

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Cohen v. Torrenueva*,  
2025 BCCA 150

Date: 20250407  
Docket: CA49862

Between:

**Mitchell Cohen**

Appellant  
(Plaintiff)

And

**Justine Torrenueva and Elmer Torrenueva**

Respondents  
(Defendants)

Before: The Honourable Justice Dickson  
The Honourable Mr. Justice Butler  
The Honourable Madam Justice DeWitt-Van Oosten

On appeal from: An order of the Supreme Court of British Columbia, dated  
April 19, 2024 (*Cohen v. Torrenueva*, 2024 BCSC 639,  
Vancouver Docket M150615).

## Oral Reasons for Judgment

Counsel for the Appellant: G. Cameron

Counsel for the Respondents: M-H. Wright

Place and Date of Hearing: Vancouver, British Columbia  
March 19, 2025

Place and Date of Judgment: Vancouver, British Columbia  
April 7, 2025

**Summary:**

*The appellant was injured in a motor vehicle accident. At trial, he was awarded damages for past and future loss of earning capacity. He challenges the damages award on the ground that the judge erred in excluding any consideration of a lost opportunity to secure a lucrative employment contract. Held: Appeal dismissed. The judge did not err in considering and ultimately excluding the alleged loss of opportunity, and it was open to him to conclude, on the evidence, that the appellant had not received a formal offer of employment from the relevant company.*

**DICKSON J.A.:****Introduction**

[1] The appellant, Mitchell Cohen, appeals awards of damages for past and future loss of earning capacity resulting from injuries suffered in a motor vehicle accident. He submits that the trial judge erred in his assessment of those awards by excluding any consideration of a lost opportunity to secure a lucrative employment contract, which error arose from a material misapprehension of the evidence and was premised on conjecture and speculation. According to Mr. Cohen, based on the record, including the unchallenged evidence regarding that opportunity, this Court should vary the awards of \$72,000 and \$240,000, respectively, by substituting awards of \$300,000 for past loss of earning capacity and \$700,000 for future loss of earning capacity.

[2] For the reasons that follow, I would dismiss the appeal.

**Background**

[3] The accident happened in May 2014. Mr. Cohen was 40 years old at the time. A trained electrician, he had recently completed his apprenticeship and received his Red Seal certification in 2012. At some point thereafter, he was also certified as a master electrician.

[4] Before the accident, Mr. Cohen was teaching the electrical trades part-time at a college and working part-time for electrical contractors. His goal was to open his own electrical company.

[5] Mr. Cohen suffered soft tissue injuries in the accident. As a result, he developed chronic pain in the jaw, neck, and shoulder, complicated by depression and an opioid use disorder. His symptoms were ongoing at the time of the trial.

[6] After the accident, Mr. Cohen attempted to pursue his new career as an electrician and operated his own electrical contracting company. However, by 2018 the company began to fail and, by 2020, he abandoned those efforts due to the effects of his condition and established himself in a related teaching position. By the time of trial, his condition prevented him from resuming work as an electrician. Nevertheless, there was a realistic prospect that, with treatment, his condition would improve to the extent that he could do so in the future, at least part-time.

### **At Trial**

[7] The trial was heard over the course of several weeks in 2023 and 2024, almost ten years after the accident. Among other awards, Mr. Cohen sought \$2.5 million for past and future loss of earning capacity. His theory of those damages included the loss of an opportunity to work with RAM Consulting, a project management and design company that does major project work in Canada and abroad.

[8] Specifically, Mr. Cohen sought a \$500,000 award for past loss of earning capacity that included a \$315,000 difference between his with-accident earnings and what he claimed he would have earned working for RAM from December 2021 onward. As to future loss of earning capacity, he sought a \$2 million award based on projected earnings on RAM projects, less his earnings from teaching, for an annual loss of approximately \$130,000 to age 70.

[9] The evidence regarding the alleged lost opportunity came primarily from Mr. Cohen and Russell Anderson, RAM's mechanical superintendent. Mr. Cohen testified that he met Mr. Anderson in the summer of 2021 at a social event, where they discussed electrical work and an opportunity to work on a complex project at the Vancouver Airport (the "YVR Fuel Farm project"). He stated that Mr. Anderson asked for his resume, which he provided on July 6, 2021.

