

CANADA / JUDGMENT

Samimi v. Omar

2025 BCSC 1767

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1767 Samimi v. Omar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Samimi v. Omar,

2025 BCSC 1767

Date: 20250911

Docket: M189137

Registry: Vancouver

Between:

Zahra Samimi

Plaintiff

And

Mohammad Omar

Defendant

- and -

Docket: M212402

Registry: Vancouver

Between:

Zahra Samimi

Plaintiff

And

Conrad Ernest Visser

Defendant

Before: The Honourable Justice A. Ross

Reasons for Judgment

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Place and Date of Trial/Hearing:

Vancouver, B.C.

April 2-4, 8-11 & 15-16, 2024

March 3-5, 7 & 10-14, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 11, 2025

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Introduction

- [1] The plaintiff was involved in two motor vehicle accidents on October 3, 2016 (the "First Accident"), and on January 31, 2020 (the "Second Accident"). Liability is admitted by the defendants for both accidents. The plaintiff claims for damages arising from her injuries.
- [2] At the time of the First Accident, the plaintiff was 17 years old and attending high school. At the time of the Second Accident, she was 20 years old. Not surprisingly, her career plans were not yet solidified. She says she intended to pursue a career as a police officer.
- [3] The plaintiff claims that the residual symptoms from the two accidents render her disabled from, or limited in, competitive employment. Those symptoms include chronic pain, headaches, neuro-cognitive issues, and mood issues. She relies on four expert reports.

- [4] The two sets of defendants are represented by the same counsel. The defence takes a view of the evidence that is diametrically opposed to the plaintiff's. The defence position is that the evidence discloses that the plaintiff's complaints cannot be believed. They submit that Ms. Samimi misrepresented her condition to the plaintiff's experts. In support of that submission, they rely on two main sources of evidence: social media and YouTube videos. The social media posts show that the plaintiff has undertaken a great deal of international travel over the past few years. The YouTube videos show the plaintiff at a dance club where her boyfriend DJ's. She is seen behind the DJ deck dancing and socializing.
- [5] The defence submits:
- a) Ms. Samimi's lifestyle does not accord with the person described in the plaintiff's expert reports.
 - b) Hence, the plaintiff's credibility is in issue. Did she accurately describe her abilities to the experts?
 - c) If the plaintiff is not credible, then there is no foundation for the expert reports upon which she relies.
 - d) If the expert reports cannot be relied upon, then there is no evidentiary basis to connect the two accidents to her (alleged) current symptoms.
 - e) In the alternative, if causation is found, then her injuries do not limit her employability.
- [6] In addition, the defence relies on their own expert, a physiatrist, as an expert who has taken a "common sense" view of the entirety of the evidence.
- [7] The plaintiff's counsel acknowledges that there are issues with the plaintiff's evidence that must be addressed and reconciled.
- [8] I should note here the disjointed nature of the trial. It commenced on April 2, 2024. Due to scheduling problems, it was then adjourned for 11 months. It completed in March 2025. This schedule was obviously not ideal for continuity. I thank all counsel for their efforts.

Issues

- [9] I need to decide:
- a) Credibility and reliability.
 - b) On the issues of causation and disability, do I accept the opinions of the plaintiff's experts:
 - i. Dr. Raphael Chow, a physiatrist;
 - ii. Dr. Izabela Schultz, a neuropsychologist;
 - iii. Mr. Russell McNeil, an occupational therapist;
 - iv. Mr. Clae Willis, a vocationalist.

- c) Do I accept the opinions of the defence expert, Dr. Paul Chapman?
- d) Given my findings on the experts, and the whole of the evidence, what damages flow from the two accidents?

Background Facts

[10] Given the time that has lapsed between the First Accident (October 3, 2016) and the start of the trial (nearly eight years), a substantial portion of the evidence at trial was dedicated to the chronology and the events in the plaintiff's life. To create an understandable narrative, I have set out the important events of her life under the following headings:

- a) The plaintiff's life before the First Accident;
- b) The First Accident and the injuries reported;
- c) The plaintiff's life after the First Accident;
- d) The Second Accident and the injuries reported; and
- e) The plaintiff's life after the Second Accident.

[11] I then discuss the issues of credibility and the expert evidence.

[12] Much of the chronology that follows was documented on social media by the plaintiff. As a result, the timeline described below is not in dispute.

The Plaintiff's Life Before the First Accident

[13] The plaintiff was born in Afghanistan in February 1999.

[14] By any measure, the plaintiff had a difficult childhood.

[15] The plaintiff never knew her father. She was raised by her mother with her siblings.

[16] The plaintiff attended school for two years in Afghanistan. She testified that she suffered two sexual assaults when she a little girl in Afghanistan. I mention this because she has been diagnosed with post traumatic stress disorder (PTSD).

[17] The plaintiff's first language is Dari, a dialect of Farsi. Her second language is Turkish, and her third language is English, which she learned in Canada.

[18] When she was 10 or 11, the plaintiff's family escaped Afghanistan, through Iran, into Turkey. She described crawling through tall grass to avoid border guards. She remembers gunfire and screaming. At one point, the family hid in a pond to avoid approaching officials and tanks.

- [19] The family eventually reached Turkey, and they were settled as refugees in the city of Van. Tragically, in 2011 an earthquake struck eastern Turkey and destroyed much of that city, including the plaintiff's family home. The family was forced to live in a tent in a city park until they were relocated to another city.
- [20] The plaintiff's family arrived in Canada as refugees in early 2013. She was 14 years old. She started high school at Byrne Creek High School in Grade 9 after the summer of 2013.
- [21] The plaintiff had emotional difficulty adjusting to life in Canada. Within the household, her mother was strictly religious and wanted the plaintiff to wear a hijab. The plaintiff's social life was restricted. There was tension between the plaintiff and her mother.
- [22] In 2015, at age 16, the combined stresses in her life caused the plaintiff to attempt suicide. She was later assessed by a psychiatrist who found she had anxiety and depression. The same report (before the First Accident) found that those conditions were in remission.
- [23] The plaintiff testified that after she was assessed by the psychiatrist, the conflict with her mother eased. Her mother became more liberal and less restrictive. Thereafter, the plaintiff was not required to wear a hijab.
- [24] The plaintiff testified that she was very fit and active before the First Accident. She would hike the Grouse Grind and Quarry Rock with her brother. She also worked out at a gym.
- [25] In 2015 the plaintiff started an Instagram account. She posted videos discussing politics and religion. The nature of those posts evolved, and she was soon posting pictures of herself. She also started modelling in 2015 at the age of 16.
- [26] The plaintiff started working before the First Accident. When she was 15, she started volunteering at the Aroma Bake House. She volunteered for seven to eight months before she was hired as a paid employee. She earned \$10/hour working 15- 20 hours per week, mostly on weekends.
- [27] Her next job was as a hostess at Uncle Willy's Buffet, in Burnaby, BC. She worked 20-25 hours per week for about six months. She quit that job and started at TipTop Tailors as a salesperson. She greeted customers and helped them pick out clothing items. She held that job at the time of First Accident.
- [28] The job at TipTop was the genesis of the plaintiff's work as a model. While at work, a customer took a picture of her without her consent. She was upset, but, upon investigation, she learned that he was a legitimate photographer. She agreed to do a photo shoot at a local gun range. Those photos were included in a calendar. She earned \$250.
- [29] The plaintiff testified that her career goal (pre-First Accident) was to become a police officer. Her physical training was driven by her motivation to pursue that career. This career goal was, to some extent, driven by her upbringing and political views. She wanted to change the male dominated narrative of her culture.

- [30] While in high school, she joined a Vancouver Police Department ("VPD") youth program. That program ran after school once per week. The training was both in-class and hands-on. The training included work with police dogs, cars, and emergency response situations. The program was outside of school hours. It lasted for a few months in 2016, and her work completed before the First Accident (although her graduation ceremony occurred after).
- [31] During this period, she was also involved with several programs aimed at helping refugees and improving human rights. As part of that volunteer work, she facilitated workshops for the Immigration Service Society of B.C. (ISS).
- [32] The plaintiff was not particularly academically inclined. This was true both before and after the First Accident. In the core academic courses (Science, Math, and English) she received marks in the "C" range with one "B". She did achieve four "A" grades in non-academic courses. Notably, two of those grades were achieved after the First Accident. (I note that none of the plaintiff's experts had access to her high school transcripts.)
- [33] That was the status of the plaintiff as of the First Accident.

The First Accident and the Injuries Reported

- [34] The First Accident occurred on October 3, 2016. Liability is admitted. It was a single-vehicle accident.
- [35] The plaintiff testified that the First Accident occurred on Boundary Road. The defendant, Mr. Omar, was driving. She was a seat-belted, front passenger. She testified that Mr. Omar was speeding. She told Mr. Omar to slow down, but he did not comply. At one point he took his hands off the wheel, leading directly to the accident.
- [36] The plaintiff recalls the entirety of the First Accident. (As I discuss below, there is no expert report from a qualified expert opining that she suffered a brain injury.) She testified about the lead-up to, and the hearing of, the crash of the impact. She closed her eyes and heard a "boom, boom, boom". She recalls hitting her head as the car crashed. She recalls being scared and confused.
- [37] In the First Accident, Mr. Omar's car rolled a few times and eventually ended upside down. The plaintiff was pinned in the car, and she had to wait for emergency personnel to extract her. She felt like she was in the vehicle for about 15-20 minutes. During that time, she smelled gasoline, and she thought the car was going to explode. She felt completely helpless and worried she was going to die. She was placed in an ambulance with a neck brace. She could feel some bumps on her head.
- [38] She says she has no memory of the ambulance ride. She recalls being at Vancouver General Hospital and seeing her sister. She was assessed and released the same day.

