IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Woods v. Fehr,*
2025 BCSC 1257

Date: 20250704
Docket: M210597
Registry: New Westminster

Between:

Desmond Woods

Plaintiff

And

Brian Fehr, Jessica Mae Dyer and The Driving Force Inc.

Defendants

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

Counsel for the Plaintiff:	A.D. Walia
Counsel for the Defendants:	J.S. Grewal
Place and Dates of Trial:	Port Coquitlam, B.C. June 17-21, 25-28 and July 2, 4-5, 2024
Place and Date of Judgment:	New Westminster, B.C. July 4, 2025

Introduction

[1] The plaintiff, Desmond Woods was injured in two separate accidents while living and working in Fort St. John, British Columbia. The first accident occurred on February 2, 2017 (the “First Accident”), the second accident on April 13, 2018 (the “Second Accident”).

[2] Initially, liability was denied by both defendants but, at the conclusion of the evidence, counsel for all defendants admitted liability on their behalf thus leaving

the assessment of the plaintiff's damages as the sole issue.

[3] According to the plaintiff, the combined effects of the two accidents have been catastrophic. He claims he has gone from being a valued employee of Peace Country Rentals ("Peace Country"), his former employer in Fort St. John, British Columbia, physically active and socially connected in the community and with his then girlfriend, Chantal Hefferan, to a life of constant pain living as an isolated recluse in Lourdes, Newfoundland, a town of approximately 500.

[4] He has not been employed since shortly following the Second Accident and, according to the plaintiff's experts, has little, if any, prospect of returning to meaningful employment.

[5] The plaintiff seeks damages under the following headings: general damages, loss of past earning capacity, loss of future earning capacity, special damages for out-of-pocket expenses to the date of trial, costs related to his future care, an award for loss of his housekeeping abilities, and an award in trust to Chantal Hefferan, mother of his two children, Kimberly Hefferan, Chantal's mother, and to his own mother, Regina Woods, for services they provided to him after the First Accident.

[6] For the sake of ease, and intending no disrespect to either Chantal or Kimberly Hefferan, I will refer to them as Chantal and Ms. Hefferan, respectively.

[7] Chantal resided with the plaintiff for most of their time in Fort St. John. She was a passenger in the plaintiff's truck when the First Accident occurred.

[8] In 2018, following their departure from Fort St. John, the plaintiff drove himself and Chantal to Stephenville, Newfoundland where they resided together in the home of Chantal's mother.

[9] The defendants, while acknowledging the plaintiff suffered injuries in both accidents thus entitling him to an award of damages, argue that his injuries are not as severe as claimed by him and that he has, post-accidents, done little, if anything, to either treat the injuries he claims he sustained or seek alternate employment commensurate with his residual ability.

[10] They submit that credibility, in particular that of the plaintiff and some of the lay witnesses called on his behalf, is very much an issue in the assessment of the

plaintiff’s condition, both past and future.

[11] Both counsel ask that the assessment of damages be a global assessment in respect of what are described and agreed to be indivisible injuries. No doubt the parties, as between them, can sort out the allocation of special damages and loss of earning capacity attributable to the period of time from the First Accident in February 2017 to the Second Accident in April 2018.

Background

The Plaintiff's Pre-Accident Condition

[12] Mr. Woods is presently 37 years old. He was 30 at the time of the First Accident. He is a native of Newfoundland and moved to Fort St. John, the location of both accidents, in 2015. The plaintiff had no physical health concerns or complaints prior to the First Accident. By all reports he was physically robust.

[13] Mr. Woods self reports that he has both dyslexia and ADHD. He has a Grade 9 education. His efforts to obtain his GED following his departure from school were unsuccessful. He began his working life at approximately age 16. He described his employment history which, for the most part, consisted of seasonal work including work at a lobster processing plant, snow shoveling, roofing, drywalling, laying sod for a sod company and also as a potato harvester.

[14] None of these vocations were particularly remunerative. His income prior to moving to Fort St. John was modest and, as acknowledged by him, his prospects in Newfoundland were limited.

[15] In 2015, the plaintiff, at the instance of a friend who wanted Mr. Woods to work on his lake house, flew to Fort St. John with Chantal. At the time, they were intimate partners.

[16] In exchange for free room and board, Mr. Woods performed various tasks at the friend’s lake house. Ultimately, the plaintiff sought and obtained employment at Peace Country as a yardman, where aspects of his employment were physically demanding.

[17] He began at the bottom of the company’s hierarchy cleaning porta-potties. He was paid $18 an hour which included a one dollar premium because he had a

driver's license.

[18] Work hours at Peace Country were, and remain,10 hours a day Monday through Saturday during the entirety of the plaintiff's employment with Peace Country. The plaintiff was paid eight hours of straight time and two hours at time-and-a-half Monday to Friday. On Saturdays, he earned time-and-a-half for the entire shift. In addition to his salary, there were medical benefits and disability insurance, together with holiday pay of 4% and an employer matching RRSP plan.

[19] It is unclear from the evidence what holiday time the plaintiff took prior to the First Accident.

[20] His income tax return for 2015 (the year he moved to B.C.) shows income of $35,436 and receipt of social assistance in the amount of $3,014. In 2016, the plaintiff's first and only year of full employment with Peace Country, he earned $61,750.

[21] During his tenure at Peace Country, the plaintiff received pay increases. By the end of his employment in June 2018, he was making $21 per hour plus 4% holiday pay. Over the course of his employment, the plaintiff never contributed to the RRSP plan offered by his employer despite the benefit of dollar-for-dollar matching by the employer.

[22] From cleaning porta-potties, the plaintiff was moved into the yard where he helped customers secure equipment rentals and assisted them with the return. Peace Country's "yard" covered two city blocks and required both mobility and the ability to perform heavy lifting.

[23] Following his successful tenure as yard worker, he was promoted to a delivery position as a driver's helper and ultimately became a driver, driving loads to locations outside of Fort St. John. Some of those deliveries required tent set up and the movement of equipment weighing upwards of 100 pounds.

[24] Throughout most of the time he lived in Fort St. John, the plaintiff shared accommodation with Chantal who was, according to both, his long-time girlfriend. She described his pre-accident state as: "a bit of a scatterbrain" but he had boundless energy, had a good memory "remembering phone numbers, his home

address” and was always punctual. In fact, she said, he was “always half an hour to 45 minutes early.”

[25] The owner and foreman of Peace Country, Tyler Soule, described the plaintiff's capacity as an employee prior to the First Accident as exemplary. According to Mr. Soule, the plaintiff was a model employee with prospects for advancement within Peace Country. In the approximate three years of his employment, he received pay increases in one-dollar increments. By June 2018, he earned $21 per hour plus holiday pay.

[26] Peace Country’s foreman, Joseph Smalls, was also complimentary of the plaintiff's abilities prior to the accident and echoed the comments of Mr. Soule. Both described him as a happy-go-lucky person who is hard-working, a favourite of customers of Peace Country and, generally, a “go-getter”.

[27] Chantal described the plaintiff’s abilities in similar terms. She described their pre-accident activities as being active socially and physically both prior to their move to Fort St. John and after. Because it factors into the injuries claimed by the plaintiff, I note that Chantal testified that they were sexually active and the plaintiff experienced no difficulties in respect of their sex life.

[28] According to the plaintiff, he intended to stay at Peace Country for at least five years when, according to Peace Country tradition, he would be presented with a company watch. He stated that he intended to work until at least 70 because that is what his father did. I note that at the date of trial his father was 63.

[29] Chantal was less enthusiastic about the long-term life in Fort St. John. She testified she and the plaintiff were in Fort St. John to earn money to save to buy a house and car and then, presumably, although not explicitly stated, return to Newfoundland where each of their families remained. She testified she expected to stay in Fort St John for three to three-and-a-half years.

[30] In 2016, the plaintiff’s last complete year of working for Peace Country – i.e. last year uninterrupted by time missed because of the First Accident – the plaintiff’s reported income on his T1 General tax return was $61,750 (rounded). It is unclear whether he took time off in 2016, but his income reported does not equate to that which one would earn with 60 hours of weekly employment, half of which was at premium rates, whether at $18.72, $20.80 or $21.84 hourly.

[31] According to both the plaintiff and Chantal, both were active in maintaining their one-bedroom apartment in Fort St. John. They were socially and physically active until both were injured in the First Accident. Chantal testified in direct examination that their cohabitation was continuous prior to separating in the spring of 2018 but later acknowledged a separation earlier in the fall of 2017 that lasted approximately four months.

The First Accident

[32] On February 2, 2017, the plaintiff was driving his GMC Terrain from his apartment intending to drop Chantal off at her place of employment. She was a right front seat passenger. Both were wearing seatbelts.

[33] The couple were crossing the Alaska Highway at 108th Street. They were behind several vehicles while the light was red for their direction of travel. When it turned green, two or three cars passed through the intersection with the plaintiff following. As he was going through the intersection a vehicle coming from his left, on the driver's side of the Terrain, ran the red light for traffic on the Alaska Highway and violently collided the plaintiff's vehicle. The speed limit at the accident site was 80 km/h for the defendant, Mr. Fehr, who acknowledged that he was behind a truck that was turning and he failed to see the red light. Upon entering the intersection, he realized his mistake. He initially braked but he skidded on ice. He then tried to accelerate to make it through the intersection without hitting the crossing traffic. He was unable to estimate his speed at the time of impact but acknowledges that he was travelling at or near the posted speed limit. He collided with the driver's side of the plaintiff's vehicle in the intersection.

[34] The airbags in the Terrain deployed and the plaintiff's vehicle was spun several times and moved down the highway to the north.

[35] What occurred following impact is contentious. Chantal testified that the plaintiff was unresponsive to her calls to him. The OnStar system in the plaintiff's vehicle began to "inquire as to whether an emergency vehicle should be called". She testified the plaintiff was helped to the median by a police officer.

[36] The plaintiff complained of feeling like there was glass all over his body, despite the fact there is no apparent glass breakage of the vehicles. He noted his breathing was laboured. He said he was dazed and confused.

[37] According to reports from both, police and ambulance were quickly dispatched to the accident scene. According to dispatch records, Corporal Bojczuk arrived at scene within five minutes of the accident. On arrival, she observed three people outside their vehicles standing on the centre median of the roadway. They identified themselves as the two drivers of the respective vehicles and Chantal.

[38] Corporal Bojczuk confirmed the defendant, Mr. Fehr, told her he did not see the lights turn red and entered the intersection while prohibited. She spoke to the plaintiff who identified himself as the driver of the Terrain. His reported complaints to her were that he had a numb arm but that he could move it, and his chest felt as if he had been “punched”. Both the plaintiff and Chantal were taken by ambulance to hospital.

[39] Corporal Bojczuk neither spoke to the presence of any other officer nor observed anybody assist the plaintiff as was described by Chantal. Corporal Bojczuk first observed the plaintiff on the median. Her written report of the incident does not speak to the attendance of any other officer at the scene.

[40] According to the emergency services records, an ambulance was dispatched to the scene at 12:45 p.m. and arrived at the scene at 12:50 p.m. The report discloses the plaintiff was assessed at the scene and taken to hospital at 1:12 p.m. The emergency service records describe the plaintiff as “out walking at scene”.

[41] When assessed by emergency personnel, the plaintiff reported an “achy back and a red mark at his wrist”. His mental state was described as normal. He was, according to the ambulance report, oriented to person, place, and time and his Glasgow Coma Score was 15; entirely normal.

[42] Upon arrival at the emergency department at Fort St. John Hospital the plaintiff was assessed. The diagnosis was lumbar strain from a motor vehicle accident. His recorded neurological signs were normal. He also presented with chest pain and shortness of breast breath.

[43] Eight days following the accident, he re-attended the hospital for x-rays upon the advice of his treating physician, Dr. Nobar. Findings were recorded as normal.

[44] The defendant, Mr. Fehr, the driver of the other vehicle, reported that he exited his vehicle within 5 to 10 seconds of the collision and approached the plaintiff who was, by then, on the meridian. He spoke with the plaintiff and apologized. He could not recall which of the occupants of the Terrain arrived at the meridian first. He recalls hearing the Terrain's OnStar system and the female wanting to turn it off. The plaintiff cautioned her against leaving the safety of the meridian.

[45] Mr. Fehr described the plaintiff as lucid and engaging in normal conversation, including expressing concern for his passenger's safety when she suggested returning to the Terrain to disengage the OnStar system.

The Aftermath of the First Accident

[46] The plaintiff testified as to continued confusion at the hospital and noted that by the time of his arrival he was experiencing nausea and dizziness and tingling in his fingers.

[47] Upon his return home, he reported getting "bad nightmares – I could have lost my life". He reported waking up and thinking about the crash. Chantal testified the plaintiff would wake screaming and the sheets were sweat-soaked.

[48] The plaintiff also reported the quick onset of forgetfulness and said he began "missing stuff" at work. He testified he would forget to remove pots from the stovetop when cooking or leave things in the oven.

[49] In addition, he noticed sensitivity to light and sound immediately after the accident. He began wearing sunglasses both indoors and out because bright light caused headaches or sore eyes.

[50] According to the clinical records of his physician, Dr. Nobar, the issue of light sensitivity was first reported to him by the plaintiff's solicitor in September 2017. The first record of Dr. Nobar recommending wearing sunglasses appears in a note written for the plaintiff to show his employer in April 2018.

[51] The plaintiff complained that the high level of noise at work bothered him, and he began to notice his balance was impaired. He testified he began losing his balance after the accident whereas, according to his testimony, prior to the accident he could "perform back flips and 'walk' down stairs on his hands".

Chantal confirmed the plaintiff's balance issues and testified she "held him by the arm" when they walked. She testified, although the plaintiff never mentioned the incident, that he fell once in the mall when in her company.

[52] Following the accident, the plaintiff took several weeks off work and then returned on a graduated basis commencing with lighter duties. The plaintiff stated he kept going to work because he needed the money to pay his bills.

[53] The plaintiff attended the emergency room on February 6, 2017 because, according to his evidence, he "could barely walk" and his pain level was 9 of 10 as was his anxiety. The corresponding entry from the emergency department at Fort St. John Hospital notes the plaintiff's involvement in a motor vehicle accident the Thursday prior. He was given a prescription for pain medications but said he was unable to fill the prescription due to insufficient funds. He requested a note for work stating he could not continue work and also requested medications for anxiety relating to driving. According to the hospital's records, he left Emergency without seeing a doctor.

[54] On February 10, the same day the plaintiff began seeing Dr. Nobar, he had x-rays taken of his chest as a result of complaints of shortness of breath due to his chest hitting the steering wheel. The x-rays indicated no abnormality.

[55] The plaintiff reported the circumstance of the accident to Dr. Nobar, who recorded the plaintiff's complaints as: lower back pain and stiffness, coupled with reduced range of motion; midline neck pain with stiffness; chest pain with soreness; and tingling in his right upper extremity. The plaintiff was prescribed pain medication and massage therapy.

[56] At trial, the plaintiff reported that "after the crash he lost his ability to perform sexually". Reportedly, sexual intimacy between him and Chantal stopped after the First Accident. In addition, he said he was urinating a lot – 10 to 15 times a day. He also reported loose bowel movements.

[57] Despite the plaintiff's testimony as to the almost immediate onset of sexual dysfunction, the first reference to any sexual complaints in the plaintiff's medical records appear in a notation from Dr. Nobar on September 7, 2017, when he reported "unable to provide for her (sic) partner sexually and patient (sic) has left him for another man." In a subsequent clinical entry, the same day, Dr. Nobar

apparently discussed with the plaintiff's lawyer issues of memory, bladder control when driving, and "issues with eyes requiring sunglasses". According to the note of their conversation, the plaintiff's lawyer paid for the plaintiff to take two to four weeks off work.

[58] The plaintiff continued, throughout his time in Fort St. John, to complain of back, neck, shoulder and leg pain. He never complained to Dr. Nobar of nightmares during his time in Fort St. John or, if he did, it was never recorded. The plaintiff was unable at trial to recall what he had reported to the various treating physicians he saw. He did not deny the contents of any of the reported entries that were put to him in cross examination.

[59] According to his clinical records, Dr. Nobar asked the plaintiff, on more than one occasion, about urinary or bowel problems. On each occasion, the plaintiff denied them.

[60] The plaintiff said he carried on working at Peace Country because he needed money. He did not have any funds saved and his expenses carried on. He recalled being placed on modified duties at Peace Country; cleaning small pieces of equipment. He reported needing to sit every 10 to 15 minutes because of the high degree of pain he was experiencing.

[61] The B.C. Pharmanet records produced at trial indicate that, over the course of the approximate sixteen months the plaintiff remained in B.C. following the First Accident, the plaintiff only filled prescriptions for Tramadol (30 tablets) and Cyclobenzaprine (30 tablets) on February 6, 2017. The prescription for cyclobenzaprine was renewed August 3, 2017 and the tramadol was renewed March 3, 2018 (50 tablets).

[62] No equivalent to Pharmanet records were produced for the period of time the plaintiff has been in Newfoundland. The total claim advanced by the plaintiff for prescription drugs is documented in Great West Life's subrogated claim for prescriptions paid for, including the four prescriptions referenced above as well as three further prescriptions from September 2018 for Rabeprozole, Naproxen, and Amitriptyline. Dosages for the latter three prescriptions are not referenced on the summary sheet from Great West Life.

[63] Those are the only receipts provided for prescription medications taken by the plaintiff following both accidents which are the subject matter of this damage assessment. In addition to prescription medications, the plaintiff testified he took Tylenol for headaches.

[64] The plaintiff said his employer was reluctant to allow him to leave work early to attend either medical or doctors' appointments, thus explaining the lack of treatment while in Fort St. John. Mr. Soule testified Peace Country made accommodations for Mr. Woods throughout his post accident employment, including accommodations at work, allowing him to depart for scheduled medical appointments, and to leave prior to the end of his scheduled work day as needed.

[65] Despite ongoing complaints, during his next attendance upon Dr. Nobar on February 22, 2017, the plaintiff's symptoms had improved according to self-report. His lower back pain associated with stiffness "has improved greatly". He reported the prescribed medication had been very effective. His limp gait was reportedly resolved as well as the wrist numbness and tingling in his right lower extremity. According to Dr. Nobar's chart, he denied any urinary issues or bowel issues such as "loose stool". According to the same entry, his chest pain continued but he reported mild improvement to his cervical and thoracic spine.

[66] At trial, the plaintiff said his anxiety continued to worsen and his pain was the same. The plaintiff was using a pressure washer at work which caused pain in his left arm. His sleep was significantly interrupted. He reported "not getting any."

[67] On March 21, 2017, the plaintiff re-attended Dr. Nobar for what appears to be a follow-up to the motor vehicle accident. His chart indicates he reported that his mid lower back pain and associated stiffness had improved greatly and that the prescribed medication was very effective. According to the entries in his chart, the plaintiff noted resolution of the limp previously complained of and resolution of the numbness and tingling in his right lower extremity. During that visit, the plaintiff denied, once again, any urinary or stool incontinence/retention. Dr. Nobar recorded, "has been performing full duties at work". Examination of his cervical, thoracic and lumbar spine noted improvement but were still symptomatic.

[68] On June 1, 2017, he reported his lower back pain and stiffness had improved slightly since the last visit but was aggravated with prolonged standing and sitting. He further reported he has been able to perform more duties at work

and reach normal duties at work. His pain worsened if he stood for a long time or reached overhead. He said he had headaches daily and daily doses of Tylenol did not help. He said the headaches lessened once he began wearing sunglasses.

