

CANADA / JUDGMENT

Wong v. Nijjar

2025 BCSC 1956

COURT

Supreme Court of British Columbia

DECIDED

7 October 2025

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2025 BCSC 1956 Wong v. Nijjar

THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wong v. Nijjar,

2025 BCSC 1956

Date: 20251007

Docket: M1911150

Registry: Vancouver

Between:

Ho Wong

Plaintiff

And

Manimrit Kaur Nijjar

Defendant

Before: The Honourable Madam Justice Tucker

Reasons for Judgment

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E. J. Barff

Place and Date of Trial:

Vancouver, B.C.

October 1-4, 7-11, 15-18 and November 22, 2024

Place and Date of Judgment:

Vancouver, B.C.

October 7, 2025

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I. Introduction

- [1] This is a personal injury negligence claim arising from a motor vehicle accident (the "Accident") that occurred on February 21, 2018, when a Lexus NX300 (the "Lexus") came into contact with the rear driver's side of a Toyota Corolla (the "Corolla"). At the time of the Accident, the plaintiff, Ho (Justin) Wong, was a passenger in the front seat of the Lexus, and the defendant, Marimjit Kaur Nijjar (the "Defendant"), was driving the Corolla.
- [2] Mr. Wong asserts that the Accident was the Defendant's fault, and that it caused him soft tissue issues and caused him to develop addictions and suffer psychological injury. The Defendant denies liability, and in the alternative, disputes much of the alleged causation and most of the damages.
- [3] I find the Defendant is liable for the Accident. I find that Mr. Wong suffered soft tissue injuries as a result of the Accident. However, Mr. Wong has failed to establish that the Accident was a cause of any addictions he may have developed, or that the Accident was a cause of, or a cause of any aggravation of, his anxiety.
- [4] Mr. Wong did sustain soft tissue injuries in: (1) his upper back/scapular area ("upper back region" or "upper back injury"), and (2) his lower back/right hip area ("lower back region" or "lower back injury"). In respect of these injuries, Mr. Wong is entitled to an award for non-pecuniary damages, cost of future care, and special damages. Mr. Wong has failed to establish any entitlement to damages for past or future loss of future earning capacity, or to damages for past or future loss of household capacity.

- [5] An alleged loss of earning capacity was a centrepiece of Mr. Wong's claim. The evidence does not establish any loss of opportunity flowing from his Accident-related soft tissue injuries. Further, to the extent the damages claim was advanced on an assertion that, but for the Accident, Mr. Wong would have succeeded as an actor and model, that assertion is speculative.

II. Liability

A. Law

- [6] To succeed in negligence, a plaintiff must establish, on a balance of probabilities, that: (1) the defendant owed a duty of care; (2) the defendant breached the applicable standard of care; (3) the plaintiff suffered loss or damage; and (4) the defendant's conduct was, in fact and in law, the cause of that loss or damage: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 3; *Shamtanis v. Leung*, 2023 BCSC 829 at para. 41.
- [7] As observed in *Stewart v. Dueck*, 2012 BCSC 1729 at paras. 38-40, some basic propositions apply to all motorists:
- [38] The authorities establish that all motorists have an overarching common law duty to exercise what constitutes, in all the circumstances, reasonable and due care. All motorists have a general duty to keep a proper look-out and to take reasonable precautions in response to apparent potential hazards: *Hmaied v. Wilkinson*, 2010 BCSC 1074 at para. 23.
- [39] It is a well-settled proposition that drivers in this province are entitled to assume, within reason, that the other users of the roads in British Columbia will obey the law: *Mills v. Siefred*, 2010 BCCA 404 at para. 26.
- [40] The Court's task is to determine whether each of the parties in an accident met their common law duties of care. The analysis of the standard of care, which is relevant to the particular circumstances, is informed by both the reasonableness of the parties' actions and by the rules of the road; *Salaam v. Abramovic*, 2010 BCCA 212 at para. 21; *Kilian v. Valentin*, 2012 BCSC 1434 at para. 28.
- [8] The Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA] establishes "rules of the road" that may inform the common law standard of care: *Ryan v. Victoria (City)*, [1999] 1 S.C.R. 201, 1999 CanLII 706 (SCC) at para. 29.
- [9] Under s. 144 of the MVA, the Defendant was under a duty of care that prohibited her from driving:
- (a) without due care and attention,
 - (b) without reasonable consideration for other persons using the highway, or
 - (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.

[10] Under s. 168(a) of the MVA, the Defendant was prohibited from turning her vehicle to proceed in the opposite direction unless she could do so without interfering with other traffic.

B. Analysis

[11] Although liability was contested, neither driver involved in the Accident testified at trial. Most of the relevant evidence was entered by agreement. The agreed statement of facts included the following:

3. On February 21, 2018, the non-party, Jeffrey Cheuk-Yin Sung, was the driver and lessee of the Plaintiff Vehicle.
 4. On February 21, 2018, the Plaintiff Vehicle was travelling eastbound on Marine Drive, in Vancouver, British Columbia.
 5. On February 21, 2018, the defendant Manimrit Kaur Nijjar was the owner and driver of a black, 2009 Toyota Corolla (the "Defendant Vehicle").
 6. On February 21, 2018, the Defendant Vehicle was exiting a parking lot (the "Parking Lot") of a plaza, located at the north-east corner at the intersection at Main Street and Marine Drive, in Vancouver, British Columbia (the "Intersection").
 7. On February 21, 2018, at the Intersection, there were two (2) northbound lanes on Main Street.
 8. On February 21, 2018, when the Plaintiff Vehicle approached the Intersection, the Plaintiff Vehicle turned left onto Main Street, travelling northbound.
 9. On February 21, 2018, the Plaintiff Vehicle and the Defendant Vehicle collided (the "Accident").
 10. Just prior to Accident, the defendant Nijjar's intention in making the Turn was to position the Defendant Vehicle in the southbound, left-turn-only lane of Main Street at the Intersection.
 11. While still in the process of making the Turn, the Defendant Vehicle was within the oncoming (northbound) lane of Main Street that the Plaintiff Vehicle was travelling in when the Accident happened near the Intersection.
 12. The Accident happened within the northbound lanes of Main Street near the Intersection.
 13. When the Accident occurred, the front-end of the Plaintiff Vehicle collided with the driver-side of the Defendant Vehicle.
- [12] Photographs show very minor damage to the bumper/grill area in the front passenger-side area of the Lexus.

- [13] Mr. Wong testified that he was turned sideways and looking back at Kevin Kuo (who was seated directly behind the driver of the Lexus) at the moment of impact and did not see the Corolla approaching. His body moved toward the windshield, and then back into his seat.
- [14] Mr. Kuo says he saw the Defendant's car coming toward them from the right and make a U-turn in the path of Lexus, resulting in the front of the Lexus contacting the driver-side of the Corolla at the rear. Mr. Kuo said that he jerked forward and back again "pretty hard" with the impact.
- [15] The drivers exchanged information and then both vehicles carried on to their original destinations.
- [16] The following was read in from the transcript of the examination for discovery of the Defendant:

Q All right. This accident took you by surprise,- right?

A Yeah.

Q So what were you attempting to do prior to this collision happening?

A Get into the turning lane.

Q So you were trying to get into the southbound left-turn-only lane?

A Yeah.

Q Now, there's no way for you to really -- to have made that coming out of the plaza here. And if you turned up 65th after the accident happened, it means you weren't turning left out of here.

So what I think is what had happened, and this is kind of consistent with what everybody has been saying and tell me if I'm wrong, but in order to make it into the left turning lane you kind of made like a U-turn, so you turned right in order to make it into the left turn lane? Because if you did it directly you wouldn't make it,- right?

A Yeah, yeah.

Q So first you kind of make a wide U-turn in order to make it into the left turn lane; right?

A Yeah.

Q All right. All right. And you didn't see the other vehicle that struck you until the point of collision; right?

A No.

- [17] In my view, the evidence establishes that the Defendant is liable for the Accident. The Lexus contacted the Corolla because the Defendant drove the Corolla through the northbound lanes of Main Street to enter the southbound left-turn lane. The Lexus was moving forward, having completed the turn onto Main Street from Marine Drive. The Lexus was in its proper lane at the moment of impact. The level of damage indicates that neither vehicle was travelling with much speed, so excessive speed is not an issue.
- [18] The Defendant should have seen the Lexus well prior to the moment of contact - it was there, in its proper lane, to be seen. If the Defendant was taken by surprise, it can only be because she failed to look carefully before proceeding.
- [19] It is unclear whether the Defendant was performing a U-turn. The evidence suggests it would be more accurate to say she crossed the northbound lanes on a slight diagonal. In any event, it makes no difference to the outcome here. Even if it was not a U-turn, the Defendant pulled out from an off-road area and went through the Lexus' proper and anticipated line of travel without ensuring there would be no overlap in time and space. The Accident happened because the Defendant proceeded without ensuring she had enough time to clear the Lexus' lane before the Lexus arrived.

C. Conclusion on Liability

- [20] The Defendant owed and breached her duty of care as a motorist to keep a proper look-out and to take reasonable precautions in response to apparent potential hazards, and her breach caused the Accident. While the nature and extent of the harm resulting from the breach is disputed, the Defendant concedes that Mr. Wong suffered at least some injury and at least some loss. Accordingly, liability is established, and I will move on to damages.

III. Issues and Overview of Positions

- [21] The following lay witnesses were called in the plaintiff's case:

- Mr. Wong;
- Yi (Kevin) Kuo (Mr. Wong's best friend);
- Lily Wong (Mr. Wong's sister); and
- Philip Chan.

A. Overview of the Plaintiff's Narrative

- [22] For clarity, the following overview does not set out findings of fact. Rather, it is a summary of Mr. Wong's narrative and is provided only to situate the reader for the following reasons for judgment. The overview essentially reflects Mr. Wong's testimony, although I will occasionally note the existence of competing evidence.
- [23] The Plaintiff was born in 1995. He was 22 at the time of the Accident, and 29 years old at trial.

- [24] Mr. Wong graduated from high school in 2013. He then attended Langara College for one or two years. He testified that he took an assortment of courses. (Ms. Wong testified that Mr. Wong was studying business.)
- [25] Mr. Wong's mother has a brother who lives in China. This person was generally referred to as "Uncle" in testimony, so I will adopt that term for use as well. Uncle founded and operates a successful coffee business in China (the "Coffee Company"). The Coffee Company has some 100 franchises in China.
- [26] At some point while Mr. Wong was attending Langara, Uncle advised that if Mr. Wong wanted to study business, he should come and observe the actual practice of business firsthand by working in the "family business" (the Coffee Company). Mr. Wong accepted Uncle's offer and in 2015/2016, he and Ms. Wong both went to stay in China and learn about the Coffee Company.
- [27] Mr. Wong's role was to shadow Uncle while Uncle went about his business, and this shadowing included learning about how business was conducted over dinners. Mr. Wong testified that he met Mr. Chan while attending such a dinner.
- [28] Mr. Chan works in the entertainment industry in Asia. Mr. Chan started his career as an actor, but has now expanded into some producing. Mr. Chan expressed admiration for Mr. Wong's "Western" look, and encouraged Mr. Wong to try acting and modelling in Asia.
- [29] Mr. Chan (and a silent partner) had a company called Red Carpet Entertainment ("Red Carpet"). Mr. Chan said that Red Carpet could help Mr. Wong get into the entertainment industry. Mr. Wong testified that acting or modelling had never crossed his mind prior to Mr. Chan's suggestion. After returning to Vancouver and further considering Mr. Chan's idea, Mr. Wong decided to pursue Mr. Chan's offer rather than continuing his studies at Langara.
- [30] In September 2016, Mr. Wong signed a contract with Red Carpet (the "RC Contract"). Under the RC Contract, Red Carpet agreed to represent Mr. Wong and to front the costs involved in having Mr. Wong reside in Taiwan and take acting, modelling, dancing and other classes as arranged by Red Carpet (the "Classes").
- [31] The Classes included Mandarin lessons, as Mr. Wong could speak Cantonese, but not a word of Mandarin. The Classes also included a class on martial arts.
- [32] Mr. Wong began living in an apartment in Taiwan and taking the Classes. Red Carpet paid for the apartment, and for two assistants to assist Mr. Wong with living and studying in Taiwan. Additionally, Red Carpet routinely provided Mr. Wong with significant amounts of cash for discretionary spending.
- [33] Notwithstanding the apartment in Taiwan, Mr. Wong spent time in Hong Kong, Beijing and certain cities in China quite frequently.

- [34] In his testimony, Mr. Wong adopted the convention of referring to this grouping collectively as "Asia". For example, he would testify that after being in Vancouver for a visit, he flew back to "Asia", as he had no recollection of what city or country was his precise destination on that occasion. Counsel subsequently adopted Mr. Wong's use of the term "Asia", with this limited meaning, for purposes of questioning and argument. I will use "Asia" in the same limited sense in these Reasons.
- [35] Mr. Wong did not keep any track of how much cash he received from Red Carpet.
- [36] In 2016 or 2017, Mr. Wong appeared in a commercial and photographs advertising the Coffee Company. In 2017, he was in a commercial and some photographs (one of which was used for a billboard advertisement in Hong Kong), for a clothing company called "Salad". In 2017, his photograph was taken for and used in advertisements for a popular sports drink and for KFC.
- [37] Mr. Wong testified that in either 2017 or 2018, he met Elva Hsaio. (Ms. Wong testified that Mr. Wong introduced her to Ms. Hsaio near Christmas of 2017.) Ms. Hsaio is an established and quite well-known Mando-pop singer. At some point in 2017/2018, he and Ms. Hsaio began dating, at first discreetly and then publicly. When Ms. Hsaio and Mr. Wong went out, they had to take measures to avoid being followed by paparazzi. After their dating relationship was public, paparazzi sometimes followed Mr. Wong even when he went out alone (e.g., to the gym).
- [38] The Accident occurred in Vancouver on February 21, 2018. Mr. Wong testified that he felt fine at the scene, but later that evening began to feel sore. On February 24, 2018, Mr. Wong went to see his Vancouver family doctor, Dr. Robert Ho. He reported neck pain, tingling in the tailbone area, and a burning "knot" in his right shoulder, upper scapula region. Dr. Ho suggested muscle relaxants and heat, and Mr. Wong flew back to Taiwan shortly thereafter.
- [39] At some point in time prior to July 20, 2018, Mr. Wong filed a claim with ICBC. Mr. Wong saw Dr. Ho on July 20, 2018. He reported experiencing "back pain", difficulty sitting for long periods of time (e.g., "on the plane"), inability to do some casting work and certain movements, and that he was not dancing, taking boxing lessons, or playing basketball. He reported that sexual intercourse was "affected". The only prescription given by Dr. Ho on July 20, 2018 was for Accutane (an acne treatment).
- [40] Mr. Wong saw Dr. Ho again on July 28, 2018. He reported left sternal rib pain, back pain/weak-feeling legs with prolonged sitting, and low back pain. He told Dr. Ho that he was going back to Taiwan on July 30, 2018. Dr. Ho prescribed a 20-day course of Tylenol 3 (the "Ho Prescription").
- [41] Mr. Wong testified that he began taking pain, anxiety and sleeping medications in 2018 following the Accident. He testified that all the medications he took in 2018 were prescribed for him by physicians he saw in Asia, including the first medications he took after the Accident.

- [42] Mr. Wong testified that at some point prior to the end of 2018, he had developed a high tolerance for prescription drugs and had adopted a practice of obtaining opiates (he mentioned Ultracet and Tramadol) and benzodiazepines (he mentioned Xanax) from three different hospitals in Taiwan, in order to have overlapping prescriptions.
- [43] Mr. Wong testified that the physical injuries from the Accident and his heavy use of prescription drugs interfered with his ability to participate in the Classes in 2018, and that he eventually stopped attending them altogether.
- [44] At or about December 2018/January 2019, Mr. Wong told Mr. Chan that he would not be able to do work for Red Carpet. This included not taking up a part in a horror movie called "Evening Rain" (which Mr. Chan was producing) that Red Carpet had lined up for him. Mr. Wong testified that it was obvious to him (i.e., Mr. Wong) that he could not do work for Red Carpet as he was "burned out" after just one day of Classes.
- [45] Mr. Wong testified that Mr. Chan told him in January 2019 that Red Carpet was going to terminate the RC Contract, but Mr. Chan did not sign papers actually terminating the RC Contract until about August 2019.
- [46] At some point in 2019, Mr. Wong began taking anti-depressants prescribed for him by physicians in Taiwan.
- [47] At some point in 2019, Mr. Wong moved into Ms. Hsiao's house in Taiwan.
- [48] When the RC Contract was formally terminated in August 2019, no financial reconciliation took place under the contract. Mr. Wong testified that he and Red Carpet "just called it even". (In his testimony, Mr. Chan indicated that Red Carpet lost money on the RC Contract.)
- [49] At some point in 2019/2020, Ms. Hsiao was the featured guest on a comedy "roast" show. As Ms. Hsiao's boyfriend, Mr. Wong was invited to appear at the end of the show as a special guest. He appeared and contributed some humorous comments.
- [50] Mr. Wong testified he was, at some point, offered an acting role playing a prince in a television show, but that he turned the role down because he understood that the actor playing the part would have to perform fighting and horseback riding. He was unable to recall the name of the show or the production company. (It is unclear when this is said to have happened, or by what means Mr. Wong came to be involved with the project.)
- [51] At some point in 2019, after learning that Red Carpet was going to terminate the RC Contract, Mr. Wong began considering other representation. In that same year, Mr. Wong formed a temporary arrangement of sorts with an individual named "Dalei". Through Dalei, Mr. Wong tried out to be a participant in a 2019 reality show under production by a streaming service. This show was called Super Nova Games.
- [52] Mr. Wong described the concept of Super Nova Games as a reality show in which minor celebrities compete against one another in Olympic sports. At the first stage of the show, some 200 or 300 people tried out in various sports to be selected to compete. Following the

try outs, Mr. Wong was selected to compete in three different events: archery, swimming and the high jump. The people selected after try outs advance to the second stage, training with Chinese Olympic coaches and trainers. The final stage was holding the actual competitions. Mr. Wong completed the Super Nova Games event.