The Plaintiff's Life After the First Accident

- [39] The First Accident occurred near the beginning of the school term for her Grade 11 (October 3, 2016).
- [40] The plaintiff testified that she took one semester off high school immediately after the First Accident. She was not able to go back to work at TipTop Tailors. She did attend the ceremony and receive her certificate from the VPD course in December 2016.
- [41] Although the plaintiff claimed at trial that the First Accident delayed her graduation, I do not accept that evidence. To be frank, this calculation constitutes some amount of guesswork. The plaintiff's school records are a bit mixed up because she took some courses out of order. However:
- a) the accident occurred near the beginning of Grade 11 (October 2016);
 - b) in the ordinary course, she would have proceeded to Grade 12 in September 2017, and graduated in June 2018;
 - c) in fact, she graduated in January 2018, which was six months early. She did not complete a full course load in Grade 12.
- [42] To achieve this early graduation, the plaintiff returned to school in January 2017, completing Grade 11 in June 2017. During that school term, she also travelled to Victoria (in January) and Winnipeg (in February and in April) for youth conferences related to immigration. She was also involved in some modelling work, including a runway fashion show at the Hudson's Bay in March. She also went snowshoeing with an ISS group in April 2017. Hence, she was active by the second term of her Grade 11 year (within eight months of the First Accident).
- [43] In the summer of 2017, the plaintiff enrolled for the Burnaby Fire Academy Youth Program. Although she was limited in the physical aspects of some parts of the program, she managed to complete other rigorous activities, including rappelling down the side of a 70-foot building.
- [44] In order to achieve her diploma in January 2018, she only took four courses in Grade 12 (during the Fall of 2017).
- [45] The plaintiff testified that she attempted to return to work at TipTop Tailors after graduation, but decided she was unable to work with her injuries. The job required long periods of standing which, she testified, she could not do.
- [46] In August 2017, the plaintiff started a job at a Cactus Club. She testified that her first day of work at Cactus Club was August 8 and her last day was August 12. She claimed that the work increased her pain. However, she conceded that her family advised her not to continue with the job.
- [47] In September 2017 (while still in high school), the plaintiff got a full-time job as a front desk concierge at a residential building in Coal Harbour. The job entailed working at the front desk, working on computers, and filling out activity reports. She also took care of guests and

received packages and payments. She patrolled the premises and addressed issues in the parking lot. Her starting wage was \$17 an hour, but she received a raise to \$20 an hour. She testified that, during this period, she continued to experience knee and lower back pain. She also testified that she had memory problems.

- [48] When she got the concierge job, the plaintiff was living with family members in East Vancouver. She was dating a man who lived close to Coal Harbour. She decided to move in with him, in part, because he lived close to her work.
- [49] The plaintiff testified that during her time working at the concierge job, she was working on herself, both mentally and physically, and she was in a "really good state of mind". She felt that the work was good for her mental health. She was working full time, as well as finishing high school. She worked at the concierge job until September 2018 (i.e., for 12 months). She earned \$38,772 during that period.
- [50] Unfortunately, the plaintiff's boyfriend at the time had mental health issues, and the relationship became toxic. He interfered with her work by calling multiple times a day. He would threaten suicide if she suggested ending the relationship. Ultimately, there was a police incident at their apartment in February or March 2018. The boyfriend was taken away by the police. The plaintiff retrieved her belongings from their apartment, and the relationship ended. She acknowledged that this breakup was traumatic. She moved back to her mother's house, but friction with her mother resurfaced. As a result, she rented an apartment close to her work in the Summer of 2018.
- [51] The plaintiff's experts discuss her drug and alcohol use over time. To some extent, they link it to the First Accident.
- [52] The plaintiff testified that in 2018 she was drinking because her physical pain had worsened. Her evidence on this issue was not consistent. The plaintiff's evidence was that her drinking started after she broke up with her boyfriend and she moved into her own apartment in the summer of 2018. She confirmed that she did not drink while she was in the relationship. Based upon that evidence, she started drinking in the summer of 2018, and by the end of that year, she was drinking heavily. She had at least two visits to the hospital emergency room due to intoxication. She advised her family doctor in December 2018 that she felt unable to stop drinking.
- [53] Based on this evidence, I find that any issues with alcohol commenced more than 18 months after the First Accident, and after the traumatic break-up with her boyfriend.
- [54] During 2018, the plaintiff also enrolled in a program at Simon Fraser University for the Police Academy. The program only involved class work, mostly group discussions. She did not complete this program, although there was no clear reason in the evidence. She testified that she was assigned to observe interviews conducted by police officers. She did not have difficulties performing these tasks.

- [55] The plaintiff testified that during the latter half of 2018, she struggled with ongoing pain and mood issues. She testified that she did not work in the fall of 2018 because she was going through a lot of mental issues. However, as noted at a different point in her testimony, she described late 2018 as a good time in her life. Further, her activities during that period tend to contradict the narrative that she was struggling and unable to work. Specifically:
- a) She continued to be involved with the ISS in 2018. She continued to do volunteer work and travel to speak at conferences. For example, in June 2018, she flew to Toronto for a conference on refugees. On the day of her flight, she suffered a fall while rollerblading in Stanley Park. She injured her right knee but was still able to catch the flight to Toronto which departed later the same day. She made a presentation at York University to the Canadian Council for Refugees. Later that day, her knee injury required a hospital visit in Toronto. She undertook this trip and the requirements of the conference while still working her full-time concierge job.
 - b) She testified that, despite her activities, she was having difficulties with her volunteer activities, most notably, the facilitation of workshops. She found the long hours difficult. She says she struggled with the travel, needing to stretch and walk the aisle during longer flights. However, she continued to volunteer for these organizations.
 - c) In the early fall of 2018, the plaintiff attended a gala fundraising event put on by the "Spark Foundation" which encourages youth participation and education. Arising from that event, she received an invitation to attend a conference sponsored by the Spark Foundation. In November 2018 (after leaving the concierge job), she travelled with the Spark Foundation to Washington, D.C., and New York City where the group visited the American Red Cross, the U.S. capitol, and the United Nations Headquarters.
- [56] I have difficulty reconciling the plaintiff's evidence of her limitations in late 2018 with the evidence of her volunteer involvements.
- [57] The evidence of the plaintiff's involvement in volunteer organizations ends at the end of 2018. However, the defence notes that this ending coincides with the beginning of a long stretch of international trips in 2019:
- a) New Year 2019, Los Angeles, USA;
 - b) March 2019, Los Angeles, USA;
 - c) May 2019, Los Cabos, Mexico;
 - d) May 2019, Victoria, BC;
 - e) December 2019, Manzanillo and Tijuana, Mexico.
- [58] The plaintiff testified that she was in a "dark place" during 2019. I address this period further under the heading "Credibility and Reliability". She testified that she attended counselling sessions from May through December 2019.

- [59] The defence places particular focus on her two trips to Mexico. Each trip was taken with a different boyfriend. At trial, the plaintiff was unable to provide a last name for either of these boyfriends. Of note, during this period in 2019, she was unemployed. The second boyfriend, "Nico", gave her cash of approximately \$2,200 per month while they were dating in the latter half of 2019. I have difficulty attributing the plaintiff's "dark place" to the First Accident which occurred three years prior.
- [60] During 2019, the plaintiff commenced, but did not continue with, several jobs, including retail sales jobs at Hugo Boss and Mavi Jeans.
- [61] Also, in the fall of 2019, the plaintiff began attending Coquitlam College. She had received a scholarship to attend this college based upon an essay she wrote in high school. She took courses in sociology, business, and psychology. She attended two days per week, usually on the weekends. While in school, she lived with her family in Langley.
- [62] The plaintiff testified that, leading up to the Second Accident, she was still experiencing pain in her upper back, lower back, neck, and shoulder injuries. She experienced headaches, but they were not as severe.

The Second Accident and Injuries

- [63] The Second Accident occurred on January 31, 2020.
- [64] The plaintiff was riding as a passenger in her brother's car in Langley. Their vehicle was proceeding through a green light when the defendant's vehicle T-Boned them.
- [65] Due to the impact, the plaintiff's chest hit the dashboard. She recalls crying and her brother trying to calm her down. Her door was jammed. She immediately felt pain in her head and her hip. The police attended, and she was taken to the hospital by ambulance. She was released the same day.
- [66] At the time of the Second Accident, she was living with her family in Langley and attending Coquitlam College. She was not working.

After the Second Accident

- [67] The plaintiff says that the Second Accident exacerbated all of her injuries from the First Accident.
- [68] The COVID-19 pandemic, and the related lockdowns, began about six weeks post accident. All of her activities and treatments were affected. There is little information in the form of social media postings from 2020.
- [69] The records show that after the Second Accident, but prior to the COVID lockdowns, the plaintiff sought chiropractic treatments until early March 2020. Those treatments re-started in August, presumably when restrictions eased. She also pursued counselling.

- [70] The plaintiff says that the injuries from the Second Accident directly caused her to quit her courses at Coquitlam College. No records from the school were produced. There is no evidence that she sought accommodations from the school. There is also no evidence to the contrary.
- [71] The plaintiff testified that she sought work in the summer of 2020. She moved out of her mother's house and rented an apartment with her sister Narges Samimi in the downtown area. During the summer of 2020, she held two short-term jobs. She says she left them both due to back pain. She testified that her ongoing pain and her inability to pursue a normal life led to a downturn in her mood.
- [72] Also in the summer of 2020, she started dating a Mr. Khan. That relationship lasted approximately 18 months. I find that relationship to be relevant in a negative way.
- [73] The plaintiff testified that her mood improved in the fall of 2020. She and her sister were recruited for an internship at a Dance Centre in downtown Vancouver. She worked four days a week. The position involved administrative work in the office, but she was also responsible for sanitizing the dance studio and managing events. She received some accommodations due to her limitations. She avoided any heavy lifting. The position lasted six months, but she said she did not work during the last week because of her accident-related injuries. She was paid \$2,000 a month.
- [74] After the dance studio position ended, she applied for a job at Harry Rosen, a men's clothing store. She testified that she left after receiving training because the sales staff are required to stand up the entire time while on the floor.
- [75] She testified that she then took time off to recover. There is little information regarding her activities in late 2020. However, at the beginning of 2021, she enrolled in the BC Real Estate Trading Services Course, through the University of British Columbia. It is a self-directed program of study. The requirement is that the course work must be completed within two years of commencement. The lectures were online. She testified that her symptoms affected her progress. She said she struggled with pain and memorization. Ultimately, she was unable to complete the course because she could not pass the English language proficiency test requirements. Her failure to complete that test was not related to either accident.
- [76] During 2021 she sought various forms of therapy including physio, massage, and counselling. She also applied to the province for Persons with Disability status but was denied. However, she has been receiving government social assistance of \$1,060 per month since July or August 2021.
- [77] In January 2022, the plaintiff was physically assaulted by her boyfriend, Mr. Khan. They had an argument outside a Yaletown restaurant. The plaintiff testified that, during the assault, he bit her on the cheek, put his hand around her neck for 10 seconds, and punched her in the chest. He also knocked her to the ground. This assault occurred on the street. Passersby intervened, and she was taken to Vancouver General Hospital ("VGH"). The notes of the

social worker at VGH record the plaintiff's concern about her boyfriend. The defendants submit that her evidence at trial was not credible in respect of the hospital records. I discuss that evidence under the heading "Credibility and Reliability".