[69] Despite the entries in his chart regarding a return to full duties, the plaintiff testified that his pain remained “9 out of 10.” He described the work at Peace Country as too heavy and too hard on this back. His troubles at work were corroborated by Mr. Soule and Mr. Small, who observed pain behaviour and diminished enthusiasm on the part of the plaintiff from that which they observed prior to the First Accident.

[70] On the recommendation of Dr. Nobar, the plaintiff began a course of massage therapy that lasted from June 30 to August 17, 2017. The original recommendation was made in February 2017**.** His appointments were paid for by his counsel. I note that only because the plaintiff, from time to time, explained his lack of medical treatment on financial strain. From the receipts available, it appears his counsel funded the manual treatment, either massage or physiotherapy, he took both in Fort St. John and, later, Newfoundland.

[71] The plaintiff noted the treatments were helpful, but records provided by the massage clinic indicate the plaintiff began missing appointments in August 2017. He missed scheduled appointments with the massage therapist on August 8 and September 6, 2017. He blames those non-attendances on memory problems arising after the First Accident, however, he never re-scheduled the two missed visits. Further, one of the missed visits was on the same day as Chantal, his then roommate, attended. Massage therapy was discontinued. In total, he attended three of five scheduled visits.

[72] On the recommendation of Dr. Nobar, and with the acquiescence of his employer, the plaintiff took further time off from work between August 4 and 23, 2017. His counsel paid his wages, according to Dr. Nobar’s records.

[73] By September 2017, the plaintiff reported his anxiety was beginning to “feel good again” although he was still nervous when driving. He noted that he could drive from his apartment to this place of work, which apparently took him back through the scene of the First Accident, but that if a car pulled out he would “dribble” in his pants, presumably as a result of nerves.

[74] As earlier referenced, both the plaintiff and Chantal testified intimacy had come to a halt following the First Accident despite what each described as an active sex life prior. The first report of sexual problems was recorded by Dr. Nobar in September 2017, when the plaintiff told Dr. Nobar his girlfriend had left him for another man. Later in the same month, despite the reported separation and lack of intimacy since the First Accident, the plaintiff requested testing for sexually transmitted infections because, according to Dr. Nobar's records, the plaintiff reported his girlfriend was engaging in sex with another man.

[75] By November 2017, the plaintiff reported his legs were still in pain and he was not getting any sleep. There was no recorded report of accompanying nightmares. The plaintiff, when asked generally about the accuracy and completeness of his medical records, replied he couldn't remember what he told the various doctors he had seen.

[76] According to Dr. Nobar's records, the plaintiff slipped on ice and fell down on November 21, 2017. He believes he slipped because of the balance issue he earlier described, although he acknowledged it was icy at work. He was wearing safety glasses and proper footwear. His back pain "worsened" as a result. He described the tingling feeling he was experiencing was more prominent when he was working and standing up.

[77] By March 2018, his last attendance on Dr. Nobar prior to the Second Accident, he reported that his pain had decreased to either 6 or 7 out of 10 as he was managing things at work differently. By then, he was on light duties at work and continued to periodically miss work. Prior to the Second Accident in April 2018, he was placed in a variety of accommodated duties, including working in the wash bay and driving without loading.

[78] He reported that prior to the Second Accident he could not perform the duties of his former job as they required too much heavy lifting. He referenced the tent construction/erection that he did prior to the First Accident as an example of his diminished ability.

[79] As a result of depressed mood and pain, the plaintiff testified his relationship with Chantal worsened. He says they were "still together" before the Second Accident, but she was doing all of the household tasks including the housework, laundry, dishes and making his lunch.

[80] Chantal, in her direct examination, denied any separation prior to the spring/summer of 2018, but in cross examination agreed with the entries from Dr. Nobar's indicating she had left the plaintiff for a period of time in the fall of 2017. It is unclear who, if anyone, assisted the plaintiff during the period Chantal was living elsewhere. She testified they only saw each other for the occasional dinner during their separation which lasted approximately four months.

[81] According to both, their reconciliation lasted until the spring of 2018. The plaintiff testified they were not residing together in the months just before he left Fort St. John in the summer of 2018. He was experiencing financial hardship as he could not pay the rent on his own.

[82] The plaintiff said his sole objective following the First Accident was to relax after he got off work. He was not socially active. He testified his social activities dropped sharply. He acknowledged owning a dirt bike that he had traded for with a work friend but said didn't ride it. He intended to sell it because he was low on cash and behind on rent. He acknowledged he might have "fired it up or revved it" but denied riding it. A photo from Chantal's Facebook depicts the plaintiff standing and "revving" the engine of the dirt bike. In response to a post from a friend commenting on the bike and asking her to tell the plaintiff to be careful, Chantal replied: "Don't worry I'm like an old lady on side the road (sic) yelling slow down".

[83] The plaintiff's left shoulder continued to produce pain when lifted but was of normal strength. By May 3, 2017, according to Dr. Nobar 's records, the plaintiff reported his symptoms had improved and that he "has been able to perform more duties at work; was able to set up a tent yesterday and has three more to set up tomorrow". Physical examination again resulted in pain with the lifting of his left shoulder, but it was of normal strength.

[84] He was prescribed Ativan for accident-associated anxiety. Neither the Pharmanet records in evidence nor the claim for special damages for medications disclose that the prescription was filled.

[85] Prior to the Second Accident, the plaintiff's major complaints were neck and back pain, headaches, sleep deprivation and light and sound sensitivity. He testified he still had nightmares and was sad and anxious. Dr. Nobar's clinical records from July 24, 2017 note: "2) MVA associated anxiety : resolved- discussed may return as a nature of anxiety (sic) but that we can deal with it".

[86] Dr. Nobar 's entry July 24, 2017 also recorded that the plaintiff's back pain was aggravated since his last visit due to increased responsibilities at work. The plaintiff reported lifting pumps weighing approximately one hundred pounds and, according to his chart, "has since picked up a roofing job at his bosses grandma's place for roofing". He testified Peace Country paid him for the work. When asked about the roofing job, Mr. Soule denied the plaintiff did roofing work for any relative of his or that Peace Country paid the plaintiff for work done off-site for anyone but Peace Country.

[87] The plaintiff remained stressed by financial pressures but thought this was going to improve in the near future. He stated he was feeling stress at work due to coworkers bullying him at work but that had since improved after "a physician to manager discussion".

[88] In the same time period as the plaintiff was lifting 100-pound objects at work and performing roofing work, Chantal testified the plaintiff was unable to carry out garbage from their shared apartment. The plaintiff still reported left shoulder pain and noted the massage therapist had been working on his left shoulder which had mildly improved.

[89] In an August 2017 appointment following a discussion with the plaintiff's lawyer, Dr. Nobar advised the plaintiff to self advocate to get more time off work due to ongoing complaints.

[90] On a subsequent visit in March 2018, the plaintiff reported his lower back was not improving at all and pain increased with prolonged sitting. He was missing work on a regular basis – one or two days per week – and walking on packed snow greatly aggravated his lower back.

[91] In early April 2018, Dr. Nobar wrote a letter "to whom it may concern" (presumably Peace Country), saying "Desmond was in to see me at the clinic regarding worsening back pain. As you know, Desmond was in a motor vehicle accident and has been slipping on the ice which has worsened his back pain." The letter requested the plaintiff be put on light duties for one week.

The Second Accident

[92] The Second Accident occurred the morning of April 13, 2018, on 103 Avenue in Fort St. John. The location was several blocks from where the plaintiff

worked. He had picked up his foreman on his way to work and was driving along a residential street. The street was a narrow with cars parked on both sides. The plaintiff was driving down the roadway with cars near to him on both sides of his vehicle.

[93] He was driving a 2016 GMC Sierra and going approximately 40 km/h when, from his driver's side, Ms. Dyer was pulling out of a parking space facing the same direction as the plaintiff was travelling. Her vehicle hit the driver's side quarter panel of the plaintiff's vehicle.

[94] Damage to the plaintiff's vehicle was depicted in photographs and described by both the plaintiff and, later, the defendant. The photographs displayed the extent of the damage, all of which, admittedly, was to the driver's side. The front bumper on the passenger of the plaintiff's vehicle had been damaged earlier in an unrelated incident.

[95] The plaintiff testified that the defendant, Ms. Dyer, offered him $5,000 at the scene "so I wouldn't call the cops." He declined her offer. He testified that he later obtained estimates for repairs in both Fort St. John and, later, Newfoundland estimating the damage from the second accident at $10,000. He reported to one of the doctors who examined him in 2023 that the damage to his vehicle was $12,000.

[96] No estimates for the repairs were provided. According to the plaintiff, ICBC would not pay for "new parts" and the damage was fixed with "bondo" for approximately $3,000. No work order was provided detailing either the repairs or their cost.

[97] Ms. Dyer reported minimal damage to her Ram 1500 truck. Photographs of her vehicle, at least visually, support that assertion. She testified that while that the back of the plaintiff's vehicle's front bumper was askew, it was at the opposite side from where her vehicle contacted his. She testified the plaintiff acknowledged that damage occurred in another incident. There was a yellow paint mark on the passenger's side of the plaintiff's vehicle consistent with what, according to Ms. Dyer, the plaintiff told her of the circumstances of the "other accident". She testified she offered to pay for the damage she had done, but not any specific sum, given what she considered was minimal damage to his vehicle.

[98] The plaintiff reported that following the Second Accident he attended Fort St. John Hospital emergency ward. There is no corresponding record for such a visit in the hospital records. Dr. Nobar's records following the Second Accident read: "Patient proceeded home to take medication to relax".

The Aftermath of the Second Accident

[99] Following the Second Accident the plaintiff reported his headaches increased "tenfold and his nightmares returned". He said he was dreaming about the accidents "all the time." He and Chantal both testified that he would awake screaming in a cold sweat. Chantal testified that has remained the situation until the present.

[100] An entry from Dr. Nobar's chart dated April 24, 2018 – 11 days following the Second Accident – reads, in part:

> States was recently involved in another MVA 04/13/2018. Patient was driver of a 2016 GMC Sierra…denied head trauma, LOC, amnesia…states body completely seized up…describes continued workplace bullying with weekend foreman not allowing him to wear sunglasses to 'prevent light-induced migraines.

[101] The plaintiff reported that his memory continued to deteriorate. He would enter a room and forget why he came into it. He would forget why he had opened the fridge. He said the sensitivity to light and sound did not get worse but was "more prominent and he was wearing his sunglasses inside and out". Chantal confirmed this, saying he wore them "all the time".

[102] The numbness and tingling in his left arm and leg worsened and he felt he was back to square one. He said he was given medications for pain and muscle relaxants for back spasms but, as noted, the last Pharmanet entry/receipt shows a prescription for 30 tablets of Tramadol on March 14, 2018. He was also prescribed anti-anxiety medication but, again, there is no corresponding Pharmanet record indicating the prescription was filled nor was a receipt presented for reimbursement.

[103] Following the Second Accident he began physiotherapy and agreed it helped alleviate some of his symptoms. He continued working but with modified duties. Overall, the plaintiff said he was "not feeling good" and he was "not happy". Peace Country was training someone to take his place and he was obliged to

“share his secrets” regarding tent erection and other “hacks” he had learned on the job.

[104] He described his mental health as “bad”. He testified he could barely walk around and thought that his driving career was over. He was given small deliveries to do where there was no loading or unloading. He could not do the lifting required for big orders.

[105] On May 15, 2018, in a follow-up visit, Dr. Nobar advised the plaintiff to take further time off work. Three half-days had been scheduled off to accommodate physiotherapy and doctor’s appointments. Further accommodations were discussed and, according to his notes, Dr. Nobar verbally consulted with Mr. Soule regarding the reassignment of the plaintiff to the wash bay with no lifting in excess of 5 kilograms.

[106] Dr. Nobar’s second last entry prior to the plaintiff leaving for Newfoundland reports “no real change in symptom; patient has now reached the point of not being able to work.”

[107] According to the plaintiff, by May 2018 he had headaches every day. He said he was required to obtain a note from his doctor to be allowed to wear sunglasses at work. While the light sensitivity was communicated to Dr. Nobar earlier, the entry of April 24, 2018 is the first recorded complaint of headaches.

[108] The plaintiff testified that June 15, 2018 was his last day of work. He left because he could not physically perform the tasks he being was offered. He said he tried his best but inferred he was given his “walking papers by Peace Country”.

[109] He described being called into the office to sign some papers. He did not recall the conversation that Mr. Soule testified to, where Mr. Soule said he called the plaintiff into his office on June 14, 2014, and advised the plaintiff to go on short-term disability. Mr. Soule noted the plaintiff seemed unaware of the program, which was a benefit provided to Peace Country employees as a term of their employment. Mr. Soule testified he did not terminate the plaintiff and expected him to return to work after a time on disability. He never heard from the plaintiff again.

[110] Mr. Soule referred the plaintiff to the office manager, Tracy, who apparently assisted the plaintiff in the preparation of the necessary forms. Subsequently,

although the timeline is uncertain, the plaintiff began receiving disability payments of approximately $3,300 monthly – an amount approximating 80% of his take-home pay when working.

[111] Following the Second Accident, the plaintiff testified his relationship with Chantal was over. She had left the apartment they shared and he could not afford rent on his own. He described himself, after she left him, as suicidal. He had lost both his girlfriend and his job. He decided to return home to Stephenville, Newfoundland. He said he had no money as he had been supporting Chantal “for many years”. Chantal confirmed the breakup was “bad” and that “he was suicidal”, but said that “they decided to remain friends”.

[112] Despite the bad breakup, he and Chantal departed together for Newfoundland in early July 2018. The two of them estimated variously that the trip from Fort St. John to Stephenville, Newfoundland, took two to three weeks. The plaintiff did all the driving because Chantal did not have a driver’s license. They both testified that their journey was interrupted every two hours or so for either rest or for him to collect himself because of the nervousness he suffered as a result of driving. Neither testified as to incidents of incontinence or the need to change clothing during the return trip.

[113] Prior to their departure for Newfoundland, the two went for a birthday breakfast on July 2, 2018. A portion of the event was captured by the plaintiff on video and posted to Facebook. I will refer to this video later when I deal with the assessment of credibility which, I conclude, is important to the assessment of the plaintiff’s subjective complaints and level of disability.

Return to Newfoundland

[114] Upon arrival in Stephenville, despite the bad breakup, the plaintiff stayed with Chantal at her mother’s home. The plaintiff testified his complaints remained significant. He described his pain as from 8 to 9 out of 10 in his back/shoulders and that he needed to be in the dark or wearing sunglasses. He could not watch TV for more than an hour without a headache. The same with his phone.

[115] Ms. Hefferan testified. Her evidence aligned with that of the plaintiff and her daughter as to the plaintiff’s state. She described his pain, behaviour, forgetfulness, depression and walking with a limp. According to Ms. Hefferan, he

was never able to “complete tasks” be it doing laundry, cooking, or tidying his room.

[116] Despite the plaintiff’s presence in her home for approximately eight months, Ms. Hefferan made no mention of hearing the plaintiff screaming at night nor did she, despite doing the laundry, describe washing his sweat-soaked sheets. The plaintiff testified his sleep continued to be interrupted and he continued to have headaches.

[117] The plaintiff’s first recorded doctor’s appointment following his return to Newfoundland was with Dr. Garcia on September 5, 2018; depending on whose travel time I accept, five to six weeks following his arrival in Stephenville. Dr. Garcia recorded: “patient is suffering from pain….moved to town a few months ago……no urine retention…no change in bowel habits.. mood is stable, not depressed...mild restriction of movement.”

[118] The plaintiff did not identify any medical treatment he received in Newfoundland prior to attending Dr. Garcia. He was prescribed and, per the special damages claim, obtained Naproxen and Rabeprazole. The prescriptions were filled and their cost forms part of the claim for special damages. Such are the last documented prescriptions filled by the plaintiff to the date of trial.

[119] The plaintiff testified the numbness in his left leg became worse and the pain in his left arm was constant. He began a course of physiotherapy at the Linnick Physiotherapy Clinic. He described the therapy taking place in Cornerbrook, although the invoice for physiotherapy treatments notes that there is a Stephenville office.

[120] He was treated with trigger point injections in his neck and acknowledged some improvement after the injections. In October 2018, he attended at a pain clinic. In March 2019 he changed family doctors.

[121] At some point in time following their departure from Fort St. John, Chantal learned she was pregnant as a result of a sexual encounter with the plaintiff. Their child, Connor, was born on March 8, 2019. Connor is on the autism spectrum resulting in the need for substantial oversight.

[122] The plaintiff denied that Connor's birth indicated he and Chantal were together again as a couple, but rather suggested they were "hooking up". He denies ever returning to an ongoing intimate relationship with Chantal. Nonetheless, upon his return to Newfoundland in 2018, he noted Chantal as his next of kin on entries in the clinical notes of Bay St. George Medical Clinic. Moreover, in his attendances upon the various experts who testified on his behalf, he variously described Chantal as his common law partner, fiancée, girlfriend or ex-girlfriend. During his interview with Dr. Heran in 2023, he reported that he spent his time between his home in Lourdes and his "girlfriend's place".

[123] At an unspecified date in 2019, the plaintiff said he moved to an apartment in Lourdes, Newfoundland. Lourdes is a community of approximately 500 people. In the spring of 2019, the plaintiff posted on Facebook that he had bought a house in Lourdes. He testified that the move to Lourdes was occasioned by cheap rent and "a lot of family is out there". When referred to the Facebook post where he claimed home ownership, he said that was in the nature of boasting to friends and that he was actually renting the property from "Junior Snook". He testified he was paying $600 a month for rent to Mr. Snook, as his landlord.

[124] He continued on to say Mr. Snook allowed him to renovate the bungalow to provide for the addition of another bedroom. The plaintiff testified his father and others did the physical work and Mr. Snook paid for materials via a rent abatement. He described the materials as a "couple of two by fours and some drywall". The renovations were to expand the number of bedrooms to provide, presumably, a room for Connor and Chantal stay when they visited.

[125] A second child, Peyton, was born in early 2020. Peyton was, according to the plaintiff's and Chantal's evidence, a result of a further "hook-up"; not a resumption of their earlier relationship. According to Chantal, the birth of their two children was the result of two isolated sexual encounters.

[126] The plaintiff testified that following his return to Newfoundland, his anxiety remained high. He continued to "dribble" in his pants when driving and is "super nervous and worried about other drivers as well as loud noises". He noted when he returned to Vancouver by airplane for medical assessment and/or the trial, he was obliged to wear a diaper.

[127] Following his move to Lourdes, therapy, for the most part, came to a halt. He continued, periodically, to attend doctors in Stephenville until November 2022 and engaged in active physiotherapy in the spring of 2020. Various medications were prescribed to him but no receipts were provided to establish the prescriptions had been filled. Up until September 2018, his prescription costs were being paid, in part, by Great West Life.

[128] Lourdes is a remote community far removed from any other than virtual medical treatment. The drive to Stephenville, the closest urban centre with medical services, is 45 minutes to an hour depending on traffic and weather. Cornerbrook, a larger urban centre with more complete medical services, is three to four hours away. Lourdes offers no counselling services, physiotherapists or any other medical treaters. The nearest swimming pool (a recommended treatment modality) is 45 minutes away by car. The plaintiff attended a neurologist in February 2020 to investigate numbness in his arms and legs but no report was provided indicating the findings.

