
CANADA / JUDGMENT

Lutzke v. Beier

2018 BCSC 1427

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Supreme Court of British Columbia

DECIDED

23 August 2018

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2018 BCSC 1427 Lutzke v. Beier

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lutzke v. Beier,

2018 BCSC 1427

Date: 20180823

Docket: M161756

Registry: Vancouver

Between:

Willi Lutzke

Plaintiff

And

Lysa Beier

Defendant

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

July 9, 11 and 12, 2018

Place and Date of Judgment:

Vancouver, B.C.

August 23, 2018

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I. Introduction

- [1] This is an action for damages flowing from a psychological injury that the plaintiff, Mr. Lutzke, sustained as a result of an accident that occurred on December 17, 2014. Mr. Lutzke works as an engineer for the Canadian Pacific Railway (the "CPR"). On that date, he was operating a train travelling westbound from the Alberta border near Fort Steele, British Columbia. The defendant, Ms. Beier, was stopped at a crossing waiting for Mr. Lutzke's train to pass. She negligently moved her vehicle into the crossing just as Mr. Lutzke's train was approaching and the train collided with the vehicle. Mr. Lutzke thought for a time that the driver had been killed and that there had been a child in the vehicle who was either killed or seriously injured. As it turned out, Ms. Beier was not killed and there had been no one else in the vehicle.
- [2] Liability for the accident has been admitted. It is common ground that Mr. Lutzke developed post-traumatic stress disorder ("PTSD") as a result of the accident and that he has since recovered sufficiently to return to work full time. Despite his return to work, however, Mr. Lutzke says that he continues to suffer from increased anxiety and remains vulnerable to a relapse of PTSD, particularly if he experiences another traumatic event.
- [3] The parties have agreed on the quantum of all but two of the heads of damages claimed. What remains in issue is Mr. Lutzke's entitlement to damages for: (a) future loss of income earning capacity, including future pension benefits; and (b) the cost of future care.
- [4] Mr. Lutzke contends that as a result of the accident he is no longer able to continue working for long enough to allow him to qualify for a full pension. He seeks to be compensated for the anticipated loss of income and associated pension benefits that will result from his early retirement. He also says that a relapse of PTSD before his retirement is a "real and substantial possibility" that would further reduce his earnings and pension benefits and give rise to a need for additional care. He seeks to be compensated for that contingency as well.
- [5] The defendant submits that although Mr. Lutzke suffered from PTSD immediately following the accident, he has now essentially recovered. It is argued that any lingering symptoms that Mr. Lutzke continues to experience are minor and, in any event, have not been shown to affect his ability to continue working until he chooses to retire. The defendant submits that the possibility of a relapse of PTSD leading to a termination of his employment before his planned retirement is a possibility that is too "speculative" to justify any additional award of damages on that ground.

II. Factual Background

A. Mr. Lutzke's Medical and Employment History

- [6] Mr. Lutzke is married and has two children. He described his health prior to the accident as excellent. He went through a bout of depression between 2011 and 2012 associated with marriage difficulties that have since resolved. In that connection, his family physician, Dr.

Joubert, prescribed Wellbutrin, an anti-depressant medication. Dr. Joubert has prepared two expert reports for Mr. Lutzke in this litigation. In the first of them, Dr. Joubert expressed the opinion that Mr. Lutzke's emotional issues have been stable since 2012. Nevertheless, Mr. Lutzke has continued to use Wellbutrin since then.

- [7] Mr. Lutzke is currently 52 years old. He has spent his entire career of almost 30 years with the CPR. He became a conductor in 1992 and qualified as an engineer in 2000. He has been working as a locomotive engineer since 2004.

B. The Accident

- [8] On December 17, 2014, Mr. Lutzke was working as the engineer on a train traveling westbound at approximately 35 miles per hour approaching a private crossing at Caithness Road, near Fort Steele, British Columbia. He recalls that a vehicle was stopped at the crossing but accelerated into it just as the train came within 300-400 feet of the crossing. In the resulting collision, the vehicle was pushed approximately 400 feet down the track. The train came to a stop 2,000 feet beyond the point of impact.
- [9] After the train came to a stop, Mr. Lutzke called 911 and proceeded with the conductor to assist the driver, whom they found trapped and still conscious in the vehicle. They observed a child seat in the vehicle and feared that a child had been ejected. They searched in vain for a child in the vicinity but learned later that the driver had been alone in the vehicle.
- [10] After waiting for approximately two hours at the scene for emergency responders to arrive, Mr. Lutzke took a taxi to Fort Steele where he was picked up by his wife and taken home.