- [53] At some point during the temporary arrangement, Mr. Wong concluded that Dalei was an unsuitable representative and terminated the arrangement. After reaching this conclusion, Mr. Wong failed to attend a photoshoot for a magazine advertisement that Dalei had previously arranged on his behalf.
- [54] At some point in 2019, Ms. Hsaio had a new single released. She decided to make a music video for the song and asked Mr. Wong to play the part of her love interest in the video. The video plan included some choreographed dancing. Mr. Wong worked on the video choreography with a professional dance coach at the same time he was training for his Super Nova Games events.
- [55] Ms. Hsaio's video was to be filmed in Los Angeles. Mr. Wong flew out to Los Angeles with Ms. Hsaio for the filming. Mr. Wong testified that he told Ms. Hsaio, after they arrived, that he was not going to perform his choreographed routine because his "body was not able to handle all the flying and all the competition". The plan for the video was adjusted accordingly, but then Ms. Hsaio injured herself and the filming was cancelled altogether. Upon the cancellation, Mr. Wong flew back to Shanghai to appear in the Super Nova Games competitions.
- [56] Mr. Wong's mother flew out to Shanghai to watch the Super Nova Games competitions. Mr. Wong testified that while she was there, she found his stash of drugs and became furious with him for using drugs.
- [57] At some point after the Super Nova Games, but still in 2019, Mr. Wong signed a contract with Ms. Hsaio's company to represent him as a performing artist. (Mr. Wong was unable to say whether "Ms. Hsaio's company" was a company that Ms. Hsaio owned or simply the company that represented Ms. Hsaio herself.)
- [58] At some point in 2019 or 2020, Ms. Hsaio and Mr. Wong agreed to be one of the couples in a season of a program called "Meeting Mr. Right". Meeting Mr. Right is reality show in which the family members of one half (in this instance, Ms. Hsaio) of a couple rate the long-term potential of the other (in this instance, Mr. Wong).
- [59] At least some of their Meeting Mr. Right episodes were shot. (Mr. Wong gave unclear evidence as to when these Meeting Mr. Right episodes were filmed, but it appears to have been at some point in 2020). The filmed episodes portrayed Ms. Hsaio and Mr. Wong having "dates" (e.g., going fishing together). Mr. Wong could not recall how many episodes they completed, nor how many there were intended to be, but testified that he and Ms. Hsaio did not complete their episodes. Mr. Wong testified that he and Ms. Hsaio dropped out of the show due to his drug problems.

- [60] Through his participation in Meeting Mr. Right, Crest (a Meeting Mr. Right show sponsor), contracted to have Mr. Wong endorse their toothpaste on his social media sites (the "Crest Contract"). Mr. Wong cannot recall whether the endorsement occurred while Mr. Wong and Ms. Hsaio were still actively filming Meeting Mr. Right episodes in 2020. (The Crest Contract indicates that the endorsement period started running on October 21, 2020.)
- [61] After they dropped out of Meeting Mr. Right, Mr. Wong and Ms. Hsaio continued living together, but they argued, including about his drug use, and their romantic relationship was on a downward trajectory.
- [62] Mr. Wong testified that the Covid 19 pandemic did not really impact Taiwanese society until about 2021, but that once it did, Taiwan closed down tight, including in the entertainment industry.
- [63] In or about February 2021, Ms. Hsaio and Mr. Wong suffered dog bite injuries (same dog, separate bites). Mr. Wong testified that by this time, their relationship was platonic, but he continued to live with Ms. Hsaio while she recovered from her bite.
- [64] In or around the fall of 2021, Mr. Wong moved back into his mother's house in Vancouver.
- [65] Mr. Wong testified that he brought a supply of drugs with him from Taiwan, but that, at some point after returning to Vancouver, he decided to quit "cold turkey". He testified that he had weeks of very severe withdrawal symptoms, but managed it on his own and without medical help because he did not want his mother or sister to worry.
- [66] Mr. Wong testified that he has not taken any opiates since December 2021.
- [67] Mr. Wong testified that he was prescribed benzodiazepines by Dr. Ho again after he quit, but has not taken any further since 2023.
- [68] At some point after Mr. Wong quit "cold turkey" (Mr. Wong gave conflicting testimony as to when), Mr. Wong moved from his mother's house to a condominium apartment in Burnaby. (Ms. Wong testified that she moved along with him and that they lived together in the condominium for at least a few months.)
- [69] On May 19, 2023, Mr. Wong married a woman in a wedding ceremony in Vancouver. His wife had lived in the condominium unit next to the one Mr. Wong had moved into. After they were married, they began living together in what had been her unit.
- [70] On May 24, 2023, Mr. Wong fell playing basketball and landed on his right hip. He went to Burnaby General Hospital where some scans were taken. Mr. Wong testified that he suffered increased pain from his soft tissue injuries from the Accident for one or two weeks following this fall, but then returned to his pre-fall baseline (including going back to playing basketball).
- [71] On August 8, 2023, Mr. Wong and his wife had a second wedding ceremony in China.

- [72] On January 7, 2024, Mr. Wong and his wife had a son.
- [73] In the year or so prior to the trial, Mr. Wong began doing some casual work as a social media influencer, making about \$5,000 a month endorsing products during active months. Other than this influencer work, the last time Mr. Wong worked and earned income was while filming Meeting Mr. Right and performing the Crest Contract (around or about October 2020).
- [74] Under the agreed statement of facts, income reported by the Plaintiff in Canada is as follows:
19. In 2013, the plaintiff did not report any income with Canada Revenue Agency (the "CRA").
 20. In 2014, the plaintiff did not report any income with the CRA.
 21. In 2015, the plaintiff reported a total income of \$6,500 with the CRA.
 22. In 2016, the plaintiff reported a total income of \$7,800 with the CRA.
 23. In 2017, the plaintiff did not report any income with the CRA.
 24. In 2018, the plaintiff did not report any income with the CRA.
 25. The plaintiff did not file his income tax returns with the CRA for the year 2019.
 26. In 2020, the plaintiff reported a total income \$85,355 with the CRA.
 27. The plaintiff did not file his income tax returns with the CRA for the year 2021.
 28. The plaintiff did not file his income tax returns with the CRA for the year 2022.
- [75] Mr. Wong testified that the earnings reported to CRA in 2020 related to monies earned in Asia.
- [76] There are no tax documents showing any income declared or taxes paid in any country aside from Canada.

B. Plaintiff's Claim

- [77] Mr. Wong says he suffered soft tissue injuries in the Accident. He also says that after, and because of, the Accident, he became addicted to prescription drugs (opioids and benzodiazepines) and developed anxiety and psychological disorders. He maintains that these injuries terminated a burgeoning acting career.
- [78] Mr. Wong says his substance abuse disorders are now in full remission. He says he suffers chronic myofascial cervicothoracic and periscapular (upper back region), and lumbopelvic, including the right hip girdle (lower back region), pain from his soft tissue injuries, which pain interferes with his sleep. He also says that he continues to suffer from anxiety and adjustment disorders. He also asserts that the injuries he suffered as a result of the Accident have left him with some sexual dysfunction, an increased risk of a major depressive

disorder, and a high risk of relapse into substance abuse.

[79] He contends that he is now competitively unemployable - aside from his current casual and sporadic work as a social media influencer - as a result of the Accident.

[80] In his closing submissions, Mr. Wong sought amounts under heads of damage as follows:

- non-pecuniary damages: \$250,000
- net past loss of earning capacity: \$2,250,000
- future loss of earning capacity: \$5,000,000
- special damages: \$6,884
- past loss of housekeeping capacity: \$3,000
- loss of future housekeeping capacity: \$55,000
- cost of future care: \$72,000

Total: \$7,636,884.60

C. Defendant's Position

[81] The Defendant expresses serious concerns about Mr. Wong's reliability and credibility, both in relation to his testimony and his reporting to expert witnesses.

[82] The Defendant also says that adverse inferences are appropriate based on Mr. Wong's failure to adduce material documents and/or call material witnesses in support of his case. Adverse inferences are sought with respect to a variety of specified documents and witnesses but, in particular, with respect to Mr. Wong's failure to adduce any medical records from treating physicians in Asia, call any of those treating physicians as witnesses, or produce any documents (aside from the Crest Contract) to support of his loss of earning capacity claims.

[83] In the event liability is established, the Defendant's position on damages is as follows:

- While it is conceded that Mr. Wong suffered certain soft tissue injuries as a result of the Accident, the majority of his injury and loss claims are disputed.
- While Mr. Wong may have some lingering symptoms, he is not disabled from employment, and there is no loss of earning capacity, past or future. (In the alternative, any past loss of working capacity was concluded no later than 2019.)
- The separate claim for a separate award for loss of household capacity is unjustified.
- Much of the claim for cost of future care lacks medical justification.

D. Witness List

[84] As already noted, the following lay witnesses were called by the plaintiff: Mr. Wong, Mr. Chan, Ms. Wong, and Mr. Kuo. In addition, Mr. Wong filed reports by and called the following experts:

- Dr. Harpreet Sangha, psychiatrist;
- Dr. Venugopal Karapareddy, psychiatrist;
- Aman Rangi, occupational therapist; and
- Clae Willis, vocationalist.

[85] The Defendant filed reports by and called the following experts:

- Dr. Simon Horlick, orthopaedic surgeon;
- Dr. Eugene Okorie, psychiatrist;
- Avita Sharma, vocationalist; and
- Jeff Padvaiskas, occupational therapist.

IV. Credibility and Reliability

A. Law

[86] Credibility and reliability findings are critical in the context of personal injury claims based on soft tissue injuries. In *Jenkins v. Irving*, 2020 BCSC 391, aff'd 2022 BCCA 64, Justice Crerar commented:

[100] The injuries in this case are soft tissue injuries. There is no objective indication of those injuries; they cannot be detected on an MRI, X-ray, or other device. Thus the six expert medical reports and two vocational and rehabilitation reports adduced by the plaintiff all rely almost entirely upon the plaintiff's self-report of her pain symptoms. In cases such as the present, credibility findings are important.

[101] The court must be "exceedingly careful" when there is little or no objective evidence of continuing injury and when complaints of pain persist for long periods extending beyond the normal or usual recovery. As McEachern CJ stated in *Price v. Kostyba* (1982), 1982 CanLII 36 (BC SC), 70 BCLR 397 (SC), citing his earlier decision in *Butler v. Blaylock Estate*, [1981] BCJ No. 31 (SC):

An injured person is entitled to be fully and properly compensated for any injury or disability caused by a wrongdoer. But no one can expect his fellow citizen or citizens to compensate him in the absence of convincing evidence - which could be just his own evidence if the surrounding circumstances are consistent - that his complaints of pain are true reflections of a continuing injury. *[italics added]*

[102] Price must be read with more recent authority that recognizes that even minor motor vehicle accidents can cause long-term and debilitating soft-tissue injuries. For example, in the recent case of *Sekhon v. Gill*, 2019 BCSC 811 at para. 39, N. Smith J tempered Price:

Medical knowledge has obviously advanced in the almost four decades since Price was decided. In this case, there is expert evidence of an identified medical/psychological condition -- chronic pain syndrome -- that explains the persistence of the plaintiff's symptoms.

[103] In *Kallstrom v. Yip*, 2016 BCSC 829, Kent J stated:

[329] Much scepticism, some might say cynicism, can accompany claims that significant injury has been sustained as a result of a minor MVA, and particularly so where there is little objective evidence of physical injury and where complaints of pain persist far beyond what most observers might consider to be "normal". It must be remembered, however, that not everybody has the mental or physical constitution of a rugby prop forward.

[104] Kent J also notes (at para. 335) that the Butler decision cited in Price was later overturned: *Butler v. Blaylock Estate*, [1983] BCJ No. 1490 (CA), where the Court stated:

[12] With the greatest respect, I am of the opinion that there is no evidence upon which one could reasonably conclude that the appellant did not continue to suffer pain as of the date of the trial. After careful consideration of the expert testimony and the evidence of that appellant and his wife, I have reached the conclusion that the only finding open to the learned trial judge was that as of the date of trial the appellant continued to suffer moderate pain and in the words of Dr. Lehmann, his symptoms 'will gradually subside with further time. Having been present for approximately two and a half years, it is doubtful that they will disappear completely'.

[13] It is not the law that if a plaintiff cannot show objective evidence of continuing injury that he cannot recover. If the pain suffered by the plaintiff is real and continuing and resulted from the injuries suffered in the accident, the plaintiff is entitled to recover damages. There is no suggestion in this case that the pain suffered by the plaintiff did not result from the accident. I would add that a plaintiff is entitled to be compensated for pain, even though the pain results in part from the plaintiff's emotional or psychological makeup and does not result directly from objective symptoms. [Footnote omitted.]

[87] The reasons of Justice Abrioux (then of this Court) in *Karim v. Li*, 2015 BCSC 498, summarize the fundamental principles as they apply in the context of personal injury claims:

[88] As Madam Justice Dillon noted in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para.186, *aff'd* 2012 BCCA 296:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as

the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (Wallace v. Davis (1926), 31 O.W.N. 202 (Ont. H.C.); Faryna v. Chorny (1951), 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C. C.A.) [Faryna]; R. v. S. (R.D.), 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 (S.C.C.) at para.128). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Faryna at para. 356).

[89] In addition, the following principles should be taken into account by the trier of fact:

- no one can expect compensation in the absence of convincing evidence that complaints of pain are true reflections of a continuing injury: Price v. Kostryba (1982), 1982 CanLII 36 (BC SC), 70 B.C.L.R. 397 at 399 (S.C.);
- every injured person has a different understanding of his or her own complaints and injuries and it falls to judges to translate injuries to damages: Price at 397;
- where there is little or no objective evidence of continuing injury and where complaints of pain persist for long periods extending beyond the expected resolution, the court should be exceedingly careful to assess assertions in light of the surrounding circumstances including the medical evidence: Price at 399; Tai v. De Busscher, 2007 BCCA 371 at para. 41;
- it is the doctor's function to take the patient's complaints at face value and offer an opinion based on them and it is for the court to assess credibility. If there is a medical or other reason for the doctor to suspect the plaintiff's complaints are not genuine, are inconsistent with the clinical picture or are inconsistent with the known course of such an injury, the court must be told of that. But it is not the doctor's job to conduct an investigation beyond the confines of the examining room: Edmondson v. Payer, 2011 BCSC 118 at para. 77, aff'd 2012 BCCA 114; and
- in the absence of objective signs of injury, the court's reliance on the medical profession must proceed from the facts it finds, and must seek congruence between those facts and the advice offered by the medical witnesses as to the possible medical consequences and the potential duration of the injuries: Fan (Guardian ad litem of) v. Chana, 2009 BCSC 1127 at para. 73, aff'd 2011 BCCA 516.

B. Lay Witnesses

Mr. Wong

[88] Mr. Wong proved to be a very poor witness in his cause.

[89] There were any number of weaknesses with Mr. Wong's testimony.

- [90] Mr. Wong's timeline of events was jumbled on direct examination, and was repeatedly subject to revision and admissions of uncertainty on cross-examination. This was true even with respect to, what one would consider to be, very basic matters (e.g., whether he went straight to college after high school, whether he went to college for one year or two, when he moved into the Burnaby condominium).
- [91] Mr. Wong's testimony about his contracts with his various representatives (including such fundamental and basic terms as the profit split as between representative and performer) constituted either guesswork or admitted inability to recall. He was uncertain (or at least, unclear) as to whether he considered the cash he was provided from Red Carpet was an advance against his future earnings or payment from profits. He appeared to have no understanding of how the RC Contract terms addressed his living and training expenses.
- [92] Setting aside the question of the relationship between payments and income, I find that Mr. Wong's testimony about the amounts paid to Red Carpet in respect of projects he worked on is conjecture. I note that there a single project contract (the Crest Contract) in evidence, and that Mr. Wong was unable to even identify the parties to that contract. I find the numbers he gave in his testimony to be unsupported and entirely unreliable.
- [93] Similarly, Mr. Wong's testimony regarding the medical treatment he received in Asia following the Accident amounted, literally, to him stating that he saw "some" (unidentified) physicians, some of whom worked at hospitals and some of whom did not, and that these physicians prescribed him "some" drugs.
- [94] On cross-examination, Mr. Wong's answers in respect of almost every topic on which he was questioned quickly "hit the wall" in form of Mr. Wong asserting that he could not recall any details. On more than one occasion, attempts to draw out details resulted in Mr. Wong testifying that he was no longer certain of the original assertion.
- [95] I found Mr. Wong's powers/lack of recollection uneven. The following are some examples. While he could not recall when he started college or how many years he attended, he could recall how his well his high school basketball team had done each year. Notwithstanding Mr. Wong's testimony that he was using drugs heavily at the time of the comedy roast, he provided details regarding his appearance there and the intestinal problems and related medical investigations he says occurred following that event. He also gave vivid and detailed evidence about the dog-bite incidents, including the medical care he and Ms. Hsaio received for their bites. In contrast, he provided no details about the physicians he says he saw in Asia regarding the injuries alleged in this action, nor about the medical care or information provided to him by those physicians. Although Mr. Wong could not recall when he moved into the Burnaby condominium, and failed to mention that Ms. Wong moved in with him, he was able to describe the series of events through which he met his neighbour with in painstaking detail.

