COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *McPhail v. Ross,*
2025 BCCA 139

Date: 20250430
Docket: CA49308

Between:

Cory McPhail

Appellant
(Plaintiff)

And

Kyle Ross

Respondent
(Defendant)

Before: The Honourable Justice Griffin
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated July 28, 2023 (*McPhail v. Ross*, 2023 BCSC 1301, Vancouver Docket S149600).

The Appellant, appearing in person:	C. McPhail
Counsel for the Respondent:	M.R. Milne
Place and Date of Hearing:	Vancouver, British Columbia January 9, 2025
Place and Date of Judgment:	Vancouver, British Columbia April 30, 2025

Written Reasons by:
The Honourable Justice Griffin

Concurred in by:
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Edelmann

Summary:

The plaintiff in a personal injury action appeals the outcome of a remittal hearing in the trial court after his successful appeal from the initial damages award. The initial trial judge found that the plaintiff had not proven that he experienced a loss of income or required future care as a result of the motor vehicle accident caused by the defendant's negligence. However, she awarded $35,000 in non-pecuniary damages to reflect some minor physical injuries that had resolved by trial. On appeal, this Court found that the trial judge had overlooked expert evidence that the plaintiff had some lingering psychological symptoms caused by the accident. The matter was remitted to the trial court to reconsider damages in light of this evidence. The remittal judge found the evidence was not sufficient to prove the plaintiff's claims for a loss of earning capacity and rejected a new claim for loss of marriageability. However, the remittal judge increased the non-pecuniary damages to $50,000 and awarded $3,600 to cover future counselling sessions. The remittal judge noted that the non-pecuniary award was limited by the fact that the plaintiff had not mitigated his damages because he did not seek psychological treatment after first being diagnosed with a trauma disorder by his doctor immediately following the accident. On appeal, the plaintiff seeks to introduce additional evidence from experts, and he argues that the remittal judge, trial judge and the Court of Appeal made several errors. He also argues that the remittal hearing was procedurally unfair and that there was a reasonable apprehension of bias.

Held: Appeal allowed in part. The appellant's arguments that he should have been awarded damages for loss of earning capacity and loss of marriageability are rejected. The appellant's arguments are limited by the fact he did not lead sufficient evidence at trial to show his capabilities before the accident, and his own testimony was found by the trial judge to be unreliable and lacking credibility. The remittal to the trial court was on a limited question and was not a full re-trial nor did it permit the appellant to advance new heads of damages such as loss of marriageability. The principle of finality means that the appellant cannot re-argue issues that he otherwise lost in the first trial and appeal or did not raise at trial. There was no reasonable apprehension of bias. However, the remittal judge's conclusion that the appellant failed to mitigate was in error. The judge raised this on his own without hearing from the parties and made a palpable and overriding error of fact as the appellant's doctor did not diagnose him with a trauma disorder or recommend treatment for it following the accident. As such, the award for non-pecuniary damages is reassessed, and varied to $60,000.

Reasons for Judgment of the Honourable Justice Griffin:

Introduction

[1] Mr. McPhail was in a car accident on December 12, 2012 in Vancouver. Mr. Ross (the "respondent") admitted that he negligently caused the accident.

Mr. McPhail appeals from a second decision in the trial court on damages, after a successful first appeal led to the matter being remitted. The reasons on the remittal are indexed at 2023 BCSC 1301 [“Remittal Reasons”].

Trial Reasons

[2] The majority of the relevant facts are found in the reasons of the trial judge indexed at 2019 BCSC 21 [“Trial Reasons”].

[3] The accident occurred when the respondent driver of another car ran a stop sign and pulled out from a side street into the path of the car that Mr. McPhail was driving on West 4th Avenue, in Vancouver. Mr. McPhail swerved to avoid the other vehicle, but the front and right side of his car hit the respondent’s car. Although Mr. McPhail says he was in pain and crying, he drove home and no emergency vehicles were called. He went to see his family doctor two days later.

[4] Mr. McPhail claimed that the accident was devasting, and caused him to be unable to practice in a career commensurate with his subsequently completed Master’s degree in science. Mr. McPhail claimed millions of dollars in damages for lost earning capacity.

[5] Mr. McPhail represented himself at trial. He testified and called his family doctor as his only other witness.

[6] The trial judge found Mr. McPhail’s evidence to be unreliable and lacking in credibility. While he sustained some physical injuries in the accident, the injuries were far less devastating than he claimed. Mr. McPhail had not proved that his injuries caused him any past or future loss of earning capacity or that they required any future care that merited compensation. However, because he had some minor injuries related to the accident, he was awarded non-pecuniary damages of $35,000 and special damages of $2,475 for expenses related to physiotherapy.

[7] At a costs hearing, the trial judge learned that the respondent had made three escalating offers to settle, including a last offer of $100,000 on September 19, 2018

[the “September Offer”]. The trial judge concluded this was an offer that ought reasonably to have been accepted. She ordered that Mr. McPhail would have his costs up to and including September 19, 2018, and that the respondent would have his costs after that date (with some limits on the respondent’s disbursements). The costs reasons are indexed at 2019 BCSC 896 [“Trial Costs Reasons”].

First Appeal

[8] Mr. McPhail appealed the trial decision, resulting in a judgment made March 24, 2022, indexed at 2022 BCCA 122 [“First CA Reasons”].

[9] On appeal, this Court found that the trial judge had erred by misapprehending the expert opinion evidence of Dr. Lari, a psychiatrist who examined Mr. McPhail at the request of the respondent. The trial judge correctly stated some of Dr. Lari’s findings, but erred in stating that the psychiatrist did not draw a causal link between his diagnosis of Unspecified Trauma and Stressor Related Disorder (“UTSD”) and the accident. The psychiatrist had drawn such a causal link. While Mr. McPhail had claimed to have Post-Traumatic Stress Disorder (“PTSD”), and failed to prove it, this Court noted that according to Dr. Lari he did have some symptoms of the lesser psychological injury described as UTSD, that were caused by the accident. Additionally, the trial judge did not deal with the psychiatrist’s finding that this injury was continuing at the time Dr. Lari examined Mr. McPhail in 2018.