- [78] In April 2022, the plaintiff found a job as a receptionist at a law firm. She did not survive the probationary period. This was a full-time position. The salary was approximately \$21 an hour. She testified that she had two flare-ups of neck pain. She saw her doctor, and he told her to take some time off. She said she was taking a lot of breaks during her shift. As discussed below, the receptionist role is a job that most experts believe that she can perform (physically).
- [79] The plaintiff concedes that at some time prior to, or during, 2022, she developed a habit of using cocaine every day. The plaintiff's counsel described this as a form of self-medication. I do not accept that characterization. I discuss this issue further under the heading "Expert Reports".
- [80] In the summer of 2022, the plaintiff undertook a number of trips abroad:
- a) In mid-August, she was recruited to work as an interpreter for a construction company in Turkey. She assisted with meetings between Farsi and Turkish speakers. She recalls being paid \$2,000 per week.
 - b) However, after the first week, she spoke with her mother and brother (who were also in Turkey at the time). On their advice, she quit the interpreter's position.
 - c) Rather than return home to Vancouver, she then travelled to Bulgaria where she met (in person) with a pop singer whom she had previously met online. She was in Bulgaria for two days.
 - d) After Bulgaria, she flew to Sweden to visit friends of her family. She posted a photo of herself in Gothenburg on August 22, 2022.
- [81] The plaintiff had no apparent source of funds to finance these travels (apart from the job in Turkey). She testified that she borrowed money from a man named "John". She was unable to describe any basis upon which John would lend her money when there was no real prospect of her repaying him.
- [82] She testified that these travels flared her accident-related pain. However, within days of returning to Vancouver, she met and started dating her current boyfriend, Mr. Pau Vila-Peterson. He works as a DJ and operates a dance club. Events at his club typically run from 11:00 p.m. to 6:00 a.m. She met him at his club. Soon after meeting, the new couple travelled to Seattle in late August 2022.
- [83] The defence submits that these multiple trips, in the latter half of August 2022, indicate that she was able to carry out a number of activities that she wanted to complete.

- [84] I have noted above some of the plaintiff's boyfriends. Based on the plaintiff's testimony, I infer that all the boyfriends before Mr. Vila-Peterson were a bad influence upon her. Those poor choices appear to have changed in August 2022. Mr. Vila-Peterson appears to be a good influence. She had a daily cocaine habit when she met him. He demanded that the plaintiff cease using cocaine. She did.
- [85] The plaintiff continued to travel extensively in 2022. In October 2022, she flew from Vancouver to Rome, Italy, by herself for two or three days. She then flew to directly to Havana, Cuba, where she met Mr. Vila-Peterson and his friends. The plaintiff had no explanation for her trip to Rome, apart from wanting to see the city. There was no evidence of how she financed this trip.
- [86] In November, the couple travelled to Montreal to attend a concert.
- [87] In early 2023 the couple travelled to:
- a) Kelowna in mid-February;
 - b) Las Vegas in early March;
 - c) Spain in late March.
- [88] The trip to Spain was to visit Mr. Vila-Peterson's family. They stayed three weeks.
- [89] In September 2023, the plaintiff debuted as a DJ at Mr. Vila-Peterson's club. She DJed a set of 90 minutes. She was on her feet for the entire set. She performed another set on November 25, 2023. I return to this evidence when discussing the expert reports.
- [90] In February 2024, the plaintiff again travelled to Spain with Mr. Vila-Peterson. They attended a music festival and went camping.
- [91] As noted above, the trial commenced on April 2, 2024. Due to scheduling problems, it was then adjourned for 11 months. The trial completed in March 2025. At the time of trial, the plaintiff was receiving social assistance benefits. She was living with her boyfriend.

Video and Social Media Evidence

- [92] Most of the time at trial was devoted to evidence contained in social media posts and YouTube videos.
- [93] As noted above, the social media posts allow an accurate recounting of the timeline of events since the First Accident.
- [94] Of particular note, regarding the video evidence: at some point just before the beginning of trial (after the expert reports had been exchanged), the defence learned of, and obtained, videos posted by the plaintiff's boyfriend to promote his club. The videos were shot from a stationary camera aimed at the DJ "deck". The plaintiff's boyfriend is one of the DJs. The videos are up to two hours in length. The plaintiff is often seen behind, or beside, her boyfriend. She is dancing, chatting, and socializing. She engages warmly with a number of

people, with whom she appears to have a friendly relationship.

- [95] In my analysis below, I am cognizant that photos and videos are unlikely to expose the true nature of a person's condition. It is easy to pose and smile for a picture while in pain. Further, people rarely post on social media the negative aspects of their lives.
- [96] However, even with that caveat, I find this evidence helpful. The social media posts disclose a timeline and a number of activities (mainly travel) that I must consider in the light of the expert opinions. In my opinion, the videos depict the plaintiff in a light that stands in stark contrast to the person described in the plaintiff's expert reports.

Collateral Witnesses

- [97] The plaintiff called several family members, friends, and former employers to testify.
- [98] The plaintiff's mother, Marzieh Mohammadi, testified. Her evidence was very general. She had little ability to discern between plaintiff pre- and post-accidents. The general force of her evidence was that the plaintiff was wonderful and ambitious before the accidents (she was going to be a police officer) and now she cannot. Ms. Mohammadi did not know, for example, that the plaintiff had been modelling, travelling, or DJing after the accidents. I consider hers to be the evidence of a mother who sees no faults in her daughter. I do not consider her testimony helpful in my consideration of the issues I must decide.
- [99] The plaintiff's sister Sadighe Samimi testified. Her knowledge of the plaintiff pre-accident is limited. She left the family home (in Afghanistan) when the plaintiff was six. She returned to live with the family in August 2019. As to the plaintiff's current condition, she testified that she gives the plaintiff massages at home. However, she has not seen much of the plaintiff since the plaintiff moved out of the family home in September 2020. She also testified that the plaintiff does not attend family birthday parties because she is too tired. The video evidence from the club, showing the plaintiff dancing late into the morning hours, suggests that any absences are not accident-related.
- [100] The plaintiff's brother, Kazem Samimi, testified. He came to Canada several months after the plaintiff (in November 2013). Thereafter, he lived with the family for two months before moving in with his wife. In 2019, he moved back in with the plaintiff and her mother. He described the plaintiff as caring, friendly, smart, and social. He testified that he witnessed the plaintiff not socializing or hanging out with her friends. She did not do chores around the house. He noted that she no longer talks about her future.
- [101] The defence notes that the video evidence indicates that the plaintiff has a variety of friends and she has no trouble socializing. I accept the defence submission.
- [102] The plaintiff's sister Narges Samimi testified. She attended high school with the plaintiff. After the First Accident, she noted the plaintiff became withdrawn and relied on painkillers.

- [103] Narges Samimi saw less of the plaintiff after she moved out of the family home in the Fall of 2017.
- [104] The two sisters worked together at the Dance Centre in 2020. The plaintiff did not lift heavy objects. She continued to take pain killers.
- [105] Narges Samimi supported her sister financially.
- [106] The plaintiff also called a friend from high school, Marzia Rasouli. In my opinion Ms. Rasouli had little relevant evidence. The two met in Grade 12. Ms. Rasouli left high school in 2017 because she got pregnant. That was just after the First Accident. She described the plaintiff (pre-accident) as happy, active, and a hard worker. She does not recall learning about the First Accident. After she left school, she had little contact with the plaintiff, but they have reconnected more recently.
- [107] The plaintiff also called Mr. Rudolfo Cres-Carpio. He met the plaintiff in the summer of 2021 at an outdoor concert, and they became friends. They see each other usually twice a week. He describes the plaintiff as loving, kind, and a great friend. He attends the same nightclubs as the plaintiff. He has seen her tire easily, tune-out and withdraw from the crowd. He notes that she "takes time to breathe". He noted that the plaintiff had been stressed about the trial.
- [108] In my opinion, the witness who provided the most helpful evidence was the plaintiff's boyfriend, Mr. Pau Vila-Peterson. As described above, they started dating in late August 2022. He runs the nightclub where she has been the DJ. They live together. In summary:
- a) When they started dating, he told her to quit cocaine, and she did so.
 - b) Since they have been living together, he sees her in the morning, and she cracks and stretches every part of her body. He confirmed that she does not lift heavy things. Further, he massages her back, neck, and feet.
 - c) He says that she is sometimes irritable, perhaps 2-3 times per week, but not to the extent that it hurts their relationship.
 - d) He confirmed that they have travelled extensively, including Seattle, Cuba, Montreal, Spain (twice), San Francisco, and Las Vegas.
 - e) While on long flights, the plaintiff gets up and walks the aisle to stretch out.
 - f) She DJs, which involves standing for 90 minutes, but is not physically taxing.
 - g) She is tidier than him. He has a cleaner who cleans the house three times per week.
 - h) He also confirmed that the plaintiff regularly attends shows at his club. The club runs from 11:00 p.m. until 6:00 a.m. He says that the plaintiff attends most of these events, approximately four per month.

[109] I did not find any major credibility problems with the plaintiff's collateral witnesses, but with the exception of Mr. Vila-Peterson, I do not find them to be helpful. I find that none of them was able to give an accurate picture of the plaintiff both before and after the two accidents. More to the point, there are two stark descriptions of the plaintiff:

- a) the happy young woman dancing on the videos, exhibiting no physical or social problems; and
- b) the "crushed", "damaged" girl described by the family.

[110] My impression was that the plaintiff's family members were describing a somewhat idealized version of the plaintiff. In other words, they described her as "great" before the First Accident and broken after it. That description does not accord with the plaintiff's activities or the evidence as a whole.

[111] In my opinion, the most accurate description is the one offered by her boyfriend, Mr. Vila-Peterson. He describes the plaintiff as having some pain, needing some mild accommodations, and being irritable a couple of times per week. There was nothing he said that would indicate that the plaintiff is disabled or limited in employment.

Credibility and Reliability

[112] I find it helpful to set out here the parties' positions on credibility and reliability. These assessments come into sharper focus when I discuss the plaintiff's expert opinions.

[113] The plaintiff's counsel concedes that there are negative aspects to the plaintiff's credibility. Specifically, counsel acknowledges that there are challenges in reconciling the fact that some experts were not told about the plaintiff's activities (dancing, DJing, modeling, and traveling), as well as the social media and video evidence demonstrating various activities.

[114] However, the plaintiff's counsel submits that those negative aspects are outweighed by the consistency of the plaintiff's overall theme. Counsel submits that the negative evidence should be compared fairly and in a balanced manner against the following big picture:

- a) The plaintiff was an academically average, but driven, student before the First Accident. Her grades should be considered in the context of her immigration and English as her third language.
- b) The plaintiff also demonstrated her ambition by commencing work early in her life and working with volunteer organizations.
- c) She had a documented interest in becoming a police officer and took the steps to achieve that goal.
- d) After the First Accident, she had a hard time holding a job. Her only attempt to further her education started in the fall of 2019 when she attended at the Coquitlam College. That was interrupted by the Second Accident.

