

CANADA / JUDGMENT

Visser v. Cheema

2020 BCSC 1098

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1098 Visser v. Cheema

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Visser v. Cheema,

2020 BCSC 1098

Date: 20200727

Docket: M186127

Registry: New Westminster

Between:

Jocelyn Visser

Plaintiff

And

Balraj Singh Cheema and John Hansen

Defendants

And

Insurance Corporation of British Columbia

Third Party

- and -

Docket: M212370

Registry: New Westminster

Between:

Jocelyn Visser

Plaintiff

And

Benjamin David Larson and Innovative Mining Services Inc.

Defendants

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

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Place and Dates of Trial:

New Westminster, B.C.

October 15-18, 21-25,

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Introduction

- [1] This case concerns a very serious automobile accident and a less serious accident which followed. The plaintiff claims damages as a result of injuries suffered in the accidents and the ongoing effects of those injuries. The defendants did not admit liability for the first accident, but did not call evidence in relation to the question of liability. The defendants in the second accident admitted liability.

The First Accident

- [2] An Admissions of Fact made by the parties set forth the specific details of the accident on September 13, 2015 (hereinafter referred to as "the first accident" or "the first collision"), and reads in part as follows:
3. On September 13, 2015, at approximately 11:15 p.m., the Plaintiff was alone in her vehicle travelling westbound on Old Yale Road between Eagle Mountain Drive and St. Moritz Way in Abbotsford. She was traveling directly from her work at Save-On Foods located at 2388 Whatcom Road, Abbotsford to her home located at [removed] in Abbotsford, British Columbia.

4. At approximately the same time, the Defendant CHEEMA was, at all material times, alone and travelling eastbound on Old Yale Road in Abbotsford in the 2004 Dodge Ram pick-up truck. He had just passed Eagle Mountain Drive as he was eastbound, when he caused or otherwise allowed his vehicle to move into the westbound lane on Old Yale Road and strike the Plaintiff's SX automobile head on. (the "subject collision").
5. The subject collision occurred while the Plaintiff's SX automobile was entirely in her west bound lane on Old Yale Road and the Defendant Cheema's eastbound Dodge Ram was either entirely in the Plaintiff's westbound lane of travel or mostly within the Plaintiffs westbound lane of travel.
6. At approximately 11:21 p.m. on September 13, 2015, the Abbotsford Police Department were advised of the subject collision. At approximately 11:26, p.m., members of the Abbotsford Police Department began to arrive at the scene of the subject collision on Old Yale Road. In the moments following the subject collision, members of the Abbotsford Fire Department and Emergency paramedics attended at the collision scene as well.
7. At 12:09 a.m. on September 14, 2015, the Plaintiff was removed from her vehicle by the attending fire and ambulance crews. She was loaded into an awaiting ambulance where paramedics worked on stabilizing her condition until approximately 12:32 a.m., whereupon the Plaintiff was transported to a soccer field on McMillan Road behind the Abbotsford Recreation Centre.
8. While at the soccer field, at approximately 12:46 a.m., the Plaintiff was moved from the ambulance and loaded onto an air ambulance in order to transport her to Royal Columbian Hospital for emergency treatment.
9. The Plaintiff arrived at Royal Columbian Hospital via air ambulance at approximately 1 a.m. and was moved to Trauma 1 emergency care where her critical treatment needs were assessed.
10. As a consequence of the subject collision, the Defendant's Dodge Ram truck was rendered a total loss.
11. The Plaintiff's SX was destroyed in the subject collision.
12. At all material times during the subject collision, the Plaintiff was appropriately wearing her lap and shoulder seat belt.
13. In the aftermath of the subject collision, and arising directly from it, the Defendant Cheema pled guilty to having consumed alcohol in excess of 80 milligrams of alcohol in 100 millilitres of blood, in which he did have care and control of his Dodge Ram truck and did cause an accident resulting in bodily harm to the Plaintiff contrary to S. 255(2.1) of the Criminal Code of Canada.

The Second Accident

- [3] In April 17, 2017, the plaintiff became involved in another motor vehicle accident (the "second accident"). She was driving straight through an intersection and an oncoming car cut in front of her. She had her seatbelt on. She found she was traumatized after the collision. The noise was loud and she was crying.
- [4] The following facts were admitted for the truth of their contents without calling evidence in this trial:
- (a) On April 17, 2017, at approximately 3:39 pm, the plaintiff, Jos[e]lyn Visser, was driving a 2010 Toyota Matrix ("Toyota") motor vehicle bearing BC license plate number [omitted], westbound on Old Clayburn Road near Immel Street, in Abbotsford, British Columbia.
 - (b) At the material time, the defendant, Benjamin David Larson, ("Larson") was the driver of a 2004 Volkswagen Passat ("VW") motor vehicle bearing BC license plate number [omitted] and was eastbound on Old Clayburn Road near Immel Street, in Abbotsford, British Columbia.
 - (c) At the material time the defendant, Innovative Mining Services Inc. ("Innovative"), was the owner of the VW and the defendant, Larson, was the operator of the VW, with the consent of the defendant, Innovative.
 - (d) As the defendant, Larson, entered the intersection of Old Clayburn Road and Immel Street in Abbotsford, he attempted to turn left from Old Clayburn Road onto Immel Street on a green light for eastbound traffic.
 - (e) As the defendant, Larson, was in the process of executing a left turn, the plaintiff was in the intersection having entered into it on a green light for westbound traffic.
 - (f) The defendant, Larson, failed to yield to the Toyota while turning left and collided with the Toyota being driven by the plaintiff ("the accident").
 - (g) The defendant, Larson, admits he was negligent in causing the accident.
- [5] The police attended the scene. One of the police officers who attended had been at the prior accident in 2015. The plaintiff was emotionally upset as a result of the second accident, but did not experience any additional injuries in the second accident.

Circumstances before the Accident

- [6] Jocelyn Visser was born in 1993, into a tight-knit, hard-working family in the Abbotsford area. Her family included her mother, father, sister and grandmother. Ms. Visser's parents, Karina and Larry Visser, were both age 54 at the time of trial. Her father and mother owned and operated a community bakery where all of the family worked.

- [7] Ms. Moore, Ms. Visser's grandmother, was able to provide the Court with a thorough description of her granddaughter. Ms. Moore was able to provide this description because, among other things, she was the birth coach when Ms. Visser was born. Ms. Moore held a responsible managerial position as a loans officer and financial advisor at a bank.
- [8] Ms. Visser's older sister, Cassandra, was 27 years old at the time of trial, and her younger sister, Tianna, was 20 years old at the time of trial.
- [9] I note that on a number of occasions Ms. Visser was simply unable to recall events or dates which typically would have been easy for someone to recall and which most individuals would have recalled. Ms. Visser has been through a very difficult experience caused by the first accident. As a result, from time to time, her memory was not consistent. In that regard, she may not have been considered a reliable witness. I am satisfied that at times her evidence was simply inaccurate, not because of any attempt to mislead the court, but simply because of her head, brain and other injuries.
- [10] Ms. Visser attended Alexander Elementary School, Abbotsford Middle School and Abbotsford Senior High School, from which she graduated in 2011.
- [11] Following high school, Ms. Visser attended Sprott Shaw College and obtained a diploma in early childhood education ("ECE"). She had planned to attend the University of the Fraser Valley and applied for entry as a student to train as a teacher; however, she decided to take the ECE training first, from January to November 2013. She described obtaining the ECE certificate as taking less time and costing less money. This allowed her to see if she could figure out if she was interested in being a teacher for young children.
- [12] As an example of matters which one would expect a student to recall, Ms. Visser was unable to recall the hours she attended school to obtain her ECE certificate. She also could not understand or remember the projects, field trips and practicums, except in the most general terms. She did not recall exams, the papers that she had been asked to write, or anything in respect to the practicums. She also did not recall the marks she obtained in the practicums. She was able to recall that she enjoyed the experience of obtaining her certificate and working with young students, particularly those aged three to five. She was aware that patience was a requirement when dealing with children at a very high level.
- [13] In respect to career opportunities, Ms. Visser worked part-time at her parents' bakery, which her parents had owned for about 12 or 13 years. It was open six days a week from 8 am to 6 pm and 8 am to 5pm on Saturdays. She had begun working there while she was in high school and would work at least one eight-hour shift a week, plus several three-hour shifts. She enjoyed assisting her father, who was the baker, and she enjoyed working with her sisters, all of whom worked in the bakery from time-to-time. Work started in the bakery at 3 am. Pay for this work was at minimum wage.
- [14] For at least one summer she worked at an ice-cream parlour at Cultus Lake. She also worked in a flower shop near the bakery during and after high school.

- [15] Prior to obtaining her ECE certificate, Ms. Visser volunteered at Alexander Elementary School working with kindergarten to grade two students, assisting the teacher in whatever way she was instructed. When she obtained her ECE certificate, she tried working at a couple of different daycare programs until she found one that was comfortable for her. She first attempted a placement where she worked one-on-one with a particularly difficult student. That assignment was not a good fit for her.
- [16] Eight months prior to the first accident, which is the principle subject matter of this action, she had been hired to work in a daycare called Beans N Buttons. Given the circumstances of that accident, Ms. Visser is not able to recall the hours she was working at Beans N Buttons or her rate of pay. She did recall that she enjoyed working with students in that facility.
- [17] At the same time, she was working at a local Save On Foods where she had been hired since February 2015. The first accident occurred approximately eight months later. At Save On Foods, the plaintiff was hired as a general clerk and she had been trained in the bakery, front end grocery, stocking shelves and as a cashier. Stocking shelves included squatting, stretching, reaching and bending over. In the bakery, her responsibilities included cleaning the pans used to prepare baked goods, pulling baked goods that had not been sold at the end of the night, pulling frozen dough out of the freezer and lining pans to be cooked later. She was also assigned duties as a cashier at the front end of the grocery store, principally ringing groceries through the till and assisting with customers carrying groceries or pushing loaded grocery carts out to cars in the parking lot. The job at Save On Foods provided the plaintiff with an opportunity to become more outgoing.
- [18] The plaintiff worked at Save On Foods and Beans N Buttons at the same time in part-time positions. She also worked one day a week at her parents' bakery.
- [19] Immediately before the first accident, she was working about 60 hours a week. She had plans at that time to move to her own "place" and obtain elementary teaching credentials. She hoped to get married and have children of her own. At that time, occupied with three jobs, she was responsible for cleaning the basement, vacuuming, cleaning the bathroom in the basement, and doing her own laundry, all of which she was able to perform without limitation.
- [20] Prior to the accident, which I will describe shortly, the plaintiff liked reading, going for walks with her father and her dog, Diesel, and doing hikes such as the Abbotsford Grind, a comparable activity to the Grouse Grind in North Vancouver. Her reading included about 20 books over the summer period. She was also interested in writing and, in particular, poetry. She wrote a Remembrance Day poem in Grade 12 and "it makes people cry". The plaintiff played the piano and took sewing lessons. The piano was at her grandmother's home, which she frequently attended on weekends and where she sewed and did some arts and crafts.

- [21] One of her favourite activities was rollerblading at Mill Lake, but that activity stopped with the first accident. Ms. Visser was also an accomplished artist, drawing and painting. She enjoyed swimming and other water sports. She had a boyfriend throughout high school. She enjoyed going to her grandparents' farm to ride on a quad and spend time with cows and dogs. She did not consider herself a person with a temper or an attitude.
- [22] Ms. Visser has no recollection of the first accident that profoundly changed her life. Earlier that day, she, her father, and some of her father's friends had gone skydiving because it was her father's 50th birthday.
- [23] Ms. Visser has no memory until some time after the first accident, when she awoke in Royal Columbian Hospital. She was subsequently transferred to Abbotsford Memorial Hospital, where the only memory she has is that "their food sucks".
- [24] The plaintiff's vehicle was virtually destroyed in the crash and, as displayed on a video presented in the court, the plaintiff suffered catastrophic injuries. It took approximately 45 minutes for her body to be extracted from her vehicle.
- [25] She was driven in an ambulance to a nearby soccer field where an air ambulance picked her up and flew her to Royal Columbian Hospital in New Westminster, where she arrived at about 1:06 am.
- [26] When she arrived at the hospital, she had a Glasgow Coma Scale recording of eight. There was grave concern that she would not survive.
- [27] When asked about her injuries during testimony, Ms. Visser reported a severe concussion and two significant skull fractures. She reported a large indented scar on the back of her head where an aneurysm had to be repaired. She had a number of breaks in the bones around her knee. Both her wrists were fractured. She had three breaks on her right knee cap and five breaks on her left kneecap, which was essentially shattered. A surgical repair plate was installed in her right thigh, but that had to be repaired when a screw came loose and painfully penetrated the skin. She had difficulty with her eyes. Her right eye would not open for a considerable period of time. She would use an eyepatch if there were a number of people in the room because her eye was dysfunctional and her eyes were not tracking together. After the first acute hospital bed, she moved to the Surrey Memorial Hospital Laurel Place Pavilion for physiotherapy and rehabilitation. She referred to it as a "hell prison".
- [28] She appreciated the involvement of her grandmother in this care because she disliked hospital food. Her grandmother would from time-to-time smuggle, something more to her liking, in for her to eat. Her grandmother was with her on a daily basis. Ms. Visser reported the rehabilitation process was extremely painful and that she was continuously in pain. Exhibit 17 shows videos of the plaintiff with a standing walker struggling to stand and walk, where one of the therapists is heard to say "pain is good".

- [29] On December 23, 2015, she was finally released from hospital. She came home with a walker and a wheelchair. Her grandmother would assist her up the stairs to take her to appointments and help her with showering and dressing. Her mother and father helped as they could, despite their need to continue to run the bakery. She would take meals outside of the home with her parents from time-to-time.
- [30] She began to work on rehabilitation at Abilities Rehab in Abbotsford with a kinesiologist in the gym, as well as a physiotherapist and then a second kinesiologist.
- [31] Ms. Visser was unable to drive for a number of months due to vision issues. Her grandmother or parents drove her wherever she needed to go. Her grandmother regularly took her to local appointments.
- [32] She reports that her legs do not bend well and she does not have strength in them. She continues to have double vision. She is dizzy and experiences anxiety. She is nervous and worried about being in a car either as a passenger or driver. Prior to the accident, she had driven all over the province as far as 100 Mile House and Osoyoos. To this day she avoids driving near the collision site.
- [33] She began driving herself to medical appointments in 2016. She will not drive "out-of-town" at night and will not go on the highway. She does not like driving in the dark or in the rain because of the anxiety it causes, but from time to time, she needs to drive at night. She has difficulty turning her head and there is a blind spot in her left peripheral vision which she tries to compensate for, but it remains harder to see. Her depth perception is not as good in the dark as it formally was. She has not attempted to drive in snow conditions. Her vision before the accident was 20/20, but no longer is.
- [34] She found that work was very hard and she was very tired when she came home. She worked two four-hour shifts a week for a few months, most of her time assisting people scanning groceries through the till. She became sore and tired from standing in one place at the till. She was unable to return to her work at the family bakery because the landlord had evicted all tenants from the mall were it was occupied.
- [35] The plaintiff described being physically unfit to attend at the daycare because she could not run, bend, or squat. She cannot move or jump quickly enough to stop a kid from some activity they should not be doing. She has migraine-type headaches which are adversely affected by noise and light. She continues to experience headaches a couple of occasions each month.
- [36] She was required to have further surgery to remove a problematic surgically installed wire in her leg to improve the range of motion. Her range of motion did not improve. Her range of motion is limited in her left knee. She cannot drive a standard automobile because her left leg is not strong enough to operate the clutch.

