

CANADA / JUDGMENT

Simms v. Alzawad

2025 BCCA 346

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 346 Simms v. Alzawad

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Simms v. Alzawad,

2025 BCCA 346

Date: 20251014

Docket: CA48801

Between:

John Simms

Appellant

(Plaintiff)

And

Mohammed Alzawad

Respondent

(Defendant)

Before:

The Honourable Justice Riley

The Honourable Justice Edelmann

The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated

December 6, 2022 (Simms v. Alzawad, 2022 BCSC 2125,
Vancouver Docket M174551).

Counsel for the Appellant:

G.J. Kehler

Counsel for the Respondent

(via teleconference):

E.J. Segal

Place and Date of Hearing:

Vancouver, British Columbia

September 12, 2025

Place and Date of Judgment:

Vancouver, British Columbia

October 14, 2025

Written Reasons by:

The Honourable Justice Riley

Concurred in by:

The Honourable Justice Edelmann

The Honourable Justice Mayer

Summary:

This appeal arises out of an assessment of damages following a motor vehicle accident for which the respondent admitted liability. The appellant alleges the judge erred in his assessment of special damages by finding the Workers Compensation Act, R.S.B.C. 2019, c. 1 [WCA] did not oust the court's jurisdiction to assess the necessity and reasonableness of vocational rehabilitation expenses incurred by WorkSafeBC, which were the subject of a subrogated claim for damages. He argues that the disallowed vocational rehabilitation expenses are "health care" costs that must be included in the damages award, or alternatively, that the judge made a palpable and overriding error in finding they were not justified. Held: Appeal dismissed. Once a plaintiff shows that amounts have been expended by WorkSafeBC on "health care" within the meaning of WCA s. 133(1)(a), the court must include those amounts in a damages award without further assessment of their reasonableness. However, the disallowed vocational rehabilitation expenses were not "health care" expenses. The trial judge was therefore correct to apply common law principles governing assessment of special damages and made no palpable and overriding error in finding that the amounts in issue were not reasonable.

Reasons for Judgment of the Honourable Justice Riley:

Introduction

- [1] This is an appeal from a judgment of the Supreme Court of British Columbia awarding damages to the appellant for personal injuries suffered in a motor vehicle accident. By the time of the hearing before us, the sole ground of appeal advanced by the appellant was that the trial judge erred in failing to include amounts paid by WorkSafeBC ("WorkSafe Payments") in the award of damages.
- [2] The respondent has filed a written submission indicating that he is not opposed to the relief sought, namely that the judgment below be varied to include in the damage award the full amount of the WorkSafe Payments. However, even where the respondent consents, this Court typically will not allow an appeal without first satisfying itself that there is a proper legal basis for interfering with the decision of the court below: *Brown v. British Columbia (Director of Child, Family and Community Service)*, 2024 BCCA 248 at para. 10; *RGN Management Limited Partnership v. 7th Light Education Group Inc.*, 2025 BCCA 23 at para. 35.
- [3] In this case, there are three specific reasons why the Court must satisfy itself that there is a proper basis for the relief sought by the appellant. First, as the respondent correctly acknowledges, the point raised on appeal turns on a question of statutory interpretation, and the Court has an overriding responsibility to ascertain whether the interpretation adopted by the trial judge was in error and the interpretation urged by the appellant is sound. Second, as the appellant points out in his factum, this is the first time this particular point of statutory interpretation has been raised in this Court, and the result will be taken as binding on the lower courts. Third, the point raised involves some consideration of public policy, because it addresses the requirements for proof of damages in a subrogated claim intended to allow WorkSafeBC to recover amounts paid for the benefit of an injured worker.
- [4] Although the appellant's position is unopposed, for the reasons that follow, I find myself unable to agree with it. I am not satisfied that the trial judge reached an incorrect or unjustifiable result, although I would arrive at that result by a chain of reasoning that differs somewhat from that employed by the trial judge.

