

CANADA / JUDGMENT

K.H.C. v. Scheirer

2025 BCSC 998

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 998 K.H.C. v. Scheirer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.H.C. v. Scheirer,

2025 BCSC 998

Date: 20250530

Docket: S215414

Registry: Vancouver

Between:

K.H.C.

Plaintiff

And

Marc Andre Scheirer

Defendant

Before: The Honourable Justice E. McDonald

Reasons for Judgment

Counsel for Plaintiff:

M. Chandler

H. Reid

The Defendant, appearing in person

M. Scheirer

Place and Date of Trial/Hearing:

Vancouver, B.C.

October 16-18, 2024

Place and Date of Judgment:

Vancouver, B.C.

May 30, 2025

Table of Contents

Overview.. 3

Background.. 3

Evidence. 6

Liability. 13

Damages. 14

Disposition.. 17

Overview

- [1] The plaintiff seeks damages for the tort of sexual assault respecting a sexual assault by the defendant. The defendant denies the sexual assault took place.
- [2] On November 27, 2020, the defendant was convicted in the Provincial Court of British Columbia of the sexual assault of the plaintiff. The defendant received a suspended sentence for that offence along with two years of probation.
- [3] The defendant unsuccessfully appealed from the summary conviction. In Justice Ker's November 1, 2022 reasons for judgment dismissing the appeal indexed as R. v. Scheirer, 2022 BCSC 1907 (the "Criminal Appeal Judgment"), Ker J. noted the defendant's sole ground of appeal was that he received ineffective assistance from his trial counsel. Although the defendant denied the sexual assault occurred, he raised no ground of appeal respecting the trial judge's reasons.
- [4] The only issues for determination in this proceeding are liability and quantum of damages to be awarded to the plaintiff for the tort of sexual battery arising from a sexual assault.

Background

- [5] The background to the sexual assault is set out in the Criminal Appeal Judgment:

- [12] During the time of the incident, the appellant shared a law office with his then spouse, B.S., also a lawyer. As of January 2018, the appellant and B.S. had separated their law practices, but continued to share office space, which contains three separate work stations. The law office also shares the floor with a real estate group.
- [13] The complainant, K.H.C. was seeking legal assistance on behalf of her husband, J.C., to remove a condition of his bail which prohibited J.C. from communicating with K.H.C. and visiting their residence, after he had been charged with assaulting K.H.C.
- [14] On February 28, 2018, after being referred to the appellant through the Lawyer Referral Service ("LRS"), K.H.C. spoke to the appellant over the phone for roughly thirty minutes, during which time they scheduled a meeting at 4:00 p.m. that day, at the appellant's office in Abbotsford, B.C., for a prospective intake. The events of this meeting form the basis of the appellant's sexual assault charge. Later that evening, when K.H.C. returned home, she phoned the police and reported her allegations.
- [15] In brief, the complainant alleged that while meeting with the appellant in his office, the appellant sexually assaulted her.
- [16] On June 1, 2018, Constable ("Cst"). La Framboise visited the appellant's office and informed the appellant of the allegations that K.H.C. had made against him.
- [17] At the time of the offence, the appellant was struggling with an unresolved alcohol addiction issue. Once the Law Society of B.C. (the "Law Society") became involved, the appellant started to address his addiction issues and attended residential treatment in the early spring of 2019.
- [18] In January 2019, the appellant first met with his former trial counsel, who agreed to represent him on matters before the Law Society.
- [19] In August 2019, the appellant was served with a summons, formally charging him with one count of sexual assault of K.H.C. On September 23, 2019, the appellant retained trial counsel to represent him on this charge.
- [20] The criminal trial proceeded in the Provincial Court of British Columbia before the Honourable Judge N. Phillips on July 7-10 and October 15, 2020. In reasons delivered on November 27, 2020, Judge Phillips found the appellant guilty of one count of sexual assault of K.H.C.
- [21] On December 17, 2020, at the court appearance to set the date for the sentencing hearing, trial counsel withdrew as the appellant's counsel on the criminal proceedings.
- [22] At the appellant's sentencing hearing, held on February 12, 2021, he was represented by new counsel. On March 8, 2021, Judge Phillips imposed sentence upon the appellant - a suspended sentence with a two-year probation period.