- [37] In May 2019, she had further surgery to remove surgical hardware that was displaced in her hip and a support rod that was removed from her thigh. There is a scar on her leg about five inches long caused by the surgery.
- [38] In June 2019, she had further surgery in her hip which caused significant shooting pains.
- [39] She has continued as a general clerk at Save On Foods, principally at the self-scanning counter. She finds she is sore and her legs are very stiff at the end of a shift. Her left wrist continues to be sore. She recalled being asked to assist a customer to get vinegar from a low shelf and she had to call a manager because she could not bend or squat down to pickup the requested item. At the till, she has to reach for boxes and bags which are located in the bottom of the cabinet by the till and she has to ask another employee to assist her to get those items.
- [40] In the bakery, she has not been able to do heavy lifting and she also cannot do shelf stocking because it is too much heavy lifting, bending and stooping. She cannot reach to the top shelf.
- [41] She cannot push empty grocery buggies to bring them back into the store. She reported she feels quite useless when she cannot do something that she used to do. She said the staff at Save On Foods are very supportive of her.
- [42] She eventually added more hours, eventually reaching 32 hours per week. She found that her body was sore and she was exhausted so that she could not do anything after work.
- [43] After the June 2019 surgery, she was off work for all of June until the end of July and then tried to start eight-hour shifts again. She found that her hip caused too much pain because of the surgery and she reduced her work hours to four six-hour shifts per week the maximum she feels she can work. She has to apply ice to her legs after a six-hour shift.
- [44] Prior to the first collision, she had worked eight-hour shifts, which were more labour intensive, and after work she could go out with friends or "read to midnight", without pain. She has difficulty now remembering the food codes required for the till.
- [45] Since the accident, she has taken a couple of education courses at the University of the Fraser Valley: a course in fine arts and an English course. She does not have career goals in either of those fields. She attended the University of the Fraser Valley to avoid social isolation and to try to make friends.
- [46] As an aside, it was curious to note that on two occasions while giving evidence, Ms. Visser used expletives which were unnecessary and out of context. She finds that she swears very frequently since the accident, something she did not do before the first collision. She has difficulty filtering her responses to people, particularly if someone makes a comment or asks a question about the first collision.

- [47] She finds she makes unwarranted outbursts. Her relations with most family members are not as good as they were, although her relationship with her father continues to be close.
- [48] Ms. Visser testified how important her grandmother's assistance is in providing a written schedule for her. She has also found it helpful to play "brain" games such as Luminosity.
- [49] Ms. Visser took a holiday at Disneyland with her grandmother, watching the cartoon characters, taking their pictures and obtaining their autographs. Disneyland's ground surface is flat, so she was able to walk a lot, but she did not go on any rides. They went to Portland on the way home, and she found walking a problem in Portland because the topography was not flat.
- [50] She continues some swimming, but it is not easy. She is embarrassed with scars everywhere on her arms and legs, including the indented scar in the back of her head.
- [51] She has not played the piano at all since the accident because she cannot remember what she learned before the accident. She finds she cannot read sheet music.
- [52] She finds drawing difficult because she cannot concentrate on the paper for long. She has continued to write some poems, but again, concentration is difficult.
- [53] Kneeling is difficult without a cushion, and with a cushion kneeling is still painful. Standing for more than an hour and a half will cause her hips to become sore. She is unable to run because her knees do not bend the way they should. She has difficulty with stairs, particularly if there is no railing present. Bending is virtually impossible. She cannot go further than a curtsy. Squatting is a very limited activity because of pain in her knees. When she attempts to climb a ladder, it is very uncomfortable because it brings on vision problems and instability. Her right hand was quite normal prior to the first collision, but now her index finger does not bend all the way. She cannot touch her palm. She has been unable to do rollerblading because her knees do not bend and she knows that if she fell while rollerblading, the pain would be excruciating.
- [54] Surgical areas are sensitive in her hip. She believes she will require a knee replacement shortly. Hiking, which she very much enjoyed prior to the first accident, is problematic, particularly when walking downhill, and she simply cannot jump because her knees will not bend the right way.
- [55] When she moves around her home at night, she has to turn on the lights because otherwise she becomes disoriented. She sleeps with a pillow under her left leg, which keeps it from over arching. Her wrist and hand that were fractured in the accident were sore for a considerable time, but that soreness has become more random in recent days. She changes physical positions frequently to alleviate pain in her knees and left hip.

- [56] She is aware that teaching is no longer a possibility for her, and she has real difficulty dealing with family members. She lost some considerable weight in the hospital and has since gained some weight. Her balance is not secure, which is apparently connected to her eyesight. She has difficulty walking without seeing her feet and if she cannot see, a misstep is really awkward.
- [57] She is concerned about the physical nature of childcare because she cannot get onto the ground. She cannot chase kids around the house or do anything physical, and she would need a caregiver or nurse to help her raise children.
- [58] Recently, Ms. Visser has had to attend medical appointments in Vancouver. She finds she cannot drive that far and her grandmother will not drive that far. She is planning to get a driver, but her experience with the driver was the driver was driving too fast.
- [59] She still intends to get a home of her own, but knows now that she will require help to do things like mow the lawn. She is capable of lifting light items to waist level, but she cannot clean bathtubs, do floor work or move laundry down a flight of stairs. She has to wear different supportive footwear and getting into and out of cars is awkward.
- [60] She has no experience with financial issues or purchasing stocks, bonds, other investments or the cost of borrowing. She will need help and guidance in doing that. She notes that everything she has planned has been taken from her.
- [61] Cross-examination was a very difficult exercise, as the most common answer given by the plaintiff was that she did not remember or did not recall particular activities or when some events occurred. I do not view this as an attempt to mislead the court or avoid answering the questions. I am satisfied that "not knowing" was a genuine answer.

Witnesses Called by the Plaintiff

Cheryl Moore

- [62] As noted above, Cheryl Moore, the maternal grandmother of Ms. Visser, had formerly worked as a loans officer, financial advisor and manager of a small branch of a national bank, where she worked for 33 years. Ms. Moore was actually the birth coach assisting at Ms. Visser's birth. Ms. Moore was close to all of her grandchildren, with whom she babysat, hosted sleepovers, taught sewing lessons, and worked on preparing crafts used as gifts for classmates of the grandchildren.
- [63] The grandchildren would also come to their grandparents' home when the grandparents resided in Mackenzie, British Columbia and later on their ranch near Lone Butte, BC, where the grandchildren would spend a portion of their summer. Ms. Visser spent time helping her grandparents clear rocks from farm fields, feed cattle and birds, and rode a four wheeled "quad" vehicle, apparently without fear. Ms. Visser got along well with those at the ranch, including friends she brought with her to enjoy summer holidays. She learned to drive on the ranch property and drove some long-distance trips in British Columbia.

- [64] As she matured, Ms. Moore observed Ms. Visser working at the family bakery, particularly during busy periods of the year such as Christmas, and noted she worked well with customers. She was so familiar with the customers, her grandmother noted that she could predict the bakery order which a customer might make. She had no limitations working in the bakery or during any of her activities around the ranch.
- [65] Ms. Moore observed Ms. Visser to be a fine artist, able to draw creative and accurate representations of what she saw. With Ms. Moore's assistance, and that of a piano teacher, Ms. Visser also became a competent musician, often playing by ear.
- [66] Ms. Moore attended Ms. Visser's high school graduation, where she and Ms. Visser discussed goals, including working with children. The two women attended the University of the Fraser Valley to determine the requirements for its education program. Ms. Moore reported "all she talked about was being a teacher". As Ms. Visser's older sister was becoming a teacher, Ms. Moore interpreted their relationship as being very close. Before the first accident, Ms. Moore described Ms. Visser as "quieter by nature, soft-spoken, easy-going, a gentle person." Ms. Moore does not recall Ms. Visser ever snapping or yelling, and she did not get angry. Ms. Moore testified that Ms. Visser did not swear or use inappropriate language at any time around her grandparents.
- [67] Ms. Visser's mother and Ms. Moore attended at the Royal Columbian Hospital the night of the first accident. Ms. Moore testified that the scene at the hospital was traumatic and that "her granddaughter was hooked up to every kind of tube known to man". A doctor about to perform surgery told the family present that Ms. Visser might not live through surgery. She survived and eventually was moved from an intensive care unit into a high-intensity care unit. Ms. Moore remained in her granddaughter's hospital room for 10 to 12 hours each day, providing water when needed, help with bed pans and help for nurses and care aides changing bedding.
- [68] According to her grandmother, Ms. Visser's left eye functioned in an abnormal way and "juttred out", with her vision crossed. During the stay in Royal Columbian Hospital, an accident occurred where Ms. Visser's legs, which were both encased in casts, fell from a sling, causing apparent pain and intense screaming from Ms. Visser.
- [69] Following a stay in Royal Columbian Hospital, Ms. Visser was moved to the Abbotsford Hospital where, due to a staff shortage, Ms. Moore assisted with Ms. Visser's meals, bed pans, hair and "trying to keep her entertained so she didn't go batty".
- [70] Ms. Moore described in some detail the efforts made to encourage Ms. Visser to stand and eventually take a few halting steps with the aid of a platform walker. This very painful and difficult activity took place three to five times a day during therapy.
- [71] Eventually, on December 23, 2015, Ms. Visser was discharged from hospital and her grandmother drove her to her home. Both of her parents were occupied working six days a week in the bakery. Ms. Moore provided daily care including assisting with showers,

transfers within the home, dressing, making breakfast, and assisting with rehabilitation until her father, the baker who rose early in the morning, returned home around 1:00 pm. Ms. Moore assisted with those activities until Ms. Visser became more ambulatory. Then the two women would go to a mall or similar area where Ms. Visser could practice walking with a walker and eventually a cane. Ms. Moore also assisted Ms. Visser by driving her to medical appointments within 10 km of her home or to a bookstore when Ms. Visser began to try reading. When Ms. Visser was required to attend medical appointments in Vancouver, a professional driver would be hired to drive her.

- [72] Ms. Moore found that her granddaughter had difficulty remembering appointments for therapy and medical treatment. Ms. Moore would prepare a schedule of appointments and confirm those appointments with Ms. Visser so that she did not miss such activities.
- [73] Ms. Moore testified that post-accident, Ms. Visser was angry, said inappropriate things, did not care about the feelings of others, including her grandmother, did not appear to have empathy for anyone else, and used "really bad and inappropriate" language. Ms. Moore specifically asked Ms. Visser not to use foul language in front of certain persons, but the unpleasant language use continued. This speech pattern by Ms. Visser was heard by Ms. Moore for the first time following the accident, and included both swearing and inappropriate sexual comments.
- [74] Post accident, Ms. Moore describes the family dynamics of the Visser family as "horrible". Ms. Visser is "angry at everybody and everything. She won't listen to her mother, she won't help out. She slams doors, swears. It's just not good." Ms. Moore has discerned that the relationships between Ms. Visser and her mother, and Ms. Visser and her younger sister, have deteriorated significantly since the accident. Ms. Moore feels it would be helpful if the whole family were involved in counselling because of the effects of the accident.
- [75] Ms. Moore expects that, as and when, Ms. Visser moves into her own residence, she will require a security system because she is very afraid because she has no ability to flee or run. Presently, her grandmother provides driving services when she can, but Ms. Visser's mother does not drive and her father works elsewhere during the day and so is not available to drive at that time.
- [76] Ms. Moore described Ms. Visser's as having limited ability to move around in her home and perform everyday tasks. She tires very quickly, and after a six-hour shift she has no patience and angers easily.
- [77] Ms. Moore described Ms. Visser post-accident as an immature 15-year-old, who says and does stupid things, and who does not appreciate other people's feelings or space.
- [78] Since the accident, she has not played the piano, and Ms. Moore described Ms. Visser's post-accident attempts at art as "really bad". According to Ms. Moore, Ms. Visser attempts to read, but cannot stay focused on a book, and her hip prevents her from sitting for any period of time.

- [79] Prior to the accident, Ms. Visser and her grandmother would hike regularly up Whatcom Hill in Abbotsford. Ms. Visser can no longer do this as she has difficulty walking on flat land and gentle slopes.
- [80] Ms. Moore is concerned that as she ages, her ability to assist Ms. Visser will diminish, and Ms. Visser's future will be bleak.
- [81] Ms. Moore agreed Ms. Visser continues to read, but that her choice of books comes from the teen section in bookstores as opposed to a more mature selection of books in keeping with her age. Ms. Moore agreed that her granddaughter went rollerblading before the accident, but not after.
- [82] Ms. Moore was told by an occupational therapist at ICBC to maintain a record of the time she spent with Ms. Visser during rehabilitation; Ms. Moore initially kept track of that time, but eventually she stopped doing so. Ms. Moore drove Ms. Visser to her medical appointments, and also drove with her on "roundabouts" trips to see other family members "up north".
- [83] After purchasing a new vehicle in 2016, Ms. Visser took a couple of driving lessons and Ms. Moore took her to the large parking lots at the University of the Fraser Valley to practice driving for the purpose of restoring Ms. Visser's independence. After that training she would drive to her grandmother's house, to nearby therapy appointments, and to a gymnasium, all within 10 km of her home. According to her grandmother, Ms. Visser now drives to work, to stores, to the bank, to her therapist, and to her lawyer's office. She does not drive for pleasure and avoids driving when it is raining or after nightfall.
- [84] Ms. Moore was asked about her trip to Disneyland with her granddaughter. They did a lot of walking on the Disneyland site over a week long vacation. While Ms. Visser was able to walk on the site she complained of pain in her legs.
- [85] During cross-examination, Ms. Visser confirmed statements she made to Dr. Lazar that Ms. Visser was still very angry, and taking the accident personally. She was also asked to comment on the improvement in her granddaughter's memory, which she agreed had improved, but was not "better or good". When asked if Ms. Visser was able to control swearing while meeting persons for the first time, Ms. Moore responded "not all the time".
- [86] When queried about Ms. Visser's ability to control money, Ms. Moore testified that Ms. Visser wanted her bills paid when they arrived, but that she had no understanding of mutual funds or other investments.
- [87] Finally, Ms. Moore agreed that she had noted occasions where Ms. Visser showed empathy, but that such occasions were notable because of their rarity.
- [88] Ms. Moore has been through an arduous experience of supporting her granddaughter and her family following the first accident. None of her evidence was challenged as either unreliable or incorrect, and I found Ms. Moore to be a reliable, credible, and helpful

witness.