C. Post-Accident Treatment

- [11] It is clear that the accident had a profound effect on Mr. Lutzke. He was deeply disturbed by what had occurred. It was the only collision Mr. Lutzke has experienced in his 29-year career with the CPR.
- [12] In the immediate aftermath of the accident, he remembers that he was trembling and his voice was shaky. Mr. Lutzke's wife testified about her impressions of him when they spoke on the telephone and when she later picked him up in Fort Steele. She remembered that he was pale, his voice trembled and he had a cold sweat on his face.
- [13] In the ensuing days and weeks, Mr. Lutzke says he suffered from insomnia, nightmares, anxiety, irritability, reduced energy and appetite and detachment from friends and family. He had difficulty concentrating. Driving made him nervous. He lost interest in the outdoor activities that he had enjoyed before.
- [14] Mr. Lutzke remained off work for the better part of a year while he obtained treatment for his symptoms.

- [15] He attended Dr. Joubert's office two days after the accident. Dr. Joubert prescribed Mirtazapine to help him sleep but Mr. Lutzke did not find it helpful. Mr. Lutzke also attended counseling sessions near his home in Cranbrook but he did not find that his condition was improving.
- [16] He submitted a claim for compensation with WorkSafeBC, who referred him to a psychologist, Dr. Biehl, for an assessment. Following that assessment, in March 2015, Dr. Biehl diagnosed Mr. Lutzke with PTSD and recommended that he attend a PTSD treatment programme.
- [17] To that end, Mr. Lutzke attended a ten-week programme at the Orion Health and Rehabilitation Centre in Vancouver, in the spring of 2015. He spent three days each week in Vancouver and the remainder of the days at his home in Cranbrook.
- [18] The programme led to some improvement in his symptoms. He learned coping techniques. He rode on the Sky Train and the West Coast Express in order to overcome his anxiety.

D. Return to Work

- [19] By October 2015, Mr. Lutzke had recovered sufficiently to begin a graduated return to work programme. At first, he was given no duties but simply rode on the trains. After two weeks, he began taking on his former duties as an engineer. By December 2015, he was back at work on a full-time basis.
- [20] Despite his return to work, Mr. Lutzke says that he remained anxious, particularly as the trains approached people or vehicles at crossings. On those occasions, he would grow tense and his palms would become sweaty. He says that he tends to "over-concentrate" as he anticipates the worst-case scenarios.
- [21] Since he has been back at work, Mr. Lutzke has experienced a number of unnerving incidents. On July 24, 2016, his train nearly collided at a crossing with a boat and trailer. On another occasion in 2018, he was upset by an incident involving children who were "playing chicken" with the train. Despite the increased anxiety that such incidents have caused him, he has been able to make use of the coping techniques he learned and he has not required additional treatment. He has taken minimal time off work.
- [22] Nevertheless, Mr. Lutzke testified that his condition has not improved significantly in the two and a half years since he has returned to work. He continues to have difficulty sleeping. He is nervous while driving a car, even as a passenger. He remains socially detached.
- [23] Because Mr. Lutzke's position is classified as "safety critical" by the CPR, he is required on a regular basis to show that he continues to be fit to perform his duties. To that end, Dr. Joubert has periodically completed forms to attest to Mr. Lutzke's continued fitness. In one such form that Dr. Joubert completed on May 25, 2018, Dr. Joubert ticked a box to indicate that Mr. Lutzke was "not asymptomatic" and commented that he has "ongoing anxiety and apprehension." This led to Mr. Lutzke being temporarily suspended from his duties by the

CPR pending clarification of the nature of his ongoing symptoms.

[24] The occupational health department of the CPR followed up with a further questionnaire seeking clarification from Dr. Joubert about those reported symptoms. It asked if they arose "as a result of certain triggers?" Dr. Joubert responded by ticking "yes" and elaborating, "[p]eople running over train tracks in front of train, kids playing 'chicken' with the train." In the remaining questions, Dr. Joubert certified that in his professional opinion, Mr. Lutzke was:

- a) "asymptomatic in the areas of recurrence, hyperarousal and affective problems;"
- b) "able to cope and manage his anxiety effectively;"
- c) not in need of "further assessment or treatment;" and
- d) fit to work in a Safety Critical position without any restrictions [i.e., he is not at risk of sudden impairment or incapacitation due to his current mental health status].