[10] This Court rejected all other arguments by Mr. McPhail, noting that many of the propositions he put forward in his factum lacked a foundation and were not arguable. Importantly, this Court rejected Mr. McPhail’s argument that the trial judge made many other errors of fact or erred in her findings regarding Mr. McPhail’s lack of credibility and reliability. This Court found no error in the trial judge’s assessment of the physical effects of the accident and damages related to those effects.

[11] Again, the only error found by this Court on the first appeal was that the trial judge overlooked Dr. Lari’s evidence that Mr. McPhail had some continuing psychological injury caused by the accident. This Court noted that this might have impacted the damage award, particularly non-pecuniary damages (also known as

general damages), although the Court did not pre-judge whether any other damage award might be affected. As a remedy, this Court ordered the matter be remitted to the trial judge to reconsider her award with a proper understanding of the psychiatrist's evidence.

[12] Specifically, this Court said in the First CA Reasons:

> [32] The respondent says that the damages award was within the appropriate range, even if the continuing psychological condition did not form part of the basis for the judge's award. In my view, the failure of the judge to consider what might be an important component of the damages in making her award cannot be dismissed simply by considering whether, in some sense, the damages awarded might fall within an appropriate range. Mr. McPhail was entitled to have his continuing psychological injury assessed by the judge.
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> [33] At the very least, the continuing psychological injury does not appear to be a trivial one, and would appear to justify at least a modest increase in general damages. Depending on the judge's assessment of the injury, it might be seen as more important. There is even a possibility that the judge might wish, in light of the psychiatrist's evidence, to reassess her conclusion that no loss of earning capacity or cost of future care has been proven.
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> [34] It is impossible for us to know what impact resulted from the judge's misapprehension of the psychiatrist's evidence. It will, however, be a comparatively straightforward task for her to reconsider the award in light of what the psychiatrist said in his report and in his testimony. In the interests of efficiency, the matter should be remitted to the trial judge in order for her to reconsider the issue.
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> [Emphasis added.]

[13] It is clear from the above passage that this Court was not directing a re-opening of trial to re-hear evidence on all issues. Rather, this Court was allowing the parties to make arguments on the proper assessment of damages, based on the evidence already led at trial, in light of the Court's finding that the trial judge had misapprehended the opinion evidence of Dr. Lari that the accident had caused a diagnosable mental injury which continued to affect Mr. McPhail.

Remittal to Trial Court

[14] Mr. McPhail did not diligently advance his claim following the appeal judgment. After one year passed, counsel for the respondent initiated a judicial

management conference (“JMC”) in the trial court on March 27, 2023 to discuss the process going forward.

[15] Since the trial judge had retired, the matter was assigned to another judge (the “remittal judge”).

[16] The respondent’s position was the matter should proceed on limited written submissions, based on the evidence that was before the trial judge.

[17] Mr. McPhail’s position was a little more difficult to discern. Mr. McPhail was accompanied by counsel in this hearing, although counsel explained he had not yet been retained on the matter, and Mr. McPhail largely spoke on his own behalf.

[18] Mr. McPhail suggested that he wished to obtain legal advice as to his options. He was equivocal as to whether he thought he might want to introduce new evidence, but suggested he might want to get a vocational expert. The remittal judge informed him that the case of *R. v. Palmer*, [1980] 1 S.C.R. 759 [*Palmer*] set out the requirements for parties seeking to lead new evidence after trial. A fair reading of the transcript is that the remittal judge suggested to Mr. McPhail that if evidence was available but not sought at the time of trial, which is what it sounded like, it might not fit the test. However, the remittal judge did not make any rulings in that regard.

[19] The remittal judge was not amenable to Mr. McPhail’s submissions that he needed more time, noting that Mr. McPhail had a year to obtain legal advice since the appeal judgment and the accident had happened more than ten years’ prior. He directed that the matter proceed by way of written submissions, on a schedule. The remittal judge initially suggested that the respondent’s written submissions be filed first. However, after Mr. McPhail indicated that he preferred to make written submissions first, the remittal judge directed that he could do so.

[20] Mr. McPhail provided his main written submission on April 17; the respondent provided a written submission on May 8, and Mr. McPhail provided a written reply on May 15, 2023.

[21] In his written submission, Mr. McPhail argued that:

a) His non-pecuniary award should be increased to a total of $335,000 to recognize his ongoing physical injuries to his neck and back and resulting pain, his mental injuries, and his reduced marriageability.

b) He should be awarded damages for reduced marriageability in the amount of $224,960, as the injuries caused by the accident directly affected his ability to form and maintain an interdependent relationship within which he could receive financial benefit.

c) He should be awarded damages for loss of past and future earning capacity, and loss of opportunity, totalling approximately $1.385 million (as set out in his written submission, although the Remittal Reasons at para. 78 refers to this claim totalling about $1.2 million). In summary, he argued that his very low actual earnings after the accident were a result of his accident-related injuries and had the accident not occurred, he would have substantially higher earnings commensurate with his level of education. He submitted the previous trial judge erred in finding there was no reasonable possibility he would have been earning more but for the accident, as the trial judge erred in finding the accident did not cause him a mental injury. Key to his proposed damage assessment was his argument that it was “reasonably possible” that but for the accident, he would have worked at a position “earning much more than the average Master’s salary”.

d) He should be awarded damages for future care costs, equal to the cost of 12 counselling sessions, as recommended by Dr. Lari. He should also be awarded damages equal to the cost of an annual gym membership for 50 years.

e) There should be a finding that it was reasonable for him not to accept the September Offer on which the trial costs award was based, because at the time of receiving the offer his judgment was impaired by psychological

> symptoms which, based on the now correctly understood evidence of Dr. Lari, were caused by the motor vehicle accident.

[22] In addition, Mr. McPhail argued that he should be permitted to provide additional evidence: a report from an economist, vocational expert, and sociologist, and further earnings information to support his claims of loss of earnings, future loss of earning capacity, and loss of opportunity, as well as his new claim of loss of marriageability. He submitted that this evidence would meet the *Palmer* criteria because at the time of the trial, his accident-related injuries caused him financial hardship and impaired his judgment, which prevented him from exercising due diligence.

[23] The respondent, in written submissions, took the position that the trial judge's original award appropriately compensated Mr. McPhail for all his injuries. Alternatively, the respondent submitted that the recognition of psychological symptoms caused by the accident justified at most a modest increase to the non-pecuniary damages award.

