

CANADA / JUDGMENT

## Steinlauf v. Deol

2021 BCSC 1118

COURT

Supreme Court of British Columbia

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2021 BCSC 1118 Steinlauf v. Deol

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Steinlauf v. Deol,

2021 BCSC 1118

Date: 20210609

Docket: M189080

Registry: Vancouver

Between:

Shawn Steinlauf

Plaintiff

And

Pawandeep Deol and Best Can Trucking Ltd.

Defendants

Before: The Honourable Mr. Justice Basran

Reasons for Judgment

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Place and Date of Trial:

Vancouver, B.C.

February 16-18, 22-26 and

March 1-2, 2021

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June 9, 2021

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## INTRODUCTION

- [1] On September 14, 2017, Constable Shawn Steinlauf was on duty and driving a marked police SUV. He turned left from Westminster Highway onto Jacombs Road in Richmond, B.C. when his vehicle was violently struck by a tractor-trailer driven by Mr. Deol, an employee of Best Can Trucking Ltd. (the "Accident"). The defendants dispute their liability for the Accident. Constable Steinlauf was in good health prior to the Accident, which caused significant injuries to his neck, shoulder, lower left leg, and back. He also developed depression, anxiety, post traumatic stress disorder (PTSD), insomnia, and cognitive difficulties after the Accident.
- [2] Constable Steinlauf seeks damages for his pain and suffering, loss of past and future earning capacity, cost of future care, and loss of past and future homemaking capacity. He also seeks special damages.
- [3] For the reasons that follow, I have concluded that the defendants are 85 percent liable for the Accident and Const. Steinlauf is 15 percent liable for it. Constable Steinlauf is therefore entitled to 85 percent of:
- a) \$225,000 for pain and suffering;
  - b) \$50,000 for loss of past earning capacity;
  - c) \$3,179,000 for loss of future earning capacity;
  - d) \$122,000 for cost of future care;
  - e) \$182,000 for loss of past and future homemaking capacity; and
  - f) \$23,290 for special damages.

## CREDIBILITY ASSESSMENT

- [4] The evidence of Const. Steinlauf, his colleagues and superiors at the RCMP, former principal, Mr. Engel, and father, David Steinlauf, was entirely credible. They all testified in a clear and internally consistent manner. All of them recounted that Const. Steinlauf was outgoing, active, ambitious, and high achieving prior to the Accident. He had a strong academic record, work ethic, and employment history.

- [5] They all recalled that this changed dramatically after the Accident. The Accident exacted a heavy toll on Const. Steinlauf physically, psychologically, and emotionally. The evidence of these changes was specific, consistent, and clearly described. None of the plaintiff's witnesses, including Const. Steinlauf, exaggerated or embellished their testimony. I accept their evidence unreservedly.
- [6] Mr. Deol's testimony on the circumstances surrounding the Accident conflicts with the dash camera video footage as well as the expert opinions of two accident reconstruction specialists, Mr. Toor and Mr. Gough. Mr. Deol's recollection was that the traffic light turned yellow shortly before he entered the intersection and he was therefore too close to the intersection to stop before it. As will be discussed in more detail, the accident reconstruction experts agree that the light turned red between 2/30 and 9/30 of a second after Mr. Deol entered the intersection. Accordingly, it was yellow for almost four full seconds before he entered the intersection.
- [7] At trial, Mr. Deol did not recall with certainty what the colour of the light was when the car ahead of Const. Steinlauf began its left turn. He seemingly guessed that it was yellow. During his examination for discovery, he stated that he was 100 percent sure that the light was green when this vehicle turned left. He later confirmed that the vehicle ahead of Const. Steinlauf had completed its left turn on a green light. At trial, Mr. Deol modified his answer and stated that the car ahead of Const. Steinlauf initiated its left turn on a green light but finished it on a yellow light. He also stated that he does not remember the colour of the light. Mr. Deol's varying answers to the same questions, combined with the conflict between his recollection of the events and the dash camera video footage, lead me to conclude that his evidence is not credible. I do not accept his description of the circumstances surrounding the Accident.
- [8] Mr. Harrhy witnessed the Accident while stopped on Jacombs Road, facing south at the intersection. His memory of the Accident accords to some extent with Mr. Deol's description of the collision because he recalls that the light was yellow at impact. He believes that neither the vehicle ahead of Const. Steinlauf nor Const. Steinlauf should have turned left when they did. I decline to conclude that Mr. Harrhy's evidence is not credible but I find it is not reliable because it conflicts with the dash camera video footage. It also conflicts with the information provided by the accident reconstruction experts. They indicated that the lights on Westminster Highway remain yellow for four seconds followed by 1.5 seconds of all red lights before the northbound and southbound lights turn green.

## LIABILITY

### Relevant Legal Principles

- [9] The driver of a vehicle approaching an intersection and facing a yellow light must stop before entering the intersection unless the stop cannot be made safely: s. 128(1)(a) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA].

- [10] The driver facing the yellow light has the onus of proving that they cannot safely stop: *Vapheas v. Madden*, 2014 BCSC 138 at para. 34, and *Wattar v. Lu*, 2013 BCSC 603 at para. 20.
- [11] A signalling left turning vehicle in an intersection must yield the right of way to approaching traffic that constitutes an immediate hazard. Having done so, oncoming traffic must yield the right of way to the left turning vehicle: s. 174 of the MVA.
- [12] The colour of the traffic light is the starting point in analyzing liability as between the left turning and through drivers: *Miller v. Dent*, 2014 BCCA 234 at para. 16.
- [13] The next step is to assess whether the left turning driver acted with reasonable care in the circumstances and with regard to manifest hazards: *Lozinski v. Maple Ridge (District)*, 2015 BCSC 1277 at para. 71.
- [14] A left turning vehicle is entitled to proceed on the assumption that oncoming traffic will act in accordance with the law: *Swieczko v. Nehme*, 2016 BCSC 399 at para. 36, referring to *Kokkinis v. Hall* (1996), 19 B.C.L.R. (3d) 273 (B.C.C.A.).
- [15] In addition to oncoming traffic, left turning drivers have a duty to be aware of cross traffic, pedestrians, and whatever else is in an intersection: *Kokkinis* at para. 10.
- [16] Through drivers approaching a busy intersection must expect that a yellow light may be the only opportunity when left turning vehicles can complete their turns. There is no burden on left turning drivers to wait until oncoming traffic stops. If there was, traffic would come to a standstill: *Kokkinis* at para. 10.

### Plaintiff's Position on Liability

- [17] Constable Steinlauf asserts that Mr. Deol is 100 percent liable for the Accident because he could have safely stopped before entering the intersection had he responded properly to the yellow light. Instead, he entered the intersection on a very late yellow light. Constable Steinlauf recalls looking for oncoming traffic before commencing his turn, seeing it was clear, then beginning his turn. He testified that oncoming traffic partially obstructed his view of vehicles in the opposing left turn lane so he could not see beyond six or seven car lengths. Constable Steinlauf denies that Mr. Deol's truck was an immediate hazard because it was far from the intersection when he began his turn.

### Defendants' Position on Liability

- [18] Mr. Deol testified that he did not have enough time to bring his large tractor-trailer to a stop after the light turned yellow and that Const. Steinlauf made his left turn without looking for hazards. Mr. Deol recalls seeing that Const. Steinlauf was looking down prior to impact and if he had looked before commencing his turn, Mr. Deol's large vehicle was clearly visible. He submits that Const. Steinlauf is 100 percent liable for the Accident.

## Findings of Fact on Liability

- [19] One of the unusual features of this case is that there is dash camera video footage of the collision. A stopped vehicle facing southbound on Jacombs Road recorded this footage. It shows a vehicle turning left ahead of Const. Steinlauf's vehicle, Const. Steinlauf following behind it, Mr. Deol's truck entering the intersection and violently colliding with Const. Steinlauf's vehicle.
- [20] The Accident took place at the intersection of Westminster Highway and Jacombs Road. Jacombs Road is on the north side of Westminster Highway and Sidaway Road is on the south. Westminster Highway is oriented in an east-west direction. Jacombs Road and Sidaway Road are the northern and southern branches of this intersection. Westminster Highway has two through lanes of travel and dedicated left turn lanes. Signal lights govern the flow of traffic at this flat intersection.
- [21] The accident took place at approximately 2:38 p.m. on September 14, 2017. The conditions were clear, sunny, and dry and the temperature was 24°C. The posted speed limit on Westminster Highway was 60 km/h. Constable Steinlauf was facing eastbound on Westminster Highway in the left turning lane, intending to turn northbound onto Jacombs Road. Mr. Deol drove westbound on Westminster Highway in the curb lane.
- [22] The video footage reveals that at impact, the southbound light was red. The trailer portion of Mr. Deol's vehicle briefly obstructs the view of the traffic lights as it crosses the intersection. When the traffic lights reappear, they are green.
- [23] Mr. Toor and Mr. Gough, accident reconstruction specialists, provided expert reports and testified at trial.

## Mr. Toor's Expert Evidence

- [24] Mr. Toor completed a comprehensive collision analysis in which he determined the speed of Mr. Deol's tractor-trailer at the point of impact, the position of it when the traffic signal changed from green to yellow, and Mr. Deol's opportunity to avoid the collision.
- [25] He obtained a traffic signal sequencing report from the City of Richmond that provided the time duration for the traffic signals at the intersection of Westminster Highway and Jacombs Road on September 14, 2017, between 2:00 p.m. and 3:30 p.m. The traffic signals for Westminster Highway included a yellow signal for four seconds prior to the signal changing to red. The signal information also indicates that there would have been a red signal for 1.5 seconds for all directions before the north and southbound traffic signals changed to green.

- [26] Mr. Toor calculated the speed at which the defendants' vehicle was travelling by extrapolation using an analysis of momentum. He cross-referenced this calculation with the dash camera video footage. These videos record at 30 frames per second. He broke down this video footage of just under ten seconds into 290 frames so he could count the frames and determine the distance travelled to calculate the speed of the defendants' vehicle. He used this calculation to validate his momentum analysis.
- [27] Mr. Toor concluded that the impact speed of the tractor-trailer was 45 km/h with a range of approximately 42 to 48 km/h. He also concluded that the pre-breaking speed of the tractor-trailer was about 61 km/h with a range of approximately 58 to 64 km/h.
- [28] Mr. Toor reviewed the video footage and found that the southbound traffic signal changed from red to green about 0.7 to 1.1 seconds after impact. Given that there was a red signal for all directions for 1.5 seconds, this indicates that the traffic signal for westbound traffic on Westminster Highway changed from green to amber about 4.4 to 4.8 seconds before impact and changed to red about 0.4 to 0.8 seconds before impact. He therefore concludes that Mr. Deol entered the intersection 0.13 seconds before the light turned red and this light was likely red at impact. The traffic signal was yellow for about 3.1 to 3.5 seconds before Mr. Deol applied the tractor-trailer brakes. Accordingly, Mr. Deol's braking was likely in response to seeing Const. Steinlauf's vehicle as a hazard and was not in response to the traffic light changing from green to yellow.
- [29] Mr. Toor calculated that Mr. Deol's tractor-trailer was about 78 meters from the point of impact when the traffic signal changed from green to yellow. At impact, it was about 15 meters past the westbound stop line. Therefore, when the traffic signal changed from green to yellow, the tractor-trailer was about 63 meters away from the westbound stop line. Accordingly, Mr. Toor concluded that Mr. Deol could have stopped his vehicle before the westbound stop lane if he had responded to the traffic signal changing from green to yellow.
- [30] It is common ground that the brakes on the tractor-trailer of Mr. Deol's vehicle were deficient but both Mr. Toor and Mr. Gough concluded that it had adequate braking capability. Mr. Toor further found that the tractor-trailer could have stopped at the westbound stop line, in response to the change in the traffic light. He therefore concluded that the collision would not have happened if Mr. Deol had reacted to the changing traffic signal from green to yellow and applied his vehicles brakes.