- [23] It is necessary to include a brief general summary of the circumstances that form the basis of the charge the appellant faced. The review is only in broad brushstrokes so as to inform the assessment this Court is called upon to make: whether the appellant has established that the conduct of his trial counsel was so deficient as to be ineffective and has occasioned a miscarriage of justice such that the verdict should be overturned and new trial ordered. The details of the offence and the findings of fact made by the trial judge are thoroughly set out in the comprehensive reasons for judgment delivered on November 27, 2020. The appellant takes no issue with the learned trial judge's reasons for judgment and has advanced no ground of appeal in respect of the reasons.

The Incident

- [24] On February 28, 2018, K.H.C. borrowed her friend, M.O.'s vehicle, and drove by herself to the appellant's office for the client intake meeting, arriving at the building at approximately 3:55 p.m.
- [25] At trial, K.H.C. testified that she went up the stairs and to the left, and that there was a reception area to the right. She said that as she was heading through the door marked for the law office she heard the appellant call out "I am in here," and saw him standing there with his shirt untucked and wearing dark socks with no shoes. She recognized his voice from the earlier phone call.
- [26] At some point during this meeting, K.H.C. showed the appellant photos on her cellphone of the products that she and J.C. designed and sold as part of their business. The appellant then came around from behind his desk to where she was sitting, moving his chair beside hers on her left. He moved closer and put his head on her chest and his right hand behind her back. When K.H.C. asked what he was doing, he put his left hand on her leg and started rubbing it and moving it up towards her crotch. When she pushed him away and went to stand up, he pushed her down and said "Nicer you are to me now, the sooner we get your husband home." These incidents form the substance of the sexual assault charge.
- [27] Shortly after leaving the appellant's office, while still in the car on her way home, K.H.C. spoke to M.O. and then her husband, J.C., on the phone. Phone records established the exact time that these calls occurred. Both M.O. and J.C. testified that K.H.C. was distressed and crying during these calls as she recounted the assault. Later that evening, K.H.C. reported the incident to police.
- [28] For his part, the appellant initially stated that he had no recollection of either the phone call or in-person meeting with K.H.C. The appellant claims that it was not until the trial in Provincial Court, when he saw her in person, that he remembered K.H.C., the telephone call with her and the intake meeting. The timing of his sudden detailed recollection of the meeting with K.H.C. remains unclear.

- [29] Significantly, both trial counsel and his associate depose that the appellant never told them during the trial that he remembered the complainant and the details of the telephone call or meeting with her. They acknowledge the appellant told them he thought he recognized the complainant but could not recall his discussions or meeting with her. Indeed, trial counsel and his associate depose that they were neither aware of nor advised of the appellant's recovered memory until they received the appellant's first affidavit in these proceedings in November 2021.
- [30] The appellant denies ever committing the assault on K.H.C.
- [6] After noting in the Criminal Appeal Judgment (at paras. 238-239) that the defendant's complaints on his appeal "are more in the vein of expressions of disappointment with the result", and, after concluding that the defendant's trial counsel's conduct was the "antithesis of incompetence", Ker J. dismissed the appeal.