Cassandra Evans

- [89] Cassandra Evans is the older sister of Ms. Visser. She is married and the mother of two children. She lives with her family in Abbotsford. She attended Sprott Shaw College with Ms. Visser, and both obtained a Certificate in Early Childhood Education.
- [90] As a child, Ms. Evans described her sister as shy, hard-working, motivated to do stuff and stubborn. Her general disposition was calm and they got along well. They worked together at their parents' bakery, with Ms. Evans working the early part of the day and her sister working the later part of the day, with some overlap in the middle of the day. They both sold baked goods to customers, cleaned heavy pans and bowls, glazed baked goods, and prepared for the next day. Ms. Evans testified that Ms. Visser had no difficulty performing physical tasks in the bakery where they both got along well with their parents.
- [91] Ms. Evans and her sister took part in sewing and craft-making together, producing costumes, blankets, shirts, pyjamas and Barbie doll clothes. Each year at Christmas, the sisters would go to the grandmother's home and produce craft gifts to hand out to classmates at school and teachers.
- [92] Both women were interested in ECE and entered Sprott Shaw College as a stepping stone to determine if ECE as a teacher was something they would pursue later on. After they passed the course, Ms. Evans considered Ms. Visser her best friend, and they spent much time together going for coffee, lunch or walks. She found her sister full of energy, patient and calm. She never swore and otherwise her communication was appropriate with others.
- [93] In July 2015, both women were working in a daycare program called Beans N Buttons. Ms. Evans described the daily program as encouraging the children present to have empathy, and teaching them how to share and communicate with other children appropriately. Physically, it was necessary for teaching staff to be able to get down on the floor and get up in a moment's notice, as well as lift children to change diapers or avoid an emergency. The ratio of supervisors to children was one to eight at Beans N Buttons.
- [94] Ms. Evans moved out of the family home with a roommate approximately a year before the first collision. She had a variety of opportunities to return to her parents' home during that year and observed that family relationships were positive.
- [95] After the first collision and the release of her sister from hospital, Ms. Evans noted that her sister had a very negative mood, her language was atrocious, and she had no patience; anything one might say could trigger an angry outburst. Ms. Evans felt like she had to "walk on egg shells" anytime she was near her sister. As an example, Ms. Evans said any discussion about the first collision in the presence of Ms. Visser would set off a tirade of swearing, even in the presence of children. Ms. Evans has observed that the relationship between Ms. Visser and her mother and her younger sister, Tianna, is also toxic and negative. Ms. Evans

is concerned about having Ms. Visser in her household and will not have her babysit because Ms. Evans' children are at a stage in life where they copy what they hear.

- [96] Ms. Evans observed that Ms. Visser's art lacks its customary proportion and appeal. Ms. Evans also noted that her sister stopped playing piano.
- [97] In cross-examination, Ms. Evans noted that her sister did well in high school. When asked about her sister's long-term plan, she said her sister wanted to be a second-grade teacher, although she had no plan to attend university immediately. Ms. Evans promoted the idea of attending Sprott Shaw College for the ECE program to encourage her sister to complete the teacher training.

Melody Hamel

- [98] Ms. Hamel is an employee of Save On Foods, where she has worked for 20 years. She is age 40 and has two children. She had known the plaintiff since the spring of 2015 in a working relationship. Their shifts coincided a couple of times a week before the first accident.
- [99] Ms. Hamel's original observations of the plaintiff were that she showed up for work on time, happy and polite. The plaintiff had the capacity to get to know customers personally. She related well to staff and others. Ms. Hamel and the plaintiff discussed how the plaintiff enjoyed working with little children and wanted to continue her education with the goal of becoming an elementary school teacher. They had also discussed the plaintiff's interest in getting married and having children. Ms. Hamel observed the plaintiff drawing, which she had considerable capacity for, and working on art projects.
- [100] Following the first accident, Ms. Hamel visited the plaintiff in hospital, where she was "incoherent and whiny". Ms. Hamel noted the plaintiff would grab stuffed animals on her bedside when anyone approached.
- [101] The grocery store where both women worked held two events, one in October and another in December 2015, as fundraisers in support of the plaintiff. Ms. Visser attended the December 2015 event, supported by a walker and wearing an eye patch. Ms. Hamel's observation of her was that she was "pretty dismal" and she did not appear to appreciate what was happening or why she was there. The plaintiff visited the store from time to time as she approached a return to work. Ms. Hamel observed her to be "a little kid-like" and she tired quickly. Her childlike behaviour included wanting to show other staff members' teddy bears that she had received.
- [102] The plaintiff finally returned to work for brief periods in December 2016. At that time, Ms. Hamel was responsible for the front-end service desk in the grocery store. She had a responsibility for assigning staff breaks, doing price checks, instructing staff to collect grocery buggies and to make sure everything in the store ran smoothly. She observed the plaintiff from her position at the service desk. She supervised the self-scan cashiers and took over their positions when they took breaks.

- [103] Since the return of the plaintiff to work following the accident, Ms. Hamel said the plaintiff had real difficulty performing work duties. She had difficulty finding products and doing price checks. Ms. Hamel said that there was a 50-50 chance that she would bring back the wrong item or be unable to locate the right item, as she had difficulty selecting the right item out of a shelf of similar items. Ms. Hamel noted this had occurred the night before Ms. Hamel gave evidence. Ms. Hamel also noted that the plaintiff had real difficulty stooping or bending down to get items from a lower shelf, particularly if they had any weight. She had difficulty restocking the in-line cooler near her self-scan counter and difficulty matching items to the Universal Product Code ("UPC"). She had difficulty stocking certain items where shelf products have to be rotated so that the new products are put at the back of the shelves because she cannot reach the back of the shelves.
- [104] When working at the self-scan counter, she has difficulty dealing with more than one issue at a time. She may swear in front of customers when frustrated, including small children, because she cannot respond to alarms or deal with common UPC items.
- [105] Ms. Hamel also noted that the plaintiff would dress oddly following the first collision, such as by painting a butterfly on her face, wearing feathers or flowers in her hair, and dressing up in a revealing peacock outfit for Halloween. This was entirely out-of-keeping with the clothing worn by other staff members.
- [106] Ms. Hamel heard the plaintiff repeatedly talk to customers about the first accident. The plaintiff became angry describing the first accident.
- [107] Customers have mentioned to Ms. Hamel that they avoid going to the till operated by the plaintiff. Ms. Hamel views this is an example of how the plaintiff lacks awareness of social cues and does not understand when conversations with customers should come to an end. The plaintiff in these conversations has made inappropriate comments about food and, in particular, about customers purchasing wine, once commenting "this is what almost killed me". Not surprisingly, the customer was irritated after that comment was made. As a result, Ms. Hamel avoided having the plaintiff assist customers when they are seeking sensitive products.
- [108] Ms. Hamel tried to instruct the plaintiff concerning this inappropriate behaviour and the plaintiff's reaction to these instructions led Ms. Hamel to conclude the plaintiff had no insight as to what was wrong with these comments in her capacity as a store clerk. Ms. Hamel noted the lack of empathy for another co-worker hit by a car. The plaintiff reacted in anger, as this person appeared to have taken her spot.

- [109] The plaintiff's sister, Tianna, who also works for Save On Foods, is ignored by the plaintiff, who refers to her in derogatory language. Ms. Hamel is very concerned leaving the plaintiff in a solo capacity at work because if something is dropped or ends up on the floor, she cannot pick it up as she cannot bend down. Further, Ms. Hamel's observation was that she could only occupy a position standing for approximately half an hour due to fatigue and pain, which results in a loss of focus.
- [110] It is not clear how long the checkout style of job that the plaintiff works at will be maintained, and other jobs in the store are too physically demanding for her. Ms. Hamel did not believe that the plaintiff would be capable of selecting online shopping orders.
- [111] Ms. Hamel estimated the performance of the plaintiff as a cashier was at the lower end of the cashiers she oversaw, and that if it was not because of the plaintiff's need to be accommodated for collision-related injuries, she would have been terminated.

Tracy Lawley

- [112] Tracy Lawley, a 51-year-old mother of four, is the plaintiff's mother's sister. She has known the plaintiff since she was very young and as she grew older, she knew of the plaintiff's interests in reading, art, poetry and writing. She felt the plaintiff's art was amazing. She saw the plaintiff working in her parents' bakery, where she was friendly and positive with customers. She was quick in her job and described as "just what you would want in an employee". The plaintiff was also described by Ms. Lawley as quiet, likable, personable, responsible, honest and brave. She never heard her swear. She found the plaintiff easy-going with her and her children. Ms. Lawley noted no particular family conflicts beyond sibling rivalry and typical mother-daughter angst. Ms. Lawley described the plaintiff working hard and doing very well at Sprott Shaw College.
- [113] Ms. Lawley found the plaintiff had a personality change after the first accident. The plaintiff was very angry and dismissive about others experiences. As a result, her peers, who had been visiting regularly, stopped coming around to see her at the hospital.
- [114] After the first collision, the plaintiff, according to Ms. Lawley, regressed in maturity. She became obsessed with Disney cartoon characters, swore inappropriately and created untoward scenes with others. Ms. Lawley regrets that she cannot have a normal conversation with her niece, and observed alienation of other family members because of this behaviour.
- [115] Ms. Lawley described several incidents of the plaintiff behaving inappropriately. One incident involved the plaintiff swearing in front of Ms. Lawley's clients despite direct instructions to stop. Another incident occurred when the plaintiff was in a bookstore and had a loud outburst. Ms. Lawley described this second experience as deeply embarrassing, as the entire store stopped to watch Ms. Visser. Not surprisingly, this incident created significant friction in the family. When Ms. Lawley admonished the plaintiff regarding this negative behavior, the plaintiff put a blanket over her head and began to cry. As a result, she

has distanced herself from her niece. Ms. Lawley also reported a similar incident at a family birthday party with children present, where the plaintiff loudly interrupted a conversation between other party guests to speak about her own condition with repeated swear words. When Ms. Lawley told the plaintiff that her behaviour was inappropriate, the plaintiff said she did not understand why that was so.

Beverly Simons

- [116] Beverly Simons was driving along old Yale Road after 11 pm on September 13, 2015 and came across the accident scene. The defendant's truck was on its roof and its tires were spinning. She told her daughter to close her eyes because she was concerned that the occupant of the plaintiff's vehicle was likely dead. She asked another bystander to call the 911 emergency line and flagged down another vehicle asking that the occupants block further traffic.
- [117] Ms. Simons tried to get the passenger side door of the plaintiff's vehicle open, but was unable to do so. She had earlier formed the opinion the plaintiff was dead. Eventually it was clear the plaintiff was still alive and she appeared "very badly banged up". Her eyes were open and she was having difficulty breathing, due to fluid in her throat.
- [118] A police officer directed Ms. Simons to hold the plaintiff's hand and then first responders arrived with the Jaws of Life, and Ms. Simons was asked to leave the immediate area of the car. She refused and said she was not going to leave until she knew that the plaintiff was "okay". Ms. Simons later saw media reports of the accident, including photos of the plaintiff in the newspaper. Ms. Simons later saw the plaintiff sitting in a wheelchair.

Cst. Deanna Dixon

- [119] The next witness called was Deanna Dixon, a member of the Abbotsford Police Department. She was on patrol duty and responded to a radio call around 23:21 hours in Abbotsford with a report that there had been a serious motor vehicle accident at Old Yale Road and St. Moritz. She proceeded with emergency lights and sirens on a Code 3 basis. She arrived at the accident scene and described the scene as chaotic with debris on the road. The plaintiff's vehicle, severely damaged, was facing into the rock face of the mountain and, further east, the pickup truck, referred to above, was resting on its roof.
- [120] Officer Dixon noted the driver of the Dodge SX was unconscious. The police officer believed that the plaintiff was going to die if she was not already dead.
- [121] Officer Dixon described Old Yale Road as having a slight curve east with a solid yellow line that divides the lanes. There is a rock face on the north side. The area is not well lit.

- [122] She described the plaintiff's vehicle as she tried to gain access through the passenger side. The officer testified the whole front end was pushed in and the plaintiff's legs were completely pinned by the front-end which had been forced into the passenger compartment of Ms. Visser's vehicle. Officer Dixon was at the scene for approximately an hour until the plaintiff was removed by helicopter from a nearby soccer pitch.

Constable Joiner

- [123] The next witness called was Constable Joiner, who was an accident reconstruction specialist who began his career in policing in 1991 with the Matsqui Police Department. He later worked with the Abbotsford Police Department. In 1994, he was assigned to conduct collision investigations and analysis, which he continued until he retired in January 2019. During his accident investigation career, he kept a log of almost six hundred accident investigations. Since his retirement, he has been requested to perform file reviews of accident investigations.
- [124] Mr. Joiner has been qualified as an expert witness in the Supreme Court about 50 times. He did a review of the site of the accident which is the subject matter of this case, noting both vehicles, making permanent markings and taking a series of 24 photographs that were marked as Exhibit 9. He eventually escorted both vehicles to Civic Works Yard in a secure facility for forensic examination. It was noted there were bottles of alcohol inside the cab of the pickup truck driven by the defendant. Mr. Joiner advised that the evidence was consistent with the pick-up truck having crossed the centre line, slammed head-on into the vehicle driven by Ms. Visser, and then flying over her vehicle and landing upside down approximately 30 metres along the road way. Several other witnesses attended the scene and made observations which are consistent with the evidence already given that the pickup truck had crossed the centreline of the road and slammed head-on into the vehicle driven by Ms. Visser.

Kevin McDonald

- [125] Mr. Kevin McDonald gave evidence. He works as a stringer, or freelance photographer, providing video reporting for various television news outlets. He attended the scene of the crash. He lives very nearby. At the time he attended, he videoed the extraction efforts on Ms. Visser from her Dodge vehicle. He noted she was trapped in the vehicle and the "Jaws of Life" had to be used to open the car sufficiently to allow first responders to attach Ms. Visser to a stretcher and slide the stretcher out of the vehicle through what was the trunk of the car and into a waiting ambulance. The video also displayed two liquor bottles on the road outside of the defendant's pickup truck. The video shows the air ambulance taking off with Ms. Visser onboard to deliver her to the Royal Columbian Hospital on an emergency basis. The video is 22 minutes long.

Warren Paul Visser

- [126] Mr. Visser is the plaintiff's uncle and has known her since birth. He is the brother of the plaintiff's father. Mr. Visser had frequent contact with the plaintiff at family occasions prior to the first collision. Prior to that collision, Mr. Visser considered the plaintiff to be a hard-working person, full of energy, looking forward to establishing a career and a family. He had never heard her swear prior to the first collision. He considered that she was on good terms with the family members and was close to her older sister, Cassandra. She was a talented artist and really liked children and wanted to pursue a career in teaching.
- [127] When he got to the hospital the morning after the first collision, the plaintiff was unconscious and attached to a number of tubes and sensors. Mr. Visser and his wife visited the plaintiff regularly in hospital, and described her rehabilitation progressing slowly and appearing very painful. He noted that her eyes did not track properly.
- [128] He described that Ms. Visser lacked range of motion in her knees after she was discharged from hospital. Any attempt to bend her knees resulted in a painful response. Her gait was abnormal and she became tired and angry quickly.
- [129] To this day, she appears exhausted after working and is short tempered. Mr. Visser observed that following the first collision, the plaintiff is not aware of what she is saying to other people and "she does not appear to have a filter". He noted that she swears at family events, including in front of her grandmother. She is rude to her mother and to her sister, Tianna. She has become immature for her age and her interests and temperament are consistent with a 12 to 13-year-old.