- e) After the Second Accident, she only held one job that lasted more than a few months (the Dance Centre).
 - f) She is now inactive in educational and vocational pursuits.
- [115] The plaintiff submits that this chronology is consistent with the findings of the plaintiff's experts.
- [116] The main force of the defence submission is that:
- a) Ms. Samimi's multiple activities over time run contra to the claims she presents in these actions; and
 - b) To the extent Ms. Samimi relies on the plaintiff's experts, those opinions must be discounted because she misled the experts as to the extent of her abilities and activities.
 - c) Misleading the experts speaks to two issues that are problematic:
 - i. The plaintiff chose to mislead the experts who were preparing reports for this litigation (which speaks to her credibility); and
 - ii. The experts' opinions are, as a result, worthless (or suspect).
- [117] The defence submits that plaintiff's testimony should not be considered credible or reliable. They submit her testimony was, at times, either obviously untrue, or contrary to common sense.
- [118] The main force of the defence submission relates to the history and chronology provided by the plaintiff to the experts. However, in addition, the defence notes two specific examples of the plaintiff's testimony at trial that lacked credibility. The defence submits that both examples diminish the plaintiff's "big picture" narrative of an ambitious young woman.
- [119] I noted above that in January 2022 the plaintiff was assaulted by her former boyfriend. She was taken to VGH where she was seen by a social worker. I am cognizant that the social worker's notes are not admissible for their truth, unless verified by the plaintiff: *Olynyk v. Yeo*, 55 D.L.R. (4th) 294, 1988 CanLII 3101(B.C.C.A.).
- [120] First, the social worker recorded that the plaintiff's former boyfriend had told her that if she ever involved the police, the relationship would end. Ms. Samimi confirmed that she provided that information to the social worker. In cross-examination, the defence suggested that the plaintiff's former boyfriend was a drug dealer. She initially disagreed with that proposition. However, she ultimately admitted that she knew that he sold drugs, because he had told her. But she then testified that she believed he had stopped selling drugs before they started dating, "And - but he -- when we were -- when we met, he already stopped it. So that time, as I remember, he was not a drug dealer or something like that."
- [121] I find that evidence to not be credible when placed in the context of other evidence about the relationship and the social worker's other notes.

[122] The social worker's notes indicated that the former boyfriend carried several pieces of ID with him at all times. Further, he was afraid of police interactions. The plaintiff confirmed that she had provided that information. In cross-examination, defence counsel posited that the boyfriend carried extra IDs to avoid police gang-squad detection. She disagreed. The plaintiff testified that he used multiple IDs because he was unvaccinated:

A: But I cannot confirm that he was afraid of -- he was carrying the fake ID because he was afraid of police. I cannot confirm that if that's the only reason. But the explanation that he gave me, that he didn't have any vaccination for COVID time. And each restaurant that we were going to, they would check his ID for vaccination. So if I said that, that he's afraid of police, yes, he was afraid of police.

[123] The defence submits that the idea that her ex-boyfriend was unvaccinated was a ham-fisted (and untruthful) attempt on Ms. Samimi's part to avoid an obvious and negative association. They submit the plaintiff knew her ex-boyfriend was a drug dealer. The obvious inference to be drawn is that he would present the fake ID if he was stopped by the gang squad at a restaurant. The defence submits that, in the context of being taken to VGH after an assault, she was clearly telling the social worker that she was afraid of her ex-boyfriend because of his criminal associations. She provided that information to inform the social worker that he was a threat. That threat would have been top of mind, because he had just assaulted her. Then, at trial she attempted to present a life narrative wherein she was an upstanding citizen with dreams of becoming a police officer. The defence submits that those two narratives are in conflict. They submit that this evidence was relevant to the main issues in her claim for damages. It also indicates her willingness to lie under oath.

[124] The defence carries this allegation over to the plaintiff's relationship with "Nico" in the second half of 2019. As noted above, the plaintiff was unemployed while they were dating for six months. However, Nico would give her \$2,200 per month. Nico's assistant would provide her with envelopes of cash. The plaintiff claims that she never learned of Nico's last name. She did not know his address because she never went to his residence. The defence submits that the plaintiff was clearly hiding Nico's last name to avoid the defence contacting him and calling him as a witness. The defence submits that she was deliberately misleading the court.

[125] As for the plaintiff's credibility during her testimony, I find that she answered the majority of the questions in a straightforward manner. She did not try to deny the evidence of her significant travel, nor her recent work as a DJ. To be frank, there would be no point in denying events that had been recorded on Instagram or YouTube.

[126] However, I accept the defence submissions regarding her testimony about the two boyfriends. On a balance of probabilities, I find that the plaintiff was attempting to hide from the court the fact that she was dating men who had troublesome, if not criminal, backgrounds. One obvious inference is that she did not want them to be contacted by the defence. However, I also infer that she wanted to maintain the narrative that she was a

young woman who could have been a police officer, but had her dream dashed by the injuries she suffered in the two accidents. That narrative was weakened significantly by her questionable boyfriends and her world travels (at least in the period before August 2022).

[127] In addition, I find the more troublesome aspect of the plaintiff's credibility arises from the history she provided to the experts. I review those problems in my discussion of their reports.

[128] I pause here to discuss the plaintiff's evidence that she was in a "dark place" in the second half of 2019. I consider that evidence in the context of the plaintiff having been in a "good place" in late 2018. During the second half of 2019, she was dating Nico. The couple vacationed to a resort in a small town in Mexico in December 2019. She described a bizarre sequence of travel wherein they took a taxi from the resort to a small airfield. They flew in a small plane to Tijuana, Mexico, where they rented a hotel room for one night. Her boyfriend met with business associates while she stayed in the hotel. Then, she took a car-service across the American border by herself. All of that is probably true, but in my opinion, it is concerning.

[129] I find the plaintiff's evidence regarding this period in 2019 to defy rational explanation. Her story did not accord with any experience of vacation travel with which I am familiar. Put another way, I note that Dr. Schultz made a finding that the plaintiff being in a "dark place" in 2019 was linked to the First Accident. However, I believe that it would be impossible to make that connection without a full explanation of what was going on in the plaintiff's life during the period. This is especially the case given her stated good mindset in the prior year. I consider her association with Nico to be the most likely cause of any emotional upset or "dark place" in late 2019.

Injuries Suffered

[130] The plaintiff alleges that she suffered the following injuries as a result of the First Accident, all of which were exacerbated in the Second Accident:

a) Physical Injuries:

i. Persistent or chronic post traumatic headaches, either cervicogenic or tension-type or migraineurs.

ii. Chronic neck and shoulder girdle pain with numbness caused by soft tissue injury to the cervico-thoracic spine and myofascial pain syndrome.

iii. Chronic low back pelvic pain and Myofascial Pain Syndrome.

iv. Bilateral Upper Extremity Paresthesia from either Thoracic Outlet Syndrome (TOS) or from injury to the shoulder-blades.

b) Psychological and Cognitive Issues:

- v. Mild-neurocognitive disorder;
- vi. Persistent depressive disorder; fluctuating from mild to moderate severity;
- vii. Posttraumatic stress disorder, moderate;
- viii. Generalized anxiety disorder, moderate;
- ix. Other specified eating disorder, mild;
- x. Somatic symptom disorder with predominant pain, moderate.

[131] The plaintiff argues that these injuries combine to form a constellation of symptoms of headache and chronic pain. They are worsened by mood, cognitive and sleep issues with tiredness and fatigue, likely caused by Late Whiplash Syndrome (as diagnosed by Dr. Chow).

[132] The plaintiff (in final submissions) posited that she suffered a concussion in the First Accident. For the reasons discussed below, I find that she did not.

[133] The defence relies on the report of Dr. Chapman, a physiatrist. In summary, Dr. Chapman found some symptoms of chronic pain that he linked to the accidents. He did not believe that the plaintiff has any limitation in work or life activities.

[134] I review the expert evidence below, then return to make my findings regarding the plaintiff's condition and causation.

Expert Evidence

[135] The plaintiff called the following experts:

- a) Dr. Raphael Chow, Physiatrist
- b) Dr. Izabela Schultz, Neuropsychologist
- c) Mr. Russell McNeil, Occupational Therapist
- d) Mr. Clae Willis, Vocationalist

[136] I address each of the opinions below. The problem faced by the plaintiff is that, with the exception of Dr. Schultz, she did not inform any of the experts about her late-night dancing or her DJing. I find that the plaintiff's presentation to the experts did not accord with her actual physical and emotional state. My finding in that regard is based on the testimony of each of the plaintiff's experts. As noted at the outset of these reasons, the plaintiff's counsel concedes that there were issues with the plaintiff's evidence that must be addressed and reconciled.

[137] I divide the plaintiff's experts into two groups: Dr. Chow and Dr. Schultz can opine on diagnosis and causation. Mr. McNeil can only opine on current function. Mr. Willis relies on the other experts to opine on careers that were open to the plaintiff pre-accidents.

Dr. Chow

- [138] Dr. Chow is a physiatrist. He was the only medical doctor (retained by the plaintiff) who examined her and provided a report for trial. He saw the plaintiff on November 15, 2023. His report is dated November 16, 2023.
- [139] In summary, Dr. Chow's opinion is that the plaintiff suffers from chronic pain in her neck, shoulders, and back. She also has mood issues. The combination of these conditions renders her unable to work in heavier occupations. She can work in sedentary to light occupations, but her hours may be limited.
- [140] I discount Dr. Chow's opinions for two reasons: first, because the plaintiff did not provide an accurate history to him; second, because he was an advocate for the plaintiff.
- [141] On the first point, an example is illustrative. The plaintiff informed Dr. Chow, and he recorded, "Her social life has been affected by 80%." Dr. Chow testified that she was less able to talk to people and go out socializing. It is clear that Dr. Chow believed that the plaintiff's lifestyle was severely limited by her injuries and had significantly declined. The evidence at trial established the opposite: she is very social. In addition to the dance videos, the evidence established that Ms. Samimi actively sought out new friendships. She travelled extensively, meeting new people along the way. Dr. Chow's impression of the plaintiff was incorrect because she misled him in that regard.
- [142] Further, the plaintiff informed Dr. Chow that she ceased all her recreational activities after the rollerblading accident in 2018. He accepted that information as true. The dance videos indicate that it was not true.
- [143] Based on his examination of the plaintiff, Dr. Chow found her sitting tolerance was 10 minutes, and her standing tolerance was 15 minutes. Those findings are belied by the plaintiff taking multiple intercontinental flights and the videos of her dancing at her boyfriend's club. As noted, she DJ'd a set for 90 minutes soon after he Dr. Chow's assessment.
- [144] Hence, the person Dr. Chow described and opined upon was not an accurate description of the plaintiff.
- [145] Second, and more important for my gatekeeping function, I find Dr. Chow to be an advocate, especially on the topic of causation. When faced with questions regarding the causation of specific problems, Dr. Chow tended to resort to unsubstantiated speculation. For example, in his report, he noted that the plaintiff began her use of alcohol in September 2018. He was asked in cross-examination whether the plaintiff told him what prompted her use of alcohol. His response was that, by 2018, her whole persona had changed. She had been in pain. She was not feeling well. She was depressed. She was not sleeping well. He said that she was not the person she used to be, so she resorted to alcohol. In my opinion:
- a) His answer sought to link the alcohol use to the First Accident, although his report does not.