Evidence

- [7] The plaintiff testified about her life prior to the sexual assault. She grew up in the Lower Mainland and left school after completing grade eight. The plaintiff worked in various jobs, such as fast-food restaurants and as a telemarketer for a cleaning company. The plaintiff met her husband when she was a teenager and they have been married since 1989.
- [8] The plaintiff and her husband started a carpet cleaning business. She also pursued post-secondary education, for example, in payroll and in certificates respecting cleaning and restoration work. The plaintiff currently works in flood restoration and she described doing that work professionally for at least five years up to the trial date. The plaintiff also worked as a stay-at-home parent managing their family and farm.
- [9] The plaintiff also testified about numerous health conditions she experienced prior to the sexual assault. For example, the plaintiff was diagnosed with fibromyalgia, which she attributed to injuries from multiple car accidents.
- [10] During the defendant's cross-examination of the plaintiff, the plaintiff's counsel objected to a question respecting the details of the sexual assault and more specifically, going to the issue of whether the sexual assault occurred. Counsel pointed out that the defendant had admitted he was convicted and sentenced for the offence of sexually assaulting the plaintiff and that he unsuccessfully appealed from the conviction.
- [11] The defendant submitted that I should permit him to relitigate the question of whether he sexually assaulted the plaintiff and to introduce fresh evidence because it would enhance the integrity of the judicial system. However, I disagreed with the defendant.

- [12] I determined that questions about whether the sexual assault occurred amounted to an impermissible relitigating of the findings made in the criminal proceeding. Ruling on the objection, I noted that in *C.D. v. Mostowy*, 2021 BCSC 1919, at paras. 29-30, Justice Jackson observed that the essential elements of the tort of sexual battery were satisfied by the defendant's conviction for the offence of sexual assault.
- [13] However, during her cross-examination, the plaintiff did agree that she had been involved in many motor vehicle accidents since 1992 and suffered serious injuries in some of those accidents. The plaintiff also agreed that she experienced past traumatic events, such as an incident in which her husband suffered a life-altering beating. I find the plaintiff was open and forthcoming during her cross-examination respecting her family history and past-traumatic events she experienced.
- [14] The plaintiff testified in chief that her mental health was very good until 2015 when a personal conflict arose with one of her daughter's that lead to a period of estrangement. The plaintiff said she began taking large quantities of prescription medications, including pain medication. At some point, she described taking up to 47 prescription pills per day. In 2017, the plaintiff testified that she attempted suicide and her doctor later told her that suicidal thoughts were caused by a certain prescription medication she had been taking.
- [15] In early 2018, the plaintiff said that she consulted with family and her doctor, before deciding to immediately cut out all of the prescription medication she had been taking. The plaintiff said she had a plan for managing the withdrawal and possible psychosis symptoms that could arise.
- [16] The plaintiff said she did experience withdrawal and psychosis symptoms in January 2018, and she attributed these symptoms to the conflict she had with her husband that led to him being arrested for assault. After her husband's arrest, he was prohibited by bail conditions from contacting her or attending the family home.
- [17] These are the bail conditions the plaintiff sought to alter when she attended at the defendant's law office on February 28, 2018. The plaintiff described that when she attended the appointment at the defendant's office on the day of the sexual assault, she was hopeful about getting her husband back into the family home.
- [18] The plaintiff described that during her meeting with the defendant at his office, she immediately knew something was "off" with the defendant, but she just kept asking herself how far it would go and how she could get out of there. She recalled thinking about whether the defendant would "rape" or hurt her. The plaintiff said she decided to trust someone and it backfired on her because the defendant violated her trust in the worst way.