[129] Despite not having worked since June 2018, the plaintiff successfully applied for CERB benefits and received $14,000 over the course of 2020. He originally testified Chantal assisted him with his application but later explained he applied for CERB over the telephone “by dialing a phone number and pressing numbers in response to automated prompts”. Chantal denied providing him any assistance with his application and confirmed he applied on his own.

[130] Counselling for the plaintiff’s depressed mood was recommended early on after his return to Newfoundland but he only began counselling in 2024, shortly before the trial’s commencement. Given the remoteness of his location, the counselling takes place via video. He had three sessions scheduled in April and May 2024, but missed two of them.

[131] Various other recommendations for treatment are contained in the reports tendered on behalf by the experts retained but, with the exception of one counselling session, none of the other recommendations have been pursued. Dr. Heran opined that further investigation by way of spinal injections could determine possible surgical sites which could lead to improvement of his lumbar pain and associated leg complaints. Despite that advice, nothing has been done in the year which followed. Dr. Nigro, the urologist, recommended a variety of

treatments for the plaintiff's erectile dysfunction, the simplest of which was medication. To date, there has been no follow-up.

[132] Overall, there appears to have been little by way of treatment since his move to Lourdes, with the exception of occasional medical attendances to obtain prescriptions or, as noted at least once in the medical records, to simply attend because "his lawyer told him to see a doctor once a month."

[133] Despite references to prescribed medications in the clinical records, similar to the Ativan prescriptions issued by Dr. Nobar, there is no documentary evidence that they were ever filled. The claimed special damages for prescription expenses end as of September 2018. In total, they amount to less than $150.

[134] Currently, the plaintiff reports his neck pain is 8 to 9 on a scale of 10. He describes constant pain from his shoulders and in his calves. His lower back is continually sore as if "on fire". His mid-back is uncomfortable while sitting and he gets neck and back pain any time he is doing prolonged walking or putting on his shoes and socks.

[135] The plaintiff notes he wakes up most days with an intense headache. He has numbness and tingling which is worse on the left than on the right. He has poor sleep habits and says he gets 30 to 45 minutes sleep, with the exception of one or two good sleeps a week. He testified his nightmares "went away" but, as the trial approached, they returned.

[136] Chantal, according to her testimony, has lived with the plaintiff in Lourdes four nights a week since about a year prior to the trial. She says she sleeps on the couch or with her daughter, Peyton, because the plaintiff still screams at night and wakes in soaking wet sheets.

[137] The plaintiff says he gets pain in the groin down from his belly button when walking. The pain is exacerbated by bending or getting in and out of chairs. He complains of poor bladder function noting he has to be careful about what eats and drinks. He continues to complain of loose bowel movements.

[138] As to sexual function, he continues to complain of erectile dysfunction and says he cannot get or maintain an erection. He told Dr. Nigro he can neither

achieve orgasm or ejaculate, but did not specify as to the time frame in which those latter complaints emerged; presumably after the birth of his two children.

[139] The plaintiff continues to have a fear of driving and is very cautious and nervous. He testified he drove only once or twice this year but told Dr. Karapeddy, a psychiatrist, he had not driven since 2022. Despite this, he maintains his GMC Sierra at a monthly cost of approximately $900 per month. He also owns one or more quads and a snowmobile. It is unclear when or where the recreational vehicles were acquired. If owned before, he took them with him to Lourdes. If purchased in Lourdes, one wonders why given his evidence of his functional limitations.

[140] While in Lourdes, now almost five years since his return to Newfoundland, the plaintiff has modified his snowmobile including the installation of a loud exhaust system. He testified the modifications were in preparation for sale but he still owns it.

[141] The plaintiff testified his present anxiety is 9 out of 10 and that he is isolated from socialization in his bungalow in Lourdes. He testified he “can go weeks without seeing people”, despite the evidence of his mother, Chantal and Ms. Hefferan as to the frequency of their visits. He continues to have suicidal ideation.

[142] He testified that his balance is so bad his leg can give out and he can fall down and, as a result, he needs someone to “steady him”.

[143] The plaintiff describes his current day-to-day routine as follows. He gets out of bed, has a bath and performs stretches, and then goes outside to smoke a cigarette. He then “attempts to make breakfast” and later checks his email. He made no mention of requiring assistance to bathe but, according to Chantal, he needs assistance to get in and out of the bath.

[144] While swimming is a recommended therapeutic activity, the nearest pool is 45 minutes to an hour away. He complains of a lack of funds, although he is receiving approximately $3,300 (net) a month from his disability and/or disability plus CPP disability benefits. I again reference the plaintiff’s income only because he explains his lack of treatment as being a result of insufficient funds. He testified

in direct examination that he paid $600 a month to rent the bungalow from his landlord, Mr. Snook, and $900 a month for his vehicle.

[145] In cross-examination, the plaintiff recanted his testimony concerning the payment of rent to Mr. Snook and, for the first time, acknowledged Chantal owned the bungalow which she bought on “a rent to own basis”. He testified he paid $600 a month to Mr. Snook on account of the purchase price until the bungalow was completely paid for. He thought that the payments were complete a year or, perhaps, eighteen months prior to trial.

[146] Chantal testified she paid cash for the bungalow sometime late in 2019 or early 2020. She made no reference to a payment schedule, to the renovations performed earlier in 2019, or how they were paid for.

[147] A date-stamped video depicting the extent of the renovations show them as substantially complete by May 14, 2019; close in time to the plaintiff’s post that he had “bought a place in Lourdes”. The video depicts the substantial nature of the renovation. It displays new flooring, new insulation, new plumbing fixtures, new paint, and exterior siding far in excess of “a few two by fours and some drywall”.

[148] As to the matter of funding for the plaintiff’s medical treatments, it is clear from receipts advanced in support of the claim for special damages that the plaintiff’s counsel funded most, if not all, of the plaintiff’s medical treatment as well as “paying him” for time off work while in Fort St. John.

[149] The plaintiff says he does not cook because “the stove is dangerous”. He reports cooking noodles or “quick stuff” but no fancy meals. He testified “I can’t have a shower because I am afraid I am going to fall.”

[150] Chantal, Ms. Hefferan, and Regina Woods (the plaintiff’s mother) all testified that they regularly attended Lourdes since the plaintiff moved there to assist with housekeeping and some yard work. A substantial claim “in trust” is advanced by the plaintiff for each of them. Neither Ms. Woods nor Ms. Hefferan gave any indication their level of attendance had changed since Chantal began living there Monday through Friday. Lourdes is an approximate 45-minute drive from Stephenville in good weather. It is closer to an hour during winter, making a round-trip 90 minutes to two hours.

[151] The plaintiff, owing to his various complaints, said he cannot do yard maintenance and said it was mostly done by his father. The plaintiff's father also performed most of the renovations to the Lourdes property, cuts and delivers the plaintiff's wood and, according to Ms. Woods, drives the plaintiff to and from appointments as well as Sunday dinners at her residence in Stephenville. Based on that evidence, the plaintiff's father has seemingly done far more for the plaintiff than Ms. Hefferan and Ms. Woods, but no in trust claim is advanced on his behalf. The plaintiff's father did not testify.

[152] As for pain relief, the plaintiff continues to take Tylenol #3 most days according to Dr. Heran. He augments normative pain medications with "shatter", an enhanced form of THC. He also reportedly takes anti-depressants and zopiclone as a sleep aid.

[153] He was also prescribed amitriptyline while in Newfoundland but stopped taking it "because it gave him bad dreams" according to an entry in his clinical records. That reference is the only record of any reported sleep disturbance related to "bad dreams", let alone nightmares of the magnitude described by the plaintiff and Chantal at trial.

[154] According to Dr. Heran's report, the plaintiff has not been compliant with taking all prescribed medications, in particular gabapentin. Despite the expert reports and clinical records noting prescriptions were written, no receipts for the purchase of prescriptions were advanced for reimbursement beyond those paid for, mostly, by Great West Life.

[155] The plaintiff claims to be restricted from all of the activities he previously enjoyed. As for snowmobiling, a common and previously enjoyed activity in Newfoundland, he reports he can do it for a little bit but then needs to stop and the activity might cause him to spend "a couple of days in bed after". Similarly, he reports he can do a short "whiz" on a quad but he can only sit for so long and the ride needs to be smooth. He reports he could do that for perhaps 30 to 45 minutes.

[156] The plaintiff denied any ability with computers, saying he can turn one on to watch a YouTube video but could never use Word or Excel or an accounting program. According to posts on Facebook, however, he is apparently an

accomplished gamer. His mother gave him a computer in 2020 to facilitate his gaming because of his social isolation.

[157] Despite fathering two children with Chantal and her living under the same roof with him Monday through Friday, the plaintiff describes the two of them as friends, nothing more. He says friends drop in on him once or twice a week or come over and “check up on me”. He made little mention of the visits from his mother or Ms. Hefferan.

[158] The plaintiff does not want to remain in Newfoundland. He has not worked since Fort St. John. He says he is a labourer and cannot operate outside of that context. He says the modified jobs he tried at Peace Country were too hard for him. He reports that work is readily available to him through friends either in Fort McMurray or back in Fort St. John, but they are beyond his physical abilities. The plaintiff reports his life has been ruined since the two accidents.

[159] Chantal testified after the plaintiff’s evidence was complete. She said she now resides in the bungalow with the plaintiff and their two children from Monday through Friday to allow the children to attend Lourdes Elementary. She said it benefits Connor because the school is small and affords more special care for him. She made no reference to any interruption in the schedule of their cohabitation during the summer of 2023 when school is out. She receives no child support from the plaintiff but said he provides whatever she and their two children need.

[160] According to both Chantal and the plaintiff, the plaintiff has little involvement in the actual day-to-day care of the children. Chantal described the situation as being like having three children not two.

[161] She acknowledged she was aware of the plaintiff attending a mountain festival on snowmobile but thought he had been taken by friends. She recalled friends coming to the house and “getting him out of bed then loading the snowmobile on the truck”. She referenced the quads and conceded he rode them with Peyton across “the field” and sometimes to “the beach” with his cousin. She claimed no knowledge of the plaintiff riding the moped depicted in one of the videos posted by the plaintiff on his Facebook page.

[162] She summarized her current observations about the plaintiff's mobility as follows:

> So, I always, usually, if we do need to walk together somewhere, I'll always- my first reaction is to put my arm out so that he's got some thing to hold onto….it still happens today.

[163] Later in her testimony, speaking to the plaintiff's current level of disability, she said:

> He doesn't—he doesn't have any physical ability anymore…..It's –it's terrible. It's hard to walk with him. It's (sic) takes way longer…

[164] As to his photophobia, she testified "if we go out anywhere, the first thing he would reach for was his sunglasses."

[165] When asked about his medications following the First Accident, she testified that she was:

> … picking them up for him, dispensing them and making sure he was taking them at the proper time because like I said he wasn't remembering much to-that he had to do, so I reminded him to it got taken at the right time, the right amounts.

[166] Prior to her taking up part time residence in Lourdes, Chantal said she visited the plaintiff two or three times a week to assist him with cooking and cleaning and "get medication if needed". She noted attendance by Ms. Woods, as well. She commuted and sometimes stayed over "if she couldn't get a ride back." It is not clear who she travelled with either way or whether she now has a driver's license.

[167] She said it was during this period, sometime in mid 2019, she and the plaintiff were intimate again: "we ended up trying and then there (sic) came our son". I presume she meant daughter, Peyton, as Connor was born in March 2019, about the time of the purchase of the Lourdes home.

[168] As above, Chantal's move to staying regularly through the week was to accommodate Connor's needs. He is, according to Chantal, "severely autistic". She said "[h]e's got a very set schedule throughout the day. Transitioning is something you have to prepare him for. He has a set school schedule throughout the week."

[169] Despite testifying she would spend four nights and five days in Lourdes, Chantal described her Monday routine as follows:

> Usually I wake up, I'll bathe my daughter, do her hair, feed both my kids breakfast. Then I get my daughter in the car. She goes to school for 8:30. She's dropped off. I come back home, bath my son, give him a snack, and then I have to go back and get my daughter by 11:20. Pick up my daughter, get my son in the car, struggle to do that, get him in the car. I get him at school. Usually it's about an hour fighting at school., and then drop him off, go back home and then pick him up again by 3:30.

[170] When asked specifically about the plaintiff's left arm, Chantal said replied she hadn't even seen him hold a carton of milk in it.

[171] Ms. Hefferan testified as to her observations of the plaintiff both prior to and after the accidents.

[172] She confirmed the plaintiff was fit and able before the accidents. Her next observation of him was when he returned from Fort St John to Stephenville, she says in the "middle of 2018". At that time, he moved into her house with Chantal, though they were not in a relationship. He moved out "roughly the middle of 2019". During the year or so that he resided with her she observed him limping and holding his back. He wore sunglasses and watched TV in the dark. She said he was not sleeping well but she did not testify, as both the plaintiff and Chantal did, about any "screaming nightmares or sweat soaked sheets" despite saying it was her who did the laundry.

[173] Ms. Hefferan said she assisted the plaintiff because "he is my son-in-law", despite maintaining that the plaintiff and Chantal are not in a relationship. She explained "he gave me two beautiful grandkids so he is a part of the family whether they are together or not". She noted that "currently" he slouches and walks with a limp. She said his energy is low and he cannot walk long distances. She said he consistently takes hot baths – three to four a day.

[174] Ms. Hefferan testified that she visits Lourdes "once or twice a week" because "we want to help him". Helping him includes taking out the garbage, yard work, snow shovelling, picking up groceries, bringing wood in, and childcare. She said she feeds and bathes the two children and lets them sleep over at her place. She acknowledged that Chantal stays in Lourdes four nights (not five) and five days a week but otherwise lives with her in Stephenville. She said Chantal is there because the kids attend school there and "it's better for Connor."

[175] Ms. Hefferan said that if the Hefferan family hold an event in Stephenville, “he can’t make it” because of the drive. However, Chantal testified she and the plaintiff spend Christmases at her mom’s home and, according to Ms. Woods and Chantal, the plaintiff regularly spends Sunday in Stephenville for Sunday dinner at his mother’s house.

[176] Ms. Woods testified “he comes for dinner at 12 and then leaves”. She said his father or sister go pick him up – “he is not good for driving”. Currently, she said when she sees the plaintiff “he is limping, holding his back” and “whether it’s in a dark room, in his mom’s room just to lie down or on the couch”.

[177] When the First Accident occurred, Ms. Woods was working in camps in Alberta. She returned permanently to Stephenville in 2023. Her previous schedule, generally, was 21 days on and 7 off. On her time off work, she sometimes returned to Newfoundland. She testified she was in contact with the plaintiff by Facetime calls while he and Chantal were in Fort St John. She testified she was able to see his limp over the FaceTime calls and some were made while he was soaking in a tub in a darkened room. She described his appearance as being in pain and rubbing his neck. Sometimes, he wore sunglasses.

[178] Ms. Woods testified the plaintiff told her of the breakup between he and Chantal and that he “was single” by the time they returned. He stayed at the Hefferan residence because there was no room at Ms. Woods’ home.

[179] Ms. Woods’ current observations were that he walked with a limp and could only walk for a short period of time. He attends her home in Stephenville for Sunday dinner but resides in Lourdes. She sees him there “whenever I can” and helps with groceries and laundry. According to her, the plaintiff “can’t take out the garbage.’ Ms. Woods never mentioned Chantal accompanying the plaintiff to Sunday dinner but Chantal testified that she and the two children regularly attend.

[180] In describing what the plaintiff “can do”, Ms. Woods said “he will try to make a sandwich”. She reported his poor memory and said “doctors call me the night before” so as to remind him of appointments. Despite seeing him up to 4 times a week, depending upon her schedule, Ms. Woods said the plaintiff wants to be left alone. She said when she is not there, someone else is.

[181] Ms. Woods said she doesn’t know who owns the house he lives in. In cross-examination, when asked about the activities he can do, she replied “there

are things I know and things I don't know." She knew he played video games on the computer she gave him in 2020 "to occupy his time". Only in cross-examination did she acknowledge that Chantal was in Lourdes living with the plaintiff for four nights and five days weekly. Ms. Woods has a "cordial" relationship with Ms. Hefferan but the two don't attend Lourdes at the same time.

Positions of the Parties

[182] The plaintiff argues that his losses are nothing less than catastrophic. Counsel submits that the plaintiff has lost "his identity as a hard-working, energetic and driven man. He had a bright future ahead of them, which is now gone."

[183] In respect of those losses, the plaintiff seeks an award of $375,000 for general damages including loss of housekeeping capacity (but then makes a claim for future housekeeping); $376,273 in respect of loss of past earning capacity; $3,703,463 in respect of future loss of earning capacity; $326,964 for cost of future care; and $9,297 for special damages.

[184] Additionally, the plaintiff advances "in trust" claims in the amount of $135,450 for Chantal, $12,500 for Ms. Woods, and $34,256 for Ms. Hefferan, in respect of the services they provided the plaintiff since the First Accident.

[185] The defendants, collectively, argue that the plaintiff's injuries are far less than those stated by him in his evidence. They put in issue both the credibility and reliability of the plaintiff as well as some of the witnesses who testified on his behalf, mostly notably, Chantal. They argue that to the extent any of the experts commissioned by the plaintiff relied on his self-report to describe his injuries, the resulting opinion should be viewed with caution or ignored.

[186] Nonetheless, the defendants collectively acknowledge that the plaintiff has suffered an injury and is entitled to compensation. The injuries acknowledged to be causally related to one or both of the accidents caused by the defendants' negligence are the myofascial pain described in the reports of both Dr. Heran and Dr. Singla, and the facet joint issue described in the report of Dr. Heran. The defendants acknowledge the plaintiff has a depressive syndrome but assert that it results from the absence of any pursuit of the counselling recommended to him since his return to Newfoundland and, according to their expert Dr. Laban, is treatable. The defendants argue the plaintiff has failed to prove that he suffered a

mild traumatic brain injury (MTBI) as a result of the First Accident, or any form of neurocognitive disorder, post traumatic stress disorder (PTSD), somatoform disorder, erectile dysfunction or urinary issues.

[187] In respect of compensating the plaintiff for the acknowledged injuries, the defendants suggest an award between $75,000 to $100,000 for non-pecuniary loss, and the $23,313.42 gross wages, as calculated by Peace Country, for the period following the First Accident until the date of the plaintiff's departure for Newfoundland.

[188] The primary position of the defendants is that there is no further loss to the plaintiff in respect of his earning capacity, noting that he has made no attempt to return to work in any capacity and, in the words of the defendants, "has simply decided to subsist off of his disability benefits despite evidence confirming that he has the residual earning capacity to return to sedentary work".

[189] Alternatively, the defendants suggest capitalizing the loss of future earning capacity by providing for one to two years of income replacement based upon his 2016 earnings. The defendants suggest $65,000 to $130,000, less a contingency of 15% for labour market contingencies, unrelated health issues, etc.

[190] As to cost of future care, the defendants suggest a modest award of $15,000 given, according to the defendants, the plaintiff's seeming unwillingness in the past to avail himself of medical treatment.

[191] On the matter special damages, the defendants acknowledge the legitimacy of approximately $2,900 in special damages for prescription medications, physiotherapy treatments actually attended, some clinical counselling and the replacement of a TENS machine.