- [96] These variations in recollection do not align with his assertion that he has a generally poor memory as a result of drug use. Further, his recall of peripheral matters appeared to me to be consistently superior to his recall of facts material to his claims. I found these aspects of his testimony quite troubling.
- [97] I also found Mr. Wong prone to exaggeration in service of his case. For example, while he generally described the Classes as being focused on modelling, acting, and dancing, but including an additional "martial arts training type course" (see, for example, Rangi report, p. 10), that characterization changed markedly when he spoke of his desire to be an action movie star akin to Bruce Lee. In the latter context, Mr. Wong claimed that he had been prepared for such a career by "intense kung fu martial arts training". In service of the same point, he testified that after the Accident he had to "stop taking" these "action type" roles, notwithstanding that there is no evidence of his ever having acted in such a role.
- [98] Mr. Wong also sought to revise his direct testimony once adverse implications became apparent on cross-examination. For example, on direct examination, Mr. Wong described the Super Nova Games training as "a couple of months of preparing" and "months of preparation" with Chinese Olympic coaches and trainers. However, when the topic resurfaced on cross-examination in the context of his degree of recovery in 2019, he sought to reframe the training as being akin to one day spent receiving tips and pointers. (I am satisfied that the several months' training version is more accurate, as it is corroborated by other evidence, such as Mr. Wong's evidence that he worked with a dance coach to train and learn choreography for Ms. Hsiao's music video while he was in Beijing for Super Nova Games training.)
- [99] In many respects, Mr. Wong's evidence was internally inconsistent. For example, Mr. Wong testified that in late 2021, he opted to quit drugs "cold turkey" in his Vancouver bedroom, without medical assistance and in secret, because he did not want to worry his mother and sister. However, Ms. Wong testified (and I accept) that she learned of his drug use back in 2019/2020, and that afterward she argued with him, trying to get him to quit (including after he moved back to Vancouver). There was no need to keep quitting a secret from his sister or to refrain from getting her help. On Mr. Wong's own evidence, his mother also already knew about his drug use, as she had found drugs while at the Super Nova Games competitions in 2019. Contrary to Mr. Wong's testimony implying that his mother is naïve about drugs, her reaction to discovering his drugs stash indicates that she fully grasped the implications of the situation. Further, Mr. Wong's testimony that he stopped using drugs without any help is inconsistent with his reporting to experts. The Horlick report indicates that Mr. Wong reported that "after supervised treatment he was successful in withdrawing from medications", and the Sangha report indicates that he told Dr. Sangha he "spoke to a counsellor to help him discontinue".

- [100] As another example, Mr. Wong testified that he had two assistants in Taiwan, who were paid by Red Carpet and whose duties included attending Classes and reporting his progress to Mr. Chan. Given Mr. Wong's testimony that his injuries and drug use led him to fall asleep, drop some lessons, and then quit Classes, Mr. Chan would have known there were issues long before Mr. Wong says he told Mr. Chan that he was not going to take part in the projects planned under the RC Contract.
- [101] There are also inconsistencies between his testimony at discovery and trial. At his June 7, 2023, discovery, Mr. Wong was asked whether he was "still experiencing any issues with neck pain or shoulder blades or upper back pain". Mr. Wong responded "no", and then agreed that his complaints were focussed on his lower back region. On October 17, 2023, Mr. Wong reported to Dr. Horlick that he had no complaints about his upper back region, and then two months later, on December 13, 2023, told Dr. Sangha that the upper back region was his most significant source of pain. In direct testimony at trial, he said that the upper back region continues to flare up, but that the right lower back region is his central concern. That is not only a veritable hodgepodge of evidence on a central point, but it involves two conflicting versions of material facts given under oath.
- [102] Mr. Wong attempted to explain the inconsistency between discovery and trial by saying he understood the discovery question to ask whether he had pain in his upper back region at that very moment. Given the phrasing and context of the question, that is not a believable explanation. Further, Dr. Horlick confirmed in testimony that Mr. Wong did report to him that he had no complaints about his upper back region. I accept Dr. Horlick's evidence on this point: Dr. Horlick would not have missed such a complaint had one been made. I am satisfied that Mr. Wong has made inconsistent statements without good explanation, and find it concerning that his statements closer to and at trial improve his damages claim.
- [103] Further, in his direct testimony, Mr. Wong described Mr. Chan as "a director" he met who "took an interest" in him. On cross-examination, Mr. Wong explained that he met Mr. Chan while attending business-associated dinners in the course of shadowing Uncle. I am satisfied that these descriptions were intended to portray Mr. Chan to the Court as a disinterested witness with whom Mr. Wong had only a professional association. However, based on Ms. Wong's testimony, I find that Mr. Chan and Uncle are very close personal friends. I am satisfied that Mr. Wong's portrayal was calculated to lend weight to Mr. Chan's evidence in support of his case.
- [104] Finally, I note that during closing argument, counsel for the plaintiff, Mr. Dennis, conceded that Mr. Wong was an unreliable witness. Mr. Dennis asserted that Mr. Wong's uncertainty and lack of recall is rooted in his drug use and that, accordingly, his unreliability in the fault of the Defendant. That puts the cart in front of the horse. For that proposition to even apply, Mr. Wong first needs to establish, by evidence satisfactory to the Court, that the Accident was a cause of his drug use.

[105] I conclude that is appropriate for the Court to be generally skeptical of Mr. Wong's testimony. It does not follow from this that none of Mr. Wong's testimony can be accepted, but this does mean that his testimony must be scrutinized with care and is unlikely to be given much weight unless it aligns with or is supported by accepted evidence or facts.

Philip Chan

[106] I also found Mr. Chan an unsatisfactory witness.

[107] As with Mr. Wong, I find Mr. Chan deliberately sought to portray himself to the Court as a disinterested witness. On several occasions during his testimony, Mr. Chan made reference to certain unnamed friends (e.g., he heard from a friend that Mr. Wong had been in a car accident). Only at the very close of cross-examination, and only in response to a pointed question, did Mr. Chan confirm that this friend throughout his testimony was Uncle.

[108] When asked about the identity of his partner in Red Carpet, rather than answering directly, Mr. Chan said the person did not matter as Mr. Chan made all of Red Carpet's decisions. Although counsel for the Defendant chose to move on, the evasion troubles the Court.

[109] Finally, I am satisfied that Mr. Chan testified with the express goal of advancing Mr. Wong's claim, not assisting the Court to find the truth.

[110] I am satisfied that all of Mr. Chan's evidence requires close scrutiny.

Lily Wong

[111] In my view, Ms. Wong's testimony was generally reliable and truthful.

[112] Ms. Wong did initially testify she was simply too busy to attend Mr. Wong's wedding, and then subsequently admitted that she had not wanted to go because she and Mr. Wong had fallen out over his drug use and life choices. However, my impression is that that is how she generally explains her lack of attendance when asked about it, as opposed to having fabricated an answer just for Court. In any event, whether due to embarrassment or not, I am satisfied that her original answer, while untrue, was not part of an effort to advance her brother's case.

[113] I specifically accept Ms. Wong's evidence on the following points. Mr. Wong introduced her to Ms. Hsaio around Christmas 2017 and, at that time, Mr. Wong had an apartment in Taiwan, but stayed part-time at Ms. Hsaio's house. She first learned that Mr. Wong was using drugs around 2019/2020. She discovered a stash of pills in his Vancouver bedroom in late 2021/early 2022, and they argued about this. She and Mr. Wong also argued on other occasions about his drug use, and Ms. Wong had tried to persuade him to quit and had suggested a rehabilitation program.

[114] I also accept Ms. Wong's evidence that Mr. Wong was, at least in a general sense, studying "business" at Langara. This is consistent with Mr. Wong's own evidence about why and how he went to shadow Uncle at the Coffee Company.

[115] Finally, I accept Ms. Wong's testimony that Uncle and Mr. Chan are very close friends. She testified that this was plainly obvious to her from observing their interactions whenever she, Mr. Wong, Uncle, and Mr. Chan spent time together, which they did.

[116] Wherever Ms. Wong's evidence differs from Mr. Wong's, I prefer Ms. Wong's evidence.

Kevin Kuo

[117] Kevin Kuo has been Mr. Wong's friend from childhood. Once Mr. Wong went to Asia to work for Red Carpet, Mr. Kuo generally saw Mr. Wong whenever Mr. Wong visited Vancouver. At present, he sees Mr. Wong several times a week.

[118] I accept Mr. Kuo's testimony that he witnessed Mr. Wong taking pills on various occasions after the Accident, but did not know what the pills were. The only evidence Mr. Kuo gave of his conversing with Mr. Wong about the pills is that, when they went snowboarding, Mr. Wong told Mr. Kuo that he took the pills so he could snowboard.

[119] I am satisfied that Mr. Kuo sought to exaggerate Mr. Wong's pain and limitations in order to assist Mr. Wong's case, as discussed further below.

C. The Rule in *Browne v. Dunn*

[120] In his closing argument, Mr. Dennis submitted that Mr. Wong's evidence was "unchallenged on really any substantive points". He argues the Defendant is precluded from arguing that Mr. Wong is not credible by virtue of the rule in *Browne v. Dunn* (1893), 6 R. 67 (H.L.), 1893 CanLII 65 (FOREP), citing *R. v. Podolski*, 2018 BCCA 96 at paras. 160-162 in support of this submission.

[121] A helpful review of the rule in *Browne v. Dunn* is found in Justice Ker's reasons in *Friebel v. Omelchenko*, 2014 BCSC 1039:

[165] The rule in *Browne v. Dunn*, (1893), 1893 CanLII 65 (FOREP), 6 R. 67 (HL (Eng.)) (the "rule") has been discussed numerous times in the jurisprudence. A comprehensive review of it can be found in the decision in *R. v. Ali*, 2009 BCCA 464, where Madam Justice Kirkpatrick, writing for the Court, succinctly summarized the genesis of the rule:

[24] The "rule" comes from the British civil case of *Browne v. Dunn*. The case considered a defamation suit, in which six signatories of a legal document gave evidence that was not challenged on cross-examination. The articulation of the "rule" comes from the comments of Lord Herschell in the House of Lords (at 70-71):

Now, my lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that the imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it

is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses.

[Emphasis added.]

[25] In his comments, Lord Morris, in general concurrence, added that (at 79):

In this case, I am clearly of opinion that the witnesses, having given their testimony, and not having been cross-examined, having deposed to a state of facts which is quite reconcilable with the rest of the case, and with the fact of the retainer having been given, it was impossible for the plaintiff to ask the jury at the trial, and it is impossible for him to ask any legal tribunal, to say that those witnesses are not to be credited. But I can quite understand a case in which a story told by a witness may have been of so incredible and romancing a character that the most effective cross-examination would be to ask him to leave the box. I therefore wish it to be understood that I would not concur in ruling that it was necessary, in order to impeach a witness's credit, that you should take him through the story which he had told, giving him notice by the questions that you impeached his credit.

[26] The oft-cited modern enunciation of the *Browne v. Dunn* rule comes from the Ontario Court of Appeal, sitting in a division of five in *R. v. Henderson* (1999), 1999 CanLII 2358 (ON CA), 134 C.C.C. (3d) 131 at 141:

This well-known rule stands for the proposition that if counsel is going to challenge the credibility of a witness by calling contradictory evidence, the witness must be given the chance to address the contradictory evidence in cross-examination while he or she is in the witness-box.

[27] The rule was first adopted by the Supreme Court of Canada in the civil case of *Peters v. Perras* (1909), 1909 CanLII 178 (SCC), [1910] 42 S.C.R. 244. The Court allowed an appeal in a case in which "no opportunity was afforded to the witness of explaining or qualifying the facts or conduct on which the attack upon his veracity or honesty was based" (at 245).

[28] The rule was again considered by the Court in *R. v. Palmer*, 1979 CanLII 8 (SCC), [1980] 1 S.C.R. 759. *Palmer* was not cross-examined fully on his defence before impeachment by the Crown; the trial judge found *Palmer* not credible and did not accept his whole testimony. In dismissing an appeal from conviction, the Court quoted at length from *McFarlane J.A.*'s comments at the Ontario Court of Appeal. Justice *McFarlane* approved of Lord *Morris*'s statement in *Browne v. Dunn* that it was not necessary "in order to impeach a witness's credit, that you should take him through the story which he had told, giving him notice by questions that you impeached his credit" (at 70). Justice *McIntyre* writing for the Supreme Court adopted *McFarlane J.A.*'s statement that "the effect to be given to the absence or brevity of cross-examination depends upon the circumstances of each case. There can be no general or absolute rule. It is a matter of weight to be decided by the tribunal of fact" (at

781).

[29] Recently, in *R. v. Lyttle*, 2004 SCC 5, [2004] 1 S.C.R. 193, the Supreme Court of Canada briefly considered the rule in *Browne v. Dunn* in obiter dicta. The Court rejected the submission that there must be an evidentiary foundation for questions in cross-examination, but confirmed that the rule requires notice to a witness who will later be impeached; the intent of the rule is to provide fairness (paras. 64, 65). The rule remains "a sound principle of general application" (para. 65). The extent of the rule's application is "within the discretion of the trial judge after taking into account all the circumstances of the case" (para. 65).

...

[167] The rule is a sound principle, of general application, that a witness should be given an opportunity to respond to attacks on his or her credibility: *R. v. Cormier*, 2012 NBCA 76 at para. 33; *R. v. Dryden*, 2013 BCCA 253 at para. 17.

[168] The rule is not an absolute or inflexible rule of evidence. The rationale for the rule is fairness. As such, the applicability of the rule and whether it has been violated must be assessed within the context of the particular case.

...

[170] Counsel for Mr. Friebe relies upon the following extract from Alan W. Bryant, Sidney N. Lederman & Michelle K. Fuerst, *The Law of Evidence in Canada*, 3d ed, (Markham: LexisNexis Canada Inc., 2009) at 1161:

§16.180 The rule applies not only to contradictory evidence, but to closing argument as well. In *Browne v. Dunn*, Lord Halsbury added:

To my mind nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although

[171] What counsel leaves out of what he cited to the Court is the remainder of the passage from that learned treatise that carries on as follows:

not one question has been directed either to their credit or to the accuracy of the facts they have deposed to.

Accordingly, there has been a suggestion that a presumption of truth attaches to the testimony of a witness not subjected to cross-examination. It is questionable, however, whether the principle in *Browne v. Dunn* can extend that far, particularly in cases where the evidence that has not been cross-examined upon is inconsistent with other evidence.

- [172] The authors go on to include a passage from *R. v. Mete*, 1971 CanLII 1422 (BC CA), [1973] 3 W.W.R. 709 at 712 (B.C.C.A.) wherein the Court of Appeal rejected the proposition that the trier of fact may not reject evidence which is disbelieved merely because it has not been cross-examined upon.
- [122] Justice Ker's application of the law in *Friebel* is also instructive here. There, Justice Ker concluded:
- [174] I would pause to note that neither of the complaints advanced by Mr. Friebel's counsel is based on a failure to confront the witness with contradictory evidence. It appears more to be a suggestion of a failure to confront Mr. Friebel and suggest to him that he was not credible and a failure to confront Dr. McLean with an assertion that he was biased. However, insofar as Mr. Friebel is concerned, many questions on cross-examination were directed to his credibility and his lack of recollection of aspects of the conversations. And, with respect to Dr. McLean, it was apparent from the tenor of the cross-examination that he was being challenged on the parameters of his opinion and he was unprepared to acknowledge that if there were flaws in the assumptions on which his opinion was based then his opinion might be undermined.
- [175] In the case at bar the plaintiff's memory of the events up to and around December 30, 2009, was far from reliable even on his own account. This is not a case where the defendant testified on a number of matters that ought to have been put to the plaintiff but were not or that the witness was contradicted by another witness in the absence of confrontation on the point during cross-examination. Instead, the plaintiff's own memory of the events was tested on cross-examination and it was found to be wanting. Indeed he was contradicted by other independent evidence which he was unprepared to acknowledge, e.g. purchasing alcohol on December 30, 2009, when in direct-examination he denied purchasing or having alcohol in his home on that date.
- [176] Like the circumstances that arose in *Drydgen*, the rule was not engaged in this case. ...
- [178] As Kirkpatrick J.A. noted in *Ali* at para. 39, and Donald J.A. reiterated in *Drydgen* at para. 18, the rule is not engaged when there can be no realistic possibility that the witness was "caught by surprise" by closing arguments or that the witness was treated unfairly.
- [Emphasis added.]
- [123] The facts here are comparable. Mr. Wong was cross-examined at significant length. Specific inconsistencies were put to him for response and comment (e.g., his statements about his upper back region at his examination for discovery). Counsel for the Defendant put videos and photographs of Mr. Wong engaged in vigorous activities to Mr. Wong for comment, and Mr. Wong sought to explain the circumstances (e.g., saying he was able only because he was heavily medicated). The Defendant did not introduce, after Mr. Wong left the stand, any evidence contradicting his testimony aside from the Defendant's expert reports, which reports had been delivered to Mr. Wong in accordance with the Rules. Mr. Wong did not

seek to re-open his case to provide any evidence to cure any ostensible breaches of the rule in *Brown v. Dunn*. As in *Friebel*, the objection here is essentially that counsel for the Defendant did not expressly state to Mr. Wong during questioning that Mr. Wong was not credible.

