
CANADA / JUDGMENT

Mitchell v. Martin

2016 BCSC 1544

COURT

Supreme Court of British Columbia

DECIDED

23 August 2016

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2016 BCSC 1544 Mitchell v. Martin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mitchell v. Martin,

2016 BCSC 1544

Date: 20160823

Docket: M9849

Registry: Campbell River

Between:

Stephen Mitchell

Plaintiff

And

Nora Roberta Martin

Defendant

Before: The Honourable Madam Justice Young

Reasons for Judgment

Counsel for Plaintiff:

P. Field

Counsel for Defendant:

R. Hornquist

Place and Date of Trial:

Campbell River, B.C.

June 1-3, 2016

Place and Date of Judgment:

Campbell River, B.C.

August 23, 2016

INTRODUCTION

- [1] This is an action in damages for personal injuries sustained by the plaintiff in a motor vehicle accident that occurred on August 12, 2009 on Dogwood Street in Campbell River, at or near the intersection of Dogwood Street and Seventh Avenue ("Accident"). The plaintiff was thrown from his motorcycle and injured his right shoulder, neck and back and suffered from bruising and road rash. Injuries to his neck and back and the road rash injuries resolved within a few months, however, the right shoulder injury did not and required surgery to repair.
- [2] The plaintiff is a faller who has worked in the forestry industry since 1986.
- [3] The plaintiff had previously suffered a serious injury to his left leg in a logging accident on November 24, 2007. He had not yet returned to work at the time of this Accident, however, he was intending to return to work in the middle of August 2009 and says that he was prevented from doing so because of this Accident. An issue at trial is whether or not he was fit to return to work as a faller in mid-August 2009.
- [4] The plaintiff claims general damages and loss of earning capacity. His future loss of earning capacity claim is contentious because at trial he had returned to falling and was earning close to the same income he would have earned but for the Accident.

ISSUES

- [5] Liability was denied in the pleadings in this case; however, no evidence was led on behalf of the defendant on the liability issue. The defendant waited until his closing submissions to concede that the Court should find the defendant 100% responsible for the Accident.
- [6] The issues for determination are:
 - a) The nature and extent of the plaintiff's injuries which were caused by the Accident;
 - b) Whether the plaintiff was fit to return to work as a faller in mid-August 2009?
 - c) Whether the plaintiff suffered a past loss of earning capacity?
 - d) Whether the plaintiff suffered diminished future earning capacity?

THE FACTS

Prior to the Accident

- [7] The plaintiff is 47 years old, has a grade 12 education and has worked in the forestry industry since 1986, after graduating from high school. He has experience in all phases of logging, including falling, loading, scaling, safety inspection of job sites and road construction.
- [8] Falling is physically demanding because of the uneven terrain a faller has to work on. The faller has to be aware of hazards around him, including the pivot point or direction of the fall of a tree. The tools and personal protective equipment are heavy to carry. The job entails a fair amount of overhead work.
- [9] In November 2007, the plaintiff was in a logging accident where a log crushed his left tibia and fibula. He was on the site alone and had to straighten and splint his own broken leg and call for medical assistance. It took eight surgeries to get the leg repaired, including skin grafting and inserting balloons to stretch the skin to allow for the removal of the skin graft. His recovery took approximately three years.
- [10] In the spring of 2009, the plaintiff participated in a return-to-work program through WorkSafeBC. He did not find the program effective so he dropped out and designed his own rehabilitation program. He attempted to return to work as a faller in early May 2009. After one six-and-a-half-hour shift, his left leg swelled up considerably and he did not return to work.
- [11] That summer, the plaintiff and his spouse say that he worked diligently at his own rehabilitation by running, walking, riding a bike and hiking on uneven terrain. He felt that he was ready to return to falling work in August 2009.
- [12] The plaintiff is now divorced but actively parents his three children. They were staying with him for the first two weeks of August and so he had planned to return to work after they departed, which would have been around August 15, 2009.

The Accident

- [13] On August 12, 2009, the plaintiff was driving his motorcycle southbound on Dogwood Street, coming up the hill from downtown Campbell River. He approached a long line of cars which were stopped at a traffic light at 7th Avenue and Dogwood Street, leaving a gap to allow traffic to enter Dogwood Street from a driveway on the plaintiff's right-hand side. The plaintiff was not aware of the gap until he was almost beside it. A white car cut in front of his motorcycle so abruptly that he could not take sufficient evasive action to avoid collision. The white car was attempting to turn left. He tried to move out of the way and he lifted his right leg so it would not be crushed against the car. He was ejected from the motorcycle and landed a couple of lanes to the left near the sidewalk.

- [14] He immediately felt right shoulder pain, bruising, road rash, a sore neck, and a sore back, but fortunately no head injury. The police and ambulance did attend but he did not go to the hospital. His common-law spouse, Jennifer Renaas, picked him up and took him home.
- [15] The plaintiff sought medical attention a few days after the Accident. He recalls that it took a few days for the soft tissue pain to really set in. The soft tissue injuries improved over the course of three months but his shoulder injury did not improve. His family doctor sent him for an MRI and then referred him to Dr. Steven Sohmer, a local orthopedic surgeon.
- [16] After months of conservative treatment with physiotherapy, Dr. Sohmer decided that the plaintiff required arthroscopic surgery. Dr. Sohmer performed the surgery on August 25, 2010 and it took approximately six months for the plaintiff to recover from the effects of the surgery.
- [17] The plaintiff did not attempt to return to work between August 2009 and August 2010, primarily because he did not want to further injure his shoulder.
- [18] Between August 2009 and August 2010, the plaintiff was working with vocational rehab consultants through WorkSafeBC and investigating the possibility of retraining as a log scaler. He was investigating this retraining because of the pre-existing injury to his left leg and because of WorkSafeBC's recommendation that he not return to falling.
- [19] The plaintiff recovered from shoulder surgery by late February or early March 2011. In early May 2011, he was hired by the Pallan Group, based out of Campbell River, as a lumber broker and was earning a rate of pay of approximately \$10,000 a month. He had applied for the same job with the Pallan Group in 2010, but at that time, they would not hire him without certain education credentials. It was not clear why they were willing to hire him in 2011 but not in 2010, as the plaintiff had not gained those credentials in the interim.
- [20] The plaintiff worked for the Pallan Group until September 2013, both in British Columbia and in Nicaragua. The job involved assessing the value of lumber and the cost of harvesting lumber. By the time the lumber license was issued in Nicaragua, the Pallan Group was in receivership. The bank forced it to shut down its operations in September 2013.
- [21] The plaintiff continued to work without pay after the Pallan Group shut its operations. He tried unsuccessfully to find another investor to continue the project in Nicaragua. He could not finance the project on his own. The Pallan Group had one remaining contract commitment and the plaintiff contacted Dave Trembley, with whom he had worked with before his leg injury, to work on this contract. He and Mr. Trembley successfully bid on that job and have continued working together.
- [22] Fortunately for the plaintiff, this is been a successful partnership. The plaintiff has returned to falling and provides supervisory services as well.