- b) Based upon the plaintiff's own evidence, while she was working at the concierge job (until September 2018), she was in a "really good state of mind".
 - c) She started drinking after her traumatic breakup.
- [146] There was no evidentiary basis for Dr. Chow's testimony. It was pure speculation. I find it relevant that the plaintiff does not claim that her alcohol use in 2018 was causally linked to the First Accident.
- [147] In another example, Dr. Chow was asked about the plaintiff's cocaine use. He testified that he understood she used cocaine "every so often". He was clearly trying to minimize a negative piece of evidence. However, there was no evidentiary basis for his answer. The plaintiff did not describe her cocaine use to Dr. Chow. The later report of Dr. Schultz reported that the plaintiff used "a lot of cocaine". The plaintiff did not deny that statement. Her own evidence was that she used cocaine every day.
- [148] In a similar vein, Dr. Chow wrote in his report, "Normal human functional ability will require a balanced intact biopsychosocial-cognitive organ-system which she may be lacking." He resorted to that statement during his testimony on several occasions. I find that sentence to be of no assistance. As I understand it, it means that all parts of the body are interconnected. It does not assist me.
- [149] As noted, the plaintiff submitted at the close of trial that she suffered a concussion. In my opinion the discussion of a possible diagnosis of concussion is another area where Dr. Chow advocated for the plaintiff:
- a) In his report, he noted that there was no loss of consciousness in either accident. Although the plaintiff's family doctor noted symptoms compatible with a concussion, Dr. Chow's report stated that there were "confounding variables that may complicate the diagnosis of concussion since she has psychological issues. She had a history of anxiety/depression when she was a teenager." He also wrote that her constellation of symptoms "is consistent with the Late Whiplash Syndrome which shares similar symptoms with Post-Concussion Syndrome."
 - b) Hence, Dr. Chow did not diagnose a concussion (in his report).
 - c) In cross-examination on the subject, defence counsel asked him to clarify (confirm) that he did not diagnose a concussion. Dr. Chow first answered that she possibly could have had a concussion. He then gave a long answer regarding the diagnosis of brain injury. He concluded that answer with a sentence indicating that, in all probability, she did suffer a concussion.
- [150] This testimony is an example of Dr. Chow's amoeba-like answers. He avoided being nailed down to a position that ran contra the interests of the plaintiff. He used long winded answers, with vague generalities, to talk around the question.

- [151] On the issue of concussion, I accept Dr. Chow's written opinion: A concussion (brain injury) was possible, but not probable, in the First Accident. There was no concussion on the Second Accident. Hence, on a balance of probabilities, based on the plaintiff's expert evidence, there was no brain injury.
- [152] Dr. Chow's propensity to advocate reached its crescendo when he was cross-examined about the videos of the plaintiff dancing. He was presented with evidence that, 10 days after he had examined the plaintiff, she DJ'd a 90-minute set from 3:30 to 5:00 a.m. He had diagnosed her with chronic headaches, and neck and back pain. He found her standing tolerance was limited and she could not abide flashing lights. All of those findings were contradicted by the videos. In response to questions, Dr. Chow refused to concede that the plaintiff's activities were inconsistent with his opinion or diagnoses. He said he would need to know the frequency, intensity, and duration of the activities. He then reverted to the blanket statement about the biopsychosocial-cognitive organ-system. He then stated that the plaintiff may be able to do things that she enjoys, but unable to do other mundane tasks, like employment.
- [153] Dr. Chow did concede that the plaintiff was undertaking a number of activities that she did not tell him about. He also conceded that, to the extent those activities were unknown to him, his report is based on incomplete information. Dr. Chow conceded that it would have been helpful for his report if he knew about those activities.
- [154] However, Dr. Chow did not concede that the videos of the plaintiff changed his opinion on her capacity to work. I find his evidence on that issue unhelpful. I would have expected a different answer from an unbiased expert who was attempting to assist the court. In my opinion, it was obvious that, in the dance videos, the plaintiff appeared much more capable, active, and socially engaged than the person described in his report. He should have conceded that point. His reticence to concede that fact lessens my ability to rely on his opinion.
- [155] In short, I find Dr. Chow's attempts to defend the plaintiff's claim devolved into advocacy.
- [156] Further, I infer the plaintiff did not tell Dr. Chow about the activities because they did not assist her narrative of disability.
- [157] It follows that I do not accept Dr. Chow's opinion on causation. Nor do I accept his opinion that the plaintiff is limited in her ability to work. Again, his opinion was that the plaintiff can work in sedentary to light occupations, but her hours may be limited. His opinion is damaged by the plaintiff's failure to disclose relevant information and by Dr. Chow's propensity for advocacy.

Dr. Izabela Schultz

- [158] Dr. Schultz is a neuropsychologist who saw plaintiff on November 2, 4, 5, and 17, 2023. Her report is dated January 3, 2024.

- [159] Dr. Schultz's report opines on the areas of cognitive function and psychological wellbeing.
- [160] The defence objected to the admissibility of her report. They also submit that no weight should be given to the opinions of Dr. Schultz. I indicated that I would address both admissibility and weight in these reasons.
- [161] There are two main arguments against the report's admissibility.
- [162] First, the defence argues that Dr. Schultz's report does not comply with the Rules. The report is 78 pages long with no summary. It is divided into sections. Section 7 is entitled "Opinion", and it comprises the final 30 pages of the report. I received little assistance in deciphering Dr. Schultz's report. The plaintiff's written argument only mentions her opinion twice.
- [163] The defence is correct that the report does not comply with the principles set out in *Maras v. Seemore Entertainment Ltd.*, 2014 BCSC 1109.
- [164] Second, the defence objects to Dr. Schultz's report because it appears to present an opinion suggesting that the plaintiff suffered a brain injury. Dr. Schultz conceded at trial that neuropsychologists are not qualified to diagnose such injuries because a brain injury is a medical diagnosis. I have already found, based upon Dr. Chow's evidence, that the plaintiff did not suffer a brain injury in either accident. Hence, there is no prospect that Dr. Schultz's suggestion will mislead me. However, her writing relating to a brain injury creates significant confusion in interpreting her report.
- [165] The defence is correct on both fronts. There are ample grounds to exclude the report. However, in my opinion, exclusion of the report would be overly prejudicial to the plaintiff's case. Instead, I have decided to admit the report into evidence, and I have undertaken the task of interpreting it.
- [166] Although I have admitted the report, after reviewing it in full, I find that I do not accept the opinions expressed in it. There are at least three significant problems with Dr. Schultz's report. I outline these problems here and then delve into them in more detail.
- [167] The first problem arises from Dr. Schultz's opinions regarding the causes of the plaintiff's ongoing symptoms. In summary, Dr. Schultz assumes there is a traumatic brain injury occurred and then finds that it was the "primary trigger" for the plaintiff's neuropsychological impairment.
- [168] I have already found that there was no brain injury.
- [169] Hence, my finding that there was no brain injury significantly complicates the consideration of Dr. Schultz's evidence. In short, there is no factual basis for her opinion on the "causation" of problems that she links to the brain injury. As a result, I am required to sort through the remainder of the report and determine whether there is a basis for the remaining opinions.

- [170] The second significant problem arises from Dr. Schultz's apparent method. On the totality of the report, the defence submits that an apt description of Dr. Schultz's method is found in *Thandi v. Try*, 2021 BCSC 22, where Justice Myers wrote:
- [102] It appeared to me from her report and her evidence at the trial that Dr. Schultz was keen to find a causal connection by working backwards from her conclusion and has gone too far in her opinion. I do not find it meets the evidentiary or legal threshold for causation.
- [171] I find that to be an apt description of Dr. Schultz's method and opinions regarding both cognitive function and emotional state. I explain my reasons below.
- [172] I also note that Dr. Schultz described the plaintiff's presentation as an "extremely complex neuropsychological assessment". In her testimony she called it "overwhelmingly complex". I infer the report was very long because Dr. Schultz was attempting to tease out the multiple, complex factors that were at play. However, I also infer that in an extremely complex presentation, receiving an honest and complete history would be essential. That is the third significant problem with the report. The plaintiff was not fully forthcoming with her history.
- [173] To be frank, I find Dr. Schultz's report opaque and impenetrable. My best efforts have led me to break it down as follows:
- a) What impairments were found?
 - b) Were those impairments causally linked to the accidents?
- [174] In large overview, Dr. Schultz's report opines on the areas of cognitive function and psychological wellbeing. Again, given its length and its lack of a summary, the report does not lend itself to concise critical review.