- [124] In closing, the Defendant submitted that Mr. Wong's testimony was unduly vague, inconsistent, changeable, and fraught with inconsistencies, both internally and with the evidence of other lay witnesses (e.g., Ms. Wong). The Defendant submitted that Mr. Wong exaggerated in his testimony and his reporting, and that his description of his pain, limitations, and capabilities was inconsistent with his actual activities, including as depicted in the videos and photographs shown to him in evidence. The Defendant's submission in this regard cannot reasonably have come as a surprise to either Mr. Wong or his counsel.
- [125] The general tenor of the Defendant's cross-examination of Mr. Wong suggested that the consistency, logic and believability of Mr. Wong's testimony was under challenge. Frequently, the terminal point on a given line of cross-examination, in which the Defendant was pushing for details and specifics, was Mr. Wong's assertion that he could not recall anything further. The fact that counsel for the Defendant would then move on, cannot be taken as her acceding the truth or accuracy of Mr. Wong's initial, vague assertion. The clear implication throughout Mr. Wong's cross-examination was that counsel for Defendant considered his evidence to be both wanting and warranting skepticism.
- [126] This is also a case in which the Defendant's position - that Mr. Wong's claims of injury and loss were vastly overstated - was known to Mr. Wong prior to trial. The Defendant's expert reports included a medical report opining that Mr. Wong had limited soft tissue injuries and no associated impairments (Dr. Horlick), and a psychiatric report saying that Mr. Wong's reporting did not support any causal connection between his psychiatric issues (addiction and anxiety) and the Accident. Mr. Wong had notice that the Defendant disputed critical aspects of his injury claims, including those matters resting primarily or entirely on Mr. Wong's testimony.
- [127] In my view, the Defendant's conduct of the case was not unfair to Mr. Wong, nor to any of the plaintiff-side witnesses.

V. Expert Evidence

A. Plaintiff's Expert Evidence

Dr. Harpreet Sangha, Psychiatrist

[128] Dr. Sangha assessed Mr. Wong on December 13, 2023.

[129] Dr. Sangha diagnosed four injuries as having been caused by the Accident:

- a) lower neck/upper back and shoulder blade area strain resulting in chronic regional soft tissue (muscle, tendon and ligament) pain, most prominently in both sides of the muscle supporting the shoulder blade;
- b) lower back strain resulting in chronic regional soft tissue pain in the right lower (lumbar) spine and right hip girdle;
- c) disordered sleep; and
- d) psycho-emotional distress.

[130] Dr. Sangha observed at assessment a lateral external snapping of the IT band (a large tendon attached to the hip) over the outside hip bone, and an anterior snapping hip with tenderness of the lower back muscles. He gave evidence that these issues are usually secondary to overuse syndromes or muscle imbalances.

[131] Dr. Sangha opined that further improvement in Mr. Wong's injuries is unlikely. He noted that the physical and psycho-emotional symptoms work together, so that if you improved one, that would likely also improve the other.

[132] In Dr. Sangha's opinion, Mr. Wong suffers from impairments impacting the following activities:

- a) engaging in prolonged static postures for the neck and back, including sitting and standing;
- b) activities involving full truncal mobility of the neck and back; and
- c) activities that place strain through the neck and back, including but not limited to lifting, bending, pushing, and pulling, and in particular, engaging in such actions in a way that requires placing the arms away from the body.

[133] In his view, Mr. Wong cannot meet work demands with the same vigor and endurance as he did prior to the Accident and his ability to meet work demands is lesser than that of others of the same age and without any injuries.

[134] He makes a number of recommendations for treating symptoms, such as therapy treatments for pain flare-ups and exercise for core conditioning and strengthening.

[135] After his first report, Dr. Sangha was provided the scan and x-rays taken following Mr. Wong's May 2023 fall. In a supplementary report, he advises that the review did not alter his initial opinion.

Dr. Venugopal Karapareddy, Psychiatrist

[136] Dr. Karapareddy examined Mr. Wong on January 15, 2024, and made four psychiatric diagnoses:

- a) opioid use disorder (in sustained remission);

- b) benzodiazepine use disorder (in sustained remission);
- c) other specified anxiety disorder (residual features); and,
- d) adjustment disorder.

[137] He described other specified anxiety disorder as involving excessive worrying and excessive catastrophication with accompanying physical symptoms. "Other" indicates the state is not constant, but rather triggered by specific things. "Residual" means it occurs from time to time.

[138] Dr. Karapareddy describes adjustment disorder as a disorder making a person cope poorly with stress. Having an adjustment disorder puts a person at high risk of developing a depressive disorder.

[139] Dr. Karapareddy opined that all four of his diagnoses were caused by the Accident.

[140] In his view, the short-term prognosis for Mr. Wong's use disorders is relatively good, but he is at a high risk of relapse in the event of future trauma or increased pain. The prognosis for his anxiety disorder is also relatively good, unless he should relapse into substance use. Dr. Karapareddy considers Mr. Wong's anxiety disorder symptoms to be "relatively in remission", with Mr. Wong's prognosis for a full recovery from adjustment disorder being guarded.

[141] Dr. Karapareddy recommended cognitive behavioural therapy for anxiety, counselling for the adjustment disorder, and sessions with a substance use counsellor to avoid drug use relapse. He noted that Mr. Wong told him that he did not want to take any medications as treatment.

[142] In Dr. Karapareddy's report, he noted that Mr. Wong denied having traffic-related anxiety or any pre-existing mental health issues.

[143] On cross-examination, Dr. Karapareddy disagreed with the proposition that Mr. Wong had an anxiety disorder prior to the Accident. Dr. Karapareddy said it appeared to him that Mr. Wong had only situational anxiety before the Accident.

Aman Rangi, Occupational Therapist

[144] Mr. Rangi was qualified to provide opinion evidence with respect to a functional capacity evaluation, a work capacity evaluation, and the cost of future care. Mr. Rangi met with the plaintiff on January 12, 2024, and conducted a functional capacity evaluation (the "FCE"). His report deals with the results of the FCE as well as the cost of future care.

[145] With regard to the FCE results, Mr. Rangi reports that "overall encountered FCE results suggest aspects of Mr. Wong's workday to have exceeded his physical capacity to some extent". He considers Mr. Wong capable of work activity in the sedentary to light strength categories of occupations, with some residual medium strength capabilities as well. He

observes that the plaintiff's physical suitability for acting roles will depend largely on the specific role, but goes on to recommend a restriction for "lighter" roles involving 20-25 hours a week.

- [146] On sports and leisure, he recommends that the plaintiff avoid highly vigorous sport and leisure activities that involve consistent or ongoing exposure to higher levels of impact or jarring, unpredictable body contact, maintaining static body postures, and repetitive or highly resisted use of his lower back and right hip region.

Clae Willis, Vocationalist

- [147] Mr. Willis was qualified as a vocationalist capable of providing opinion evidence with respect to psychometric analysis, vocational analysis and vocational reintegration. He saw the plaintiff on January 26, 2024. Mr. Willis assessed Mr. Wong's competitive employment aptitudes, and then considered these in combination with his transferable skills and residual abilities to determine suitable (and unsuitable) employment options.
- [148] In Mr. Willis' view, Mr. Wong is not capable of returning to employment as an actor on a competitive, consistent, or economically supportive basis.
- [149] Mr. Willis also addressed employment in three fields that were specifically identified to him by Mr. Wong as areas of interest: opening a rehabilitation centre; opening a basketball academy; and, opening a daycare. In Mr. Willis' opinion, Mr. Wong is not reasonably vocationally suitable for such given his physical function and psychological makeup. Mr. Willis considered it reasonable for Mr. Wong to pursue education and training in order to become a healthcare facility manager.
- [150] In Mr. Willis' opinion, the plaintiff's physical, cognitive, structural, and psychological barriers likely render him currently incapable of engagement in any reasonably competitive employment. He suggests vocational therapy.
- [151] On cross-examination, Mr. Willis agreed that the only work history Mr. Wong reported to him was modelling and acting, and that Mr. Wong had not told him that he had attended college. Mr. Willis agreed that he usually reviews academic records as part of the assessment, but that he had not been provided with any for Mr. Wong.
- [152] Mr. Willis did not evaluate Mr. Wong's potential to earn income as a social media influencer. Nor did Mr. Willis evaluate Mr. Wong's potential to earn income in a business career, although he was advised that the Coffee Company was a family business. Mr. Willis was not aware that Mr. Wong had gone to China to shadow Uncle as a practical business experience.

B. Defendant's Expert Evidence

- [153] Counsel for Mr. Wong asserted the Defendant's experts were biased and/or engaged in advocacy. In my view, all of the experts tendered at trial (including the plaintiff-side experts) provided their reports and gave their testimony in conformity with their duties to the Court.
- [154] The Defendant's experts explained how their opinions were formed and the structure of their reports. There is no basis for criticism in these respects. I also note that the Defendant's experts were all prepared to make reasonable concessions when valid points were raised on cross-examination. In my view, counsel for Mr. Wong's submissions in this respect are without merit and I do not intend to address them in any further detail.

Dr. Simon Horlick, Orthopaedic Surgeon

- [155] Dr. Horlick saw Mr. Wong on October 17, 2023, and wrote his report that same day. Dr. Horlick's report states that Mr. Wong reported that his cervical spine and thoracic spine issues had resolved, and that Mr. Wong had no current complaints regarding his shoulders or upper back. Dr. Horlick states that Mr. Wong reported at assessment that his primary complaint was his right low back, hip, and knee region, with his main complaint about that area being two fold: 1) right hip snapping; and 2) right low back pain.
- [156] Dr. Horlick says Mr. Wong reported an occasional snapping sensation over the lateral aspect of his right hip, which he described as "mildly painful but not problematic" and as resolving instantaneously. Mr. Wong reported to Dr. Horlick that the snapping did not impact the function of his hip function, cause instability, or cause groin pain. Mr. Wong was unable to demonstrate the snapping during Dr. Horlick's assessment.
- [157] Regarding the right lower back pain, Dr. Horlick noted that Mr. Wong's biggest complaint was "ongoing right low back pain which occasionally radiates toward the right thigh and causes a feeling of numbness", with symptoms exacerbated by prolonged sitting or standing, and improved with movement and stretching. Mr. Wong reported to Dr. Horlick that the pain did not wake him from sleep. Mr. Wong also reported an improvement in intensity, duration, and frequency of the symptoms over time and with treatment (primarily acupuncture and massage therapy).
- [158] Dr. Horlick says Mr. Wong reported his current walking distance as "unlimited", reported having no difficulty with stairs, and said he did not require any walking aids. Dr. Horlick said Mr. Wong reported being independent for all activities of daily living and being able to help with domestic duties.

- [159] On physical examination, the only measures of physical impairment noted by Dr. Horlick were an area of elicitable tenderness over the right posterior-superior iliac (aligning with Mr. Wong's back pain complaint) and some ligament tenderness secondary to a recent ankle sprain while playing basketball. Dr. Horlick was unable to detect any issues regarding Mr. Wong's knee.
- [160] In Dr. Horlick's opinion, no additional treatment (e.g., physiotherapy, massage therapy or acupuncture) is warranted and there is no medically supportable vocational, avocational, or recreational disability.
- [161] Dr. Horlick was asked to comment upon Dr. Sangha's reports. Dr. Horlick states that Dr. Sangha's physical findings were similar to his own with two exceptions: (1) Dr. Sangha found some palpable trigger points in the cervical area (whereas none were present on Dr. Horlick's examination); and (2) Dr. Sangha found a possible, but not significant, restriction in range of motion in Mr. Wong's lumbar area (whereas Dr. Horlick found a full range of motion). Dr. Horlick concurred with Dr. Sangha's diagnosis of lumbopelvic strain resulting in chronic regional pain of the right lower lumbar spine.
- [162] Dr. Horlick confirmed in his oral evidence that Mr. Wong told him at the assessment that he had no residual complaints about his cervical or thoracic regions.
- [163] Dr. Horlick disagrees with Dr. Sangha's conclusion that Mr. Wong has diminished physical and functional tolerances, reiterating that no identifiable measure of physical impairment was found. Dr. Horlick disagrees with Dr. Sangha's finding of a persistent musculoskeletal impairment, noting that Dr. Sangha's report does not identify any clinically observable and measurable alterations in structure or function. Dr. Horlick testified that given the absence of clinically observable or measurable alterations, Mr. Wong's complaints are primarily subjective, and can be improved by improving his physical tolerance.
- [164] Dr. Horlick was subsequently provided with Mr. Wong's hospital records and images from his May 24, 2023 fall. He noted a "tiny corticated density adjacent to the lesser trochanter, which appears to be more chronic", but noted that whatever MRI and CT scans were said to have been done in Asia are not available for a comparison. Dr. Horlick stated that nothing in the additional materials altered his earlier opinion.

Dr. Eugene Okorie, Psychiatrist

- [165] Dr. Okorie examined the plaintiff on January 3, 2024. In his report, Dr. Okorie diagnosed the plaintiff with:
- a) generalized anxiety disorder (or "GAD"); and
 - b) opioid and sedative use disorders (in full remission).

[166] Dr. Okorie posited mild neurocognitive disorder (or "MCD") as an additional tentative diagnosis for exploration, but stated that it is not possible to make a diagnosis without cognitive testing.

[167] Dr. Okorie opines that Mr. Wong has residual and ongoing generalized anxiety disorder, with partial remission. His residual symptoms cause social awkwardness, social withdrawal, and reduced social participation, but these symptoms will likely improve with continued abstinence, the passage of time (allowing the brain to recover from substance use), and with treatment interventions.

[168] Dr. Okorie opines that Mr. Wong's residual generalized anxiety disorder and possible MCD do not impair Mr. Wong's work function nor cause any ongoing disability or impairment in terms of his future employment. He observes that even when Mr. Wong's disorders were at their worst, Mr. Wong remained able to work.

[169] In Dr. Okorie's view, Mr. Wong's generalized anxiety disorder pre-dates the Accident. Dr. Okorie writes:

The combination of Mr. Wong's childhood ADHD and his obsessive nature caused his GAD, which seems to predate the MVA.

Mr. Wong's ADHD-related issue, his GAD, and environmental factors such as the increased availability of prescription medications, easy access to such medications, and work pressures caused his opioid and sedative use disorders and the resulting possible MCD.

Unless the court accepts that there is a connection between his MVA-related injuries/ pain and initiation of opioid medications that directly/ indirectly flared his GAD, it is my opinion that the subject MVA did not cause or aggravate his mental disorders.

[170] In Dr. Okorie's opinion, Mr. Wong's residual generalized anxiety disorder and possible MCD symptoms do cause him to suffer emotional distress, reduce his quality of life, and reduce his social participation, but these issues are likely to improve with time.

Jeff Padvaiskas, Occupational Therapist

[171] Mr. Padvaiskas was qualified to provide opinion evidence with respect to functional capacity evaluations, work capacity evaluations, and the cost of future care. Mr. Padvaiskas did not assess Mr. Wong. His report is a review and critique of the Rangi report.

[172] In Mr. Padvaiskas' view, Mr. Rangi could have, but did not, take steps that would have ensured his test results were more reliable. For example, it would have assisted to have more information about Mr. Wong's current activities (e.g., what sort of basketball Mr. Wong was still playing) to better assess the validity of the test results. In Mr. Padvaiskas' opinion, if Mr. Rangi was aware that Mr. Wong was engaging in activities involving rapid, resisted, upper-extremity movements or jarring and quick body maneuvering, Mr. Rangi might have considered his work capacity test findings to be incongruent.