[24] The respondent submitted that the revision of the trial judge's findings on the cause and duration of Mr. McPhail's psychological symptoms did not change her findings on any other head of damage.

[25] The respondent argued that Mr. McPhail failed to demonstrate the functional impact of his psychological injuries. The respondent emphasized that Dr. Lari testified during cross-examination that: Mr. McPhail had told him his mental health symptoms had no impact on his occupational, social and personal life; and he could not give an opinion on the impact of these symptoms on Mr. McPhail's ability to work in his chosen field.

[26] The respondent also submitted that Mr. McPhail led no evidence at trial as to his alleged reduced marriageability and its connection with his psychological symptoms.

[27] The respondent emphasized that Mr. McPhail led no evidence at trial to demonstrate his employment history and prospects prior to the accident.

[28] The respondent opposed Mr. McPhail's request for leave to adduce new evidence, taking the position that Mr. McPhail had not established that he could not have called it at the first trial; and further, it was not relevant to the sole question that was remitted to the trial court, namely, the impact of Dr. Lari's evidence that there was a causal connection between the plaintiff's psychological symptoms and the accident on the award of damages.

[29] The respondent also submitted that the trial judge's award of costs remained appropriate, as the trial judge considered Mr. McPhail's psychological symptoms in determining that the $100,000 September Offer reasonably ought to have been accepted.

[30] In his written reply submission, Mr. McPhail repeated and expanded on much of his earlier argument. He stated that the new evidence he wished to call "would consist of income reports of additional tax years following trial that support the plaintiff's claims of significant and sustained depressed earnings following the accident"; and fresh evidence "would consist of reports from a vocational expert and sociologist to tabulate the pecuniary loss of earnings and reduced marriageability".

[31] The remittal judge issued his judgment on July 28, 2023. He did not permit Mr. McPhail to call new or fresh evidence. After citing *Palmer* and the more recent case of *Barendregt v. Grebliunas*, 2022 SCC 22, he held that Mr. McPhail had not met the due diligence requirement, although he recognized this factor was less stringent when there is a reviewable error in the trial decision. The remittal judge rejected Mr. McPhail's argument that he was not capable of making decisions about his claim in advance of the first trial or significantly affected by UTSD in this regard: para. 41. Nor did Mr. McPhail show that he could not have called evidence from an economist, vocational expert, or sociologist at the first trial. The remittal judge held that he was "unwilling to allow the plaintiff to essentially relitigate his case": Remittal Reasons at para. 42.

[32] The remittal judge also commented that absent any specificity about the content of the proposed evidence, he could not assess whether it met the other *Palmer* factors, including being credible, reliable, and reasonably expected to affect the result.

[33] The remittal judge then turned to the topic of the duty to mitigate. Dr. Lari's report in June 2018, which formed part of the evidence in the original trial, opined that the plaintiff would benefit from psychological treatment of 12 to 16 sessions of cognitive behavioural therapy, and that had he done so following the accident, his symptoms might have been reduced or resolved by the time that Dr. Lari examined him: paras. 54–55.

[34] The remittal judge held that Mr. McPhail's family doctor had diagnosed him with PTSD after the accident in 2012, and recommended treatment. He found that Mr. McPhail ought to have undergone that treatment and had he done so, there was a real and substantial possibility that his mental health condition attributable to the accident would have become asymptomatic by the time of trial: para. 57.

[35] The remittal judge stated that his finding that Mr. McPhail had failed to mitigate his mental health damages limited the amount he would assess for non-pecuniary damages.

[36] The remittal judge then reassessed non-pecuniary damages. After considering comparator accident cases involving some mental health symptoms, he found the case of *Zaluski v. Verth*, 2015 BCSC 1902 [*Zaluski*] a helpful comparator. In that case the injuries were more severe and the plaintiff was awarded $50,000. Taking into account that the injuries here were less severe, and the impact of inflation on the *Zaluski* assessment, the remittal judge ordered that the award of non-pecuniary damages should be increased from $35,000 to $50,000 to account for Mr. McPhail's accident-related mental health symptoms.

[37] The remittal judge also held that there should be an increase in the award of damages for cost of future care in the amount of $3,600 to account for the counselling sessions recommended by Dr. Lari.

[38] The remittal judge found no basis to award damages for past and future loss of earning capacity. He noted, among other things, at para. 87:

> … The plaintiff has failed to lead any admissible, reliable evidence of his earning potential before the accident. His bare assertion that after the accident he was only earning $12,000 when he ought to be earning more is not sufficient.
>
> [Emphasis added.]

[39] The remittal judge also rejected Mr. McPhail's claim for damages for loss of marriageability. Not only was this not argued before the original trial judge, there was no supporting evidence showing that the accident caused Mr. McPhail a decline in the ability to sustain an interdependent relationship.

[40] The remittal judge also did not interfere with the trial judge's costs ruling. Even taking into account the additional damages, the total award would still be only $56,075, well below the September Offer. However, he awarded Mr. McPhail costs in relation to the remittal hearing.

[41] Prejudgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996 c. 79 was awarded, but was statutorily limited to the past expenses of physiotherapy totalling $2,475 awarded by the trial judge.

Issues

[42] Mr. McPhail appeals from the order of the remittal judge. He raises multiple issues, which I will organize as substantive issues, procedural issues, and arguments related to new evidence.

[43] The substantive issues raised by Mr. McPhail on appeal are:

a) this Court made multiple errors on the first appeal in the First CA Reasons including:

i. failing to overturn the trial judge for her errors in: relying on the medical evidence of a neurologist, Dr. Stewart, who carried out an independent medical examination of Mr. McPhail; finding that Mr. McPhail had recovered from his physical injuries caused by the accident by May 2013, including by giving weight to the fact he competed in the 122 km GranFondo bike race in September 2013; concluding in her costs award that Mr. McPhail ought to have accepted the September Offer; and

ii. remitting the matter to the BC Supreme Court as a remedy rather than awarding sizeable pecuniary and non-pecuniary awards.

b) The remittal judge erred in several ways, including:

i. relying on findings of the trial judge including with respect to Mr. McPhail's credibility;

ii. admitting the evidence of Dr. Lari from the first trial and relying on it;

iii. failing to award damages for lost income;

iv. failing to award damages for loss of marriageability; and

v. basing a duty to mitigate on a palpable and overriding error of fact and in circumstances where it was not argued by the defence.