- [23] At trial, the plaintiff indicated that he had been falling for two years and plans to continue doing so. Things are looking quite bright for the partnership over the next four to five years. He is earning \$12,000 a month.
- [24] The plaintiff says that the shoulder injury slows him down when he has to raise his arm above shoulder level to cut branches. He has to stop periodically and stretch out his shoulder and rest for a while before continuing to work. Raising his right arm above his shoulder causes it to fatigue quickly and to lose strength. At trial, the plaintiff's evidence was that his productivity is reduced by about 15%.
- [25] This reduced productivity has not translated into a loss of earnings. The plaintiff still receives his daily rate and the extra \$50 a day for supervising his crew.
- [26] The plaintiff was asked if his reduced production causes problems on the job site. He said that it may raise a few eyebrows here and there but he brings a lot of other strengths to the table and so it has not been an issue. There has never been a discussion about reducing his partnership draw because of his impairment. He brings to the table 20 years' experience in the industry, with lots of contacts and a good reputation as a hard worker. He gets the job done and he attracts new contracts.
- [27] In terms of his left leg limitation in productivity, the plaintiff said he has worked hard to overcome his limitation. His left leg bothers him when he is working on steep ground, primarily when climbing down from a hill. He does not have full mobility in his foot but he wears proper footwear and so he is able to manage. He suffers from large toe drop, making it difficult to walk barefoot, and he gets cramping in his calf. He has been assessed with a 36.06% permanent functional impairment pension by WorkSafeBC and will receive \$1,200 a month from WorkSafeBC until he is 65 years of age.
- [28] The plaintiff has suffered impairment to his recreational activity; however, some of this was caused by his leg injury. For example, he was not water skiing after his leg injury and he was not snowboarding as much or playing hockey. Because of the shoulder injury, he is reluctant to ski and bike because of the strain it puts on his shoulder. Some family chores are difficult, for example, staining the siding on the house and trimming the cedar hedge that borders their property.

The Nature and Extent of the Plaintiff's Injuries Caused by the Accident

- [29] There is no doubt that the soft tissue injury to the plaintiff's back and neck and the road rash were caused by the Accident. There is a question as to the extent the right shoulder injury was caused by the Accident, because x-ray reports of the right shoulder area show an old pre-existing clavicular fracture and some degenerative changes.
- [30] Three medical reports were provided and none of the physicians were called for cross-examination.

- [31] Dr. Sohmer was the orthopedic surgeon who treated the plaintiff. He first saw the plaintiff on November 16, 2009. The plaintiff reported to him that he had injured his right shoulder in a motor vehicle accident. He was complaining of pain, stiffness and weakness of the right shoulder. Prior to the Accident, he was asymptomatic. Dr. Sohmer noted full range of motion of the right shoulder and no evidence of acromioclavicular joint pathology or rotator cuff pathology, but he did have findings of superior labral pathology. He initially tried non-operative treatment with follow-up in three months. In February 2010, the plaintiff was still symptomatic and surgery was booked.
- [32] Dr. Sohmer performed the surgery on August 25, 2010. He found a partial thickness tear of the rotator cuff which he debrided and repaired. He also found a labral tear which was repaired and he debrided the glenoid articular surface. He noted that the head of the humerus was normal but that there was significant cartilage wear of the anterior inferior quarter of the glenoid. There was a greater than 50% loss of thickness of the cartilage. The remainder of the glenoid articular surface was normal. The thickness of the rotator cuff tear was approximately 20 to 25%. There was some general fraying of the anterior and posterior superior labrum. There was a complete avulsion of the superior labrum, which was repaired with a single anchor.
- [33] By March 14, 2011, the plaintiff no longer had sharp pain and he was slowly resuming all of his activities. He still reported some grinding in the shoulder, but on examination, had a full range of motion and strength. Dr. Sohmer's opinion was that he was doing extremely well at that point. He was functioning at a high level and continuing to improve. He was discharged from care.
- [34] It is Dr. Sohmer's opinion that the Accident was the direct cause of the plaintiff's shoulder injury. He had an onset of symptoms immediately after the Accident. Dr. Sohmer believes that the superior labrum anterior, posterior tear (slap tear), the partial thickness rotator cuff tear and the chondral damage to the right shoulder were a direct consequence of the Accident on August 12, 2009.
- [35] As will be discussed later, the radiologist, Dr. Douglas Connell, was of the view that the labral abnormality may have pre-dated the Accident. Dr. Sohmer disagrees with this opinion because there was no evidence of pre-accident discomfort or disability with the right shoulder.
- [36] The plaintiff does not recall any traumatic injury to his right shoulder prior to this Accident. The x-rays do show that there was a previous trauma to the distal clavicle but Dr. Sohmer believes this was a remote injury, which probably incurred during the plaintiff's younger years. Dr. Sohmer commented that these injuries commonly heal rapidly and are of minor significance. He concluded that the clavicle injury does not relate to the shoulder injury, particularly because there were no reported symptoms.