Michael Bryant

- [130] Michael Bryant was called as a witness for the plaintiff. He is currently the store manager in Abbotsford for Save On Foods. He stated that Jocelyn Visser was hired in February 2015 as a general clerk. He agreed that was a vague job description, but it was a non-management role in the front-end of the grocery store, dealing with food and perishable items. She was a positive employee who worked as a cashier. He considered her polite and "a nice young lady". She was good with customers and had no conflicts. She had good communication skills. There was no swearing. She was never absent and she stuck strictly to the store dress code.
- [131] On September 15, 2015, he received a telephone call from a family member of Ms. Visser and drove immediately to the hospital. When he arrived, he saw her in an unconscious state, connected to a number of machines. He visited her regularly in the hospital and spoke to her a few times. The plaintiff later indicated to him that she had no recollection of these conversations.

- [132] Following her discharge from hospital, Mr. Bryant described the plaintiff as confused, frightened and unsure of when she was in fact in hospital. There were apparent changes in her personality. There are unexpected periods of anger at family members and she even registered anger at one of the team members from the store who had not visited her enough in hospital. Mr. Bryant felt that her anger was misdirected. During convalescence she visited the store, but had inappropriate reactions when she did not receive greetings she had hoped. Her response was to take that "very, very personally and to get really, really angry". The use of profanity and "dropping F bombs" surprised Mr. Bryant. The result of this strange behaviour was that other members of the store team would avoid contact with the plaintiff.
- [133] Mr. Bryant left the Abbotsford store in June 2016 and the plaintiff had not returned to work at that point in time. Mr. Bryant was concerned as to how a future manager would deal with the plaintiff when she did return to work because she had problems to overcome physically, cognitively and behaviourally. She had a short fuse and did not mix well with the public and other people.
- [134] Mr. Bryant was asked about the duties of the employee responsible for the self-scan station, which require a staff person to oversee the centralized monitor and assist customers at self-scan stations when they have problems using the scanner. He indicated the role is quite basic and often boring. Little creativity is required, but the role does require multitasking, as multiple stations can experience problems at the same time.

Plaintiff's Expert Witnesses

Donald Rempel - Professional Engineer

- [135] Mr. Rempel is engaged in a full-time practice of forensic engineering in Accident Reconstruction. His report dated July 24, 2019 was filed without challenge or objection.
- [136] The photograph on p. 3 of the report indicates the two vehicles were travelling in broadly opposite directions when the impact occurred. Mr. Rempel then explains how the marks in the roadway and motor vehicle fluids released in the area of impact were caused, inter alia, because the Dodge pickup truck rolled over the plaintiff's car, forcing it downward into the road surface. The plaintiff's vehicle also buckled, causing downward displacement of the front and mid-underside of that vehicle. The vehicle rotated slowly away from the point of impact.
- [137] The Dodge pickup truck rotated counter clockwise from the point of impact, tipped over and slid to rest on its roof. The impact occurred entirely in the westbound lane and Mr. Rempel opines, based on the evidence he reviewed, that the Dodge pickup was travelling eastbound in the westbound lane at the point of impact.

[138] As the expert medical evidence tendered by the plaintiff was not subject to cross-examination by counsel for the defendants and the third party, the court accepts the expert evidence as tendered. The only expert witnesses who were cross-examined by counsel for the defendants and third party were the vocational consultant, Mr. Dean Powers, and the rehabilitation consultant, Ms. Elaine Sandor, whose evidence I discuss below.

Dr. Jasdillar Gill

- [139] Dr. Gill was the treating physician for the plaintiff. He is a physician qualified to practice medicine in British Columbia and has two separate family practices in the Abbotsford area. He has been a physician for the Visser Family and its members for many years. He became involved in the treatment of this Ms. Visser at Laurel Place where, among other things, he made a referral to a psychiatrist to assess Ms. Visser for "high intensity rehabilitation". Ms. Visser had been in a primary care setting up to the end of December 2017, with a number of referrals to specialists and physiotherapists. Dr. Gill told Ms. Visser that she would have restrictions going back into a working environment and she should not rush that activity. Her ability to work was going to be restricted.
- [140] Dr. Gill has seen the plaintiff every four to eight weeks since the first accident. When she comes to the office she is attended with her grandmother, Ms. Moore. He considers that the plaintiff lacks emotional maturity and she is reliant on her grandmother. Ms. Moore acts as a buffer to maintain contact between Ms. Visser and the real world.
- [141] He finds that when attempting to discuss the situation Ms. Visser faces, asking open-ended questions, she is angry, resentful, and consistently negative. He recalls an incident when during a discussion she became angry and stormed out of his office. He has discussed the inappropriate swearing with Ms. Visser. With respect to the use of foul language, it is a new post-accident occurrence. If at any time she becomes uncomfortable with questions she is asked, according to Dr. Gill, "she can say fuck with anything". He has not seen what he considers to be an improvement in Ms. Visser's social relationships in the last three years. They seem to have plateaued.
- [142] During cross-examination, Dr. Gill agreed that the plaintiff had been working 32 hours a week, but in June 2018, she had a pin removed from her hip and her pain is worse post-removal than it was before removal of the pin. She will have to work with a physiotherapist to obtain more positive results.

Dr. Cirelle Rosenblatt

- [143] Dr. Rosenblatt is a psychologist registered to practice in British Columbia. In the course of conducting a neuropsychological evaluation of the plaintiff, Dr. Rosenblatt examined the plaintiff twice in November 2016 and a final time on June 8, 2017. The doctor also conducted an interview with Ms. Moore on June 8, 2017.

[144] Testing by Dr. Rosenblatt included effort testing, which involved both standalone and embedded tests or validity indicators. The results of those tests reflected scores consistent with credible reporting with no indication of under- or over-reporting. Dr. Rosenblatt opined that the plaintiff's test results were valid.

[145] Dr. Rosenblatt noted the following:

marked change indicative of significant impairment of sustained visual attention and visual scanning or tracking demands on fine motor tasks, as well as on tests involving coordinated visual and fine motor functioning. These areas of markedly reduced performance are consistent with oculomotor dysfunction, perhaps related to occipital infarct or injury to cranial nerves (such as cranial nerve VI, for which referral to neuro-ophthalmology was made), as noted in the medical records reviewed. Persistent oculomotor dysfunction is indicated on Ms. Visser's performance on the visual Ocular-Motor Screening ("OMS"), and further supported by associated neuropsychological test results. Notably, dysfunction such as has been noted in the Trail Making Test B (on which Ms. Visser performed at the 4th percentile) has been correlated with Visual Field of View ("VFOV") deficits, indicative of attention and visual processing or visuomotor tracking dysfunction, rather than intellectual or cognitive impairment (see Greenwald et al., 2012).

[146] Dr. Rosenblatt's report also remarked on a change in her psycho-emotional and social functioning as follows:

Another notable change for Ms. Visser appears to have been in the area of psycho-emotional and social functioning. A general dissatisfaction with her relationships and her daily life is repeatedly referenced during clinical interview and when referenced unstructured inventories or questionnaires administered. This dissatisfaction involves both Ms. Visser's primary and its secondary social networks, such as include her immediate family and her friends and social support network. Immature and diffuse, irregular social contact with described, as well as regular conflict with immediate members of her family.

[147] Another marked change noted by Dr. Rosenblatt was a denial and minimization of symptoms of depression and anxiety and diminished insight into those feelings and the emotional impact of the motor vehicle accident. Dr. Rosenblatt is clear that the problems indicated above were caused by the first motor vehicle accident and neurological events arising from it.

[148] Dr. Rosenblatt recommended:

- a) physiotherapy;
- b) ophthalmology or behavioural optometry;
- c) neural physiotherapy; and
- d) neurology and occupational therapy.

- [149] Dr. Rosenblatt gave a guarded prognosis for the plaintiff, but considered that improved function is still possible for Ms. Visser if optometric and physical rehabilitation is achieved, and if psychological functioning further resolves and stabilizes. She considered a final opinion would be reserved pending further investigations, interventions and rehabilitation.

Dr. Brian Day

- [150] Dr. Day, an orthopedic surgeon, prepared two reports concerning his examinations of the plaintiff; dated February 27, 2017 and July 31, 2018. For his first report, Dr. Day also reviewed and listed the ambulance crew report, a number of excerpts of hospital reports from the two hospitals attended by Ms. Visser, records of Dr. Gill, and records of two occupational therapists.
- [151] Dr. Day's first report included notes of his interview with the plaintiff on February 22, 2017, in the presence of the plaintiff's grandmother, where after an initial reference to her hospitalization, Ms. Visser advised Dr. Day that she felt her current level of musculoskeletal function had plateaued; neither improving nor worsening at that point in time. Her function was limited because of pain and stiffness in her knees and left hip. She also reported wrist and hand pain. Troublesome headaches were another feature which, although improved, persisted intermittently. She reported she had ceased taking medications other than vitamins.
- [152] Dr. Day discussed at some length the original accident; a head-on collision resulting in a head injury, bilateral femoral fractures, a fracture of the left hip and fractures of the left tibia and fibula. Dr. Day also noted that the plaintiff had suffered a skull fracture and liver laceration. In relation to the skull fracture, she developed a right carotid pseudoaneurysm. There were also fractures of a number of bones in her left hand.
- [153] In preparation for his second report, Dr. Day reviewed more recent medical records than for his first report. Dr. Day saw, interviewed and examined the plaintiff on July 26, 2018
- [154] He noted that the plaintiff had surgery to remove internal fixation devices from the left patella and distal locking screws from the left femur, both on April 6, 2018. The doctor noted the plaintiff worked two four-hour shifts and one six-hour shift per week, which finds her fatigued at the end of the shifts. She reported continuing physiotherapy and low intensity treadmill and elliptical exercise, without improvement in symptoms. She also reported experiencing left hip pain.
- [155] On examination, Dr. Day noted a positive change in knee flexion on both sides. He also noted the plaintiff had persistent limitation in the rotation of the left hip and limitation of full flexion in both hips to 135°. He commented on the scar left by the surgery in April 2018 and crepitus or grinding on examination of the left patellofemoral joint, between the thigh bone and the kneecap.

[156] Dr. Day opined that he did not expect any significant improvement in range of motion in the future. He felt that the plaintiff might benefit from an arthroscopic procedure to attempt to smooth the surfaces of the left patellofemoral joint. He opined that the plaintiff would very likely develop progressive osteoarthritis over the next 10 to 20 years which while require joint arthroplasty. He also opined the plaintiff may require future procedures to remove some of the other internal fixation devices, including the left hip screw.

[157] Dr. Day's reports were not challenged.

Dr. Philip Teal

[158] Dr. Teal is a duly qualified neurologist with a specialty qualification in neurology and emergency medicine with a particular interest in acquired brain injury arising from cerebrovascular diseases and traumatic brain injury. On March 3, 2017 and December 14, 2018, after having reviewed various medical records, he conducted interviews and examinations of the plaintiff.

[159] Dr. Teal's report helpfully reviewed medical records for almost three years after the accident. The initial first responder arrived at the accident scene at 11:30 pm, and at that time the plaintiff's Glasgow Coma Score was recorded at 10. The ambulance arrived at the scene on September 14 at 12:10 am when the Glasgow Coma Score was recorded as 8/15.

[160] Upon arrival at hospital, it was noted her pupils were equal and reactive, but both eyes were deviated to the right. She had a 3-4 cm scalp laceration in the occipital region. She was given multiple doses of intravenous ketamine and rocuronium. Facial bone asymmetries were noted and her eyes were reacting in a sluggish fashion. The right thigh had a distal wound with bone protruding; her left thigh was grossly distended and obviously deformed. She moved her right arm spontaneously, but there was no movement at all in her left arm or lower legs.

[161] Later the same day, during a reported neurosurgical examination, Ms. Visser was able to reach up with both her left and right hand, but could not move her legs. There was evidence of a right frontal skull fracture with a small volume of bleeding in the brain.

[162] Approximately 10 days later, examinations by a neurologist and neurosurgeon were conducted. The first noted evidence of a stroke and the second reported that Ms. Visser had sustained a traumatic cranial cerebral injury and subsequently developed an expanding pseudo-aneurysm which was ultimately treated by a coiling procedure, blocking blood flow to the aneurysm.

[163] In his opinion, Dr. Teal noted the plaintiff was in excellent health without significant pre-existing medical, surgical or psychiatric conditions prior to the first accident.

[164] Following the first accident and her hospitalization, initially in an intensive care unit for two weeks, she spent approximately one month in a rehabilitation unit and was then transferred for a further month to a rehabilitation unit at Surrey Memorial Hospital.

[165] As a direct result of the motor vehicle accident, Dr. Teal opined that the plaintiff sustained neurological injuries, including:

1. Severe traumatic brain injury with evidence of subdural hematoma, traumatic subarachnoid hemorrhage, diffuse axonal injury, and cerebral contusions;
2. Traumatic arterial dissection and subsequent development of an expanding pseudoaneurysm involving the cavernous portion of the right internal carotid artery;
3. Stroke affecting the right middle cerebral artery territory secondary to the dissection of the internal carotid artery and development of pseudoaneurysm resulting in a left hemiplegia, now resolved;
4. Right cranial nerve VI palsy resulting in double vision, now resolved;
5. Right Horner's syndrome (ptosis/droopy eyelid) and miosis (small pupil), now resolved;
6. Skull fractures/scalp laceration;
7. Post traumatic neurocognitive syndrome; and
8. Incomplete left visual field quadrantanopia.

[166] Dr. Teal also opined that as a result of the motor vehicle accident, Ms. Visser sustained polytraumatic injuries including, but not limited to, the following:

1. Bilateral femoral fractures requiring surgery. The left femoral fracture was compound;
2. Left tibia and fibula fracture;
3. Left patellar fracture requiring surgery;
4. Multiple fractures of the left-hand including second, third, and fifth metacarpal's, hamate and triquetrum;
5. Liver laceration managed conservatively; and
6. Multiple soft tissue injuries.

[167] Dr. Teal opined that Ms. Visser sustained a severe traumatic brain injury based on the following findings:

1. Her initial Glasgow coma score was 10, but declined to 8/15 prior to the need for intubation;
2. She likely experienced a severely impaired level of consciousness for much longer than 36 hours;

3. She sustained a prolonged posttraumatic amnesia and recalls little of her entire hospital stay at Royal Columbian Hospital from September 14, 2015 to October 18, 2015;
4. She had persisting confusion, drowsiness and disorientation in Royal Columbian Hospital for more than two weeks;
5. She sustained skull fractures affecting the right temporal and parietal bone;
6. She had radiographic evidence of a right-sided subdural hematomas, traumatic subarachnoid bleeding, and intraparenchymal microhemorrhages; and
7. Ms. Visser had CT and MRI evidence of hemorrhagic and non-hemorrhagic cerebral contusions and probable traumatic cerebral edema.