[192] The defendants dispute any award in trust for the plaintiff's mother, Chantal or Ms. Hefferan given, they say, the evidence establishes that the tasks those three claim to have performed are, and always have been, within the ability of the plaintiff to perform on his own.

Credibility

Credibility and Reliability of the Plaintiff and Collaterals

[193] Both parties acknowledge that the plaintiff's credibility and reliability as to the existence of subjective symptoms and the timing of their onset are central to the assessment of the plaintiff's injuries and, consequentially, his damages. Similarly, the plaintiff's self-reported degree of physical impairment hinges, to some extent, upon finding him, as well as those called on his behalf, credible and reliable witnesses.

[194] Credibility refers to the truthfulness of the witness; reliability relates to the accuracy of the testimony: *Ford v. Lin*, 2022 BCCA 179 at para. 104.

[195] On behalf of the plaintiff, counsel argues that the plaintiff's evidence is both credible and reliable on the key issues and is supported by collateral witnesses. That said, some inconsistencies or inaccuracies are conceded by counsel some of which, I agree, may not be germane to the issues of the trial. That, however, does not render them less noteworthy if they affect my assessment of the plaintiff's overall credibility and/or reliability as a historian.

[196] Plaintiff's counsel stressed the plaintiff is both dyslexic and has ADHD. Also, according to the evidence, depending upon the weight I afford it, he has cognitive and psychological injuries "including a brain injury, major depressive disorder, unspecified neurocognitive disorder, PTSD and unspecified somatic symptom disorder". All, according to the plaintiff, arise from the combined effect of the accidents and accordingly must be accounted for in the assessment of the plaintiff's evidence. The takeaway from this submission is that I am to take the plaintiff as I find him and consider the impact of inconsistencies in a manner not dissimilar to the assessment of other vulnerable witnesses such as children. Such presupposes, to some extent, my acceptance of some of the suggested psychological injuries said to affect the plaintiff.

[197] As above, counsel for the plaintiff acknowledged inconsistencies in the evidence of the plaintiff but says they are minor and do not go to any of the core elements underlying the contention of the degree of his disability: see *R. v. Hoda*, 2023 BCPC 218; *Gillespie v. Yellow Cab Company Ltd.*, 2014 BCSC 1745, aff'd 2015 BCCA 450. In *Gillespie*, the trial judge noted:

> [230] I am mindful that a plaintiff's ability to accurately recall and express post-accident experiences can be hampered by the very injury that is to be assessed. Even the defendants' expert noted that individuals with head injuries are not reliable reporters of historical events. He may have been somewhat unreliable in his testimony; I ascribe that unreliability to the nature of his injury and not to any willful attempt to mislead the Court. I have been able to find the facts necessary to decide this issue in spite of the flaws in Mr. Gillespie's evidence.

[198] Finally, from the plaintiff's perspective, I was referred to the decision of *Warder v. Insurance Corporation of British Columbia*, 1993 CanLII 724 (B.C.S.C.), in which Mr. Justice Bouck summarized his reliance upon collateral witnesses to vouchsafe the evidence of the plaintiff. He noted:

> … What struck me about the severity of his condition was the evidence coming from people who knew him well before the accident and then saw the significant change in his performance after the accident. This kind of evidence is very compelling when compared to evidence from others who only examined him after the accident and had little personal knowledge of him before that time.

[199] I am asked to take into account not only the plaintiff's evidence and the expert evidence but also the evidence of Chantal, her mother, the plaintiff's mother and his two co-workers, Mr. Soule and Mr. Smalls. I am asked to accept, as the experts who opined on his condition seemingly did, the plaintiff's evidence as to the existence of his subjective complaints taking into account, as if proven, an MTBI, PTSD, and ADHD and 'forgive' the numerous inconsistencies which emerged during his evidence and, by implication, those of Chantal.

[200] The defendants take the opposite position. While not disputing the plaintiff sustained some objective physical injuries as a result of the two accidents, the defendants suggest the plaintiff has grossly exaggerated his symptoms and been untruthful to the experts (and the court) respecting the history of the accidents, their aftermath, and the degree of impairment he has experienced as a consequence.

[201] Counsel for the defendants referred me to *Afework v. Correa*, 2019 BCSC 1672, where Justice Giaschi summarized his assessment of credibility as follows:

> [9] Before turning to the issues, I address credibility issues raised by the defendants in relation to the evidence given by the plaintiff. In summary, the defendants submit that:
>
> > a) The plaintiff's evidence of her injuries varied between examination-in-chief and cross-examination, conflicted with

> the medical records, and was frequently unreasonable and unlikely;
>
> b) The plaintiff was unable to “resist the influence of interest”;
>
> …
>
> [15] Accordingly, I generally find that the plaintiff was not a reliable witness, particularly in relation to the severity of her injuries, the effects of her injuries, and the hours worked by the plaintiff following MVA#1. I therefore approach the plaintiff’s evidence with considerable caution.

[202] I am mindful in assessing the overall effect of the accidents on the plaintiff’s enjoyment of life and continued participation in the work force that there is undisputed evidence of the plaintiff suffering objectively ascertainable injuries to his left shoulder coupled with possible disc involvement affecting the strength of his left leg. That being said, reliability and credibility become an issue when it comes to the assessment of the plaintiff’s injuries, resulting impairment and the impact on his financial future based, primarily, on self-report. All of the examining doctors acknowledged that one of the facts/assumptions relied upon in offering their opinions was the accuracy of the plaintiff’s narrative of events and, more particularly, the veracity of his subjective complaints.

[203] As noted by defendants’ counsel, proving subjective injuries is more problematic where the evidence of same largely emanates from the plaintiff's own description of his pain and suffering. In that respect, former Chief Justice McEachern's comments in *Price v. Kostryba* (1982), 70 B.C.L.R 397, 1982 CanLII 36 (S.C.), are noteworthy:

> The assessment of damages in a moderate or moderately severe whiplash injury is always difficult because plaintiffs, as in this case, are usually genuine, decent people who honestly try to be as objective and as factual as they can. Unfortunately, every injured person has a different understanding of his own complaints and injuries and it calls to judges to translate injuries to damages.

Further at page 4, he noted:

> In Butler v. Blaylock et al. decided October 7th, 1980, (Vancouver Registry B781505), I referred to counsel's argument that a defendant is often at the mercy of a plaintiff in actions for damages for personal injuries, because complaints of pain cannot easily be disproved. I then said:
>
> > "I am not stating any new principle when I say that the Court should 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.

> "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."

[204] Lastly, in terms of case law, the defendants noted that in *Kallstrom v. Yip*, 2016 BCSC 829, Justice Kent discussed the risks associated with reliance on experts' opinions formed primarily on the basis of "independent assessments" performed years after the original injury:

> [339] Ms. Kallstrom's case relies substantially upon the medical opinions of various experts retained by counsel to provide "independent" assessments of Ms. Kallstrom, in most cases, many years after the MVAs. Ms. Kallstrom did not call as expert witnesses most of the general practitioners, psychologists, psychiatrists or other health professionals involved in her treatment and care either before or after the MVAs. While extensive clinical records for most of these health professionals were put into evidence, more detailed opinion evidence from Ms. Kallstrom's treating general practitioners and psychologists would likely have assisted the Court in better understanding the plaintiff's pre-accident mental and medical conditions, and the involvement of factors unrelated to the MVAs in the development of her chronic pain and depression.

[205] Those observations are applicable here. In this case, no treating physician of the plaintiff was called at trial, nor were any reports provided from Dr. Nobar or the various family physicians who attended the plaintiff in Newfoundland. All of the experts who opined on the plaintiff's condition saw him five to six years after the accidents. None of the plaintiff's treating physicians offered a medical opinion as to the extent of his injuries or their effect on his function.

[206] In the oft-cited authority of *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013), Justice Dillon stated the following methodology for the assessment of credibility:

> [187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

[207] Here, I find that there are numerous incidences of the plaintiff's evidence being so implausible as unlikely to be true, as well as inconsistent with the available medical records, inconsistent with prior sworn testimony, and inconsistent with the evidence of others called on his behalf.

[208] The plaintiff testified, as one would expect, that he truthfully relayed his symptoms to his treating physicians and the experts to whom he was referred, knowing they relied on the truth of his narrative as informing their assessment and, in part, their medical opinion.

[209] With that in mind, I begin, as briefly as I can, to assess the evidence of the plaintiff and of the collateral witnesses called to support the contention that he sustained a catastrophic injury as a result of the two accidents.

[210] There is no issue as to the physical fitness or mental health of the plaintiff prior to the First Accident. Both Chantal and the plaintiff testified as to the plaintiff's mental state immediately following the First Accident. Mr. Soule and Mr. Small, the owner and a foreman from Peace Country, testified as to the plaintiff's physical abilities prior to the accidents and the impact they observed in terms of his enthusiasm and abilities in their aftermath.

[211] The circumstances surrounding the First Accident are important because the magnitude of the collision provides a plausible starting point for the opinion that the plaintiff suffers from both an MTBI and PTSD.

[212] According to Chantal, the plaintiff was assisted by a police officer to the median where he remained in a state of confusion. The plaintiff was steadfast in his denial of walking about at the scene of the accident, which certainty of events is, in itself, inconsistent with his evidence that he was dazed and confused and thereby unlikely to specifically recall anything happening at the scene.

[213] The plaintiff told Dr. Karapeddy that it took him 20-30 minutes before he realized he was in the middle of the highway following the collision. He told Dr. Karapeddy he attended the emergency ward and was held for observation for four to five hours. Neither statement is accurate.

[214] The evidence of both the plaintiff and Chantal is inconsistent with the testimony of Mr. Fehr, the investigating police officer, the ambulance attendants' report, and the Hospital's emergency admission records. All of those, whether

through testimony at trial (the officer and Mr. Fehr, whose evidence I accept) or the record keepers, reported the plaintiff's mental state immediately following the First Accident as being normal with no complaints either as to an altered state of consciousness or short-term amnesia relating to the circumstances of the accident.

[215] Both the officer and Mr. Fehr testified that the plaintiff appeared lucid throughout their encounter. Mr. Fehr said the plaintiff expressed concern about Chantal's safety when she tried to return to the vehicle to turn off the OnStar alert. Nothing in the evidence or written report of the attending officer, nor the evidence of Mr. Fehr, support the testimony of Chantal that another officer attended the scene, let alone provided the plaintiff assistance in reaching the median.

[216] The plaintiff's attendance at Emergency lasted approximately one hour and fifteen minutes. He was not seen in the first hour but assessed at approximately 1:50 p.m. and released at 2:00 pm.

[217] Both the plaintiff and Chantal testified as to the almost immediate onset of what the experts describe as photophobia; sensitivity to light. While Dr. Nobar was eventually told of this complaint and ultimately wrote the plaintiff's employer to allow him to wear sunglasses at work, such was reported long after the First Accident, apparently by the plaintiff's counsel. Dr. Nobar's entry in September 2017 suggests the disclosure regarding light sensitivity was the first he had hard of it.

[218] As to the photophobia, Chantal testified "if we go anywhere, he puts on sunglasses". The evidence that the plaintiff always wears sunglasses is belied by various depictions in post-accident video or photos of the plaintiff not wearing sunglasses in situations where one would reasonably expect, given the complaint and the testimony of both the plaintiff and Chantal, he would be. In particular, the video taken in Fort St. John in July 2018 as the plaintiff and Chantal are going out for breakfast (the "birthday video") depicts the plaintiff, without sunglasses, on what appears a bright, sunny day.

[219] The birthday video also depicts the plaintiff driving while narrating and photographing himself on his cell phone, debunking, in large measure, his claims of anxiety or even caution when driving and, more importantly, the diagnosis of PTSD made by Dr. Karapeddy. By the time of the birthday video, the plaintiff had

experienced both accidents and, despite his evidence to the contrary, appears cheerfully driving while using his telephone to record the birthday celebration.

[220] The birthday video is also very much at odds with the common evidence of both the plaintiff and Chantal that the plaintiff was despondent to the point of suicidal ideation because of the “bad break-up” with Chantal.

[221] The birthday video also depicts the plaintiff walking, if not spryly then at least unassisted, emerging from his GMC Sierra seemingly without difficulty or discomfort. I contrast that visual, after the effect of both accidents, with Chantal’s testimony that the plaintiff’s ability to walk got progressively worse and she “had to hold him up by the arm when he walked”. When shown the birthday video depicting the seeming ease with which the plaintiff exited his vehicle and walking without assistance, she responded by volunteering that when the videoing stopped, she took his arm to assist him into the restaurant. I disbelieve her.

[222] In another post depicting the acquisition of his replacement vehicle, the 2016 GMC Sierra, the plaintiff is shown outside in a contorted position, looking happy, not wearing sunglasses on what seems another bright, if not sunny, day.

[223] Another photograph taken from the plaintiff’s social media depicts the couple during a trip they took to Hudson Hope on April 2, 2017; approximately 2 months after the First Accident. While the plaintiff was on that occasion equipped with sunglasses, they are on the crown of his head, not covering his eyes. The plaintiff and Chantal travelled to a trail near Hudson Hope, by his estimate a normal one-hour drive from Fort St John. Chantal estimated the drive took 2 hours because they needed to stop to accommodate the plaintiff’s aversion to driving. Despite that professed aversion, the trip was so they could drive a side-by-side off road (after loading and unloading it on the plaintiff’s truck). According to Ms. Hefferan they travelled in the side-by-side for approximately 30 minutes.

[224] Approximately three-and-a-half months post-accident, Chantal posted a photo of another trip the two took to Fish Creek Trails; a 4-kilometre nature walk near Fort St. John. The two drove to the park. When asked about the plaintiff’s ability to walk recreationally over a trail, Chantal explained they only walked a portion of it. Given the testimony that the plaintiff, both then and now, requires assistance to walk, I cannot reconcile why they would drive to a nature trail and walk “part of it”.

[225] Chantal testified how nervous the plaintiff was while driving and that she had to bring fresh clothes and a face cloth nine times out of ten if they drove. The plaintiff mentioned wearing a diaper so as to fly to Vancouver for either medical meetings or these proceedings, however, he never expanded on his evidence that he "dribbled" to suggest he required clean up or a change of clothes following a drive.

[226] In another graphic instance of the disconnect between the plaintiff's testimony and other evidence, the plaintiff is depicted in Newfoundland snowmobiling during a winter festival in 2020, on what is a reasonably bright day, walking about on packed snow (a matter he complained of particularly to Dr. Nobar) amongst a group of friends without the benefit of sunglasses or any aid for walking. He wore goggles but those were perched atop his head, not covering his eyes. In the video, he can be heard speaking by phone to a person named Andre, a former co-worker at Peace Country, advising him: "I got my legs back." He goes on to say, "I'll be back soon."

[227] Such is wholly at odds with the evidence of the plaintiff, Chantal, Ms. Hefferan, and Ms. Woods as to the walking impairment they observed the plaintiff experience right up to the date of trial.

[228] The plaintiff testified "I got walking papers from Tyler", implying termination from Peace Country in June 2018. However, I accept Mr. Soule's evidence that he did not fire the plaintiff but advised the plaintiff of short-term disability and expected the plaintiff to return to work. Mr. Soule also explained he expected to hear back from the plaintiff but never did.

[229] As to driving, Chantal described driving with the plaintiff as "horrible" and only happening "if he needs to or he has a good moment". The plaintiff drove the whole of the return trip from Fort St John to Newfoundland in the summer of 2018. He was also clearly using his vehicle to drive back and forth to medical appointments in Stephenville. He retained the truck he bought to replace the vehicle written off in the First Accident at considerable monthly cost despite his claims of financial distress.

[230] Once the plaintiff moved to Lourdes, he attended periodically in Stephenville for medical treatment. He told Dr. Karapeddy he stopped driving in 2022; five years after the accident said to have caused him PTSD. According to

Dr. Laban, PTSD would result in a driving phobia inconsistent with the reported pattern of the plaintiff's driving after the First Accident. The plaintiff told Dr. Heran he still drives occasionally but is nervous when doing so.

[231] The plaintiff reported to both the vocational expert and to government authorities in his CPP application that he was paying rent of $600 monthly. He identified his landlord, after a pause, as "Junior Snook." He stated under oath in direct examination and confirmed as truthful the discovery evidence put to him that he paid rent.

[232] Only after a break during cross-examination during which the plaintiff, as is routine, had been cautioned not to discuss his evidence, did he seek to "clarify" some of his earlier answers. That clarification amounted to a complete recantation of his earlier evidence concerning the payment of rent for the past year or perhaps year-and-a-half; the same period of time in which he told various of the expert witnesses he saw that he was still paying rent. He disclosed that Chantal bought the property on a "rent-to-own" basis and that he continued to pay $600 monthly until the whole of the purchase price was fully paid. Later, Chantal said she paid cash for the property no later than early 2020.

[233] The plaintiff's evidence that the minimal renovations performed were paid for by rent abatement is wholly unbelievable. It is implausible the renovations depicted were performed other than after it had been acquired by Chantal. The renovation was extensive. From the video posted to social media, it appears the house was gutted, re-insulated, new flooring and plumbing installed, new windows installed, and the outside siding replaced or installed. It did not, as the plaintiff testified, involve a "couple of two by fours and some drywall" to install a second bedroom.

[234] On the totality of the evidence, including the plaintiff's post, true or not, that he bought the Lourdes property in the spring of 2019, and the May 2019 video depicting the almost completed renovations, I conclude the Lourdes residence was purchased sometime near the beginning of 2019 and prior to the commencement of renovations performed to accommodate a soon-to-be family of three.

[235] Given my conclusion the property was purchased at or near the time of Connor's birth, the purchase could hardly have been for the purpose of getting

Connor better assistance for his autism, as Chantal asserted. Chantal did not provide any other rationale for buying a non-income producing property in a town where she does not reside to allow the plaintiff, who she suggests was at that time a “friend”, to reside in it rent free.

[236] Chantal insists she and the plaintiff are, despite their two children together, “friends only”. Her mother, on the other hand, referred to the plaintiff as her “son-in-law”, which I conclude accurately defines their relationship throughout the period both before and after the accidents.

[237] As to the plaintiff’s testimony, confirmed by Chantal, of regular nightmares so severe that he woke up screaming in a cold sweat and had suicidal ideation, there is no earlier record of such prior to his disclosure to Dr. Karapeddy. Instead, the records suggest that “bad dreams” were associated by the plaintiff to the amitriptyline he had been prescribed. The plaintiff later discontinued taking amitriptyline, reporting that he associated it with bad dreams, but did not mention the nature of those dreams or the intrusive thoughts of the accident he reported to Dr. Karapeddy.

[238] Chantal testified that the screams and night sweats have continued since she began to live in Lourdes with him four nights a week despite the plaintiff’s testimony they had abated for a period only to return when he began to think about the pending trial date. He denied hallucinations to medical practitioners in Newfoundland. Ms. Hefferan, in whose house the plaintiff lived for six to eight months following his return to Newfoundland, never testified as to nightmares or cleaning sweat-soaked sheets. The evidence of Chantal and the plaintiff on this significant symptom is thus not in harmony with each other, other witness, or the medical records.

[239] Chantal testified she had been going to Lourdes Monday to Thursday for about one year as it was better for Connor because “Lourdes has a smaller school with less kids”. It also allowed her to “be there to look after Des”. I contrast that with the plaintiff’s report to Dr. Laban that the two decided to “move in together for financial reason so that they can co-parent”.