### Mr. Gough's Expert Evidence

- [31] The defendants asked Mr. Gough to assess whether the deficiencies identified in the mechanical inspection report of Mr. Deol's tractor-trailer materially contributed to the collision. Accordingly, the scope of Mr. Gough's expert report is considerably narrower than the report prepared by Mr. Toor.

- [32] Mr. Gough analysed the data recorded by Const. Steinlauf's vehicle and concluded that at the time of the collision, the driver's seatbelt was not buckled. However, Const. Steinlauf testified that his seatbelt was properly fastened.
- [33] Mr. Gough concluded that the tractor-trailer was probably travelling at a speed of 58 to 71 km/h at the onset of braking and its speed at impact was between 45 and 55 km/h. He concluded that the trailer's brakes were out of adjustment. This would have reduced the vehicle's braking efficiency by approximately five percent. If the brakes had been fully functional, the speed of the truck at impact would have been approximately 1 km/h slower.
- [34] On February 10, 2021, approximately two weeks before the trial, Mr. Gough reviewed the dash camera video footage and produced an addendum report. He testified that he agreed with Mr. Toor's finding that the vehicle entered the intersection when the light was yellow but it turned red between 2/30 and 9/30 of a second later. Therefore, the light turned red very shortly after the tractor-trailer entered the intersection.

### Analysis of Liability

- [35] Constable Steinlauf testified that he looked for oncoming vehicles before turning left towards Jacombs Road but saw none. Mr. Deol's evidence was that the light turned yellow when he was close to the intersection so he could not safely stop. Mr. Harrhy and Mr. Denusik witnessed the accident from their respectively stopped vehicles, southbound on Jacombs Road. Mr. Harrhy's vehicle was several car lengths ahead of Mr. Denusik's vehicle. Mr. Harrhy's recollection accords with Mr. Deol's evidence. Mr. Denusik's evidence was consistent with the video footage.
- [36] As this Court has previously observed, witnesses to a collision are neither capable, nor expected, to precisely recount moment-by-moment details of abrupt and unexpected events such as vehicle collisions. They merely piece together the details from the fragments of information they recall. This case differs from most because there is dash camera video footage of the collision. Video footage, combined with the analysis conducted by Mr. Toor, demonstrates that Mr. Deol entered the intersection on a very late yellow light that turned red no more than 3/10 of a second after he entered it. This means he had almost four full seconds to see the yellow light and respond to it by braking his vehicle. If he had done so, he would have stopped his vehicle before entering the intersection thereby avoiding the collision with Const. Steinlauf.
- [37] The best evidence of the colour of the light, and the circumstances surrounding the collision, comes from the dash camera video footage. Both Mr. Toor and Mr. Gough agree that Mr. Deol entered the intersection on a very late yellow light. Their evidence, along with the dash camera video footage, is far more reliable than the evidence of Mr. Deol and Mr. Harrhy.

- [38] Next, I will turn to Const. Steinlauf's responsibility. A review of the dash camera video footage demonstrates that he began his left turn on a yellow light. He was required to ensure that no oncoming vehicles posed an immediate hazard. He testified that he did not see any such vehicles when he commenced his turn but that vehicles turning left, southbound onto Sidaway road, may have obstructed his view. I am not satisfied that he looked for oncoming vehicles. If he had, he would have seen a large tractor-trailer travelling at full speed, close to the intersection. Its size and proximity would have been unmistakable.
- [39] I am convinced that Const. Steinlauf would not have entered the intersection if he had looked for Mr. Deol's oncoming vehicle. The vehicle turning left in front of Const. Steinlauf narrowly avoided a collision with Mr. Deol's tractor-trailer. Mr. Deol's tractor-trailer entered the intersection before this other vehicle completed its turn onto Jacombs Road. I expect that Const. Steinlauf relied on that driver's decision to enter the intersection. He assumed that driver had determined it was safe to turn left and he proceeded with his turn because the light was still yellow. Unfortunately, he began this turn without looking for oncoming traffic.
- [40] Constable Steinlauf cannot rely on the assumption that Mr. Deol would act in accordance with the law and stop instead of entering the intersection because his evidence was that he did not see Mr. Deol's vehicle at all.
- [41] I am satisfied that Mr. Deol is substantially, but not solely, responsible for the Accident. The dash camera video footage combined with the analysis performed by Mr. Toor establishes that Mr. Deol entered the intersection on a very late yellow light and was in the intersection on a red light when the collision occurred. He had ample time to avoid the accident by braking when the traffic light turned from green to yellow but he failed to do so. Instead, he started braking in response to seeing two vehicles turning left in the intersection, the one ahead of Const. Steinlauf and Const. Steinlauf's vehicle.
- [42] Mr. Deol should not have entered the intersection on a late yellow light that turned red no more than one-third of a second later. In my view, he is 85 percent liable for the Accident. Constable Steinlauf is 15 percent liable for his decision to follow the other left-turning vehicle without first looking to verify that there was no oncoming traffic.

## PAIN AND SUFFERING

### Relevant Legal Principles

- [43] Constable Steinlauf must prove that the Accident caused his injuries. He need not establish that the negligence of the defendants was the sole cause of his injuries, but he must demonstrate a substantial connection between the Accident and his physical and psychological injuries: *Thompson v. Helgeson*, 2017 BCSC 927 at paras. 28-30, citing *Athey v. Leonati*, [1996] 3 S.C.R. 458 (S.C.C.).
- [44] Some of the relevant factors in assessing non-pecuniary damages include:

- a) Age of the plaintiff;
- b) Nature of the injury;
- c) Severity and duration of the pain;
- d) Disability;
- e) Emotional suffering;
- f) Loss or impairment of life;
- g) Impairment of family, marital, and social relationships;
- h) Impairment of physical and mental abilities;
- i) Loss of lifestyle; and
- j) The plaintiff's stoicism (as a factor that should not penalize the plaintiff).

Stapley v. Hejslet, 2006 BCCA 34 at para. 46.

- [45] Once causation is established, the burden shifts to the defendant to prove that the plaintiff failed to mitigate some of his loss or injury. If a plaintiff has not pursued a recommended course of medical treatment, the defendant must prove that the plaintiff acted unreasonably in declining the medical treatment and the extent, if any, by which the plaintiff's damages would have been reduced had he acted reasonably: Chiu v. Chiu, 2002 BCCA 618 at para. 57.
- [46] The question of whether a person has been reasonable in refusing recommended treatment is one for the trier of fact to decide based on the circumstances of the case. The degree of risk from the treatment, the gravity of the consequences for refusing it, and the potential benefit to be derived from it must be taken into account: Janiak v. Ippolito, [1985] 1 S.C.R. 146 (S.C.C.).
- [47] Mitigation is a subjective/objective test: Gregory v. Insurance Corporation of British Columbia, 2011 BCCA 144 at para. 56. The first part of the test asks whether the reasonable patient, having all the information at hand that the plaintiff possessed, ought to have undergone the treatment. The second part asks the extent, if any, to which the plaintiff's damages would have been reduced by that treatment. Also see Rhodes v. Surrey (City), 2018 BCCA 281 at para. 66.

### Plaintiff's Position on Non-Pecuniary Damages

- [48] Constable Steinlauf submits that he has suffered tremendously because of the Accident. He has multiple ongoing physical and psychological injuries that will worsen overtime. He suffers daily pain, is depressed, anxious, and cannot sleep. He no longer socializes outside of his home and may never have a real relationship. He is dismayed by his inability to pursue his chosen career in policing. He is no longer the outgoing, confident, self-assured young man he used to be. He takes multiple daily medications to manage his symptoms and

requires ongoing physical treatment and psychological therapy for the foreseeable future.

- [49] Constable Steinlauf asserts he has been generally diligent in following the advice of medical professionals. He received physiotherapy, massage therapy, chiropractic treatment, and psychological counselling. He has also taken a wide range of prescription medications to treat the serious and unrelenting symptoms caused by the Accident.
- [50] Constable Steinlauf submits that in applying the factors set out in Stapley, the Court must consider that he is quite young, 26 years old on the date of the Accident and 29 years old at trial. He has multiple injuries including ongoing pain in his neck and shoulder, severe pain in his lower back, weakness in his lower right extremity, a serious waddling gait, and daily headaches. He also experiences ongoing depression, anxiety, PTSD, and insomnia. His symptoms worsened in the past year. He is unable to stand, sit, or work in front of screens for extended periods. He has difficulty walking short distances and cannot ascend or descend stairs. His psychological symptoms are serious, persistent, and dramatically affect his ability to enjoy life. His prognosis is guarded and his symptoms have been ongoing for over three and a half years.
- [51] The change in Const. Steinlauf's physical and psychological condition is significant compared to his pre-Accident state. Prior to the Accident, he had no physical, psychological, or emotional health issues. He was physically active, in good shape, extroverted and ambitious. Now, he suffers from chronic pain, depression, anxiety, emotional suffering, PTSD, and impairments of family, marital, and social relationships.
- [52] Constable Steinlauf submits that the following cases provide guidance in assessing the amount that should be awarded to him for his pain and suffering:
- a) Kallstrom v. Yip, 2016 BCSC 829;
  - b) Sebaa v. Ricci, 2015 BCSC 1492;
  - c) Pololos v. Cinnamon-Lopez, 2016 BCSC 81;
  - d) Gill v. Apeldoorn, 2019 BCSC 798; and
  - e) Fletcher v. Biu, 2020 BCSC 1304.
- [53] Based on these cases, Const. Steinlauf submits that he should receive \$275,000 in non-pecuniary damages.

## Defendants' Position on Non-Pecuniary Damages

- [54] The defendants concede that the Accident caused Const. Steinlauf's physical and psychological injuries, soft tissue injuries, a "closed head injury", depression, and anxiety. However, they emphasize that he has not undergone some of the recommended treatments and has therefore not mitigated his damages. They assert there is still some room for improvement if he obtains these treatments. These include attending a multidisciplinary pain clinic, doing an exercise program, and treatment from a psychiatrist or psychologist.
- [55] The defendants rely on the following cases with respect to the quantum of Const. Steinlauf's non-pecuniary damages:
- a) Slater v. Gorden, 2017 BCSC 2265;
  - b) X. v. Y., 2011 BCSC 944; and
  - c) Provost v. Bolton, 2018 BCSC 1090, rev'd on other grounds 2020 BCCA 86.
- [56] The defendants submit that the appropriate range for damages for Const. Steinlauf's pain and suffering is \$135,000 to \$150,000.