[168] Dr. Teal also noted that Ms. Visser suffered a stroke superimposed on her traumatic brain injury.

[169] Dr. Teal opined that Ms. Visser made a much better than expected recovery from her traumatic brain injury, but certain neurocognitive sequelae persisted as follows:

1. Improvements occurred in initial symptoms of memory impairment, speech and language problems, and neurobehavioural changes. Ms. Visser has persisting mental and physical fatigue and a lack of stamina;
2. Ms. Visser still has persisting symptoms of memory disturbance;
3. She has persistent persisting frontal lobe/dysexecutive symptoms including loss of inhibition with the use of foul language, and problems with temper control and anger management; and
4. Ms. Visser has some loss of insight into her behavioural changes, including a loss of "social filter". She also demonstrated signs of anger and impatience.

[170] Dr. Teal opined that the persisting neurocognitive and behavioural changes are directly attributable to the traumatic brain injury. The doctor also opined that Ms. Visser has a mild upper left quadrant visual field defect and as a result she needs to be very vigilant while driving. He noted that she continues to experience pain in both legs, more on the left than the right, and that as she is unable to move quickly; she would not be able to look after children.

[171] Dr. Teal opines that Ms. Visser does have persisting limitations with regard to her work capacity. In the doctor's opinion, she is unlikely to return to long hours of work; she has neither the mental nor the physical stamina to work as she had done prior to the motor vehicle accident.

[172] The doctor further reported that at the time of his evaluation, she did not have adequate behavioural control or mental stamina to work in a childcare setting caring for multiple children. "Her lack of temper control and problems with anger management would likely provide challenges for her." While her improvement has been significant, the doctor opined she is likely approaching her maximal recovery. Dr. Teal noted that Ms. Visser remains at a small increased lifetime risk for developing post traumatic epilepsy.

Dr. Mark Adrian

[173] Dr. Mark Adrian was qualified as an expert in physical medicine and rehabilitation. He conducted an independent medical examination of the plaintiff on October 23, 2017. In preparation for his report, he was provided with hospital records, the reports of three medical doctors and records and reports of two occupational therapists.

[174] Dr. Adrian noted the injury-free pre-accident status of the plaintiff and her lack of memory of the first accident. Dr. Adrian discussed the various procedures in hospital which have been referred to above, as well as the therapy and treatments received by the plaintiff to that date.

[175] On physical examination, Dr. Adrian made comments about her gait and reports of stiffness in her knees. Dr. Adrian noted wasting involving her left quadriceps. He noted that Ms. Visser has a full, pain-free range of motion in her shoulders, elbows, wrists and digits, with the exception of her right index finger. She has a full and pain-free range of motion of the hips with 50° internal rotation and 10° external rotation on the left side, although there is tenderness over the lateral hip.

[176] Her left knee is held in a flex position where she has a fixed restricted range of motion. She has pain over the medial patellar facet to palpation, as well as over the medial and lateral joint line.

[177] Dr. Adrian opined that Ms. Visser suffered physical forces to her wrists and hands; lower extremities; head; and internal organs during the course of the accident, resulting in a number of injuries including femoral fractures, fracture of the left patella, fracture of the left tibial, plateau left wrist and hand fracture, traumatic brain injury associated with skull fracture and a pseudoaneurysm.

[178] Dr. Adrian reviewed the functional capacity of the plaintiff, where he stated she will probably continue to experience difficulty performing activities that involved prolonged sitting, standing, stooping, and kneeling; impact activities; heavier repetitive lifting; and stair climbing due to the injuries suffered to her lower extremities. He opined that these limitations were unlikely to improve, and that Ms. Visser is permanently partially disabled due to the first accident.

- [179] Dr. Adrian noted that her current work activities are modified because she experiences difficulty with prolonged standing, walking, crouching, and other work activities with greater physical demands.
- [180] Dr. Adrian suggested after a year of physical therapy and kinesiology, Ms. Visser should be instructed to complete an independent exercise program to maintain her level of fitness and function. This independent exercise program should be subject to periodic supervision and monitoring by a physical therapist or kinesiologist. If she is unable to continue working as a grocery store clerk or otherwise feels the need to change her current employment, Dr. Adrian felt she may benefit from the involvement of a vocational counsellor and a full capacity evaluation.
- [181] Dr. Adrian conducted a second examination on February 1, 2019. He continued to have access to the materials listed above, but also had an opportunity to review more medical records and imaging. In his second report dated February 19, 2019, he noted that Ms. Visser experiences bilateral knee pain more on the left side than the right. These pain symptoms fluctuate and flared with activities such as prolonged standing; sitting with her knee bent; attempts at crouching or kneeling; walking, particularly uphill; jarring activities; and climbing steps or stairs. She also reported left lateral hip pain which occurs with prolonged standing, walking, and transitioning.
- [182] Ms. Visser reported sensations of dizziness, particularly when transitioning or turning her head or body quickly. She experiences fatigue symptoms easily, and has difficulty focusing and concentrating when reading.
- [183] On physical examination, Ms. Visser was able to walk on her heels and toes. She was able to perform a 50% squat with stiffness involving her left knee, and there was audible joint noise involving her left knee joint.
- [184] Dr. Adrian opined that Ms. Visser experiences persistent, regularly occurring and physically limiting pain involving her knees that affects her activity levels. He also noted the plaintiff is at risk for the development of post-traumatic arthritic changes in her knees and progressive knee pain. He again opined that it is unlikely these symptoms will improve in the future, and Ms. Visser is permanently partially disabled.

Dr. Susan Lazar

- [185] Dr. Lazar is an expert in psychiatry and provided a medical legal report based on an independent medical examination conducted on February 27, 2017. Dr. Lazar based her report on the same facts and assumptions described in the reports above.
- [186] Dr. Lazar commented concerning a low mood, distractibility, memory loss, and poor concentration. Dr. Lazar noted that on several occasions, Ms. Visser's caregivers had reported to therapists that they felt Ms. Visser's "social filter" was affected.

[187] Dr. Lazar opines as follows:

As a result of the injuries sustained in the motor vehicle accident of September 13, 2015, Ms. Visser is likely experiencing cognitive impairments and personality change consistent with diagnostic criteria outlined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) for the probable diagnosis of mild neurocognitive disorder due to traumatic brain injury and personality change due to traumatic brain injury as well as post-traumatic stress symptomatology that does not meet diagnostic criteria for the diagnosis of posttraumatic stress disorder.

[188] Further, on p.16 of her report, Dr. Lazar stated:

Personality change due to a traumatic brain injury is one of the more common novel psychiatric disorders following a severe traumatic brain injury and is frequently associated with neurocognitive disorders. The onset of personality change usually occurs within three months post injury.

[189] At the end of her report, Dr. Lazar opined that it was premature to consider a reliable future prognosis as maximal cognitive recovery with respect to Ms. Visser's personality change was not yet possible 18 months post accident. She stated "persistence of personality change secondary to a traumatic brain injury is assessed at two years post trauma".

[190] A second report of Dr. Lazar was then published based on an updated assessment and examination on May 7, 2019. In the second report, Dr. Lazar opined that Ms. Visser's personality change was caused by the traumatic brain injury which persists and "is unlikely to remit". Further, Dr. Lazar opined that Ms. Visser's ability to engage in long-term intimate relationships and parenting of children will likely be adversely impacted by her mild neurocognitive disorder, as well as her personality change. The doctor also stated that if the plaintiff were to experience another motor vehicle accident in the future, there is a risk for an increase in posttraumatic stress symptoms and functional impairment.

Dr. Briar Sexton

[191] Dr. Sexton is expert witness qualified to an ophthalmologist, originally retained by the defendant/third party, but whose report dated July 3, 2019 on the impact of the first collision on the visual system of the plaintiff was entered by the plaintiff.

[192] Dr. Sexton opined that as a result of the first collision, Ms. Visser developed a right-sided Horner syndrome which manifested with right-sided ptosis and myosis. By the time of Dr. Sexton's report, this syndrome had resolved and was not likely to recur. Dr. Sexton also diagnosed a right cranial nerve VI palsy which caused an inability to abduct her right eye and the symptom of diplopia. A closed head injury is a recognized cause of cranial nerve VI palsy.

- [193] This palsy is functionally resolved, but the plaintiff is left with a slight ease of phoria or "latent deviation of one eye" and right gaze. The plaintiff is asymptomatic at this time.
- [194] Dr. Sexton stated that Ms. Visser has a left superior quadrantantopia, a defect of about one fourth of an eye's visual space. This condition is associated with right- sided intercranial bleeding in the parietal, occipital and temporal lobes. This condition was detected immediately after the first accident and that event was the probable cause. Ms. Visser also suffered other injuries which are consistent with the closed head injury, but which will not become symptomatic for the plaintiff.
- [195] Dr. Sexton opined that on a review of Ms. Visser's visual field, the field does not meet the visual criteria for driving in the province of British Columbia. This concurred with the opinion of Dr. Kowal, who performed visual field testing on Ms. Visser. Ms. Visser will have to approach the driver's licensing authority to determine if she can obtain a passenger vehicle license. According to Dr. Sexton, Ms. Visser would not be able to pursue employment that requires driving and certainly not an occupation that requires her to drive a commercial vehicle.
- [196] Dr. Sexton recommended that the plaintiff should undergo a functional driving assessment for presentation to the driver's licensing authority in BC

Dean Powers

- [197] Dr. Dean Powers is an expert in vocational rehabilitation. He is a psychologist educated at Simon Fraser University with a doctorate from California Southern University where he graduated "magna cum laude". He holds a certificate as a vocational professional from the College of Vocational Rehabilitation Professionals. For over 35 years, he has been providing expert vocational assessments for persons who have been involved in accidents and sustained injuries and assisting those persons to return to the labour market, where possible. He has provided expert reports in BC on over 100 occasions. His credentials were not challenged.
- [198] Dr. Powers met first with Ms. Visser on January 7, 2019 in company with Dennis Shaw, an administrative support person on Dr. Powers' staff, and conducted psychometric tests and examinations. Later, on April 2, 2019, once the tests and examinations had been scored and tabulated, Dr. Powers had a more extensive meeting with the plaintiff. Dr. Powers prepared two reports, dated April 25, 2019, and September 23, 2019.
- [199] In the course of his examination of a person, Dr. Powers retains a psychometrist to administer psychometric tests in accordance with rules and specific protocols for standardized testing.
- [200] Dr. Powers used a number of tests to assess the plaintiff's current ability. Upon compilation and review of the results of these tests, Dr. Powers opined in his April 25, 2019 report the plaintiff's abilities and aptitudes with respect to academic achievement were not positive.

While her academic fluency scores were average for her age and grade level, she struggled with processing speed, perceptual speed, and attention span. She also had low test scores in reading fluency, math calculation, and auditory attention. Dr. Powers opined that this was related to injuries she sustained in the accident, and was likely to interfere with her educational upgrading, retraining, and new skill acquisition.

[201] At para. 51 of the same report, Dr. Powers opined as follows:

In my opinion, Ms. Visser did not appear to have any pre-accident disabilities or limitations that would have limited employability as an Early Childhood Education/Child Care provider or hindered her in acquiring advanced educational upgrading. In my opinion, the injuries sustained as a result of the MVA in question has consequently resulted in vocational decompensation (in my view, evident in her post MVA performance in her current employ at Save On Foods), thus limiting her vocational options and reducing her freedom to compete in the labour market and to access fully, without restraint, occupational options within her skill complement and educational qualifications."

[202] In cross-examination, Dr. Powers stated that he was the author of the reports and that a typist who assisted him did not author any part of either report.

[203] Dr. Powers also stated in cross-examination that he was told by the plaintiff in April that her pre-injury career goal was to become an elementary school teacher. This assertion was not further challenged or questioned in evidence.

[204] In submissions, defence counsel raised the case of *Rahemtulla v. Sutton*, 2019 BSCS 1105, where Dr. Powers agreed (a) portions of his report were written by a technical writer; (b) that he had not conducted the intake interview of the plaintiff in that case; (c) that Dr. Powers did not meet with the plaintiff in person; and, (d) that he did not personally conduct the vocational testing of the plaintiff.

[205] In the case at bar, Dr. Powers testified that he wrote the entirety of the report himself and personally conducted the intake interview of the plaintiff, together with a psychometrist. He also testified that he conducted the April 2, 2019 interview for more than an hour.

[206] The judge in *Rahemtulla* also reduced the weight of Dr. Powers report because he lacked knowledge of the elevator mechanic industry. There is no basis, in the present case to reduce the weight given to the evidence presented by Dr. Powers. His credentials included experience teaching courses on career development and disability, ethics, and rehabilitation management. His experience in teaching is a positive factor given the plaintiff's long term goal to become a teacher.

Paul Pakulak

- [207] Mr. Pakulak was qualified as an expert functional capacity evaluator. He conducted a functional capacity evaluation with respect to the overall capacity of Ms. Visser to complete functional activities, including work as a grocery store cashier and prospective work as a daycare provider.
- [208] Mr. Pakulak reviewed the circumstances of the first accident. Ms. Visser advised him about her functional duties as a cashier and customer service clerk at the self service counters in the grocery store. She also reported to him duties as a daycare provider for children aged three to five years old.
- [209] At the assessment of function, she reported left and right knee pain and left hip pain as described above. Ms. Visser also reported intermittent headaches often coupled with nausea, balanced difficulties and fatigue.
- [210] Mr. Pakulak observed general fatigue and low energy levels; mood changes; cognitive changes; and personality changes with anger management problems and frequent uncontrollable inappropriate language.
- [211] When Mr. Pakulak conducted vertical reaching and horizontal reaching tests, Ms. Visser was able to complete overhead transfers, but not to industrial standards. General fatigue and persistent headaches were reported during the tests and there was a decline in speed over time consistent with fatigue and headaches. The same declines were noticed in speed on horizontal reaching tests.
- [212] With respect to functional testing involving bending, crouching, kneeling and sitting, there was a decline in function into the afternoon testing sessions, demonstrating lower left extremity fatigue and strain with left knee and hip strain during mild bending. Ms. Visser demonstrated she could perform mild stooping on an occasional, but not regular basis.
- [213] Hand-strength was bilateral without symptoms in grip strength testing. Two-handed lifting showed that the plaintiff could lift up to 30 pounds from floor to shoulder level on an occasional basis and a maximum of 20 pounds from floor to knuckle level on a frequent basis.
- [214] She was not able to lift 40 pounds on either floor to knuckle or shoulder tests. She was able to carry 30 pounds over a distance of 50 feet which, compared to other women in her category, placed her in the 18th percentile.
- [215] Tolerance to continuous sitting was limited to 118 minutes with increased bilateral knee stiffness. Continuous standing in weight-bearing positions lasted 155 minutes with increased left knee and hip strain and lower extremity fatigue. Her walking tolerance declined over the testing day from an early average range to well below average. Climbing stairs was relatively slow and again declined over the testing day.