E. The Medical Evidence

[25] Mr. Lutzke adduced two medical reports, both authored by Dr. Joubert.

[26] In the first report, dated May 16, 2016, Dr. Joubert confirmed the diagnosis of PTSD. With respect to Mr. Lutzke's prognosis, Dr. Joubert concluded as follows:

Although his symptoms are currently in remission, the potential of another incident and subsequent relapse remains. One of the potential hallmark symptoms of PTSD is the reliving of a past traumatic incident and I am of the opinion that another collision or close call, even with an animal on the tracks, could precipitate another episode of PTSD for Mr. Lutzke.

[27] Dr. Joubert's second report, dated May 8, 2017, took the form of a letter in response to two questions posed by Mr. Lutzke's counsel. The first question was broken down into four parts.

[28] For purposes of the first question, Dr. Joubert was instructed by Mr. Lutzke's counsel that:

Mr. Lutzke has advised me that before the accident he routinely worked 3,800 miles per month. That was considered full-time. He states that since returning to work following the accident, he only feels capable of working 3,000 miles per month due to the increased stress he continues to experience.

[29] Based on that instruction, Dr. Joubert was asked to give his opinion, among other things, as to whether:

- (c) it is medically beneficial for Mr. Lutzke to work approximately three quarters of his normal working hours; and
- (d) as to whether you believe that it will be necessary for Mr. Lutzke to continue to work reduced hours in the foreseeable future.

[30] Dr. Joubert's answers to those questions were as follows:

- (c) It is my opinion that it would indeed be beneficial for Mr. Lutzke to work approximately three quarters of his normal working hours.
- (d) It is also my opinion that Mr. Lutzke should continue to work reduced hours in the foreseeable future and perhaps for the rest of his career in his current position.

[31] The second question put to Dr. Joubert in his second report was formulated as follows:

Mr. Lutzke has advised me that it was his original plan to keep working until his 55th birthday on November 16, 2020 even though he would not have acquired a full pension. He had considered working until age 58 to acquire the full pension. He now feels that he will not be capable of working past the age of 55 due to his increased stress.

The question for you is:

- (a) Please provide your opinion as to whether Mr. Lutzke is, as a result of the injuries suffered in the accident, likely to be unable to work past the age of 55.

[32] Dr. Joubert's response to that question was that "Mr. Lutzke would likely be able to work past the age of 55 provided that he reduces his hours of work. A future relapse of course will put this ability in jeopardy."

[33] Counsel for the defendant objected to the admissibility of that second report on various grounds, including that it was not in the correct form, it failed to state the reasons for his conclusions and it failed to include the attestation required by Rule 11-2. I ruled during the trial that the report should be admitted into evidence and that those concerns should be treated as matters of weight.

[34] The defendant adduced a March 25, 2018 expert report of Dr. Riley, a psychiatrist. Dr. Riley met with Mr. Lutzke on March 14, 2018. He agreed with Dr. Joubert's diagnosis of PTSD. He considered Mr. Lutzke's prognosis to be excellent, particularly in view of his resilience, as demonstrated by his ability to cope with the near misses that he has reported since the accident. Nevertheless, Dr. Riley acknowledged that patients who have suffered from PTSD are at increased risk of a relapse if they experience another trauma. With respect to Mr. Lutzke's residual symptoms, Dr. Riley concluded that he:

continues to report mild residual symptoms in the form of increased apprehensiveness and alertness, particularly in situations where he is concerned for his safety or the safety of others, but there is no associated impairment in his social or occupational functioning.

[35] The report of Dr. Riley was admitted into evidence without any oral testimony. Dr. Joubert, on the other hand, was cross-examined on his two reports. During his cross examination, Dr. Joubert confirmed what he had communicated to the CPR in the forms referred to earlier - i.e., that Mr. Lutzke continues to experience mild increased apprehensiveness and alertness but his ongoing symptoms do not affect his ability to perform in a safety critical

position or otherwise impact on his occupational or social functioning. Dr. Joubert also confirmed that there is currently no medical need for Mr. Lutzke to reduce his hours at work. He accepted Dr. Riley's characterisation of Mr. Lutzke as "resilient" and agreed that he would be likely to cope successfully with another near miss situation in the future, given his demonstrated ability to cope with the near misses he has experienced since the accident. Dr. Joubert testified that a relapse would likely be triggered only by a traumatic incident such as another accident, which would have to be relatively serious to cause such a reaction.