- [19] The plaintiff said that as the sexual assault was occurring, she was in shock and as she was driving home, she started crying. She pulled over and called her friend before driving to her friend's house. Her husband then called her and he ultimately met her and drove her home from her friend's house. Her friend and husband encouraged the plaintiff to report the sexual assault to the police, which the plaintiff did later that day.
- [20] The plaintiff testified that after the sexual assault, she could not stop crying and she felt like all the progress she had made since discontinuing her prescription medications was lost. The plaintiff's husband was not allowed in the family home at this time and she was completely alone and in a "daze" after the sexual assault occurred. The plaintiff said she did not seek any medical attention after the sexual assault. The plaintiff also agreed that the sexual assault did not interfere with her family's plan to sell their home.
- [21] The plaintiff described that when she was required to speak with the police or prepare for the trial, her nightmares about the sexual assault would return. Her sleep was disturbed and her intimate relationship with her husband disappeared due to the effects of the sexual assault. She described that she would cringe whenever her husband tried to give her a hug. Prior to the sexual assault, the plaintiff described her sexual relationship with her husband as excellent.
- [22] The plaintiff said that in the period following the sexual assault, she and her husband took a lengthy road trip together. She said that at first she was "okay", but as soon as they returned to the BC border, she realized the criminal trial was pending and she just wanted to run away.
- [23] The plaintiff described feeling she had no one to talk to about the sexual assault. The plaintiff avoided discussing the incident with her husband and children. The plaintiff said she dreaded the medical assessment appointment with Dr. Spivak and she rescheduled it many times because she dreaded having to talk about the sexual assault and her mental health.
- [24] The plaintiff said she experienced many negative reactions to the sexual assault, including anxiety and fear of men. For example, when she started a new job at an auto glass company, she felt uncomfortable when she had to interact alone with her male co-workers. The plaintiff said her employment lasted only six months because she found it too hard to avoid her male colleagues.
- [25] After the sexual assault, the plaintiff also obtained a new family doctor who was male. She said that at first she could not attend appointments unless the doctor left the office door open. The plaintiff said it took a long time before she felt comfortable meeting behind a closed door with her new doctor.

- [26] Her doctor has recommended that she take a low-dose antidepressant and attend a psychologist to treat her anxiety, depression and bouts of crying. The plaintiff said she cannot afford to attend psychological treatment and she had not sought any counselling or other psychological treatment for the sexual assault.
- [27] The plaintiff described that her symptoms would worsen whenever something about the incident came up or required her involvement. She described a loss of confidence in herself since the sexual assault and a loss of trust in other people, especially men. For example, the plaintiff said her symptoms worsened when she had to speak to the police or Crown during the criminal trial, the appeal and during the Law Society disciplinary proceedings respecting the defendant. She described feeling relief that the defendant would not be seeing other vulnerable women when she learned the defendant had been disbarred by the Law Society.
- [28] The plaintiff also described experiencing numerous traumatic events pre-dating the sexual assault. For example, her sister was murdered and her husband suffered a traumatic brain injury during an assault. However, the plaintiff described her life as a wife and mother to their children as happy. It is clear the plaintiff's participation in the life of her family is a source of deep meaning and joy.
- [29] The plaintiff also testified that prior to the sexual assault, she was a social and active person who liked to host social gatherings and travel. She described enjoying her work and spending lots of time with family and friends. Since the sexual assault, the plaintiff describes she has struggled to return to her former level of participation and enjoyment in most aspects of her life.
- [30] The plaintiff did not go into much detail concerning the circumstances of the sexual assault. The plaintiff's counsel referred me to the findings concerning the incident set out in the Provincial Court Judge's reasons for judgment and the defendant's admission that he was convicted of sexual assault.
- [31] I find that because of the principles of comity and abuse of process, I am entitled to determine whether the defendant is liable for the tort of sexual battery by relying on the November 27, 2020 reasons for judgment and findings made by the Provincial Court Judge in convicting the defendant of sexual assault: see *Ontario (Attorney General) v. Clark*, 2021 SCC 18 at para. 135.
- [32] According to the findings of the Provincial Court Judge in the reasons for judgment, the defendant intended to and did touch the plaintiff without her consent and the contact was of a sexual nature. In the reasons, the Judge summarizes the plaintiff's testimony that she came to the defendant's law office for a meeting about her husband's bail documents and she was directed to a client chair in front of the defendant's desk.