## Findings of Fact on Non-Pecuniary Damages

- [57] While attending high school in Montreal, Const. Steinlauf worked as a lifeguard and swim instructor. Throughout his childhood, he was physically active and socially engaged. He had a good group of friends and participated actively in school and community activities. His father described Const. Steinlauf as athletic, studious, social, and an excellent student. He had no physical or emotional limitations and was in very good shape.
- [58] He began training at the RCMP Depot in February 2016. This training was physically demanding but he had no difficulty with it. His first assignment was to the Richmond detachment of the RCMP and he commenced working there on August 25, 2016. This work involved the occasional use of physical force. Constable Steinlauf had no physical difficulties or restrictions.
- [59] Prior to the accident Const. Steinlauf enjoyed an active social life. He spent time with colleagues after work and had a girlfriend whom he started dating approximately two months before the Accident. He maintained his physical stamina by working out in the gyms in his building and workplace, and by running regularly.
- [60] In January 2017, he sustained an injury to his head when he slipped on some ice. This produced headaches, dizziness and some slowed speech. The headaches lasted until April/May 2017. He did light duties for approximately one month and then received medical clearance to return to full-time duties. He had no ongoing symptoms from this injury.

- [61] Prior to the Accident, Const. Steinlauf had no problems with his neck, shoulders or back. Nor did he have any psychological problems. He had not been prescribed pain medication or any other type of medication. Aside from a short period when he was recovering from a childhood injury, he had not previously received physiotherapy, massage therapy, or chiropractic treatments. He also had not received counselling. By June 2017, he recovered from his January 2017 fall and did not have any further headaches. He had no difficulties with mental stamina and memory prior to the accident.
- [62] The Accident took place on September 14, 2017. Immediately after it, Const. Steinlauf recalls a chaotic scene. His vehicle's airbags deployed and he was covered in shattered glass and blood. An ambulance transported him to Vancouver General Hospital. His initial reaction was fear, distress, and concern because he did not know the extent of his injuries nor the circumstances of the Accident.
- [63] After the Accident, he spent several days at a co-worker's home. Over the first few days after the Accident, he developed pain in his neck and right thigh. He did not sleep well and had nightmares. He experienced significant pain, particularly in his back. He also suffered from driving anxiety immediately after the Accident.
- [64] In the first few weeks after the accident, Const. Steinlauf experienced pain in his neck and right shoulder. He also suffered from headaches and pain in his back, particularly the lower right side.
- [65] Approximately six months after the Accident, Const. Steinlauf's condition deteriorated and his symptoms became more pronounced. He has not experienced any improvement in his symptoms since then and most of them worsened. For example, the rate and severity of his headaches worsened over time. He suffers from daily headaches and pain in the right side of his neck and right shoulder.
- [66] After the first year, his headaches worsened, as did his back pain. He also developed right heel numbness that spread to his toes and calf. He experienced significantly reduced sensation in his lower right leg and a persistent sharp pain in his lower right back. Periodically, he can not feel his foot and is unable to balance properly on his right leg. This causes further pain because he is unable to walk properly and occasionally falls.
- [67] Constable Steinlauf described his headaches as a tight band around his head or a baseball sized pressure behind his right eye. He suffers from occasional blurred or double vision and stinging in his eyeball.
- [68] Constable Steinlauf also experienced mood changes. He became depressed, sad, and hopeless about his chances of recovery because none of the extensive treatments he undertook improved his condition. This caused anxiety about his future job prospects. He tires easily and is often unable to concentrate throughout the workdays. He is unable to look at screens for long periods, is becoming forgetful, and is losing his ability to concentrate on tasks.

- [69] Constable Steinlauf's most significant pain is in his back. He is unable to find a position or activity that minimizes his back pain. He constantly moves and readjusts his position. He is unable to undertake any activity without experiencing back pain. He described the pain in his lower right back as akin to a piece of glass stabbing into his back. This pain has worsened over the past three and a half years. He experiences this persistent pain, particularly whenever he shifts his weight or changes position while lying down.
- [70] The lack of feeling in his lower right extremity combined with his lower back pain causes a lack of balance on his right side. He often feels the sensation of crumbling on his right side and he has fallen on several occasions. He did not suffer from any of these symptoms prior to the accident.
- [71] He also experiences tingling and shakiness in his right hand. This symptom developed more than a year after the accident. He cannot properly grip things with his right hand.
- [72] Constable Steinlauf developed depressive symptoms approximately six months after the Accident. He felt unwell, could not sleep properly, and was frustrated that his peers were obtaining more experience while he was restricted to administrative duties. He became withdrawn and developed a strong sense of hopelessness. His sadness affected his social life. He frequently cancelled social commitments at the last minute. Over time, he withdrew from those who were important to him.
- [73] Constable Steinlauf also suffers from PTSD, flashbacks, and nightmares about the Accident. In some of his dreams, he walks away from the Accident but in others, he dies. On the first year anniversary of the Accident, he had a panic attack during which he experienced chills, fear, and shortness of breath.
- [74] Constable Steinlauf described a significant deterioration in his ability to do office work. Prior to the Accident, he could study for long periods including reading and writing. His work ethic in law school was very strong and he routinely worked late into the night and attended classes the following morning. He maintained this ability while articling. After the accident, he finds it mentally exhausting to review video footage or compile photos. He tires easily and has difficulty concentrating on tasks for long periods of time. Constable Steinlauf believes that his thinking and mental processing have deteriorated so he is not as sharp or quick witted as he used to be.
- [75] Corporal Blakey testified that Const. Steinlauf was in a lot of pain and lacked energy when he returned to work after the Accident. He could not complete tasks properly and was not mentally sharp. Instead, he was distant and unfocused. Although he was trying to get better, Cpl. Blakey recalled that Const. Steinlauf often appeared to be in a great deal of pain.
- [76] Corporal MacDonald saw Const. Steinlauf struggling and wincing in pain. He also witnessed Const. Steinlauf's driving anxiety and emotional upset caused by his ongoing symptoms.

- [77] Corporal Howard observed Const. Steinlauf's pronounced limp and inability to climb stairs to the second floor of the Richmond RCMP building. Constable Steinlauf regularly exhibited pain behaviours and was unable to sit for long periods because of pain.
- [78] Constable Ber confirmed his colleagues' observations of Const. Steinlauf's driving anxiety and inability to go up or down stairs. He recalls that Const. Steinlauf's most significant symptoms were his back pain and pronounced limp. He also recalls that it became difficult to have conversations with Const. Steinlauf because he was quite negative and often frustrated because his symptoms were not improving. Constable Steinlauf frequently hunched over in pain and exhibited other pain behaviours. He also recounted Const. Steinlauf's disappointment at being unable to pursue career opportunities because he could no longer do operational police work
- [79] After the accident, Const. Steinlauf gained 50 to 60 pounds due largely to his inability to do physical activities. He can no longer run and exercise vigorously. He described his circumstance as "eating his feelings". His physical activities are now limited to doing some exercises on a stationary bike and short walks. Prior to the accident he paddle boarded, ran, hiked, biked, and played a number of pickup sports. He is no longer able to do any of these activities. He began skiing when he was five years old and skied every winter until the Accident but is no longer able to ski.
- [80] Constable Steinlauf has seen a number of doctors, taken a range of medications, and received physiotherapy, massage therapy, chiropractic treatment and attended a pain management clinic. None of these treatments or medications improved his condition. He received no relief from anything he tried.
- [81] Constable Steinlauf has seen both a psychologist and a psychiatrist since the Accident. He did not require these treatments prior to it. He is currently taking medications for migraine headaches, chronic pain, and depression.
- [82] Constable Steinlauf's pain symptoms affect every aspect of his life and he feels pain constantly in everything he does. For example, while attending the hearing of this matter, he was unable to go up and down the stairs of the courthouse. Corporal MacDonald testified that Const. Steinlauf was unable to climb the stairs to the second floor of the Richmond RCMP detachment and instead took the elevator up one floor to get to his office.
- [83] Constable Steinlauf does not connect with people in the way he used to. Prior to the Accident, he thoroughly enjoyed meeting and dealing with a variety of people. Since the Accident, he finds it difficult and awkward to connect with others and increasingly feels withdrawn from social interactions. This affects his personal relationships. He cannot effectively interact with others and he is insecure about the manner in which he presents himself because of the pronounced limp in his gait. He finds that all conversations with new people revert to questions about his condition and he understandably does not want to relive the details of the Accident. For this reason, he avoids social situations. He also has difficulty starting and maintaining new relationships because he is moody, withdrawn, lacks

compassion, and by his own admission is not very caring. He exhibited none of these traits prior to the accident.

- [84] After requesting a transfer to Montreal in 2018, he moved back there in January 2020. He returned to Montreal because he needed the support of his family and community. He was not coping well with living on his own in Vancouver.
- [85] On his return to Montreal, Const. Steinlauf moved back into his family home with his parents. He does not do any housekeeping or cooking because he is too exhausted from working. He is embarrassed by his inability to contribute to his family household in any meaningful way. Since returning to Montreal, he finds it difficult to connect with people and avoids conversations about the Accident. However, the noticeable scar on his head, his pronounced limp, and pain behaviours often provoke questions about his condition and discussions about the Accident.
- [86] David Steinlauf, Const. Steinlauf's father, observed that Const. Steinlauf's demeanour changed significantly and he is no longer the same person. He walks with a pronounced limp, his injuries regressed in the past year, and his attitude worsened. Constable Steinlauf is exhausted at the end of a workday, has difficulty walking, and suffers from significant pain. He has difficulty sleeping, is extremely sad, and has driving anxiety. His father observed that Const. Steinlauf is sometimes so exhausted from a day of work that he needs to take a nap before supper. Furthermore, the Accident has dramatically affected Const. Steinlauf's ability to begin and maintain relationships because he has a visible handicap. He had no difficulty with relationships prior to the Accident. David Steinlauf is uncertain if Const. Steinlauf will ever be able to live on his own. He and his wife worry about their son's future.
- [87] Chief Superintendent Claude Castonguay supervises Const. Steinlauf in Montreal. He witnesses Const. Steinlauf's tremendous physical limitations and is surprised that he is able to come to work. He believes that Const. Steinlauf's condition is worsening. For example, he or another RCMP member pick up Const. Steinlauf from his parking lot a few blocks away from the RCMP building in Montreal because Const. Steinlauf cannot walk this distance. When he does walk, he struggles and is frequently out of breath, sweaty, and needs to sit. When he arrives at the detachment, he needs several minutes to gather himself before he can do anything, including removing his jacket.
- [88] Chief Superintendent Castonguay also observed that Const. Steinlauf has significant difficulty getting up from a chair. He shakes heavily and sometimes requires two or three attempts before he can successfully get up. He frequently exhibits pain behaviours such as grimaces and winces. He also exhibits these behaviours when traversing speed bumps and potholes while being driven to the detachment. He occasionally loses concentration and stares off into space. His work performance worsens over the course of the day and deteriorates later in the week. Most notably, his speech and the quality of work suffers. He cannot work more than eight hours a day.

