMS, she has nociceptive pain as well. But for the MVA, she would have neither.

[214] He did agree however, with the other experts in the case, that fibromyalgia is not a clinical diagnosis. There remains uncertainty as to the precise cause.

The Evidence of Mr. Trevor Lesmeister

[215] Mr. Lesmeister was called by the defendant and was qualified to provide expert opinion evidence in the area of vocational rehabilitation and evaluation. He provided two initial reports based on his assessment of Ms. Cindrich; dated February 26, 2020 and April 6, 2020. The April report is, in large part, a response to the report of Ms. Thompson.

[216] Mr. Lesmeister produced a third report dated July 21, 2023, updating his opinion; based on certain additional medical evidence, and in response to certain factual assumptions provided by counsel.

[217] Mr. Lesmeister has a Master's degree in Counselling Psychology from Simon Fraser University and is a designated clinical counsellor. He does not have any professional qualifications focused on vocational assessments but, nevertheless, he was qualified to provide expert opinion evidence in this area without objection.

[218] The purpose of the initial assessment in February 2020 was to evaluate the employability of Ms. Cindrich in the context of her limitations at that time. According to Mr. Lesmeister, Ms. Cindrich scored "very high" on the intelligence testing. Mr. Lesmeister, in his report, suggested various employment options for consideration as he felt the plaintiff, at that point, could gradually ease back into some sort of employment; perhaps, as he stated, something part-time. The report of Mr. Lesmeister focused on the conclusions of Dr. Finlayson that the plaintiff had the potential to return to full-time employment. In this context Mr. Lesmeister came to the view that Ms. Cindrich may require little or no accommodation to return to the workforce.

[219] Mr. Lesmeister was directed to offer his opinion in an area that was returned to from time-to-time throughout the trial. Mr. Lesmeister stated that having only a part-time employment background in applying for a full-time position in a related area, as against applicants with full-time experience, might be seen as less favourable to a potential employer.

- [220] Mr. Lesmeister was also taken to Ms. Thompson's report where Ms. Thompson outlines medium to high wage ranges regarding potential occupations that Ms. Cindrich would be or would have been suitable. Mr. Lesmeister testified that while it was not a 'concern' regarding the opinion of Ms. Thompson in this regard; he wished to clarify that there were of course lower-wage thresholds, and as well within a certain category of occupation, there is a diverse cluster of occupations that ought to be considered. That said Mr. Lesmeister did express the view that he did not think the suggestions of Ms. Thompson were necessarily appropriate for the plaintiff.
- [221] The final report of Mr. Lesmeister dated July 21, 2023 addressed additional medical evidence provided to Mr. Lesmeister by the defendant. As well, it addressed hypothetical questions based on assumptions relating to the plaintiff's involvement in her craft business.
- [222] Mr. Lesmeister offered the opinion that based on those assumptions, Ms. Cindrich would be able to consider part-time employment; and, that generally speaking, employers could relatively easily put in place accommodation for her. Mr. Lesmeister provided the context to this opinion based upon Ms. Cindrich regularly assembling and building lamps and small furniture (benches and tables), with the participation of her husband. Mr. Lesmeister was not asked how, if at all, his opinion would change on the assumption that it was the husband that took on the bulk of the work concerning benches and tables.
- [223] In any event Mr. Lesmeister also testified he did not have the specific evidence or circumstances concerning how Ms. Cindrich navigates her efforts with RADD; nor the impact those efforts have on her physical and mental state.
- [224] Indeed, Mr. Lesmeister testified it would have been preferable to have interviewed Ms. Cindrich for his 2023 report and obtained more detailed information in this regard.
- [225] Finally Mr. Lesmeister candidly conceded he agreed with many of the factors outlined in Ms. Thompson's report that undermined Ms. Cindrich's ability to pursue employment; including the development of fibromyalgia and the fact that fibromyalgia can be a significant barrier to employment and interferes with vocational durability.
- [226] Mr. Lesmeister also testified that he would defer to the opinion of Dr. Koo. In particular the opinion of Dr. Koo stated 'Ms. Cindrich is completely disabled from gainful employment and that the maximum medical recovery has likely taken place with regards to Ms. Cindrich; that permanent severe disability is likely an ongoing condition for Ms. Cindrich; and it is unlikely she will make significant symptomatic or functional gains'.

The Evidence of Mr. Min Kyi

- [227] Mr. Kyi, called by the defendant, is an occupational therapist; a clinical associate professor at the UBC Faculty of Medicine; and a certified work capacity evaluator. Mr. Kyi was qualified to provide expert opinion evidence in this area; specifically relating to functional and capacity evaluations of Ms. Cindrich to determine work potential and other various capacity issues.
- [228] Mr. Kyi's assessment of Ms. Cindrich in 2019 is contained in his report dated October 24, 2019. Mr. Kyi advises his assessment of Ms. Cindrich took place over six hours that provided a picture of her capabilities and disabilities at that time. Mr. Kyi also provided viva voce evidence.
- [229] Mr. Kyi testified that Ms. Cindrich did better in her testing when she was "distracted"; as opposed to when she was more focused. Mr. Kyi came to the view that, all in all, he did not feel Ms. Cindrich had put in her best effort during the testing. This view, in turn, caused Mr. Kyi to conclude he could not comprehensively address the true work capacity of Ms. Cindrich. He warned that he would "be careful" in relying on Ms. Cindrich's subjective complaints; but added he did not think "she was necessarily trying to deceive anyone".
- [230] Mr. Kyi concluded that from a physical capacity perspective, he was optimistic about Ms. Cindrich returning to her previous employment role or something similar. He also cautioned however that before any such return could be seen as viable, Ms. Cindrich's psychological chronic pain presentation needed to be dealt with; about which he deferred to other medical practitioners.
- [231] The psychological issues related to chronic pain, in the opinion of Dr. Kyi, also impacted her testing results. In this regard, Mr. Kyi agreed that somatic symptom disorder (as diagnosed by Dr. O'Shaughnessy) could well be relevant in accounting for his view that Ms. Cindrich exhibited low effort in areas, and account for her apparent heightened perception of pain. Mr. Kyi also agreed that in the event Ms. Cindrich had fibromyalgia at the time of the assessment, that also may well be an explanation for the heightened perception of pain.
- [232] Mr. Kyi testified he had not, in coming to his views, considered the presence or impact of her central sensitization, somatic symptom disorder, or fibromyalgia. I pause once again to observe that any criticism of Dr. Kyi's views as those views stood in 2019, must, in fairness, take into account he was not privy to the circumstances of Ms. Cindrich as they have unfolded in the four years since his assessment.

The Evidence of Mr. Gary Worthington-White

- [233] Mr. Worthington-White was called by the defendant and was qualified to provide expert evidence in occupational therapy and future cost of care. Mr. Worthington-White has a diploma in functional capacity evaluation, and a Bachelor of Science degree in occupational therapy and kinesiology. Mr. Worthington-White assessed Ms. Cindrich and prepared a report dated in December 2020. He also provided viva voce evidence.
- [234] Mr. Worthington-White testified that he tested Ms. Cindrich in October 2020 for approximately five hours. He pointedly testified he did not do any assessment or testing in the home of Ms. Cindrich due to concerns, including COVID. This was regrettable, as he testified in order to provide a proper cost of care report it is "imperative" an assessment take place in the home.
- [235] Nevertheless, Mr. Worthington-White offered the opinion that it was possible Ms. Cindrich may be capable of greater function than demonstrated, at least in certain areas, at certain periods of her testing. In particular, reaching and certain lifting. He was of the view that at the time of his opinion Ms. Cindrich was best suited to part-time work and, with improvement, full-time work. He stated that his observations during testing for the most part was consistent with the advice and information he was receiving from Ms. Cindrich. He advised that Ms. Cindrich should strive to do as much home care and housekeeping as she could manage, as such effort could foster a sense of self-worth, activity, and improved performance.
- [236] Mr. Worthington-White also agreed that somatic symptom disorder may explain the observations of Mr. Worthington-White that Ms. Cindrich's ability to provide higher levels of physical effort were limited by expressions of fatigue; and the consequent self-limiting of her performance in testing. In addition, he agreed fibromyalgia could explain his observations of Ms. Cindrich self-limiting during testing. He agreed as well that before any notion of part-time work could be attempted to be accommodated, she would have to address the symptoms of chronic pain and emotional difficulties.