- [37] Dr. William Regan, an orthopaedic surgeon, was retained by the defendant to assess the plaintiff and gave an opinion on causation of the shoulder injury. At page 6 of his report, Dr. Regan wrote that the plaintiff had a previous undisclosed right lateral clavicle fracture which had healed. He also found old acromioclavicular joint arthritis. Both were asymptomatic prior to the Accident. Dr. Regan is of the opinion that the cause of the plaintiff's right shoulder pain would be the Accident.
- [38] Dr. Regan is of the opinion that the old wear and tear changes affecting the anteroinferior glenoid (lower front edge of the socket) suggest subtle instability events of a chronic nature and it is his opinion that this is not Accident-related. It was his opinion that the plaintiff recovered from his shoulder surgery by late February 2011.
- [39] The radiologist, Dr. Connell, was asked if the abnormalities present on the MRI were caused by the Accident. He said one cannot be certain when the labral tear visualized on the MRI occurred.
- [40] The plaintiff was cross-examined on the fact that he had told David O'Neill, his WorkSafeBC case manager, about discomfort in his lower right shoulder blade area on May 1, 2009 when carrying a backpack. I accepted the plaintiff's explanation that the center of pain from the Accident was in the shoulder joint itself and not the mid-back area at the bottom of the scapula. This scapular pain was different from the pain he suffered after the Accident.

Finding

- [41] I am satisfied on a balance of probabilities that the labral tear and the rotator cuff tear were caused by the Accident and that the majority of the plaintiff's right shoulder injuries were caused by the Accident. I prefer the evidence of the surgeon, who not only reviewed the MRI and treated the plaintiff, but actually visualized the shoulder joint during surgery.
- [42] As for the damage to the glenoid surface, Dr. Sohmer thinks that it was a direct result of the Accident and not old wear and tear suggestive of chronic instability. I prefer his opinion over that of Dr. Regan's for the same reason. Dr. Sohmer examined the damage to the glenoid directly while performing the surgery. He noted that there was no history from the plaintiff of previous instability of the shoulder. If damage to the glenoid pre-existed the Accident then it was clearly asymptomatic.
- [43] I am satisfied that the old fracture of the clavicle had been asymptomatic for a number of years and was not the cause of the plaintiff's shoulder pain
- [44] The only remaining issue is whether any further surgery required for degenerative glenohumeral arthritis would be related to the Accident. Dr. Regan is of the view that it would not relate to the Accident because he believes it would stem from chronic wear and tear. Dr. Sohmer believes that it would result from Accident-related trauma to the shoulder but he cannot predict with any certainty what the likelihood would be of requiring further shoulder surgery. He does say, and I accept that, over time, the plaintiff will be at risk of

developing further shoulder arthritis stiffness and pain. He believes that the rate of progression however will be very slow.

- [45] I find that further surgery to the shoulder to address arthritis is very remote and not compensable.

Course of the Plaintiff's Recovery

- [46] The plaintiff has made a remarkable recovery, as he did from his severe left leg injury. By March 2011, Dr. Sohmer discharged him from care, saying that he was functioning at a high level and continuing to improve.
- [47] When Dr. Sohmer saw the plaintiff in 2016 for the purpose of preparing a report for trial, the plaintiff described ongoing shoulder pain, graded to be about three out of 10 on a 10-point scale, with 10 equating to the most severe pain. The plaintiff reported that the pain can increase to four or five out of 10 with activity. The plaintiff finds activities that require the right arm to be elevated above shoulder level aggravate his symptoms. This typically happens while at work. The plaintiff denies any shoulder instability. He reports painless clicking in the shoulder. After extended exertion, the shoulder feels loose and he reports that the shoulder fatigues easily.
- [48] Dr. Regan also examined the plaintiff in 2016. He agrees that the plaintiff did extremely well following his right shoulder surgery and on physical examination, there was no detectable weakness. The range of motion of the shoulder joint had been restored and there was no instability or palpable pain around the right shoulder. He had a near normal shoulder examination. As a result, Dr. Regan was of the view that nothing further needed to be done. He also noted that the plaintiff has been able to work as he has done for the last two years as a faller. The plaintiff had some fatigue weakness which may be a "perceived disability"; however, there was nothing objective on the physical examination to illustrate that there was a disability at that time.
- [49] In the future, Dr. Regan says there is a small risk, approximately a 5% chance, of the plaintiff developing further pain in his shoulder as a result of arthritis.

Non-Pecuniary Damages

Law

- [50] In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal outlined the factors to be considered when assessing non-pecuniary damages at para. 46:
- [46] The inexhaustive list of common factors cited in *Boyd [v. Harris]*, 2004 BCCA 146 that influence an award of non-pecuniary damages includes:
- a. age of the plaintiff;
 - b. nature of the injury;

- c. severity and duration of pain;
- d. disability;
- e. emotional suffering; and
- f. loss or impairment of life;

I would add the following factors, although they may arguably be subsumed in the above list:

- g. impairment of family, marital and social relationships;
- h. impairment of physical and mental abilities;
- i. loss of lifestyle;
- j. the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, 2005 BCCA 54).

[51] The plaintiff provided the authorities set out below to substantiate quantum of non-pecuniary damages in the range of \$75,000 to \$95,000.

[52] In *Furlan v. The Owners, Strata Plan BCS3202*, 2016 BCSC 213, Madam Justice Loo awarded \$80,000 to a plaintiff who suffered many soft tissue injuries, but predominantly a shoulder injury requiring surgical repair of a labral tear which left him with constant pain within the shoulder joint. He described the pain in his right shoulder before the surgery as 10 out of 10, but after the surgery, sometimes seven out of 10 and usually three out of 10. He had difficulty sleeping on his right shoulder but he had regained range of motion in that shoulder and considered its strength to be 33% of what it was before the accident. For several months, his right arm was in a sling after his surgery

[53] In *Montgomery v. Williamson*, 2015 BCSC 792 [Montgomery], Mr. Justice Crawford awarded \$95,000 for non-pecuniary damages, including shoulder symptoms requiring surgery to repair a partial thickness rotator cuff tear, and removal of bursal tissue. In this case, the injuries to the shoulder likely pre-dated the motor vehicle accident, but the accident accelerated the degeneration of the shoulder, bringing the surgery on five to 10 years earlier than it would have been. This plaintiff also suffered neck and back injuries and myofascial pain affecting the cervical and paraspinal muscles that persisted at the time of trial.

[54] In *Mir Tabatabaei v. Kular*, 2015 BCSC 295 [Mir Tabatabaei], Madam Justice Duncan awarded non-pecuniary damages of \$75,000 for a 53-year-old plaintiff experiencing pain in his right shoulder and pain in his neck which persisted at trial. In that case, the plaintiff had not yet undergone shoulder surgery but there was a possibility that he would need to do so in the future.