[216] Mr. Pakulak opined that Ms. Visser was capable of light to medium work with a modified medium strength level at part-time levels with restrictions and limitations. His opinion was that the plaintiff's capacity to compete for work in the open market was significantly reduced by these physical limitations. The demands of work duties as a cashier or cashier-checker based on National Occupational Classification (NOC) and Dictionary of Occupational Titles exceeded her physical capacity to complete this work on a full-time basis at a competitive and sustainable pace. Mr. Pakulak suggested that Ms. Visser might, with significant accommodations, work a maximum of three days per week. He opined that Ms. Visser could not perform work described on the NOC standards for ECE or nursery school attendant on a full or part-time basis at a competitive or sustainable pace.

Elaine Sandor

- [217] Ms. Sandor is a rehabilitation consultant who has been providing community-based rehabilitation services since 1985. Her expert report was filed as Exhibit 7 at trial. The report contains three parts: facts and assumptions; functional factor analysis; and tables of costs.
- [218] Ms. Sandor reviewed the occurrence of the first collision and the medical treatment and impairments which Ms. Visser experienced. Such impairments included physical, cognitive, emotional and behavioural changes, which have a negative impact on her housekeeping capacity, her employment, her social relationships, and her capacity to provide childcare in the future.
- [219] Ms. Sandor used four measures to project and plan Ms. Visser's future care needs and provide a basis for costs analysis.
- [220] The Activity Limitations Index demonstrated a score reflecting that Ms. Visser experienced persisting limitations with respect to day-to-day activities in cognitive, behavioural and motor domains. Ms. Sandor opined that Ms. Visser tended to minimize her limitations.
- [221] The SF-36 instrument measures health-related quality of life. Ms. Visser's received low scores, indicating limitations due to physical health. Low scores achieved by Ms. Visser are said to be demonstrative of lower functioning, thereby supporting the need for ongoing supports to enhance her health-related quality of life.
- [222] The Rehabilitation Check List indicated 17 of a possible 49 problems limiting participation in regular activity. A score of over 13 is considered evidence of an emotional risk factor. As identified by Ms. Sandor, Ms. Visser's scores support a need for counselling to meet daily experiences of cognitive, physical and emotional barriers.

- [223] The Community Integration Questionnaire measures the integration of an individual into their family and community. The first collision reduced Ms. Visser's score. She is still living with her family with reduced household responsibilities, and her work hours have been reduced by about 50%. She had intended to leave her family home assuming responsibility on her own for household tasks, but this has not occurred.
- [224] When Ms. Sandor observed Ms. Visser in her home, Ms. Sandor observed Ms. Visser changing her body position frequently, reporting that she had reduced reading tolerance associated with leg discomfort. Numerous observations were noted showing reliance on handholds, railings and footstools.
- [225] Ms. Visser's grandmother was interviewed by Ms. Sandor as a collateral contact. Ms. Moore reported that relationships between Ms. Visser and other family members, except for her father, were troubled since the first collision, often marked by inexplicable anger which is "consuming Ms. Visser".
- [226] Ms. Sandor's report included a summary of activity limitations and participation restrictions which were analysed using the International Classification of Function. Those limitations were recorded as: learning and applying knowledge; self-care; domestic life; mobility; interpersonal interactions and relationships; general tasks and demands; community life; and major life areas.
- [227] Ms. Sandor identified personal and environmental factors which may impact Ms. Visser's future needs. These included factors such as home planning, as due to knee injuries she has reduced tolerance for stair climbing, requires railings on all stairs, and is unable to carry larger items on the stairs. It is anticipated her future physical status will deteriorate and she will be less able to deal with stairs and therefore more suited to a one-level home. Ms. Sandor also noted that Ms. Visser has a reduced tolerance for walking on uneven and inclined terrain. While she is able to drive in a limited capacity in low traffic conditions, she avoids darkness, snow conditions, and driving to distant locations. As a result, Ms. Sandor expects she will require travel assistance from some other person.
- [228] Ms. Visser is disinhibited because of her traumatic brain injury, and she is therefore at times reactive, socially inappropriate and unappreciative of the impact her behaviour has on other persons. Ms. Sandor opined this is a barrier to creating and preserving relationships and creates a risk of isolation.
- [229] According to Ms. Sandor, Ms. Visser was at a pivotal life stage when the first collision occurred. She was not yet living on her own and was at an early career stage where her long-term vocational plan was not permanent; as a result, she will likely require increased support with personal and household tasks as she ages and experiences physical decline at an earlier age than she otherwise would have as a result of her injuries.

- [230] As it is unlikely that Ms. Visser has the physical capacity to undertake work in a daycare centre, according to Ms. Sandor, she is likely to require different training to work in an alternate field in tune with her post-collision physical capabilities. As Ms. Sandor noted, any additional education will take longer to complete.
- [231] Ms. Sandor also noted that while Ms. Visser has a close relationship with her grandmother, redeveloping relationships with the rest of her family and/or paid assistance will be required in the future.

Kevin Turnbull

- [232] Kevin Turnbull is a consulting Chartered Accountant and Economist who has been accepted as an expert witness estimating damages in hundreds of cases in this Court in litigation for both plaintiffs and defendants. He was originally retained in the case at bar as a witness for the defendants/third party. Upon receipt of the two reports of Mr. Turnbull, the plaintiff decided to call him as a witness for the plaintiff.
- [233] In a report dated July 19, 2019, Mr. Turnbull opined on the present value of future care cost items previously described in the report of Elaine Sandor dated July 5, 2019. Mr. Turnbull calculated the cost of future care and treatment recommended by Ms. Sandor in the total amount of \$1,126,839.
- [234] In a further report dated July 22, 2019, Mr. Turnbull performed calculations estimating the loss of earnings for the plaintiff into the future after the trial date.
- [235] Mr. Turnbull prepared opinions based on calculations "without accident" if Ms. Visser had become an elementary school teacher or an educational assistant. Mr. Turnbull's calculations included a delay to complete the university training to become a teacher or training to become an education assistant.
- [236] Labour market contingencies taken into account by Mr. Turnbull include participation, unemployment and part-time work. Participation is represented by working or actively looking for work. A lack of participation would include schooling, raising children, retirement or disability. The participation rate declines as individuals approach age 70. Unemployment means that an individual will be participating in the labour market, but cannot find work. Part-time work contingency is the possibility that a person works part-time or less than full-time.
- [237] Non-wage benefits, according to Mr. Turnbull, such as medical, dental, insurance and pension benefits, are approximately 16% of underlying gross earnings for both teachers and teacher's assistants. Absent the first accident, the future loss of income estimate for the plaintiff as a teacher is \$1,424,000, and as a teacher's assistant \$441,000.

[238] Mr. Turnbull noted that Dr. Powers opined that Ms. Visser would have been capable of becoming an elementary school teacher if the first collision had not occurred. On Table A attached to Mr. Turnbull's report, the figure of \$1,139,781 represents absent accident future earnings after taking into account labour market contingencies. This figure was calculated using a discount rate of 1.5% per annum, and adjusted for Ms. Visser's probability of survival each year.

Expert Witnesses for the Defendants

Dr. Riar

- [239] Dr. K. Riar was called as an expert in psychiatry. He examined Ms. Visser on a single occasion on May 15, 2019. Dr. Riar provided details of the material he was provided as factual bases for his report.
- [240] Dr. Riar opined that "As far as her cognitive issues, it seems to have improved and her overall functioning at work is proof of that". Dr. Riar repeated the same opinion on p. 9 of his report, where he wrote "As far as disability, around the time of my interview, she is functioning reasonably well at her employment and does not seem to have any limitations".
- [241] I appreciate that doctors preparing medical legal reports are obliged to accept the statements of the subjects of the report being prepared, and that practice is well known. It is no fault of the doctor involved if the facts stated do not coincide with the evidence otherwise heard in a trial.
- [242] Those factual bases did not include reference to any independent statement from staff at the grocery store where the plaintiff was working.
- [243] One of the difficulties with Dr. Riar's report is that he relied upon statements by the plaintiff that she was being complimented in her work at the till in the grocery store. That statement does not coincide with the evidence of employees and managers at the same store, where there appears to be considerable toleration and accommodation of the plaintiff's actions. For instance, Dr. Riar opines that the plaintiff is "able to cope with her work and manage her emotions and demeanour effectively". This statement is not consistent with behaviour of the plaintiff criticizing customers who choose to buy wine, customers who are offended by swearing in a retail setting where children are present, and by the impression that she is being complimented by customers for her work or that she is the fastest cashier at the grocery store.

Min Trevor Kyi

- [244] Min Kyi is an occupational therapist and functional capacity evaluator who presented evidence of an evaluation conducted of the plaintiff on May 9, 2019.

- [245] Ms. Visser report to Mr. Kyi that post accident, she was one of the grocery store's best and fastest cashiers and that she had a good memory for grocery items.
- [246] As noted above, these statements are not consistent with the evidence from the employees of the grocery store.
- [247] Mr. Kyi opined after conducting a number of tests to measure physical function that the plaintiff was capable of performing as a cashier for up to 32 hours per week, but that she should not attempt to work more hours. Further, if the grocery store was unable to accommodate changing the plaintiff's duties between working as a till cashier and support for self-checkout, she would be restricted to a half-time work schedule (15-25 hours). A job requiring the application of light strength might allow the plaintiff to work full time (35-40 hours), but no particular job was specified.
- [248] Mr. Kyi also opined that ECE would not be a good occupational choice for Ms. Visser because of her limitations and inability to react physically with young children. Mr. Kyi suggested that a position as an elementary school supervision aide might be a more suitable position provided that there was adequate assistance for the plaintiff.
- [249] Mr. Kyi recommended an active exercise programme with an annual cost of \$340 to \$600 per annum.

Colleen P. Quee Newell

- [250] Dr. Quee Newell holds a doctor of philosophy in counselling psychology and offered expert evidence as a vocational consultant and clinical counsellor. She conducted a vocational assessment of the plaintiff on May 22, 2019 to examine her vocational potential.
- [251] Dr. Quee Newell performed an analysis of the plaintiff's educational experiences, work history and employment records. Prior to the first accident, Dr. Quee Newell found the plaintiff had a demonstrated capacity to successfully complete training to become an early childhood educator and had two years' experience in the field. Pre-accident, Dr. Quee Newell opined that the plaintiff demonstrated:

ability to perform work requiring average general learning ability, average verbal ability, average numerical ability, low average special perception skills, average form perception skills, average clerical perception skills, low average motor coordination, low average finger dexterity and low average dexterity skills.

- [252] Apart from physical limitations caused by the first accident, which included eight fractures to her legs, injuries to her left wrist and right hand, a concussion, an aneurysm, a stroke, and the requirement for a breathing tube and life support, mention was also made of the plaintiff having suffered a lacerated liver.

- [253] Curiously, however, there is no mention in the facts or assumptions portion of this report that Ms. Visser suffered a skull fracture and a traumatic brain injury, which injury is described in the expert report of Dr. Teal, a specialist in neurology. Dr. Teal also described the stroke suffered by the plaintiff in considerable detail. Given that the head injury was evidenced by an indented scar in the scalp of Ms. Visser, I find it hard to accept that significant injury was not noticed by Dr. Quee Newell at her initial interview with the plaintiff.
- [254] The reason that Dr. Quee Newell was apparently unaware of the nature of this injury was that she was not provided with any of the expert medical reports of Dr. Teal, Dr. Day, Dr. Adrian, or Dr. Sexton; all of which contain references to clinical records and reports of treating physicians in appropriate specialties. Dr. Quee Newell agreed during cross-examination that the scope of her opinion does not include a diagnosis or prognosis related to medical injuries, but that knowledge of medical injuries and how they progress over time would be very helpful in determining the employability of any individual recovering from an injury.
- [255] At para. 50 of Dr. Quee Newell's report, she comments that Ms. Visser is capable of managing the functional requirements of her current employment as a grocery clerk "at her current schedule of 32 hours per week". Following surgery in 2019, Ms. Visser was only able to sustain six four-hour shifts per week, for a total of 24 hours. The same error is repeated at para.52 of that report.
- [256] At para. 56, Dr. Quee Newell states "Vocational testing is not designed to identify or confirm the presence of cognitive sequelae related to traumatic brain injury. However, cognitive sequela can affect one's performance on various vocational measures." Previously in this report, there is no mention of traumatic injury.
- [257] In other words, Dr. Quee Newell was expressing an opinion about the capabilities of Ms. Visser to participate in education without taking into account her reduced cognitive function caused by her traumatic brain injury.
- [258] It was concerning that Dr. Quee Newell recommended a series of occupational options for Ms. Visser such as warehouse order picker, retail shelf stocker, food preparer/assembler, bakery assistant and library clerk. In every case, Ms. Visser would require extensive accommodations from employers to work in such occupations or would not be competitively employable. For instance, it was notable that Ms. Visser had worked pre-collision as a baker's assistant at Save On Foods, but had not been reassigned to those duties post-collision.
- [259] In short compass, the recommendations for employment by Dr. Quee Newell in relation to Ms. Visser are of little or no assistance determining this case, and as a result the report of Ms. Newell is of little assistance to this court in the case at bar.

Credibility

- [260] Defence counsel submitted that the plaintiff is functioning appropriately at work and is keenly aware of what she can get away with because she is still employed. With respect, this submission has no merit. It makes no sense for an employee not to swear at customers before the first accident, but to swear at customers after the first accident simply because she thinks she can get away with swearing.
- [261] This was the opinion of counsel and not the opinion of any witness called by the defendants with necessary expertise such as an occupational therapist. No such proposition was put to the plaintiff in the witness stand, nor put to any other witness called by the plaintiff. It is unfair to put forward a proposition that the plaintiff is "keenly aware of" something without asking the plaintiff a single question on the topic. In *Dinnissen v. Lee*, 2019 BCSC 1729 at para. 164, Mr. Justice Funt discussed attacks on credibility in the form of submissions about "implausible answers", noting that such brings into play the well known case of *Browne v. Dunn*, (1893), 6 R. 67 (U.K.H.L.), which requires a party to put contradictory evidence to a witness if they intend to impeach their credibility. As noted in *Sopinka, Lederman and Bryant: The Law of Evidence in Canada*, 5th ed. at para. 16.211 quoting from *R. v. Dexter*:

The rule is a rule of common sense. By enabling the trial judge to observe and assess the witness when he or she is confronted with contradictory evidence and given an opportunity to explain his or her position, the rule promotes the accuracy of the fact-finding process. In doing so, it enhances public confidence in the justice system.