The Evidence of Christianne Clark and Mark Szekely

- [237] Ms. Clark is an economist called by the plaintiff and provided expert opinion evidence regarding two areas of relevance. A report addressing present value calculations of cost of future care; and a report providing various updated estimates of a range of earnings from various spheres of employment. These estimates also included estimates of the values of non-wage benefits, including municipal pension plan ("MPP") benefits. The latter report is relevant, to one degree or another, to any past and future loss of earnings and benefits.

- [238] Mr. Mark Szekely was called by the defence. Mr. Szekely is an economist and provided expert opinion evidence in the area of labour economics; in matters pertaining to present valuations of cost of future care and past and future income losses, including pension and non-wage benefits. Two reports of Mr. Szekely are before the courts; the latter being a response to the evidence of Ms. Clark. In particular Mr. Szekely provides average labour market contingencies in counterpoint to the approach of Ms. Clark.
- [239] The particulars of the evidence of Ms. Clark and Mr. Szekely will be addressed, as required, in the context of the particular analysis concerning areas of damages.

Analysis

- [240] I conclude that as a result of the collision Ms. Cindrich suffered whiplash injuries to the cervical, thoracic and lumbar spine. She injured her left shoulder resulting in a rotator cuff and labral tear. She injured her left shoulder, her left hip; with myofascial pain syndrome. These injuries resulted in post-traumatic headaches; adjustment disorder with depression, anxiety and chronic pain. She has been diagnosed, as at August 2023, with fibromyalgia that would, in the opinion of Dr. Koo, have been unlikely to develop absent the accident. These injuries and their aftermath, including fibromyalgia, also tend to be supported by Dr. Shucett as a result of her assessment of Ms. Cindrich in the fall of 2022. I prefer and accept the evidence of Dr. Koo and Dr. Shucett in this regard.
- [241] Dr. O'Shaughnessy offers the view, as at July 2023, Ms. Cindrich is now suffering from somatic symptom disorder. This finding is not challenged.
- [242] The only controversial point in my opinion arises concerning the diagnosis of fibromyalgia. The position of the defendant appears to be two-fold. The court should not accept the diagnosis of fibromyalgia; but alternatively, the defendant submits that the plaintiff has not established that the trauma associated with the accident and the consequent injuries contributed to the diagnosis.
- [243] The evidence of Dr. Finlayson takes issue with the notion that any future diagnosis of fibromyalgia would be associated with trauma.
- [244] As previously referenced, I do not find the evidence of Dr. Finlayson as helpful as it might be due to its somewhat unusual hypothetical context. In addition, Dr. Finlayson did not have the benefit of responding to an actual diagnosis and assessing the foundational evidence in support of that diagnosis. On balance, I prefer the evidence of Dr. Koo and Dr. Shucett on this particular point; although frankly, in any event, I find Ms. Cindrich continues to suffer from significant chronic pain.
- [245] I also find and accept the evidence of Ms. Cindrich that although there has been improvement over the years, she continues to suffer from ongoing symptoms of depression, insomnia, fatigue, and certain cognitive symptoms. As well, of course, the continuing chronic pain.

- [246] The defendant submits the reliability of the evidence of the plaintiff concerning her injuries and their aftermath, has been undermined to such a degree that it fatally taints the medical evidence in this regard.
- [247] I do not agree. In fact I conclude the court can completely rely upon the evidence of the plaintiff in this regard.
- [248] The plaintiff testified over the course of some days. It was apparent Ms. Cindrich found testifying concerning her adversities following the accident not an easy task. The exercise was on occasion traumatic. On occasion her memory failed her. More than once her train of thought abandoned her.
- [249] Nevertheless she provided her evidence in a forthright manner, with civility and grace. She was not argumentative and remained respectful of counsel. She listened carefully, and asked for clarification if she was uncertain concerning what was being asked of her. I discerned no ulterior motive concerning her evidence. She generally maintained an internal consistency in her evidence that in my view comported with a witness of truth, as opposed to simply a witness that was providing a memorized narrative to suit her claim. I find any discrepancy between her evidence and any previous statements made by Ms. Cindrich are minor and of no import in this context. There is simply no basis to conclude the credibility of the plaintiff is other than comfortably intact. In my view her veracity is beyond reproach. I also find, as stated, the court can in fact, in all the circumstances, place complete reliance on her evidence.

Non-Pecuniary Damages

- [250] The legal principles applicable are conveniently summarized by Mr. Justice Hunter, citing Justice Wedge at trial, in *Tisalona v. Easton*, 2017 BCCA 272:
- 39 The trial judge correctly summarized the considerations for the assessment of non-pecuniary damages at paras. 80-83 of her judgment:
- [80] The purpose of an award for non-pecuniary loss is to compensate the plaintiff for pain, suffering, disability and loss of enjoyment of life.
- [81] Non-pecuniary loss must be assessed for both losses suffered by the plaintiff to the date of trial and for those she will suffer in the future. The award of a sum of money is to permit the plaintiff to substitute other amenities of life for those she has lost.
- [82] In *Stapley v. Hejslet*, 2006 BCCA 34, Kirkpatrick J.A., writing for a majority of the Court, quoted at para. 45 *Lindal v. Lindal*, [1981] 2 S.C.R. 629 at 637, with respect to the underlying rationale for non-pecuniary damages and the considerations that should guide a court in awarding such damages. In *Lindal*, the Court emphasized that the amount of an award for non-pecuniary damages should not depend only on the seriousness of the injury. Rather, the amount of the award must depend as well on its ability to ameliorate the condition of the injured plaintiff considering his or her particular situation. For that reason, the gravity of

the injury will not, of itself, be determinative of the amount of the award. An appreciation of the loss in the context of the specific plaintiff's circumstances is the key, and "the need for solace will not necessarily correlate with the seriousness of the injury."

- [251] The plaintiff seeks non-pecuniary damages of \$250,000. The defendant submits the more appropriate range is \$50,000-\$100,000.
- [252] Both parties provided me with numerous decisions to support their proposed range of non-pecuniary damages that serve as a rough guide. However, it is clear that each case must be decided on its own facts.
- [253] Counsel for both parties cited *Stapley v. Hejslet*, 2006 BCCA 34 for the list of non-exhaustive factors to be considered in determining the appropriate award for non-pecuniary damages. I must consider the age of the plaintiff, the nature of the injury, the severity and duration of the pain, the emotional suffering, the level of disability, the impairment of family, marital and social relationships, the impairment of physical and mental abilities, the loss of lifestyle or impairment of life, and the plaintiff's stoicism: *Stapley* at para. 46.
- [254] In summary, Ms. Cindrich has undertaken an array of treatments and medications over the years since the accident. There has been improvement in her functioning; but, that improvement must be described as incremental. I found she continues to suffer ongoing symptoms of depression, fatigue and chronic pain. She experiences certain cognitive symptoms. Her life has changed dramatically. Frankly, on the evidence, she no longer lives the life she had; nor is that life likely to return.
- [255] Her vocational aspirations can no longer be viewed as practical. The evidence of friends and family make it clear her life now is centred around functioning the best she can with the least amount of pain. This, it is clear, is a far cry from the life and aspirations she enjoyed prior to the accident.
- [256] The plaintiff has provided authorities that award damages in the range suggested. The defendant has reciprocated with cases that are suggested to mirror the circumstances of Ms. Cindrich.
- [257] In the end, as has been consistently emphasized in the jurisprudence; other cases are guides. No case is the same. Each case turns on the particular features of the individual plaintiff.
- [258] I find the authorities of the plaintiff more helpful than the authorities of the defendant. I will not parse this; however, but one example, the case of *Sharma v. Bhullar*, 2020 BCSC 379 is offered by the defendant. The plaintiff in *Sharma* was involved in two accidents. She was awarded approximately \$47,000 in non-pecuniary damages accounting for inflation. This was a case where not only was the plaintiff found to be not credible; her injuries were such that she was able to carry on working without interruption after the first accident; and only missed a modest amount of time from work after the second accident. All the experts concluded that all of the plaintiff's injuries had mostly resolved by trial; any discomfort has

not impaired her ability to function; and her prognosis for a full recovery was "very good".