[55] In *Smith v. Fremlin*, 2013 BCSC 800, aff'd 2014 BCCA 253 [Smith], Mr. Justice Groves awarded \$90,000 for non-pecuniary damages to a 31-year-old plaintiff who suffered soft tissue injury, including injury to her left shoulder which caused her significant pain up to the date of trial.

As a result of her injuries, the plaintiff changed careers. No shoulder surgery was required in Smith. Groves J. considered that the plaintiff, being forced through the action of another to interrupt her career path, and substitute a new, albeit related, career path, impacted this head of damages.

- [56] The defendant's authorities in this case suggest a non-pecuniary range of damages between \$55,000 and \$85,000, and are set out below.
- [57] In *Driscoll v. Deshaarnais*, 2009 BCSC 306, Madam Justice Gray awarded \$55,000 to a 40-year-old male plaintiff who ran his own landscaping business and suffered injury to his back, neck, and right shoulder. At the time of trial, he still had pain in at least the three to four out of 10 range. The plaintiff did not undergo surgery but had accepted the level of constant pain and was living with it. He had reduced capacity for repetitive reaching and overhead lifting, according to his physician, but was still capable of doing most of his work tasks. This plaintiff was considered to be stoic and inclined to push through pain until it became intolerable. He had reduced capacity to work and was no longer able to participate in some of the activities he enjoyed.
- [58] In *Langley v. Heppner*, 2011 BCSC 179, Mr. Justice Barrow awarded \$55,000 to a plaintiff who suffered a right shoulder injury, right neck injury and thoracic outlet syndrome. This plaintiff was in some degree of discomfort at all times but had not undergone surgery.
- [59] In *Jurczak v. Mauro*, 2013 BCSC 658, Mr. Justice Silverman awarded \$70,000 in non-pecuniary damages to a female plaintiff who suffered thoracic spine, neck and shoulder injuries and was left with constant neck pain, stiffness, and restriction of movement in her shoulder blades at trial. No surgery was required.
- [60] In *Cimino v. Kwit*, 2009 BCSC 912, Madam Justice Dillon awarded \$85,000 to a 44-year-old female plaintiff who suffered pain, numbness, tingling, and burning from her right shoulder to her arm and into her hand, and traumatic thoracic outlet syndrome, causing a permanent ongoing disability of such significant degree that she was required to take multiple pain medications in order to achieve personal and work functionality. This plaintiff was in constant pain and required daily synthetic morphine medication. It was determined that surgery was not an option for her.

Conclusion

- [61] The plaintiff suffered considerable pain and instability of his shoulder while waiting for surgery. This was a time period during which he saw no improvement. After 12 months, he then had to undergo the pain of surgery and a six-month recovery period. The surgery distinguishes this case from many of the defendant's cases that fall in the lower range.

- [62] The plaintiff is a stoic, motivated individual who enjoyed an excellent recovery because of his rehabilitation efforts so that he has a stable, fully mobile shoulder but he is not without chronic pain. There is no indication that this level three out of 10 pain is going to improve and I expect, given that it has not improved in six years, he will continue to experience it.
- [63] His shoulder pain will affect his productivity at work and in his recreational activities, which impact his enjoyment of life. He does not suffer the level of pain that Ms. Cimino does, however, I take into consideration that award is seven years old and may have been higher in 2016.
- [64] I award \$85,000 for non-pecuniary damages.

Loss of Earning Capacity

Law

- [65] The burden of proof for past events is a balance of probabilities: *Steenblok v. Funk* (1990), 46 B.C.L.R. (2d) 133 (C.A.). On occasion, this onus is mistakenly applied to hypothetical past events. However, the standard of proof of a balance of probabilities only applies to past events that actually happened: *Falati v. Smith*, 2010 BCSC 465 at para. 43, *aff'd* 2011 BCCA 45 [Falati].
- [66] Past hypothetical events, like future events, need only be shown to be a real and substantial possibility to be taken into consideration by the Court: *Athey v. Leonati*, [1996] 3 S.C.R. 458 [Athey]. The relative likelihood of their occurrence is a factor that affects the quantum of the plaintiff's award. As the Supreme Court of Canada explained in *Athey* at para. 27:
- [27] Hypothetical events (such as how the plaintiff's life would have proceeded without the tortious injury) or future events need not be proven on a balance of probabilities. Instead, they are simply given weight according to their relative likelihood: *Mallett v. McMonagle*, [1970] A.C. 166 (H.L.); *Malec v. J. C. Hutton Proprietary Ltd.* (1990), 169 C.L.R. 638 (Aust. H.C.); *Janiak v. Ippolito*, [1985] 1 S.C.R. 146. For example, if there is a 30 percent chance that the plaintiff's injuries will worsen, then the damage award may be increased by 30 percent of the anticipated extra damages to reflect that risk. A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation: *Schrump v. Koot* (1977), 18 O.R. (2d) 337 (C.A.); *Graham v. Rourke* (1990), 74 D.L.R. (4th) 1 (Ont. C.A.).
- [67] At para. 28, the Court in *Athey* went on to explain the types of past events that must be proven on a balance of probabilities. Such events include the negligent conduct of the defendant, and whether that conduct was the cause of the plaintiff's injuries. Once those events are proven on a balance of probabilities, they are taken as certainties.
- [68] Mr. Justice Saunders sets out these principles quite clearly in *Falati* at paras. 40-41:

[40] The full assessment of damages for such losses may involve, at least to some extent, consideration of hypothetical situations and contingencies - what might have happened, or what might yet happen, had the accident not occurred, as distinct from what actually has happened. However, particularly where the claimed losses are derived from something other than a measurable, conventional income stream, the determination of a plaintiff's prospective post-accident, pre-trial losses can involve considering many of the same contingencies as govern the assessment of a loss of future earning capacity: "The only difference is that knowledge of events occurring before trial takes the place of prediction" - Prof. Waddams, *The Law of Damages*, Looseleaf Ed. (2008) para. 3.360. When considering hypotheticals and contingencies in the context of a pre-trial loss, the same general principles which govern the assessment of lost future earning capacity may be equally applicable - Waddams, *ibid.* As stated by Rowles J.A. in *Smith v. Knudsen*, 2004 BCCA 613 at para. 29,

"What would have happened in the past but for the injury is no more 'knowable' than what will happen in the future and therefore it is appropriate to assess the likelihood of hypothetical and future events rather than applying the balance of probabilities test that is applied with respect to past actual events."