- [89] The restrictions on Const. Steinlauf's work are the same now as they were immediately after the accident. He is limited to administrative duties and cannot do operational police work. Constable Steinlauf finds his current work in Montreal to be difficult and taxing. His capacity has diminished. Whereas before the accident he had no difficulty working into the evenings and on weekends, he now has less stamina and finds it difficult to work full-time regular hours.
- [90] Constable Steinlauf has considered the possibility of pursuing a career in law, however, he is not confident that he is cognitively capable of doing this work and his physical limitations would prevent him from being able to go to and from court.
- [91] Constable Steinlauf is uncertain if he is going to get better because he has tried a myriad of therapies and medications and not obtained any benefit. He is concerned about the future because he feels that his position within the RCMP is uncertain. His current role is temporary and classified as "surplus to establishment". He does not work in a defined or recognized role.
- [92] Constable Steinlauf is extremely disappointed that his lofty career aspirations are no longer available to him. He worked extremely hard in law school to become a police officer and thought he would have many career options. Now, because of the Accident, those doors are closed and he cannot even do sedentary, administrative duties let alone operational police work. He lacks the motivation that he once had and believes he is destined to sit at a desk and slowly degrade until he is unable to do meaningful work.

#### Medical Expert Evidence

##### **Dr. Fox - Neurologist**

- [93] Dr. Fox examined Const. Steinlauf on four occasions: July 10, 2018; December 17, 2018; April 15, 2019; and November 14, 2019. Dr. Fox administered the Montreal Cognitive Assessment during three of these visits. Each time, Const. Steinlauf scored below the average range.
- [94] Based on his examinations, Dr. Fox diagnosed mild traumatic brain injury ("MTBI"), post concussive syndrome, chronic migraine, chronic pain, and he referred to a psychiatrist's diagnoses of post traumatic stress disorder. He attributes each of these conditions to the Accident.
- [95] He concludes that it will be impossible for Const. Steinlauf to work as a police officer on general duty. In respect of his administrative duties, Dr. Fox believes that Const. Steinlauf will require assistance with review of his work because his cognitive symptoms adversely affect his attention to details. These symptoms include difficulty with short-term memory, concentration, and multitasking.
- [96] Dr. Fox's prognosis for recovery is guarded because Const. Steinlauf's symptoms persisted, without meaningful recovery, for more than 29 months. His chronic migraines have not diminished despite his trials of various medications. Furthermore, his chronic pain

symptoms have not improved, notwithstanding significant physiotherapy and massage therapy. Dr. Fox does not anticipate a full recovery of the symptoms. He notes that Const. Steinlauf has some elements of central pain sensitization. He is more vulnerable to developing significant symptoms of pain with relatively innocuous stimuli or minor injuries in the future.

- [97] He recommends a multifaceted treatment approach including physiotherapy, massage therapy, occupational therapy, psychiatry and referral to a chronic pain clinic. He also recommends further use of migraine medication and that Const. Steinlauf follow the recommendations of a psychiatrist to manage his PTSD symptoms.

### **Dr. Krassioukov - Psychiatrist**

- [98] Dr. Krassioukov is a specialist in physical rehabilitation. He examined Const. Steinlauf on September 8, 2018, December 21, 2019, and interviewed him by phone on November 5, 2020. He produced three expert reports dated November 14, 2018, January 25, 2020, and November 20, 2020. His observations, diagnosis, and prognosis were largely unchanged over these three reports.

- [99] Dr. Krassioukov diagnosed the following injuries and conditions caused by the Accident:

- a) soft tissue injuries to the head, neck, shoulders, mid and lower back;
- b) mild traumatic brain injury;
- c) post concussive symptoms;
- d) right occipital nerve neuritis;
- e) L5 nerve root pain;
- f) cervicogenic headaches;
- g) depression and anxiety; and
- h) chronic pain.

- [100] Dr. Krassioukov explained that the chronic pain syndrome arises where pain persists for more than six months and is accompanied by psychological components such as depression, anxiety, fatigue, and sleeplessness. This creates a vicious cycle in which pain limits functional capacity and causes frustration and symptoms of depression. Once this takes place, treatment becomes more difficult and recovery is less likely if an individual has chronic pain and depression for more than six months. It becomes unlikely that their symptoms will improve. Dr. Krassioukov does not criticize Const. Steinlauf for not following the advice to exercise regularly and remain active because he describes this as part of the vicious cycle of pain and psychological symptoms that result in a lack of motivation.

- [101] Dr. Krassioukov found that the right occipital neuritis most likely contributes to Const. Steinlauf's persistent headaches. He also found that Const. Steinlauf's myofascial neck pain causes cervicogenic headaches.
- [102] He recommends that Const. Steinlauf commence a home-based exercise program of stretching and strengthening of his neck, shoulder, back, and core muscles. He also recommends trigger point injections, evaluation by an occupational therapist and a referral to a comprehensive pain management program.
- [103] Dr. Krassioukov's prognosis for a full recovery is guarded because Const. Steinlauf continues to experience a variety of pain and significant limitations with his work, home and recreational activities. He believes it is likely that Const. Steinlauf will continue to have some level of pain for the foreseeable future.
- [104] In his subsequent expert reports dated January 25, 2020, and November 20, 2020, Dr. Krassioukov did not change his opinion with respect to the diagnosis, causation, and prognosis of Const. Steinlauf's conditions and injuries.
- [105] In his last report, he observed that Const. Steinlauf followed all medical recommendations and received a typical set of appropriate assessments and treatments considering the injuries he sustained in the Accident. He followed the advice of the various physicians who assessed him and obtained appropriate treatments.
- [106] Dr. Krassioukov concluded that Const. Steinlauf's prognosis for recovery remained guarded due to the combination of chronic pain and persistent symptoms of depression and anxiety exhibited by Const. Steinlauf more than three years after the Accident. He also agreed with Dr. Fox's finding that Const. Steinlauf is vulnerable to developing symptoms of pain with relatively innocuous stimuli or minor injuries in the future.

### **Dr. Anderson - Psychiatrist**

- [107] Dr. Anderson is a qualified psychiatrist. He assessed Const. Steinlauf on December 27, 2019, and by video link on October 13, 2020. He produced three expert reports dated December 31, 2019, April 10, 2020, and October 15, 2020. The April 10, 2020, report responded to the report of Dr. Smith.
- [108] In his first report, Dr. Anderson noted that Const. Steinlauf's injuries would affect his vocational ability. His intelligence has not changed but he struggles with concentration, memory problems, thinking speed, and has to limit his screen time. His reduced energy affects his cognitive abilities and vocational performance. He has a number of interrelated disorders: pain, depression, general anxiety disorder, and PTSD. These all contribute to his cognitive impairment and his symptoms worsen with fatigue, stress, and pain. His work performance deteriorates during the workday because he gets tired.

- [109] Constable Steinlauf described himself as a "zombie" at the end of a day of work. He is unable to socialize or do anything else because he is exhausted from working. He does not have a life outside of work.
- [110] Dr. Anderson found that Const. Steinlauf's life revolves around pain. He thinks about it every hour of the day and it affects most of his work, social, and recreational activities. He dwells on his pain and feels anxious and depressed. This is a vicious cycle because his perception of pain increases the more he dwells on it.
- [111] Dr. Anderson diagnosed Const. Steinlauf with Somatic Symptom Disorder (SSD) with predominant pain (formerly known as chronic pain disorder), symptoms of Post Traumatic Stress Disorder (PTSD), General Anxiety Disorder (GAD) of moderate severity, and mild to moderate Major Depressive Disorder (MDD). He explained that a person with GAD, MDD, and SSD would have difficulty with any of life's stresses. Constable Steinlauf is chronically irritable and this makes it difficult for him to have relationships. The convergence of these diagnoses operate such that everyday stressors affect him more than the average person.
- [112] In his second report, Dr. Anderson explained that there is some controversy over Const. Steinlauf's ongoing symptoms from the MTBI. However, Dr. Anderson does not believe this is meaningful because the psychiatric symptoms and pain symptoms have persisted for so long that they are likely to continue indefinitely. This comorbidity makes these symptoms refractory to treatment.
- [113] In his third report, Dr. Anderson concludes that Const. Steinlauf has a permanent partial disability. Despite treatment and the extensive passage of time, he will have ongoing difficulties in the workplace and will be unable to function at his previous level. He requires an understanding employer who will accommodate his need to occasionally stand, stretch, attend appointments, and work at his own pace. Dr. Anderson opines that Const. Steinlauf will not be able to return to his pre-accident level of functioning.
- [114] Dr. Anderson believes that the focus of Const. Steinlauf's treatment should be on his major depression and feelings of helplessness, hopelessness, uselessness, and worthlessness. These symptoms have both cognitive and behavioural aspects.
- [115] Dr. Anderson recommended he see a psychologist in Montreal because of the extent of psychiatric disorders he suffers from. He also recommended a supervised exercise program, Cognitive Behavioural Therapy, and attendance at a pain clinic. Constable Steinlauf has not yet done these things. However, he takes pain medication, rides a stationary bike, and does some walking. Despite these efforts, his condition has not changed.
- [116] Dr. Anderson believes it is highly unlikely that Const. Steinlauf will have a remission of symptoms but he could have some improvement of them. This is largely because of the comorbidity of his symptoms. Constable Steinlauf has tried a variety of medications but is still suffering from serious symptoms three and half years after the Accident. Importantly,

Dr. Anderson believes that Const. Steinlauf has been generally compliant with treatment recommendations. In his experience, it is difficult to obtain an appointment to see a psychiatrist because of long waiting lists. Constable Steinlauf has seen a psychiatrist, obtained counselling from a psychologist, and continues to take his antidepressant medication.

### **Dr. Tessler - Neurologist**

- [117] Dr. Tessler has practiced neurology for the past 48 years. Constable Steinlauf's counsel accepted that he was an expert in neurology and did not cross-examine him. His expert report was in evidence.
- [118] On March 9, 2020, Dr. Tessler performed an independent medical examination at the request of counsel for the defendants. His report is dated March 16, 2020. He diagnosed Const. Steinlauf with a concussion or a mild traumatic brain injury that resulted in cognitive changes and decreased levels of concentration. He also administered the Montreal Cognitive Assessment; the same test administered by Dr. Fox, and also found that Const. Steinlauf's results were below the expected level.
- [119] Dr. Tessler diagnosed Const. Steinlauf with soft tissue cervical strain injuries caused by the Accident. He concluded that Const. Steinlauf would not be able to work as a general duty police officer and instead is limited to administrative duties. He noted Const. Steinlauf's psychological and psychiatric symptoms, including depression, PTSD, and driving anxiety, but deferred to experts in those areas for further diagnoses and treatment.
- [120] Dr. Tessler performed a subsequent virtual assessment of Const. Steinlauf on November 16, 2020. There was no change in his opinion as set out in his March 10, 2020, expert report.