[259] There was no submission by the defendant how this case remotely resembled the case at bar.

[260] The defendant also relies, for instance, on *Grewal v. Chandi*, 2021 BCSC 1200. The plaintiff in *Grewal* was awarded non-pecuniary damages of approximately \$80,000 accounting for inflation. This case is an example of why a court must look beyond the injuries. The injuries in *Grewal* were, in some respects, similar to the injuries in the case at bar. In my view however there is an important finding in *Grewal*. While it was found her pain was unlikely to resolve entirely in the future, she has since the accident, and has generally, been able to continue to enjoy the things she enjoys doing in her life; with only occasional pain flareups.

[261] I found the authorities of the plaintiff generally reflected more significant difficulties and repercussions than the evidence in this case reveals. I do find however the case closest to the plaintiff's case might be *Choi v. Ottahal*, 2022 BCSC 237 where the Court awarded \$225,000 in non-pecuniary damages.

[262] The plaintiff in *Choi* exhibited many of the lasting symptoms as Ms. Cindrich. In addition however Ms. Choi was left with ringing in both ears. She lost her ability to return to the teaching profession she loved. The Court found Ms. Choi "was a shadow of her former self".

[263] In all of the circumstances, in my view the appropriate award for non-pecuniary damages in the case at bar is \$210,000.

Loss of Past Earning Capacity

[264] An award of damages for loss of earning capacity, whether in the past or in the future, compensates for a plaintiff's pecuniary loss. Compensation for past loss of earnings is based on what a plaintiff would have, not could have earned, but for the accident related injuries.

[265] The burden of proof of actual past events is a balance of probabilities. However an assessment of both past and future earning capacity involves consideration of hypothetical events. An award for past loss of earning capacity requires the court to assess how a plaintiff's life would have unfolded in the pretrial period absent the injury. Such hypothetical events need not be proven on a balance of probabilities. They are given weight according to their relative likelihood and will be taken into consideration as long as the hypothetical event is a real and substantial possibility and not mere speculation. In addition, recovery is limited to net income loss.

The Plaintiff's Position

- [266] The plaintiff submits the accident caused the injuries and those injuries have rendered Ms. Cindrich less capable of earning income. It is submitted that she is not capable of competitive employment and has relied, and relies upon, disability payments, loans, and a pension payout from the Township of Langley as her significant source of income. The plaintiff says the injuries and symptoms have kept Ms. Cindrich out of the competitive employment market for 13 years and that will continue into the future.
- [267] The plaintiff states that while she attempted to return to work she quickly had to give up those efforts due to the injuries. That is, the injuries she suffered impaired the earning capacity of the plaintiff. The plaintiff says the evidence of Ms. Cindrich, and the expert evidence overwhelmingly support these propositions.
- [268] The plaintiff submits as well, there is a real and substantial possibility that but for the accident, Ms. Cindrich would have not only continued with her employment at the Township of Langley, but shortly advanced in her career beyond the Township of Langley and found full-time employment, with increased income, in the healthcare field. In fact, based on the evidence, the plaintiff submits Ms. Cindrich would have so advanced to a management type position in this field by 2016; and by 2020 obtained a position in a more senior management/director role and continued her employment in that capacity until retirement.
- [269] In particular, the plaintiff has relied on certain hypothetical scenarios and mathematical estimates provided by the plaintiff's expert witness, Ms. Christianne Clark. Ms. Clark provided a report based upon various assumptions, addressing estimates of income loss, loss of non-wage benefits, and pension loss.
- [270] It is common ground Ms. Cindrich's T4 earnings for 2014 was \$46,825. Her income for 2015 was \$30,922; and for 2016 was \$550.
- [271] The scenarios presented by Ms. Clark regarding earnings estimate, past and future, without the accident, were as follows:
- (a) The potential income from the Township of Langley had Ms. Cindrich carried on in her current capacity until retirement at age 70.
 - (b) Estimates provided by Ms. Clark of income from full-time employment with the Township in 2015; moving to a Researcher IV SPARC BC from 2016-2019; and finally as a Director of Covenant House (as an example) until retirement at age 70. This scenario, according to Ms. Clark, presented an example at the low end of the pay range in the area of possible careers going forward.

(c) The final scenario presented reflected the high end of those pay ranges. The estimates including the same full-time employment with the Township through to 2015; then as a manager for the recreational department of Provincial Health Authority for 2016-2019. These estimates then included employment as a Director for Fraser Health Authority for 2020 to retirement at age 70.

[272] Ms. Clark has also included income ranges for these various hypothetical positions; and provided a number of calculations under this head of damage. The third and final scenario presented by Ms. Clark is the most favourable and optimistic from the point of view of Ms. Cindrich and it is the scenario the plaintiff says is supported by the evidence and is the most realistic.

[273] On this basis the plaintiff seeks an award for past lost capacity of approximately \$700,000.

The Defendant's Position

[274] The defendant takes quite a different position.

[275] The defendant submits the injuries of the plaintiff have not caused any impairment of earning capacity and consequently Ms. Cindrich has not suffered a loss of past income.

[276] This submission, at least as I understand it, is primarily based on the invitation to the court to reject the evidence of the plaintiff as not reliable in relation to her injuries and their impact on her. Consequently, submits the defendant, the opinion of the expert evidence in this trial, that concludes those injuries did in fact impair her capacity in this regard, ought to be given no weight. This is so because, the defendant submits, those opinions are "based upon the plaintiff's subjective complaints" that ought to be rejected.

[277] In addition, the defendant submits there is additional evidence that ought to undermine any finding that her injuries caused or impaired her earning capacity. The defendant says she had identified as being "burned out" with her position with the Township of Langley prior to the accident. This comment appears to have been stated to Ms. Thompson by Ms. Cindrich during their discussions.

[278] Secondly, the defendant says that during certain times in and around the accident, and following, there is evidence Ms. Cindrich was in a dispute with her ex-husband concerning support payments; causing much distress.

[279] The defendant submits these issues support the notion, as well, that whether the accident occurred or not, the circumstances of Ms. Cindrich would have somehow curtailed her ability or desire, to earn an income. The defendant's say no award is justified.

[280] The defendant made an additional or alternative submission in this area. The alternative submission rests on the opinion of Dr. Finlayson concerning Ms. Cindrich; at least as matters stood in 2019.

- [281] Dr. Finlayson voiced the view, as has been referenced, that in her opinion Ms. Cindrich could return to part-time work within the year. The defendant submits the opinion of Dr. Finlayson is supported by certain evidence concerning the activity of Ms. Cindrich in and around this time. This activity includes her efforts concerning her craft sales; her short-lived efforts at gardening design; her care of her elderly friend for a short while; and other efforts of Ms. Cindrich that she made to move forward.
- [282] In the result, the defendant submits (now conceding there was impairment of capacity); the loss should be calculated, roughly speaking, as ending January 2021.
- [283] The defendant submits, accepting this proposition, and basing an award on her salary as a recreational counsellor with the Township of Langley, the net award ought to be \$226,000.
- [284] The defendant made a further alternative submission. This submission directly addressed the seminal position of the plaintiff.
- [285] The defendant submits that in the event there is a finding the loss of capacity of the plaintiff extends to the trial date; there has not been established a real and substantial possibility the plaintiff would have evolved in her career as submitted by the plaintiff. The defendant submits to so find would be simply speculation.
- [286] In particular, the defendant repeats certain submissions and evidence that the defendant says negates any realistic possibility in this regard.
- [287] The defendant states that the fact the plaintiff had always worked part-time and, in addition, "having suffered burnout", would undermine any possibility of working full-time. The defendant says she would as well be at a competitive disadvantage in seeking full-time employment, having only had part-time experience.
- [288] Consequently, the defendant submits that, at best, the award to Ms. Cindrich for past lost capacity is essentially the loss of her part-time employment with the Township from the accident to trial. This appears to be an estimate of the net income loss of approximately \$325,000.
- [289] I begin with the primary position of the defendant. I find it a startling position in light of the evidence, and reject it outright. I have concluded I generally find the plaintiff a credible and reliable witness.
- [290] I also observe that the submission of the defendant that "the opinions are based upon the subjective complaints of Ms. Cindrich" is, in any event, a submission that is not as complete as it might be. The evidence is quite clear the expert witnesses generally, and particularly the psychiatrists, found and observed, to one degree or another, objective indicia and restrictions consistent with the complaints of the plaintiff.