Facts

- [5] I will set out only the most basic facts necessary to decide the point raised on appeal.
- [6] By way of background, the appellant, Mr. Simms, suffered personal injuries in a motor vehicle collision with the respondent, Mr. Alzawad, in Vancouver on 25 September 2016.
- [7] The appellant was in the course of his employment as a hospital transfer driver when the collision occurred. He was therefore eligible for benefits from WorkSafeBC.

- [8] Between 28 October 2016 and 30 April 2021, WorkSafeBC expended \$56,546.24 for the appellant's benefit, consisting of: (i) \$36,797.25 in "medical expenses", made up of medical services plan ("MSP") payments and other health care benefits; and (ii) \$14,962.36 under WorkSafeBC's "Vocational Rehabilitation Program".
- [9] Mr. Simms filed a notice of civil claim against Mr. Alzawad for damages arising out of the collision. The pleadings include a subrogated claim for recovery of the WorkSafe Payments.
- [10] At trial, Mr. Alzawad admitted liability for the collision. The sole issue for the trial judge was the quantum of damages.

Trial Judge's Decision

- [11] In reasons for judgment indexed as *Simms v. Alzawad*, 2022 BCSC 2125, the trial judge awarded Mr. Simms damages totalling \$297,450, inclusive of non-pecuniary damages, gross past loss of earning capacity, loss of future earning capacity, and costs of future care.
- [12] The trial judge dealt with the claim for recovery of WorkSafe Payments under the heading of "special damages". As explained in further detail below, the judge's reasons identified the amount to be awarded under this head of damages as "to be determined".
- [13] Given the focus of the appeal, my summary of the trial judge's reasoning is limited to his analysis and conclusions with respect to the WorkSafe Payments.
- [14] The trial judge first considered which version of the Workers Compensation Act [WCA] applied to WorkSafeBC's subrogated claim. He reasoned that the former version of the statute (R.S.B.C. 1996, c. 492) applied, because this was the statute in place at the time of the claim. The revised statute (R.S.B.C. 2019, c. 1), which came into force on 6 April 2020, did not state that it was to apply retroactively or retrospectively. Relying on the reasoning in *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at para. 71, the judge concluded that the former version of the statute applied in this case.
- [15] Section 10 of the former WCA governs subrogated claims for WorkSafeBC payments made on behalf of an injured worker. Section 10(6) provides that WorkSafeBC is subrogated to any right of action that a worker may have against a party who is liable for the injury in respect of which the worker receives benefits. The trial judge referred to s. 10(10)(a), which provides that in any such subrogated action, "an award for damages is to include" amounts expended for "health care" provided under the WCA. After considering two cases, *Pinch v. Hofstee*, 2015 BCSC 1888 and *Lane v. Ou*, 2019 BCSC 928, the trial judge found that the effect of s. 10(10)(a) was merely to require "plaintiffs to include WorkSafeBC's subrogated claim in their claims for damages". In reaching this conclusion, the trial judge rejected an interpretation of s. 10(10)(a) that would make health care expenses paid by WorkSafeBC "automatically recoverable without proof of recoverability according to the ordinary principles applicable to special damages".