[44] I will deal with the duty to mitigate as a separate issue.

[45] Mr. McPhail also argues that the remittal hearing was procedurally unfair and raised a reasonable apprehension of bias.

[46] Mr. McPhail further complains about the dismissal of his application to introduce fresh or new evidence at the remittal hearing, and he brings another application to introduce additional fresh and/or new evidence in this Court.

[47] The respondent says that Mr. McPhail's appeal has no merit and his application to introduce new evidence on appeal should be dismissed.

Analysis

Substantive issues

[48] As noted, Mr. McPhail raises several issues on appeal with the findings of the original trial judge, the conclusions of this Court on the first appeal, and the findings in the Remittal Reasons. I find it unnecessary to review each of these arguments in detail. This is because other than with respect to one issue related to the duty to mitigate, which I will come to, there are two fundamental problems with Mr. McPhail's arguments which he has not overcome:

a) he called no credible or reliable collateral witnesses at trial to give evidence as to what his abilities and circumstances were before the accident; and

b) he ignores the principle of finality which is a fundamental underpinning of the justice system.

Standard of review

[49] Mr. McPhail primarily takes issue with factual findings of the trial judge and the overall damage award. The appropriate standard of review on questions of fact is a deferential one. Absent a demonstrated palpable and overriding error, an appellate court will not interfere with the trial judge's findings of fact: *Housen v. Nikolaisen*, 2002 SCC 33 at para 1.

[50] A trial judge's assessment of damages also attracts a deferential standard of review. An appellate court may not interfere with a damage award simply because it would have come to a different conclusion on the evidence. Appellate intervention is only warranted where the trial judge's assessment is based on a wrong principle of law, unsupported by any evidence, or so inordinately low or high that it must be "wholly erroneous": *Woelk v. Halvorson*, 1980 CanLII 17 (SCC), [1980] 2 S.C.R. 430 at 435–36; *Reilly v. Lynn*, 2003 BCCA 49 at para. 99.

A lack of independent collateral evidence undermines the claims

[51] The crux of Mr. McPhail's argument on the substantive issues on appeal is that the courts at the trial and appeal level have erred in not recognizing that his low earnings and lack of marriage-like relationship were caused by the accident. However, there is a fundamental flaw in Mr. McPhail's argument, and that is the absence of evidence at trial from independent collateral witnesses that would have provided a foundation for the trial court to determine what his abilities were before the accident, and to infer that the accident caused him a loss or diminishment of these abilities post-accident.

[52] In personal injury cases, the burden of proof is on the plaintiff to show that the negligence complained of caused them the losses they claim. For past losses, the standard is "on a balance of probabilities": *Reynolds v. M. Sanghera & Sons Trucking Ltd.*, 2015 BCCA 232 at para. 15. The plaintiff must show that it is more likely than not that the loss occurred as a result of the accident. For future losses, the standard is a "real and substantial possibility". In other words, the plaintiff needs to provide evidence that allows the judge to have a realistic, and not merely speculative, picture of how their life would have proceeded if the accident had not occurred: *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183 (SCC), at para. 27. To show a future loss of earning capacity, the plaintiff must show that they have or may develop functional limitations as a result of the accident, which would result in a real and substantial possibility of a reduction of their earning capacity into the future. Once this has been shown, the next step is quantifying the loss: *Rab v. Prescott*, 2021 BCCA 345 at para. 47.

[53] To meet this burden, generally speaking, plaintiffs in personal injury cases attempt to show what their lives were like before the accident to support inferences as to what their life would have been like in the future if the accident had not happened. This "before accident" evidence is contrasted to the "after accident" circumstances of the plaintiff: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para 32. This is necessary to assist the judge in

determining what was a real and substantial possibility in the future "but for" the accident.

[54] Often evidence of pre-accident circumstances is called from collateral witnesses: co-workers; employers; friends; family members; and depending on the plaintiff's age and stage of life, teachers, whose evidence may be supported by school records. For example, in the case of *Rattan v. Li*, 2022 BCSC 648, the plaintiff's witnesses included her daughter, husband, friend, co-worker, and former supervisor, and their evidence was remarkably consistent: at para. 6. Where a plaintiff's evidence is found by a trial judge not to be credible or reliable, the evidence from these collateral witnesses can be critically important.

[55] No such collateral witnesses were called to give evidence at trial here.

[56] This was the essential problem with Mr. McPhail's case for damages for loss of earning capacity and cost of future care. The trial judge found Mr. McPhail's own testimony not to be credible or reliable, but he called no credible or reliable witness who could speak to what his abilities and circumstances were before the accident. The trial judge repeatedly commented negatively on this: see Trial Reasons at paras. 18, 24, 99, 111, 117, and 142.

[57] Notably, in respect of his claim for millions in damages for loss of earning capacity, Mr. McPhail called no independent collateral witnesses who might have given evidence as to his pre-accident ability to function in a workplace environment. This was despite the fact that he was 32 at the time of the accident and 38 by the time of trial in 2018. He called no evidence from any co-worker; employer; or even an academic supervisor; or anyone else who would have been close to him in his life pre-accident.

[58] Instead, Mr. McPhail relied only on his own testimony as to his high educational achievements (which was not supported by transcripts), and then contrasted this to his current work as a mover with a very modest income. He argued that the fact he was not working at a higher level commensurate with his

education, logically proves that the injuries caused by the accident derailed his career.

[59] This argument was rejected by the trial judge.

[60] I accept as a very general proposition that higher education may lead to higher incomes for some people. Educational achievement is one piece of relevant evidence as to a person's earning capacity.

[61] However, I also observe that the mere fact that a person is highly educated does not automatically prove that there is a real possibility that the person will obtain high-paying work. There can be a whole variety of reasons that an adult's educational attainment does not translate to the employment marketplace, including reasons having to do with the specialized topic of education or one's own aptitude.

[62] The trial judge had several reasons for not accepting Mr. McPhail's testimony that the accident left him with severe injuries impacting his career, including: evidence of a pre-existing tendency to exaggerate the impact of medical issues on his life; a disparity between what Mr. McPhail said he would have achieved but for the accident and evidence of his past academic activities; evidence of his post-accident physical activities and notes from Mr. McPhail's physiotherapist which indicated his physical injuries had mostly resolved before trial.