- [262] In *R. v. Quansah*, 2015 ONCA 237 at para. 37, Watt J.A. stated the rule is important to provide fairness to the witness whose credibility is attacked, the party whose witness is impeached, and to the trier of fact.
- [263] The defendants also submitted the court should find Warren Visser was not credible on the basis of a theory that he did not know much about the plaintiff prior to the first accident. This theory was advanced in part because of an answer given to an open-ended question during cross-examination. To suggest this answer showed a lack of knowledge of the plaintiff is simply unreasonable and has little to do with credibility. Mr. Visser had known the plaintiff since she was very young and had seen her in a number of family events over the years including attendances at the family bakery where the plaintiff worked. If the defendants wanted to know particular details known to Mr. Visser, it was for the defendants to ask about those details and not expect those details to be provided as an answer to an open-ended question. Such an approach is simply unfair.
- [264] Further, it is clear that Mr. Visser's comparison of his niece before and after the accident is wholly consistent with the evidence of a variety of other lay and expert witnesses called by the plaintiff. As such, his evidence is reliable and credible.

Positions of the Parties

[265] The following chart summarizes the positions of the parties on the various claimed heads of damage.

Head of Damage

Defendants

Plaintiff

Non-pecuniary

\$275,000

\$315,000 to \$330,000

Past Income Loss

\$70,000

\$125,000

Loss of Earning Capacity

\$500,000

\$1,443,600 to \$1,956,800

Cost of Future Care

\$600,000

\$1,148,078

Loss of Housekeeping Capacity

\$40,000

In Trust

\$40,000

\$71,183

Special Damages (agreed)

\$63,000

\$63,000

Total

\$1,548,000

\$3,205,861 to \$3,734,061

Non-pecuniary Damages

[266] Damages for non-pecuniary losses are an attempt at restitution for pain and suffering, loss of enjoyment of life and loss of amenities suffered by the plaintiff and caused by the conduct of the defendant.

[267] In assessing non-pecuniary damages, the leading case is *Stapley v. Hejslet*, 2006 BCCA 34:

[45] Before embarking on that task, I think it is instructive to reiterate the underlying purpose of non-pecuniary damages. Much, of course, has been said about this topic. However, given the not-infrequent inclination by lawyers and judges to compare only injuries, the following passage from *Lindal v. Lindal*, *supra*, at 637 is a helpful reminder:

Thus the amount of an award for non-pecuniary damage should not depend alone upon the seriousness of the injury but upon its ability to ameliorate the condition of the victim considering his or her particular situation. It therefore will not follow that in considering what part of the maximum should be awarded the gravity of the injury alone will be determinative. An appreciation of the individual's loss is the key and the "need for solace will not necessarily correlate with the seriousness of the injury" (*Cooper-Stephenson and Saunders*, *Personal Injury Damages in Canada* (1981), at p. 373). In dealing with an award of this nature it will be impossible to develop a "tariff". An award will vary in each case "to meet the specific circumstances of the individual case" (*Thornton* at p. 284 of S.C.R.).

[Emphasis removed.]

[268] In other words, in assessing non-pecuniary damages, it is not only a matter of comparing the injuries suffered, but also the effect of those injuries on the lifestyle and personality of each person.

[269] In *Clark v. Kouba*, 2012 BCSC 1607, the court stated the following with respect to the law of non-pecuniary damage assessments:

[71] In *Hartnett v. Leischner*, 2008 BCSC 1589, [2008] B.C.J. 2242, Russell J. provides a helpful summary of the law with respect to general or non-pecuniary damages:

[80] The purpose of non-pecuniary damage awards is to compensate the plaintiff for "pain, suffering, loss of enjoyment of life and loss of amenities": *Jackson v. Lai*, 2007 BCSC 1023, [2007] B.C.J. No. 1535 at para. 134; see also *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229; *Kuskis v. Tin*, 2008 BCSC 862, [2008] B.C.J. No. 1248. While each award must be made with reference to the particular circumstances and facts of the case, other cases may serve as a guide to assist the court in arriving at an award that is just and fair to both parties: *Kuskis* at para. 136.

[81] There are a number of factors that courts must take into account when assessing this type of claim. Justice Kirkpatrick, writing for the majority, in *Stapley v. Hejslet*, 2006 BCCA 34, 263 D.L.R. (4th) 19, outlines the factors to consider, at para. 46:

The inexhaustive list of common factors cited in Boyd [Boyd v. Harris, 2004 BCCA 146] that influence an award of non-pecuniary damages includes:

- a) age of the plaintiff;
- b) nature of the injury;
- c) severity and duration of pain;
- d) disability;
- e) emotional suffering; and
- f) loss or impairment of life.

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

- g) impairment of family, marital and social relationships;
- h) impairment of physical and mental abilities;
- i) loss of lifestyle; and
- j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: Giang v. Clayton, [2005] B.C.J. No. 163, 2005 BCCA 54 (B.C.C.A.)).

[270] The plaintiff submits that she is entitled to non-pecuniary damages for pain and suffering and loss of enjoyment of life. The defendants agree that the plaintiff suffered soft tissue injuries, pain in her neck, upper back, shoulders and arms, paresthesia in both arms, headaches, aggravation of pre-existing insomnia, depression, anxiety and post-traumatic stress disorder.

[271] The combined effect of the plaintiff's physical and psychological injuries is severe. She is either unable or has a significantly reduced capacity to enjoy most of the activities she enjoyed pre-accident. She is in a vulnerable physical position, and her psychological symptoms have made it hard for those around the plaintiff to continue supporting her.

[272] Each party submitted a selection of cases which provide some assistance in determining the quantum of non-pecuniary damages.

[273] Having taken those authorities into account, including the submissions of counsel and the cases referred to directly therein, as well as the unique evidence heard in this trial, I conclude the appropriate award of nonpecuniary damages in this case is \$315,000.

Past Income Loss

[274] The parties have both made submissions with respect to the quantum of past income lost. The plaintiff submitted the past income loss is an amount of \$125,000. The defendants and third party submitted that the past income loss should be awarded in the sum of not more than \$70,000.

- [275] The plaintiff's submissions on past income loss are based on a calculation of the plaintiff's pre-collision working hours--approximately 60 hours per week--and the income derived therefrom. In 2015, the plaintiff earned approximately \$34,000 per annum, which does not include one eight-hour shift per week at her parents' bakery.
- [276] Following the first collision, the plaintiff had no employment income. In late 2016, the plaintiff began a gradual return to work program at Save On Foods, where her total income for that year was \$356. In 2017, the plaintiff struggled to continue with the gradual return to work program for a total of 501.28 hours. The evidence before this court was the plaintiff's greatest number of hours worked in a single week was 13.66 and she earned a total income from employment of \$5,964.
- [277] The defendants and third party argued that the plaintiff's income in 2017 should be reduced because the bakery business ceased that year. As the single weekly shift at the bakery worked prior to the first collision was not included in the plaintiff's calculation, a loss of bakery hours would not result in any deduction from the plaintiff's income loss. Additionally, the defendants provided no factual basis that this deduction would be appropriate, as the defendants' submissions failed to note the plaintiff's ability to work elsewhere, including as a florist.
- [278] The defendants and third party also made a submission that breaking up with a boyfriend was somehow connected to the plaintiff taking a job at Beans N Buttons. This submission was not a matter canvassed in the evidence. What was canvassed in the evidence was that the plaintiff started and completed an ECE certificate at Sprott Shaw College and then sought and obtained employment in the field of ECE; eventually at Beans N Buttons. This submission of the defendants and third party has no basis in the evidence nor in the facts of this case. The alleged factual contents of this submission were not put to the plaintiff during her testimony.
- [279] The final submission by the defendants and third party is based on an assumption that the work at Save On Foods was transitional only and would not have persisted past the plaintiff obtaining full time employment as a childcare provider. This submission is frankly speculation and does not support a submission that there would have been a reduction in the plaintiff's income if she had obtained full time work as a childcare provider. The income of a childcare provider exceeded the average income of a clerk at Save On Foods.
- [280] In 2018, the evidence before the court was that the plaintiff was off work from April 6, 2018 until April 27, 2018, for surgery required to remove post-accident hardware implanted in her left knee. Otherwise, the plaintiff worked a total of 772.83 hours and earned a total of \$8,154 in 2018.

- [281] In 2019, the plaintiff was required to undergo further surgery to remove post accident hardware implanted in her left femur. This surgery occupied the period from May 25, 2019 to July 24, 2019. Return to work after this surgery was slow; the plaintiff gradually increased her hours to 24 hours per week. The prorated hours over the course of the year were 1,149 hours, with earnings of approximately \$16,484.
- [282] The defendants and third party submitted that the calculation of past income loss should be based on a 40-hour work week. This submission is not based on the evidence in this case; it is clearly contrary to the actual working experience of the plaintiff before the first collision. The submission represents an unexplained reduction from 60 hours per week to 40 hours per week; a reduction of 1/3 of the hours previously worked by the plaintiff.
- [283] In order to assess the past wage loss of the plaintiff, the court is required to determine what amount the plaintiff would have, not could have, earned, but for the injury that was sustained: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49.
- [284] The evidence suggests the plaintiff worked at least 60 hours per week prior to the accident; there was no evidence that, but for the accident, the plaintiff would have reduced her weekly hours.
- [285] The plaintiff is entitled to recover the net income loss caused by the first collision, pursuant to s. 98 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231.
- [286] The parties presented submissions in gross income amounts or estimates which were not stated to be net income amounts. The actual income figures used by both parties were net income amounts.
- [287] Absent the first collision, the plaintiff would have worked more than full time hours until she began her education to become a teacher, which I estimate would have occurred in September 2019. Accounting for increases in minimum wage, and deducting income taxes, Canada Pension Plan, Employment Insurance charges, and the plaintiff's residual earnings, the past income loss of the plaintiff is awarded in the amount of \$125,000.

Loss of Future Earning Capacity

- [288] In relation to damages to compensate the plaintiff for the loss of future earning capacity, the parties agreed that the "capital asset approach" should be applied. Such damages are to be assessed as opposed to being based on a mathematical calculation, particularly in the case of a young person who has not yet established a specific career path. The test to be applied to future hypothetical events is stated in *Rousta v. MacKay*, 2018 BCCA 29 at para. 17:

As can be seen from the above, the standard of proof for hypothetical past events, like hypothetical future events, is the lesser "real and substantial possibility" threshold. This standard can be contrasted with the standard of proof for past events, which is on the ordinary civil balance of probabilities standard, and alleged events which do not rise to the "real and substantial possibility" standard because they constitute mere speculation.

- [289] The evidence in this case overwhelmingly supports a finding that the plaintiff has suffered life-threatening injuries including traumatic brain injury, multiple orthopedic injuries, visual injuries, and injuries to her cognitive systems which are not always readily visible, but no less traumatic.
- [290] Each of the expert witnesses testifying for the plaintiff has confirmed continuing symptoms which will impair and impede her future employability. Dr. Rosenblatt opined concerning ongoing visual problems and their effects in the workplace settings, including driving. Dr. Day opined concerning "a significantly increased risk of osteoarthritis", particularly in the plaintiff's left knee, caused by comminuted fractures involving the patellofemoral joint and tibia. Dr. Sexton, originally retained by the defendants, was clear that the plaintiff could not follow an occupation that required driving; even if she could pass the driving assessment. Dr. Teal gave an opinion which sealed off work by the plaintiff caring for children, because from a neurological perspective, "Ms. Visser does not have adequate behavioural control or mental stamina to work in a childcare setting caring for multiple children. Her lack of temper control and problems with anger management would likely provide challenges for her."
- [291] Dr. Adrian was clear that on a permanent basis Ms. Visser should be considered partially disabled, and whatever work she does is going to require accommodation by her employer. He was clear that any activity in employment, recreational or household activities that involves any prolonged sitting, standing, stooping, crouching, kneeling, impact activities, heavy or repetitive lifting, stair climbing or walking on uneven surfaces will cause Ms. Visser to experience difficulty. Dr. Adrian further opined that it was unlikely that any of these problems or impairments would improve in the future.
- [292] Mr. Pakulak discussed limitations on weekly working hours and opined that limited shifts of three days a week would optimal for the plaintiff.
- [293] In the opinion of Dr. Powers, the plaintiff's academic goals of being a teacher are more likely than not beyond her capability. A position as a child care assistant would be outside of her physical capability. It was Dr. Powers' opinion that Ms. Visser would be at a competitive disadvantage compared to her nondisabled peers in hiring and promotional opportunities.
- [294] The parties made passing reference to the leading cases in this area, including *Jorgensen v. Coonce*, 2013 BCSC 158; *Perren v. Lalari*, 2010 BCCA 140, *Athey v. Leonetti*, [1996] 3 S.C.R. 458; *Andrews v. Grand & Toy Alberta Limited*, [1978] 2 S.C.R. 229; *Crimeni v. Chandra*, 2015 BCCA 131; and *Penvidic Contracting Company v. International Nickel Company of Canada*,

[1976] 1 S.C.R. 267 at p. 297, where the court notes the difficulty in assessing damages does not relieve the wrongdoer from the necessity of paying damages; the court must do the best it can to estimate them.

- [295] It is clear from the review of the medical reports cited above that the plaintiff will have grave difficulty entering into any, but a limited number of work situations. Many employment options, including the potential occupation as an elementary school teacher, have been permanently foreclosed. The plaintiff cannot work at anything like a competitive level for more than 24 hours a week. The plaintiff also lacks insight into her condition, as was reflected in the evidence of Ms. Hamel and others, including her grandmother.
- [296] The plaintiff put forward a series of scenarios "with collision" and "without collision". The "with collision" scenarios involve the plaintiff continuing to work on a very limited basis at approximately minimum wage. The "without collision" scenarios involve the plaintiff moving ahead to attain either a teacher's credential, a bachelor's degree in some other field, a card or gift shop manager, a librarian, an author or writer, or an advertising artist and writer. These scenarios, based on the assumption that there was no collision, demonstrate a lifetime earning capacity of between \$1,860,000 and \$2,282,000, subject to the application of contingencies.
- [297] The scenario which most closely fits the evidence given by the plaintiff concerning her future job goals is the one in which she seeks to become an elementary school teacher. In this scenario, she would need to complete five years of schooling. If she began in September 2019, which I find likely, she would have graduated and began teaching full time in September 2024. During the time she was in school, the plaintiff also submitted that she would have been able to work part-time, earning approximately \$19,500 per year.
- [298] According to the calculations performed by Mr. Turnbull in his expert report, the plaintiff would have earned approximately \$1,870,000 as a teacher without labour market contingencies applied. Mr. Turnbull estimated the value of employment benefits Ms. Visser would have received at approximately 16%, bringing the total to \$2,266,700, without labour market contingencies. While the defence did not make extensive submissions on this point, the plaintiff's submissions were drawn on the case of Andrews, cited above. Contingencies, both negative and positive, are to be based on evidence as noted by Mr. Justice Willcock in *Smith v. Fremlin*, 2014 BCCA 253 at para. 28. The court should be careful, of course, not to reduce an award based on standard labour market contingencies and then erroneously include another deduction based on other contingencies which are a repetition of the first deduction. Mr. Turnbull mentioned three such factors in his report:
1. Unemployment, approximately 4% per year;
 2. Participation rate; and
 3. Part-time employment.