[10] Mr. Cohen's resume and covering email to Mr. Anderson were marked as trial exhibits. In the email, he described the resume attached as "accurate". On the resume, under the heading "Education", Mr. Cohen listed a Bachelor of Arts in philosophy, ITABC Journeyman Electrician, and Licensed Master Electrician, but did not provide dates for those certifications. Among other things, he also represented that he was: employed as an "Electrical Supervisor/Chief Engineer (2002-Present); the "Electrical Supervisor/Chief Engineer" who "ran the 2013 power and systems upgrade" at TRIUMF on the UBC Main Campus, where his "crew decommissioned and commissioned the main particle accelerator"; and a "P/T Facility Supervisor, Engineering and Electrical" in 2012 at BC Place, where he "[m]anaged all aspects and phases of the business cycle and, while on-duty was "responsible for the entire facility". He did not include any names of references or their contact information on the resume. Under the heading "Companies that I have worked with", he listed several companies, including Ledcor, BC Hydro, and Ellis Don.

[11] Mr. Cohen testified that on December 5, 2021, he submitted a quote to Mr. Anderson and his colleague, Priya Sandhu, for work on the YVR Fuel Farm project. He said that shortly thereafter, Mr. Anderson offered him a job as the electrical superintendent, but that he declined because of his injuries.

[12] For his part, Mr. Anderson testified that he was impressed with Mr. Cohen when he met him, and that he immediately tried to hire him as the electrical superintendent on the YVR Fuel Farm project, which he described as a "very, very, very complex job electronically and mechanically". Mr. Anderson stated that, based on what Mr. Cohen had told him, his covering letter, and his resume, he thought Mr. Cohen would be a good candidate for the position. In particular, he explained, he was deeply impressed that Mr. Cohen had worked on the TRIUMF project:

When you get on the TRIUMF project, they have scoured the world looking for the best of the best for that job. And when you get on that job that is probably the feather in your cap of your career, and I cannot stress that fair enough. That is a career moment when you get on a project like that.

[13] Mr. Anderson went on to repeat that he offered Mr. Cohen a job as the electrical superintendent on the YVR Fuel Farm project. However, he stated, when he and Mr. Cohen discussed the roles and responsibilities involved in the job, Mr. Cohen had to decline.

[14] In the course of his testimony, Mr. Anderson outlined the process that is followed when RAM enters into a contract of employment or with a contractor. He explained that RAM investigates the validity of representations made by prospective employees and contractors, and does not put out an offer until all references, education, background, credentials, and work experience are verified by the Human Resources Department, which was led by Ms. Sandhu. In discussing Mr. Cohen's resume in particular, he stated that he received and reviewed it, and then gave it to Ms. Sandhu to confirm the contents and "chase down all the references".

[15] Mr. Anderson made it clear in his testimony that he did not personally check Mr. Cohen's references. Rather, he stated that Ms. Sandhu "would have" interviewed those references, whom he described as "UBC and the TRIUMF people". Nor, he testified, did he draft or send a written contract to Mr. Cohen, although he believed Ms. Sandhu had done so. In response to the question, "And you assumed his resume was accurate when you reviewed it", Mr. Anderson replied, "Yes. I would have no reason to doubt it".

[16] However, it was equally clear on the evidence that, in fact, Mr. Cohen's resume was not accurate. For example, contrary to what he claimed, Mr. Cohen had not been employed by the TRIUMF facility. Rather, he had done some electrical installation work there in 2013 for three months as an employee of an electrical subcontractor, Entec Systems Inc., which company was not listed on his resume. On cross-examination, Mr. Cohen also acknowledged that he had worked at BC Place in 2012 for just under the probationary period of 90 days.

[17] Further, there was no written evidence that RAM had accepted Mr. Cohen's December 2021 quote or that a contract with terms of engagement was ever drafted

or sent to him. Neither Ms. Sandhu nor anyone else from RAM’s Human Resources Department was called by either party as a witness at the trial.

[18] In an exchange with counsel during closing submissions, the judge commented that Mr. Anderson had testified that the job offer with RAM “was going to be subject to somebody in his office checking out the references”. In response, trial counsel referred him to the transcript of Mr. Anderson’s testimony, where Mr. Anderson stated “I offered him the job. Yeah, I went beyond considering him. I offered him the position”. At that point, the judge remarked that it was “quite clear that whatever Mr. Cohen did at [TRIUMF], he wasn’t the superintendent”, which was “the kind of job that Mr. Anderson was going to hire him for”; rather, he “was an electrician working for a subcontractor; right?” In reply, Mr. Cohen’s counsel simply said “yes”.

**Reasons for Judgment: 2024 BCSC 639**

[19] The judge began with an overview and a comment on the extreme nature of the parties’ competing positions. After reviewing the background and medical evidence, he found that Mr. Cohen suffered from “a chronic pain condition involving genuine subjective perception of pain that is out of proportion to any objectively identifiable physiological injury” caused by the accident, and that the effects of his condition were “complicated and magnified by accident-related depression and opioid use disorder”: at para. 95. He rejected the defence position that Mr. Cohen had failed to mitigate his losses, but accepted that, while he would “likely have some ongoing pain and discomfort in the future, appropriate treatment will likely result in substantial improvement from his present condition and greatly improve his ability to function”: at paras. 101, 104. At that point in his analysis, he turned to the assessment of Mr. Cohen’s past and future loss of earning capacity.