[240] Further, given the routine described by Chantal on Monday mornings of getting her daughter (then three years old) to school while leaving Connor “at home”, it is obvious Chantal is at the Lourdes residence from Sunday evening on;

likely returning with the plaintiff after Sunday dinner at Ms. Woods' home in Stephenville. Otherwise, she would be leaving Stephenville early Monday morning. Chantal gave no indication she had, since returning to Newfoundland, obtained a driver's license or had access to a vehicle other than, possibly, the plaintiff's truck.

[241] As to Ms. Woods' evidence that the plaintiff's sister or father picked up and returned the plaintiff for Sunday dinner, it is implausible. The return trip is 90 minutes on good days; two hours in winter conditions. The driver would need to pick up the plaintiff in Lourdes, drive back to Stephenville and then make the round trip four or five hours later to return the plaintiff to Lourdes and return to Stephenville. That would equate to a total three to four hours of driving.

[242] The only reasonable inference, and the one I draw, is that the plaintiff drives to Stephenville, has dinner with his mother, Chantal and their two children, and then the four of them return to Lourdes in the plaintiff's truck, where all four wake up Monday morning to commence the routine described by Chantal. I presume, as Chantal never testified to having a driver's license, that the plaintiff drives both ways.

[243] As to the Lourdes school being the rationale for the shared accommodation, I note Connor was born March 8, 2019 and was thus four years old when Chantal moved (earlier according to the narrative provided by the plaintiff to Dr. Laban) to purportedly provide Connor better access to a smaller school to allow him more attention. Peyton, their daughter, turned four in March 2024. Chantal described her day as "getting the kids to school", leaving the plaintiff alone for perhaps fifteen minutes then returning to "look after Des". Children aged three and four do not typically attend school.

[244] Turning to the plaintiff's physical abilities, when questioned about his mobility by defendants' counsel, the plaintiff stated:

> Well, I can barely go outside in the winter. I'm scared to fall down and stuff like that. And then during the summer months, most of my friends are working; so I spends (sic) a lot of time by myself and just, I guess, thinking to myself. I guess I spend a lot of time contemplating and what happened and what's going to happen…

[245] Later he was asked and answered as follows:

> Q: How's your balance problems now?

A: Bad.

Q: How often do you have problems with balance?

A: I never did have a problem with balance.

Q: Now, how often do you have problems with balance?

A: If my leg -- if I'm walking and my leg decides to quit out, well, then, I'm going to end up going down. So now when I'm walking -- I'm to avoid falling down and hurting myself -- I'll hold myself up or I'll get someone to hold me up.

[246] Both exchanges are incompatible with the evidence earlier referenced. As another example, the plaintiff's evidence that he does not take showers for fear of falling down is not compatible with his report to Mr. Cole, the functional capacity assessor, that he showered sitting on a stool. Such leads me to conclude that, put charitably, the plaintiff is less than forthright when testifying under oath.

[247] Chantal similarly testified, speaking in the present, that the plaintiff "can barely walk – his left leg drags", that the plaintiff's continuing balance issues are so bad "sometimes his leg can give out and he falls down", and that "the curtains are always closed and he wears sunglasses". I contrast that again with the evidence of Mr. Cole, the video of the winter festival, and the video depicting the plaintiff riding a moped. Chantal's evidence is simply not believable given the evidence I have referred to. Nor does it conform with the plaintiff's presentation over the days he testified before me, where I observed him enter and exit the witness box on multiple occasions. All in all, the plaintiff and Chantal's evidence as to the extent of the plaintiff's current impairment goes beyond mere embellishment or exaggeration when I compare it to the more reliable evidence of the plaintiff's function when he presumed he was unobserved.

[248] When confronted with the "winter festival video", which sharply contrasted with answers given under oath as to his engagement in recreational activities, the plaintiff volunteered that he spent four or five days in bed following the excursion up a mountain on his snowmobile. Chantal, after viewing the video, recalled his "friends came and got him out of bed to take him to the event". Both descriptions are entirely implausible based on the video alone.

[249] Ms. Woods testified she "facetimed' the plaintiff while she was in Alberta and observed him wearing sunglasses and saw his left leg limp. It is difficult to

understand, without some more fulsome description of the set-up of the plaintiff's phone during a Facetime call, how Ms. Woods would observe a left leg limp.

[250] Both the plaintiff and Chantal testified as to the plaintiff's erectile dysfunction following the First Accident and the immediate cessation of intimacy between them. Despite that, in September 2017, following the separation of the two and the plaintiff relaying to Dr. Nobar that Chantal was sexually active with another male, the plaintiff sought testing for sexually transmitted infections. Were they not still engaged in intimate contact such would have been unnecessary. Further, the plaintiff and Chantal's youngest child, Peyton, was born in March 2020, making the likely date of conception sometime during June or July 2019. On July 9, 2019, Dr. Bouls recorded, after reviewing numerous symptoms of which the plaintiff complained, "no sexual complains [sic]". Again, I disbelieve both of their evidence regarding the onset of erectile dysfunction.

[251] Dr. Nigro testified there was no physiological reason for the plaintiff's complaints but explained that erectile dysfunction was a known side effect of anti-depressants. According to the clinical records, the plaintiff was first prescribed anti-depressants upon his return to Newfoundland and, as such, their use does not explain the alleged sexual dysfunction following the First Accident. Given the immediacy of the claimed onset, neither could chronic pain explain the symptom. I also note that the plaintiff does not appear to have tried medication such as Cialis or Viagra in an attempt to correct, even temporarily, the erectile dysfunction he complained of, either before or after attending Dr. Nigro.

[252] Despite the plaintiff's testimony of ongoing complaints of urinary frequency and loose bowel movements since the First Accident, he repeatedly denied urinary or bowel issues to Dr. Nobar and various treating physicians in Newfoundland.

[253] Both the plaintiff and Chantal testified their children's births were the result of two isolated sexual encounters where neither apparently wanted a pregnancy to result. Dr. Nigro testified as to the statistical unlikelihood of two sexual encounters between persons not intending pregnancy resulting in pregnancy on each occasion.

[254] Both were referred to posts on Facebook which included photos and text depicting the two of them as a couple. The plaintiff told many of the experts he saw for assessment about his ongoing relationship with Chantal either as a

partner or common law spouse. The plaintiff told Dr. Heran in March 2023 that he split his time between Lourdes and living at his girlfriend's in Stephenville. He told Mr. Cole in 2023 "he intended to move back in with his spouse and two kids".

[255] Chantal originally denied an interruption to their relationship prior to departing for Newfoundland but eventually acknowledged that she had separated from the plaintiff in September 2017 as a result, she said, of his low mood and treatment of her. She agreed she saw other men during their separation, which accords with the recorded remarks of the plaintiff to Dr. Nobar.

[256] As to the plaintiff's testimony that he was suicidal in June 2018, having lost both his job and his girlfriend, the birthday video of their breakfast together belies both the assertion of suicidal ideation and that the two were not a couple as they returned home. So does their continued cohabitation in Ms. Hefferan's home in the face of their "bad breakup".

[257] Connor was born in March 2019. Conception, presuming a full-term pregnancy, would have occurred in or around June or July 2018, when the parties were purportedly broken up and the plaintiff suicidal. Chantal testified she didn't know she was pregnant until well after their return to Newfoundland. She said Connor was premature. Assuming both to be true, and hypothesizing Connor was a month premature, conception would have been early July 2018; again, hardly supportive of their evidence of a "bad break-up".

[258] Despite never being asked about its import by either counsel, Chantal wore what would commonly be described as a wedding band on her left ring finger throughout her testimony. She testified "that when we left Fort St. John, we went separate ways". Nothing could be further from the truth on any objective assessment of what followed. In summary, they returned to Stephenville together and resided together until the plaintiff moved to Lourdes in the early part of 2019 where she purchased the house they now reside in. They have two children together. The plaintiff referred to Chantal, over roughly the same period while in Vancouver, as his common law partner, girlfriend, ex-girlfriend and fiancé, to various of the experts engaged on his behalf and in documentation submitted to governmental agencies or attending doctors.

[259] Ms. Hefferan testified that when the plaintiff and Chantal returned to Newfoundland, they were not in a romantic relationship and he simply moved in

with her until things got better and he could find a place of his own. She stated he left mid-2019 but failed to mention he moved to a home purchased by her daughter.

[260] Ms. Hefferan testified that, after he moved, she visited him once or twice a week to help out and that her husband did yard work. She, too, mentioned Chantal is in Lourdes because “the kids because they attend school there.”

[261] Ms. Hefferan also testified that “if we hold something here (Stephenville) he can’t make it because it’s a 45-minute drive”. That evidence does not align with the Ms. Woods’ report that the plaintiff attends for weekly Sunday dinners and that Chantal and the two children are frequently there as well. Chantal accompanied the plaintiff to BC for scheduled medical assessments and the trial.

[262] Chantal maintains the plaintiff still speaks of suicide despite the numerous reports from doctors in Newfoundland where the plaintiff denied suicidal ideation. The plaintiff first reported suicidal ideation to Dr. Karapeddy despite his numerous previous denials.

[263] Chantal’s statement that following the First Accident she was responsible for picking up and dispensing the plaintiff’s medications consistent with the dosage and times prescribed was misleading as it leads one to believe, without any other point of reference, that this entailed something more than picking up four prescriptions (two on the same day) and, over the course of 16 months, “administering” a total of approximately 140 pills. The plaintiff, despite the stated intensity of his discomfort, was clearly not taking the prescribed medications daily. He never filled the prescription(s) from Dr. Nobar for Ativan.

[264] Ms. Woods description of the time she was absent from Newfoundland and the frequency of her returns from 2018 to 2023 make it difficult to accept the frequency with which she described attending in Lourdes to assist the plaintiff. She said she often assists the plaintiff one to four days a week. Only during cross-examination did Ms. Woods acknowledge that Chantal had been living in Lourdes Monday to Friday for the past year. It is hard to understand, given the 90-minute return trip, why Ms. Woods needed to attend to assist the plaintiff up to four times per week when Chantal was already there. Moreover, she testified the plaintiff attends her residence weekly for dinner.

[265] The same applies for Ms. Hefferan's evidence as to the frequency of her attendance in Lourdes.

[266] The evidence of all three – Chantal, Ms. Hefferan, and Ms. Woods – is impossible to harmonize with the plaintiff's evidence that he is isolated and alone in Lourdes and can go one or two weeks without seeing anyone. Were I to accept their evidence, there would have been days when all three women would be there together assisting him.

[267] Nowhere is what I find to be Ms. Woods' tendency to exaggerate more on display than when she was asked about what she observed of the plaintiff when in Lourdes and she described him "trying to make a sandwich" as if such a task were the limits of his ability. I contrast that observation with the plaintiff's building of the moped he reported on Facebook and then enthusiastically riding it.

[268] Ms. Woods testified she was unsure of who owned the house where the plaintiff lives in Lourdes, a suggestion that defies common sense.

[269] Despite the plaintiff's endorsement of treatment recommended by his physician in Newfoundland and re-stated by experts testifying on his behalf as to the benefits of counselling, the plaintiff missed two of three scheduled online counselling appointments. He blames this on his forgetfulness and lack of focus. He still claims, as special damages, the cost of all missed appointments whether for counselling or missed physiotherapy/massage treatments while in Fort St. John.

[270] As to the stated aversion to driving, it is noteworthy the plaintiff, rather than sell the vehicle he purchased in Fort St. John, drove across Canada with Chantal over the course of two to three weeks stopping repeatedly, he says, so that he could calm himself from the stress of driving.

[271] The plaintiff was questioned on a series of posts on his Facebook account relating to either photos of or modifications to the snowmobile he acknowledged was his. There are numerous posts about waiting for snow or asking about snow accompanied by photos of his snowmobile loaded in the back of his truck.

[272] One such thread from a post from January 2019 reads:

> Plaintiff: Boys who got (sic) an Artic Cat 550 side coil I can try on my skidoo Sputtering when driving even coil would work to try (sic)

> Reply: Clean carbs.
>
> Plaintiff: carbs r fine just got the motor dun (sic)
>
> ……
>
> Coltan Bell: Coils either work 100% or don't give any spark at all bud doubt it's a coil (sic)
>
> Plaintiff: coils brake down after a wile but I am thinking that water is Seeping down into the small cracks making is Spit and sputter (sic)

[273] The photos of the snowmobile in his truck and wistful remarks about the location of snow, coupled with the posts relating to modifications to the snowmobile's shocks and exhaust, lead to no other reasonable conclusion than the plaintiff has utilized the snowmobile far more than he was willing to concede and far more frequently than he described to the medical experts he saw. Such further undermines his testimony as to his current level of engagement and activity.

[274] I disbelieve the plaintiff when he described the various alterations made to the snowmobile as part of plan to sell it. It has been five years since his return to Lourdes. It is unclear in the evidence whether he owned the snowmobile while in Fort St. John, thus bolstering my conclusion of his intended return to Newfoundland, or bought it after his return to Newfoundland, a purchase incompatible with his claimed level of function. In either case, he transported it (along with two quads) to Lourdes and has performed modifications to it as per the Facebook posts. If for sale, as he claims, it would be a simple matter to have referenced a post where it is offered for sale.

[275] The plaintiff's Facebook posts in evidence also indicate, at the very least, a far higher degree of social interaction via Facebook than initially conceded. He testified he can barely put together an email but later acknowledged he was a frequent user of Facebook and used it to source items for friends, give friends advice on computer or game related issues and, finally, to effect advice on repairs to friend's skidoos, snowmobiles or quads.

[276] Quite apart from his lack of entitlement to benefits under the CERB program during Covid-19, I also disbelieve the plaintiff as to the manner in which he obtained them. The plaintiff claimed on social media that he was not receiving government benefits connected to the pandemic despite receiving them.

[277] I accept the submissions of the defendant that the plaintiff was selective in his willingness to share information with the experts retained to examine him. In his interview with Ms. Burkatsky, the vocational consultant, the plaintiff reported not owning a laptop or home computer despite owning both a computer and a computer specially designed for gaming. Communication through Facebook posts made by the plaintiff belie his professed lack of knowledge of computers. Ms. Woods acknowledged providing the plaintiff with a computer in 2020. When confronted with the obvious conflict during cross examination about access to a computer, he replied, disingenuously, that technically the computer belonged to his mother because she paid for it.

[278] The claimant's denial of any but the most basic of computer skills, an issue seemingly not pursued by Ms. Burkatsky given his denial of access, is at odds with his ability to make modifications to gaming programs, access Discord servers together with servers for customized games, and to proffer advice to friends experiencing wi-fi issues. Neither did the plaintiff volunteer to Ms. Burkatsky his skills repairing small engines or working on snowmobiles. He has a credential in small engine repair according to his CPP application.

[279] When queried on the conflict in his answers at trial and discovery, where he stated he had bruising on his left leg and ankle all the way up to the kneecap, the plaintiff conceded his discovery evidence was inaccurate but explained his erroneous answer by noting that he was exhausted from travelling 14 hours to attend the examination for discovery and then sitting in a room all day to answer questions. It was then pointed out to him that the discovery had been conducted by way of videoconference.

[280] In the CPP disability application the plaintiff filled out in early 2022, he represented his disability was of such magnitude that he could not remove something out of his back pocket and that he needed the use of a walking stick or friend to "help walk". He noted he could not look at screens or pick up his child. The accuracy of all those assertions is again belied by Facebook posts and videos which depict him walking unassisted, holding his child in his right arm, and viewing screens without sunglasses.

[281] His CPP application states the date of separation from common law partner was January 2020; a date which at odds with the various reports he has offered

regarding his relationship with Chantal. For example, as noted above, in 2023, he told Dr. Karapeddy he was living common law with the mother of his two children.

[282] Despite the plaintiff's professed aversion to loud noise, confirmed by Chantal in her testimony, the video depicting the moped ride also records the loud noise from the moped. As well, the plaintiff installed on his snowmobile a noise amplifying exhaust system.

[283] When asked why he missed treatments in Fort St. John he blamed, alternately, his memory and his employer. He said Mr. Soule would not accommodate him. Mr. Soule testified, and I accept his evidence, that Peace Country never interfered or delayed his attendance at a medical appointment.

[284] It was not uncommon for the plaintiff, when confronted with a prior inconsistent statement from one of his two discoveries, to explain inconsistencies by saying he had "misconstrued the question" in discovery. As an example, the plaintiff told Dr. Nigro, the urologist, that he had not had any urinary tract infections. When confronted with answers on discovery where he stated he had had two urinary tract infections, the plaintiff testified he could not remember giving that answer, but if he did, it was untrue. He 'explained' his contradictory answers by adding that, prior to the discovery, he had been up four or five days without sleep and had begged his lawyer to re-schedule it.

[285] When asked about medications he took, the plaintiff reported zopiclone (sleep aid), gabapentin (an anti-convulsant used to block nerve pain) and venlafaxine (brand name Effexor, an anti depressant). Pain medication for what he reported to experts as daily headaches seems to be limited to almost daily use of Tylenol #3 as opposed to prescription strength medication, despite continued complaints that his pain level was 7 to 9 out of 10.

[286] I again note the unexplained absence of any prescription receipts post September 2018 for any out of pocket/subrogated claims respecting prescriptions. The plaintiff dutifully recorded all mileage charges for medical treatments but failed to keep receipts for medications.

[287] The plaintiff testified that in the aftermath of the Second Accident, despite the modest visual damage to the left front corner panel of the GMC Sierra, the defendant Ms. Dyer offered him $5,000 at the scene "not to call the cops".

Common sense, together with the photographic evidence of the damage to his vehicle, dictates the unlikelihood of the police attending an accident of the magnitude both participants described. While it would have been helpful had either counsel asked Ms. Dyer to recount the specifics of her offer regarding payment of damages, she never reported offering a specific sum. From the visual damage done to the plaintiff's vehicle, it seems unlikely in the extreme a driver, presumably insured for the eventuality of an accident, would offer such an amount given the apparent modest amount of damage.

[288] The plaintiff, after prompting with Dr. Nobar's clinical records, acknowledged performing a roofing job following the First Accident for one oft his employer's relations. He said he was paid by Peace Country for the work. Mr. Soule denied having his grandmother's (or any other relative's) roof replaced or paying the plaintiff for work performed off-site. He also denied, contrary to the plaintiff's evidence, providing for transportation costs to allow the plaintiff to return to Newfoundland during the term of his employment.

[289] The plaintiff denied riding a dirt bike following the First Accident but admitted buying one for "re-sale". In a post depicting the plaintiff 'revving' the bike while standing beside it, there is a comment on the post by an observer of the photo not to ride it too fast. In Chantal's reply, she noted "Don't worry I'm like an old lady on side the road (sic) yelling slow down". The only way the post makes sense is if the plaintiff rode the dirt bike rather than just 'rev' the engine as he claimed.

[290] When confronted with the video he took and posted which shows him vigorously peddling a moped adjacent to a country road with traffic, the plaintiff explained the seeming incongruity between his asserted disabling condition and the visual presented in the Facebook video by noting he was "in bed for days recovering after the ride". I further note that, in the video, the plaintiff seems unconcerned by traffic (albeit light) on the roadway beside him.

[291] As to the moped, it is depicted in a post by the plaintiff on May 27, 2022, accompanied by the following quote:

> with the price of gas being so high I've been in the workshop all week and this is what I've come up with I call it hardly a Davidson (sic)

[292] While not explained further in the evidence, either in direct or cross-examination, the post leads to the inference that the plaintiff was able to adapt what looks like a BMX bicycle into a moped on his own and, if believed, he had "been in the workshop all week" customizing the bike he is later shown riding.