[41] Those general principles involved in the process of assessment include the following:

- The task of a court is to assess damages, rather than to calculate them mathematically - *Mulholland (Guardian ad litem of) v Riley Estate* (1995), 12 B.C.L.R. (3d) 248 at para. 43;
- The standard of proof is not the balance of probabilities; the plaintiff need only establish a real and substantial possibility of loss, one which is not mere speculation, and hypothetical events are to be weighed according to their relative likelihood - *Athey v Leonati*, [1996] 3 S.C.R. 458, 140 D.L.R. (4th) 235, at para. 27;
- Allowances must be made for the contingencies that the assumptions upon which an award is based may prove to be wrong - *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 at 79 (S.C.), *aff'd* (1987), 49 B.C.L.R. (2d) 99 (C.A.);
- Any assessment is to be evaluated in view of its overall fairness and reasonableness - *Rosvold*, at para. 11.

[Emphasis added.]

[69] As explained in the above passage, real and substantial possibilities that may have affected a plaintiff's pre-trial loss should thus be taken into consideration as positive and negative contingencies that increase or decrease the amount awarded under this head of damages.

[70] A recent example of such an exercise can be found in *Ilett v. Buckley*, 2016 BCSC 1407 [Ilett]. In *Ilett*, the plaintiff was a labourer who had worked for the Victoria Shipyards before the motor vehicle accident in question. Two considerations were raised that affected the quantum of his award for pre-trial loss of income. First, he was a student at the University of

Victoria prior to the accident, and had intended to quit his job at the shipyards within the next one to five years in order to attend university full-time. Secondly, the shipyards periodically laid off their labourers, and although they would often be rehired, potential layoffs would likely have affected Mr. Ilett's past income.

[71] Madam Justice Gray assessed Mr. Ilett's award for pre-trial loss of income in the following manner:

- a) She determined that Mr. Ilett likely would have continued to work at the shipyards for three years before returning to school full-time;
- b) She then calculated the amount Mr. Ilett would have earned if he had worked steadily at the shipyards for three years, and reached a figure of approximately \$260,000;
- c) From that figure, Gray J. considered the positive and negative contingencies that might have affected Mr. Ilett's income, including the positive contingencies that he was a hard worker who might have been promoted or earned overtime, and the negative contingencies that he likely would have been laid off for some periods; and
- d) She deducted 15% for contingencies from the \$260,000 figure, resulting in an award of approximately \$220,000.

Evidence

[72] The plaintiff had not filed income tax returns after 2008. In 2005, he earned \$126,205 from REM Contracting. His income for 2006 was reduced to \$31,000, as the company went bankrupt.

[73] In 2007, his T4 earnings were \$54,080. This is the year that he had a leg injury in November. He said most of his income was from Standing Stem Logging Contractors ("Standing Stem")

[74] In 2008, his T4 earnings were \$14,560 from Standing Stem. The rest of his income that year would have been from WCB benefits, but I do not know how much he received.

[75] The plaintiff has not provided evidence of his income for 2009 or 2010. In 2011, his T5007 shows receipt of WCB benefits in the amount of \$14,039. In addition, he has T4 income of \$79,239 from the Pallan Group.

[76] In 2012, the plaintiff's T4 income was \$122,438 from the Pallan Group for a full year. The plaintiff's record of employment, filed by the Pallan Group on September 2013, said that the plaintiff's pay up until September 2013 was \$68,408.

[77] After that, the plaintiff started working with Mr. Trembley in their partnership. The plaintiff's limited company receives \$12,000 a month. He has no documentation to prove this. Mr. Trembley did not give evidence and there is no proof of profit or loss incurred in the partnership.

Work History and Work Tolerance

- [78] The plaintiff had worked as a faller for Mr. Ford's company up until the time of his logging accident in 2007 and he had been earning \$600 per day. During this time, he was also working for Standing Stem. He continued to work for Standing Stem after the leg injury for a few months into 2008 because much of the work could be done from his laptop at home while he was recuperating. He had to stop doing the work in March 2008 because he could not go to the jobsite due to his leg injury.
- [79] It is the plaintiff's evidence that he was planning to return to work for Mr. Ford's company, 633086 B.C. Ltd., in August 2009, falling trees. He had trained all summer after his one unsuccessful day on May 1st and felt that he was in shape to go back to falling in August 2009.
- [80] On April 23, 2010, the plaintiff was assessed by WorkSafeBC for the calculation of a permanent functional impairment related to his leg injury, by disability awards medical advisor Dr. Gregory Franklin. The plaintiff reported to Dr. Franklin that he had constant pain in his left leg, ankle and foot. The pain started from the proximal third of his tibia just below the knee and shot down to the ankle and foot. The pain was aggravated by walking and was especially worse on inclines or uneven surfaces, standing, lifting and if resting the leg for a period of time. When standing, he tried to weight bear on the right side only. He reported stiffness and soreness of the leg if it rested for a period of time. He described severe cramping of the left foot. Swelling of the left leg and ankle varied with time. He had numbness and tingling distal to the proximal third of the left tibia which involved the lower legs circumferentially, including ankle and foot. At times he felt as if his foot were in a hot bath or wet boot. He had decreased range of motion of the left ankle and decreased strength of the lower left limb. When walking, the toe of his left foot was difficult to control (because of toe drop) and he tripped and stubbed infrequently. The plaintiff explained this happened when he walked barefoot.
- [81] The plaintiff was asked by Dr. Franklin to rate the level of function of his left lower limb on a scale of zero to 10, where 10 is the best, and he said it was at a three most days but goes down to a two on his worst days.
- [82] The plaintiff complained that cutting the grass took considerable time in April 2010 because he had to stop frequently and take breaks as his left leg ankle and foot swelled and became very painful. The lawn has a slight slope and walking on slopes exacerbated his pain. He complained that his leg pain was aggravated when driving for long periods of time. In April 2010, the plaintiff was considering finding a new career. Ascending and descending stairs caused a worsening of pain. He avoided ladder work.
- [83] The plaintiff's family physician filed a progress report on May 18, 2010, saying that the plaintiff was not medically capable of returning to duties full-time.