III. The Issues

A. Future Loss of Earning Capacity

i. The Law

[36] The leading case on the test to be applied in assessing damages under this head is *Perren v. Lalari*, 2010 BCCA 140. There, Garson J.A. stated as follows at para. 32:

[32] A plaintiff must always prove, as was noted by Donald J.A. in *Steward*, by Bauman J. in *Chang*, and by Tysoe J.A. in *Romanchych*, that there is a real and substantial possibility of a future event leading to an income loss. If the plaintiff discharges that burden of proof, then depending upon the facts of the case, the plaintiff may prove the quantification of that loss of earning capacity, either on an earnings approach, as in *Steenblok*, or a capital asset approach, as in *Brown*. The former approach will be more useful when the loss is more easily measurable, as it was in *Steenblok*. The latter approach will be more useful when the loss is not as easily measurable, as in *Pallos* and *Romanchych*. A plaintiff may indeed be able to prove that there is a substantial possibility of a future loss of income despite having returned to his or her usual employment. That was the case in both *Pallos* and *Parypa*. But, as Donald J.A. said in *Steward*, an inability to perform an occupation that is not a realistic alternative occupation is not proof of a future loss.

[Emphasis in original.]

ii. The Parties' Arguments

[37] Mr. Lutzke testified that although he had not yet made up his mind before the accident about when he would retire, one of his options was to continue working in his current position until March 1, 2024 (i.e., when he will have completed 35 years of service), at which point he would be entitled to a full pension. As a result of the extra stress he has been carrying since the accident, however, he no longer believes that he can "survive" in his current position for that long. Instead, he now intends to retire as soon as he can qualify for an immediately payable pension, which will be when he has completed 32 years of service, i.e., on March 1, 2021, at age 55.

- [38] Assuming he will retire as planned on March 1, 2021, Mr. Lutzke says that he should be compensated for the loss of foregone income between that date and March 1, 2024, as well as for the associated diminution in his future pension benefits. He says that his full pension benefits would be reduced in that scenario by \$2,200 for every year until March 1, 2024, that he does not work, which would translate into a post-retirement loss of \$6,600 per year in pension income for the rest of his life.
- [39] In addition, Mr. Lutzke says that there is also a real and substantial possibility that even before he gets to his intended date of retirement on March 1, 2021, he will experience another traumatic event that will lead to a relapse of his PTSD or otherwise increase his level of anxiety to the point that he can no longer work. Were that to occur, he says, he would probably be unable to obtain less stressful, alternative work from the CPR until he is ready to retire because he does not believe that the CPR would accommodate him in that way. If he is terminated or otherwise ceases to work before March 1, 2021, his pension will not become payable until he turns 65. In that scenario, his losses would include the following:
- a) loss of foregone income between the date when he ceases working and March 1, 2024;
 - b) deferment of his pension until he turns 65; and
 - c) reduction of his post-retirement annual pension income (payable from age 65 until the rest of his life), by \$2,200 per year for every year until March 1, 2024 that he did not work.
- [40] Accounting for the various contingencies, Mr. Lutzke seeks damages under this head in the amount of \$100,000.
- [41] Counsel for Mr. Lutzke relies in this regard on *Grewal v. Naumann*, 2017 BCCA 158. In that case, the trial judge found that the most likely scenario was that the plaintiff would remain healthy. There was, however, also found to be a lesser possibility that the plaintiff would experience another episode of depression, which would require him to seek alternative employment at a lower income. In those circumstances, the plaintiff was awarded damages for future loss of earning capacity based on that lesser possibility.
- [42] Counsel for the defendant responds that Mr. Lutzke's claim under this head should be refused because it lacks support in the evidence.
- [43] With respect to the claim for damages based on Mr. Lutzke's anticipated early retirement, counsel for the defendant submits that the claim fails because Mr. Lutzke need not retire in 2021 but plans to do so merely because he has no desire to continue working until 2024.
- [44] With respect to the possibility of Mr. Lutzke being terminated or otherwise rendered unable to work before his intended date of retirement, counsel for the defendant submits that Mr. Lutzke has shown himself to be sufficiently resilient to cope with the kind of event that is most likely to occur in his work until then. He has adduced no evidence, it is argued, as to the likelihood of a more traumatic event (such as an accident) that would be serious enough to cause a relapse. Even if Mr. Lutzke did suffer a relapse or was otherwise rendered

incapable of working in his current position, it is argued, the CPR would be required by law to accommodate him and there is no valid reason to believe that he would not be accommodated.