- [16] The trial judge went on to consider the common law requirements for proof of special damages, which in his view required the appellant to prove that the amounts at issue were: (i) reasonable, and (ii) necessary.
- [17] The judge noted that the WorkSafeBC billing records tendered in evidence grouped all of the amounts claimed under three headings: (i) health care, (ii) MSP, and (iii) vocational rehabilitation. Because the submissions of the parties contained no precise breakdown of the underlying figures, the trial judge was "left with uncertainty" as to which amounts were actually at issue. Accordingly, the judge framed his reasons by reference to "general terms only", leaving it to counsel to work out the details, with the right to return to court if they were unable to reach agreement based on the "general terms" in his judgment.
- [18] The trial judge accepted that all of the "MSP" and other "health care" expenditures were reasonable and necessary. He reached the same conclusion with respect to psychological counselling services provided to the appellant for "accident-related mood issues".
- [19] The judge also accepted that it was reasonable and necessary for WorkSafeBC to engage occupational therapy services in response to the appellant's collision-related injuries, including the costs of a functional capacity evaluation.
- [20] However, the trial judge was not satisfied that the retraining program and related expenses were justified. Specifically, the judge reasoned that the claim for job retraining and related expenses was "problematic given that the retraining program seems to have been particularly ill-suited to the plaintiff" because "office administration was a vocational field in which the plaintiff had no interest". There was, in the judge's view, insufficient evidence to show that these amounts were justified. For similar reasons, the trial judge was not satisfied that amounts paid for "occupational therapy services" related to the "implementation or monitoring of the retraining course" were justified.
- [21] In the result, the trial judge ruled that the damages award: (1) should include (a) WorkSafeBC's "health care" and MSP expenditures; (b) psychological services expenditures; and (c) occupational therapy expenditures, except those related to the retraining course; and (2) should not include (a) vocational rehabilitation expenditures related to the job retraining program; and (b) occupational therapy costs relating to the implementation or monitoring of the program. The trial judge left it to counsel to work out the details, failing which they could appear before him for an additional order.
- [22] Counsel were, in fact, able to work out the exact amounts in issue based on the reasons for judgment. They subsequently entered an order that included special damages of \$38,626.38, which included \$33,839.75 as the allowable amount of the WorkSafe Payments. It is common ground that the disallowed WorkSafe Payments total \$17,919.86. This is the quantum of damages at issue on appeal.

Analysis

- [23] The first point of statutory interpretation raised by the appellant is whether the trial judge erred in determining that the subrogated claim for WorkSafe Payments was governed by the former version of the WCA and not the revised version.
- [24] The appellant relies on s. 8 of the Statute Revision Act, R.S.B.C. 1996, c. 440. Section 8(1) provides that a revision does not operate as new law but rather has the effect of consolidating the law contained in the enactments and provisions replaced by the revision. Section 8(2) states that if a revised provision has the same effect as the provision it replaces, the revised provision operates both retrospectively and prospectively, and is deemed to have been enacted and come into force on the day on which the provision it replaced came into force. Section 8(3) states that where the revised provision "does not have the same effect" as the provision it replaces, the former version "governs all transactions, matters and things before the revision comes into force", and the revised provision governs all such matters after it comes into force.
- [25] The Statute Revision Act was not brought to the attention of the trial judge. I have no difficulty concluding that this is a situation in which s. 8(2) applies. When one compares the content of the operative provision in the former WCA (s. 10) with the operative replacement provisions in the revised WCA (ss. 130 and 133), their effect is the same. There is a slight difference in the wording of the damages provisions, in that former s. 10(10)(a) states that a damages award "is to" include health care provided to the worker under the relevant part of the Act, whereas revised s. 133(1)(a) states that a damages award "must include" such health care amounts. However, the difference is inconsequential, and I have no difficulty concluding that the old provision and the revised provision have the same effect.
- [26] I conclude that, owing to the fact that the Statute Revision Act was not brought to the trial judge's attention, he erred in applying s. 10(10)(a) of the former WCA, when he should have applied s. 133(1)(a) of the revised WCA. However, this error had no bearing on the trial judge's analysis given that the provisions have the same effect, as described above. The point of the discussion so far is merely to establish that the analysis is properly conducted by reference to s. 133(1)(a) of the revised WCA, and not s. 10(10)(a) of the former statute.
- [27] The main thrust of the appellant's submission on appeal is that the trial judge erred in law by failing to give effect to the mandatory or non-discretionary nature of the text of the provision governing subrogated claims for "health care" provided to injured workers.
- [28] The modern rule of statutory interpretation requires that the words in the statute be given their plain and ordinary meaning, when read in their entire context, harmoniously with the scheme of the statute, in a manner that is consistent with its object and purpose: *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26; *Rooney v. Galloway*, 2024 BCCA 8 at para. 120.