- [84] On the basis of the Dr. Franklin's examination, the disability awards officer concluded that the plaintiff was entitled to a 36.06% disability award, which is a significant award.

Finding

- [85] I cannot accept that the plaintiff could have returned to falling trees between August 2009 and May 2010 based on his reports to Dr. Franklin. He may have tried, but more likely than not, he would have been unsuccessful.
- [86] Having said that though, I think the plaintiff likely could have succeeded at working as a production manager for Standing Stem, because the work was primarily supervisory. Mr. Hearn, the principal of Standing Stem, gave evidence that Standing Stem wanted to hire the plaintiff in August 2009 to take over managerial duties and supervise the crew and, in addition, to assisting the company in attracting new contracts. Mr. Hearn was aware of the plaintiff's injuries and felt that he was ready to walk around the woods. This job did not involve a lot of field work. It would have required some attendance at the jobsite.
- [87] By August 2009, the plaintiff was frequently hiking on uneven terrain for the purpose of his rehabilitation and likely could have attended at the jobsite on a supervisory capacity. Mr. Hearn indicated that the job paid \$20 an hour with a weekly average of 50 hours a week.
- [88] The defendant questioned why the plaintiff did not take this opportunity at Standing Stem.
- [89] Immediately after the Accident, the plaintiff suffered from numerous injuries, which did resolve, but not until December 2009. He was then left with pain in his right shoulder and was concerned about re-injuring the shoulder. When it did not improve, he was put on the waiting list for surgery. Given the delicate nature of his shoulder joint and the fact that the plaintiff's symptoms were not resolved but getting worse, I find that this was a reasonable decision. The plaintiff said he did not take the job with Standing Stem because he did not want to re-injure himself, and I accept that explanation.
- [90] The plaintiff lost earnings from August 24, 2009 until Standing Stem ceased operation. Standing Stem stopped cutting logs in 2009, but still had to sort and sell their inventory. Mr. Hearn said that Standing Stem closed their operations sometime in 2010 but he is uncertain exactly when. For the purpose of this decision, I find that Standing Stem stopped operating half-way through 2010, closing on June 30th.
- [91] During this time, the plaintiff was still waiting for shoulder surgery. I have found that he was incapable of returning to falling during this time because of his leg injury, which was unrelated to the Accident. Dr. Regan expressed the opinion that the plaintiff was disabled from work due to his leg injury until mid-2010. I have to assume he meant that the plaintiff was disabled from the type of work he was engaged in prior to his leg injury.
- [92] The plaintiff had shoulder surgery and was fully recovered in March 2011.

- [93] But for the Accident on August 14, 2009, I find that the plaintiff could have continued to work for Standing Stem continuously until June 2010.
- [94] At the end of June 2010, he was sufficiently recovered from his leg injury to return to his previous employment, which is falling. I find that there is a real and substantial possibility that the plaintiff would have returned to falling on July 1, 2010 but for his shoulder injury. Had Standing Stem not ceased operation, he may have done both jobs.
- [95] I assume that during that time he would have taken two weeks off in the summer and at least two weeks off at Christmas.
- [96] I find that the plaintiff lost 9.5 months (38 weeks) of earnings from Standing Stem at \$1,000 a week or \$38,000. I accept the plaintiff's submission that a reduction of 20% should be made for other injuries or negative contingencies. That reduces the earnings loss claim to \$30,400.
- [97] I also find that the plaintiff lost income from falling from July 1, 2010 to May 1, 2011. Mr. Ford gave evidence that his annual pay for falling trees would have been \$56,000. This estimate already takes into account time off work for holidays and lack of work. For 10 months, his income loss would be \$46,666.67. I will apply a lower negative contingency of 10% for injury, since Mr. Ford's estimate already factored in holiday and lack of work. The reduced amount is \$42,000.
- [98] The combined award of \$72,400 must be further reduced by deducting income tax and employment insurance as per the provisions of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231. I will use a modest reduction of 20% as suggested by the defendant. That leaves a net award of \$57,920, which I will round up to \$58,000.
- [99] The plaintiff did start working in May 2011 for the Pallan Group as a lumber broker both in British Columbia and in Nicaragua. I have no evidence to evaluate why the Pallan Group did not hire him in 2010. He continued to work for the Pallan Group both in British Columbia and Nicaragua until the Pallan Group was forced to close its operations in September 2013. He earned \$79,230 from the Pallan Group in 2011, \$122,438 in 2012 and \$68,408 in 2013. Although he was not paid after the Pallan Group was forced to shut its operation in 2013, he continued to work for some period of time after that.
- [100] As I said earlier, Mr. Trembley and the plaintiff joined forces to complete the Pallan Group's last contractual commitment, and they have been working together ever since. Their joint venture now employs 45 contractors and they are expanding their operations.
- [101] I find that the plaintiff has not suffered any further past loss of earnings since May 2011.

Future Loss of Earning Capacity

[102] For an award of future loss of earning capacity, the plaintiff must show that he has suffered an impairment to his earning capacity and that there is a real and substantial possibility that the diminishment in earning capacity will result in a pecuniary loss. To quantify the claim, the plaintiff can either use a mathematical formula or capital asset approach: *Perren v. Lalari*, 2010 BCCA 140 at para. 32. The loss may extend over the course of the plaintiff's working career.

[103] In *Kwei v. Boisclair* (1991), 60 B.C.L.R. (2d) 393 (C.A.), Mr. Justice Taggart, speaking for the British Columbia Court of Appeal, said when it is not possible to assess future annual loss in using a mathematic formula, the correct approach is to consider the factors set out by Mr. Justice Finch, as he then was, in *Brown v. Golaïy* (1985), 26 B.C.L.R. (3d) 353 (S.C.) [Brown]. Taggart J. cited the Brown factors with approval:

[25] The trial judge, as I have said, referred to the judgment of Mr. Justice Finch in *Brown v. Golaïy*. Future loss of earning capacity was at issue in that case. It stemmed from quite a different type of injury than the injury sustained by the plaintiff in the case at bar. But I think the considerations referred to by Mr. Justice Finch at p. 4 of his reasons have application in cases where loss of future earning capacity is in issue. I refer to this language at p. 4 of Mr. Justice Finch's judgment:

The means by which the value of the lost, or impaired, asset is to be assessed varies of course from case to case. Some of the considerations to take into account in making that assessment include whether:

1. The plaintiff has been rendered less capable overall from earning income from all types of employment;
2. The plaintiff is less marketable or attractive as an employee to potential employers;
3. The plaintiff has lost the ability to take advantage of all job opportunities which might otherwise have been open to him, had he not been injured; and
4. The plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market.