- [173] In Mr. Padvaiskas' view, a review of Mr. Wong's clinical records would have enabled Mr. Rangi to identify whether something specific triggered a global deterioration over the test day. If this was the case, then removing or reducing that specific activity may improve general capacity results.
- [174] Mr. Padvaiskas observed that the test results as set out in Mr. Rangi's report fail to provide certain details (e.g., time between activities, sequence of activities, numbers of trials) that are of assistance in assessing effort levels and consistency of symptom responses.
- [175] Mr. Padvaiskas agrees that capacity for work as an actor is not clear cut, but observes that, in his own experience, acting work is not generally physically arduous in terms of dynamic and resisted activities and few actors do their own stunts. In Mr. Padvaiskas' opinion, Mr. Wong did demonstrate sufficient strength abilities to meet the general occupational job demand expectations for acting.
- [176] In particular, Mr. Padvaiskas takes issue with Mr. Rangi's stated assumption that "static standing demands [are an] inherent, and unavoidable aspect of work in virtually all acting roles". In his experience, actors generally move around or sit down when not actively performing. Mr. Padvaiskas is also skeptical of Mr. Rangi's assumption that certain physical demands described by Mr. Rangi as core reasons for Mr. Wong's poor suitability (such as heavier strength capabilities, longer duration body postures, and extended periods of static standing) reflect the typical acting job. In Mr. Padvaiskas view, those are the demands are associated with physical labouring jobs.
- [177] Mr. Padvaiskas observed that the Rangi report is unclear about which roles Mr. Wong turned down, or why or on what basis Mr. Wong felt he could not perform them. In his view, the Rangi report also suggests Mr. Wong did ceased taking roles due to a combination of issues, rather than due solely to an inability to perform their physical requirements.
- [178] Mr. Padvaiskas also reviewed Mr. Rangi's cost of future care recommendations.

Avita Sharma, Vocationalist

- [179] Ms. Sharma was qualified to opine on vocational and employability assessments and rehabilitation. She did not assess Mr. Wong, but rather reviewed and provided comments on the Willis report.
- [180] Ms. Sharma observes that Mr. Willis failed to consider all available information with respect to pre-Accident vocational profile, current employability, and current and future employment options. In her view, the Willis report is both overly optimistic about Mr. Wong's pre-Accident vocational profile, and overly pessimistic about his current and future vocational profile.
- [181] With respect to his pre-Accident profile, Ms. Sharma notes the volatility of the acting profession, the fact that Mr. Wong was not an established actor, and the absence of any documented pre-Accident income. In her opinion, Mr. Wong lacks the training, education,

and experience to compete equally with skilled and seasoned actors. She notes there is no evidence that Mr. Wong was generally competitive for acting roles, nor for Mr. Willis' assumption that Mr. Wong was working full-time in a durable, consistent, and competitive capacity in the industry prior to the Accident.

[182] She also notes that Mr. Willis did not consider Mr. Wong's attendance at Langara, his high school or post-secondary academic records, or his full pre-Accident work history. As a result of these omissions, Mr. Willis' conclusion that Mr. Wong is incapable of working or has sustained a complete vocational loss lacks an evidentiary foundation.

[183] Finally, in Ms. Sharma's view, it is impossible to assess Mr. Wong's current ability to work given that he has made no attempt to work since 2021. His current work tolerances for purposes of the general labour market are unknown, and thus there is no basis for assessing his residual earning capacity.

VI. Causation, Injuries, and Impairments

A. Law

[184] As noted at the outset of the liability section, to successfully claim damages under the tort of negligence, a plaintiff must establish that the defendant's conduct was, in fact and in law, the cause of the loss or damage at issue.

[185] In *Pannu v. Behnke*, 2024 BCSC 362, Justice Elwood provided a very helpful and concise overview of the legal principles that govern causation in negligence:

[54] The basic rule of causation for negligence is that the plaintiff must show on a balance of probabilities that "but for" the defendant's negligent act, the injury would not have occurred: *Clements v. Clements*, 2012 SCC 32 at para. 13.

[55] Inherent in the "but for" test is a requirement that the defendant's negligence was necessary to bring about the injury - in other words, the injury would not have occurred without the defendant's negligence.

[56] It is not necessary for the plaintiff to demonstrate that the defendant's negligence was the sole cause of subsequent pain or limitations. There may be other tortious or non-tortious causes. So long as there is a substantial connection between the defendant's negligence and the plaintiff's injury, the defendant is liable for the damages: *Athey*, at paras. 13-17, 44; *Farrant v. Laktin*, 2011 BCCA, 336 at paras. 9-11.

[57] It is important to distinguish between causation as the source of the loss and the assessment of damages for that loss. The first step is to determine whether the defendant caused or contributed to the injury, thus making him liable. This determination includes a consideration of whether the plaintiff's injuries are divisible. Divisible injuries are those that can be separated so that their damages can be assessed independently. If the plaintiff's injuries are divisible, the defendant is only liable for those injuries or that part of an injury

which he caused: *Athey*, at para. 24; *Bradley*, at para. 20; *Khudabux v. McClary*, 2018 BCCA 234, at para. 31.

- [58] In other words, if the injuries are divisible, the defendant will not be not liable for the loss or damage that was caused by an independent intervening event such as a slip and fall.
- [59] If the injuries are indivisible, however, the defendant is fully liable for the plaintiff's loss or damages, or jointly and severally liable with any other tortfeasors (absent contributory negligence). As stated, liability for indivisible losses is not apportioned between tortious and non-tortious causes. The defendant is fully liable for the plaintiff's damages: *Athey*, at para. 19-23; *Bradley*, at para. 24, 32; *Khudabux*, at para. 33.
- [60] The assessment of damages then requires the court to consider what the "original position" of the plaintiff would have been without the negligent act of the defendant. The governing principle is that the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway: *Khudabux*, at para. 30.
- [61] Independent intervening events are taken into account in the same way as pre-existing conditions. If the intervening event would have affected the plaintiff's original position adversely in any event, the net loss attributable to the defendant's negligence will not be as great and damages are reduced proportionately. The defendant need not prove that the independent intervening event would have inevitably led to the plaintiff's current condition. Intervening events that might realistically cause or contribute to the loss claimed regardless of the negligence of the defendant are relevant to the assessment of damages. They are a contingency that should be accounted for in the award. Such a contingency does not have to be proven to a certainty. It should be given weight according to its relevant likelihood: *T.W.N.A. v. Canada (Ministry of Indian Affairs)*, 2003 BCCA 670, at paras. 36, 48; *Barnes v. Richardson et al.*, 2008 BCSC 1349, at para. 96, *aff'd* 2010 BCCA 116.

[Underlining omitted.]

B. Alleged Injuries and Impairments

- [186] Here, Mr. Wong has, in effect, advanced his case on the assumption that "but for" causation and the indivisibility of all injuries he has asserted is evident on the facts.
- [187] The Defendant concedes that the Accident caused certain soft tissue injuries. However, the Defendant says the evidence fails to establish that the Accident caused or contributed to any of Mr. Wong's other alleged injuries (i.e., addiction or psychological injuries). It follows from this position on causation that the Defendant also takes the position that whatever soft tissue injuries are established on the evidence are divisible from any other injuries, and that the soft tissue injuries are capable of being the subject of an independent assessment of damages.

Addiction

- [188] The Plaintiff alleges he developed addictions to opioid and benzodiazepine prescription drugs as a result of the Accident.
- [189] His evidence in support of this rests entirely upon his personal testimony. That is, Mr. Wong's testimony is the only evidence before the Court about why, when, and how he obtained drugs in Asia, what drugs he ingested and in what quantity, and how the drugs affected his capabilities. (All that Ms. Wong and Mr. Kuo were able to testify to, respectively, was finding a container of unidentified pills in late 2021/early 2022, and having seen Mr. Wong taking pills at times after the Accident.)
- [190] Mr. Wong testified that he obtained opioids (specifically mentioning Tramadol and Ultracet at trial) and benzodiazepines (specifically mentioning Xanax at trial), and that all of the drugs he took were prescribed for him. He testified that he first obtained prescriptions from physician(s) he saw in Asia (it is unclear where exactly in Asia), and then began attending hospitals in Taiwan in order to obtain prescriptions from physicians working at those hospitals. Mr. Wong testified that he had a marked tolerance and was addicted by the end of 2018, and that his drug use rendered him unable to learn or stay awake during Classes in 2018.
- [191] Not a single medical record from a treating physician anywhere in Asia has been put into evidence.
- [192] The only documentary evidence of a prescription being given to Mr. Wong in 2018 specifically for Accident-related injuries is the July 2018 clinical record entry indicating that the Ho Prescription (a 20-day course of Tylenol 3) was made.
- [193] There is no evidence that the Ho Prescription was filled before Mr. Wong returned to Asia. At trial, Mr. Wong said that Dr. Ho had prescribed Tylenol 3, but said nothing about the role of that Tylenol 3 in his developing an addiction.
- [194] Mr. Wong consistently testified that his addictions began in Asia and then were fed with drugs obtained in Asia. On cross examination, Mr. Wong specified that he first started taking "opiate pain medication" in Taiwan, and did so by obtaining "some sort of pain medication" from a doctor in Taiwan. He reported to Dr. Karapareddy that he started taking pain medication "in China", was given "codeine pills" initially, but then switched to Tramadol and Xanax. He reported to Dr. Sangha that he had been prescribed Tramadol in Taipei. Mr. Rangi's report indicates Mr. Wong reported having been "prescribed strong pain medications (i.e., benzodiazepines)" while in China. Mr. Wong reported to Dr. Horlick that he developed an addiction to oxycodone (oxycodone was not otherwise mentioned in evidence at trial).

- [195] On January 4, 2019, Mr. Wong reported to Dr. Ho that a Taiwanese doctor had prescribed him "Xanax" (Clonazepam). Dr. Ho's clinical records (which are very unclear) suggest Dr. Ho may have prescribed 20 days of Alprazolam as a bridge prescription. Dr. Ho's clinical notes do not indicate the reason Mr. Wong had sought or been given the Xanax prescription in Taiwan, nor the reason that Dr. Ho considered it appropriate to provide the Alprazolam.
- [196] Some receipts were put into evidence based on Mr. Wong's testimony that these receipts related to his payment for drugs that were prescribed to him. Only three of the receipts were accompanied by English translations; all three of those are dated 2021.
- [197] According to Mr. Wong, these receipts relate to drugs prescribed for him in Taiwan as follows:
- a) A translated June 4, 2021, receipt from the Heartware Clinic for 60 units of Ultracet 500 mg (2 per day) and 90 units of Xanax 0.5 mg (3 per day). (Six untranslated receipts are attached behind).
 - b) A translated "medical receipt" from Taipei City Hospital dated September 10, 2021. The receipt references "psychiatry morning" as a department. It shows that a "medication fee" was charged and paid. It does not state that a prescription was provided, identify a physician, or identify a drug. Mr. Wong testified that he was able to identify it as relating to his anti-depressant medication by the department shown. (Six untranslated receipts are attached behind).
 - c) A translated document entitled "Postal Hospital Receipt", dated November 9, 2021. This receipt indicates Mr. Wong attended the "Neurology/Internal Medicine" department. It records a consultation fee and a "pharmaceutical service fee". There is no mention of a prescription being given and no drugs are identified. (Six untranslated receipts are attached).
- [198] None of these receipts corroborate Mr. Wong's testimony that he began taking prescribed opioids and benzodiazepines in 2018, nor his testimony that he was prescribed and began was taking drugs in 2018 to address Accident-related injuries and symptoms.
- [199] Aside from the Ho Prescription for Tylenol 3 prescription and the June 4, 2021 receipt described above, there is no evidence corroborating Mr. Wong's claims about the type or amount of drugs he took between 2018 and 2021, no evidence that whatever drugs he took were obtained by prescription, and no evidence that they were prescribed as treatment for Accident-related injuries or symptoms.
- [200] Notably, on the issue of types and amounts of drugs, Dr. Okorie testified that it would take years to build up a tolerance for Tramacet or Tramadol, whereas Mr. Wong's testimony is that he had marked tolerance by the close of 2018.

- [201] Very significantly, Mr. Wong reported to Dr. Okorie that he could not recall the reason why he took drugs. Dr. Okorie confirmed this in testimony, and I accept Dr. Okorie's evidence on the point. Dr. Okorie would most certainly have taken note of such information had it been provided. In his oral testimony, Dr. Okorie explained that he had actively tried to get an explanation from Mr. Wong for why he took drugs, but that Mr. Wong told him that he could not recall. In my view, if Mr. Wong could not recall any reason why when speaking with Dr. Okorie on January 29, 2024, then his reporting elsewhere and testimony at trial that he took drugs specifically in order to obtain relief from symptoms from his Accident-related injuries is not sufficiently reliable to be accepted on the point.
- [202] Further, Ms. Wong did not, in her testimony, draw any connection between pain, anxiety, or sleep issues (whether arising from the Accident or even otherwise), and Mr. Wong's drug use. Given the amount of time Ms. Wong and Mr. Wong were together after the Accident (e.g., both living in their mother's house whenever Mr. Wong was in Vancouver), and Ms. Wong's testimony that she had arguments with Mr. Wong trying to get him to quit his drug use, that is a very notable silence.
- [203] Overall, I find Mr. Wong's testimony about his claimed addictions to be hopelessly vague, confusing, inconsistent, and unreliable. Mr. Wong may well have developed an addiction to drugs of some kind at some point in time after the Accident. If that is the case, the evidence does not establish the what, or the how, let alone the why.
- [204] As Dr. Okorie observed, the reasons for developing an addiction can be complicated. But as Dr. Okorie further observed, patients are routinely prescribed opioids for short term relief of acute pain without developing addiction issues. Contrary to his Mr. Dennis' submission, it does not follow from the timing of the Accident and the mere existence of the Ho Prescription that the Accident is a cause of any addiction he subsequently developed. Something more than temporal correlation is required here, and there is no satisfactory evidence of anything more before me. The evidence falls well short of establishing, on a balance of probabilities, that the Accident was a but for cause of Mr. Wong's drug use.
- [205] The Defendant invites the Court to draw an adverse inference from Mr. Wong's failure to adduce his medical records from treating physicians in Asia or to call any such physician to testify. Mr. Wong gave evidence that he inquired about his Taiwanese hospital records and was told that he would need to pick his records up in person. Mr. Wong did not do so (despite having travelled to China twice since his wedding). In closing submissions, Mr. Wong's counsel stated on the record that no steps were taken to obtain any of Mr. Wong's medical records from Asia.
- [206] I agree with the Defendant that an adverse inference with respect to causation and addiction is warranted in the circumstances, although it is superfluous given my finding on causation based on the evidence that is before me.

[207] As the Accident has not been established to be a cause of any subsequent drug use, the various harms or injuries said to flow from Mr. Wong's drug use (e.g., potential cognitive issues, risk of relapse, increased risk of depressive disorder, and drug use-related sexual dysfunction) also lack any causal connection to the Accident.

Anxiety/Adjustment Disorders

[208] The agreed statement of facts includes the following paragraph:

18. In the two years prior to the Accident, the plaintiff was not reporting any psychological or mental complaints to his health care providers.

[209] That agreed statement of fact is consistent with Dr. Ho's clinical records in evidence (which date back to February 2016). However, it is a statement about reporting to providers, not an agreement that Mr. Wong had no issues.

[210] Ms. Wong described Mr. Wong as happy, easy going, and normal in the years before the Accident. She was not, however, asked any questions specifically about anxiety nor about whether she was privy to his medical status prior the Accident.

[211] Mr. Wong testified that he has suffered from anxiety since childhood. He described having chest pains in China that, when reported to a doctor, were considered to be consistent with panic attacks, and that he was prescribed anti-anxiety medication at that point to address his level of anxiety. He testified that he did not to fill the prescription he was given at that time because he decided that he did not want to be on medication.

[212] On cross-examination, Mr. Wong agreed that he "struggled" with anxiety before the Accident and, more specifically, was struggling with anxiety right before the Accident. Mr. Wong testified that he found dealing with Ms. Hsaio's fame overwhelming, and Ms. Wong testified that Mr. Wong and Ms. Hsaio were seriously dating prior to the Accident. Mr. Wong reported to Dr. Okorie that he felt a lot of pressure under the RC Contract, and that when he complained about it, he was given medications. Significantly, Mr. Wong told Dr. Okorie that he could not recall whether he was already "in therapy or taking medications" at the time of the Accident.

[213] In Dr. Okorie's opinion, Mr. Wong has suffered from generalized anxiety disorder since childhood. In testimony, Dr. Okorie explained that his opinion in that respect rests on how Mr. Wong described his anxiety as impacting his functioning and, in particular, his description of ongoing intrusive anxiety. Mr. Wong's counsel took issue with the fact that Dr. Okorie did not set out Mr. Wong's reporting in detail in his written report. I agree that it would have been very helpful had Dr. Okorie done so, but Dr. Okorie did address the discussion sufficiently in his written report to enable him to provide a more detailed description in response in testimony. No one was unfairly surprised by Dr. Okorie's more detailed description. To the contrary, the details provided by Dr. Okorie in his oral testimony are consistent with, and supported by, Mr. Wong's testimony about how his anxiety impacted him well before the Accident.