[63] For example, the trial judge noted that Mr. McPhail had a groin cyst before the accident, and he was awaiting surgery for its removal. He wrote a letter to the doctor, complaining about the delay, as set out in the Trial Reasons at para. 26:

> Please understand that this health problem has completely changed my life. I am in a stressful MSc program and I exercise to relax. It is hard to work hard when you can't play hard. I also can no longer bike to school while this cyst is around.
>
> I missed a triathlon this summer and the good health that goes along with it while waiting.
>
> I have to focus on what I can control, and that is half-measure and alternate exercise in the meantime. …It is unacceptable that someone in the prime of

> their life would wait eight months or longer for day surgery that inhibits their ability to commute or exercise…
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> [Emphasis added.]

[64] Mr. McPhail's complaint to a physician that a groin cyst "completely changed my life", and caused him difficulty working, was disproportionate.

[65] It seems clear from the whole of the trial judge's reasons that she concluded his letter together with his other evidence revealed a tendency by Mr. McPhail to exaggerate the impact of a medical problem on his life and this tendency pre-dated the accident. His evidence was conclusory and not objective, and it damaged both his credibility and his reliability: Trial Reasons at para. 104.

[66] As another example, the trial judge contrasted Mr. McPhail's evidence on the extent that the accident limited him in his professional activities, with the actual extent of those activities in the year prior to the accident. Mr. McPhail testified that without the accident he would have attended 15 conferences plus done two more internships on top of finishing his thesis and physically training 20 hours per week. However, in the year prior he had attended only about four conferences: Trial Reasons at paras. 50–51. He also was already behind on his thesis before the accident (it should have been completed by 2011 as he started the program in September 2008), and the accident did not prevent him from completing it subsequently: Trial Reasons at paras. 13–14. He was not accepted into a PhD program in 2011, which had nothing to do with the accident: Trial Reasons at para. 19.

[67] Mr. McPhail did not provide clear evidence as to what he did in the year after receiving his Master's degree in the Fall of 2013: Trial Reasons at para. 57. There was a large gap in his family physician's evidence, who saw him after the accident in December 2012, but not again until June 2014: Trial Reasons at para. 58. His family physician's evidence relied almost entirely on Mr. McPhail's subjective reports.

[68] It was because of the lack of objectivity, credibility and reliability of Mr. McPhail's testimony that the trial judge concluded she could not accept his

description of how the accident affected his pre-existing capabilities, without some independent collateral evidence.

[69] The trial judge paid careful note to the detailed records of Mr. McPhail's physiotherapist who treated him for about 5 months following the accident, and who noted Mr. McPhail's return to a great deal of physical activity (skiing, swimming, cycling including the GranFondo, running). The physiotherapist recorded Mr. McPhail's report that he was feeling 90% by April 16, 2013: Trial Reasons at paras. 39–47, 122. This was in contrast to Mr. McPhail's testimony that there remained serious ongoing physical effects of the accident.

[70] In the First CA Reasons, this Court acknowledged the original trial judge's concerns about a lack of collateral evidence: paras. 22, 29, 30. This Court accepted the trial judge's findings that by the time Mr. McPhail defended his thesis in May 2013, he had essentially recovered physically: Trial Reasons at para. 24.

[71] This Court noted in the First CA Reasons:

> [29] … [O]nce Mr. McPhail's evidence was discounted, there was simply no evidence to support the inferences he sought to have drawn.
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> [30] There was an abundance of evidence calling into question the nature and extent of Mr. McPhail's injuries. Indeed, it would have been difficult for any judge to square Mr. McPhail's description of his circumstances with the objective evidence of his physical capabilities in the months following the accident and at the date of trial. In particular, it is noteworthy that Mr. McPhail engaged in extensive and physically demanding athletic activities, and later took employment doing heavy labour work as a mover.
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> [Emphasis added.]

[72] On the remittal, the remittal judge noted these same concerns: Remittal Reasons at paras. 82–87.

[73] Contrary to Mr. McPhail's arguments on remittal and on appeal, Dr. Lari's evidence regarding Mr. McPhail having a continuing psychological injury caused by the accident, does not lead inevitably to the conclusion that this injury caused Mr. McPhail to suffer pecuniary losses. Dr. Lari did not give evidence that these psychological symptoms caused Mr. McPhail difficulties with his earning capacity or

relationships. Rather, Dr. Lari appears to have accepted Mr. McPhail's own statements that they did not have a significant impact on his day-to-day life and that he was working full-time. Mr. McPhail has not established any error in the remittal judge's reliance on Dr. Lari's evidence.

[74] Again, the lack of any collateral evidence as to Mr. McPhail's functional abilities pre-accident undermined his claim on remittal that any psychological injury had a pecuniary impact: see Remittal Reasons at paras. 86–87.

[75] As for Mr. McPhail's claim that the accident caused him a loss of marriageability, and without accepting that there are not other insurmountable problems with this claim, in my view this claim suffered from the same lack of collateral evidence. At trial Mr. McPhail called no evidence from a close friend or family member to support the inference that he was functioning well socially prior to the accident and was capable of forming and maintaining lasting relationships.

[76] The trial judge did not have sufficient reliable evidence of the "before accident" picture of Mr. McPhail's ability to function in a work environment and in his inter-personal relationships, and so was unable to infer that the accident caused him problems in these areas of his life. In other words, even if he is having problems in these areas of his life post-accident, the court was left with the equal inference that he would have had them in any event and they had nothing to do with the accident.

[77] This lack of sufficient reliable evidence to support Mr. McPhail's claims of diminished earning capacity and loss of marriageability remained an insurmountable problem at the remittal hearing and remains an insurmountable barrier to Mr. McPhail's several substantive issues raised on this appeal.

[78] In short, leaving aside findings on failure to mitigate which I will come to, there is no basis to interfere with the conclusions of the remittal judge, including the conclusions that Mr. McPhail did not prove he suffered any loss of earning capacity or loss of marriageability caused by the accident.

The finality of previous decisions

[79] The other fundamental flaw in Mr. McPhail's many substantive arguments on appeal is that these arguments do not appear to appreciate that the remittal to the trial court was on a narrow issue only. The remittal hearing was not an opportunity for Mr. McPhail to relitigate his entire claim, nor is this appeal such an opportunity. This Court's earlier judgment is final, including to the extent it dismissed Mr. McPhail's appeal from many of his other challenges to the trial judge's findings.