- [45] Counsel for the defendant submits that this case is like *Fata v. Heinonen*, 2010 BCSC 385, and *Lorenz v. Gosling*, 2011 BCSC 1250, in which no award for loss of future earning capacity was made, on similar grounds.

iii. Analysis

- [46] Mr. Lutzke's entitlement to damages under this head turns on whether there is a real and substantial possibility that he will be:

- a) forced into early retirement at age 55 by the lingering effects of the accident; or
- b) terminated or otherwise rendered unable to work before his preferred date of retirement, without being accommodated by his employer.

- [47] I find that the answer to both of these questions is "no."

- [48] With respect to the first question, in *Fata*, Griffin J. (as she then was) rejected a claim for past income loss on the following grounds at paras. 75-76:

- [75] The totality of the evidence indicates that Mr. Fata was able to sufficiently perform the duties of his job. While he enjoyed his job less and felt less able to perform it, I am not convinced that his injuries made him incapable of performing his job and unable to continue his SFU employment. In my view, Mr. Fata's dissatisfaction with work may have arisen because of his injuries caused by the accident, but nevertheless he likely could have kept working and earning an income until his planned retirement at age 65.

- [76] Mr. Fata's loss of enjoyment of his work in my view is a factor to be taken into account when considering non-pecuniary damages. But on the facts of this case, I simply do not see that the past income loss sustained by Mr. Fata, due to his decision to quit work, can be the defendant's responsibility.

- [49] Justice Griffin also rejected the claim for future income loss on the same grounds at paras. 79-81:

- [79] This claim suffers from the same problem as the claim for past wage loss. Mr. Fata has failed to prove that the accident caused his early retirement in the sense that it made him not capable of continuing to earn his income at SFU. He was capable, but he enjoyed his job far less.

- [80] The medical evidence does support the point of view that Mr. Fata was less capable of doing some tasks, involving overhead lifting and repetitive arm movements. But the problem with extending this concept to suggest that Mr. Fata was less capable of earning an income after the accident is that I have found that the evidence does not establish that he was not capable of continuing to work at SFU until retirement.
- [81] Given how close Mr. Fata was to retirement and how many years he had worked at SFU, I find that there is next to no chance that he would have been in the marketplace looking for another job. Before the accident, Mr. Fata's plan was to continue working at SFU until retirement. I have concluded that he was capable of continuing to do so after the accident. This means that I find that Mr. Fata has not proven a real possibility of a future loss of income due to the accident. Therefore, I award no damages for loss of earning capacity.
- [50] I agree with the defendant that this case is similar to Fata. Counsel for Mr. Lutzke argues that Fata is distinguishable because in that case the plaintiff's premature retirement was found to be voluntary whereas in this case it will be compelled. I do not agree that the evidence in this case supports such a distinction.
- [51] Both Dr. Joubert and Dr. Riley concluded that Mr. Lutzke is currently fit to work in his current capacity, despite his lingering symptoms.
- [52] Although Dr. Joubert also expressed the opinion in his second report that Mr. Lutzke "would likely be able to work past the age of 55 provided that he reduces his hours at work [emphasis added]", I find that qualification to be problematic for a number of reasons.
- [53] First, most of the facts that were presented to Dr. Joubert to inform the opinions expressed in the second report, as quoted above, were not proven in evidence. Dr. Joubert does not explain to what extent, if any, he relied on them in forming his opinions. Second, no explanation was given for that qualification. It is not clear, in particular, how big a reduction would be needed in Mr. Lutzke's work hours in order to enable him to continue working past the age of 55 or why such a reduction would be needed for that purpose. Dr. Joubert was not aware of what has occurred with Mr. Lutzke's work hours since the report was prepared and I heard no evidence about the actual status of his work hours now or in the future.
- [54] The probative value of Dr. Joubert's opinion in that regard is also undermined to some extent by the testimony that Dr. Joubert gave in cross-examination. Despite the opinion he expressed in the second report, quoted earlier, that working reduced hours would be "beneficial" for Mr. Lutzke and that Mr. Lutzke "should continue to work reduced hours in the foreseeable future and perhaps for the rest of his career in his current position," Dr. Joubert testified that he did not believe at the time that he prepared the second report that reducing Mr. Lutzke's work hours was medically necessary. Dr. Joubert never conveyed to the CPR his views about the benefits of reduced work hours. Instead, within a day of completing the second expert report he also completed a form for the CPR certifying Mr. Lutzke's continued fitness to work full-time in his current position without any qualification.