- [214] I accept Dr. Okorie's opinion that Mr. Wong suffered from generalized anxiety disorder at the time of his assessment, and that he developed and suffered from generalized anxiety disorder before the Accident. In particular, his anxiety did adversely impact his functioning, on an ongoing basis, prior to the Accident, but that Mr. Wong decided to live with the impact rather than take medication or seek out other treatment.
- [215] Conversely, I reject Dr. Karapareddy's diagnoses of specific anxiety disorder and adjustment disorder. Dr. Karapareddy's view that Mr. Wong had situational anxiety finds no support in the general anxiety described by Mr. Wong at trial and reported to Dr. Okorie during assessment.
- [216] I accept that it is theoretically possible that suffering soft tissue injuries in an accident could aggravate Mr. Wong's generalized anxiety disorder, but again, it becomes an issue of causation. As with the addiction claim, the only evidence that his soft tissue injuries did cause an aggravation of his anxiety consists of Mr. Wong's testimony. Given my general reservations about Mr. Wong's testimony, there is no reliable evidence that Mr. Wong suffered any adverse change in psychological well-being as a result of suffering soft-tissue injuries in the Accident.
- [217] The Defendant again asks the Court to draw an adverse inference from Mr. Wong's failure to adduce evidence of any kind pertaining to his medical treatment for anxiety in Asia. Those medical records would, for example, disclose what Mr. Wong contemporaneously reported to treating physicians about the origin, nature, and severity of his anxiety after the Accident. I agree that an adverse inference is warranted, although it is once again superfluous given my findings on the evidence that is before me.
- [218] I find that the evidence fails to establish that the Accident was a cause of any aggravation to Mr. Wong's generalized anxiety disorder.
- [219] Finally, I conclude that had the Accident never occurred, then Mr. Wong's drug use (which has not been established to have been caused by the Accident) and the impacts of that drug use on his life would have almost certainly have aggravated his pre-existing generalized anxiety disorder in any event.

Soft Tissue Injuries

i. Pre-Accident

- [76] Mr. Wong, Ms. Wong and Mr. Kuo all described Mr. Wong as physically able and active prior to the Accident. Mr. Wong testified that due to training and dieting as part of his Red Carpet preparations, he was in the best shape of his life. I accept this evidence.

ii. Accident

[83] Mr. Wong testified that he did not feel any immediate effects from the Accident, but later that day, while playing video games and hanging out, began to feel pain in his neck and around his shoulder blades. Several days later, on February 24, 2018, he went to see Dr. Ho.

[220] Dr. Ho's clinical notes were entered into evidence. Under the parties' document agreement, Dr. Ho's direct observations are admissible for their truth, but the reports by Mr. Wong are admissible only for the fact that they were made. Unfortunately, Dr. Ho's clinical notes do not make this distinction clearly. In general, his clinical notes are extremely brief and ambiguous. Dr. Ho was not called to provide any clarification.

[221] On February 24, 2018, Dr. Ho recorded that Mr. Wong reported neck pain, tingling in the tailbone area when bending the head forward, burning and tightness in the right shoulder/upper scapula, and poor sleep. Dr. Ho observed tenderness on deep palpation of the post-cervical spine, right trapezius muscle, and right supra-scapular area. He recommended topical creams and the application of heat. Mr. Wong returned to Asia.

iii. Post-Accident

Dr. Ho Clinical Records

[222] Mr. Wong was back in Vancouver in or about May 2018 (for his mother's birthday), but returned to Taiwan without seeing Dr. Ho. Dr. Ho's next clinical note is dated July 20, 2018. It appears Dr. Ho's objective observations on that date included "spastic tenderness deep palpation soft tissue suprascapular, post neck trapezius muscles, lumbosacral spine". On the other hand, the following excerpt appears to note Mr. Wong's subjective reporting:

Taiwan (end of May to July 15)

Acupuncture, massage, chiropractor

will be going back next week July 26

Difficulty sitting for a long time

e.g., on the plane

Stopped dancing, unable to do all the movements

did not go through boxing lessons

Unable to do some work for casting

Unable to perform certain movements

Affect sexual intercourse

Back pain

Anti-anxiety meds. Alpraxolam before

Play basketball,

now does not want to play

[223] Mr. Wong also reported to Dr. Ho, at his July 20, 2018, appointment, that he had filed a claim with ICBC.

[224] It is entirely unclear what the reference to anti-anxiety meds and "Alpraxolam before" means. It is unclear what part of the back the reported pain was in. The only medication prescribed by Dr. Ho on July 20, 2018, was for acne.

[225] In Dr. Ho's next clinical note, dated July 28, 2018, Mr. Wong reported low back pain, lumbar spine discomfort, and pain and leg weakness with prolonged sitting. Dr. Ho observed: "mild spastic tenderness on deep palpation bilateral cervica; some Lumbar spine" (sic). Dr. Ho prescribed 20 days of Tylenol 3 (again, the "Ho Prescription").

[226] Mr. Wong also saw Dr. Ho on January 4, 2019. The clinical notes do not contain any objective observations. Mr. Wong reported lower back pain and pain in the left sacroiliac region.

[227] On January 31, 2019, there was another appointment with Dr. Ho. No objective observations were recorded. Mr. Wong reported "much pain" in his chest wall and "pain" in his right hip. Dr. Ho prescribed 10 days of an anti-inflammatory medication. It is unclear what the chest issue was.

[228] Dr. Ho's February 7, 2019, notes record no objective observations. Mr. Wong reported right hip pain "started 2-3 months ago, noticing pain" and that walking for five minutes could result in "pain, need to rest". Dr. Ho prescribed 30 Tylenol 3, Vimovo, and Gabapentin.

[229] Dr. Ho's July 19, 2019, clinical note sets out pain reports regarding lower back and buttock pain, with the latter radiating down the leg. Dr. Ho noted Mr. Wong reported some "Taiwan meds". Dr. Ho prescribed some Xanax.

[230] On November 23, 2019, Mr. Wong reported back, hip and radiating buttock pain, and that he had "participated" in a "sports program", but took "a lot" of analgesics. Mr. Wong was presumably referring to the Super Nova Games. No objective observations are set out in the clinical note. Dr. Ho prescribed Xylocaine/Depo-Medrol (a steroid injection).

[231] On December 4, 2019, Mr. Wong reported being "better", but that at the "Olympic show" the right hip joint was "coming out, popping out".

[232] On Jan. 28, 2020, Dr. Ho's sole note is that Mr. Wong had seen a chiropractor. There are no objective observations.

- [233] Dr. Ho's next clinical note is 22 months later, in October 2021. Mr. Wong reported low back pain radiating down his buttock and hip into his leg. The only objective observations relate to migraine headaches. Mr. Wong is said to have reported: "certain work cannot take, if lift heavy objects Fighting, jumping, take pain killers".
- [234] On November 5, 2021, Mr. Wong reported "a lot of pain" in his lower back and radiating down to joint and buttock toward his knee. Dr. Ho noted "tender to touch and deep palpitation".
- [235] Mr. Wong reported similar pain to Dr. Ho on November 19, 2021, but also "not much paresthesia" and a "need to constantly stretch soft tissues and muscles" and that massage therapy provided "some relief".
- [236] On February 7, 2022, Mr. Wong reported to Dr. Ho that he stopped taking all "meds" in December of 2021 and had two weeks of "really bad" withdrawal symptoms, but was taking Tylenol for his chest pain.
- [237] On July 15, 2022, Mr. Wong saw Dr. Ho, but reported no pain of any kind.
- [238] Mr. Wong next saw Dr. Ho almost a year later, May 12, 2023. He reported low back pain. Dr. Ho observed localized tenderness on deep palpitation in the right sacroiliac joint region, decreased straight leg raising on the right, neuropathic pain radiating from the right hip to the lateral thigh and back of the knee, and a "lateral hip subluxation noise". Dr. Ho prescribed a topical anti-inflammatory, a steroid injection in the sacroiliac joint, and physiotherapy.
- [239] On May 25, 2023, Mr. Wong reported that his sacroiliac joint was "much better" after the injection, but that he had then sustained a fall injury to his right hip while playing basketball.

Paramedical Treatments

- [240] Mr. Wong entered aggregate invoicing for registered massage therapy ("RMT") treatments (30 minutes), as well as one chiropractic treatment, in BC. The invoicing shows RMT appointments as follows: 2018: 4; 2019: 11; 2020: 4; 2021: 8; and 2022: 19. In 2022, Mr. Wong booked three physiotherapy sessions in BC (June, September, and October) (with October being a no-show).
- [241] In 2023, he booked one physiotherapy treatment for May of 2023, but was again a no-show.
- [242] In 2024, he had one physiotherapy session in January and one in April. Between April 9 and August 16, 2024, Mr. Wong went to the chiropractor twice, to physiotherapy four times, and for RMT on nine occasions.
- [243] No clinical notes relating to any massage, chiropractor or physiotherapy treatments (in BC or Asia) are in evidence.

- [244] Mr. Wong testified that he took various treatments for his Accident-related soft-tissue injuries while in Asia. He rather vaguely described having had some massage and "traditional" treatments. He testified that Ms. Hsaio paid for his treatments in Asia (but later claimed to have informally repaid her somewhat by over-contributing on notional "rent" for some months he spent in Ms. Hsaio's house).
- [245] There are no receipts for any treatments in Asia. Mr. Wong testified that he kept a thick folder of receipts at Ms. Hsaio's house, but left it there when he moved back to Vancouver in late 2021.

Mr. Wong's Testimony

- [246] Mr. Wong testified that at six months or so post-Accident, he had developed a lasting "knot" and "burning sensation" between his shoulder blades, pain and spasms in his lower back, and pain in his "butt area on the right side" and running down into his leg.
- [247] He testified that he could not continue to meet the demands of the Classes due to his Accident-related injuries, pain, and the effects of his drug use.
- [248] Mr. Wong testified that he told Mr. Chan in or about the close of 2018 that he was unable to do perform work under the RC Contract, but that Mr. Chan did not take any steps to terminate the contract until August 2019. (This is inconsistent with Mr. Wong's early 2019 report to Dr. Ho that his contract had been "dropped".)
- [249] Mr. Wong testified that participating in the Super Nova Games was very difficult for him because of his soft-tissue injuries, and that he managed it only by taking even larger quantities of prescription drugs. He said that after they flew to Los Angeles to film the music video, he told Ms. Hsaio he did not feel up to performing the choreographed routine he had learned for it. He agreed that at the end of filming the video in Los Angeles, he flew right back to Shanghai for the Super Nova Games competition episodes. He participated, but testified that he went home early following the archery event because of pain.
- [250] Mr. Wong testified that, as of trial, he continues to get pain "in a knot" between his shoulder blades and that his lower back spasms if he lays on his back. If he lays on his right hip, he gets pain in his hip. He said his knee often feels numb and cold, and that his back feels like it "burns" when he tries to sleep. He agreed that his newborn son also affects his sleep.
- [251] He testified that when he carries his son, he gets a pinching feeling in his right lower back just above his right buttock, and that if he walks a lot his knee will get numb. He testified that he finds it hard to do tasks like dishes and sweeping due to his back pain, and that his mother and Mr. Kuo help with these tasks when they come over to his place. He and his wife also purchased a robotic vacuum to maintain the floors.
- [252] He said that he no longer does any yard or building work at his mother's house due his back.

- [253] With respect to sex, Mr. Wong testified that his legs will begin shake if in certain postures, but that this is not an issue in his relationship with his wife.
- [254] Mr. Wong uses the gym in his condominium's common area. His only complaint about the condominium gym is that it mostly has lighter weights, while he prefers heavier. He sometimes goes to a private gym with Mr. Kuo to work out instead. He agreed that he went to a gym regularly before the Accident.
- [255] Mr. Wong testified that he can and does still play basketball. He agreed that he was one of the best players in the video of a basketball game put into evidence by the Defendant, but says he can no longer play top tier men's competitive league as he did prior to the Accident because he is not as quick as he was before, cannot rebound without pain, and feels his knee is too weak to allow him to go "100%".
- [256] He said that if he goes hiking now, by the end of the hike he will limp due to his hip and his lower back may start to spasm. He testified that if he has to drive for more than three hours, or has to sit down for a full day, his shoulders will flare-up and his back will begin to hurt. When he does things he used to do, Mr. Wong says he now needs to do "recovery" work afterwards, such as applying ice or compression and massage.
- [257] He testified that he is a nervous car passenger now as a result of the Accident.
- [258] Mr. Kuo described Mr. Wong as positive, outgoing, and charismatic before the Accident. He testified that Mr. Wong slowly became a different person after the Accident: he became less outgoing, looked tired, seemed unable to sit still and to constantly need to stretch.
- [259] Following the Accident, Mr. Kuo and Mr. Wong went snowboarding together. The evidence is unclear, but suggests that this was the first winter following the Accident.
- [260] He and Mr. Wong continue to play basketball. Mr. Kuo testified that he and Mr. Wong joined a competitive league last summer, but that Mr. Wong dropped out because he could not manage the level of play. Mr. Kuo said that when Mr. Wong plays basketball now, he observes Mr. Wong holding his lower back, constantly having to stretch, and to limp somewhat after playing.
- [261] Mr. Kuo testified that at the time of trial he would generally see Mr. Wong about five times a week, and that when he sees him he helps Mr. Wong with his son and by doing chores for him like the dishes, vacuuming, and walking the dog. Mr. Kuo recently went to China with Mr. Wong and Mr. Wong's wife and son. While there, they went on a significant mountain hike, which Mr. Wong was able to do, but by the end of the hike Mr. Wong's gait was affected. Mr. Kuo testified that Mr. Wong put his hand on Mr. Kuo's shoulder as a support at times during the hike.

C. Findings

- [262] I am satisfied that Mr. Wong exaggerated his level of pain and his degree of impairment in his reporting to plaintiff-side experts. I note as an example his testimony about experiencing pain putting his son to bed. Similarly, I am satisfied that his subjective reporting to Dr. Ho is overstated as compared to his actual ability and experience.
- [263] I am also satisfied that Mr. Kuo sought to portray Mr. Wong's pain levels and impairments as more significant than they are. I do accept that Mr. Kuo makes every effort to be helpful at Mr. Wong's house, but I do not accept the associated implication that it is necessary for him to assist Mr. Wong with his household duties. I agree with the Defendant's observation that Mr. Kuo's description of Mr. Wong's conduct when playing basketball does not align with video evidence showing Mr. Wong playing at a relatively high level of skill and energy and without any of compensatory behaviours described by Mr. Kuo.
- [264] I find it very telling that Ms. Wong gave no evidence regarding pain and suffering experienced by Mr. Wong beyond residual unease and the need to stretch she described. She lived with Mr. Wong in the immediate aftermath of Accident, whenever he came back to visit Vancouver and stayed at their mother's house, and even for a period when he moved into the Burnaby condominium.
- [265] She testified at length about changes in him that she attributed to his drug use, but said next to nothing about pain or physical impairment. I note the following exchange from her direct testimony:

Q How about after this car crash?

A It was like -- it was like 180-degree change.

Q What do you mean?

A So I kind of lost my younger brother basically. So never in a million years that I thought he would turn to drugs or be taking all these drugs, because it really changed him.

So he was very reserved, turned into a very quiet -- I just didn't know what was going on with him, because even when he was not in Vancouver we would always be messaging, but after the accident I felt like -- I thought it was something else that changed him, but now, looking back, I kind of realize what really was going on.

Q What do you mean?

A So the drugs made him very reserved, very different. He didn't enjoy a lot of the things and he will always forget to come home, even for just normal scheduled family dinners. It's really -- it's a very different world that I was never really introduced in, and seeing that and not having a reason why he was doing that back then really hurt.

Q Have you seen his hip after this car crash?

A Yes.

Q What did he show you?

A He was always showing me that it keeps popping in and out in a weird way, and he will always tell me to touch it and when he moved in different movements you can hear a very loud cracking noise, and whenever he's either sitting for long or lying down for long, if we're watching TV together he can't sit still and he will always -- always move or always stretch his legs and always be like -- just uneasy.

[266] I am satisfied that had Ms. Wong been asked further or more pointed questions in direct regarding Mr. Wong's pain and impairment due to soft tissue injuries sustained in the Accident, her evidence would not have supported Mr. Wong's position.

[267] I accept that Mr. Wong did suffer a soft tissue injury to the lower back region in the Accident. Notwithstanding that his initial report to Dr. Ho focussed on the upper back region, he did also complain of a tingling feeling in his lower back. I also accept that Mr. Wong continues to suffer mild, intermittent chronic pain from the lower back region injury, as set out in Dr. Sangha's report and supported by Dr. Horlick's report.

[268] The Defendant raises the delayed onset of Mr. Wong's hip ligament "popping" and the fact that Mr. Wong was unable to demonstrate it for Dr. Horlick. I accept that the popping is a ligament issue that stems from the lower back injury. Dr. Sangha explained it as development "generally secondary to overuse syndromes", by which I understood him to mean that it reflects compensatory movement. An injury related to compensatory overuse would logically take some time to surface. I do, not, however, find that it presents any functional impairment. It resolves almost immediately and without pain. Ms. Wong's evidence indicates that Mr. Wong demonstrates it for people for fun. Further, his inability to demonstrate it for Dr. Horlick shows that it is intermittent.

[269] With respect to the strain injury to the upper back region, I accept that a strain injury in that area was sustained in the Accident. However, I accept Dr. Horlick's evidence that no trigger points were present during his examination and that Mr. Wong reported no complaints during Dr. Horlick's assessment. Mr. Wong testified that it was resolved at his discovery. On the other hand, Dr. Sangha was able to discern some corresponding trigger points at his assessment. Dr. Horlick agreed that trigger points may be present at times and absent at others. Because Dr. Sangha found some trigger points, I accept that the soft tissue strain to the upper back is not entirely resolved. It remains an occasional source of low-level pain and discomfort when flare-ups occur, but I do not accept that it is the significant source of pain reported to Dr. Sangha, nor that it flares up as frequently and readily as depicted by Mr. Wong at trial.