[293] As to the lack of medical involvement since the move to Lourdes (as early as May 2019, given the comment about buying a house) the plaintiff cites geographic and financial barriers as the major impediment to continuing physiotherapy and/or massage as well as counselling. Against this proposition is the fact that, even when in Fort St. John, the plaintiff failed to attend scheduled physiotherapy and massage treatments in circumstances where his lawyer was paying for the therapy. He also missed two of three scheduled virtual counselling sessions as at the date of trial.

[294] With respect to the geographic barriers, the plaintiff chose Lourdes as his home. It offers little access to medical treatment and no realistic possibilities of any sort of employment due to its population. As a result, the plaintiff's attendances upon medical practitioners required him to drive to and from Stephenville, generally for renewals of prescriptions. One notation in his chart reports:

> Mr. Woods is here as He (sic) was informed by his lawyer to be checked every month for his claim after he had MVA." On that visit, the recorder noted he/she tried to get him to see Dr. Bouls but he left before that could be arranged.

[295] Chantal denied on cross-examination that she assisted the plaintiff with his CPP application and stated: "Maya the paralegal helped Desmond; not me." The actual application is exhibited and bears the plaintiff's signature together with Chantal's as witness.

[296] In sum, the compound effect of the numerous inconsistencies, exaggerations and outright untruths cause me to conclude both the plaintiff and Chantal were neither reliable nor truthful witnesses. Nor do I give credence to the evidence of Ms. Woods or Ms. Hefferan for reasons earlier described. As a result, I have approached their evidence with great caution.

[297] Further, I conclude that the corroborative evidence of the plaintiff's injuries, save for that of the two Peace Country employees who testified the plaintiff was able-bodied before the First Accident, is both unreliable and, at times, untruthful.

[298] My conclusion as to the credibility and reliability of the plaintiff and some of the witnesses he called has an obvious impact on my assessment of the medical opinions offered in support of the plaintiff's injuries. In large measure, although not exclusively, the medical opinions offered on the plaintiff's behalf are reliant on the accuracy of his report to them. Such is particularly true when it comes to the psychological aspects of the plaintiff's claimed injuries.

[299] Where there is objective evidence as to an injury, I accept that injury is causally related to the accidents and has resulted in pain and impairment of function. Where the expert's opinion was formed substantially as a result of interviews with the plaintiff, I do not.

Discrepancies in the Clinical Records

[300] Discrepancies between the contents of the plaintiff's clinical records and plaintiff's testimony were, in my view, repeated and significant.

[301] The authorities, most recently *Shebat v. Zhang*, 2024 BCSC 1355 and *Malakoe v. Harris*, 2024 BCSC 1178, make clear that the assessment of credibility relying on cross-examination on clinical records must be assessed with some caution. This is because of the possibility of inaccurate recording by the medical provider, difficulty in communicating symptoms by the patient, and the fact that medical appointments often only have enough time to deal with one issue: see *Shebat* at para. 117; *Malakoe* at para. 46.

[302] Nevertheless, as in both *Shebat* and *Makaloe*, the scope of the discrepancies between the plaintiff's evidence and the recorded complaints and denials of symptoms now asserted as causally connected to the accidents are of such a magnitude that they significantly undermine the plaintiff's reliability on several key issues surrounding the ultimate conclusion as to the magnitude of his injuries.

[303] Both the absence in the clinical records of significant symptoms now asserted by plaintiff and, more importantly, the denial of symptoms to his treating physicians later reported to the experts retained by counsel negatively impact the weight to be afforded the opinions advanced as to the plaintiff's current psychological and physical complaints.

[304] For instance, despite a one-time reference in 2017 to what is described as an inability to sexually satisfy his then partner (Chantal) and a more detailed report to Dr. Nobar from Plaintiff's counsel on symptoms unreported to Dr. Nobar some seven to eight months after the First Accident, the plaintiff denied any sexual complaints to Dr. Bouls in July 2019. The plaintiff did not say that he had frequently reported the complaints to Dr. Nobar (or sought treatment) or deny that he responded in the negative when asked of any sexual complaints by Dr. Bouls.

[305] A later entry in May 2019 from Dr. Bouls' records indicates he discontinued amitriptyline "because of the side effect in the form of stomach sickness and bad dreams". In that same visit, the plaintiff once again denied any suicidal ideation or psychotic symptoms. In July 2019, Dr. Bouls again recorded the plaintiff "denies any suicidal ideas, he denies any hallucinations or delusions**."** The plaintiff again denied any suicidal ideation in a visit with Dr. Bouls in September 2019. Dr. Karapeddy appears to be the first medical practitioner to whom he mentioned suicidal thoughts.

[306] On the same visit to Dr. Bouls in September 2019, the plaintiff began a course of treatment with Effexor, a drug which, according to Dr. Nigro the urologist, offered the only plausible explanation for the plaintiff's reported erectile dysfunction. Treatment with Effexor began approximately two years following the First Accident. The plaintiff, in his testimony, said the erectile dysfunction occurred almost immediately following the First Accident. There was, however, a paucity of complaints on the topic of sexual function in the records, which Dr. Nigro acknowledged was surprising given the information relayed by the plaintiff to Dr. Nigro (including an inability to orgasm or ejaculate).

[307] The plaintiff's limp, according to the clinical records of care providers both in Fort St. John and Newfoundland, seemed to come and go.

[308] Contrary to the plaintiff's evidence throughout about urinary and bowel habits changing following the First Accident, he repeatedly denied changes to Dr. Nobar and carried on denying any changes to Dr. Bouls.

[309] The plaintiff told Dr. Karapeddy of an ongoing problem with nightmares related to the motor vehicle accidents, but such were never recorded by Dr. Nobar. The only reference to dreams in the entirety of the plaintiff's clinical records relates

to his telling Dr. Agbejule that the use of amitriptyline gave him bad dreams. There was nothing about intrusive thoughts in reliving the accident.

[310] Given the plaintiff and Chantal's descriptions of the magnitude of plaintiff's ongoing nighttime unrest, including screaming and awakening to sweat soaked sheets, it is not believable the symptoms would not have been repeatedly mentioned by the plaintiff to the various treatment providers he attended.

[311] Despite ongoing complaints regarding pain in his neck, shoulder and back, at times at a level of 8 or 9 out of 10, and despite reporting some relief through massage therapy, the plaintiff attended only four of six scheduled massage treatments between June and August 2017. As above, he explains missed visits as a result of "forgetfulness". His counsel argues such is occasioned by the consequences of the accidents. One of the missed visits was scheduled the same day as an appointment Chantal had with the same therapist. They were living together at the time. In such circumstances, the suggestion that he missed the appointment because he "forgot" is difficult to accept. Dr. Laban, whose evidence I accept, described the plaintiff's short-term memory as intact.

[312] On a visit to Dr. Bouls on March 22, 2019, the plaintiff reported, contrary to both Chantal's and her mother's testimony regarding childcare:

> Mr. Woods reports that his is much better today. He had good response to injections administered by Dr. Agebjule which resulted in improved pain and muscle spasms and enabled him to increase his daily activity. He just had a baby boy. He feels much happier now. He told me that he helps his partner in caring for the baby. He feels motivated to get back to his normal activity and functioning. However, he still gets muscle spasm and stiffness on some days which keeps him indoors. … I did not notice any limp in his gait today…Normal gait and balance.
>
> I renewed his amitriptyline which he finds very helpful for night time pain control which allows him to get a good night sleep. He is tolerating it well and has no side effects.
>
> Affect: Normal range. Euthymic (normal, tranquil) mood… "No suicidality".

[313] In a note made by his physiotherapist in Newfoundland in April 2020, the plaintiff recapped his week's activity as follows:

> Awake @ 7, workout, laundry, sweep, clean yard, demolish wood shed.

[314] The entry admittedly goes on to reference complaints of pain and depressed mood but nonetheless indicates a degree of activity well beyond what

the plaintiff claims to be capable of. The shed, I note, is depicted in the May 2019 video of the home renovation and, as can be seen, was a substantial structure.

[315] In a further entry, made in May 2020, the physiotherapy records note:

> saw kids on weekend, (drove to town)

[316] It was the plaintiff's lawyer in September 2017, not the plaintiff, who informed Dr. Nobar of urinary issues associated with driving.

[317] Despite the plaintiff's evidence regarding light sensitivity causing headaches, a symptom said to have commenced more or less immediately following the First Accident, there is no recorded complaint of such in Dr. Nobar's clinical records until raised by the plaintiff's lawyer in September 2017.

[318] In 2018, the plaintiff complained to Dr. Nobar of difficulty walking on packed snow. The 2020 video of the festival, while somewhat removed in time from that complaint, clearly indicates that by 2020 that difficulty had been overcome. He can be seen and heard walking across packed snow without difficulty.

[319] When queried as to the absence of reports of suicidal ideation, incontinence, nightmares so severe he awoke screaming in sweat-soaked sheets, the plaintiff was only able to say he did not recall what he told the doctors, not that he reported those symptoms and the doctor failed to record them.

[320] On at least one occasion, the clinical records note the plaintiff advised that he was attending the doctor (Dr. Bouls) because his lawyer told him to do so. According to the entry, he left without seeing the doctor.

[321] While the plaintiff frequently described his pain level as 8 or 9 out of 10, with 10 being sufficient to occasion a trip to Emergency according to Mr. Cole, the plaintiff reported to Dr. Heran he takes the equivalent of one Tylenol #3 most days for pain relief. He, according to Dr. Heran and Dr. Singla, had not complied with the recommended dosage for Gabapentin. Indeed, no receipt for Gabapentin was presented for reimbursement as special damages. More generally, as above, the plaintiff's claim for special damages includes a claim for reimbursement for prescription medication ending in September 2018. In total, five prescriptions were filled over the course of 18 months. Yet, under the heading Cost of Future Care, the plaintiff seeks approximately $50,000 for future prescription medications.

[322] All in all, I find that these discrepancies in the clinical records and their inconsistency with the evidence of the plaintiff and other witnesses called on his behalf at trial cast further doubt on both the credibility and reliability of their evidence.

The Expert Evidence

Dr. Singla

[323] Dr. Singla is a physiatrist. He examined the plaintiff on March 15, 2023 at the behest of plaintiff's counsel.

[324] Among his assumptions were the following:

1. I assume the history reported to me by Mr. Woods is accurate and reliable.
2. I assume that Mr. Woods participated in the physical examination to the best of his ability.

[325] The plaintiff wore sunglasses throughout the assessment and reported sensitivity to the bright lights in the clinic. Dr. Singla's observation in this regard is the first mention of the plaintiff wearing sunglasses in all of the medical reports submitted. He reported that his pain was rated between 7 and 8 out of 10 on a constant basis.

[326] Dr. Singla administered a number of questionnaires resulting in an opinion that Mr. Woods suffered from moderate depression. "He denies any thought or plan of harming himself or others". Such conforms with the opinion offered by Dr. Laban, the psychiatrist retained by the defendants, but stands in stark contrast to his report to Dr. Karapeddy and the evidence of Chantal.

[327] Dr. Singla also opined that he displays a mild to moderate degree of anxiety:

> He reports an "uneasy feeling" when driving or when he is a passenger in the car. He reports no feelings of uncontrollable anxiety or having senses of impending doom when there are no triggering situations but he is hypervigilant around any activity that might have a safety concern (such as riding recreational vehicles).
>
> [Emphasis added.]

[328] There is no reference to incontinence when driving.

[329] Once again, I note that the report is at odds with reports made to other medical providers in his evidence. For example, the plaintiff saw Dr. Singla in the same time frame as Dr. Karapeddy. He reported to Dr. Karapeddy he had not driven since 2022. He reported to Dr. Heran he was unable to drive for long periods; not that he had not driven since 2022.

[330] The suggestion that the plaintiff is “hypervigilant around any activity that might have a safety concern” is belied by the video of his moped riding.

[331] The plaintiff told Dr. Singla he did not perform any heavy duties at his home, explaining it was not his property but a rental. That statement is untrue, even were I to accept the plaintiff’s “fallback position” that the property was purchased by Chantal on a rent-to-own-basis. By the time of his attendance on Dr. Singla, there was no question that Chantal, his partner, owned the property outright.

[332] As to his stated inability to perform heavy duties, I refer back to the physiotherapist’s note of the plaintiff’s weekly activity from 2020:

> Awake @ 7, workout, laundry, sweep, clean yard, demolish wood shed.

[333] As to treatment of the mood disorder, Dr. Singla noted the benefits of Effexor for chronic pain and anxiety but said in cross-examination the plaintiff was prescribed Effexor but didn’t take it.

[334] Dr. Singla is the only medical specialist to have diagnosed the plaintiff with an MTBI. He did not describe any formal testing leading to his opinion, but rather based it on the circumstances reported to him regarding the First Accident and the plaintiff’s self-reported symptoms. He attributes it to the First Accident, noting:

> … He may have had a brief period of post traumatic loss of consciousness though his emergency records due [sic] note no loss of consciousness at the time of arrival of EMC. It appears that he did have some post traumatic amnesia following the accident as well as a normal Glasgow Coma Scale at presentation to the emergency room.

[335] Much of what Dr. Singla relies upon is at odds with the evidence, that I accept, from those who attended the scene, the notations in the emergency medical technician records, and those of the emergency ward.

[336] Various other reports by the plaintiff make no reference to amnesia. The photophobia complaints arise months after the accident, at least as recorded, and there are no references to headaches in Dr. Nobar's early notes or, indeed, in the focused discussion which apparently took place between Dr. Nobar and plaintiff's counsel in September 2017. As set out above, there are many photos and videos of the plaintiff where he is not wearing sunglasses in circumstances where one would expect him to be wearing them given his avowed light sensitivity.

[337] Further diagnoses by Dr. Singla include acute cervical sprain with accompanying cervicogenic headaches, acute left shoulder sprain resulting in persistent mechanical dyskinesia (poor functional movement at the right shoulder), acute lumbar strain, left sacroiliac joint dysfunction, and widespread myofascial pain.

[338] Under the heading "Prognosis of Medical Diagnoses" Dr. Singla noted:

> After uncomplicated cervical and lumbar sprain/strains, and after following a physical rehabilitation program, often patients will have a resolution of their symptoms. A large risk factor for prolonged symptoms afterwards is ongoing kinesiophobia which contributes to the phenomenon of central sensitization … This forms a vicious cycle of pain and needs to be aggressively treated with a multimodal and multidisciplinary treatment approach. Mr. Woods is at high risk for the sensitization and is likely experiencing this to a high degree. He had significant features of sensitivity to palpitations and guarding during today's exam. He appears to understand the hurt vs harm principles that appears to be fearful of movement or exercise and is still reluctant to push himself physically due to the fear of pain flares.

[339] While I accept in large measure the physical reality of the injuries suggested by Dr. Singla, the above statement does not accord with observations I have made of the plaintiff through videos and Facebook posts which suggest he is far more active than he has relayed to any of the medical treaters and/or experts. The latter, not the former, inform my assessment of the extent of the plaintiff's ongoing disability and function.

[340] At para. 153 of his report, Dr. Singla noted:

> Overall, it is my opinion that Mr. Woods is permanently, at least partially, disabled because he has reached maximum medical improvement and is likely to be dealing with ongoing pain and limitations. He could likely perform the duties of a much more sedentary job potentially on a part time basis with some degree of pain. Functional capacity evaluation and vocational counselling have not been explored but these assessments and

> service could better delineate exact jobs that would be appropriate for Mr. Woods's currents condition.

[341] He went on to say at para. 154:

> I would suspect Mr. Woods could perform a majority of his light household duties independently while employing pacing techniques. He has the strength and mobility to navigate his current home and do light cleaning.

[342] Dr. Singla recommended gabapentin as offering "more long-term relief of pain that allow for bridging towards medication free exercise and spine strengthening", but then went onto to note:

> He was given Gabapentin in the past but it was not used on a scheduled basis nor was it titrated".

[343] Dr. Singla recommended referral to a multidisciplinary pain clinic in a community or hospital setting. As well, he suggested that plaintiff would be a candidate for interventional treatment of his mechanical pain syndrome at or near the SI joint. If evaluative testing proves positive, then treatment (therapeutic radiofrequency ablation) can be considered which can result in 9 to 12 months of pain relief. He agreed that Newfoundland likely had a suitable treatment facility.

[344] In cross-examination, Dr. Singla agreed the accuracy of the plaintiff's self-reporting was important to his of assessment and further agreed that if the plaintiff was "outright lying to him" it would be a concern affecting the underlying opinion. Further, if the plaintiff stated to him that he could not do certain things when in fact it has been demonstrated the can and has, that too would, to some extent, undermine Dr. Singla's opinion.

[345] Dr. Singla agreed that the plaintiff only reported to him one occasion of snowmobiling during the last winter prior to his assessment (2022). The plaintiff also told Dr. Singla he was unable to ride dirt bikes and that he had "tried to ride a snowmobile but it caused a lot of exacerbation of pain". Dr. Singla reported that, when asked of his present recreational function, the plaintiff said he could neither ride a dirt bike or snowmobile. Such does not align with my findings. More specifically, it is at odds with the video evidence depicting the attendance at a winter festival in 2020 and the inference I drew above from that and other evidence that he has continued to ride his snowmobile. When it was put to Dr. Singla that the plaintiff had been able to snowmobile up a mountain and then

down it in February 2020, he conceded that was at odds with what he had been told with respect to the plaintiff's recreational pursuits following the accidents.

[346] As to the diagnosis of an MTBI, Dr. Singla could not point to any clinical record which bolstered his opinion of an MTBI and, in fact, those clinical records available indicated no loss of consciousness or state of confusion following the accident. Such is buttressed by the evidence of Cpl. Bojczuk and Mr. Fehr, whose evidence I accept.

[347] Dr. Singla conceded that he does not have the expertise to diagnose the plaintiff of any formal DSM-V diagnoses. He further acknowledged that he would recommend that the plaintiff be as functional as possible and the plaintiff could still perform jobs of a sedentary nature if, given the other complications of his injury, the correct role could be found.

[348] Finally, he agreed that if the plaintiff stopped treatment of his own volition, that would be the opposite of what he informed Dr. Singla during the assessment, where he pointed to geographical and financial barriers as the reason he stopped accessing therapy. As above, given the advanced state of renovations to the bungalow depicted in the video dated May 14, 2019, I conclude he was in Lourdes from early 2019 onward. Further, the plaintiff’s geographical barrier was self-imposed. It is clear from the limited invoices for treatment submitted as special damages that the plaintiff’s counsel, not the plaintiff, was paying for most of his therapy. Following a discussion with his then treating physician in Stephenville in November 2022, there are no further records or receipts to indicate what, if any, treatment the plaintiff was receiving save for records from Sir Thomas Roddick Hospital in Stephenville related to lumbar examination which included an MRI of the plaintiff’s lumbosacral spine.

[349] Dr. Singla agreed the Second Accident, as it was described to him, was not the source of the MTBI he diagnosed. He agreed the plaintiff could improve in recovery of function if properly diagnosed and treated for his back, leg pain and shoulder injury. According to Dr. Singla, the plaintiff’s only impairment to driving is anxiety. He could drive an Uber if he had the stamina.

Dr. Nigro

[350] The plaintiff saw Dr. Nigro on one occasion in March 2023. His report was issued April 17, 2023.