[80] The principle of finality means that after trial has concluded, the result cannot be continually adjusted for changing circumstances or because a litigant has decided to obtain additional evidence, including in cases involving personal injuries: *Townsend v. Kroppmanns*, 2004 SCC 10 at paras. 18–20. The law seeks to reach a conclusion to litigation, for the benefit of the parties and the justice system as a whole, and for this reason litigants are required to put their best foot forward when they first have the opportunity to prove their case at trial: *J.P. v. K.S.*, 2025 BCCA 112 at para. 100, citing *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at para. 18.

[81] Here, Mr. McPhail raises several challenges to this Court's First CA Reasons. This is not the appropriate venue for these arguments. One division of this Court does not sit on appeal of another division's ruling. If Mr. McPhail wanted to appeal this Court's First CA Reasons, his route was to apply for leave to appeal to the Supreme Court of Canada. Absent such an appeal, the First CA Reasons are final.

[82] Mr. McPhail also continues to raise several challenges to the trial decision. This Court's rejection, in the First CA Reasons, of Mr. McPhail's many other challenges to the Trial Reasons means that Mr. McPhail is bound by the findings of the trial judge on these points. Again, the remittal to the trial court was simply to reconsider the assessment of damages in light of the properly understood psychiatric evidence of Dr. Lari heard at trial. It was not a rehearing of all other issues decided against Mr. McPhail at the original trial. Nor was it a new opportunity

to argue new heads of damages that were not advanced at trial, such as loss of marriageability.

[83] The remittal judge was not in error in refusing to reconsider all of the trial judge's original findings of fact, nor was he in error in refusing to accept a newly argued category of damages, loss of marriageability.

Procedural issues and fresh evidence

[84] Mr. McPhail also suggests that he did not have a procedurally fair hearing before the remittal judge.

[85] Mr. McPhail says he did not understand the procedure for seeking to introduce new or fresh evidence and the remittal judge decided the matter without giving him a proper opportunity to call this new or fresh evidence.

[86] However, in my view, this argument does not assist Mr. McPhail. Leaving aside any other problems, the type of new or fresh evidence he described to the remittal judge as wanting to call was expert evidence relating to post-accident circumstances. It did not address the two insurmountable problems I have identified: the lack of independent, reliable evidence as to how Mr. McPhail in fact functioned in the workplace or in other relationships before the accident; and the fact that the Trial Reasons were final except with respect to the narrow issue which was the basis for remittal.

[87] Even if, as Mr. McPhail contends, the remittal judge ought to have relaxed the requirement for due diligence, Mr. McPhail still cannot show that the new evidence could reasonably be expected to affect the result. The problem with Mr. McPhail's case was not simply a lack of expert evidence, it was a lack of evidence from independent collateral witnesses that would have provided the court with a basis to assess Mr. McPhail's abilities before the accident.

[88] Again, given that the trial judge found Mr. McPhail's evidence to not be credible or reliable, there had to be some other independent evidence as to how he

functioned at work or in an academic environment, and in relationships, before the accident. Without this evidence, Mr. McPhail's own evidence on his limitations post-accident could not prove that these self-expressed limitations were caused by the accident. The possible new expert evidence he alluded to on remittal would not fill this causation gap.

[89] The same can be said about Mr. McPhail's application to introduce additional evidence on appeal. In this Court he seeks to introduce four reports of experts he did not call to give evidence at the original trial: a psychiatrist, Dr. Ganesan, whose report is dated January 3, 2025; a psychologist, Dr. Sotskova, whose report is dated January 7, 2025; a vocational rehabilitation consultant, John Lawless, whose report is dated January 7, 2025; and an economist, Darren Benning, whose report is dated June 20, 2024.

[90] The psychiatric and psychologist's reports dated in January 2025 were not reports described by Mr. McPhail when he told the remittal judge that he wished to call new evidence. Regardless, these and other expert reports he has produced on appeal do not remedy the lack of collateral evidence regarding Mr. McPhail's functional abilities pre-accident. They cannot assist Mr. McPhail on appeal and I would not admit them. I find it unnecessary to review in detail other arguments by the respondent as to additional reasons these reports are inadmissible.

[91] Mr. McPhail has alluded to the difficulties he faced representing himself because of his psychological symptoms, in effect suggesting he should be given more leeway to reopen his case with new evidence on appeal. However, even though Mr. McPhail had some psychological symptoms caused by the accident, they were not such as to disqualify him from representing himself, or from making choices as to what evidence he might choose to call at trial. Courts must ultimately accept the rights of individuals to make their own choices as to how they present their cases. Mr. McPhail is not entitled to a re-trial simply because, with hindsight, he wishes he had run his case differently. This would undermine the goal of ensuring that litigants put their best foot forward at trial and the goal of finality.

[92] As another procedural issue, Mr. McPhail submits that the remittal judge showed bias at the JMC in suggesting the respondent should file written submissions first, before Mr. McPhail.

[93] I note that as a self-represented litigant, this direction would have given Mr. McPhail the opportunity to see the defence position first and be educated by it as to what hurdles were necessary to overcome, so that he could address those hurdles in his own materials. In context this could have been an advantage to him and a disadvantage to the respondent.

[94] Regardless, when Mr. McPhail objected to this order of submissions, the remittal judge accepted his wish to file his materials first. There is no merit to the suggestion that this raised a reasonable apprehension of bias.

[95] I would therefore not accede to Mr. McPhail's grounds of appeal based on these procedural matters and new evidence.

Failure to mitigate

[96] I return to the substantive issue on appeal challenging the finding of the remittal judge that Mr. McPhail failed to mitigate his psychological injuries. Mr. McPhail submits that the remittal judge made two errors in reducing his non-pecuniary damages related to his psychological symptoms, based on his conclusion that Mr. McPhail did not mitigate these symptoms:

a) The respondent did not submit that there was a failure to mitigate and so the remittal judge ought not to have raised the issue on his own; and

b) The remittal judge made a palpable and overriding error of fact in finding that Mr. McPhail did not follow the advice of his general physician, Dr. Edamura, in 2012, regarding treatment of his PTSD. Dr. Edamura did not advise him to seek treatment for PTSD.

[97] The respondent does not seriously dispute the second error.