### **Dr. Smith - Psychiatrist**

- [121] Dr. Smith is a qualified psychiatrist. He performed an independent medical examination of Const. Steinlauf on March 9, 2020, and produced his first report on March 27, 2020. He diagnosed Const. Steinlauf with Major Depressive Disorder, PTSD, Insomnia Disorder, and a possible MTBI. He is not prepared to make a diagnosis of MTBI because he believes the evidence of Const. Steinlauf's loss of consciousness is uncertain. He also thinks it is possible that he re-injured his vestibular apparatus in the Accident and this aggravated symptoms from his slip and fall in January 2017.
- [122] Surprisingly, Dr. Smith finds that the cause of Const. Steinlauf's right leg symptoms and "grossly disturbed gait" is unknown. He defers to other experts for diagnoses regarding Const. Steinlauf's headaches. He found that his cognitive difficulties could be caused by a brain injury or may be symptoms of anxiety, depression, pain, and poor sleep. He believes that the impairment of Const. Steinlauf's social and sexual functioning is primarily due to his symptoms of depression.

- [123] He recommended that Const. Steinlauf see a psychiatrist in Montreal and receive an assessment for Benign Paroxysmal Positional Vertigo (BPPV) from an otolaryngologist. He also recommended a referral to a psychologist for treatment of his depression and PTSD and further medications for his PTSD symptoms and sleeplessness. He also recommended a program of active rehabilitation including vigorous exercise.
- [124] Dr. Smith found that the Accident caused Const. Steinlauf's three psychiatric diagnoses. He vaguely described his prognosis for Const. Steinlauf's recovery from his psychiatric problems as "hopeful" with the implementation of the treatment program he recommended.
- [125] On November 5, 2020, Dr. Smith conducted an updated independent medical examination of Const. Steinlauf and produced a second expert report dated November 16, 2020. His diagnoses did not change from his first report except that Const. Steinlauf's symptoms of depression changed from severe to moderate. He characterized this as a "significant improvement".
- [126] Dr. Smith emphasized Const. Steinlauf did not follow any of his earlier treatment recommendations but acknowledged that he would have had difficulty obtaining these treatments because of the COVID-19 pandemic.
- [127] Dr. Smith reviewed Dr. Anderson's expert report and disagreed with his diagnoses of Somatic Symptom Disorder and General Anxiety Disorder. He agreed that Const. Steinlauf suffers from chronic pain and anxiety but believes PTSD explains the latter. He agrees with Dr. Anderson that Const. Steinlauf's cognitive problems are due to this pain, insomnia, and fatigue but he disagrees with his recommendation that Const. Steinlauf requires 8-12 counselling sessions per year, indefinitely.
- [128] Dr. Smith's prognosis is "considerably more optimistic" than Dr. Anderson's because he expects "significant improvement" in Const. Steinlauf's symptoms if he fully implements the recommended treatment program.
- [129] Dr. Smith completed a follow up report on December 8, 2020 after reviewing several additional reports. He did not change his diagnoses after reviewing these records. He reiterated that none of the interventions he recommended had taken place and that "[i]t remains my opinion that with full implementation of the recommendations I have made and those Dr. Anderson has made there is likely to be substantial improvement in Const. Steinlauf's functioning." He similarly expects "substantial improvement in Const. Steinlauf's occupational functioning". He also concluded that Const. Steinlauf "appears to be functioning reasonably well working full-time."

#### Analysis of Non-Pecuniary Damages

## Quantum of Damages

- [130] Constable Steinlauf was in good health physically, mentally, and emotionally prior to the Accident. His co-workers, superiors at the RCMP, former principal, and father all described him as outgoing, energetic, enthusiastic, high achieving, and ambitious with absolutely no physical, psychological or emotional restrictions. He enjoyed a wide range of outdoor activities and sports such as hiking, skiing and basketball. He exercised regularly, ran, and maintained good physical condition as expected of young police officers. He was social and had a good network of friends and a history of personal relationships.
- [131] Dr. Fox, the neurologist retained by the plaintiff, diagnosed mild traumatic brain injury, post concussive syndrome, chronic migraine, chronic pain, and noted a psychiatrist's diagnosis of post traumatic stress disorder. He assessed the prognosis for recovery as guarded because Const. Steinlauf's symptoms have persisted, without meaningful recovery, for more than three and a half years. Dr. Tessler, the neurologist relied upon by the defendants, diagnosed Const. Steinlauf with a concussion or mild traumatic brain injury that resulted in cognitive changes and decreased levels of concentration. There is no significant disagreement in the expert reports of the two neurologists. Both concluded that the Accident caused the symptoms they diagnosed.
- [132] Dr. Krassioukov, a specialist in physical medicine and rehabilitation, diagnosed soft tissue injuries to the head, neck, shoulders, mid and lower back; mild traumatic brain injury; post concussive symptoms; right occipital nerve neuritis; cervicogenic headaches; depression and anxiety; and chronic pain. He concluded that the Accident caused these injuries and believes that Const. Steinlauf has a guarded prognosis for full recovery and will experience pain for the foreseeable future.
- [133] The expert reports of the psychiatrists, Dr. Anderson and Dr. Smith, conflicted to some extent. Dr. Anderson diagnosed Const. Steinlauf with Somatic Symptom Disorder (SSD) with predominant pain, symptoms of Post Traumatic Stress Disorder (PTSD), General Anxiety Disorder (GAD) of moderate severity, and mild to moderate Major Depressive Disorder (MDD). Due to the comorbidity of Const. Steinlauf's symptoms, Dr. Anderson believes a remission of his symptoms is highly unlikely. At best, he may experience some improvement of them.
- [134] Dr. Smith diagnosed Const. Steinlauf with Major Depressive Disorder, PTSD, Insomnia Disorder and a possible MTBI. He found that the Accident caused Const. Steinlauf's three psychiatric diagnoses. In his first report, Dr. Smith unhelpfully described his prognosis for Const. Steinlauf's recovery from his psychiatric symptoms as "hopeful". Obviously, doctors and patients alike retain hope that symptoms will improve but this is not a useful assessment by an expert.

- [135] Although not within his specific area of expertise, I am puzzled, and concerned, by Dr. Smith's inability to determine the cause of Const. Steinlauf's right leg symptoms and "grossly disturbed gait". He knew that a large tractor-trailer violently struck the vehicle driven by Const. Steinlauf. In the absence of another plausible explanation, it is difficult to conceive of another possible cause of these injuries. None of the other medical experts had any difficulty in drawing this causal link.
- [136] Dr. Smith also exaggerated the extent of Const. Steinlauf's alleged improvement in depression symptoms. He characterized the distinction between "severe" and "moderate" as a "significant improvement". He also used "significant improvement" to express his expectation for Const. Steinlauf's prognosis if he follows Dr. Smith's treatment recommendations. None of the other medical experts assessed Const. Steinlauf's prognosis any higher than guarded. Mr. Smith was unduly critical of Const. Steinlauf for not following his treatment recommendations notwithstanding his admission that it has been harder to obtain various treatments during the COVID-19 pandemic.
- [137] Based on these concerns with Dr. Smith's evidence, I attach minimal weight to his evidence and instead prefer the evidence of Dr. Anderson where their evidence conflicts.
- [138] The Accident significantly changed the course of Const. Steinlauf's life. He was on track to build a successful career within the RCMP and live a fulfilling and accomplished life. Before the Accident, he set lofty goals and worked hard to achieve them. Since the Accident, he is a shadow of his former self. This once confident, ambitious, and extroverted young man is now permanently, partially disabled, with limited mobility, shattered confidence, serious psychological problems, persistent and worsening pain, and an uncertain future. The Accident affected every aspect of his young life and unalterably and negatively changed its course.
- [139] Constable Steinlauf's pain and psychological symptoms are ongoing after more than three and a half years. The experts whose evidence I accept all agree that his prognosis for recovery is guarded.
- [140] I have considered all of the relevant cases referred to by the parties, however, each case turns on its unique facts. In light of Const. Steinlauf's circumstances and prognosis, I conclude that he is entitled to \$225,000 in damages for pain and suffering.

## Mitigation

- [141] In closing submissions, counsel for the defendants briefly referred to Const. Steinlauf's alleged failure to mitigate his damages. She suggested that he failed to mitigate his damages because he did not undergo all recommended treatments. I disagree. Constable Steinlauf underwent a wide range of therapies and treatments including physiotherapy, massage therapy, chiropractic treatment, psychological counselling, and pain management therapy. He also tried an extensive range of medications to treat his physical and psychological injuries. I agree with Dr. Krassioukov's observation that Const. Steinlauf followed medical

recommendations and received appropriate assessments and treatments considering the injuries he sustained in the Accident. I am satisfied that to the extent possible, he followed the advice of the various physicians who assessed him and obtained appropriate treatments.

[142] There is no evidence, beyond mere speculation, to suggest other treatments would have reduced Const. Steinlauf's damages. The defendants have not discharged their onus to establish that Const. Steinlauf failed to mitigate his damages.

## LOSS OF PAST EARNING CAPACITY

### Relevant Legal Principles

[143] The principles applicable to the assessment for loss of past earning capacity are:

- An assessment of a loss of income involves a consideration of hypothetical events.
- The plaintiff need not prove these hypothetical events on a balance of probabilities.
- A hypothetical possibility will be taken into account provided that the plaintiff establishes that it is a real and substantial possibility, and not mere speculation.
- Once a hypothetical possibility is established, the Court must consider the likelihood of the event occurring in determining the measure of damages.
- A causal connection must be established, on a balance of probabilities, between the Accident and the pecuniary loss claimed.
- It is up to the trial judge to determine what approach to use to quantify the loss (i.e., an earnings approach or a capital asset approach).

See: *Grewal v. Naumann*, 2017 BCCA 158 at para. 48 (Goepel J.A. in dissent, but not on this point); *Griffioen v. Arnold*, 2019 BCCA 83 at para. 67; *Smith v. Knudsen*, 2004 BCCA 613 at paras. 36-37; *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 106 at para. 186.

### The Parties' Positions on Loss of Past Earning Capacity

[144] Constable Steinlauf asserts that absent the collision, he would have worked much more overtime than he did. He estimates that he lost overtime pay of approximately \$23,000 per year from the date of the accident to trial. After subtracting the overtime he worked and applying relevant tax rates, he submits that he is entitled to an award of \$50,000 for loss of past earning capacity.

[145] The defendants point out that Const. Steinlauf created the overtime summary he relies on and it contains some inexact figures. Furthermore, this information was not independently verified. In cross-examination, Const. Steinlauf admitted he did not work overtime for several months after he first became eligible to do so. On this basis, they submit that Const. Steinlauf is not entitled to an award for loss of past earning capacity.