- [29] Section 133(1)(a) of the WCA provides that a damages award "must include" "health care" payments made under Part 4. I agree with the appellant's submission that, in view of the overall object and purpose of the WCA and the specific purpose of the subrogated claim provisions, the effect of s. 133(1)(a) is to require the court to include all "health care" expenditures made on behalf of an injured worker in a damages award against a party liable for the worker's injuries.
- [30] With regard to "health care" expenditures, the WCA sets up a rigorous and comprehensive scheme for determining that such expenditures are truly required for the treatment of an injured worker. By providing that such "health care" amounts "must be" included in a damages award, s. 133(1)(a) reflects the intention of the legislature for WorkSafeBC, not the court, to determine when "health care" expenditures are justifiably made to meet the injury-related needs of an affected worker. This interpretation is reinforced by s. 157(2), which provides that "[a]ll questions as to the necessity, character and sufficiency of health care to be provided are to be determined by" WorkSafeBC. These provisions leave no room for the court to apply its own assessment of the reasonableness of "health care" expenditures for the injured worker's benefit under the relevant part of the WCA.
- [31] I therefore agree with the appellant that the trial judge erred in applying the common law requirement of reasonableness to "health care" expenditures falling within the scope of the WCA. In my view, once a plaintiff shows that amounts have been expended by WorkSafeBC on "health care" within the meaning of s. 133(1)(a), then the court "must include" those amounts in the damages award made against the defendant as the party liable for the injuries.
- [32] However, that is not the end of the analysis, because s. 133(1)(a) only applies to "health care" within the meaning of Part 4 of the WCA.
- [33] The appellant relies on s. 1 of the WCA, which states that "'health care', when used in a compensation provision, includes things that [WorkSafeBC] is empowered under this Act to provide for injured workers". The appellant says this expanded definition of the term "health care" is broad enough to include "vocational rehabilitation" expenditures which WorkSafeBC is "empowered" under the WCA to provide to injured workers.
- [34] With respect, I do not agree, for two interrelated reasons.
- [35] First, the expanded definition in s. 1 states that "'health care', when used in a compensation provision, includes things that [WorkSafeBC] is empowered under this Act to provide for injured workers". The effect is to clarify that where a particular provision of the WCA refers to "health care", that term is to be interpreted to include all "things" WorkSafeBC is empowered to provide. This expanded definition only applies to provisions that involve or pertain to "health care". I would interpret the intent of the expanded definition to make it clear that "health care" expenditures include not just costs of health care services or actual care, but also costs of medical devices, i.e. "things" such as crutches, prosthetics, and the like, that are determined by WorkSafeBC, or qualified medical professionals engaged by

WorkSafeBC, to be necessary for the treatment or amelioration of a worker's injuries.