[98] On the first alleged error, the respondent says that because a failure to mitigate argument was part of the respondent's position at the first trial, the remittal judge was free to explore the argument his own at the remittal hearing, even if it was not raised again by the respondent in that context.

[99] It appears that the topic of Mr. McPhail not seeking out treatment after his general physician diagnosed him with PTSD did come up at trial, when Mr. McPhail gave evidence. The trial judge held, in the context of reviewing the facts of Mr. McPhail's post-accident rehabilitation in 2013:

> [49] According to Mr. McPhail, he did not seek any treatment for his PTSD symptoms, at least in part because of all the other demands on his time and the "severe time pressure" he felt he was under because of how he felt he was functioning. According to Mr. McPhail, he did not feel he was able to think in the same way as before the accident. Mr. McPhail explained that Dr. Edamura had not recommended any counselling for his PTSD symptoms. He explained further that he did his own research concerning how to reduce what he considered his PTSD symptoms and also had discussions with others in his department at UBC about what he should do. According to Mr. McPhail, he felt that self-management of his symptoms was sufficient, especially because he was also managing his physical symptoms and the damage to his career.

[100] Nevertheless, the remittal hearing was based on the submissions of the parties as to how the damages assessment might change in light of a proper understanding of Dr. Lari's evidence regarding Mr. McPhail having psychological symptoms caused by the accident. The respondent made no submission that if Mr. McPhail was entitled to damages due to his psychological injuries, he failed to mitigate those damages. Mr. McPhail therefore had no notice that he needed to reply to such a position.

[101] There is no dispute that the onus is on a defendant to prove failure to mitigate: *Haug v. Funk*, 2023 BCCA 110 at para. 56. In my view, it was an error for the remittal judge to consider the issue when the respondent had not raised it in his submissions at the remittal hearing. If the remittal judge was concerned about the issue; at a minimum the parties ought to have been given a chance to address it first before a decision was made.

[102] I also accept Mr. McPhail's argument that his general physician, Dr. Edamura, did not make recommendations to him regarding treatment for his psychological symptoms. The finding of the remittal judge to the contrary was in error, namely, at para. 57 when he found that had Mr. McPhail followed this recommendation in 2012, his mental health condition would have become asymptomatic by the time of trial.

Reassessment of non-pecuniary damages

[103] Since the remittal judge erroneously took failure to mitigate into account in his assessment of the impact of the psychological injury on non-pecuniary damages, we are required to reassess those damages.

[104] In doing so, I would rely on Dr. Lari's evidence regarding the extent of Mr. McPhail's symptoms. His evidence was impartial and credible.

[105] I repeat the summary of Dr. Lari's evidence set out in the Remittal Reasons:

> [9] At paras. 93 and 95–97 of the *Trial Reasons*, Adair J. summarized the evidence of Dr. Lari, the only psychiatric witness, as follows:
>
> > [93] With respect to psychiatric diagnoses, Dr. Lari's opinion was as follows:
> >
> > > Mr. McPhail reports some of the features of Posttraumatic Stress Disorder (PTSD) following the MVA of 2012. However, I am unable to tell if he met the full diagnostic criteria of PTSD after the index MVA. In my opinion, Mr. McPhail developed the symptoms as a direct consequence of the MVA of 2012.
> >
> > His medical treatment notes indicate some of the features of PTSD and a diagnosis of PTSD was mentioned in Medical Legal Report of Dr. Arthur Edamura (dated May 7, 2015). But the information available to me is not comprehensive enough to support full diagnosis.
> >
> > Mr. McPhail scored 12 on PCL-5 completed at time of my assessment. PCL-5 is a commonly used psychiatric rating scale for PTSD. A total score of 33 or higher suggests the patient needs further assessment to confirm a diagnosis of PTSD.
> >
> > During my assessment he reported some of the features of PTSD as well as he denied any significant impact of the trauma symptoms on his current day to day life and thus I am diagnosing him with Unspecified Trauma-and Stressor Related Disorder and not PTSD.

> He unfortunately denies trying any treatment for PTSD. He would benefit from seeing a Psychologist trained in treating trauma related symptoms and chronic pain.
>
> Mr. McPhail had a significant suspicious stance towards myself, healthcare and legal systems at [the] time of my assessment. His chart review also indicates behavioral difficulties towards healthcare staff in the past. It will be most helpful to refer him for a Psychological assessment including personality assessment to rule out any underlying personality disorder / traits contributing towards his current difficulties. Collateral history from family members would also be invaluable.
>
> He is currently working full time and denies any current significant impairment / disability arising from mental health symptoms.

...

[95] In a brief addendum report dated June 28, 2018, Dr. Lari wrote:

> 1. My diagnosis of Unspecified Trauma-and Stressor Related Disorder remains the same.
> 2. Mr. McPhail denied any treatment for his trauma related symptoms following the MVA of 2012. If he may have participated in appropriate treatment his symptoms may have further reduced if not resolved by now.
> 3. Mr. McPhail would benefit from participating in Cognitive Behavior Therapy (CBT). CBT will help improve his psychosocial functioning and reduce his mental health symptoms. A standard CBT course includes 12 - 16 sessions, subject to re-evaluation.
> 4. Mr. McPhail reports ongoing pain since the MVA of 2012. He would benefit from seeing a Psychologist trained in CBT for both chronic pain and trauma. CBT will help him learn psychological skills to deal with his reported chronic pain. The psychologist could also help clarify psychological contribution towards his symptom of pain.

[96] ... Dr. Lari pointed out that what he observed in Mr. McPhail at the time of the assessment was anxiety, rather than a negative affect. Mr. McPhail put to Dr. Lari that his homelessness was an example of distress for purposes of satisfying Criterion G [of the DSM-5] for the diagnosis of PTSD. Dr. Lari responded that, while homelessness could be an example of distress it was not in his view because of PTSD. Rather, the distress was a result of Mr. McPhail's homelessness and financial difficulties, and Dr. Lari was unable to say why it was that Mr. McPhail could not get a job in his chosen field. Dr. Lari also mentioned that it would be helpful to have collateral

> information in order to make a final decision on the diagnosis of PTSD.
>
> [97] With respect to treatment for PTSD symptoms, Dr. Lari did not agree with Mr. McPhail that talking to a colleague was the same as seeking treatment. It was not treatment, in Dr. Lari's opinion. He repeated on cross-examination that cognitive behavioural therapy is recommended for PTSD, and also a trial of antidepressant medication.
>
> [Emphasis in original.]
>
> [10] In his evidence at trial, Dr. Lari was questioned with respect to his opinion that the plaintiff did not meet the diagnostic criteria for PTSD in the DSM-V. Dr. [Lari] reported that when he interviewed him, the plaintiff denied that his mental health symptoms were affecting his occupational, social or personal life. Based on this self-reporting, Dr. Lari opined that the plaintiff did not meet an important criterion of a PTSD diagnosis. He did not deviate from his position during cross-examination.