[104] The plaintiff need only establish a real and substantial possibility of loss. There has to be some link to the evidence and the claim cannot be merely speculative. Hypothetical events are to be given weight according to their relative likelihood: *Athey* at para. 27.

- [105] Insofar as possible, the plaintiff should be put in the position he or she would have been in but for the injuries caused by the defendant's negligence: *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 106 at para. 185. The essential task of the Court is to compare the likely future of the plaintiff's working life if the Accident had not happened with the plaintiff's likely future working life after the Accident: *Gregory v. Insurance Corp. of British Columbia*, 2011 BCCA 144 at para. 32.
- [106] The plaintiff has referred me to three cases, previously discussed in relation to non-pecuniary damages, where loss of future earning capacity was awarded. In *Montgomery*, the plaintiff had returned to his self-employed sales position post-accident but his "abilities were 20-25% less than pre-accident". This loss of ability is described as being easily fatigued, less patient, short-fused, irritable and less motivated. There was evidence that he lost customers. His medical prognosis was that he was going to continue to suffer from chronic headaches, neck, and back pain in the future. The Court found that he was less capable overall of earning from all types of employment and that he would be less attractive or marketable to other employers. The Court accepted the plaintiff's claim for \$75,000 for future loss of earning capacity.
- [107] In *Mir Tabatabaei*, the Court found that the plaintiff's loss of earning capacity resulted in a gross income loss of \$7,500 to \$10,000 a year between accident and trial. The plaintiff could only work four-hour days, as opposed to his previous 10-hour days. The plaintiff was a carpet cleaner and his reduced stamina had directly resulted in a loss of income. The Court awarded \$125,000 for loss of future earning capacity using a mathematical calculation of continuing loss of \$7,500 to \$10,000 a year until the plaintiff retired.
- [108] In *Smith*, the plaintiff had to change career paths because of her injuries. She was planning to become a lawyer, but because of her injury, had changed her plan to teach law instead. The Court relied on the capital asset approach and awarded the plaintiff \$300,000 for future loss of opportunity.
- [109] The defendant referred the Court to *Morgan v. Galbraith*, 2013 BCCA 305. The 35-year-old plaintiff in that case was forced, due to injury, to leave his employment as a senior account manager at a bank. He continued to play lacrosse which he had done before the accident. He suffered no actual reduction in his income but when forced to leave lacrosse after a concussion not related to the accident, he had no banking career to go back to. On appeal, Madam Justice Garson said that in situations where the plaintiff's earnings after an accident are the same or similar to that which he or she earned before the accident, the onus is on the plaintiff claiming a loss of earning capacity to prove that there is a substantial possibility of an event occurring which will result in a loss of earnings. At para. 56, Garson J.A. said:

If the assessment is still to be based on the capital asset approach the judge must consider the four questions in *Brown* in the context of the facts of this case and make findings of fact as to the nature and extent of the plaintiff's loss of capacity and how that loss may impact the plaintiff's

ability to earn income. Adopting the capital assets approach does not mean that the assessment is entirely at large without the necessity to explain the factual basis of the award. *Morris v Rose Estate* (1996) 23 B.C.L.R. (3d) 256 at para 24 and 75 BCAC 263; *Mulholland (Guardian ad litem of) v Riley Estate* (1995) BCLR (3d) 248 at para 243, 62 BCAC 145.

[110] In *Zajackowski v. Grauer*, 2014 BCSC 711, aff'd 2016 BCCA 48, Mr. Justice Macintosh accepted the evidence of three supporting witnesses that the plaintiff had less energy and more pain after the accident but found that evidence did not lead to the further conclusion that the plaintiff worked less overall and earned less overall. In that case, the plaintiff's business had actually improved after the accident. Macintosh J. concluded that there was an insufficient factual underpinning for compensation for loss of earning capacity.

[111] The balance of the defendant's cases are fact specific and reject claims of loss of future earning capacity based on the absence of evidence to substantiate the claim: *Rabiee v. Rendleman*, 2015 BCSC 595; *Marcelino v. Francesutti & Others*, 2002 BCSC 1711; *Jiwani v. Borodi* 2014 BCSC 1164; *Moore v. Cabral et al.*, 2006 BCSC 920.

The Evidence

[112] In this case, the plaintiff is now working and earning the same income he earned before his leg injury and Accident-related shoulder injury, but his endurance has been affected by both injuries. WorkSafeBC has compensated him for the loss of endurance due to his leg injury.

[113] The plaintiff, at the time of trial, is working as a faller and supervisor in partnership with Mr. Trembley's company. The plaintiff is paid the regular falling rate of \$600 a day and he gets an extra \$50 a day for his supervisory activities. In addition to receiving a wage of \$650 a day, the plaintiff receives 50% of the partnership profits. Currently, the profits are being left in the partnership to fund its expansion. The profits have not been quantified.

[114] The plaintiff has not filed income tax returns since 2009 and the Court received no financial records from the partnership.

[115] The medical experts, Dr. Sohmer and Dr. Regan, say that there are no restrictions placed on the plaintiff's activities as a result of the shoulder injury.

[116] Dr. Regan says that the plaintiff had a near normal shoulder examination. He is able to work as he has done for the last two years as a faller with respect to his right shoulder. He has some fatigue weakness, which Dr. Regan characterized as a "perceived disability", but there is nothing noted on physical examination to illustrate that there was any significant objective evidence of disability. In the future, Dr. Regan says that there is a 5% risk of the plaintiff developing further pain in the shoulder as a result of arthritis. In his opinion, any surgery as a result of arthritis would not be Accident-related. I note that he did not give an opinion that this injury has accelerated the onset of arthritis in the plaintiff's shoulder.