[20] In conducting his assessment, the judge considered Mr. Cohen’s condition and work history: at paras. 105–115. He also considered an actuarial calculation that compared Mr. Cohen’s income from the date of the accident to August 2023 with the average wages of industrial electricians, which yielded a difference of \$333,000, that

his counsel submitted should form part of the past loss of income award: at para. 116. However, the judge found that the award should be based on a shorter period than that assumed by the actuary, given Mr. Cohen's evidence that but for the accident he would have operated his own electrical contracting company, which is what he did until 2018: at para. 118.

[21] After reviewing the net income earned by Mr. Cohen's company, the judge found that the difference between the average earnings of an industrial electrician and Mr. Cohen's actual income from 2018 through 2023 was approximately \$72,000. He stated this amount represented Mr. Cohen's past loss of earning capacity: at para. 123. Then he addressed Mr. Cohen's submission that he should be awarded damages for the loss of opportunity to work with RAM.

[22] This is what the judge said:

[124] Mr. Cohen's counsel seeks a further award to represent the loss of a specific employment opportunity Mr. Cohen says he was forced to refuse because of his physical condition.

[125] Russell Anderson is mechanical superintendent for RAM Consulting, a project management and design firm that does major projects both in Canada and abroad. One such recent project was construction of a fuel tank farm at Vancouver International Airport. As general superintendent, Mr. Anderson said he is responsible for hiring trades, including electrical and mechanical contractors.

[126] Mr. Anderson testified that he met Mr. Cohen in June 2021, and he was impressed with Mr. Cohen's electrical knowledge and resume. He said he believed Mr. Cohen had the credentials to work on major projects as an electrical superintendent, which would include being responsible for code compliance, dealing with building inspectors and ensuring any problems were corrected. Such a position, he said would require some climbing of ladders and working in tight spaces.

[127] Mr. Anderson said he offered Mr. Cohen a job, but Mr. Cohen was unable to accept because of the physical component. However, Mr. Anderson also said he did not check references on Mr. Cohen's resume but understood that had been done by someone else in the company. He said the company does not offer contracts to potential employees or independent contractors until references are confirmed.

[128] The resume that Mr. Cohen provided to Mr. Anderson was clearly exaggerated and would not have allowed anyone to contact the relevant references. Mr. Anderson's attention was primarily caught by a reference in the resume to Mr. Cohen having worked at the TRIUMF nuclear research facility at the University of British Columbia. He described that as a project

that would involve very sophisticated electrical work. In his resume, Mr. Cohen described himself as having been “electrical superintendent/chief engineer” at TRIUMF, supervising a crew that decommissioned and commissioned the main particle accelerator.

[129] In fact, Mr. Cohen was never employed by TRIUMF. He worked on its site for only about three months in 2013 as an employee of an electrical subcontractor called Entec Systems Inc. (“Entec”), earning about \$6,000. William Richert, the chief engineer at TRIUMF, said Entec did electrical installation work, but on smaller projects than the major upgrade of power systems that took place in 2013. He added that there was no decommissioning of the particle accelerator at that time, although there was an annual maintenance shutdown for which Entec provided some electrical support services.

[130] Mr. Richert said his dealings with Entec were through the principal of that company, a Mr. Krajic, who has apparently since died. Mr. Richert does not know Mr. Cohen, and there is no record of Mr. Cohen ever having been employed by or directly contracted to TRIUMF.

[131] Mr. Cohen’s resume makes no mention of Entec. If anyone checking references based on the resume had contacted TRIUMF, they would have obtained no information about Mr. Cohen. Although I accept that Mr. Anderson seriously considered hiring Mr. Cohen, I find it would have been impossible for the company to verify the information on his resume. I therefore find that Mr. Anderson must be mistaken in his recollection that matters progressed to a formal job offer. I make no award for that alleged lost opportunity.

[23] As to Mr. Cohen’s loss of future earning capacity, the judge applied the three-part test in *Rab v. Prescott*, 2021 BCCA 345. He found that the difference between the present value of work as an industrial electrician and Mr. Cohen’s income in his current job to age 70 was \$480,000, which he stated “would represent the value of Mr. Cohen’s lost future earning capacity if he were never able to return to work as an electrician”: at para. 139. He went on to find that the prospects for substantial improvement in Mr. Cohen’s condition justified a 50% deduction, and assessed his loss of future earning capacity at \$240,000.