[106] Dr. Lari's evidence indicated that Mr. McPhail's psychological symptoms caused by the accident: involved some degree of trauma less than that which would justify a PTSD diagnosis; were observed by Dr. Lari as anxiety; were not having a significant impact on his life; and were amenable to treatment. When considered together with the trial judge's other findings as to how Mr. McPhail was able to resume the many physical activities that he enjoyed after the accident, I conclude that his psychological symptoms caused by the accident had only a minor impact on his enjoyment of life.

[107] Thus, Mr. McPhail suffered some physical injuries in the accident that had largely resolved within a year, and some ongoing psychological symptoms that were amenable to treatment and did not have a significant impact on his enjoyment of life. The evidence does not support a conclusion that these injuries impacted his ability to work.

[108] The purpose of general damages, or non-pecuniary damages, is to compensate someone for what is commonly known as "pain and suffering" or loss of enjoyment of life. Assessing non-pecuniary damages requires looking at the severity of the injury that the plaintiff suffered as a result of the defendant's negligence, but also at the extent of the individual's loss as a result of that injury, which will depend

on other factors. The non-exhaustive list of relevant factors includes (a) the age of the plaintiff, (b) the nature of the injury, (c) the severity and duration of pain, (d) any disability, (e) emotional suffering, (f) loss or impairment of life, (g) impairment of important relationships, (h) impairment of physical and mental abilities, (i) loss of lifestyle, and (j) the plaintiff's stoicism (which should not penalize the plaintiff): *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46. Where, as here, the appellant has only proven relatively minor injuries, and has not proven that these injuries have impacted his life and relationships to any extent, the range of damages is modest.

[109] The remittal judge found that the facts of *Zaluski* offered a useful comparison. That case involved a 40-year-old plaintiff who, as a result of a motor vehicle accident, sustained a mild soft tissue injury to her neck which affected her shoulders and back, and suffered a somatic symptom disorder as well as anxiety and depression. The trial judge found her to have exaggerated the severity and duration of her symptoms, and did not accept that her psychological condition disabled her from working. The judge rejected the argument that the plaintiff failed to mitigate, and awarded $50,000 for non-pecuniary damages.

[110] In using *Zaluski* as a comparison, it is clear to me that the remittal judge did not notionally deduct much from the award of non-pecuniary damages for failure to mitigate.

[111] As other comparisons, the following cases involved similarly aged plaintiffs who suffered some psychological and some minor physical injuries as a result of motor vehicle accidents:

- *Prasad v. Dhadda*, 2022 BCSC 781 [*Prasad*]: the plaintiff was 32 and 36, respectively, at the time of the two car accidents that were the subject of her claim. In each accident, the plaintiff's airbags were deployed and she was taken to hospital. Concerns about the plaintiff's credibility and reliability left the trial judge unable to make specific findings about the impact of her injuries on her enjoyment of life. However the trial judge found that, generally, the plaintiff suffered from pain that interfered with her life and from driving anxiety

for a period of time. The trial judge assessed the plaintiff's non-pecuniary damages at $65,000, but reduced this award because of the plaintiff's failure to mitigate her damages through not seeking counselling for driving anxiety.

- *Jansson v. Malone*, 2021 BCSC 585 [*Jansson*]: the plaintiff was 45 at the time of the motor vehicle accident that caused her ongoing neck, shoulder and back pain. She required accommodations at work for her pain, which also resulted in a somatic syndrome disorder. Her driving anxiety, caused by the accident, limited her social life considerably. The trial judge found that her injuries resulted in a personality change which weakened her relationships with friends and family. The trial judge found an award of $55,000 appropriate.

- *Li v. Parmar*, 2024 BCSC 1628 [*Li*]: the plaintiff was 39 years old at the time of the first of three motor vehicle accidents that were the subject of her claim against the defendants. The defendants admitted liability for the first and third accident, but not the second. The trial judge found that the plaintiff had overstated the severity and duration of her pain symptoms, but found that she did suffer from minor soft tissue injuries and anxiety as a result of the accidents. These injuries resolved before trial. The trial judge awarded $50,000 in non-pecuniary damages, which she would increase if liability on the second accident was demonstrated.

[112] Like the plaintiff in *Prasad*, Mr. McPhail suffered some psychological impairments as a result of the motor vehicle accident, but failed to prove most of the damages that he alleged. However, the accidents in *Prasad* were much more severe, with the airbag deploying and emergency services being called in each. Similarly, the impact on the plaintiff's relationships that was an important part of the non-pecuniary award in *Jansson* was not proven in this case. At the same time, the psychological impacts in *Li* were possibly less severe and had resolved by the time of trial. Thus, it is my view that an award in the middle of the range found in these

three cases is appropriate. I also take into account the age of these authorities and the notion of inflation.

[113] In light of Mr. McPhail's circumstances, I would increase the award for non-pecuniary damages to $60,000.

Disposition

[114] I would allow the appeal and vary clause 1(a) of the order of the remittal judge by awarding Mr. McPhail non-pecuniary damages of $60,000.

[115] I would dismiss Mr. McPhail's application to file fresh or new evidence.

[116] Following the hearing of this appeal, Mr. McPhail wrote to this Court seeking leave to bring an application to submit supplementary arguments and to seal some of his records. I would not grant leave to advance these applications.

[117] Mr. McPhail has shown no error in the decision of the remittal judge in not varying the costs order made in the Trial Reasons.

[118] The respondent's settlement offer was clearly no longer outstanding at the time of the remittal hearing or at the time of this appeal and I do not consider it relevant to costs of this appeal. Mr. McPhail was successful on appeal and so the usual rule as to costs will follow, meaning he will be entitled to his costs on this appeal.

"The Honourable Justice Griffin"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Justice Edelmann"