Cognitive Function

- [175] Dealing first with cognitive function, Dr. Schultz found the plaintiff's pre-accident abilities were in the "low average to average" range. (I note that Dr. Schultz did not have any school records.) Further, the report says the plaintiff's inconsistent education progression probably accounted for the deficits that the neuropsychological testing noted in her math skills. Hence, those test results were not accident-related.
- [176] Dr. Schultz then devotes two pages of her report to "evidence consistent with post-concussion sequelae sustained in the course of the 2016 MVA". As noted, she is not qualified to diagnose a brain injury. However, in *Hawkins v. Kumar*, 2019 BCSC 1896 at para. 59, Justice Giaschi opined that she is qualified to give an opinion:

- [59] on the cognitive and behavioural sequelae of brain injuries and she could indicate the relative likelihood of any cognitive and behavioural abnormalities being the consequence of a traumatic brain injury. Put differently, she was entitled to give her opinion on whether test results, as evaluated by her, were of a nature, kind or quality seen in people who have been diagnosed as having had organic brain injuries.
- [177] In this case (given my finding of no brain injury), these pages in Dr. Schultz's report mean nothing. In other words, if Dr. Schultz had been provided with a report from a qualified expert who diagnosed a brain injury, then her association of certain symptoms to that brain injury would be admissible and helpful. However, Dr. Schultz did not have such a report. In my opinion, this is an example of Dr. Schultz being "keen to find a causal connection by working backwards from her conclusion".
- [178] I note, in passing, that one of the factors that Dr. Schultz considered to be consistent with brain injury was Ms. Samimi's "fragmented memory" of the First Accident. Dr. Schultz interviewed the plaintiff more than seven years after the First Accident. I would be surprised if she had non-fragmentated recollection.
- [179] Having reviewed all the material and the history, Dr. Schultz ultimately opined that the "primary trigger" for the plaintiff's neuropsychological impairment was post-concussive sequelae from the First Accident.
- [180] I reject that opinion.
- [181] However, Dr. Schultz then went on to opine that the plaintiff's cognitive sequelae were compounded and made chronic by secondary clinical factors "which include" depression, anxiety, and PTSD with dissociation and fatigue.
- [182] Dr. Schultz then wrote:
- It is clinically and scientifically not possible to discern the separate effects of each one of these secondary contributors as they interact and blend together, especially in complex, multiple comorbid cases like Ms. Samimi's. It is likely that the secondary factors are currently the key drivers of severity, complexity and chronicity of her cognitive impairment.
- [183] I am left with the situation where Dr. Schultz found that a brain injury originally caused the symptoms, but they are being amplified and prolonged by other factors. I found no brain injury. Hence, I cannot accept the opinion on causation. The other factors (depression, anxiety, and PTSD with dissociation and fatigue) cannot amplify or prolong a condition that did not exist in the first place. Further, as discussed below, I am unable to accept Dr. Schultz's determination of the causation of the majority of those psychological factors.

Emotional Disorders and Causality Thereof

- [184] Again, on the causation of M. Samimi's emotional state, I find that Dr. Schultz has over-stretched to find a causal connection.

[185] Dr. Schultz diagnosed the following accident-related psychopathology:

- a) Persistent Depressive Disorder with recurrences of major depressive episodes;
- b) Post Traumatic Stress Disorder;
- c) Generalized Anxiety Disorder;
- d) Eating Disorder (only diagnosed by Dr. Schultz and "retroactively");
- e) Somatic Symptom Disorder.

[186] After reviewing the plaintiff's history, Dr. Schultz reaches the following conclusion:

In conclusion, the long term impact of post-concussion sequelae from the 2016 MVA was compounded and made chronic by the effects of psychological trauma from both accidents, accompanied by major losses, with life, social, career destabilization and disruption, together with adverse health and functional changes over an extended period of transition from adolescence and young adulthood. Ms. Samimi's refugee trauma background and episode of depression in 2014, together with likely perfectionist/compulsive personality features, might have constituted pre-existing mental health vulnerability factors in her case, but were not of causative significance. "But for" both MVA's (with the most potent impact of the 2016 MVA), Ms. Samimi would not have likely developed and maintained her current complex and chronic mental health disability.

[187] As noted, that conclusion was reached after a review of a number of factors. Dr. Schultz wrote, "Ms. Samimi's present emotional disturbance likely constitutes her response to the interaction of the following accident-related factors". Dr. Schultz then listed those 12 factors (paraphrased):

1. Increased mental health vulnerability due to the psychological accident sequelae due to post-concussive sequelae and reduced adaptability.
2. Psychologically traumatic circumstances surrounding the 2016 accident event and sequelae resulted in the development of first acute then posttraumatic stress she experienced the following trauma:
 - a. intense fear due to driver speeding uncontrollably before the crash and the driver taking his hands off the steering wheel;
 - b. perceived threat to her life when feeling trapped in the vehicle smelling gasoline; and
 - c. fear of impending death.
3. Re-traumatization in the course of the Second Accident: reported emotional shock, shaking and crying at the scene; with subsequent worsening of depression, suicidality, bulimia and social isolation.

4. After the First Accident: significant life, school, work and social disruption and destabilization, uncertainty, loss of control, diminished independence, medicalization, and limitations on in daily life interacted with Ms. Samimi's increasing awareness of pain related, functional and other health and personal losses, including negative body image and social discomfort. These problems were compounded by the impact of the 2020 accident.
5. Multisite pain, lowered stamina, sensory issues and reduced functional tolerances, all formed a major disability burden and Ms. Samimi has had difficulties tolerating it.
6. Struggling at school, in postsecondary training and at work; inability to complete any postsecondary training or education, despite multiple attempts.
7. Let go from pre-accident employment and inability to assume any steady employment and failing probation in two jobs.
8. Loss of sense of self as a result of psychological injuries; loss of direction in life; derailment of career aspirations and planned were undertaken education. Ms. Mimi was ready for the next step in life and initiated her college courses, the Second Accident permanently disrupted her plans.
9. Awareness of decreased independence and life disruption; dependent on social/disability assistance and her family.
10. Perception of life's unfairness and vocational uncertainty.
11. Psychological impact of the First Accident occurred during developmentally vulnerable transition from adolescence to young adulthood.
12. History of refugee trauma and prior episode of depression (2014).

[188] In reviewing these factors, I question Dr. Schultz's recounting of the plaintiff's history. Returning to my chronology above, after the First Accident, the plaintiff took three months off school, but returned to school in January 2017, completing Grade 11 in June 2017. In January and February 2017, she travelled to Victoria and then Winnipeg for youth conferences related to immigration. She spoke at the Winnipeg conference. She also did some modelling work, including a runway fashion show at the Hudson's Bay in March 2017. She went snowshoeing with an ISS group in April 2017. She did all of this while completing Grade 11. She attended the fire fighter youth academy in July.

[189] Then, in September 2017 the plaintiff started in her full-time concierge job while completing Grade 12. She also moved in with her boyfriend in November. She was, in her own words, in a "really good state of mind" at that time. Her relationship with that boyfriend later ended in somewhat traumatic fashion, with (his) suicide threats and police involvement.

[190] The point being: the report fails to grapple with the inconsistency between Dr. Schultz's description of the plaintiff in this period, and the actual evidence about that period. Further, the traumatic evidence about the 2017-18 boyfriend does not appear anywhere in Dr. Schultz's conclusion on causation. Despite the evidence that ran counter to her narrative, Dr. Schultz interpreted the plaintiff's history during this period as reflecting deficits and psychological symptoms. That was not the evidence at trial.

[191] Of note, regarding the 12 points above:

- a) #1 points to the sequelae of "mild traumatic brain injury" which, she says "is known to be associated with development of comorbid mental disorders". I have found that there was no brain injury.
- b) #2 points to the psychological aspects and trauma of the First Accident. I accept that this statement is grounded in the evidence.
- c) #3 (re-traumatization in the course of the Second Accident) is also grounded in the evidence.
- d) #4 (after the First Accident: significant life, school, work and social disruption) does not address the plaintiff's successes in 2017 and 2018 which conflict with Dr. Schultz's narrative.
- e) #5 (regarding pain and stamina) does not accord with the plaintiff's life following the First Accident.
- f) # 6 is grounded in the evidence, but only after the Second Accident.
- g) # 7 is simply wrong. The plaintiff was unable to continue with her TipTop Tailors job immediately after the First Accident. However, she was employed full time at one job for 12 months in 2017 and 2018.
- h) #8-#10 are simply descriptions of how Dr. Schultz believes that the plaintiff perceived her life (given the deficits that Dr. Schultz had retroactively imposed upon her).
- i) #11 (transition to adulthood), again, fails to account for the plaintiff's positive state in 2017 and 2018.
- j) #12 (refugee trauma and prior episode of depression), are clearly not accident-related.

[192] Hence, by my reading of Dr. Schultz's "12 accident-related factors":

- a) Three factors (#2, #3, and #6) are grounded in the evidence;
- b) Six (#1, #4, #5, #7, #11, and #12) do not accord with the evidence or are clearly non-accident related.
- c) Three (#8, #9, and #10) are simply a description of Dr. Schultz's impression of how the plaintiff would have been reacting to the losses that Dr. Schultz has, by this point in her report, imposed upon the plaintiff.

- [193] Given Dr. Schultz's own description of the plaintiff's presentation as an "extremely complex neuropsychological assessment" and "overwhelmingly complex", my perception is that Dr. Schultz was working backwards from her diagnosis. Much like my finding with respect to the cognitive impairment, and the finding in Thandi, I do not find her methods meet the evidentiary or legal threshold for causation.
- [194] I accept Dr. Schultz's diagnosis that Ms. Samimi struggles with a depressive disorder, some degree of PTSD, an anxiety disorder, and some degree of somatic symptom disorder. However, I do not accept that Dr. Schultz's method meets the standard required by this Court to determine causation. Hence, I am unable to link any of the plaintiff's ongoing psychological symptoms to the two accidents.
- [195] In short, I reject the entirety of Dr. Schultz's opinion on causation.
- [196] Turning to the real-life implications of the deficits, Dr. Schultz described a number of difficulties that the plaintiff was expected to have. Somewhat comically, the report included the opinion that Ms. Samimi had "[i]nability to work night shifts" and "[d]ecreased social confidence". Dr. Schultz specifically resiled from those opinions at trial after being informed of the plaintiff's lifestyle during cross-examination.
- [197] Dr. Schultz's opinion is that, to be employable, Ms. Samimi would require a long list of accommodations (due to the symptoms caused by the accidents). For the reasons set out above, I do not accept that opinion. As noted above, I found the testimony of the plaintiff's current boyfriend to have been reliable. His testimony did not speak of any severe emotional symptomology. Based on my earlier findings, if the plaintiff suffers from cognitive or emotional impairments, I am not satisfied, on a balance of probabilities, that they were caused by the accidents. Hence, if neurocognitive symptoms or emotional impairments limit the plaintiff's capacity to work, those limitations are not Accident-related.