- [33] During the meeting, the defendant moved his chair next to the plaintiff while she was using her phone to show him pictures. The defendant moved closer to her and placed his head on her chest and his right hand behind her back. When the plaintiff asked the defendant what he was doing, the defendant placed his other hand on her leg and started rubbing it while moving his hand towards her crotch. The plaintiff tried pushing the defendant away. She stood up and squeezed herself around the chairs to leave the defendant's office. The plaintiff then got in her car and started to drive home before she pulled over to call a friend to tell her what had happened. The plaintiff reported the incident to the police shortly after she left the defendant's office.
- [34] The plaintiff called her daughter, T.C., as a witness. T.C. is the youngest of the plaintiff's three children.
- [35] T.C. testified that the plaintiff has a close relationship with her and her siblings. She describes the plaintiff as an active and involved parent. T.C. said her mother was a very social person who did everything for her family and friends. They hosted social gatherings and T.C. said the plaintiff was always out doing things.
- [36] T.C. testified that at the time of her testimony at trial, she saw the plaintiff regularly. When T.C. was younger, she would go shopping and horse back riding with the plaintiff.
- [37] T.C. said she did not learn about the sexual assault incident until approximately a few months after it occurred. She attended one day of the criminal trial and remembers seeing the plaintiff "crying her eyes out".
- [38] Since the sexual assault, T.C. said she has noticed the plaintiff no longer acts like a strong person and she avoids socializing. T.C. also noticed the plaintiff no longer takes the time to make herself beautiful or to dress up, something she used to do. T.C. says she had observed the plaintiff avoiding people, especially men, at social gatherings. Finally, since the sexual assault, T.C. has observed a change in her father's relationship with the plaintiff as they now seem to avoid physical affection such as kissing or hugging.
- [39] T.C. said that since the sexual assault, the plaintiff still participates in shopping, boating and camping activities. However, T.C. said that in the lead up to the trial, she noticed her mother had become withdrawn, for example, by not calling T.C. as often as she used to.
- [40] The plaintiff relies on the opinion of a psychiatrist, Dr. Spivak. Dr. Spivak carried out an independent medical examination of the plaintiff on May 7, 2024 and prepared a report dated May 16, 2024. Dr. Spivak's opinion was that the plaintiff experienced changes in her psychological functioning in the aftermath of the sexual assault. Those changes include a period of intense nightmares which resurface when the plaintiff is reminded of the sexual assault, persistent discomfort around men, diminished confidence and persistent heightened startle response. Dr. Spivak describes the symptoms as most compatible with a "diagnosis of an other specified trauma and stressor related disorder".

- [41] Dr. Spivak describes the plaintiff's level of impairment as mild and at times, moderate. Although the passage of time, fairly complex dynamics and comorbid events make it difficult to precisely discern whether the plaintiff's symptoms are being driven by the sexual assault, Dr. Spivak notes there does not appear to be other overt stressors in her life at present that she was unable to navigate beyond the sexual assault. Dr. Spivak also notes that the plaintiff still struggles particularly when she is reminded of the sexual assault and her ongoing symptoms likely further contributed to her period of disability leave from work.
- [42] Respecting recommendations and prognosis, Dr. Spivak notes the plaintiff has not attended any psychotherapy related to the sexual assault and that trauma-informed therapy may be of value. Despite the plaintiff being disinclined towards medications, Dr. Spivak notes that a trial serotonergic antidepressant could potentially be beneficial, although not essential.
- [43] Dr. Spivak describes the plaintiff as "someone who has been fairly resilient" and despite the many challenges she has faced, she maintains a largely happy disposition and she has been able to return to enjoying her life. However, she still has ongoing reminders of the traumatic events of the sexual assault which engender ongoing symptoms. Dr. Spivak opines that the plaintiff remains vulnerable to decompensation which could jeopardize her potential to work. The plaintiff is at risk of "return to posttraumatic stress disorder-like symptoms in the context of any form of reminder or traumatic events".
- [44] I accept the opinion provided by Dr. Spivak and I note the defendant did not challenge any aspect of Dr. Spivak's report.