### **Discussion**

[24] Mr. Cohen contends that the judge erred by excluding any consideration of his suffering a loss from not securing remuneration from RAM on the basis that he would not have been offered a job if his references had been contacted. He says this finding was “divorced from the actual evidence and premised upon conjecture and

speculation”, and that it led the judge to place no value on a real and substantial possibility disclosed on the evidence that had to be accounted for in the assessment of damages. In other words, he says, the judge materially misapprehended the evidence by relying on a speculative inference to reject cogent and uncontradicted evidence on a matter in issue. In his submission, that material misapprehension played an essential role in the judge’s assessment of past and future loss of earning capacity, and warrants appellate intervention and variation of the awards.

[25] In advancing this submission, Mr. Cohen relies on the holding of Justice Skolrood, as he then was, in *Datta v. British Columbia (Superintendent of Motor Vehicles)*, 2022 BCSC 290, that it is an error for a trier of fact to rely on a speculative inference to reject sworn evidence where there is no established factual foundation for the inference or conclusion: at para. 58. He also relies on the statement in *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23, that an appellate court may reconsider trial evidence where there is a “reasoned belief that the trial judge must have forgotten, ignored or misconceived the evidence in a way that affected his conclusion” and thus erred in law: at para. 71.

[26] According to Mr. Cohen, the judge’s conclusion that Mr. Anderson “must be mistaken in his recollection that matters progressed to a formal job offer” and a contract would not have been awarded was based on a chain of speculation. In particular, he says, it was speculative for the judge to conclude that because it would have been impossible for RAM to verify all of the information on the resume, it was impossible that the person responsible for hiring and firing (Mr. Anderson) would and could have extended an offer, even though he repeatedly said under oath that he did. He emphasizes that Mr. Anderson’s credibility was not challenged or impeached, nor did the judge make a negative finding in respect of his credibility. In addition, he says, Mr. Sandhu was not called as a witness, there was no evidence that Mr. Anderson would not make a job offer if all information on a resume was not fully vetted and verified, and the judge’s exchange with counsel in closing submissions suggests the actual evidence was not clear in his mind.

[27] Given the cogent and uncontradicted evidence regarding the job offer, Mr. Cohen submits the judge was obliged to grapple with that evidence and provide a clear explanation for rejecting it. However, he says, he failed to do so, and engaged instead in speculation about what might have happened in connection with reference checks. Moreover, Mr. Cohen says, in assessing the loss of future earning capacity, the judge erred by failing to consider the real and substantial possibility that job opportunities with RAM were “in the mix” and that he was not a median earner.

[28] I am not persuaded by these submissions.

[29] A trial judge is entitled to accept some, all, or none of the evidence proffered by a party: *Randhawa v. 420413 B.C. Ltd.*, 2009 BCCA 602 at para. 26. On appeal, absent a palpable and overriding error, the judge’s interpretation of the evidence and factual findings are entitled to deference on appeal: *Benhaim v. St.-Germain*, 2016 SCC 48 at paras. 36–39.

[30] I see no error in the judge’s interpretation of the evidence or factual findings. In particular, his finding that “it would have been impossible for the company to verify the information on [Mr. Cohen’s] resume” and therefore “Mr. Anderson must be mistaken in his recollection that matters progressed to a formal job offer” is well founded on the evidentiary record. In other words, contrary to Mr. Cohen’s submission, it is not based on an apparent misinterpretation of the evidence or speculation.

[31] As I have explained, Mr. Anderson testified that he did not personally check Mr. Cohen’s references and that RAM does not offer work to prospective employees or contractors until all references and work experience are verified by the Human Resources Department. On the face of the resume, that was manifestly impossible. In addition, contrary to Mr. Anderson’s apparent belief, the resume did not name references and it did include significant misrepresentations regarding Mr. Cohen’s work history. Faced with such evidence, it was reasonable for the judge to infer that

Mr. Anderson’s recollection, though genuine, was unreliable and a formal job offer was never made to Mr. Cohen.

[32] Moreover, the judge provided cogent reasons for this factual conclusion and related exclusion of the alleged lost opportunity in his assessment of Mr. Cohen’s past and future loss of earning capacity. In addition to noting the exaggeration in his resume and the significance for Mr. Anderson of his falsely claimed experience as an “electrical superintendent/chief engineer” at TRIUMF, he noted the sophisticated nature of the RAM job, which was manifestly different from Mr. Cohen’s actual work experience. The onus was on Mr. Cohen to establish the losses he claimed to the requisite standard. In my view, the judge was entitled to find that he did not.

**Conclusion**

[33] For these reasons, I would dismiss the appeal.

[34] **BUTLER J.A.:** I agree.

[35] **DEWITT-VAN OOSTEN J.A.:** I agree.

[36] **DICKSON J.A.:** The appeal is dismissed.

“The Honourable Justice Dickson”