Mr. McNeil

- [198] I now turn to experts retained to consider Ms. Samimi's employability and her care needs.
- [199] Mr. McNeil is an occupational therapist. He conducted a Functional Capacity Evaluation on December 29, 2023. He also assessed the plaintiff's future care needs. Of note, those exams were seven years after the First Accident and almost four years after the Second Accident.
- [200] Mr. McNeil's ultimate opinion is that the plaintiff is capable of working a job of the "sedentary" type. She would be best-suited to part-time work.
- [201] Mr. McNeil's opinion suffers from the following problems that are unrelated to his examination and testing:
- a) I have rejected Dr. Chow's opinions because he was misinformed by the plaintiff and because Dr. Chow was an advocate;

- b) As a result, there is no opinion (from the plaintiff's experts) that provides a causative link between the accidents and the plaintiff's ongoing physical symptoms.
- c) Mr. McNeil is not qualified (nor does he attempt) to provide an opinion on causation.
- [202] As discussed below, Dr. Chapman, for the defence, does link the plaintiff's current pain symptoms to the accidents (although he finds them not to be limiting).
- [203] The defence submits that Mr. McNeil's opinions should not be accepted because his testimony belied his advocacy for the plaintiff. When shown the dance videos, he refused to concede that they affected his opinion in any way.
- [204] I did form the opinion that Mr. McNeil failed to accept reasonable propositions that were put to him in cross-examination. In my opinion, Mr. McNeil's report described a different person than the plaintiff. He described a person with greater limitations. I infer that the plaintiff presented to him in a manner that overstated her limitations.
- [205] In that vein, I note that in the Future Cost of Care section of his report, Mr. McNeil recommended an award of \$7,280 per year for assistance with childcare. I find it instructive that the plaintiff's counsel did not argue for that amount to be awarded.
- [206] It follows that I put no weight on Mr. McNeil's opinion, either on her functional capacity or on her future care needs.

Mr. Willis

- [207] Mr. Willis is a vocationalist who saw the plaintiff on October 17, 2023.
- [208] Mr. Willis' opinion, from a high level, is summarized on page 37:

Ms. Samimi indicated a pre-accident path plan of becoming a Police Officer. She had engaged in scholastic program at the Vancouver Police Department. Ms. Samimi identifies as a female and is a visible minority. She reports that pre-incident she was very physically fit. I can opine this was a possible trajectory. This conclusion is further bolstered by the evidence that Ms. Samimi was provided with a \$24,000. Scholarship (sic) for post-secondary education.

- [209] Turning to her "With-Accident" vocational ability, Mr. Willis opined:

Based upon my clinical vocational impression, Ms. Samimi does not display a basic level of psychological stability that is generally considered to be a fundamental requirement for any occupation. This barrier needs to be resolved before she moves forward to vocational reintegration.

- [210] Hence, the primary barrier to employment was psychological. I have found no causation in that realm.
- [211] There are several problems with the underpinning of Mr. Willis' opinion:

- a) Mr. Willis' report noted that the plaintiff "cannot be described as a good/accurate historian". That statement was made (in his report) before he viewed the dance videos (at trial). When presented with the videos in cross-examination, he agreed that the plaintiff displayed better function on the videos than she displayed during his assessment. However, he did not resile from his opinion that the plaintiff is not competitively employable.
- b) He assessed the plaintiff on October 17, 2023. That assessment pre-dated both of Dr. Chow's and Dr. Schultz's reports. In the instruction letter for his report, the plaintiff's counsel provided Mr. Willis with two expert reports that were not tendered at trial (Dr. Herschler, a physiatrist; and Dr. Browning, a psychologist). Hence, Mr. Willis' opinion on "psychological stability" has no foundation in the evidence. The plaintiff's counsel concedes that this gap "dramatically" decreases the weight that can be placed on the report.
- c) Mr. Willis had no documents that could be considered Ms. Samimi's medical file. He had no clinical, hospital, or counsellor records. Hence, his entire understanding of the plaintiff's chronology was based upon the history provided by the plaintiff and the information contained in the two reports that were not before the Court or subject to cross-examination.
- d) In addition to reviewing no clinical records, Mr. Willis did not have any of Ms. Samimi's school transcripts. He appears to have assumed that she was a good student because he specifically noted that she received a \$24,000 scholarship. He appears to use that information as a basis to find that she has suffered some degree of cognitive deficit due to the accidents. However, Dr. Schultz opined that the plaintiff's cognitive function was in the "low average to average" range.

[212] For the reasons set out above, I reject Mr. Willis' opinion on vocational issues with the following exception: I accept that, prior to the accidents, the career of "police officer" was a possible path for the plaintiff. However, on the evidence, I do not accept that the accidents prevented her from pursuing that goal. Instead, the plaintiff made decisions in her personal life that would have been antithetical to a career in law enforcement. Those decisions were unrelated to the accidents.

[213] Hence, I find Mr. Willis' report does not assist me in deciding this case.

Defence Expert

[214] The defence called two experts. Although they relied on a cost of care expert, Joyce Lee, I do not find her report to be of assistance. I do find the defence physiatrist to be helpful.

Dr. Paul Chapman (Physiatry)

[215] In response to all of the plaintiff's experts, the defendants rely on two reports from Dr. Paul Chapman, a physiatrist, dated January 12, 2024, and March 18, 2024.

[216] In his first report, Dr. Chapman diagnosed the plaintiff with the following symptoms that he attributed to either one or both accidents:

- a) new onset neck pain;
- b) low back pain;
- c) wrist pain; and
- d) headaches.

[217] In his first report, Dr. Chapman opined that the plaintiff's complaints of mid-back pain only arose in 2024. On that basis he did not link it the accidents. However, in cross-examination, clinical records were put to him indicating that there were complaints of mid-back pain following the First Accident. Dr. Chapman conceded that the mid-back pain was accident-related. I accept that opinion.

[218] For his first report, Dr. Chapman was asked whether the plaintiff should avoid any type of physical activity. He wrote:

Ms. Samimi reported to me that she is not working, and she is not doing much at home and is not doing more than going to kinesiology sessions for recreation. This is somewhat at odds with the information provided to me in the letter of instruction where [it] can be seen that Ms. Samimi has had numerous trips to various locations throughout the world. Ms. Samimi is said to be training to work as a DJ as well as actively pursuing her modelling career.

Given the above, it would appear that Ms. Samimi is functioning at a level much greater than she described during my history taking with her. Given the varied number of activities that Ms. Samimi seems to be able to engage in it is my opinion that Ms. Samimi seems to be much more capable functionally. Therefore, I do not recommend her avoiding any physical activity. Rather, as Ms. Samimi seems to be, I would advise her to continue to be as active as possible.

[219] It appears from this passage that, for his first report, Dr. Chapman was not willing to accept the plaintiff's complaints, and their functional impact, at face value.

[220] Dr. Chapman's second report followed his review of the dance videos and social media. He wrote:

It would appear, from my observations of surveillance video, review of travel history and social media posts provided to me by defence counsel that Ms. Samimi is much more capable than she was is (sic) the past / she reports to others.

It would appear that Ms. Samimi seems to have made a remarkable improvement in function since the assessment in December 2023 where the assessor found her unsuitable for any form of employment.

Ms. Samimi has had an extraordinary amount of international travel. With all the sitting involved in this, one could certainly conceptualize her being able to manage work at a sedentary job.

- [221] At trial Dr. Chapman noted that he was being facetious when he wrote of the "remarkable recovery".
- [222] Dr. Chapman also opined that the plaintiff had not reached her optimal level of recovery.
- [223] The defence submits that I should accept Dr. Chapman's opinions.
- [224] The plaintiff submits that I should put guard-rails on Dr. Chapman's opinion. She notes that he conceded, in cross-examination, that the dance videos were of limited value. He also conceded that she is not required to be productive when she is engaging in the activities demonstrated in the videos. He conceded that a typical work schedule would require multiple days in a row, multiple weeks in a row, and this would go on for an indeterminate time in the future. Further, Dr. Chapman conceded on cross-examination that patients with chronic pain have good and bad days. He conceded that he did not know the duration of time that Ms. Samimi was modelling, or how she felt on the planes.
- [225] The plaintiff's position is that the plaintiff's experts should be preferred over Dr. Chapman, and that I should accept the plaintiff's expert opinions that do not equate her social activities to employability. I have given my opinion on the plaintiff's experts above. I do not find them helpful.
- [226] Dr. Chapman's opinion is that the plaintiff suffers the following accident- related conditions:
- a) Neck pain
 - b) Upper back pain
 - c) Mid-back pain
 - d) Low back pain
 - e) Right wrist pain
 - f) Headaches
- [227] He specifically found that there was no indication that the plaintiff was limited by pain in pursuit of any activity or employment.
- [228] The defence submits that Dr. Chapman's opinion represents a common-sense approach to the evidence. The defence urges me to accept his opinion over the opinions of the plaintiff's experts.
- [229] I agree with the defence characterization of Dr. Chapman's opinion. I find that his opinion is grounded in his experience and common sense. I accept Dr. Chapman's opinions.

Review of all Evidence

- [230] I find it useful here to attempt to synthesize the impact of the plaintiff's lifestyle on my consideration of the evidence as a whole.
- [231] The plaintiff submits that I should not overemphasize the social media posts and videos. Counsel submits that the plaintiff testified about her travels and gave evidence that her travelling was often accompanied by issues such as needing to alter her sitting style or stretching and walking while on planes. The plaintiff submits she was forthcoming at trial and testified to the activities she was doing when the photographs were uploaded.
- [232] The plaintiff also relies on a number of cases where the defence relied on social media posts to argue the plaintiff was not as limited by injuries as suggested. In particular, the plaintiff relies on: Davidson v. 0969446 B.C. Ltd., 2021 BCSC 609; Palmer v. Pozniak, 2021 BCSC 1703; Carlisle v. Vanthof, 2015 BCSC 2427.
- [233] As set out above, I accept that social media posts can be misleading. A person rarely posts a photo showing grimacing or other outward signs of pain. There is a danger that the viewer of social media could perceive a better life, and lesser symptoms, than are actually experienced by the plaintiff. I accept that if the posts were merely the plaintiff posing locally, they may carry little weight. However, in considering the whole of the evidence, I consider the following:
- a) The volume of travel undertaken by the plaintiff is inconsistent with her claims of disability (and her financial means).
 - b) The dance videos are inconsistent with her assertions about her level of function.
 - c) Although Dr. Chow, Mr. McNeil, and Mr. Willis tried to downplay the videos, I find that their physical examinations were all based upon a presentation by the plaintiff that was belied by the dance videos, and to some extent, the amount of travel.
 - d) I accept the evidence of Dr. Chapman, that the plaintiff's functioning, as displayed on the dance videos, represented significantly greater movement and fluidity than the plaintiff displayed during his medical examination which took place during the same period.
- [234] I consider the last two points to be the most important. The plaintiff's experts uniformly rejected the assertion that the dance videos provided evidence that the plaintiff was capable of working. In my opinion, their testimony on cross-examination missed the main point: The person in the dance videos was displaying significantly better function than the person they described. It follows that their assessments are of little value.
- [235] One might ask: Why would a plaintiff seek to appear more disabled during a litigation assessment than she appears in real life? The only reasonable conclusion is that the plaintiff was trying to establish the evidentiary basis for a larger personal injury award.
- [236] I note that on a high overview basis, the plaintiff's closing submissions point to the comparison between the pre-accident plaintiff to the plaintiff at trial. The plaintiff submits that pre-accident, she was a positive and optimistic person. She had a career goal of

becoming a police officer. She demonstrated a strong work ethic, holding several jobs by the age of 17. She now claims to be unemployable. She experiences moments of hopelessness. She expressed feelings of shame over not being able to repay her mother for her sacrifices and stated that her physical pain prevents her from working. She submits that the explanation for the change is the two accidents. Hence, there is a causative link.