Liability

- [45] The plaintiff advances a claim in battery arising from the defendant's sexual assault on her which took place on February 28, 2018.
- [46] The analytical framework for the claim is described in *Norberg v. Wynrib*, [1992] 2 S.C.R. 226 at 246:

The alleged sexual assault in this case falls under the tort of battery. A battery is the intentional infliction of unlawful force on another person. Consent, express or implied, is a defence to battery.

- [47] To establish the defence of consent, the defendant bears the onus of establishing that the plaintiff consented to the physical contact in question: *Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24.
- [48] In the present action, no defence of consent was raised. However, the defendant again submitted that the sexual assault did not occur notwithstanding his conviction for that offence. In his closing submissions, the defendant stated that his recollection of the five-minute meeting he had with the plaintiff in February 2018 is very different from the one described by the plaintiff.

- [49] When I consider the whole of the evidence, I am satisfied that on a balance of probabilities the plaintiff has established the defendant is liable for sexual battery. Following a trial, the defendant was convicted of sexual assault of the plaintiff.
- [50] While the defendant denies the offence occurred, he did not challenge the trial judge's findings during his unsuccessful appeal from his conviction. There is no doubt the defendant is liable to the plaintiff for the sexually assault he committed on February 28, 2018.

Damages

- [51] The principles underlying the causation and assessment of damages include that the defendant must put the plaintiff "back in the position she would have been in had the defendant's tortious act not occurred": *Brewster v. Li*, 2013 BCSC 774 at para. 79 [Brewster].
- [52] In *Brewster*, at paras. 79-80, Justice Voith (as he then was), summarizes the legal principles applicable to assessing damages to include the following:
- a) The need to compensate excludes any loss not caused by the defendant's negligence and "debilitating effects of [a] pre-existing condition which the plaintiff would have experienced anyway" (*Athey v. Leonati*, [1996] 3 S.C.R. 458 [Athey]): para. 79.
 - b) The plaintiff must prove that the defendant's tortious act caused both an injury and a resulting loss: para. 80.
- [53] Once liability is established, the defendant is liable for the full extent of the loss even though there may be other causal factors that contributed to the harm the plaintiff experienced: *Farrant v. Laktin*, 2011 BCCA 336 at para. 9, citing *Athey* at paras. 13-17.
- [54] In this case, the plaintiff submits that the defendant's sexual assault caused her to suffer injuries which have resulted in, among other things, loss of enjoyment of life, such as a diminished sexual and emotional relationship with her husband.
- [55] The plaintiff seeks an award under the following heads:
- a) Non-pecuniary damages;
 - b) Aggravated damages;
 - c) Punitive damages; and
 - d) Cost of future care.
- [56] When I consider the evidence as a whole, I am satisfied that on balance, the defendant's sexual assault caused the plaintiff injury and loss, including psychological injuries that Dr. Spivak diagnoses as most consistent with "other specified trauma and stressor related disorder". I find that this injury has caused the plaintiff to experience loss of enjoyment of life, lack of confidence, anxiety and fear while interacting with men.