- [36] Second, Part 4 of the WCA governs not only "health care" for an injured worker, but also other forms of compensation or benefits for an injured worker, including vocational rehabilitation, retirement services, and even benefits for an injured worker's family members. Thus, not all expenditures that WorkSafeBC is "empowered" to make under Part 4 qualify as "health care" for the injured worker.
- [37] The specific provisions dealing with "health care" are found within "Division 4 - Vocational Rehabilitation, Healthcare, and Other Assistance". The "health care" provisions are principally ss. 156 to 161. These provisions treat "health care" as distinct from other forms of benefits, including "vocational rehabilitation" as contemplated in s. 155, retirement services and supports as contemplated in s. 162, and benefits for family members of deceased workers as set out in ss. 167 to 177.
- [38] Section 155 is of particular relevance in the case at bar. Section 155(1) provides that WorkSafeBC may "take the measures and make the expenditures" that it considers "necessary or expedient", to "aid in getting an injured worker back to work" or "assist in lessening or removing a resulting disability". Section 155(2) provides that WorkSafeBC may "make provisions and expenditures" for the "training or retraining" of a deceased worker's dependant spouse. Section 155(3) provides that WorkSafeBC may provide "counselling and placement services" to a worker's dependants. In my view, many of the services and expenditures contemplated in s. 155 go well beyond the scope of providing "health care" to an injured worker.
- [39] To be clear, some services or expenditures that WorkSafeBC happens to classify as "vocational rehabilitation" under its billing processes may in fact fit within the scope of "health care" within the meaning of the WCA. Examples might include vocational rehabilitation expenditures intended to assist an injured worker in regaining work-related functionality in connection with an injury. The question is not how WorkSafeBC bills the expenditure, but whether, based on the evidence adduced at trial, the plaintiff can show that the expenditure qualifies as "health care" within the meaning of the WCA. Although, in practice, there may be some overlap between what might qualify as "health care" and what might constitute "vocational rehabilitation", it is apparent from the scope of s. 155 of the WCA that not all WorkSafeBC expenditures made under this provision fit within the scope of "health care" within the meaning of ss. 1 and 133(1)(a). This is one of the reasons why I am not swayed by the appellant's argument concerning the proper interpretation of the scope of "health care" expenditures that "must" be included in a damages award under s. 133(1)(a).
- [40] The appellant argues that s. 133(1)(a) ought to be interpreted purposively and in light of the overall objective of the subrogated claim provisions, which are intended to ensure that WorkSafeBC is able to recover amounts paid out of the worker's compensation fund from third parties who are found to be liable for a worker's injuries. However, the statutory purpose cannot be invoked as a basis for overriding or ignoring the text of the relevant

statutory provisions, and their place within the overall structure of the legislation. On its face, s. 133(1)(a) applies only to "health care" expenditures, and the expanded definition of "health care" in s. 1 merely extends the scope of what may be included within that term when it is used in the statute. If the legislature intended that a damages award must include all expenditures made under Part 4 of the WCA, it could have said so expressly. It did not. Section 133(1)(a) does not apply to all expenditures made under Part 4, but only those which qualify as "health care".

- [41] The foregoing interpretation of the relevant WCA provisions suggests that, when considering a subrogated claim for WorkSafeBC payments to an injured plaintiff, the court ought to proceed in two stages. At the first stage, the court should consider which of the payments at issue have been shown to qualify as "health care" within the meaning of the WCA, such that they "must" be included in the damages award pursuant to s. 133(1)(a). At the second stage, the court should consider whether any payments which do not qualify as "health care" have been shown to meet the common law requirements for special damages.
- [42] Applying that approach in the case at bar, in my view the trial judge erred in failing to recognize that s. 133(1)(a) requires that all amounts expended by WorkSafeBC on "health care" for an injured worker "must" be included in a damages award without independent proof of the reasonableness of those health care expenditures. However, for the reasons explained below, I have concluded that despite this error, the trial judge reached the correct result.
- [43] Recall that the WorkSafe Payments include amounts falling into three WorkSafeBC billing categories, namely (i) health care, (ii) MSP, and (iii) vocational rehabilitation. Although WorkSafeBC's categorization of the expenditures may be a useful starting point in the analysis, the question for the court is not what billing code WorkSafeBC uses to record the expenditures, but rather whether the expenditures in fact qualify as "health care" within the meaning of the WCA, or otherwise meet the common law requirements for special damages. In other words, the result must not be driven by how WorkSafeBC labels the payments, but rather by the true nature of the payments as disclosed by all the evidence. The WorkSafeBC billing code may be some evidence as to the nature of a particular expenditure. The actual description of that item on the WorkSafeBC billing documents may be more telling. In the end, it will be for the trial judge to determine on all the evidence whether the amounts claimed qualify as "health care" that "must" be included in the damages award, or alternatively, qualify as special damages at common law.
- [44] In this particular case, although the trial judge erred in law by applying the common law requirements for proof of special damages to all of the WorkSafeBC payments, in the end he reached the correct outcome. To explain, the trial judge determined that all of the items billed by WorkSafeBC as "health care" were properly included in the special damages award, with the exception of occupational therapy related to the implementation and monitoring of the retraining course in the amount of \$2,957.50. Although these occupational therapy services were billed by WorkSafeBC as "health care", based on the description in the billing

records and the trial judge's findings of fact, they do not fit within the definition of "health care" within the meaning of the WCA. They are, rather, expenditures related to a vocational program within the meaning of s. 155(1) of the WCA. The plaintiff was therefore required to prove that they qualified as special damages at common law.