- [291] In addition, I find the fact of Ms. Cindrich's legal dispute with her ex-husband is deserving of no weight in the analysis. Certainly the evidence of the plaintiff did not support any proposition that the dispute would, could, or did, impact matters.
- [292] Finally I do not accept the submission of the defendant that I should find on the evidence Ms. Cindrich was burned out with her position at the Township of Langley.
- [293] The issue of 'burnout' arose in the context of Ms. Thompson reciting in her report that Ms. Cindrich had mentioned burnout in relation to employment. It was not clear in her report what Ms. Cindrich meant by the term; nor could Ms. Thompson testify concerning what Ms. Cindrich meant. Ms. Thompson testified to at least her view of the term where she testified "I would consider burnout, as a healthcare professional myself, merely becoming fatigued by possibly the work hours, the kind of clients one is seeing. It doesn't necessarily mean one is incapacitated from continuing their occupation. There's just occupational fatigue that comes in certain occupations, in healthcare especially".
- [294] Ms. Cindrich was not asked whether in fact she made this particular comment to Ms. Thompson but in any event, Ms. Cindrich did testify that she was not burned out regarding her employment. I accept this evidence.
- [295] The alternative submission, as stated, rests on the opinion of Dr. Finlayson.
- [296] With respect, the overwhelming weight of the evidence does not support this submission. The particulars of the evidence do not support the notion Ms. Cindrich would be capable of competitive part-time employment in the timeframe suggested. It is quite clear, for instance, her RADD efforts and circumstances were highly variable; and completely adjustable to the day-to-day comfort or discomfort of Ms. Cindrich. In any event, again, the opinion of Dr. Finlayson, as cited by the defendant in support of this proposition, does not quite capture Dr. Finlayson's entire view.
- [297] Dr. Finlayson expressed the 'potential' for Ms. Cindrich to return to part-time employment, which potential would be dependent on improvement in her symptoms; which, in turn, would be dictated by adhering to her treatment regime and in fact benefiting from that regime.
- [298] The evidence of Ms. Cindrich, concerning managing RADD, and the general struggles she continues to experience, tended to be confirmed by other experts subsequent to 2019; that is, Ms. Cindrich did continue with her treatment regime, but did not improve. In fact there is evidence that indicates she deteriorated in some areas.
- [299] In this regard I am reminded of the comment that Mr. MacIvor quite properly posed to one of the witnesses; namely that, as between 2019 and 2023-24 "a lot can happen in four years". In the context of the opinion of Dr. Finlayson, a lot did happen.

- [300] I find the opinion of Mr. Kyi suffers from similar limitations. The assessment and opinion of Mr. Kyi, was situated in 2019. The passage of time has altered Ms. Cindrich's physical and medical landscape. Mr. Kyi, quite fairly, acknowledges his assessment, over a few hours in 2019, did not, and of course could not, take into account the diagnosis and impact of central somitization, somatic system disorder, and fibromyalgia.
- [301] Finally, I also conclude the evidence establishes that there is a real and substantial possibility Ms. Cindrich, but for the accident, would have advanced in a career beyond her part-time employment with the Township of Langley.
- [302] I find the whole of the evidence allows such a finding and well crosses the threshold of simply speculation. In particular, I am struck by the following.
- [303] The evidence supports the view that Ms. Cindrich, almost since high school, has pursued all facets of her life with enthusiasm, fortitude and ambition; including her career pursuits. There is a pattern of Ms. Cindrich seeking to put herself in a position to realistically pursue those ambitions; and in particular her interest in what can be broadly termed the healthcare space.
- [304] Ms. Cindrich worked immediately after high school at a number of jobs and in her 20s began to find her way to that desired space. While working she undertook classes in a two-year program at Douglas College and graduated with a Diploma in Therapeutic Recreation. Thereafter she worked on a part-time basis as a recreational therapist at two hospitals. The evidence clearly demonstrates Ms. Cindrich was not only successfully navigating these responsibilities, but going above and beyond the strict job descriptions. She flourished.
- [305] These pursuits were interrupted in 1998. The couple appeared to decide the priorities of Mr. French were such that a family move to Kelowna was required to accommodate the employment of Mr. French. It was while in Kelowna that the children were born. Her daughter Alisha in 1998, her son Dale in 2001. While residing in Kelowna with the young family she worked part-time for the Interior Alzheimer's Society.
- [306] The family moved back to the mainland in 2002. Almost immediately, while caring for a young family, Ms. Cindrich took up her part-time employment with the Township of Langley. The employment was part-time in the sense that it was 75-80 percent of full-time employment. Her duties in this regard, once again, suited her desire to contribute to assisting persons in crisis.
- [307] Her family obligations presented challenges beyond the usual of raising a young family. Her daughter was struggling; in life, and in particular school.

[308] Her life was exacerbated in this regard with the breakup of the marriage with Mr. French in 2008. This event was no doubt a setback concerning her goals. Nevertheless she began night classes to attain her bachelor's degree from Douglas College. In this regard, Ms. Cindrich testified that it was always her desire to complete her degree because she knew without her degree the diploma was simply not going to be competitive.

[309] It was during this timeframe she opted to pursue a master's degree at Royal Roads; in particular a Master of Arts degree in leadership with a health specialization. Her express motives in undertaking this commitment were, frankly, self-evident; given her history, but it was expressed this way by Ms. Cindrich

people would say, well, what are you going to do when you retire. I would say, I'm divorced; I'm on the freedom 85 package. There is no end in sight for me because I need to continue to work. Getting a master's degree without having to finish my bachelor's degree allowed me to skip that step and move into leadership positions where I was ready to be. I had been doing frontline care for a very long time. I had the skillset. I had the understanding. I had the intelligence to do it. It offered me the opportunity to build a life for myself and my children; and eliminate any dependence on my ex-spouse.

[310] I accept this evidence as genuine and a reflection of realistic goals.

[311] Ms. Cindrich enrolled at Royal Roads in 2011; graduating with a GPA of 3.96 in 2013; all the while not only continuing her responsibilities with the Township; but also continuing to prioritize her commitment to the welfare of her children and in particular her daughter.

[312] It was in 2013 while still attending Royal Roads, she met Mr. De Graauw.

[313] Ms. Cindrich testified that, at this point in her life, her daughter was still in high school. The evidence is such that the efforts of Ms. Cindrich to pursue those goals that inspired her to attend Royal Roads were muted following graduation from Royal Roads; due to her overarching commitment to the challenges of her daughter. In addition, as it happened, Mr. De Graauw was diagnosed with cancer shortly after Ms. Cindrich graduated. Ms. Cindrich became preoccupied with the health of her husband until remission some months thereafter.

[314] Mr. De Graauw testified that much of his life had returned to normal by the spring of 2015. He did testify however that he was unable to work for most of 2014.

[315] The accident occurred in May 2015. Ms. Cindrich was then 46 years of age, her daughter 16, and still in high school.

[316] In my view, while I have concluded there was a real and substantial possibility Ms. Cindrich would successfully embark on a career path within the general framework described by the plaintiff in submissions; I also conclude the trajectory urged by counsel on behalf of the plaintiff is not realistic and to a degree it is a submission that succumbs to self-interest. I come to this conclusion notwithstanding that it is clear on the evidence Ms. Cindrich had

the support of persons of some influence that would assist Ms. Cindrich in pursuing those goals in the future.

[317] The Clark analysis utilized various job postings, with current pay ranges, for the purpose of providing certain scenarios. It provides at least a realistic general framework in order to extrapolate scenarios that, in my view, are more reasonable.