[237] Two of the problems faced by the plaintiff are:

- a) She presented to the assessor as being more restricted than she is in real life. The plaintiff's credibility and reliability issues diminish any causative thread that may otherwise be found.
- b) Given the chronology, there is no way to draw a sufficiently direct line between the accidents and her current condition (physical or psychological). Although she missed a semester of Grade 11 in 2016, she was doing volunteer work and attending the fire department academy within a year of the First Accident. Thus, she continued to be a positive and optimistic person in 2017.
- c) Further, the chronology shows she was capable of employment after each of the accidents. However, she now claims to be unemployable. Those pieces of the puzzle do not fit.

[238] In my opinion, the absence of a causal connection is demonstrated by the lengths Dr. Chow and Dr. Schultz had to go to find to manufacture those links. Their respective stretches would have been weak enough on their own. However, the plaintiff placed the further barrier by not providing an accurate or reliable history.

[239] In summary:

- a) I find the plaintiff is not a reliable historian. I also find that, when necessary, she is capable of providing evidence that is not grounded in fact.
- b) I further find that she was not completely forthcoming with any of the experts. She presented as a person with less functional ability than she has in real life.
- c) I do not accept the opinions of Dr. Chow and Dr. Schultz.
- d) Mr. McNeil and Mr. Willis do not assist me.
- e) The only evidence of ongoing symptoms related to the accidents that I accept is that of Dr. Chapman.
- f) Dr. Chapman's opinion is that the plaintiff suffers some ongoing pains, but her condition is not disabling and should not limit her employment.

[240] On the basis of those findings, the plaintiff is physically able to work. If she is unable to work, that limitation may be caused by neuro-cognitive or psychological issues which, I have found, are not related to the accidents.

[241] Returning to the plaintiff's list of alleged injuries, I make the following findings. The plaintiff suffers from the following accident-related conditions (which do not limit her employability):

- a) Neck pain
- b) Upper back pain
- c) Mid-back pain
- d) Low back pain
- e) Right wrist pain
- f) Headaches

Damages

[242] I now turn to the damages that flow from the injuries that were caused by the two accidents. The plaintiff seeks compensation under the following heads:

- a) Non-pecuniary damages
- b) Future loss of earning capacity
- c) Past wage loss (subject to reduction for social assistance)
- d) Cost of future care
- e) Special damages

Non-Pecuniary Damages

[243] I have explained my concerns with the plaintiff's credibility and reliability above. I have rejected the opinions of Dr. Chow and Dr. Schultz on causation. However, I have accepted the opinion of Dr. Chapman which links ongoing pain symptoms to the accidents.

[244] The plaintiff seeks \$250,000 in non-pecuniary damages. The defence submits that, given the lack of credibility and reliability, an award in the range of \$10,000 to \$40,000 would be appropriate.

[245] I do not consider either of those submissions (or the cases that support them) to be helpful.

[246] I have accepted Dr. Chapman's opinion that the plaintiff's ongoing chronic pain was caused by the accidents. I do not accept that her chronic pain renders her unemployable. Based upon my findings, there is no psychological overlay or brain injury.

[247] I award the amount of \$120,000 for non-pecuniary damages.

Loss of Capacity to Earn Income - Past

- [248] The plaintiff seeks an award of \$295,947 for past loss of capacity to earn income. She submits that, but for the accident, she would have earned at approximately \$344,960 representing four years of employment as a police officer. She then reduces her past hypothetical income by \$49,013 (her actual earnings of the period). She also acknowledges that she has been receiving Provincial income assistance benefits and that those amounts must be factored into the award.
- [249] The defendants submit that, if an award for past loss income loss is made, \$10,000 would be an appropriate figure.
- [250] As I have noted many times, more than eight years have passed since the First Accident. The plaintiff was 17 and is now 25. During that expanse of time, she has had periods of employment that do not fit with her narrative of causation, or disability.
- [251] Given the multiple variables since 2016, I approach the past loss on a "loss of capacity" basis.
- [252] In considering the claim under this heading, I have in mind the following:
- a) Dr. Chapman opined that the plaintiff has ongoing pain symptoms, but they should not limit her employment.
 - b) Although her total employment income since 2016 has been low, she earned \$38,772 at her concierge job in the 12 months after September 2017 (after the First Accident). I have no explanation as to why the plaintiff was employable on a full-time basis in 2018, but unemployable thereafter.
 - c) There have also been periods when the plaintiff clearly chose not to work. For example, in the fall of 2019, she attended Coquitlam College. That schooling was interrupted by the Second Accident and the Covid pandemic in early 2020. Further, in the latter half of 2019, she received monthly cash payments from her boyfriend. I find that she chose not to work during that period.
 - d) After the Second Accident, she stopped attending Coquitlam College. I am satisfied that her quitting was caused by the Second Accident. However, she was employed for six months on a near full-time basis at the Dance Studio (fall 2020). Again, I have no explanation how the accidents caused her to be unemployable after that job ended.
 - e) Further, although she did not return to the college, she started pursuing her real estate license in early 2021. She pursued that course for two years, ultimately failing the English language competency exam. Hence, she was pursuing education toward a career but could not complete the course of study for an unrelated reason.

- f) Since August 2021, the plaintiff has been receiving income benefits from the province. Despite claiming to be unable to work, she was able to travel to Turkey (for work) plus Bulgaria and Sweden in August 2022. Then, in October 2022 she travelled to Rome, by herself, for the weekend. She then flew to Cuba to meet up with her new boyfriend, Mr. Vila-Peterson. During this period, she had no apparent means of support beyond welfare. The plaintiff's lengthy travel during this three-month period was inconsistent with her claim of disability. Further, her ability to pay for trips to Bulgaria, Sweden, and Italy was never explained in a logical manner.
- g) Finally, I note that the plaintiff's experts (Dr. Chow and Mr. McNeil) along with Dr. Chapman opine that the plaintiff is physically employable in sedentary positions. While Dr. Schultz opined that the plaintiff's neuro-cognitive and psychological problems prevent her from working, I have rejected her opinion on the causal link between those problems and the accidents.
- h) Hence, in the periods the plaintiff has not been working since the First Accident, I am unable to find a link to either the First or Second Accident with the exception of the following periods:
- i. October 3, 2016 to September 2017 (when she obtained the concierge job); and
- ii. January 31, 2020, to the fall of 2020, when she took on the internship at the Dance Centre.

[253] With respect to the first period (2016-2017), in the ordinary course, she would have been in high school. However, she had a record of working while in school. I award the amount of \$20,000 for this period, based on an estimate of the net amount she would have earned through continuous part-time work over 12 months.

[254] With respect to the 2020 period, I note the plaintiff was not employed at the time of the Second Accident. She was attending school, but had to drop her school while she recovered. Hence, she lost the opportunity to work during this period. For this seven-month period, I also award \$20,000. My basis for that award is that the plaintiff had the capacity to earn \$38,000 per year. Hence, this amount awarded takes into account her prior earnings, while deducting some contingencies, such as whether she would have chosen not to work in any event.

[255] In total, I award \$40,000 for past income loss (net) and past loss of capacity.

[256] Since the plaintiff was not receiving social assistance during the periods I have compensated, no adjustment needs to be made.

Loss of Capacity to Earn Income - Future

[257] The plaintiff seeks an award of \$759,720.93 representing present value of her lifetime loss of income.

[258] The defendants submit there is no basis for an award for future loss of earning capacity.

[259] Based on the opinion evidence that I have accepted, the plaintiff has ongoing symptoms of chronic pain, but there are no activities she should avoid. Hence, I do not accept that she is limited to sedentary occupations by her accident-related symptoms. Again, if there are neuro-cognitive or psychological issues that prevent her from working, those ongoing problems are not causally related to the accidents.

[260] I dismiss the plaintiff's claim for future loss of capacity to earn income.

Cost of Future Care

[261] The plaintiff relies on the report of Mr. McNeil regarding cost of care. The total amount claimed (in oral final submissions) was \$242,000.

[262] As noted, the defendants retained Ms. Joyce Lee, an occupational therapist, to critique Mr. McNeil's report. Ms. Lee's report does not indicate the care items that the plaintiff does need. It only critiques the report of Mr. McNeil.

[263] The defendants submit that the plaintiff's need for future care is minimal. The plaintiff appears to be functioning at a high level.

[264] Dr. Chapman recommended the plaintiff to engage in an active aerobic based exercise program. He opined that, at the outset she would need instruction in this area by a physical therapist.

[265] Given the expert evidence that I accepted (Dr. Chapman's), I award a fund of \$7,200 which the plaintiff can use to obtain either physiotherapy or massage therapy or acupuncture therapy. That should provide monthly therapy sessions for a period of approximately five years while she pursues an exercise program. By the end of that period, she should be able to continue with an exercise program that maintains her fitness without the need of ongoing therapy.

Special Damages

[266] The plaintiff seeks an award of \$16,162.15.

[267] The defence submits that the award should be in the range of \$1,673.

[268] I am left to review the plaintiff's list of special damages and discern what amounts were reasonable.

[269] I am unable to say that the physical treatments that the plaintiff undertook (active rehab, physio, acupuncture, chiro and massage) were unrelated to the accident-caused injuries. I allow them all.

[270] I accept that counselling was required:

- a) until the end of 2017 (\$336); and
- b) from January 31, 2020, to February 1, 2021.

[271] I do not accept that counselling in 2018 or 2019 was accident-related. Similarly, any counselling after Feb 1, 2021, was unrelated.

[272] By my calculations, the award is:

- a) Physical therapies: \$13,931.58
- b) Counselling: \$ 336.00
- c) Miscellaneous: \$ 1,463.22
- d) Total \$15,730.80

Summary and Conclusion

[273] In summary, I award the plaintiff the following damages arising from the two Accidents:

Non-pecuniary Damages:

\$120,000

Past Income Loss and Past Loss of Capacity:

\$40,000

Loss of Capacity to Earn Income-Future:

\$0.00

Cost of Future Care:

\$7,200

Special Damages:

\$15,730.80

Total:

\$182,930.80

[274] The plaintiff has been successful in obtaining damages. If there were offers exchanged, I will hear submissions. I request notification of that situation within 60 days of release of these reasons.

"A. Ross J."

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