- [117] Dr. Sohmer notes on physical examination that there is obvious atrophy of the right shoulder girdles noticeable on the trapezius compared to the left side. This is after the plaintiff had worked as a faller for one-and-a-half years post-surgery. Other than that observation, the remainder of his physical examination is the same as Dr. Regan's. The plaintiff had a full fluid active range of motion. He experienced pain at the extreme of internal rotation. He had no tenderness and no evidence of acromioclavicular joint pathology. The rotator cuff strength was normal and there was no instability.
- [118] The plaintiff reported to Dr. Sohmer that he has shoulder pain inside the shoulder joint constantly with intermittent exacerbations. He grades the pain in March 2016 (five-and-a-half years post-surgery) as three out of 10, with an increase to four or five out of 10 with activity. Activities requiring him to lift his right arm above shoulder level aggravate his symptoms. His shoulder fatigues easily and it still feels weak to him despite an exercise program.
- [119] The plaintiff reported to Dr. Sohmer a 10% reduction of productivity due to his shoulder symptoms (at trial, the plaintiff said he suffered a 15% reduction). This did not surprise Dr. Sohmer, who says that patient's shoulder joints are never perfect after a surgical repair and always have some limitations to some extent, especially with overhead activities. He is of the opinion that the rotator cuff tear and cartilage damage of the glenoid could contribute the plaintiff's ongoing symptoms.
- [120] Dr. Sohmer says that there are no restrictions on the plaintiff's activities. He is of the opinion that the limitations reported by the plaintiff five years after the surgery, and six-and-a-half years after the Accident, will continue into the future.
- [121] Dr. Sohmer is of the opinion that there is a risk of a further tear to the rotator cuff and future progression of the degenerative changes in the shoulder that result from the injuries the plaintiff sustained in the Accident. This is an area of divergence of opinion between the two experts. Dr. Regan is of the view that the degenerative changes in the shoulder observed shortly after the Accident were pre-existing because they could not have developed that quickly post-Accident.
- [122] Mr. Hearn has worked alongside the plaintiff since the Accident and has seen the plaintiff get tired earlier. He assists the plaintiff in carrying gas cans and pounding wedges because it is difficult to do and would slow the plaintiff down. Mr. Hearn says that the plaintiff is working at 75% of his former capacity. I reject this opinion because on cross-examination, it was clear that Mr. Hearn had not seen the plaintiff at work prior to the Accident and had nothing against which he could compare the plaintiff's post-Accident work rate or stamina.

[123] The plaintiff says that he has ongoing limitations in his right shoulder. If he has to lift his right arm above shoulder height, he has to stop periodically and stretch the shoulder and rest for a little while to get the pain to calm down. In examination-in-chief he said he was 15% less productive but did not explain how he arrived at that number. This has not resulted in a pecuniary loss to him. He is earning the same as he was before plus participating in the profit of the partnership, if there is any.

Finding

[124] I accept the evidence of the plaintiff and his description of his ongoing limitations. I prefer the opinion of Dr. Sohmer as it relates to the plaintiff's ongoing limitations. Dr. Sohmer provided a more detailed physical examination. I am persuaded by the evidence of muscle atrophy five years post-surgery that the plaintiff experiences shoulder fatigue. Dr. Sohmer places more weight on the plaintiff's subjective complaints, whereas Dr. Regan is quite dismissive of them, referring to them as "perceived disability". The plaintiff is a credible witness and by all accounts, a hardworking, stoic individual who has returned to a very physically demanding line of work despite two significant injuries. I get the impression from him that he would much rather be out in the woods working than sitting in a courtroom describing his aches and pains.

[125] I reject the claim that the logging partnership is losing money because of the plaintiff's injuries. There is no evidence to support this claim.

[126] The prospect of future surgery because of progressive arthritis is too speculative to be compensable. I have accepted Dr. Sohmer's evidence that the damage to the glenoid surface was a direct result of the Accident and not wear and tear, but I have not accepted the fact that future surgery is a substantial possibility related to the Accident that will result in loss of earnings. I have compensated the plaintiff for future pain from early arthritic changes in his award for non-pecuniary damages.

[127] The plaintiff is not currently suffering a pecuniary loss and so a loss of earning capacity award in this case does not lend itself to mathematical precision. That is not, however, the end of the analysis. The plaintiff is not in the same position he was in before the Accident.

[128] If the logging partnership between the plaintiff and Mr. Trembley continues, the plaintiff may not suffer pecuniary loss because of his skills in supervising, log grading and negotiating new contracts. However, looking back over the five pre-Accident years, two of the companies he worked for were forced to close their operations due to a downturn in the forestry industry. It is a real and substantial possibility that this might happen again and that the plaintiff may, in the future, have to look for work as a faller or in some other capacity. As a middle-aged worker with physical limitations, he is less marketable. The significant leg limitation is being compensated and does not factor into my decision. His right shoulder limitation is less significant but does render him less marketable. He has other skills that may off-set these limitations but he is less productive falling trees than he

was before this Accident.

[129] Applying Brown at para. 105, I conclude that:

- a) the plaintiff has been rendered less capable overall of earning income from all types of employment;
- b) the plaintiff is less marketable or attractive as a potential employee because of his fatiguing shoulder;
- c) the plaintiff has lost the ability to take advantage of all job opportunities that might otherwise have been open; and
- d) the plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market.

Conclusion

[130] Using the capital asset approach, I award the plaintiff a further \$45,000 for loss of future earning capacity to compensate him for being less marketable overall for falling positions in the future, if he is forced to compete in the labour market, which is a real and substantial possibility in the forestry industry.

SPECIAL DAMAGES

[131] The plaintiff claimed \$1,000 for hiring someone to cut his hedge. He had no invoice and could not establish whether this had to be done before or after the Accident. As a result, I must deny this small claim.

SUMMARY

[132] In summary, damages are awarded as follows:

- 1. Non-pecuniary damages: \$85,000
- 2. Past loss of earning capacity: \$58,000
- 3. Future loss of earning capacity: \$45,000
- 4. Special Damages: \$0
- 5. Total award: \$188,000

COSTS

[133] The plaintiff is entitled to his costs at Scale B. If the parties wish to advise the Court of a formal offer, they may do so in written submissions filed in the court registry with instructions to deliver a copy to me by no later than two weeks from the date of release of this decision. Responding submissions must be filed and delivered no later than two weeks from the date of receipt of the first submissions. A reply must be filed and delivered within one week of the receipt of the response.

"Young J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/16/15/2016BCSC1544.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mitchell-v-martin-2016>

Prepared on 29 October 2026 · Esheria