[318] A table produced by Ms. Clark is as follows:

Weekly

Pay Range

Job Title

Employer

Hours

from

to

Benefits

Manager, Clinical Operations, NICU

Fraser Health

37.5

\$52.59

\$75.59

comprehensive, inc. pension

Manager, Clinical Operations, Critical Care

Fraser Health

37.5

\$52.59

\$75.59

comprehensive, inc. pension

Manager, Clinical Operations

Fraser Health

37.5

\$52.59

\$75.59

comprehensive, inc. pension

Manager, Healthy Communications

VIHA

37.5

\$52.79

\$75.88

comprehensive, inc. pension

Community Recreation Manager

City of West Vancouver

35

\$99,000

\$112,000

comprehensive, inc. pension

Researcher (IV)

SPARC

35

\$74,017

\$81,576

comprehensive, but no pension

Director, Clinical Operations

Fraser Health

37.5

\$70.01

\$100.63

comprehensive, inc. pension

Director, Clinical Services and Complex Care

Covenant House

?

\$90,854

\$113,568

?

[319] As stated above, the likelihood of the trajectory suggested by the plaintiff is far too ambitious. The daughter of Ms. Cindrich would not graduate until 2016. It is clear Ms. Cindrich was committed to seeing that through. Ms. Cindrich would turn 50 in 2018. I find it highly unlikely Ms. Cindrich would have moved on from part-time employment until after her daughter had graduated and somehow settled. This is in accordance with the evidence of Ms. Cindrich that she was "biding her time" following graduation from Royal Roads.

[320] In all of the circumstances I conclude Ms. Cindrich would carry on with her employment with the Township of Langley for a year or two following her daughter's graduation but thereafter at some reasonable point find full-time employment in the space. I conclude the suggestions of Ms. Clark concerning the kind of employment that would be available to Ms. Cindrich, and the range of income, to be reasonable. I come to this view based on the whole of the evidence. Mr. Lesmeister was slow to criticize the views of Ms. Clark and simply suggested the kinds of opportunities offered by Ms. Clark may not be necessarily appropriate.

[321] I do conclude that Ms. Cindrich would obtain full-time employment in a researcher position, beginning at the lower end of a wage scale provided by Ms. Clark. I also take into account the rather general evidence of Mr. Lesmeister that there would exist an even lower starting point in these areas than provided by Ms. Clark. In this regard I find her prospects of full-time employment would occur in one to three years after her daughter graduated. There would, in this role, be salary increases. I also conclude there is a real and substantial possibility Ms. Cindrich would advance to a managerial position however much further along in the hypothetical career than suggested by the plaintiff.

[322] I am not parsing the mathematics in this regard but I do find the upper end of the trajectory of the suggested employment prospects crosses the line into speculation.

[323] This evidence however is only a useful tool; there can be no finding of fact as to what precisely would be available to Ms. Cindrich, or precisely when.

[324] It is obvious no scenario fits neatly into the evidence, and of course, nothing is guaranteed and that must be taken into account. Hence the requirement of assessment; coupled with a judgement as to what is fair and reasonable at the end of the day.

[325] In this regard I assess net damages under this head for past lost capacity at \$525,000.

Future Loss of Capacity

[326] I have found that the evidence establishes that there is a real and substantial possibility Ms. Cindrich, but for the accident, would have advanced in a career beyond her part-time employment with the Township of Langley.

[327] Plainly my findings concerning the proposed employment trajectory suggested by the plaintiff has relevance in assessing damages for future loss of capacity.

[328] In this regard I prefer and accept the recent opinion of Dr. Koo for the reasons described. I repeat some of those conclusions in order to properly frame the discussion:

It remains my opinion that from the time of the accident to present, Ms. Cindrich was completely and fully disabled from any form of gainful employment on the basis of her physical injuries and psychological conditions arising from the accident.

In particular, it is my opinion that Ms. Cindrich is totally disabled from her pre-accident employment as a recreational therapist/mental health worker for Fraser Health or as a bus driver for the City of Langley.

In my opinion, her fluctuating pain levels, fatigue and periodic "crashes" render her unsuitable for competitive employment where regular and consistent work output is required.

In my opinion Ms. Cindrich is likely working at or near her maximal capability doing the small woodworking business from home. This is somewhat ideal in that she is able to self-pace, take breaks and not overtax herself.

She continues to restrict her household contributions to about 10% including unloading the upper rack of the dishwasher, putting away lighter items in a cupboard, and performing laundry, albeit with the assistance of her family for carrying the hamper up and down stairs, and preparing a few meals per week with adequate time for prep and relative rest.

In my opinion, Ms. Cindrich continues to benefit from regular housekeeping services including changing bed linens, cleaning the kitchens and bathrooms, sweeping and mopping, but feels that her current housekeeping support is inadequate for the deeper seasonal cleaning, and dusting behind the appliances, etc. that she would normally be able to do herself. In my opinion her ongoing need for housekeeping services is reasonable and commensurate with her reduced capacity in these areas and this hasn't changed since reviewed in 2021. I would recommend ongoing housekeeping supports to offset Ms. Cindrich's capacity for moderate to heavier housecleaning, reduce her risk of re-injury, pain aggravation and setback, and the domestic burden that is likely shifted to her husband.

In my opinion, Ms. Cindrich remains severely disabled with regard to her normal recreational and active leisurely pursuits. She remains incapable of re-engaging in volleyball, hiking, quad biking, dirt biking, camping, wake boarding, water skiing, golfing and snowboarding. Her relative inactivity likely results in reduced choleric expenditure, and her accident has likely resulted in significant weight gain due to her reduced activity levels.

Her general pain levels have not changed significantly since 2021. Her fibromyalgia tender point count remained similar, and she continues to have generalized soft tissue tenderness in the four quadrants of her body, with hyperpathia and central sensitization of pain. It remains my opinion that maximal medical recovery has likely taken place with regard to Ms. Cindrich's motor vehicle accident related injuries, chronic pain disorder and fibromyalgia diagnosis given the duration of time since the accident, her comprehensive and ongoing treatment program, housekeeping supports, recurring Botox injections and trigger point injections, and comprehensive trials of various chronic pain and depression medications.

In my opinion, Ms. Cindrich will continue to experience permanent severe disabilities as an ongoing condition from the MVA. It is unlikely that she will make significant symptomatic or functional gains at this juncture of her recovery.

- [329] I pause to say I saw nothing in the video evidence proffered by the defendants that undermined, or was inconsistent with, the observations of Dr. Koo and the evidence of Ms. Cindrich.
- [330] The events of a hypothetical future are to be given weight in this regard, in accordance with relative likelihood. Allowances must be made for the possibility or contingency that the assumptions on which the award is predicated may prove inaccurate. In most cases - not all - this will occasion a deduction. This is so because earnings (and cost of future care) are based on an uninterrupted flow that does not reflect contingencies. Again, in the end, the goal is to fashion an award that is fair and reasonable in the circumstances.
- [331] There is a process to be engaged that is now well entrenched in the jurisprudence.
- [332] Our Court of Appeal in *Rab v. Prescott*, 2021 BCCA 345 sets out the three step analysis in considering these types of claims. The court must consider whether the evidence discloses a potential future event that could lead to a loss of capacity; whether on the evidence there is a real and substantial possibility the future event in question will cause a pecuniary loss; and finally the value of that possible future loss including the relative likelihood of the possibility occurring.
- [333] The quantification of the loss of capacity at the third step, has two models available to contemplate; loss of earning capacity or a capital asset approach. What approach is the more suitable depends on the facts in any given case.