- [57] The question that now must be determined is what is the quantum of the non-pecuniary loss.
- [58] The plaintiff's counsel referred me to *Valdez v. Naron*, 2022 BCCA 301 at para. 58, where Justice Abrioux cautions about relying on older authorities for the range of non-pecuniary damage awards since "awards for non-pecuniary damages have continued to increase over the years in addition to the inflationary component".
- [59] Based on the authorities that plaintiff referred me to, including those in *A.M.S. v. Wootton*, 2016 NSSC 351, *T.K.L. v. T.M.P.*, 2016 BCSC 789 [T.K.L.], *I.K.Z. v. S.N.A.*, 2017 ONSC 1289 and *Anderson v. Molon*, 2020 BCSC 1247, she submits that the range of non-pecuniary damages is \$106,000 to \$215,000, and that an award of \$150,000 for non-pecuniary damages, plus \$50,000 for aggravated damages, is appropriate. The plaintiff further submits that a \$50,000 award for aggravated damages is justified, for example, because of the defendant's lack of remorse.
- [60] In *T.K.L.*, the defendant was the plaintiff's stepfather, who surreptitiously video recorded the plaintiff while she was in the shower and when she was 20 years old. When the video-recordings were discovered, the offences were reported to the police. That action concerned breaches of the plaintiff's privacy and breach of the defendant's fiduciary duty; however, the court found no liability for sexual assault.
- [61] In *T.K.L.*, at para. 45, Justice Thompson observes that there are few cases available to provide guidance on the range of general damages in cases involving voyeurism. At para. 51, Thompson J. instructs himself to be cautious about "taking aggravating factors into account twice: once by considering the issue of how invasive and degrading the defendant's actions were in coming to non-pecuniary damages assessment, and then again by boosting the damages award on the basis of these same factors as aggravating." Ultimately, Thompson J. awards the plaintiff \$85,000 for general damages "of which \$25,000 is allotted to take account of the aggravating features": *T.K.L.* at para. 52.
- [62] As previously mentioned, the plaintiff agreed during cross-examination that she was injured in prior motor vehicle accidents and that she endured extremely stressful life events before the sexual assault. However, the evidence satisfies me that the plaintiff has exhibited resilience in the past and I do not accept there is a real and substantial possibility of a contingency associated with past life events or further life stressors that are a measurable risk which should reduce the assessment of damages due to the plaintiff.
- [63] In his closing submissions, the defendant submitted he is bankrupt and dealing with serious health issues, including a cancer diagnosis. When asked if he had any submissions respecting the quantum of the award sought, he stated the plaintiff would not receive a dollar and that he had no alternate amounts to suggest. He said another \$270,000 award would not make any difference to him since he would just declare bankruptcy again.

- [64] In my view, the quantum of the damage award sought by the plaintiff is effectively unchallenged by the defendant. I find it appropriate to award \$200,000 for non-pecuniary damages, which shall include a \$50,000 component reflecting the aggravating features of the case. Those aggravating features include that the sexual assault happened while the plaintiff was attending the defendant's office to obtain his legal advice and the defendant has expressed no remorse despite his conviction for the offence.
- [65] The plaintiff also seeks punitive damages in the amount of \$50,000 for the defendant's misconduct that is malicious, oppressive, high-handed or highly reprehensible: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 [Whiten] and *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC) at para. 196. The punitive component is not necessarily satisfied where a wrongdoer has already been punished criminally: *Whiten* at para. 123.
- [66] In my view, an award of \$50,000 for punitive damages is justified in this case. I reach that conclusion because the defendant engaged in highly reprehensible conduct relating to or arising from the sexual battery and I find that the general damages award described above, even with the aggravated component, is insufficient to accomplish the goals of retribution, deterrence and denunciation that are described in *Whiten* at para. 36.
- [67] Respecting the claim for cost of future care, the plaintiff seeks a global assessment of \$20,000 based on the prognosis and recommendations of Dr. Spivak that the plaintiff would benefit from psychological counselling and treatment. The plaintiff testified she has not sought treatment because she cannot pay for counselling, and I find that the plaintiff is likely to seek psychological treatment in the future.
- [68] Given the expert opinion, which I accept, and the plaintiff's willingness to engage in treatment, I find that \$20,000 for the cost of future care is an appropriate award.

Disposition

- [69] The plaintiff is entitled to the following award of damages for the injuries and loss caused by the defendant's tortious conduct in committing the tort of sexual battery:
- Non-pecuniary damages of \$200,000, which includes a \$50,000 allotment to take account of the aggravating factors in the case;
 - Punitive damages of \$50,000; and
 - Cost of future care of \$20,000.
- [70] The plaintiff is entitled to costs at Scale B.
- "E. McDonald J."

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