- [45] The only categories of WorkSafeBC Payments that the trial judge did not include in the damages award were the cost of the retraining course, and "occupational therapy services" related to the "implementation or monitoring of the retraining course". On a proper interpretation of s. 133(1)(a), these expenditures did not qualify as "health care" that "must be" included in the damages award. Thus, while s. 130(2) gave WorkSafeBC the right to seek recovery of these amounts via a subrogated claim, the burden was on the appellant to prove they were justifiable expenditures in respect of the treatment or amelioration of his collision-related injuries. The trial judge's conclusion that these amounts were not justified at common law is a finding of mixed fact and law, subject to deference on appeal.
- [46] The appellant argues, in the alternative, that even if s. 133(1)(a) did not make it compulsory for the trial judge to include the impugned vocational rehabilitation expenditures in the damages award, the judge committed a palpable and overriding error in finding that they did not meet the common law requirements for special damages.
- [47] The trial judge reasoned that at common law, special damages must be shown to be both (i) reasonable, and (ii) necessary. There is some case law to support that view: *Nijjer v. Bierman*, 2023 BCSC 1882 at para. 437. Other cases suggest that special damages must be "reasonably necessary": *Arvanitis v. Cleave*, 2023 BCSC 672 at paras. 303, 306; *Broman v. Pang*, 2023 BCSC 353 at para. 210. However, in my view, the weight of authority supports a more flexible approach, under which special damages need only meet a more general requirement of reasonableness, with evidence of medical justification for an expense aimed at promoting the plaintiff's physical or mental welfare being a factor in determining whether the expense is reasonable: *Hancott v. Barnes*, 2015 BCSC 1308 at para. 164; *Manhas v. Jaswal*, 2020 BCSC 586 at para. 86; *Austin v. Glass*, 2023 BCSC 1483 at para. 215.
- [48] I would apply the same approach to special damages claims for amounts expended on vocational programming. The central question is whether the plaintiff can show that the expenditure was reasonably undertaken to restore the plaintiff to their chosen occupation, or some reasonable alternative, with a view to placing the plaintiff back in the position they occupied before the tort-related injury: *McLellan v. Canada (Public Safety and Solicitor General)*, 2022 BCSC 419 at paras. 262-265 (aff'd without reference to this point, 2023 BCCA 279); *Bunuan v. Serka*, 2020 BCSC 800 at para. 190; *Lane* at paras. 215, 219; *S.R. v. Trasolini*, 2013 BCSC 1135 at para. 219; *Sidhu v. Kiraly*, 2009 BCSC 1202 at para. 30.
- [49] The appellant also submits that, while special damages must be reasonable taking into account the nature of the plaintiff's injury, the fact that a particular expenditure ultimately proves to be ineffective does not mean it was unreasonably incurred as a means of treating the plaintiff's tort-related injuries, assisting the plaintiff to attain full recovery from those

injuries, or ameliorating the plaintiff's post-injury circumstances. I agree. As explained in *Ponych v. Klose*, 2023 BCSC 1504 at para. 344, "[w]ithin limits", reasonable expenses may arise from "non-traditional or unconventional treatment", even where the treatment turns out to be ineffective. See also *McLellan* at paras. 262-265, to the same effect.