- [55] Insofar as there is any difference between the conclusions of Dr. Joubert and Dr. Riley in this regard, I prefer the opinion of Dr. Riley that Mr. Lutzke's prognosis is excellent, particularly given his demonstrated resilience.
- [56] Although Mr. Lutzke testified in his examination-in-chief that he doubted whether he could "survive" in his current position past the age of 55, in cross-examination he acknowledged that he could probably do so as long as he does not experience another trauma.
- [57] In light of that evidence, I find that Mr. Lutzke's lingering symptoms will not prevent him from working until he chooses to retire, barring a relapse of PTSD.
- [58] With respect to the second question, both Dr. Joubert and Dr. Riley agree that Mr. Lutzke is unlikely to have a relapse unless he were to be traumatised again. Although Dr. Joubert stated in his second report that in his experience, "patients who suffer from [PTSD] will exhibit some degree of anxiety for the majority of their lives and will have some form of relapse during that time [emphasis added]", he acknowledged in cross-examination that this opinion was not based on any peer-reviewed literature but rather on his own clinical experience with his own patients. Dr. Joubert testified that he is currently treating only 10 to 15 patients with PTSD and that Mr. Lutzke is generally better equipped than they are to avoid a relapse. Dr. Joubert also agreed that a relapse is unlikely to occur unless Mr. Lutzke experiences another trauma such as a serious accident, and that he can only speculate about the likelihood of that occurring.
- [59] I agree with the defendant that the possibility that Mr. Lutzke will experience another accident of sufficient severity to cause a relapse of PTSD is speculative. I have in particular no evidence before me as to the statistical frequency of such occurrences. The only evidence before me on that issue is that a serious accident occurred only once in Mr. Lutzke's nearly 30-year career thus far. I agree with the defendant that a relapse is less likely in Mr. Lutzke's case due to the coping mechanisms that he has learned and put to good use in the subsequent near misses he has experienced.
- [60] In any event, even if there were a relapse or if Mr. Lutzke were otherwise rendered incapable of continuing in his current position until his preferred date of retirement due to work-related stress, I also agree with the defendant that the CPR would be likely to accommodate him as the law requires. I find that Mr. Lutzke's reasons for believing that he would not be accommodated in such circumstances were not well-founded but appeared instead to be based entirely on second or third hand anecdotal reports about the experiences of certain of his co-workers.
- [61] For those reasons, I award no damages under this head.

B. Cost of Future Care

i. The Law

[62] The plaintiff is entitled to be compensated for future care that is shown to be medically justified and reasonable: Paur v. Providence Health Care, 2017 BCCA 161 at para. 109.

ii. The Parties' Arguments

[63] Mr. Lutzke seeks to be compensated under this head on the basis that he may suffer a relapse of PTSD, in which case he may require additional counselling and medication. He quantifies his damages on the basis that his counselling costs would be approximately \$200 per hour and the monthly cost of his medications would be approximately \$25-30. In addition, he argues, he may have to travel to obtain the counselling he would need, as he did in 2015 to participate in the ten-week programme in Vancouver. On that basis, he seeks damages of \$20,000.

[64] The defendant responds that no damages should be awarded under this head because the possibility of a relapse leading to a renewed need for care is speculative.

iii. Analysis

[65] For the reasons canvassed earlier, I have already found that Mr. Lutzke has failed to establish that there is a real and substantial possibility of a relapse leading to a need for future care. This aspect of the claim fails on the same basis.

IV. Conclusion

[66] I award no damages for the loss of future earning capacity or the cost of future care.

[67] The parties have leave to speak to costs if they are unable to agree on the appropriate order in light of these reasons for judgment.

"Milman J."

The Honourable Mr. Justice Milman

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Prepared on 28 October 2026 · Esheria