[351] He recorded the plaintiff's primary urological complaints as erectile dysfunction and urinary frequency and incontinence. Both, according the plaintiff, began occurring shortly following the First Accident. He reported to Dr. Nigro that he was unable to achieve orgasm or ejaculation with sexual stimulation.

[352] Given the plaintiff has fathered two children since the Second Accident, it's unclear as to when those latter issues arose. Further, by March 2023, six years following the First Accident, the plaintiff had not availed himself of any medications aimed at alleviating erectile dysfunction (e.g. Viagra or Cialis or like medications). Nor does it seem, despite the report of Dr. Nigro and its recommended treatments (first of which was medication), that the plaintiff has tried any form of drug treatment.

[353] The proposed costs of future care make no allowance for any of the treatments suggested by Dr. Nigro.

[354] In the history given Dr. Nigro, the plaintiff reported being under observation at the emergency ward in Fort St. John for "about six hours of observation and testing". The emergency room records place his arrival at 12:45 p.m., his assessment at 1:50 p.m. and his discharge at 2:00 p.m. Neither of the plaintiff's assertions are accurate. His total time in hospital was an hour and fifteen minutes; approximately 10 minutes of which was his assessment.

[355] Dr. Nigro reported:

> Mr. Wood' urologic complaints are not well documented in his medical records following his accidents There is a single note from September 7, 2017 from Dr. Nobar that Mr. Woods had wet his pants while driving and was having sexual dysfunction. There was another note by Dr. Bouls from July 9, 2019, that there were no complaints of sexual dysfunction.

[356] Dr. Nigro 'explained' the later entry by stating "although he did have complaints of sexual dysfunction shortly following his accident, his symptoms may not have been as severe by July 2019". That does not accord with the plaintiff's testimony that, despite the entry in Dr. Bouls chart, admittedly one year later, his sexual dysfunction was ongoing and contributed to the end of his relationship with

Chantal in 2018. He testified at trial not only to ongoing erectile dysfunction but of inability to achieve orgasm or ejaculation.

[357] Dr. Nigro opined that the erectile dysfunction resulted from a combination of chronic pain, anxiety and, eventually, the use of an anti-depressant, Effexor. That said, the plaintiff and Chantal testified the onset of sexual dysfunction was immediate after the First Accident and their intimate relations came to an end. The plaintiff only began treatment with anti-depressants in Newfoundland, 18 months following his asserted loss of sexual function. The chronicity of his pain could not, by definition, occur immediately following the First Accident.

[358] Ultimately, Dr. Nigro could not point to a causal relationship between the urinary complaints and the accidents.

[359] As for treatment, of the four modalities suggested, Dr. Nigro noted “His erectile dysfunction should respond well to PD5 inhibitor treatment, and that medication should continue to work well for him.” The use of the word “continue” appears to a misstatement, as Dr. Nigro acknowledged “Mr. Woods has not had the opportunity to try these medications.” As above, despite ongoing complaints, the plaintiff still appears not to have availed himself of medication to determine what restorative effect such might have.

[360] In cross-examination, Dr. Nigro acknowledged surprise over the paucity of complaints to the various attending physicians. He testified he was relying on the plaintiff’s narrative in respect of all of his complaints. No testing occurred to objectively substantiate any of the urologic complaints.

[361] Dr. Nigro did not comment on the fact of the plaintiff having fathered two children with Chantal and noted only that, statistically, the percentage chance of a pregnancy when a couple is trying to conceive a child (one or two acts of sexual intercourse weekly) is 80% over the course of a one-year period. He did not offer an opinion as the likelihood of a couple, not intentionally trying to become pregnant, achieving two pregnancies based on only two occasions of sexual intercourse.

Dr. Laban

[362] Dr. Laban is a psychiatrist who examined the plaintiff on behalf of the defendant.

[363] Unlike Dr. Karapeddy, Dr. Laban administered a series of clinical rated scales. She described those as the Montgomery-Asberg Depression Rating Scale and PCL-5. These were administered verbally in order to accommodate the plaintiff's dyslexia and assure an accurate assessment.

[364] In the opinion of Dr. Laban, the plaintiff did not meet the screening threshold for post-traumatic stress disorder. Nor, in her opinion, did he meet the threshold for somatic symptom disorder or neurocognitive disorder. She opined that his symptoms are explained by a moderately severe major depressive disorder which has not been adequately treated or addressed to date.

[365] She opined his psychological impairments were treatable with a combination of anti-depressants and cognitive behavioural therapy. With treatment, subject to his physical impairments, he would be employable.

[366] As for the potential for the plaintiff to return to his pre-accident employment as a driver, Dr. Laban noted:

> I defer to medical colleagues with respect to the assessment of his physical disability. He was a driver and although there was a brief period of MVA-related anxiety in the first year after the subject accidents, the DSM-5 criteria for PTSD are not met, there is no residual vehicular anxiety, so his psychiatric morbidity is not limiting a return to work to his pre-accident occupation.

[367] I note again here that throughout the course of plaintiff’s treatment, beginning in 2019, counselling has been recommended. Only recently did the plaintiff begin a course of counselling, of which he has attended one of three scheduled virtual sessions. Dr. Laban opined the delay in treatment and interruption of treatment due to Covid-19 was contributory to the development of the depressive disorder.

[368] The plaintiff reported to Dr. Laban, as he told others, that his ability to access treatment was hampered by his finances. He said he was unable to pay for physiotherapy although the bills submitted as special damages note his lawyer was paying the costs of physiotherapy, massage therapy and counselling. It is also unclear why there seems to have been no claim advanced for no-fault benefits. Certainly, there was no evidence the plaintiff had been denied benefits following either of the accidents.

[369] The plaintiff told Dr. Laban, contrary it would appear to his report to Dr. Karapeddy, that he had not experienced any “manic symptoms, active self harm thoughts, phobias, obsessions, compulsions, paranoia, hallucinations, and aggressive thoughts.” He told Dr. Laban that he and his partner, mother of his two children, “decided to move in together for financial reasons so that they can co-parent and reduce their costs…he said he has got to a place where he is able to do this as he wanted to be with his children all the time”.

[370] Dr. Laban also testified that some of the symptoms of neurocognitive disorder suggested to her by plaintiff's counsel and the associated cognitive defects can be explained through other causes, such as the use of cannabis.

[371] Dr. Laban acknowledged the importance of the narrative provided by the plaintiff to her opinion. The history she received was similar to that given to Dr. Karapeddy save for the denial of suicidal ideation.

[372] Dr. Laban reported “immediate recall, short term memory and long-term memory were not impaired” during her interview with the plaintiff, undermining the plaintiff’s self professed memory issues and the ‘corroborative evidence’ of his mother, Chantal and her mother on that point. Dr. Laban also noted the plaintiff was “oriented, appropriate and coherent during the interview”, and that “cognitive function was grossly intact”. His sleep and appetite were impaired according to self-report.

[373] As above, while deferring to “medical colleagues with respect to his physical injuries and limitations in working as a laborer”, Dr. Laban opined that, once treated properly with medication and cognitive behavioural therapy, the plaintiff’s psychiatric morbidity would not limit his ability to work.

Dr. Karapeddy

[374] Dr. Karapeddy is a psychiatrist. He saw the plaintiff once in March 2023 for an independent medical assessment.

[375] In preparation for offering an opinion regarding the plaintiff’s psychological injuries, he testified that he reviewed the available records, interviewed the plaintiff, and examined him physically.

[376] The plaintiff reported to Dr. Karapeddy that he “is in a common law relationship”, resides in Lourdes Newfoundland, and has three children. He provided his education history (Grade 8 completed) and his history of ADHD. He denied any prior mental health issues.

[377] The plaintiff did not complete the rating scales typically used as part of the evaluative process because “due to his special needs and distress level, he had difficulty filling in the forms”.

[378] The plaintiff recalled the First Accident and reported that he felt dazed and confused following the collision and that “it took him 20-30 minutes before he realized he was in the middle of the highway”. He reported an emergency room stay of four to five hours. He reported being off work for a month.

[379] He described the Second Accident as causing over $12,000 damage to his GMC Sierra. He reported headaches (although not to his treating doctor until long after the First Accident) following the accident and thinks he missed several days of work, “then returned to light duties as he could no longer afford his apartment without an income”.

[380] As a result, the plaintiff explained that “he took someone in for rent and boarding. He moved back to Newfoundland, where he has been living for the past three years.” By the time of his first appointment with Dr. Karapeddy, the plaintiff had been in Newfoundland for almost five years.

[381] The plaintiff reported that, following the First Accident, he began having intrusive images and smells of smoke. He continues having these intrusive memories (unreported to anyone for six years). There is no report in the plaintiff’s chart of ever reporting “smells of smoke”. He reported accident-related nightmares (being hit by an ambulance) at least two times a week. He would wake up screaming. The dreams increased following the Second Accident but “since using THC/vape his dreams seem to be more under control.”

[382] He reported he has not driven since the summer of 2022. His father drives him to his appointments. He reported there were times when “he peed his pants” due to anxiety.

[383] The plaintiff informed Dr. Karapeddy of having suicidal thoughts following the First Accident. Such was denied not only to the family doctors he saw in Newfoundland but also to Dr. Singla.

[384] He reported memory issues, sensitivity to light and sound, poor balance, and pain following the First Accident. Because he forgets things, like turning off a stove, he eats mostly canned foods or noodles. He says his dietary choices are partly financially driven.

[385] He rated his daily pain as 7 out of 10. He reported that his mother and father assist him. There was no mention of assistance form either Chantal or Ms. Hefferan. Despite his report of living common law with Chantal, he described having an on and off relationship with her. He told Dr. Karapeddy, “he finds it difficult to cut wood”, from which I surmise he does cut wood. Despite his high degree of reported pain, Tylenol was the drug of choice to control it.

[386] Under the heading “Impression”, Dr. Karapeddy reported:

> The history indicates that he was dazed and confused for approximately 30 minutes following the impact. He was off work for two months at the time and returned to work light duties…following the first motor vehicle accident, Mr. Woods presented with intrusive symptoms with intrusive memories, images and nightmares. These symptoms were most significant in the initial four to six months.
>
> He had “avoidance features” in that he had not driven since 2022.

[387] According to Dr. Karapeddy, the described history, symptoms and the plaintiff’s dysphoric presentation matched the DSM-5 criteria for PTSD, but Dr. Karapeddy only set out the actual criteria underlying that opinion in his second report. The initial report contains no roadmap as to the manner in which he arrived at his opinion that the plaintiff has PTSD.

[388] Dr. Karapeddy said the plaintiff presented with suicidal thoughts but, despite professing to have read the plaintiff’s medical records, made no investigation into the obvious discrepancy between the plaintiff’s presentation before him and those records, which reflected that the plaintiff not only failed to report suicidal ideation but repeatedly denied such to his attending physicians.

[389] Dr. Karapeddy failed, in my view, to compare the plaintiff’s report of being “dazed and confused” at the scene of the First Accident with the available records.

I, unlike, Dr. Karapeddy, also have the evidence of two other persons present at the scene of the first accident, who testified as to the plaintiff's condition.

[390] According to Dr. Karapeddy, the plaintiff also reported low self-esteem, sleep disturbance, poor focus and concentration "meeting the criteria for a major depressive disorder of moderate severity." All of those complaints are subjective and thus subject to my credibility assessment above, where I have found the plaintiff and his collaterals wanting.

[391] Due to the constellation of symptoms, Dr. Karapeddy diagnosed the plaintiff as having unspecified neurocognitive disorder of mild severity and/or unspecified somatic symptom disorder. Given the lapse in time since the First Accident and his assessment, Dr. Karapeddy described the plaintiff's overall prognosis as "guarded". Dr. Karapeddy opined that the combination of symptoms referenced in his report "are likely to impact his vocational and non-vocational aspects of his life", and later stated that "from a mental health perspective, Mr. Woods is permanently disabled in vocational and non-vocational aspects of life". Further, he opined the plaintiff is at high risk to harm himself. The latter statement I reject as utterly unfounded on the evidence before me.

[392] Recommended treatment included cognitive therapy and ongoing treatment with anti-depressant medication. Admission into a pain clinic for a six to eight-week program to address his chronic pain was also recommended.

[393] Dr. Karapeddy acknowledged in cross-examination the importance of an accurate history as the primary basis for the diagnosis he provided. He further acknowledged the clinical records he examined made little or no mention of the symptoms or of the accident history given to him by the plaintiff but stated, remarkably in my view, there is a difference in not reporting symptoms as opposed to evaluation. Dr. Karapeddy said, in effect, "I don't put much stock in the absence of previous complaints paralleling that which he reported to me".

[394] While the absence of complaints may result from poor record keeping or the patient prioritizing other symptoms, the denial of the exact symptoms upon which Dr. Karapeddy founds his opinion is quite different.

[395] As noted above, on the singular occasion "bad dreams" are mentioned in the clinical records, the plaintiff attributed those to the amitriptyline and, when he

stopped taking it, the complaints seemingly disappeared.

[396] I return to Dr. Nobar's note of the conversation between himself and the plaintiff's lawyer in the fall of 2017. While a variety of new complaints are relayed to Dr. Nobar, some of which he notes "not brought to my attention", nowhere does he record from the lawyer that the plaintiff is having nightmares, let alone nightmares of the magnitude described by the plaintiff and Chantal.

[397] When asked about the paucity of recorded symptoms in the treating physicians' records, Dr. Karapeddy respondent, in effect, "I had a history associated with PTSD …the family doctor didn't ask about PTSD".

[398] Dr. Karapeddy acknowledged that if some key information on which he based his opinion was untrue, his opinion would be affected. For instance, were it not true the plaintiff had not driven since 2022, that would be of moment and undermine the diagnosis of PTSD.

[399] As noted above, in a subsequent report, following receipt and review of Dr. Laban's medical report of April 28, 2023, Dr. Karapeddy, for the first time, laid out the actual clinical criteria underlying a diagnosis of PTSD (which Dr. Laban rejected as a diagnosis). He noted that Dr. Laban did not have the advantage of an in-person evaluation and, hence, in his opinion, was unable to make the same behavioural observations as he did.

[400] In a third report dated March 11, 2024, following a Zoom interview in February, Dr. Karapeddy noted limited progress from their meeting the previous year. He noted mood improvement, which he attributed to medication intervention, although it is not clear what medications changed from the earlier meetings. He observed that the plaintiff has limited access to care given his remote location.

[401] Despite noted improvement, Dr. Karapeddy continued to classify the plaintiff, based on the previously referenced diagnoses, as vocationally unemployable.

Dr. Heran

[402] Dr. Heran is a neurosurgeon. He saw the plaintiff for an assessment on March 13, 2023.

[403] In his list of Facts and Assumptions, Dr. Heran relied on the following as true as informing, in part, his opinion:

> In the aftermath of MVA#1, Mr. Woods sustained injuries/symptoms to his neck, back, tailbone, chest with shortness of breath, shoulders, trapezius, left elbow, left knee, left leg, feet, eyes, headaches, migraines, sexual dysfunction, impotence, urinary incontinence, photophobia, sleeplessness, irritability, anxiety, depression, light and sound sensitivity, and emotional upset/lability.
>
> In the aftermath of MVA#2, Mr. Woods sustained injuries/symptoms to his arms with numbness, abdomen, and numbness from him to knees in both legs. He also sustained aggravation/exacerbation from MVA #1 injuries to his head, neck, back, shoulders, headaches, light sensitivity, loss of libido, depression, anxiety and emotional upset.

[404] Nowhere in Dr. Heran's list of facts and assumptions does he reference the reliability of the complaints made by the plaintiff. He acknowledged on cross-examination that the history given by the plaintiff, coupled with his physical examination, forms part of the assessment process and it is important that the history given be accurate.

[405] Under the heading Historical Accounts, Dr. Heran notes there was no reported loss of consciousness or no period of amnesia.

[406] Amongst the complaints, the plaintiff's dominant symptom was neck pain resulting in pain across his upper torso which in turn resulted in secondary headaches. Dr. Heran also reported loadbearing on the plaintiff's left side worsened the pain in his low back. The plaintiff reported to him that he had previously been involved with physiotherapy but was no longer involved. Despite marginal gains being established, physiotherapy typically ended up with his symptoms being worsened.

[407] Dr. Heran noted the plaintiff's current treatment by way of medication: gabapentin three times daily, venlafaxine (Effexor) once daily, zopiclone to help him sleep, and a "Tylenol No. 3 equivalent nearly every day for headache management".

[408] The plaintiff reported to Dr. Heran he was unable to do "things such as long drives, ATV-ing, playing sports, skiing, fishing, camping, martial arts and any physical work such as woodcutting or millwork." Dr. Heran also noted that the plaintiff reported he had neglected yard work and "his mother will come over and

help him at times --- otherwise he is on his own and has no hired assistance. His father will occasionally help. … He spends time between his child's mother's house as well as his own place. His place, he rents."

[409] None of the assertions regarding his activities are true. There is evidence of long drives, be it travel from Fort St. John to Hudson Hope or, more notably, Fort St. John to Newfoundland. The plaintiff acknowledged driving an ATV, acknowledged snowmobiling, and acknowledged fishing. He refurbished a bicycle into a moped after spending a “week in the shop.”

[410] The plaintiff's reported statement to Dr. Heran about who assists him is at odds with the evidence of Chantal and Ms. Hefferan. As to his residence, neither the plaintiff, Chantal nor Ms. Hefferan testified as to time he apparently spent with Chantal in Stephenville after he moved to Lourdes.

[411] Of importance, given my scepticism of the plaintiff’s credibility and reliability, is the physical examination performed by Dr. Heran which resulted in his opinion of myofascial injuries involving neck, upper torso and low back, and mechanical neck pain arising from structural spinal elements, most consistent with facet mediation and mechanical low back pain arising from a likely disparate protrusion at L5 – S1. A subsequent MRI confirmed this. Dr. Heran also found objective signs of thoracic outlet syndrome in the plaintiff’s left shoulder resulting in numbness and tingling and pain with movement. These injuries arose from the First Accident and were aggravated by the Second Accident, according to Dr. Heran.

[412] A mental status examination demonstrated no neurocognitive abnormalities.

[413] I accept the physical findings as an accurate description of the plaintiff's injuries and accept that they would be and have been debilitating. They will remain debilitating, although not incapacitating, for the indefinite future until the plaintiff chooses to seek treatment. Treatment, according to Dr. Heran would follow after investigative injections to confirm the diagnosis of disc protrusion and, if confirmed, “there is still potential for improvement in the long term through disc desiccation and stiffening up the spinal elements”.

[414] Dr. Heran referenced the effects of both photophobia and phonophobia as they relate to the plaintiff’s claimed headaches, but I note that both are at odds

with what I consider persuasive evidence that the plaintiff has embellished both. I again refer to the many instances he is depicted without sunglasses, the snowmobile exhaust system amplification, and the moped riding depicted on video.

[415] Importantly, Dr. Heran noted:

> From a functional perspective, the limitations that he has had relegated him to a period of total disability for one month and one week respectively following each accident. He has had partial disability that continued thereafter each accident and then protracted total disability has arisen more recently following the second motor vehicle accident after the initial partial disability. He is capable of sedentary activities, intermittent light activities with guarded postures and positions. He requires frequent break taking and hence would not be employable in his previous labour-type work environment … Essentially, he is capable of sedentary to intermittent light activities. Assistance is recommended for his home environment in terms of hired assistance for seasonal endeavours, yard maintenance, and any medium to the heavier level of activities around the household. With pacing, he should be able to do up to light-duty activities as described.