## Factual Findings on Loss of Past Earning Capacity

- [146] Constable Steinlauf was born on September 4, 1991. He was 26 years old on the date of the Accident and 29 years old when the trial commenced. He grew up in Montreal, Quebec and is fluent in English and French. He attended a private school and graduated with excellent marks.
- [147] After completing two years of post-secondary college studies at a CEGEP, he obtained admission to the University of Ottawa law school. He obtained civil and common law degrees, taking courses in English and French. He graduated on the Dean's List.
- [148] After completing law school, Const. Steinlauf articulated at a criminal defence firm in Ottawa. His principal, Bruce Engel, testified at the trial. He recalled that Const. Steinlauf worked long hours, showed uncommon commitment in assisting colleagues, produced excellent legal work, and demonstrated strong writing and courtroom skills. Mr. Engel described Const. Steinlauf as a great articulated student who was honourable, ethical, and hard working. Mr. Engel described Const. Steinlauf as able-bodied, robust, well adjusted, personable, polite, and mild mannered. He had no physical, psychological, or emotional difficulties. Based on Const. Steinlauf's performance, Mr. Engel offered him an associate position after articling at a starting salary of approximately \$80,000 per year. Constable Steinlauf completed his articling period but was not called to the bar because he failed one of the bar exams. He did not retake this exam because he pursued a career with the RCMP instead of becoming a lawyer.
- [149] Constable Steinlauf chose to join the RCMP because he wanted to have a positive impact on his community and he believed his criminal law experience and legal education would serve him well. He began training to become an RCMP officer in February 2016. The training program at the RCMP Depot in Regina, SK, was physically demanding but he had no difficulty with it. He excelled in the academic component of police training and graduated on August 8, 2016.
- [150] After graduating, he was posted to the RCMP detachment in Richmond, B.C., and began working there on August 25, 2016, at a starting annual salary of \$53,144. He was a general duty constable. His work included driving a police vehicle and making arrests that sometimes required the use of physical force. He had no physical difficulties or restrictions.
- [151] Constable Steinlauf loved being a police officer. He found this work to be diverse, interesting, and exciting. He also enjoyed working with the public and meeting new people in the detachment.
- [152] In his first performance review, conducted in March 2017, approximately six months after he joined the Richmond RCMP detachment, his superiors noted that Const. Steinlauf performed at a level beyond his years and that he could "easily pass for a more senior member." They described his work as outstanding.

- [153] Constable Steinlauf reported to Cpl. Blakey at the Richmond RCMP detachment. He describes Const. Steinlauf as the best recruit he had ever seen. He recalled other senior members of the detachment joking that one day they would all be saluting Const. Steinlauf. He described Const. Steinlauf as dedicated and someone who did everything to the best of his ability. He recalls Const. Steinlauf was keen, driven, personable, and was everything one could ask for in a young constable. Constable Steinlauf was ambitious. Working as a general duty constable was a steppingstone to a career in either counterterrorism or with the RCMP's legal support team.
- [154] Constable Mike Ber joined the Richmond RCMP detachment approximately four months after Const. Steinlauf began working there. He described Const. Steinlauf as one of the best officers in the detachment because he managed his time effectively, wrote concisely, and worked efficiently, enabling him to attend more calls than anyone else. Within a year, he was one of the best officers in the detachment and had effectively obtained more than one year's experience.
- [155] The Accident took place on September 14, 2017. Constable Steinlauf returned to work on October 3, 2017. He thought it was important that he return to work in order to continue building his career. He was driven to move forward and did not want to convalesce at home. He gradually returned to work over several months before returning to full-time hours. All of his duties were administrative, not operational. He did not do any investigative tasks and, to date, he has not returned to operational duties.
- [156] Within a few months of returning to work, Const. Steinlauf transferred to the Serious Crimes Unit where he also performed administrative work. The scope of his work was considerably narrower than the work done by operational officers in that unit. Other members did a wide range of tasks including attending crime scenes, collecting evidence, videotaping the crime scene, surveillance, and recruiting informants. Most of this work required meetings outside of the office. Constable Steinlauf was unable to do this fieldwork. The restrictions on his work are the same now as they were immediately after the Accident.
- [157] Corporal Joseph MacDonald observed Const. Steinlauf's performance while working with him in the Serious Crimes Unit. He described him as a very capable police officer in regards to his writing ability and social skills. His knowledge of policy and law was second to none and his work efforts were outstanding. However, his limitations precluded him from reaching his potential because he could not perform operational duties such as attending crime scenes, dealing with suspects, interviewing them or doing other fieldwork. Constable Steinlauf was confined to office work.
- [158] Although Cpl. MacDonald would be willing to provide a letter of support for Const. Steinlauf, he noted that this type of correspondence is not part of the highly structured promotional process within the RCMP and in any event, he does not think Const. Steinlauf would have been qualified for promotion because of his physical limitations.

- [159] Corporal William Howard also supervised Const. Steinlauf in the Serious Crimes Unit at the Richmond RCMP detachment. Corporal MacDonald subsequently supervised Const. Steinlauf. They both contributed to his performance evaluation in which they noted that he had great aptitude and was extremely intelligent and well versed in the requirements of judicial authorizations. His writing skills were valuable but he was restricted to modified duties due to his limitations. Both observed that he was unable to perform the operational duties because he could not carry a firearm, drive, or perform the physical work required, such as making arrests.
- [160] Corporal Howard described Const. Steinlauf's work as "second to none" and some of the best work product he had ever seen. He described Const. Steinlauf as the most impressive officer he had worked with in 13 years.
- [161] Corporal Howard observed that operational members of the Serious Crimes Unit have access to significant opportunities to work overtime.
- [162] Constable Steinlauf prepared a table of overtime hours that he worked. It shows that he worked 238.75 overtime hours, measured in straight-time hours, between November 2016 and September 2017. He did not work any overtime hours from December 2016 to March 2017. His overtime opportunities post-Accident are restricted to completing work that he is unable to do in his regularly scheduled hours. He was prohibited from working overtime on movie locations or security details, both of which are significant sources of overtime opportunities for RCMP officers in greater Vancouver.
- [163] Constable Steinlauf finds it difficult and taxing to work overtime. His work capacity has markedly diminished since the Accident and he has very little opportunity to do this additional work.
- [164] Corporal Blakey confirmed that overtime work is widely available at the Richmond RCMP detachment. A constable could work three overtime shifts during their four days off. Overtime work often adds \$15,000 to \$25,000, and sometimes more, to his total annual income. For example, in 2018, Cpl. Blakey's first full year as a corporal, his base salary was approximately \$94,000 and his total income was \$117,613. He earned the additional \$23,613 by working overtime.
- [165] Corporal MacDonald's T4 income statements from 2015 to 2019 reveal that he earned \$10,000 to \$20,000 in overtime pay per year. Corporal Howard earned overtime pay of \$30,000 to \$40,000 per year in all but one year from 2016 to 2020. Constable Ber earned approximately \$24,000 in overtime pay in 2018 and \$28,000 in 2019.

- [166] Constable Steinlauf moved back to his hometown, Montreal, in January 2020. He works as a strategic advisor in the criminal operations office of the Montreal RCMP detachment. This work involves reviewing policy and making recommendations to Chief Superintendent Castonguay, who created this position so Const. Steinlauf can work within the scope of his abilities. However, this position is "surplus to establishment". This means it does not have a job code and is not a permanent and ongoing position within the RCMP.
- [167] Constable Steinlauf works Monday to Friday from 8:00 a.m. to 4:00 p.m. and does not work overtime. He has been reminded on several occasions that he could be medically discharged if the RCMP cannot find a permanent position for him.
- [168] Chief Superintendent Castonguay has been a member of the RCMP for 31 years: 16 years in British Columbia and 15 years in Montreal. He reached his current rank in October 2016. His base salary is \$161,000 plus bonuses of approximately 25 percent for a total income of approximately \$200,000 per year. He became an Inspector when he was 43 years old, in 2012; Superintendent two years later and Chief Superintendent in 2016.
- [169] Chief Superintendent Castonguay became aware of Const. Steinlauf's accident and its effects on him. He was instrumental in bringing Const. Steinlauf back to Montreal. However, he does not have a position for him and is having difficulty finding one. He reiterated that Const. Steinlauf's status is "surplus to establishment", meaning he does not have a permanent position.
- [170] Constable Steinlauf's current duties involve reviewing and summarizing policy documents and doing other work for the Chief Superintendent, some of which he described as "clerical". He also noted that it is unusual for a constable to report directly to the Chief Superintendent.
- [171] Chief Superintendent Castonguay recalls that when Const. Steinlauf arrived in Montreal, he thought his status was O4, meaning that Const. Steinlauf could not carry a gun but was otherwise capable of performing the other duties of a constable. However, this status assessment was not current. His updated status was O5, which means he can only work in a sedentary position. He cannot drive or walk and must work a limited number of hours. This was disappointing to the Chief Superintendent and this status rating is making it difficult to find a permanent position for Const. Steinlauf.
- [172] Chief Superintendent Castonguay describes Const. Steinlauf as stubborn and someone who tries to work through his pain but he observes that Const. Steinlauf's work performance worsens over the course of the day and also deteriorates over the course of the week. He cannot work more than eight hours a day. The Chief Superintendent specifically referred to deterioration in both Const. Steinlauf's speech and the quality of his work.
- [173] Chief Superintendent Castonguay observed that Const. Steinlauf is not promotable and he does not have a constable position for him so he is unsure how much longer he will be able to accommodate him. This is because members with an O4 designation often become a

burden and are pushed towards a medical discharge. There are no O4 positions for constables, let alone one for an O5. Chief Superintendent Castonguay doubts that Const. Steinlauf will ever become O4 so he is uncertain if he will be able to keep him as a constable within his organization.

- [174] Chief Superintendent Castonguay has received offers for a wide range of private-sector opportunities with salaries between \$225,000 and \$250,000 per year.
- [175] There are approximately 60 chief superintendents across the RCMP and about 40 people rank higher than chief superintendent. There are approximately 30,000 officers in the RCMP and one percent to two percent of them are at the inspector level.
- [176] Chief Superintendent Castonguay confirmed that the promotions process within the RCMP is rigorous but not as competitive as it used to be. He referred to several positions in his organization for corporals and sergeants for which he received no applications. Although the minimum number of years of experience prior to become a Corporal is seven, he sometimes takes people with five years of experience to fill these positions. However, he reiterated that there is no way to promote someone with an O4 designation, let alone someone with the O5 designation that Const. Steinlauf has. He emphasized that constables must be operational to be promoted and there are no constable or corporal positions available for someone with an O4 designation. On this basis, he is certain that Const. Steinlauf will not get through those stages to higher-level positions. Although the RCMP's operations manual is silent on this issue, the Chief Superintendent was adamant that Const. Steinlauf would not be promoted.
- [177] The Chief Superintendent believes that Const. Steinlauf is intelligent and works effectively. However, he limits the tasks he gives Const. Steinlauf to things that are not time sensitive because of his limitations. Constable Steinlauf produces good results, but the Chief Superintendent filters the tasks that he assigns to account for his limitations. He confirmed that Const. Steinlauf is not permitted to work overtime nor is he able to drive for work purposes.
- [178] Constable Steinlauf had significant career goals. He wanted to work for about two years as a general duty constable then move to general investigations where he could investigate serious crimes. These more complex cases require advanced investigative techniques. Next, he wanted to join a homicide unit and over the long term, he intended to work in counterterrorism. He planned to move up the ranks from Constable to Corporal to Sergeant and eventually wished to become a commissioned officer leading a program at the level of inspector or superintendent. He knew that his law degree and bilingual language skills would separate him from other candidates and that these were sought after qualifications at the management level.