- [334] The former approach requires an assessment of a number of factors, generally grounded in evidence presented by a number of experts, as was in the case at bar. This evidence often includes expected earnings, the likelihood that future events will cause a loss or diminishment, with alternative probable retirement dates.
- [335] In this regard, the court is presented with possible contingencies. Certain contingencies are characterized as 'risk only' contingencies, which account for the probability that Ms. Cindrich will be forced from the labour market into unemployment, or from full-time employment to part-time employment. Other contingencies are characterized as 'risk and choice' contingencies. These include the possibility of Ms. Cindrich choosing to retire sooner than the 'usual' retirement age, or, for instance to elect part-time work as a matter of choice or necessity due to the particular life circumstances at play.
- [336] While the exercise is a matter of 'assessment not calculation', the assessment under the earnings approach is undertaken with the assistance of evidence reflecting various hypothetical mathematical scenarios; often presented, as in this case, by economists. The expertise in this regard is not an opinion per se, concerning loss, but is a mathematical calculation; usually in the form of charts or spreadsheets on a variety of scenarios provided by respective counsel.
- [337] The capital asset approach involves consideration of the factors described in *Brown v. Golaïy* (1985), 26 B.C.L.R. (3d) (S.C.) at 356 including whether the plaintiff:
- (a) has been rendered less capable overall of earning income from all types of employment;
 - (b) is less marketable or attractive as a potential employee;
 - (c) has lost the ability to take advantage of all job opportunities that might otherwise have been open; and
 - (d) is less valuable as a person capable of earning income in a competitive labour market.
- [338] The capital asset approach will often be preferred when the future is not as easily measured: *Perren v. Lalari*, 2010 BCCA 140. The assessment is often in the form of one or more years of income.
- [339] In addition our Court of Appeal has set out the principles in approaching the issue of contingencies. In *Hussack v. Chilliwack School District No. 33*, 2011 BCCA 258 the Court stated as follows:
- [92] In assessing past wage loss and loss of future income-earning capacity, a trial judge must take into consideration any contingencies which affect the loss. General contingencies may be positive, such as the possibility of promotion, or negative, such as the possibility of lay-off. Additionally, there may be specific contingencies that arise on the particular facts of the case.

[93] In *Graham v. Rourke* (1990), 1990 CanLII 7005 (ON CA), 74 D.L.R. (4th) 1 (Ont. C.A.), the Court noted the differences between general and specific contingencies at para. 14:

These cases, and those which have applied them, tell me that contingencies can be placed into two categories: general contingencies which as a matter of human experience are likely to be the common future of all of us, e.g., promotions or sickness; and "specific" contingencies, which are peculiar to a particular plaintiff, e.g., a particularly marketable skill or a poor work record. The former type of contingency is not readily susceptible to evidentiary proof and may be considered in the absence of such evidence. However, where a trial judge directs his or her mind to the existence of these general contingencies, the trial judge must remember that everyone's life has "ups" as well as "downs." A trial judge may, not must, adjust an award for future pecuniary loss to give effect to general contingencies but where the adjustment is premised only on general contingencies, it should be modest.

[340] More recently, our court in *Rattan v. Li*, 2022 BCSC 648 put it this way:

[147] Contingencies may be general or specific. A general contingency is an event, such as a promotion or illness, that, as a matter of human experience, is likely to be a common future for everyone. A specific contingency is something peculiar to the plaintiff. If a plaintiff or defendant relies on a specific contingency, positive or negative, they must be able to point to evidence that supports an allowance for that contingency. General contingencies are less susceptible to proof. The court may adjust an award to give effect to general contingencies, even in the absence of evidence specific to the plaintiff, but such an adjustment should be modest: *Steinlauf v. Deol*, 2022 BCCA 96 at para. 91, citing *Graham v. Rourke* (1990), 1990 CanLII 7005 (ON CA), 74 D.L.R. (4th) 1 (Ont. C.A.).

[150] The relevant jurisprudence identifies two approaches to the assessment of damages for loss of earning capacity: an earnings approach and a capital asset approach. In cases using the earnings approach, valuation of the future loss--the third step of the process--typically involves a determination of the plaintiff's without-accident future earning capacity, using expert actuarial and economic evidence as well as the plaintiff's past earnings history: *Lo* at para. 109; *Dornan* at paras. 155-156. In cases using the capital asset approach, such as cases where the plaintiff continues to earn income at or near pre-accident levels, the loss of capacity in the future may be valued through various methods, including the use of one or more years of the plaintiff's pre-accident income as a tool: *Rab* at para. 72; *Pallos v. Insurance Corp. of British Columbia* (1995), 1995 CanLII 2871 (BC CA), 100 B.C.L.R. (2d) 260 (C.A.), at para. 43; *Mackie v. Gruber*, 2010 BCCA 464 at paras. 18-20.

The Plaintiff's Position

- [341] The plaintiff maintains it is the most favourable scenario commissioned from Ms. Clark, on an earnings approach, that ought to be the basis for an award. The various scenarios of Ms. Clark also include calculations accounting for not only future loss of earnings, but, as well, future loss of additional benefits, and future loss of net municipal pension benefits. The scenario also rests on the assumption Ms. Cindrich works to age 70. Ms. Clark also calculates a reduction based on risk only contingencies.
- [342] The plaintiff says contingencies of choice ought not to be factored in. This proposition is based on the evidence of Ms. Cindrich that the plaintiff submits should be accepted at face value, presently and prospectively; that she would be seeking full-time employment; would not choose to return to part-time employment or leave the work force; nor choose to retire prior to the age of 70.

The Defendant's Position

- [343] The defendant maintains the evidence does not establish a basis to conclude there is a loss of future capacity to earn an income. The defendant says the evidence supports the conclusion Ms. Cindrich has been able to work, at least part-time, and perhaps full-time, since January 2021. In the result, says the defendant, there is simply no future event that could lead to a loss.
- [344] The defendant again makes an alternative submission. The defendant submits that in the event the court finds there is a basis to claim a lost capacity, the capital asset approach would be best suited to arrive at an award. Again, the defendant submits that the plaintiff, having suffered burn out in her position with the Township of Langley, coupled with the plaintiff's significant pre-accident medical difficulties, and, what the defendant characterizes as Ms. Cindrich's expressed ongoing preference for working part-time; the task of quantifying any future loss reflects the kind of difficulty best suited to a capital asset analysis.
- [345] In this regard the defendant submits that utilizing the annual earnings of Ms. Cindrich with the Township of Langley, over the course of two years, would amount to an award of approximately \$115,000. This, the defendant says, is the appropriate award.
- [346] The defendant has put forward a further alternative position. The defendant says that in the event the court determines an earnings approach is the more appropriate approach then again that should be based upon Ms. Cindrich's continued part-time employment until retirement. The evidence of Mr. Szekely concludes that amount to be approximately \$445,000. The notion of Ms. Cindrich advancing to full-time employment the defendant says, again, is simply speculation and there is not sufficient evidence to support any other conclusion.

- [347] The defendant says that a pension loss must be added to this and concludes that the earnings approach would amount to an award of approximately \$560,000.
- [348] Contingencies, says the defendant, would reduce this award to a net loss of approximately \$280,000.
- [349] I conclude, on all the evidence, and in particular the evidence of Dr. Koo and Dr. Shucett; as supported by the evidence of the plaintiff, that the plaintiff was not, and is not, at this time capable of gainful employment; neither on a part-time or full-time basis. The submission of the defendant that the efforts of Ms. Cindrich concerning her craft sale business equates with gainful part-time employment is, with respect, somewhat artificial.
- [350] In my view the evidence and circumstances clearly establish the earnings approach is the most appropriate method of assessment.
- [351] In accordance with the reasons already provided I conclude there is a real and substantial possibility Ms. Cindrich would gain and pursue full-time employment. However, as well, I reiterate, I do not find the evidence supports the trajectory urged by the plaintiff. I do find that, perhaps by her late-50s or early-60s, there was the possibility of advancing to a position like the example provided by Ms. Cindrich; namely that as a director of Covenant House. In other words, a more modest scenario is what is justified on the evidence.
- [352] In addition, Ms. Clark provided income multipliers for the purpose of calculating present value of future employment. The multipliers are adjusted for survival rates and discounted by 1.5 percent as required for future evaluation. The estimates are extended to the age of 67 and age 70.
- [353] Ms. Clark also provided tables providing estimates of benefits and pensions in accordance with the various estimates of income over the course of the working life of Ms. Cindrich to the age of 70.
- [354] Again, this necessitates a rough and ready assessment given the fact that the expert evidence and calculations do not precisely track the facts as found. I also take into account the percentage deductions outlined by Ms. Clark for risk-only contingencies.
- [355] I am also cognizant of the evidence of Mr. Szekely that provides a statistical analysis tending to highlight certain aspects of the analysis of Ms. Clark. The analysis suggests Ms. Clark's approach related to contingencies is essentially too optimistic to the benefit of Ms. Cindrich and ignores historical data.
- [356] For instance, regarding a concept the economist referred to as 'work attachment'; Ms. Clark builds into her assessment the assumption Ms. Cindrich, absent the collision, would not choose to work fewer hours or retire early. This leads to a bigger and better result, according Mr. Szekely.