- [50] The trial judge found that the vocational rehabilitation program and associated costs were "problematic given that the retraining program seems to have been particularly ill-suited to the plaintiff" as "office administration was a vocational field in which the plaintiff had no interest". The appellant says this conclusion is tainted by palpable and overriding error in two ways.
- [51] First, the appellant argues that the trial judge erred in treating the appellant's subjective lack of interest in the re-training program as determinative. In the appellant's submission, despite his subjective lack of interest in the program, it was nonetheless objectively reasonable for WorkSafeBC to fund it as a means of getting the appellant "back to work". With respect, I do not agree. In my view, the outcome in this case did not turn on any distinction between objective or subjective suitability of the program. It was known to WorkSafeBC that the appellant was not interested in re-training to work in the field of office administration. He made a go of it, as he was evidently required to do as a condition of his continued WorkSafeBC coverage, but he ultimately abandoned the program. The trial judge weighed the evidence and concluded that in all the circumstances, the vocational rehabilitation program was not a reasonable expense to incur as a means of assisting the appellant in attaining full recovery from his collision-related injuries. It was open to the trial judge to make this finding on the evidence before him.
- [52] Second, the appellant argues that the trial judge's conclusion is inconsistent with the undisputed evidence of the respondent's own expert rehabilitation consultant, Ms. Gallagher. In particular, the appellant cites the following passage from Ms. Gallagher's report, concerning the utility of the re-training program:

Further to this, Mr. Simms' past experience does not seem to lend itself towards a position in administration. The majority of his past work experience has been in retail sales management, sales and security. In my opinion, it would be preferable to explore vocational options which would utilize the skills that Mr. Simms has already developed. That being said, I do not feel that Mr. Simms' retraining program was a waste of time as it has improved his computer skills which are necessary and valuable skills in daily life, job searches and most types of employment. Completion of this training will likely improve Mr. Simms' overall employability.

- [53] The appellant's argument is that even if he was ill-suited to the vocation that was the focus of the job re-training program (office administration), the program was nevertheless of benefit to him, because it "improved his computer skills", which are "necessary and valuable" in daily life, and in "job searches and most types of employment". The appellant says the trial judge committed a palpable and overriding error in overlooking this evidence, from the respondent's own expert, to conclude that the re-training program was not shown to be a

reasonable expense for the amelioration of the appellant's post-injury circumstances.

- [54] I do not find the appellant's submission on this point persuasive. There was evidence in the record capable of supporting the trial judge's conclusion that it was not objectively reasonable for WorkSafeBC to direct the appellant toward re-training in a field for which he was ill-suited. Indeed, while the appellant made an effort by attending the program despite his lack of interest in an office administration career, in the end he did not complete it.
- [55] The trial judge was clearly aware of Ms. Gallagher's evidence, having summarized it in his judgment. He was not required to refer to every aspect of the evidence in his analysis. The point relied upon by the appellant--that Ms. Gallagher felt there was some general value to the computer skills made available to the appellant through the re-training program--is not so overwhelming and central to the judge's conclusion that the absence of any express reference to it in the reasons means the judge overlooked or misapprehended it. This point simply did not carry the day for the trial judge, who found on all of the evidence that it was not reasonable for WorkSafeBC to fund this re-training program for this particular injured worker. As Justice Stratas has explained, "[w]hen arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing", but rather, the "entire tree must fall": *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at para. 46, cited with approval in *Benhaim v. St-Germain*, 2016 SCC 48 at para. 38. I therefore do not accept the appellant's argument that the judge's conclusion is tainted by palpable and overriding error.
- [56] I have taken into account the respondent's position on appeal. It is certainly relevant that the respondent, having argued at trial that the vocational rehabilitation expenditures were not reasonable and therefore ought not to be included in the special damages award, does not seek to defend the trial judge's conclusion on this point. However, as noted at the outset, the Court typically will not allow an appeal--the effect of which is to set aside or vary a considered decision of the court below following a full trial--without satisfying itself that there is a basis for doing so. Despite the able submissions of counsel for the appellant, I am not convinced that there is a basis for setting aside the trial judge's conclusion regarding the WorkSafe Payments related to the job re-training program, based upon his consideration of all the evidence and arguments of both parties at trial.

Conclusion

[57] I would dismiss the appeal.

"The Honourable Justice Riley"

I AGREE:

"The Honourable Justice Edelmann"

I AGREE:

"The Honourable Justice Mayer"

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