- [179] He intended to stay at the RCMP but knew he could practice law or work in the private sector in corporate security. He also could have worked with another police force in a more senior position. He intended to work as a police officer for approximately 30 years and then take on another role after retiring so that he would receive both his pension and another salary.
- [180] Currently, Const. Steinlauf does not see a promotional path available to him because he is not developing competencies for more senior positions. These competencies largely involve obtaining operational experience in a diverse range of policing circumstances. His competencies are narrow and not comparable to the operational competencies required for more senior positions. He will therefore be in an administrative position for the foreseeable future and does not have the same career aspirations that he had before the accident. Previously he had an ambitious career plan but now he can only be an "administrative guy". Constable Steinlauf referred to himself as "barely a police officer".
- [181] Constable Steinlauf is unable to take several courses, including a surveillance course and an undercover officer course, because they are only available to operational officers.
- [182] Constable Steinlauf considered a career in law but thinks that this will be difficult because he lacks the stamina and the ability to stay on task that is required of legal work. He is also physically unable to go to and from court. He does not think that he will be an effective lawyer.
- [183] Constable Steinlauf can no longer look forward to a wide range of career options with many opportunities for growth and promotion. He cannot function as an operational police officer and even struggles with sedentary computer work. He is clearly devastated. He believes his condition will continue to deteriorate and he will be assigned less meaningful work.

### Mr. Hackett's Expert Evidence

- [184] In February 2020, Mr. Hackett retired from the RCMP at the rank of Assistant Commissioner. Effective February 1, 2021, he is the Deputy Chief of the Central Saanich Police Service. He was qualified as an expert in the promotional processes, general career progression, and overtime opportunities in the RCMP.
- [185] Mr. Hackett explained that during his RCMP career, he was extensively involved in the promotional process both as a member of validation committees and as a selection officer. Validation committees assesses a candidate's accomplishments in relation to a set of minimum standard competencies. These organizational and functional competencies can only be developed by doing operational police work.

- [186] Generally, a constable with seven years of experience may apply to become a corporal. After achieving this rank, candidates can be promoted to the next rank every two years. There are significant opportunities for advancement for high achieving junior members. They are actively mentored and recruited in order to provide them with exposure to the competencies required for advancement.
- [187] In Mr. Hackett's opinion, Const. Steinlauf's injuries will have a significant impact on his career because he cannot carry out operational duties. This includes carrying a weapon, wearing a bulletproof vest, driving a patrol car, and interacting with the public. These restrictions prevent Const. Steinlauf from developing the competencies necessary for either a promotion or a lateral move to an operational position.
- [188] In his view, serious medical restrictions inhibit a member's promotional opportunities. He explained that an administrative medical discharge refers to a circumstance where an individual can no longer fulfil the duties of an operational police officer. This circumstance could arise when there are no other administrative duties available that would allow a member to continue performing as a police officer.
- [189] In Mr. Hackett's opinion, the effusive comments Const. Steinlauf received on his performance evaluations, particularly regarding his drive and professionalism, indicate that he was likely to have a long and successful career within the RCMP. He believes that Const. Steinlauf's earning potential was negatively affected because he was no longer able to work overtime. More importantly, he believes that Const. Steinlauf will not be promoted because of his lack of operational experience. To his knowledge, all corporal positions in the RCMP require operational experience. In his view, it is impossible to be promoted without meeting the required standard of functional competencies connected to operational policing. These include interviewing suspects and other witnesses, handling exhibits, seeking judicial authorizations, testifying in court, and evaluating crime scenes. Constable Steinlauf is unable to do any of these operational duties and therefore will not be promoted beyond the level of constable.
- [190] Mr. Hackett believes Const. Steinlauf was on track to achieving his goal of becoming an inspector before his progress was impeded.

### Analysis of Loss of Past Earning Capacity

- [191] Constable Steinlauf was a young, ambitious, and driven police officer. He has a long history of working hard to achieve his academic and career goals. Constable Ber and Corporals Blakey, MacDonald, and Howard all commended Const. Steinlauf for his tremendous work ethic. He wanted to obtain as much experience as possible during the first few years of his career and successfully compete for promotions to higher ranks. I am satisfied that he would have worked a significant amount of overtime as a constable.

[192] Based on the evidence of the widespread availability of overtime opportunities, the overtime income earned by Const. Steinlauf's peers and superiors, and his clear determination to rise through the ranks of the RCMP, I am satisfied that he is entitled to \$50,000 in respect of his net loss of past earning capacity between the date of the Accident and trial.

## LOSS OF FUTURE EARNING CAPACITY

### Relevant Legal Principles

[193] The principles applicable to the assessment of loss of future earning capacity are:

- A plaintiff should be put in the position he or she would have been in absent the accident, to the extent possible.
- The court should compare the plaintiff's likely future working life absent the accident to what is likely to occur with the accident having happened.
- The assessment must be based on evidence, but is not a mathematical calculation.
- The court can employ the "earnings approach" or the "capital asset" approach in assessing the loss.
- The plaintiff must prove that there is a "real and substantial possibility" of various future events leading to an income loss.
- The earnings approach is more appropriate when the loss is easily measureable.
- When applying the earnings approach, the Court must consider the overall fairness and reasonableness of the award based on all of the evidence.
- Comparison to other cases is generally of limited utility, though other cases can provide some guidance.

See: Thompson at para. 119, citing to Pololos v. Cinnamon-Lopez, 2016 BCSC 81; Gregory at paras. 32 and 33.

[194] Constable Steinlauf's own perception that he has a diminished capacity to earn income in the future is insufficient. He must show that there "is a realistic possibility [that he] will be less able to compete in the marketplace--with economic consequences, not merely psychological ones": Kim v. Morier, 2014 BCCA 63 at para. 8.

## Plaintiff's Position on Loss of Future Earning Capacity

[195] Constable Steinlauf submits that he was going to have a very successful career, regardless of what he chose to do. During the short time he worked in the RCMP before the Accident, he established an excellent reputation as a hard working and intelligent officer. He also demonstrated excellent analytical and writing skills.

[196] Constable Steinlauf asserts that his career path would have likely mirrored the successful career of the Chief Superintendent Castonguay:

- Constable until year seven - from age 26 to 33 (2016 to 2024) with base pay of \$86,110
- Corporal by year seven at age 33 (2024) with base pay of \$90,842 until reaching step 2 at \$94,292
- Sergeant by year 10 at age 36 (2025) with base pay of \$99,790 until reaching step 2 at \$102,775
- S/Sergeant by year 12 at age 38 (2029) with base pay \$109,002 until reaching step 2 at \$112,028
- Inspector by year 15 at age 41 (2032) with base pay of \$123,100 until reaching step 2 at \$127,567, then step 3 at \$132,194
- Superintendent by year 17 at age 43 (2034) with base pay of \$139,470 until reaching step 2 at \$143,055, then step 3 at \$146,735
- Chief Superintendent by year 20 at age 46 (2037), pay of \$161,000
- Retirement at age 51 at Chief Superintendent (2042, after 25 years service)
- 14 years from age 51 to age 65 as a senior police officer in a different police force or employee in a large corporation doing security and/or investigative work (2056)

[197] Constable Steinlauf also asserts that over the rest of his career, he would have continued working overtime at the rate he worked prior to the Accident, adding approximately 27.8 percent of his base salary to his annual income until he became an inspector. At this point, he submits that he would earn an annual bonus of 25 percent in addition to his base salary.

[198] Given his current condition, Const. Steinlauf believes there is a real and substantial possibility that he will be medically discharged from the RCMP. As Chief Superintendent Castonguay observed, his physical and mental condition worsened in the past year, his current position is "surplus to establishment", he cannot be promoted, and is difficult to accommodate.

[199] Constable Steinlauf seeks an award of \$3.8 million in respect of his loss of future earning capacity. This amount includes losses of his RCMP salary, overtime and bonuses, post-RCMP salary, and pension. He submits that if he is medically discharged from the RCMP, or chooses to leave because he can no longer do the work, any salary he earns will be approximately 35 percent less than the salary he receives as an RCMP constable.

## Defendants' Position on Loss of Future Earning Capacity

[200] The defendants submit there is no evidence that an accommodated RCMP employee will not be promoted. Furthermore, they assert that Const. Steinlauf's condition may improve and he has been able to work regular hours and some overtime so there is, in their submission, no real and substantial possibility of financial loss. Nevertheless, they submit he is entitled to an award in the range of \$188,000 to \$235,000 in respect of loss of future earning capacity based on the analyses of promotion, overtime, and loss of future earning

capacity in *X. v. Y., Provost, and Slater*.

#### Factual Findings on Loss of Future Earning Capacity

[201] See above section on Factual Findings on Loss of Past Earning Capacity.

#### Analysis of Loss of Future Earning Capacity

[202] I am satisfied there is a real and substantial possibility that Const. Steinlauf will suffer significant loss of future earning capacity as a consequence of the Accident. By all accounts, he was incredibly hard working, ambitious, intelligent, and well regarded prior to the Accident. He was destined to have a long and successful career in the RCMP. In my view, he likely would have risen to its senior ranks.

[203] He graduated on the Dean's List with two law degrees, in civil and common law, before joining the RCMP. This education is directly relevant to a broad range of RCMP work. The evidence of Mr. Hackett, Chief Superintendent Castonguay, and Corporals Howard, MacDonald, and Blakey was that his writing and analytical skills were excellent. He was personable, jovial, and engaging. I am convinced that Const. Steinlauf's well-rounded skill set probably would have accelerated his rapid rise through the RCMP ranks to its highest levels.

[204] However, I take issue with some of the assumptions made by Const. Steinlauf in respect of his anticipated earnings. I do not accept that he would have continued to earn overtime pay at a rate of 27.8 percent throughout his non-commissioned RCMP career. While he may have earned this level of overtime in the early stages of his career, I doubt he would have sustained this level of effort over several decades. David Steinlauf, Const. Steinlauf's father, described his son as extroverted, gregarious, and social prior to the Accident. Constable Steinlauf likely would have married and possibly had children. These responsibilities would have reduced his capacity, and perhaps desire, to work additional overtime. However, he does have a long history of working hard and achieving his goals. This work ethic served him well. I do not believe that it would have significantly abated during his career. In my view, it is reasonable to assume that he would have earned overtime at a rate of 20 percent of his base salary until he reached the level of inspector.

[205] Similarly, I do not accept that Const. Steinlauf would have consistently received a 25 percent bonus at the rank of inspector and above. Based on the evidence of Mr. Hackett and Chief Superintendent Castonguay, I believe that 20 percent is a more reasonable estimation of Const. Steinlauf's anticipated bonuses.

[206] The RCMP has successfully accommodated Const. Steinlauf since the Accident. He is highly intelligent, legally trained, bilingual, and has an impressive range of skills. Nevertheless, more than three and a half years after the Accident, they have not found a permanent position for him and there is a risk, most specifically described by Chief Superintendent Castonguay, that Const. Steinlauf will be medically discharged because

there are no O4 positions for a constable, let alone an O5 position. Constable Steinlauf is currently categorized as O5. In my view, there is a distinct possibility that he will not be able to continue working full-time for the RCMP at his current salary. In this event, I expect that he will be able to find other part-time or full-time accommodated employment at a lower salary than he currently earns as a constable. To account for this possibility, I am satisfied that the present value of his constable salary should be reduced by 25 percent.