[270] I further find that Mr. Wong had significantly recovered from his strain injuries (both upper back region and mid-back region) by mid-2019. For the Super Nova Games, he succeeded in competitive try outs, did months of physical training, and participated in

competitions for three different and quite demanding sports. As already noted above, I find that the Super Nova Games training stage involved months of preparation. Mr. Wong was able to do work with a professional dance trainer to learn a choreographed routine for the music video while also training for the Super Nova Games. In my view, these activities were significantly more physically demanding than the Classes, and were very demanding in general.

- [271] I reject Mr. Wong's testimony that he was able to do these activities in 2019 only by virtue of high levels of prescription drug use. In the high jumping video from the Super Nova Games, Mr. Wong runs and jumps fluidly. He is performing technical high-jumping with focus, at speed, and with admirable skill. He testified that in the video he is seen clearing 160 centimetres, but that he was able to clear 180 centimetres on other jumps. Dr. Okorie testified that intoxication from opioids and benzodiazepines generally results in sedation and psychomotor difficulties. The video shows no suggestion of such issues. I note that notwithstanding that the Super Nova Games was filmed as a reality series, no video was put into evidence by Mr. Wong showing him experiencing any difficulty performing his activities.
- [272] I also note that Ms. Hsaio asked Mr. Wong to train in with a professional dance coach and learn choreography (while training for the Super Nova Games), and then fly to Los Angeles in order to be in her music video. Mr. Wong testified that Ms. Hsaio was very involved in his recovery efforts. Accordingly, Ms. Hsaio would have been well aware of his abilities and limitations. The music video was obviously important to her as a professional. I find it very unlikely that Ms. Hsaio would have made such requests and plans absent grounds to believe they were reasonable.
- [273] Mr. Wong testified that he declined to do the choreography because "all the training" in combination with the long flight to Los Angeles was too much, but then flew back to China and participated in the Super Nova Games competitions. That is, in the totality of the circumstances, a demonstration of very significant capability.
- [274] Regarding Mr. Wong's pain and impairment as of the date of trial, the other evidence of Mr. Wong's capabilities simply cannot be reconciled with the picture he paints of himself as someone challenged to put his child to bed.
- [275] I also accept Mr. Padvaiskas' opinion that Mr. Rangi failed to take thorough and sufficient precautions to ensure his test results could not be altered by lack of effort and over-reporting. I accept that the steps Mr. Rangi did take might be sufficient in other circumstances. However, in this case, given the weaknesses in Mr. Wong's testimony and reporting, the Court is seeking evidence that it is satisfied can be relied upon as independently corroborative. I am not satisfied that Mr. Rangi's test results provide that here. I note, however, that even without such safeguards, Mr. Rangi obtained results indicating that Mr. Wong is capable of work activity in sedentary to light strength occupations, with residual medium strength capabilities.

- [276] What I find particularly illuminating in Mr. Rangi's report is the height of the proposed ceiling limitation for sports and leisure activities: i.e., avoid "highly vigorous" activities involving "consistent or ongoing exposure to higher levels of impact or jarring"; "unpredictable body contact"; maintenance of static body postures; or repetitive or "highly resisted" use of the lower back and right hip (emphases added). This finding aligns with Mr. Padvaiskas' view of the general demands of acting and his opinion that Mr. Wong is capable of those demands.
- [277] Mr. Wong plays recreational basketball albeit, not at the very competitive level he describes previously playing at. Although Mr. Wong endeavoured to minimize his golfing activities on cross-examination, his reporting to Dr. Okorie suggests that he golfs and plays ping pong with regularity. He works out frequently. He testified that he does not go snowboarding "regularly" anymore, but he has gone. He recently went on a significant mountain hike while in China.
- [278] I accept that Mr. Wong's lower back region will ache if he sits or stands in a static position for too long. This is consistent with Ms. Wong's personal observation. However, the threshold for "long" is significant. He testified that pain will begin to set in if drives for more than three hours or has to sit down for a "full day". The pain caused is alleviated by moving and stretching. Mr. Wong did not testify to having any particular difficulty flying between Vancouver and Asia and, in fact, testified that he is considering splitting his time between Vancouver and China.
- [279] I accept that certain household activities, such as mopping, vacuuming, doing dishes or having to hold his son out in his arms for too long, can aggravate his lower back and cause pain. However, it is not a level of pain that prohibits Mr. Wong from engaging in these activities. Even in his reporting to Mr. Rangi, Mr. Wong acknowledged that he is able to perform interior, exterior, and yard/garden maintenance activities, albeit with some increased pain and some need for pacing. He reported to Dr. Horlick that he was capable of his household duties.
- [280] Finally, even when more intense activities trigger a flare-up, the evidence indicates that these are generally adequately addressed by stretching, exercising, using a foam roller, and applying ice or heat.

D. Summary

- [281] Mr. Wong has not established that the Accident is a but for cause of any addictions he may have developed, or drug abuse he may have engaged in, following the Accident.
- [282] Mr. Wong had a generalized anxiety disorder before the Accident, and has one now. His anxiety may have worsened in the period between the Accident and Dr. Okorie's assessment, but there is not evidence establishing that the Accident was a but for cause of any aggravation that may have occurred.

- [283] The evidence does not establish that Mr. Wong suffered a knee injury as a result of the Accident.
- [284] Mr. Wong suffered soft tissue injuries to his upper back region and lower back region in the Accident. The soft tissue injury to his upper back region is largely resolved, but may cause Mr. Wong to suffer the occasional flare-up. The soft tissue injury to his lower back causes mild, intermittent, chronic pain when aggravated.
- [285] The popping of the ligament at Mr. Wong's hip is related to the lower back region injury, but presents no functional impairment.
- [286] Mr. Wong's strain injuries result in mild impairments of the type listed in Dr. Sangha's report.
- [287] Aggravation and flare-ups of Mr. Wong's soft tissue injuries can generally be alleviated by stretching, exercise, foam rolling, and/or the application of heat or cold.
- [288] Mr. Wong described anxiety as something that interrupts his sleep. He testified at trial that his son also interrupts his sleep. That said, I accept that Mr. Wong's soft tissue injuries may, when aggravated, at times interfere with his sleep. I find it unlikely that that such interference due to pain is more than occasional.

VII. Damages

A. Non-pecuniary Damages

Law

- [289] In *Stapley v. Hejslet*, 2006 BCCA 34, at para. 46, the Court of Appeal set out some factors that influence non-pecuniary damages. The inexhaustive list of common factors for consideration includes: (a) age of the plaintiff; (b) nature of the injury; (c) severity and duration of pain; (d) disability; (e) emotional suffering; (f) loss or impairment of life; (g) impairment of family, marital and social relationships; (h) impairment of physical and mental abilities; (i) loss of lifestyle; and (j) stoicism (as a factor that should not generally penalize a plaintiff).
- [290] Counsel for Mr. Wong seeks non-pecuniary damages in the amount of \$250,000. None of the cases cited by Mr. Wong as establishing an appropriate range of non-pecuniary damages align with my factual findings above. Of the cases cited by the Defendant, the most comparable are *Callow v. Van Hoek-Patterson*, 2023 BCCA 92 and *Pannu v. Behnke*, 2024 BCSC 362.
- [291] In *Callow*, Justice Frankel (for the Court) characterized the facts of the case, at an appropriate level of abstraction, as follows at para. 22:

A person in their 20s who sustained moderate soft tissue injuries to their neck, back, and shoulders which, despite treatment, remained symptomatic for years. Although their condition has improved, they will continue to experience some pain flare-ups and the likelihood for future improvement is poor. With caution, can continue to participate in previous activities while monitoring physical exertion for pain.

[292] After reviewing numerous cases, Justice Frankel found the appropriate range for the described facts to be \$50,000 to \$60,000. He awarded Mr. Callow \$55,000 in non-pecuniary damages.

[293] Notably, the more specific facts in Callow warrant comment here. Mr. Callow was a very high level recreational soccer player, and after his injuries continued to play, but could not play with the same intensity, had to monitor his exertions for pain, and required some recovery time after playing. Mr. Callow's life partner testified in that case that there were things he could not do in terms of helping out with the house.

[294] In Pannu, Mr. Pannu's injuries were found to be comparable to those described in Callow, but the Court noted that Mr. Pannu's recovery had involved enduring a shoulder surgery. Justice Elwood concluded that Mr. Pannu's base general damages claim fell in the Callow range, but then increased the base amount to reflect the shoulder surgery and the challenge of housework, resulting in a total award of \$75,000.

Analysis

[295] Given the paucity of cited cases that align with my factual findings, I have, in addition to Callow and Pannu, also considered the cases summarized at para. 21 of Callow. I keep in mind the Court of Appeal's observations in Callow that the appropriate range should be set by reference to a high level of factual abstraction, and that recent cases are of more assistance.

[296] Mr. Wong was 22 at the time of the Accident, and 29 years old at trial. He suffered soft tissue injuries to his upper back region and lower back region that cause intermittent, chronic pain with aggravation and may suffer flare-ups. These injuries are unlikely to further improve. The threshold for aggravation of these injuries is fairly high, and Mr. Wong remains able to participate in his previous activities, albeit at a less intense level and with monitoring for the onset of aggravation.

[297] Mr. Wong is able to perform household activities, but may experience some pain in performing them and may need to pace himself.

[298] It is unclear how much household work he actually performs. Ms. Wong testified that he did minimal housework while living with her and his mother. Mr. Wong's wife did not testify. There is no evidence indicating that Mr. Wong would otherwise maintain his home to an exemplary level or suffers any frustration in being unable to maintain such a level. I am satisfied that the discomfort and pain Mr. Wong may experience in performing

household activities is appropriately and adequately accounted for by non-pecuniary damages. Mr. Wong's claims for damages under the heads of past and future loss of household capacity are dismissed.

- [299] I am satisfied that Mr. Wong's case falls within in the range found appropriate in *Callow*. Unlike *Pannu*, there are no circumstances here warranting tailored increases to reflect specific circumstances. Accordingly, Mr. Wong is awarded non-pecuniary damages in the amount of \$55,000.

B. Past Loss of Earning Capacity

Law

- [300] The calculation of damages in relation to an injured plaintiff's past loss of earning capacity, from the time of the accident to the time of the trial, requires the Court to assess what income the plaintiff would have earned but for the accident.
- [301] These damages do not have to be proven on a balance of probabilities. Instead, the assessment of past loss is an estimate of pecuniary loss arrived at by weighing possibilities and probabilities of hypothetical events. In *Grewal v. Naumann*, 2017 BCCA 158, the Court of Appeal held as follows:
- [48] In summary, an assessment of loss of both past and future earning capacity involves a consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation. If the plaintiff establishes a real and substantial possibility, the Court must then determine the measure of damages by assessing the likelihood of the event. Depending on the facts of the case, a loss may be quantified either on an earnings approach or on a capital asset approach: *Perren v. Lalari*, 2010 BCCA 140 at para. 32.
- [49] The assessment of past or future loss requires the court to estimate a pecuniary loss by weighing possibilities and probabilities of hypothetical events. The use of economic and statistical evidence does not turn the assessment into a calculation but can be a helpful tool in determining what is fair and reasonable in the circumstances: *Dunbar v. Mendez*, 2016 BCCA 211 at para. 21.
- [302] Mr. Wong seeks an award for net past loss of earning capacity in the amount of \$2,250,000, and an award for future loss of earning capacity in the amount of \$5,000,000. Notwithstanding that Mr. Wong filed his claim with ICBC in July 2018, and filed his notice of civil claim with this Court in November of 2019, he failed to generate or keep records that would help establish these significant claims for lost earning capacity.

Analysis

- [303] There are multifold problems with Mr. Wong's claim for past loss of earning capacity.
- [304] First, there is the lack of reliable evidence.
- [305] There is no documentary evidence: no representation contracts, no project contracts aside from the Crest Contract, no earnings statements, no tax documents, and no bank statements. In testimony, Mr. Wong proved unable to provide an informed description of the terms of his contracts. I am satisfied that his estimates of amounts "earned" in respect of particular projects are, at best, guesswork. It is unclear what the amounts he mentioned in testimony, even if correct, would represent in terms of personal income. Mr. Chan's evidence on the point was not much better than Mr. Wong's own, although I note that Mr. Chan did say that Red Carpet lost money on the RC Contract, which suggests that Mr. Wong's living and training expenses were significant.
- [306] Second, there is no established loss of opportunity.
- [307] Mr. Chan's trial evidence was that the horror movie (Evening Rain) had not been made as of trial, remained in the planning stages, and might never be made at all. He also testified that the crime series he had planned to get Mr. Wong a role in had only just resumed shooting at the time of the trial due to pandemic-related closures and delays. Mr. Chan testified that his ability to get Mr. Wong any further work would have depended on the quality of his work in those two projects.
- [308] Mr. Wong testified that he did not turn down, due to physical incapacity, any work given to him by Dalei or by Ms. Hsaio's company. He testified that Dalei booked him a photo shoot for a magazine, which he chose not to attend because he was annoyed with Dalei. There was no suggestion that Mr. Wong was physically incapable of participating in this photo shoot or of any other modelling work.
- [309] Mr. Wong did testify that he was offered the role of a prince in a show, but turned the role down because he believed the actor playing the role would be required to perform fights and horseback-ride. It is unclear how Mr. Wong came to be offered the role. Mr. Wong was also unable to provide the name of the show, the production company or any other specifics. He was not able to say that horseback riding and fighting were definitely required to be done by the actor, nor did he provide any evidence about what would be entailed or why he concluded that he could not do it. Finally, his testimony about what he would have earned had he done it is vague, unsupported, and unreliable. The evidence regarding this purported opportunity is insufficient to ground any claim for lost opportunity.
- [310] Third, the evidence does not establish that Mr. Wong's acting career was derailed by his soft-tissue injuries. On the evidence, his attempt to learn to act was derailed by his drug use, and the evidence does not establish that his ability to be in reality shows was adversely impacted by his soft-tissue injuries.

- [311] There is no evidence indicating that the acting, modelling, singing and Mandarin Classes were too physically demanding. Mr. Wong testified that his drug use prevented him from learning in the Classes, rendered him a zombie without emotions, and made him incapable of memorizing lines.
- [312] Mr. Wong testified that after he stopped attending the Classes, he was in reality shows because he did not have to learn lines and only had to be himself. Mr. Wong was subsequently able to participate in the Super Nova Games notwithstanding his strain injuries. He testified that the reason he and Ms. Hsiao dropped out of Meeting Mr. Right was specifically because of his drug use.
- [313] Mr. Wong testified that he was asked, in 2021, by an entertainment company if he was interested in participating in another reality show. He turned the offer down without making further inquiries and on the assumption that he would be unable to participate. Although he referred to the show as involving "dancing", that is far short of what would be required to establish by evidence that Mr. Wong was not physically capable of participating by reason of his strain injuries. Further, Mr. Wong testified that he did not ask how much it would have paid and he did not identify the company that made the offer. This evidence is insufficient to ground an award for lost opportunity in any event.
- [314] Accordingly, Mr. Wong's claim for an award of damages for past loss of earning capacity is dismissed.

C. Future Loss of Earning Capacity

Law

- [315] In *Rattan v. Li*, 2022 BCSC 648, Justice Horsman (then of this Court) noted the essential comparison that informs the future loss:
- [145] An award for future loss of earning capacity represents compensation for a pecuniary loss. While the award is an assessment of damages, not a calculation, the award nevertheless involves a comparison between the likely future earnings of the plaintiff if the accident had not happened and the plaintiff's likely future earnings after the accident has happened. Accordingly, the central task for the court is to compare the plaintiff's likely future working life with and without the accident: *Dornan v. Silva*, 2021 BCCA 228 at paras. 156-157 [Dornan].
- [316] The Court of Appeal has prescribed a three-step test for assessing future loss of earning capacity in a trilogy of cases: *Dornan v. Silva*, 2021 BCCA 228; *Rab v. Prescott*, 2021 BCCA 345; and *Lo v. Vos*, 2021 BCCA 421.
- [317] Pursuant to this trilogy, the three questions to be asked can be summarized as follows:
- 1) Is there a potential future event that could lead to a loss of earning capacity?
 - 2) Is there a real and substantial possibility that the future event will cause a pecuniary loss?

3) If such a possibility of pecuniary loss exists, what is the value of that possible future loss?

[318] As a final step in the damage assessment process, the court must determine whether the damage award is fair and reasonable: *Lo*, at para. 117.

[319] Valuation can be done by either the "earnings approach" or the "capital asset approach": *Perren v. Lalari*, 2010 BCCA 140 at paras. 11-12 and 32. The earnings approach involves a calculation of the present value of a plaintiff's annual loss of income over the remaining years of employment. It is more appropriate when the loss is easily measured: *Perren* at para. 32. The capital asset approach considers a person's lost ability to work in a certain position in their field of work as the loss of an income-earning asset. Capital asset loss is more appropriate where the loss is hard to measure: *Park v. Targonski*, 2017 BCCA 134 at para. 123.