- [357] In addition, the report of Mr. Szekely suggests, effectively, there is no basis to assume the Clark assumption. In this regard Mr. Szekely offered statistics that tracked what he referred to as 'contingencies of choice', including the proposition that, statistically, Ms. Cindrich's propensity to stay in the labour market, her unemployment risk, and the probability of part-time work, would have been 'average'. Thus, reducing the overall prospects and trajectory of Ms. Cindrich.
- [358] Again, in fairness to Mr. Szekely, he was provided no opportunity to take into account the evidence of individual characteristics that might lead to a conclusion Ms. Cindrich is in fact not properly viewed as statistically average. Indeed, having weighed the evidence and listened carefully to Ms. Cindrich, I am satisfied the statistics of Mr. Szekely are overborne by the characteristics of Ms. Cindrich concerning her ambition and intentions in the pursuit of her career. I am not persuaded the report of Ms. Clark is undermined by the evidence of Ms. Szekely.
- [359] I do find however there is room for improvement on the part of Ms. Cindrich that, in my view, translates into the likelihood of accommodated part-time employment in the future. The whole of the evidence however does not support any realistic prospect Ms. Cindrich will ever resume full-time employment.
- [360] As previously stated, I do not afford the weight the defendant urges concerning the opinion of Dr. Finlayson. I prefer the evidence of Dr. Koo and Dr. Shucett for the reasons provided. In addition, I accept the evidence of Dr. O'Shaughnessy that there has been some improvement in Ms. Cindrich over the course of the three years Dr. O'Shaughnessy has been assessing the plaintiff. I accept his evidence that an exercise program could lead to some improvement or at least general better conditioning.
- [361] In this regard, the defendant seems to suggest in addition that Dr. O'Shaughnessy either concludes or implies that the current litigation is such a stressor for Ms. Cindrich that it coming to a conclusion will enable Ms. Cindrich to seek gainful employment. Again, I do not interpret the evidence of Dr. O'Shaughnessy in this way. What Dr. O'Shaughnessy concluded is that while the end of the litigation will rid Ms. Cindrich of the anxiety and frustration associated with the proceedings, it will not result in any substantial change in her functional limitations.
- [362] That said, as I have found, on the basis of her fortitude and the overall evidence, there is a likelihood Ms. Cindrich will secure part-time gainful employment within the next perhaps two to four years. Of course what also must be kept in mind is that Ms. Cindrich is entering her late-50s.
- [363] In this regard some reduction is warranted. It is not however a 50 percent reduction as suggested by the defendant. In my view it is a ten percent reduction.

- [364] I conclude there is a good likelihood that Ms. Cindrich would begin this path of full-time employment, in the field she has aspired to, following the accident as described. It is not guaranteed of course but I would place the likelihood at 80 percent.
- [365] As well, there may be choice contingencies. While I accept the evidence of Ms. Cindrich, the fact is, it is not speculation to consider that life takes twists and turns, and intentions evolve; including taking on part-time employment well into one's late-60s. In this regard I do not discount the prospect that Ms. Cindrich might find her sensitivity to family commitments; in particular the challenges of her daughter, as one of those twists and turns that could cause a change of course concerning full-time employment. I would reduce the award by a further ten percent.
- [366] Generally speaking, in accordance with my findings, I am roughly working within the framework provided in Table 3 of the report of Ms. Clark (below), retiring at age 70; including the evidence of non-wage and pension benefits as set out in Table 5 of Ms. Clark's report.

Deanna Cindrich: Estimates of Earnings as Researcher IV and Director (Low End of Salary Range)

Education base for labour market contingencies: Master's degree

Potential earnings in 2015 are based on Ms. Cindrich's 2014 T4 earnings, inflated with changes in the hourly wage rate for her position

Earnings from 2016 to 2019 are based on earnings for Researcher IV with SPARC

Earnings from 2020 onward are based on the Director Position Job Posting for Covenant House

Earnings extend from January 1, 2015 to Ms. Cindrich's age 70

Potential Incomes

Estimates of Probable Incomes Based on

"risk Only" Contingencies

Full-Time, Full Year Earnings

Cumulative

(Present)

Values

Contingency-Adjusted Estimates

Cumulative (Present) Values

Year

Age

Current \$

LFP

UN

PTF

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

Past:

2015

47

\$47,762

\$47,762

97.9%

3.9%

3.8%

\$43,268

\$43,268

2016

48

\$61,313

\$109,075

98.0%

3.5%

3.6%

\$55,873

\$99,140

2017

49

\$64,991

\$174,066

98.0%

3.7%

3.6%

\$59,163

\$158,304

2018

50

\$68,976

\$243,042

98.0%

4.0%

3.5%

\$62,640

\$220,944

2019

51

\$73,323

\$316,364

98.1%

4.2%

3.5%

\$66,535

\$287,479

2020

52

\$83,884

\$400,248

98.0%

4.2%

3.4%

\$76,127

\$363,606

2021

53

\$92,100

\$492,348

98.1%

4.5%

3.3%

\$83,357

\$446,963

2022

54

\$102,171

\$594,519

97.7%

4.5%

3.2%

\$92,346

\$539,309

2023 (to trial)

55

\$102,678

\$697,197

97.4%

4.1%

3.0%

\$93,022

\$632,330

Past Totals:

\$697,197

\$632,330

Net of Taxes and EI Premiums:

\$494,855

Future:

2023 (from trial)

55

\$10,890

\$10,881

97.4%

4.1%

3.0%

\$9,866

\$9,858

2024

56

\$113,568

\$123,263

98.4%

4.0%

1.9%

\$105,231

\$113,990

2025

57

\$113,568

\$233,666

98.2%

4.1%

1.8%

\$105,104

\$216,164

2026

58

\$113,568

\$342,096

98.0%

4.0%

1.6%

\$105,082

\$316,492

2027

59

\$113,568

\$448,560

97.7%

4.1%

2.2%

\$104,088

\$414,069

2028

60

\$113,568

\$553,063

97.4%

4.1%

2.8%

\$103,098

\$508,938

2029

61

\$113,568

\$655,607

97.0%

4.1%

3.4%

\$102,113

\$601,139

2030

62

\$113,568

\$756,191

96.7%

4.2%

3.9%

\$101,133

\$690,709

2031

63

\$113,568

\$854,811

96.4%

4.2%

4.5%

\$100,158

\$777,684

2032

64

\$113,568

\$951,463

95.9%

4.5%

5.1%

\$98,774

\$861,746

2033

65

\$113,568

\$1,046,138

95.4%

4.7%

5.7%

\$97,402

\$942,944

2034

66

\$113,568

\$1,138,823

94.9%

4.9%

6.2%

\$96,043

\$1,021,327

2035 (to Age 67)

66

\$67,519

\$1,192,981

94.4%

5.2%

6.8%

\$56,298

\$1,066,485

2035 (fr Age 67)

67

\$46,049

\$1,229,503

94.4%

5.2%

6.8%

\$38,397

\$1,096,938

2036

68

\$113,568

\$1,318,160

93.8%

5.4%

7.4%

\$93,360

\$1,169,819

2037

69

\$113,568

\$1,404,768

93.6%

5.1%

7.6%

\$93,177

\$1,240,878

2038 (to Age 70)

70

\$67,519

\$1,455,282

93.2%

4.4%

7.8%

\$55,487

\$1,282,390

Average to Age 70

\$113,568

\$100,076

Survival Adjusted Present Values of Future Incomes

\$1,455,282

\$1,282,390

Percentage allowances for negative labour market contingencies:

-11.9%

[367] I accept the assumptions of Ms. Clark moving on from her employment with the Township of Langley employment; to a research position; to the director position; but at a more modest trajectory. I have attempted to assess matters by, and to a degree, utilizing and extrapolating from the figures provided.