- [207] During Const. Steinlauf's post-RCMP career, I accept he would have earned approximately \$200,000 per year from the ages of 55 to 65. There likely would have been a strong demand for someone with his skills and experience. Now, due to the Accident, he is unlikely to work during this period. However, the present value of this amount must take into account the possibility that he would not have worked during this period in any event, due to unforeseen circumstances. In my view, a reduction of 20 percent should be applied to account for this contingency.
- [208] The present value of Const. Steinlauf's salary as a constable, not including pension and non-wage benefits, from the trial date to age 55, is \$1,798,443. Applying a 25 percent reduction of this amount, \$449,611, provides a net present value of his constable salary of \$1,348,832. In assessing his loss of future earnings, I will assume this figure represents his earning capacity in his current condition.
- [209] I am satisfied that Const. Steinlauf would have, absent the accident, reached the rank of Chief Superintendent by the time he was 46 years old. I accept the anticipated career path put forward by the plaintiff. Salaries earned by RCMP members are publicly available and Mr. Pivnenko, an economist who provided a detailed expert report, used them to calculate the present value of Const. Steinlauf's salary and pension losses.
- [210] The present value of the salary Const. Steinlauf would have earned to age 55 is \$2,698,605 plus overtime and bonuses of \$539,721, calculated at 20 percent of his base salary. After subtracting Const. Steinlauf's anticipated earnings post-accident, the present value of the loss of salary, overtime and bonuses during Const. Steinlauf's anticipated RCMP career, absent the Accident, is \$1,889,494.
- [211] The present value of Const. Steinlauf's potential post-RCMP earnings from age 55 to 65, calculated at \$200,000 per year, is \$1,174,400. Taking into account a 20 percent reduction to account for the possibility that he would not have chosen to work during this period, absent the accident, the present value of his loss for this period is \$939,520.
- [212] Constable Steinlauf will suffer a pension loss because of the difference between his anticipated career trajectory in relation to the likelihood that he will remain a constable throughout the rest of his career with the RCMP. Mr. Pivnenko provided an expert report that calculated the value of this loss at \$273,300 assuming that Const. Steinlauf would have retired as an inspector had he not suffered the Accident and will retire as a corporal because of it. I have concluded that Const. Steinlauf would have retired as a Chief Superintendent. This position is senior to that of an inspector and earns approximately 18

percent more salary. Due to the Accident, Const. Steinlauf is unlikely to achieve the rank of corporal and will instead likely retire as a constable. Considering these differences, I am satisfied that the present value of Const. Steinlauf's pension loss is \$350,000.

[213] In total, I am satisfied that the present value of Const. Steinlauf's loss of future earning capacity is \$3,179,000.

#### COST OF FUTURE CARE

##### Relevant Legal Principles

[214] The principles applicable to the assessment of costs of future care are:

Providing adequate damages for future care for an injured plaintiff is of paramount importance. The purpose of such an award is to provide for assistance directly related to the injuries caused by the accident. The test for determining an appropriate award is an objective one based on medical evidence. The focus should be on the plaintiff with fairness to the other party being achieved by ensuring that the expenses are legitimate and justifiable. The plaintiff needs to show: (a) a medical justification for the items claimed; and (b) that the amount claimed is reasonable. "Medical justification" is broader than "medically necessary". Medical experts need not expressly approve specific items of future care; it is sufficient if the totality of the evidence supports the award for specific items. Common sense should be employed in this assessment. No award should be included for items that would be incurred in the absence of the accident.

See: Thompson at para. 149, citing *Dzumhur v. Davoody*, 2015 BCSC 2316.

#### The Parties' Positions on Cost of Future Care

[215] With reference to the recommendations of Drs. Anderson and Krassioukov, Const. Steinlauf seeks \$300,000 for the costs of his future care. This amount consists of monthly counselling treatments with a psychologist, attendance at a pain management program, weekly sessions with a kinesiologist, prescribed medication, and annual membership fees of \$2,663 for private access to health care. He estimates that the annual cost of these treatments, services, and medications is \$10,000 and he will need them for the rest of his life. The present value of this annual amount is approximately \$300,000.

[216] The defendant acknowledges that Const. Steinlauf requires psychological counselling, attendance at a pain clinic, and an exercise program. They assert that \$25,000 is a reasonable amount for those expenses.

#### Factual Findings and Analysis on Costs of Future Care

[217] I am satisfied that Const. Steinlauf is entitled to funding for prescription medications of approximately \$1,860 per year. This is consistent with the cost of his medications since the Accident and the evidence establishes that he follows his physicians' medication recommendations.

- [218] Constable Steinlauf is also entitled to funding for counselling based on the recommendations of the parties' medical experts. However, I am not satisfied that it is reasonable to provide funding at the level claimed by Const. Steinlauf. He has obtained some counselling since the accident but the frequency of it has been uneven. I have taken into account his move from Richmond, B.C., to Montreal as well as the difficulties inherent in accessing counselling during the COVID-19 pandemic. In my view, Const. Steinlauf is entitled to funding for six counselling sessions per year at a cost of \$175/session. I am satisfied that he will need access to this counselling for the rest of his life based on the severity of his injuries and the impact of them on his psychological well being.
- [219] Constable Steinlauf's physical injuries are serious. Prior to the Accident, he was physically active and capable of performing all aspects of his demanding career as an RCMP constable. He gained a significant amount of weight, 50 to 60 pounds, in a short period after the Accident. Furthermore, his mobility is seriously limited and his self-confidence has deteriorated because of his physical limitations. The parties' medical experts agree that he needs to do an exercise program and I am satisfied that he is entitled to funding for sessions with a kinesiologist to guide this program. This is particularly important because he requires guidance on exercising within the context of his serious physical injuries. In my view, monthly sessions at a cost of approximately \$80 per session with a kinesiologist are reasonable and medically justified.
- [220] I am not satisfied that access to private medical treatment is medically necessary or reasonable. Quebec has a functioning public health system. I reject the claim for annual membership fees for access to private health care.
- [221] I am satisfied that \$3,870 per year in respect of medications, counselling, and exercise training is medically justified and reasonable. He is therefore entitled to \$122,000 for the cost of future care, the present value of this annual amount.

## LOSS OF HOMEMAKING CAPACITY

### Relevant Legal Principles

[222] The principles applicable to the loss of homemaking capacity are:

- Loss of housekeeping capacity may be treated as a pecuniary or non-pecuniary award. This is a question of discretion for the trial judge.
- A plaintiff who has suffered an injury that would make a reasonable person in his circumstances unable to perform usual and necessary household work is entitled to compensation for that loss by way of pecuniary damages.
- Where the loss is more in keeping with a loss of amenities or increased pain and suffering while performing household work, a non-pecuniary damages award may instead compensate the loss.

- As the award is intended to reflect the loss of a capacity, the plaintiff is entitled to compensation whether or not replacement services are actually purchased.
- Evidence of the loss of homemaking capacity is provided by the work being performed by others, even if done gratuitously.

See: *McTavish v. MacGillivray*, 2000 BCCA 164 at para. 63; and *Kim v. Lin*, 2018 BCCA 77 [Lin] at paras. 28-34.

### The Parties' Positions on Loss of Homemaking Capacity

- [223] Constable Steinlauf claims damages of \$18,000 and \$165,000 for loss of past and future homemaking capacity, respectively. This is based on five hours of assistance per week at a rate of \$20/hour. He points out that prior to the Accident, he was able to take care of his home and live independently. He cannot do this work post-Accident and had to move back to his parents' residence in Montreal. They now do virtually all of the housekeeping. He submits he has lost an asset, the ability to perform housekeeping work for himself and any future family.
- [224] The defendants deny that Const. Steinlauf is entitled to damages for past or future loss of homemaking capacity and submit that this loss is part of the claim for non-pecuniary damages. Alternatively, they suggest that there is no evidence of the cost of housekeeping assistance so if Const. Steinlauf is entitled to something under this head of damage, a modest amount of \$25,000 should suffice.

### Factual Findings and Analysis on Loss of Homemaking Capacity

- [225] Prior to the Accident, Const. Steinlauf lived on his own in Richmond, B.C. He had no difficulty doing housework in addition to working full-time. After the Accident, he was no longer able to live independently. He tried to maintain his home in Richmond, B.C., but decided to move back to Montreal to live with his parents, at least in part because he could not effectively take care of his household on his own.
- [226] David Steinlauf, Const. Steinlauf's father, testified that Const. Steinlauf contributes little to the upkeep of their family home and is often unable to even clean dishes because of his pain symptoms. Constable Steinlauf is often completely exhausted from a day of work and has neither the energy nor physical ability to do household cleaning. Constable Steinlauf confirmed that he contributes little to the maintenance of the family household.
- [227] I am satisfied that Const. Steinlauf is incapable of performing household tasks and will continue to rely on others to do this work. His inability to do these tasks is consistent with Dr. Krassioukov's assessment of his physical limitations. Constable Steinlauf's parents are performing virtually all of the household activities because he is unable to do this work. He is dismayed by his inability to contribute to the household he lives in and I am convinced he would do household work if he could.

[228] In my view, it is appropriate in the circumstances of this case to award Const. Steinlauf \$18,000 and \$164,000 for his past and future loss of homemaking capacity respectively, for a total of \$182,000.

## SPECIAL DAMAGES

### Relevant Legal Principles

[229] The principles applicable to the assessment of special damages are as follows:

Claims for special damages are subject to a consideration of reasonableness, taking into account the nature of the injury sustained, once causation is established. Medical justification for an expense is a factor as to reasonableness, but is not a prerequisite. Subjective factors, such as whether the plaintiff believes the treatment is medically necessary, may also be considered.

See: Hancott v. Barnes, 2015 BCSC 1308 at para. 164; Derksen v. Nicolson, 2015 BCSC 1268 at para. 78; Devilliers v. McMurchy, 2013 BCSC 730 at paras. 72 and 75.

## Factual Findings and Analysis on Special Damages

[230] The parties agree that Const. Steinlauf is entitled to special expenses of \$23,290. The plaintiff seeks further special damages in respect of the annual membership fee of \$2,663 for access to private health care, and \$1,383 for a mattress, pillow, and bed frame.

[231] I am not satisfied that any of the additional special expenses claimed by Const. Steinlauf are reasonable. As discussed earlier, access to private health care via an annual membership fee is neither reasonable nor necessary in a jurisdiction with public health care. Expenses relating to a mattress, pillow, and bed frame are not reasonable because there is no evidence that these expenses are related to the Accident.

[232] Constable Steinlauf is entitled to special damages of \$23,290.

## CONCLUSION

[233] I concluded that the defendants are 85 percent liable for the Accident and Const. Steinlauf is 15 percent liable for it. Constable Steinlauf is therefore entitled to 85 percent of:

- a) \$225,000 for pain and suffering;
- b) \$50,000 for loss of past earning capacity;
- c) \$3,179,000 for loss of future earning capacity
- d) \$122,000 for cost of future care;
- e) \$182,000 for loss of past and future homemaking capacity; and
- f) \$23,290 for special damages.

## COSTS

[234] If the parties wish to make submissions on costs, they may be filed within 30 days of the date of this judgment. If no submissions are received, the plaintiff will have his costs at Scale B.

"Basran J."

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