Analysis

[320] I am satisfied that those soft tissue injuries are unlikely to improve in the future. There is no evidence indicating that it is likely that they will worsen in the future. Accordingly, they are likely to remain the same for the indefinite future. The event Mr. Wong's claim of future loss is predicated upon is the likely continued existence of the soft tissue injuries found above.

[321] Mr. Wong says that these injuries will preclude him from achieving the acting career he would have achieved but for the Accident. He says the evidence establishes a real and substantial possibility that he would have been a successful actor in Asia and, more particularly, would have become a lead actor in feature films in Mainland China.

[322] He submits that with his soft tissue injuries, he is precluded from competitive employment as an actor and further (aside from his present casual work as a self-employed social media influencer) preclude him from all competitive employment.

[323] This submission relies primarily on the evidence of Mr. Chan, the Rangi test results, and the Willis report. Mr. Wong faces hurdles in all three respects. I have found that little weight can be given to Mr. Chan's evidence. I have found that Mr. Rangi did not use sufficient safeguards to ensure the accuracy and reliability of his test results in this case. With respect to the Willis report, the bulk of the Willis report is founded on the assumption that all of Mr. Wong alleged injuries would be established by evidence and shown to be caused by the Accident. However, I have found that the only injuries caused by the Accident were soft-tissue injuries to the upper back and lower back regions, and that these injuries cause only mild impairment.

i. Original Vocational Potential

- [324] Prior to Mr. Chan's suggestion, the only evidence regarding Mr. Wong's career interests indicate that he was business-oriented. Mr. Wong was attending college, he was taking business-related courses at college, and he was interested enough that when it was suggested that he should shadow Uncle a practical business learning experience, Mr. Wong took that offer up.
- [325] Mr. Wong testified that it had never crossed his mind to act or model prior to Mr. Chan's suggestion. Red Carpet enrolled him in classes, including the Classes to learn to act, to model, to speak Mandarin, and to learn some martial arts. There is no evidence that he had any relevant prior training or experience of any kind. There is no evidence about the quality of the Red Carpet Classes. There is no evidence of how Mr. Wong was doing in these Classes.
- [326] Mr. Wong was cast in some commercials. One, however, was for Uncle's Coffee Company. The Coffee Company commercial is not in evidence. One commercial was entered into evidence, the advertisement for Salad. In it, Mr. Wong is seen walking and socializing while wearing Salad clothing. That is akin to modelling, as opposed to acting.
- [327] The Super Nova Games and Meeting Mr. Right were both reality shows. Mr. Wong testified that he did not learn any lines and was just being himself. Mr. Wong's appearance at Ms. Hsaio's roast and his planned appearance in her music video, also involved being himself, and are closer to reality television work than to professional acting.
- [328] There is no evidence of Mr. Wong having ever done any character acting. Nor is there any evidence of his having talent or promise as an actor.
- [329] Mr. Chan testified that he felt that Mr. Wong might succeed in entertainment because he had a "good look". Mr. Chan was prepared to give Mr. Wong a leading role in a "small production" horror movie that Mr. Chan was planning to produce himself. There is no evidence about the nature of the role or the quality of the project. In any event, Mr. Chan is a close family friend, not a neutral casting director.
- [330] Mr. Chan testified that he could get Mr. Wong a continuing role in a streaming crime series that Mr. Chan himself appears in. Assuming for purposes of argument that this was within Mr. Chan's ability to do, there is no evidentiary basis for concluding that Mr. Wong would have been a success in the role.
- [331] Mr. Chan acknowledged in his testimony that any further career development for Mr. Wong would fundamentally turn on how those two proposed projects actually went.
- [332] With regard to Mr. Wong's acting career, the possibility of Mr. Wong's becoming a successful actor in Asia does not rise above speculation. He had no acting experience. There is no evidence of his having any relevant specialized training (e.g., high-level martial arts skills in the manner of Bruce Lee), and no evidence of his having any particular relevant talent (e.g., for acting, or for dancing). The evidence does not even establish that he successfully learned to speak Mandarin well enough to be in Mandarin language

productions. While Mr. Chan and Ms. Hsaio were willing and able to put Mr. Wong in line for opportunities, a real and substantial possibility requires something more than an opened door.

- [333] With respect to modelling, Mr. Chan did not indicate that Mr. Wong had any particular potential in any area of modelling. There was no evidence that Mr. Chan had any expertise or ability specific to modelling as a stand-alone career. No submissions were made asserting that Mr. Wong had any real and substantial possibility of a stand-alone modelling career. Nor was any evidence adduced regarding the earning potential of a stand-alone modelling career.

ii. Residual Vocational Potential

- [334] In any event, the evidence does not establish that Mr. Wong's soft tissue injuries preclude him from pursuing either acting or modelling.
- [335] I do not accept Mr. Rangi's opinion evidence that Mr. Wong would be restricted to "lighter" roles. Mr. Rangi lacks expertise or experience about casting and acting requirements or practices, work hours, work conditions, work environments or professional standards in the acting industry. As observed by Mr. Padvaiskas, there are all sorts of acting roles. Further, some productions will use stunt performers, others will use green screens.
- [336] I share Mr. Padvaiskas' skepticism regarding Mr. Rangi's critical assumption that all acting inherently requires maintaining static positions for lengthy periods. I am satisfied that Mr. Rangi does not have the expertise required to provide an opinion on either what sort of or how many acting roles Mr. Wong may (or may not) be precluded from obtaining as a result of his soft tissue injuries.
- [337] With respect to reality shows specifically, Mr. Wong participated in the Super Nova Games and Meeting Mr. Right notwithstanding his soft tissue issues (the latter having been cut short solely due to his drug issues). While Mr. Wong testified that he has turned down offers to be in reality shows since he moved back to Canada, but he did not identified what aspects of those opportunities he thought put them beyond his physical capacity due to his soft tissue injuries, let alone that they were actually beyond his physical capacity.
- [338] As set out above, in 2019, Mr. Wong was booked by Dalei to be in a magazine advertising shoot. He testified that he did not attend the shoot because he did not want to be further involved with Dalei. Mr. Wong did not indicate that there were any issues with his physical ability to participate in that magazine shoot.
- [339] In his oral testimony, Mr. Willis opined that Mr. Wong is likely no longer suitable for modelling work. This was based on a seemingly random posited hypothetical requiring him to maintaining a static pose in a challenging environment for a very lengthy period of time. There is no evidentiary basis for that hypothetical. There is no evidence at all regarding the strength, resistance, vigour, or static position maintenance requirements for modelling work (or, likely more accurately, for the different kinds of modelling work that

exist).

- [340] Mr. Wong testified that for the sports drink advertisement photoshoot, he was asked to actively engage in a number of sports. That is not evidence of any general modelling requirement. In any event, Mr. Wong can engage in sports and leisure activities. There is no evidence suggesting that activities performed for modelling purposes could or would exceed the high level sports and leisure activity limitations outlined in the Rangi report, and it would make little vocational sense for them to do so.
- [341] I note that in his reporting to Mr. Rangi, Mr. Wong described his current work as a social media influencer as performing "low commitment modelling gigs". In my view, that appears a fair description. Accordingly, Mr. Wong is currently doing modelling work, but is choosing to limit the type and amount he is doing. The evidence does not demonstrate that he is precluded from doing more modelling of that same kind, or from doing additional kinds of modelling, by reason of his soft tissue injuries.
- [342] The following paragraph from the report of Dr. Karapareddy - who is Mr. Wong's expert witness - is notable:
27. Mr. Wong is a 28 year-old married male who has a newborn child. He is not currently actively pursuing employment due to his current situation with his new family. Otherwise, he did indicate that he has a number of employment opportunities he could explore. At this time, his main focus is his social media platform.
- [343] Based on the Rangi report, Mr. Willis opines that Mr. Wong is likely poorly suited for certain types of physically demanding work (e.g., heavier trade-based occupations, fishing, logging, being a paramedic) and occupations that require a person to maintain a static postures without the ability to adjust (e.g., certain forms of security work) (collectively, the "Unsuitable Occupations").
- [344] Mr. Willis identifies office and desk-based work (along with managerial and supervisory work) as areas that remain suitable for Mr. Wong, notwithstanding his soft tissue injuries. Mr. Willis specifically notes that "working in his family business may be a viable option."
- [345] As already noted, prior to Mr. Chan's career intervention, Mr. Wong was attending college and interested in business-related courses. Mr. Wong was sufficiently interested in business career to shadow Uncle at the Coffee Company. Asked on cross-examination whether he went to shadow Uncle with a plan to start a career with the Coffee Company, Mr. Wong testified as follows:

A I work -- no. That's when I work with Phillip. That was the -- he offered me this opportunity, and it was either I continued to school at Langara or I go back -- I stop school and I go back to Asia to pursue this acting career.

Q Okay. So there was no suggestion that you were going to maybe get involved in the family coffee business?

A There was always a backup plan. That was always there. Backup plan. I wanted to do -- start something on my own.

[346] On the evidence, there was no real and substantial possibility that Mr. Wong would have pursued any of the Unsuitable Occupations but for the Accident. Nor did Mr. Wong, in his evidence or argument, assert that he would have.

Conclusion on Future Loss of Earning Capacity

[347] Mr. Wong has not established a real and substantial possibility of pecuniary loss due to his soft tissue injuries. His potential success as an actor or model was speculative, and he remains able to pursue those avenues if such is his wish.

[348] The evidence does establish a real and substantial possibility that Mr. Wong would be unable to work in the Unsuitable Occupations due to his soft tissue injuries, but does not establish a real and substantial possibility that he ever would have done so.

[349] The evidence does indicate that Mr. Wong remains able to pursue the kind of work (aside from acting and modelling) that Mr. Wong has actually demonstrated an interest in pursuing: i.e., business (office, managerial or supervisory) work or work as social media influencer.

[350] I find that the evidence does not establish a real and substantial possibility of any pecuniary loss to be suffered in the future by Mr. Wong as a result of his Accident-related soft-tissue injuries.

[351] On the above findings, there is no loss of future earning capacity to value. Accordingly, Mr. Wong's claim for an award of damages for future loss of earning capacity is dismissed.

[352] I do, however, agree with the Defendant's alternative argument that, had a future loss of earning capacity established, the plaintiff has adduced no reliable evidence on which any damages claim could be judicially valued.

D. Cost of Future Care

Law

[353] In *Tsalamandris v. McLeod*, 2012 BCCA 239 at para. 63, the Court of Appeal held as follows regarding the assessment of an award for the cost of future care, citing the decision of Justice McLachin in *Milina v. Bartsch* (1985), 1985 CanLII 179 (BC SC), 49 B.C.L.R. (2d) 33 at p. 84. The test for an appropriate award under the cost of future care head of damages is an objective one based on medical evidence. There must be (1) a medical justification for claims for cost of future care; and (2) the claims must be reasonable.

[354] Further, the principles governing the assessment of cost of future care were summarized by Justice Gomery in *Gill v. Borutski*, 2021 BCSC 554:

[107] The purpose of an award for the cost of future care is, so far as is possible with a monetary award, to restore the plaintiff to the position she would have been in had the accident not occurred. The award is based on what is reasonably necessary on the medical evidence to promote the mental and physical health of the plaintiff

Analysis

[355] In his closing submissions, Mr. Wong itemized the amounts sought under the cost of future care head of damages. He seeks amounts for occupational therapy, counselling, vocational testing, and vocational counselling. There is no basis for these claims given my findings on causation and loss of earning capacity.

[356] That leaves the following as claimed future care costs.

9. The annual cost of Mr. Wong's claimed future care is comprised of:

- Symptom management passive modalities
- TENS machine
- Ergonomic Equipment (chair, pillows)
- Mileage \$200

TOTAL ANNUAL CARE COSTS \$ 2,290

Annual future care costs extrapolated to age 70:

$\$2,290 \times 27.7995 = \$63,660$

[357] Mr. Wong's passive symptomatic treatment future care costs of \$1,980 annually represents 18 treatments per year, as per Mr. Rangi's recommendations. Dr. Sangha's report states that Mr. Wong can be expected to have flare-ups and that "at such times" passive therapies would be reasonably indicated to hasten symptom resolution and function recovery, and prevent maladaptive behaviours. Exercises, strengthening and stretching are recommended, along with use of TENS machine.

[358] While Dr. Sangha considered passive modalities of treatment reasonable to treat flare-ups, I am satisfied that Mr. Wong overstated the intensity, impact and frequency of aggravation and flare-ups in his reporting to Dr. Sangha. I am satisfied Mr. Wong's reporting regarding the efficacy of treatments taken is also unreliable. As a notable example, Mr. Wong told Dr. Sangha that the steroid injection treatments he had were of no benefit, while his contemporaneous reporting to Dr. Ho indicated that the injections helped significantly.

[359] No clinical notes relating to any RMT, physiotherapy, or chiropractic treatments are in evidence. There is no documentary evidence as to why these appointments were made when they were, the areas that were actually treated, the treatment required, or the results obtained by treatment.

- [360] Mr. Wong's feedback to Dr. Ho on July 28, 2018 was that RMT treatment was "not really that helpful". On November 19, 2021, he told Dr. Ho that RMT provided "some relief". There is no subsequent reference to RMT in Dr. Ho's clinical notes. In his direct examination, Mr. Wong's testimony with regard to massage therapy was that he really liked it and would do it in the future if funds were available for that.
- [361] There are no RMT invoice records showing RMT treatments in the years 2022 and 2023. This is so notwithstanding the evidence that Mr. Wong was doing things such as playing basketball, hiking, and flying between Vancouver and Asia in this period.
- [362] The references to physiotherapy in Dr. Ho's notes appear to be in conjunction with steroid injections (see May 12, 2023) and in relation Mr. Wong's fall injury playing basketball (July 13, 2023). There is no evidence suggesting any ongoing course of physiotherapy as treatment.
- [363] In January 2024, Mr. Wong went for a physiotherapy session. However, Dr. Ho's clinical records disclose that Mr. Wong was not seen by Dr. Ho in relation to the issues in this claim between October 3, 2023, and March 1, 2024.
- [364] The clinical records of Dr. Ho cover only the period from February 21, 2016, through March 1, 2024. Between April and August 16, 2024, Mr. Wong went to the chiropractor twice and had five physiotherapy sessions. He had nine RMT treatments between July 6 and August 16, 2024.
- [365] I am skeptical of Mr. Wong's increased treatment in the months leading up to the trial. There is no evidence of any related complaints to Dr. Ho nor of any recommendations made by Dr. Ho or any other treating physician for Mr. Wong's 2024 treatments.
- [366] On cross-examination, Mr. Wong testified that the stretches he learned in physiotherapy help with his hip and that he has a foam roller that he uses when his upper back flares up and which helps a lot.
- [367] The Defendant conceded in closing submissions that Mr. Wong might have intermittent flare-ups sufficient to justify passive treatment. I agree, but on the evidence, such occasions can be expected to be infrequent. The Defendant did not suggest any specific number. I will award Mr. Wong an amount representing two passive treatments, at the amount of \$100 each, yearly to age 70.
- [368] Along with the TENS machine and ergonomic equipment claimed, that results in an annual care cost of \$310. That amount extrapolated to age 70 and adjusted for present value (x 27.7995) amounts to \$8,618.

E. Special Damages

- [369] Special damages claimed are listed in Exhibit 5.
- [370] Mr. Wong abandoned his claim for house cleaning expenses.

- [371] The Defendant objects to the receipts regarding payment for "treatment" in Taiwan on the basis that there are no translated receipts and the relationship between the claim and the receipts is unclear. I agree that the claims based on untranslated receipts cannot be allowed. I also deny the claims based on translated receipts pertaining to 2021 payments to Taiwanese hospitals and clinics. The evidence tying these receipts to this negligence case is insufficient.
- [372] With the exception of no-show fee, the Defendant accepts the receipts related to passive paramedical treatments obtained in BC.
- [373] The Defendant disputes the \$816 claimed as mileage in relation to Mr. Wong's passive treatments in BC and to appointments with Dr. Ho. Mr. Wong testified that he walked to the closer appointments. It is not entirely clear how he travelled to others. Dr. Ho's clinical records indicate that Mr. Wong frequently sought medical advice on matters unrelated to his soft tissue injuries at the same appointments. These facts require some discounting. While the evidence regarding travel for paramedical treatments is vague, as the Defendant accepted the related paramedical treatments themselves, I think it is fair to allow some portion of the travel amount claimed.
- [374] Looking at it as a whole, I award \$400 for the expense of travel to related medical and paramedical appointments. Mr. Wong is also entitled to a further \$100 for the expense of his foam roller, which the evidence discloses that he uses and finds effective.
- [375] By my calculation, the undisputed and awarded amounts under Exhibit 5 total \$4,737. Mr. Wong is granted special damages in that amount.

VIII. Summary of Damages

[376] In summary, damages are assessed as follows:

Non-Pecuniary Damages

\$55,000

Future Cost of Care

\$8,618

Special Damages

\$4,737

TOTAL:

\$68,355

- [377] I leave it to the parties to consider any statutory deductions, interest or costs implications arising. If they are unable to agree on these, they are at liberty to request a hearing to make further submissions.

"Tucker J."

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