[299] Positive contingencies, which increase losses, are the possibility the plaintiff would have worked past the normal age of retirement, the possibility the plaintiff would have worked greater than full-time hours, or the possibility that the plaintiff may have supplemented her income by teaching during summer months at a second job. Another contingency which may reduce the plaintiff's residual earning capacity is the possibility that the plaintiff may take time off to raise children. This was also a possibility in the without-accident scenario. The plaintiff argues that a 10% reduction, taking into account involuntary unemployment and the potential of time off for maternity leave and childbearing, would be appropriate. Given the report of Mr. Turnbull, a 10% reduction is insufficient to account for the various contingencies in this case.

[300] I am satisfied the without-collision measures of earning capacity are appropriate in this case. Taking into account the contingencies discussed above, as well as the plaintiff's residual earning capacity, the plaintiff's loss of earning capacity will be awarded in the amount of \$1,430,000.

Cost of Future Care

[301] The plaintiff is entitled to compensation for the cost of future care based on what is reasonably necessary to restore her to her pre-accident condition insofar as that is possible. When full restoration cannot be achieved, the court must strive to assure full compensation through the provision of adequate future care. The award is to be based on what is reasonably necessary on the medical evidence to preserve and promote the plaintiff's mental and physical health: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.), *Gignac v. Rozylo*, 2012 BCCA 351 at paras. 29-30.

[302] The report of Ms. Sandor, a Rehabilitation Counsellor and Life Care Planner, is discussed above. Her report dated July 5, 2019 and recommendations therein were based on a review of all of the medical documentation including pertinent expert reports.

[303] The objectives of the Life Care Plan authored by Ms. Sandor are:

- (a) Access to supports that will enable Ms. Visser to compensate for losses and remediate deficits which will allow her to pursue a meaningful life;
- (b) Access to adequate housing mobility and equipment to enable Ms. Visser to maximize her independent living options;
- (c) Access to supports to help Ms. Visser cope on a daily basis;
- (d) Access to paid assistance so that Ms. Visser does not have to rely on family, friends and others in the community;
- (e) Access to supports to prevent the severity and frequency of future complications and reduce the need for crisis-based interventions; and

(f) Access to supports which include childcare assistance.

[304] Ms. Sandor met with Ms. Visser and her grandmother on April 4, 2019. The purpose of the meeting, which lasted approximately 4.5 hours, was to allow Ms. Sandor to gain insight into the plaintiff's perspective and to appreciate the difficulties that the injuries sustained in the first collision continue to have on Ms. Visser's day-to-day functioning and her ability to cope with the activities in which Ms. Visser planned to engage prior to the first collision.

[305] Most of the recommendations by doctors discussed above were adopted by Ms. Sandor.

[306] Ms. Sandor identified the need for Case Management Services, which are designed to ensure that Ms. Visser receives "the services, support, and resources that have been planned, and adjust the plan in accordance with developmental, personal, environmental, and medical changes." This is a service that has been provided to Ms. Visser by Ms. Davidson, an occupational therapist, prior to the trial. Ms. Sandor found these services necessary because Ms. Visser has little insight into her own needs, and she does not initiate appropriate responses to those needs. These services are particularly necessary in times of transition. The evidence is strong that the plaintiff will require a knee replacement surgery, she will move out of her parents' home, and she may be the mother of children. Ms. Sandor's recommendation was not challenged in cross-examination and the total claim for this item is \$8,913, which I find medically connected to the first accident, particularly because of the cognitive injury which has resulted in the plaintiff's lack of insight.

[307] The claim for medications recommended by Ms. Sandor is \$6,037, and medically related to the ongoing need for medications to treat the migraine headaches which are a product of the first accident.

[308] The recommendation by Ms. Sandor for psychological services is consistent with the present counselling treatment she is receiving from Dr. Tara Learn, who has been consulted and will continue to be consulted in terms of relationship changes, job changes, deterioration in physical status and the potential for relocation. Ms. Visser's psychiatrist Dr. Lazar, treating psychologist Dr. Learn, and neuropsychologist Dr. Rosenblatt have all recommended this therapy. The medical evidence is highly supportive of the concept that the plaintiff has not coped well with her injuries and as a result continues to respond with anger, irritability and lack of insight into her own problems without the ability to manage relationships. Mr. Turnbull calculated the plaintiff's claim for these services in the total amount of \$78,587 for individual counselling and \$3,333 for partner or family members counselling. Again, this recommendation was not directly challenged in cross-examination.

[309] The recommendation for Physical Therapy Services contained in Ms. Sandor's report responds to the need to deal with flare-ups in the plaintiff's knees as a result of significant damage caused by the first accident. Mr. Min Kyi stated in his report that the plaintiff experienced significant decreases in back and lower body strength at the end of her workday which affected her walking and productivity, particularly when stationary. Dr.

Adrian also noted that the removal of surgical hardware from Ms. Visser's left knee and the likelihood of progressive posttraumatic arthritic changes in her knees will likely require further surgical treatments due to lower extremity injuries, particularly to her left knee. Mr. Turnbull has calculated the present value of the recommendations for physical therapy services by Ms. Sandor in the amount of \$12,303 on an ongoing basis and a one-time cost of \$846 for physiotherapy after knee surgery for a total of \$13,149, which I find reasonable based on the recommendations and the medical connection.

- [310] Ms. Sandor made a recommendation for expenses for occupational therapy services. She described the difference between a case management worker and an occupational therapist. The case management worker performed a coordinating role while the occupational therapist provided treatment, which involved organizing her home in an ergonomic manner to enable Ms. Visser to be independent and avoid challenging areas of difficulty. The occupational therapist would provide for pain management strategies and positioning strategies in the home or workplace. The evidence was clear at trial that the plaintiff wished to become independent and move from her parents' home as soon as she is able. Ms. Sandor, Dr. Rosenblatt, and Ms. Visser's treating occupational therapist, Ms. Davidson, all recommended the continued assistance of an occupational therapist. Mr. Turnbull calculated the present value of Ms. Sandor's recommendation in this regard in the amount of \$20,141.
- [311] Ms. Sandor also recommended kinesiology services to assist Ms. Visser in managing the deteriorating condition of her knees. Ms. Visser testified that she was most successful and durable in maintaining her workout program when given guidance from a kinesiologist. Dr. Adrian recommended that the plaintiff have periodic supervision of her independent exercise program to monitor its effectiveness. Dr. Adrian's reports were admitted into evidence without cross-examination. Dr. Lazar supported the same recommendation. As plaintiff's counsel noted in submissions, Ms. Sandor explained the rationale for this recommendation at p. 42 of her report: ".Her current and future need for kinesiology support stems from the combined effects of her traumatic brain injury, altered mood and behaviours, in addition to her serious physical injuries." Mr. Turnbull has quantified the present value of this recommendation at \$8,841 in the first year and \$175,353 to age 75.
- [312] Ms. Sandor recommended personal care services be provided to the plaintiff. These services essentially provide for the plaintiff the care that her grandmother has provided to date: assistance with practical decision-making, facilitating involvement in social and recreational activities, supporting scheduling needs and, where necessary, providing transport to appointments. There is also a role for someone to prepare meals which allow for the plaintiff to maintain wise nutritional choices. Both Ms. Sandor and Dr. Gill noted that Ms. Moore had been effectively providing the plaintiff with support worker assistance for all of the time from the first accident to the date of trial. Ms. Moore is over 72 years of age. Mr. Turnbull quantified the present value of this recommendation at \$424,860 on an annual basis and \$4,422 on a one-time basis following the plaintiff's left knee replacement

surgery, for a total of \$429,282.

- [313] Ms. Sandor also recommended nanny and/or childcare services which provide for the pronounced desire of the plaintiff to become a mother one day. Ms. Sandor included support for the first two years of a child's life, where support is particularly necessary as Ms. Visser arrives home from work in a complete state of exhaustion. Medical experts were completely agreed that the plaintiff would not be capable of working with young children in a daycare or education environment, and it stands to reason the plaintiff would have similar difficulties with her own child or children. The estimate provided by Ms. Sandor covers only the first two years of the lives of two children. Clearly, challenges for Ms. Visser would be maintained until children were virtually independent. Mr. Turnbull has quantified the present value of this recommendation at \$81,082 for the first two years of the first child and \$77,856 for the first two years of the second child, for a total of \$158,938.
- [314] Ms. Davidson, Ms. Visser's occupational therapist, recommended a financial management and trustee service to provide needed investment advice for proceeds of the award of damages in this case to protect the funds for the long-term use of the plaintiff. Ms. Sandor adopted this recommendation. An order below reflects the possibility of a further application regarding this matter.
- [315] Ms. Sandor made recommendations for equipment aids and devices to assist the plaintiff with her injury-related physical and cognitive impairments, including such items as supportive footwear and rental equipment required after the plaintiff's total knee replacement. Footwear is necessary for the plaintiff to maintain mobility and the ability to move about given her leg and knee injuries. Mr. Turnbull calculated the value of these items at \$3,904 for supportive sandals, \$9,032 for supportive running shoes, a one-time allowance for aids and devices of \$100, and rental equipment post-knee surgery of \$236 for a total of \$13,272.
- [316] Ms. Sandor also recommended that tutoring support be provided to the plaintiff to allow her to pursue the formal education she had hoped to obtain, but for the accident. The plaintiff has taken some post secondary courses at the University of the Fraser Valley since the first collision. However, as noted above, she attends primarily to avoid social isolation, and has not pursued any courses related to teaching. I do not find it likely that the plaintiff would use tutoring support. Vocational support services were also recommended by Dr. Day, Dr. Lazar, Dr. Quee Newell and Dr. Dean Powers. Mr. Turnbull quantified the present value of this recommendation in the amount of \$3,898.
- [317] In order to move out of her parents' home and become independent, several witnesses opined that the plaintiff would have difficulty performing household activities due to the injuries suffered to her lower extremities, which are unlikely to improve in the future. As Mr. Pakulak noted in his July 12, 2019 report, Ms. Visser has a limited capacity to perform household chores and would require assistance to perform the more significantly demanding chores. According to Mr. Turnbull, the present value of the claimed

housekeeping, home maintenance and handyman services are as follows:

- (a) Housekeeping services to age 80 - \$39,363;
- (b) Heavy seasonal cleaning to age 75 - \$12,525;
- (c) Snow removal to age 75 - \$11,690;
- (d) Lawn and garden maintenance to age 75 - \$35,179;
- (e) Handyman services to age 75 - \$19,020; and
- (f) Once only-housekeeping following knee surgery - \$188.

These items, based on Mr. Turnbull's calculations, total \$117,965.

[318] As noted by Dr. Briar Sexton, the plaintiff is not legally entitled to drive in British Columbia based on visual field testing performed by Dr. Kowal. Ms. Visser also is limited to the distances that she can drive and is unwilling to drive at night or during inclement weather. Ms. Sandor recommended the plaintiff be provided with transportation services by way of taxi transport for a 40-72 kilometre round-trip twice a month for her life expectancy. According to Mr. Turnbull, the present value of the plaintiff's transportation claim is \$87,285.

[319] As noted above in her August 30, 2019 report, Ms. Sandor made a number of additional recommendations, including gym membership, a low-level work chair for tasks around the house, a Cryo Cuff System to provide assistance with knee swelling, exercise equipment allowance of \$50 per annum, and a one-time functional driving assessment and speech language pathology assessment. While the majority of these items are reasonable, the exercise equipment allowance duplicates the gym membership. The present value of the exercise equipment to the plaintiff's 65th birthday is \$1,357.85.

[320] The defendants/third-party argue that Ms. Sandor has simply tabulated the plaintiff's subjective complaints, resulting in a vastly inflated accounting of the cost of future care. While Ms. Sandor did speak to the plaintiff, the calculations of items referred to above are not connected with the plaintiff's subjective complaints, but rather reflect recommendations of various treating physicians and other experts assessing the needs of the plaintiff, as a result of a very significant collision which profoundly changed her life. The defendants asked the court to force the plaintiff to act in a cognitive fashion to mitigate her losses when the plaintiff has little ability to do so because of the severity of the injuries she has suffered; particularly the traumatic brain injury.

[321] The award in this case for the cost of future care is an award which must be based on the actual items which respond to the injuries suffered by the plaintiff which were caused by the defendants/third-party. However, the award is notional and imprecise in nature: *Kuskis v. Tin*, 2008 BCSC 862 at para. 163. Subject to the deductions noted above, in my view, the plaintiff has largely performed the cost of future care calculations correctly, and the appropriate award is \$1,123,671.15 for the cost of future care in this case.

In Trust Claim

[322] The plaintiff's grandmother, Ms. Moore, has been a virtually constant companion and stalwart assistant for the plaintiff since she arrived in hospital after the first accident in September 2015. She has performed as a nurse, cook, cleaner, tour guide, chauffeur, and confidant in many other activities. Ms. Moore's personal circumstances, including the recent death of her husband and the sale of vacation property, provided Ms. Moore with an opportunity to provide invaluable service to the plaintiff when her parents were required to each work in the family bakery and could not provide regular service to the plaintiff.

[323] The defendants/third-party argue that there was no evidence forthcoming from Ms. Visser's parents. There was unassailable evidence that her parents worked six days a week to keep their family business active. If one or both of them had taken Ms. Moore's role, the cost would have been very significant. There has also been uncontested evidence that the plaintiff's mother cannot drive, as she suffers from a disability. The plaintiff, without doubt, did not have the ability to care for herself, and her grandmother's intervention created a profound saving to all concerned. The plaintiff has advanced a claim for \$71,183. The defendants/third party have submitted that the appropriate award should be \$40,000. The appropriate award in this case for the in trust claim, based on the services provided by Ms. Moore, is an award of \$57,500.

Loss of Housekeeping Capacity

[324] The plaintiff claims an award of \$40,000 for loss of housekeeping capacity. Here, the plaintiff has suffered injuries which have deprived her of the capacity to perform housekeeping - a true loss of capacity. That said, in the circumstances of this case, the above awards for non-pecuniary damages and future costs of care adequately compensate the plaintiff for both the housekeeping she is unable to do, and the housekeeping she is still able to do with difficulty. I decline to make a further award for loss of housekeeping capacity to prevent double recovery.

Special Damages

[325] The parties agreed that special damages should be awarded in the amount of \$63,000, and that is the order of this court in respect to special damages.

Summary

[326] In summary, I award the plaintiff the following damages:

Non-pecuniary Damages

\$315,000.00

Past Income Loss

\$125,000.00

Loss of Future Earning Capacity

\$1,430,000.00

Cost of Future Care

\$1,123,671.15

In Trust Claim

\$57,500.00

Special Damages

\$63,000.00

Total

\$3,114,117.15

[327] The plaintiff is also entitled to interest pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79.

Costs

[328] Unless there are circumstances of which the Court is unaware, the plaintiff is entitled to the costs of this action as a matter of ordinary difficulty under Appendix B of the Supreme Court Civil Rules forthwith after assessment.

Liberty to Apply

[329] Neither party made submissions concerning the second accident. I do not intend to make further findings on the second accident unless the parties apply for orders regarding the second accident within 14 days of these Reasons.

[330] The parties have liberty to apply for orders respecting management of funds, provided the applications shall be filed within 90 days of the release of these Reasons.

"Ball J."

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Prepared on 26 October 2026 · Esheria