[368] I have also taken into account the comments and calculations of Mr. Szekely. In addition to Mr. Szekely's observation that Ms. Clark's assumptions embrace an unusually strong attachment to the labour market, it provides two scenarios I find somewhat helpful. Again they do not track my general findings of the employment trajectory of Ms. Cindrich, but it assists to some degree.

[369] Mr. Szekely provides present-day valuation of loss on the basis of Ms. Cindrich moving, at some point, to a full-time management position with a salary at approximately \$96,000 per annum. He extrapolates this to retirement at age 70. While I find her income would, as her employment unfolds, somewhat exceed at some point this annual salary, it is helpful. In addition Mr. Szekely calculates the loss of non-wage benefits, and then appears to calculate the loss of pension benefits based upon continuing employment with the Township of Langley and retirement at age 62. Again, this is not the scenario I find as realistic but it nevertheless is of some assistance.

[370] In other words I do not find I can follow either submission, nor any of the particular scenarios offered. Therefore, as I have stated, I will find what I hope is a reasonable and fair assessment. In this regard I note that the comments of our Court of Appeal in *Dong v. Li*, 2024 BCCA 404 at para. 29:

Often, a judge will be faced with numerous possibilities and variables in assessing the loss of future earning capacity, and the assessment will be a rough one. As this Court has said, judges are not, in making such awards, required to "show [their] math": *Kringhaug v. Men*, 2022 BCCA 186 at para. 50. An award will be upheld as long as it is a reasonable one on the evidence.

[371] Taking into account the evidence in this regard I assess damages for future loss of capacity; including loss of non-wage benefits and loss of pension; less not only the risk factors but certain other contingencies as referenced, at \$900,000.

Cost of Future Care

[372] An award for the cost of future care is, again, an exercise in attempting to restore the plaintiff to the position she would have been in had the accident not occurred. The test is based upon evidence that allows a determination of what care is reasonably necessary to promote and facilitate the health of the plaintiff. In addition, the court must be satisfied the plaintiff would in fact make use of any given medical/healthcare item or treatment.

[373] The plaintiff submits the report of Ms. Yuen sets out her opinion concerning the plaintiff's future care needs. These recommendations address treatment, medication, equipment and various supports. The plaintiff points to the report of Ms. Clark that assigns a present value to those future costs.

[374] Again, it must be observed the needs of Ms. Cindrich were assessed by Ms. Yuen some years before the trial. Ms. Clark has provided an updated present value cost report (September 2023). It includes cost assessments of the areas and items in the report of Ms. Yuen as well as the additional costing of new items based upon information and opinion provided by three persons including two medical practitioners; Dr. David Jackson and Dr. Sampson Ng. In addition the updated report of Ms. Clark costed items provided by counsel on behalf of the plaintiff. The report estimates a present-day value of these items and treatments for the lifetime of Ms. Cindrich. The medications alone are estimated to be well in excess of \$300,000. The ultimate cost range projections of Ms. Clark range from \$675,000 to approximately \$837,000. The plaintiff seeks an award of \$836,921.

[375] The defendant states, striking a recurring theme, the plaintiff is not in need of any future treatment. The defendant submits that if the plaintiff has any lingering or continuing issues it is due to the symptoms of fibromyalgia which are in no way related to the trauma of the accident.

[376] The defendant says that all that is required for the future of Ms. Cindrich to improve her circumstances is exercise and to lose some weight.

[377] In addition, the defendant says there is simply not sufficient evidence to find any of the items proposed by Ms. Cindrich are reasonably necessary.

- [378] It appears alternatively, the defendant submits it is the report of Mr. Worthington-White that is the preferred framework for analysis.
- [379] I pause to observe that both Ms. Clark and Mr. Worthington-White included in their assessments recommendations from professionals, and counsel, that are not in evidence. Consequently, once again, I approach the reports with caution.
- [380] In any event, the defendant submits, as the alternative position, the award for cost of future care ought to be between \$90,000 and \$100,000; but reduced given the contingency of Ms. Cindrich improving.
- [381] Again, I find the enthusiasm of plaintiff's counsel for the cause of Ms. Cindrich has resulted in submissions that are more in line with 'everything but the kitchen sink'; than a submission that is particularly helpful to the court.
- [382] I have found there is room for improvement in Ms. Cindrich; albeit incremental improvement. I do not believe it is fair or reasonable to award future costs on the basis that all items, interventions, or treatments will be fully relevant for her lifetime. Finally, I also consider it more appropriate to look to the lower or near the lower cost of some of these items. I do this with the assistance of the updated report of Ms. Clark and as well the information provided in the report of Mr. Worthington-White.
- [383] The plaintiff seeks costs and an award for a variety of non-prescription drugs including CL-Q10 Ubiquinol (approximately \$40,000); and a variety of prescription medications such as Ozempic (\$23,000); Dymusta (\$37,000); Dexilait (\$24,000); and Botox (\$75,000). The plaintiff also seeks treatments for massage, physiotherapy, ongoing psychological/psychiatric services, housecleaning (approximately \$112,000), a CPAP machine; along with masks, tubings and filters; a number of housecleaning services; and services for pet grooming. The plaintiff also seeks exercise equipment such as grab bars, yoga mats and yoga blocks.
- [384] I do find, in large measure, the suggested items are supported by some evidence by the professional witnesses. I accept and recognize that certain recommendations are based upon information and opinion from professionals who did not give evidence. In certain circumstances however inferences can be drawn from other medical evidence that would allow for the evidentiary foundation.
- [385] The defendant submits some ongoing vocational assistance ought to be denied as the plaintiff has undergone vocational assessments. In my view the implication in the evidence is that Ms. Cindrich, as her life unfolds and hopefully some improvement occurs, would benefit from another assessment due to the potential for changing circumstances. I also find, contrary to the submission of the defendant, the evidence supports the finding that the benefit of the CPAP machine in fact addresses symptoms connected to the accident.

- [386] I also conclude a lifetime award is not required for many of the items. I am not persuaded the evidence supports such an award. I also reduce any award taking into account some prospect of improvement.
- [387] I am also of the view that certain items remain of questionable necessity on the evidence and do not include in any award for the future cost of massage, chiropractic treatment, acupuncture, and craniosacral massage.
- [388] I find, in these circumstances the housekeeping item is properly included in cost of future care as expenses reasonably expected to be required. I do reduce this item however based upon the prospect of some improvement; the necessity of housekeeping help in any event as Ms. Cindrich ages; and the prospect of her husband assisting. In this regard, in particular, I award \$75,000.
- [389] I do not award any damages for loss of housekeeping capacity. Indeed, the plaintiff made no submission in this regard.
- [390] In the circumstances I have earmarked the housekeeping award. I do not intend to parse the reductions of the particular costs sought by the plaintiff as a result of the various contingencies as I have determined them to be. Again I have attempted to arrive at a fair and reasonable award based on the evidence, that in my view, supports some costs for the items sought; other than the items specifically excluded.
- [391] In the circumstances I conclude that a fair and reasonable award for cost of future care is \$325,000.

Special Damages

- [392] The parties have agreed that Ms. Cindrich has incurred costs to trial in the approximate amount of \$92,463.15.
- [393] The defendant takes the position that she ought to receive none of these expenses or costs due to the fact that none of her injuries complaints or symptoms are related to the accident.
- [394] Alternatively the defendant submits that there are various items that cannot be said to be reasonably connected to her injuries arising out of the accident. In my view there is little to be deducted in this regard. I do find however certain costs ought to be deducted; namely Opus Oral Healthcare, Bed Bath & Beyond, cold and sinus medication, the Belagio Café, Canada Post, and expenses for a WaterPik and toothbrush. In this regard I reduce the special damages by \$3,742.48. I award the plaintiff special damages in the amount of \$88,720.67.

Summary

- [395] In summary, I grant judgment in favour of the plaintiff and award damages as follows:

Non-pecuniary damages

\$210,000.00

Past loss of earning capacity

\$525,000.00

Future loss of earning capacity

\$900,000.00

Future care

\$325,000.00

Special damages

\$88,720.67

TOTAL

\$2,048,720.67

[396] The plaintiff is entitled to costs at Scale B.

"Crossin J."

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Prepared on 27 October 2026 · Esheria