[416] Dr. Heran acknowledged that if the plaintiff can do things which he said he cannot do, and is more functional than he self-reports, then his opinion as to extent of the plaintiff's functional impairment would be affected. To be clear, I find the plaintiff has significantly overstated his injuries and understated his functionality to all of the experts he attended.

[417] Dr. Heran agreed that during his neurological assessment of the plaintiff, the plaintiff displayed normal conversation. There were no noticeable cognitive impairments or issues with language that was abnormal. Such corresponds with the opinion of Dr. Laban.

[418] Dr. Heran also observed the plaintiff walked normally on the day of the examination and his gait was normal. There was no evidence of a limp or demonstrated issues with balance. He also agreed in cross-examination that the consumption of a concentrated form of THC would not be beneficial for medicinal purposes, but would simply enhance the cognitive behavioural symptoms of THC, which include intoxication, disassociation and a lack of concentration – all complaints made by the plaintiff, which he attributes to a loss of memory following the First Accident.

[419] The resulting opinion was that reviewing the cervical spine MRI scan provided no focality that could help further targeted therapy, but that in the lumbar spine targeted therapy was most recently done at the L4-5 and L5-S1 level.

[420] Lastly, Dr. Heran agreed with defence counsel's suggestion that the plaintiff's pain could improve in the future.

Matthew Cole

[421] Mr. Cole is a functional evaluator who assessed the plaintiff on March 16, 2023, over the course of a full day.

[422] Among the assumptions underlying his opinion are: (1) the provided medical documents are reliable; (2) the provided medical documents are complete; and (3) Mr. Woods provided a high degree of effort during the functional capacity evaluation. All of those are assertions are challenged by the defendants.

[423] Mr. Cole conceded that if statements made to him by the plaintiff were not reliable, or indeed true, then that could possibly make his report less reliable depending on other factors. Mr. Cole confirmed that he relied upon the medical documentation provided to him and the plaintiff's self-reporting to him in order to determine his functionality after the accidents.

[424] There is no question but that the plaintiff was fully physically functional prior to the occurrence of the First Accident.

[425] Amongst Mr. Cole's observations were that the plaintiff could only sit comfortably for 36 minutes during the assessment. However, he agreed that driving from British Columbia to Newfoundland with rest periods at intervals of approximately two hours indicate more functional ability than what Mr. Cole observed during the assessment in 2023.

[426] Mr. Cole confirmed that the plaintiff was independent in his self-care although he used a seat in the shower (in contrast to the plaintiff's testimony of not showering because of fear of falling), that he could complete light housekeeping tasks using accommodation such as a stool for dishwashing, that he only slept three to five hours nightly, but that he was able to fish (contrast that with report to Dr. Heran where he denied being able to fish), and that he had learned the skill of brazing (a form of welding). The defendant notes the plaintiff gave no evidence of

this skill nor, as I have pointed out earlier, his skill in converting what appears to have been a BMX or banana bike into a functioning moped with a working exhaust. He also, according to his posts, has modified his snowmobile.

[427] Mr. Cole agreed that the plaintiff overstated or overrated his pain and disability at times during the testing. He also confirmed his opinion that the plaintiff has a perception of being disabled and, based on the actual assessment, the plaintiff views himself as more disabled than he actually is.

[428] Mr. Cole acknowledged the plaintiff had high blood pressure as recorded in his clinical evaluation, which can cause fatigue, chest pain and irregular heartbeat. He also observed that the limp, much spoken about in the evidence, did not appear until much later in the day during the second phase of physical testing. Even where Mr. Cole was satisfied the plaintiff was giving full effort, his recorded heartrate was at the cut off between maximum effort and less than full effort for some testing; notably, timed walk trials, stair climbing and frequent lifting.

[429] Mr. Cole also conceded that based on test results the plaintiff, while clearly having limitations, had residual employability. In short, there are categories of jobs which he could perform.

[430] In his assessment of the reliability of the plaintiff's reported pain and function, Mr. Cole stated:

> Test findings indicate Mr. Woods had variable reliability with his reports of pain and disability. He overrated his functional pain at times. His scores on the NDI, Oswestry and Spinal Function Sort questionnaire overrated his disability. He also tested positive on 4 of 5 Waddell questions and one other non-organic test.

[431] Without further explanation, Mr. Cole carries on to say:

> Nonetheless, all other reliability variables including other functional pain ratings, pain behaviour, other questionnaire scores, other non- organic testing was consistent with his presentation and reported injuries.

[432] For reasons known only to defence counsel, the videos I viewed were apparently not provided to Mr. Cole, nor was he shown it in court when questioned. The depictions are entirely inconsistent with the latter conclusion stated by Mr. Cole.

[433] The only muscle deterioration noted by Mr. Cole was to the plaintiff's left shoulder, consistent with the diagnosis of thoracic outlet syndrome. All other muscle groups, shoulder and hip plane were 5/5. The plaintiff's left shoulder was 4/5 for flexion and 4+/5 extension.

[434] The plaintiff described his pre-accident recreational pursuits to Mr. Cole including quad riding, ATV-ing and working on motors. In describing to Mr. Cole his present pursuits, he reported he can still fish and run remote-controlled cars but told Mr. Cole he had "ceased the more physically active activities".

[435] It is also noteworthy and consistent with my conclusions that there were portions of the testing where the plaintiff provided less than full effort, Mr. Cole suggests because of an exaggerated perception of disability, and failed the Waddell testing with non-organic symptoms suggesting some of his pain was not actually emanating from a physical injury. Dr. Singla spoke of this phenomenon as well. It leads to one of two conclusions: the plaintiff is either honestly reporting pain not emanating from a physical injury or exaggerating the pain he is experiencing. Both Mr. Cole and Dr. Singla gave the plaintiff the benefit of the doubt and accepted him as honest and reliable witness. On the evidence before me, I do not find that to be the case. I conclude that the plaintiff is intentionally overstating his injuries and his degree of disability in furtherance of a greater award in this litigation.

[436] Both Chantal and Ms. Woods testified the plaintiff consistently displayed a limp which, according to Mr. Cole, did not show up until the end of a six-hour day, and was not referenced at all by Dr. Heran who described the plaintiff's gait as "normal".

[437] The plaintiff told Mr. Cole he had ceased off-roading, which I find contrary to the video of him on a moped. As above, in addition to the moped he built, the plaintiff owns a quad and a snowmobile, the latter of which he claims to be refurbishing for sale. The snowmobile remained unsold as at the time of trial, some five years after his move to Lourdes.

Darren Benning

[438] Mr. Benning is an economist who provided actuarial evidence coupled with statistical evidence as to the average earnings of Canadian males with like education to that of the plaintiff. He did not rely on the latter given the plaintiff, at

the time, was outperforming males of his age with similar levels of education. Instead, he assumed, as he was no doubt instructed, that but for the accident the plaintiff would have continued along a career path with Peace Country which would have led to increased earnings as a foreman while continuing to work 60 hours weekly until his eventual withdrawal from the workforce.

[439] The model provided by Mr. Benning ("the actuarial model") considered labour market contingencies, both positive and negative, to arrive at an "illustration" of past economic loss and future economic loss. That said, Mr. Benning correctly noted that the determination of past and future economic loss is a matter for the court after making the necessary findings of facts and considering the applicable contingencies affecting the plaintiff.

[440] In the illustration provided, Mr. Benning allowed for an annual travel allowance of $6,000 as part of the plaintiff's compensation. Mr. Soule denied the existence of any such benefit.

[441] In addition, Mr. Benning provided multipliers to determine future loss of capacity. Based on the assumption the plaintiff would remain in the workforce until age 70, the actuarial multiplier, which discounts only for mortality, is $24,513 per $1,000 of future loss; the economic multiplier, which provides for marketplace contingencies such as unemployment, part time employment, etc. until age 70 is $17,708 per $1,000 of future loss.

[442] All in all, Mr. Benning provided an opinion as to the quantum of the plaintiff's loss, past and future, based on what I find to be a number of unproven assumptions. For one thing, it was central to Mr. Benning's illustrations that the plaintiff was unemployable following his departure from Peace Country and would be unemployable to the age at which he would otherwise retire. His calculations make no allowance for residual employability, either past or prospective. Further, Mr. Benning's assumptions also included that the plaintiff would have remained in Fort St. John working at Peace Country working 60 hours weekly at enhanced pay and would have been promoted, ultimately to the position of foreman.

[443] In terms of the suggested outcomes, based on the facts and assumptions provided Mr. Benning, which I do not find proven, his model for both past and future loss is of limited assistance in performing the assessment I am obliged to do.

Lindsay Burkatsky

[444] Ms. Burkatsky is a vocational rehabilitation consultant. She prepared a report on behalf of the plaintiff following a one-day assessment on May 16, 2023.

[445] In the preparation of her report, she had access to all of the aforementioned medical reports, save Dr. Laban's, and the opinions contained therein form part of the basis for her opinion.

[446] She opined:

> It is highly unlikely and unrealistic that Mr. Woods will be able to secure competitive employment in the traditional labour market. He would likely require extensive supports from a vocational specialist who would be able to assist him with job placement for customized employment options with a benevolent employer willing to provide part-time work and on the job accommodations. Customized employment typically involves identifying a benevolent employer willing to accommodate his needs, then carving out potential employment areas that would be suited to him. The likelihood of obtaining such a customized employment opportunity is not optimistic but may be slightly improved by the following recommendations discussed later in this report.

[447] In assessing the barriers faced by the plaintiff, Ms. Burkatsky noted, "[d]oes not own a home computer and reports having limited computer skills and typing ability with low interest in computer-related tasks". This is inaccurate. The plaintiff not only owned a computer but demonstrated significant computer savvy in Facebook exchanges with others online about modifications to gaming programs.

[448] I also note that Mr. Woods did not share with Ms. Burkatsky his seemingly newly acquired skill of brazing; his ability to perform modifications to the BMX bicycle, creating a moped with hand controls and exhaust; the modifications he has done to his snowmobile, and online advice given to others about modifications to their machines. His CPP application noted a credential in small engine repair, which was never relayed to Ms. Burkatsky.

[449] Ms. Burkatsky assumed as true all of the disabilities referenced in the reports she was provided. Her assessment of the residual employability of the plaintiff is premised upon those opinions as to the extent of his diagnosis, some of which I find unproven. In particular, I find assertions of cognitive dysfunction, other than the depressive disorder described by Dr. Laban, to be unproven.

[450] As already noted, I find that the plaintiff's physical limitations are significantly less than expressed to all of the experts, as demonstrated both by video and media postings. As a result, I find that Ms. Burkatsky, like the other experts that relied on the plaintiff's narrative as to the limitations he experiences and the extent of his daily pain, was misled in a significant fashion.

Findings Regarding the Plaintiff's Injuries

[451] Given my findings respecting the credibility of the plaintiff's evidence (and that of Chantal), it is apt to quote from *Le v. Milburn*, 1987 CarswellBC 2936 (W.L.), [1987] B.C.J. No. 2690 (S.C.), where Southin J. (as she then was) said at para. 2:

> When a litigant practises to deceive, whether by deliberate falsehood or gross exaggeration, the court has much difficulty in disentangling the truth from the web of deceit and exaggeration. If, in the course of the disentangling of the web, the court casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame. In this case there has been some deliberate falsehood and some exaggeration.

[452] I say credibility as opposed to reliability, purposefully. Both the plaintiff and Chantal have been actively untruthful in the presentation of their evidence, making it difficult to assess the true extent of the plaintiff's injuries and, more importantly, the extent of his loss of function.

[453] In large measure, the evidence of Ms. Woods and Ms. Hefferan is also tainted by their unbelievable descriptions of the plaintiff's mobility, the nature of the relationship between the plaintiff and Chantal, as well as the frequency of their attendance in Lourdes to "provide services to the plaintiff". Their descriptions do not accord with the assessment of Mr. Cole, the videos of the plaintiff, or my observations of his mobility over the course of his testimony.

[454] As a result, to the extent the medical experts have relied on the plaintiff's self-professed symptoms, pain levels or degree of functional impairment, I view the resultant opinions sceptically and assess his post-accident(s) level of function accordingly.

[455] That said, there is evidence, primarily from Dr. Heran and, less so, Dr. Singla, of (1) objective medical conditions arising from the two accidents, and (2) injuries that impacted the plaintiff's abilities to perform the heavy duties associated with his work at Peace Country rentals. The latter is corroborated by

the evidence of Mr. Soule and Mr. Small. There is therefore no issue that the combined effects of the two accidents caused the plaintiff's injuries, but those injuries I find are substantially different from those claimed by the plaintiff.

[456] More problematic, given my disbelief of much of the plaintiff's evidence, is determining the extent of the plaintiff's incapacity following his departure from Peace Country and the impact of his injuries on his employability following his departure. The plaintiff was not fired. He went on short term disability at the instance of Mr. Soule with the expectation, at least on Mr. Soule's part, that he would return. Instead, Peace Country, other than the recorded "mountaintop" conversation with Andre in 2020, never heard from the plaintiff again.

[457] The assessment of his economic loss is further complicated by the absence of meaningful medical treatment from the time he re-located to Lourdes, and the impact of his now five-year isolation on future recovery efforts and employment prospects. Dr. Laban opined that his current depressive disorder stems, in part, from the absence of treatment (counselling) and, possibly, the use of THC.

[458] The paucity of medical intervention coupled with my doubts as to whether prescriptions documented in the Newfoundland clinical records were ever filled by the plaintiff colour my views as to the extent of his actual physical distress following his departure from Fort St. John.

[459] Also, given the earlier remarks recorded in the medical records of Dr. Bouls, i.e. that his lawyer advised him "to be checked every month for his claim after he had MVA," it is difficult to accept that on each visit the plaintiff was seeking improvement to his medical health as opposed to documenting his pending claim for compensation. This is particularly so given his seeming disregard for the advice given regarding treatment.

[460] As above, I discount his explanation of financial hardship as the reason for the minimal treatment he has availed himself of since moving to Newfoundland and the missed visits for therapy in Fort St. John based on (1) the income he receives and the absence, since returning to Newfoundland, of significant living expenses beyond payment for a truck he professes not to drive, and (2) the fact that his counsel has, according to the receipts for treatment undertaken by the plaintiff, paid the associated costs. Yet again, with counselling, the plaintiff has

missed two of three scheduled visits. His excuse of memory problems associated with the accidents is also unconvincing.

[461] There is no evidence the plaintiff applied for, let alone was denied, benefits from the no-fault policy of insurance on his own vehicle. The report of Dr. Laban makes reference to a CL-10 report to ICBC from Dr. Nobar but there appears to have been no claim for repayment of the expenses for physiotherapy or massage or any of the other treatments or medications. I reference the absence of an explanation only because of the plaintiff's reliance on his impecuniosity as the reason for the paucity of medical treatment.

[462] As noted, the plaintiff receives through disability pay between 75-80% of his net pay from when he was working at Peace Country. I do not mean to the infer the defendants can take advantage of those payments, but neither can they be saddled with the plaintiff's demonstrable reluctance to undertake remunerative work commensurate with his residual abilities or meaningfully engage in treatment and/or retraining that might restore function and employability. I conclude, despite his protestations otherwise, he has little by way of financial incentive to return to active employment. His prospects, even if able to return to demanding physical labour, are limited in Newfoundland and in particular the location he has chosen to reside.

[463] Concluding, as I do, the plaintiff has residual employability from as early as June 2018, the compensation he would need to earn to replace his current "income" would be approximately $50,000 annually for him to "break even", given employment would terminate his receipt of disability payments.

[464] His earnings from employment prior to his engagement at Peace Country were significantly less by way of gross income than he now nets from disability. The only tax return in evidence disclosing income other than from Peace Country is 2015. In 2015, he earned approximately $35,000 (presumably from Peace Country) and $3,000 from social assistance.

[465] The plaintiff has not sought retraining compatible with his diminished physical skills. As above, he has demonstrated aptitude for small engine repair (work on snowmobiles); brazing, the form of welding described by Mr. Cole; fabrication skills, the construction of the "Hardly Davidson"; and a rudimentary

knowledge of computer skills. Further, according to his CPP disability application, he is certified in small engine repair.

[466] Indications of his physical progression following his departure from Peace country are: (1) the clinical notes of Dr. Garcia from September 2018 reporting “no change in bowel habits... mood is stable, not depressed...mild restriction of movement”; (2) the winter festival video from 2020 together with his proclamation to his co-worker Andre, “I’ve got my legs back”; (3) the report to his physiotherapist in 2020 regarding his activity: “workout, laundry, sweep, clean yard, demolish wood shed,”; and (4) the video depicting him on the moped in 2021.

[467] As to the actual injuries suffered by the plaintiff in the two accidents, I reject the opinion of Dr. Karapeddy based on my view that it relied on a narrative from the plaintiff that does not accord with my factual findings as to the events following the First Accident and, more importantly, my rejection of the evidence of both the plaintiff and Chantal as to occurrences of either nightmares or suicidal ideation. Dr. Karapeddy, in my view, has relied substantially on self-reported symptoms and failed to critically assess how those claimed symptoms harmonize with the available medical records. He administered no clinical testing but relied entirely on his “structured interview” with the plaintiff. The plaintiff is not a credible witness.

[468] Dr. Karapeddy also made no inquiries as to the obvious lack of complaints paralleling those relayed to him by the plaintiff regarding nightmares, nor did he inquire as to the repeated denials of suicidal ideation in the records. The plaintiff, for his part, never denied the comments attributed to him in the various clinical entries but said he “didn’t remember”. Based on the records available from the treating physicians, notably the denial of suicidal ideation, the complete absence of reference to the intrusive thoughts testified to by the plaintiff in any clinical records save for one reference to “bad dreams” the plaintiff attributed to taking Amitriptyline, the absence of any reference by Ms. Hefferan, in whose house the plaintiff resided for six to eight months, to screaming at night or soaked sheets, I am unable to accept the plaintiff’s evidence about nightmares.

[469] I similarly reject Chantal’s evidence of the nightmares she says the plaintiff still experiences or the balance/walking issues she testified occur to the date of trial.

[470] The plaintiff variously told Dr. Karapeddy, Dr. Heran and Dr. Singla that: (1) he was “dazed and confused” and it took “20-30 minutes until he realized he was in the middle of the highway”; (2) “there was no loss of conscious, no periods of amnesia”; and (3) “he was unsure if he struck his head or lost consciousness… he was quite confused following the accident but recalls the events vaguely”. These conflicting accounts were given within days of one another while he was in Vancouver being assessed.

[471] The video evidence, specifically the birthday video, the video of the plaintiff riding a moped beside the street, and the video of the snowmobiling in 2020, lead me to conclude the plaintiff does not exhibit a phobia to driving. This was a key indicator of the diagnosis of PTSD, according to Dr. Laban. The plaintiff gave varied reports about his driving to the three experts mentioned above. He told Dr. Karapeddy he gave up driving in 2022. He told Dr. Singla, he felt nervous “when driving and when he is a passenger in a car”.

[472] I reject the notion that the plaintiff is averse to driving given the extensive driving he admits to, namely, the trans Canada trip in 2018 and repeated travel between Lourdes and Stephenville (which I find he continues to do weekly). I am therefore of the view that some type of driving in the course of employment is not beyond his current physical capability.

[473] The diagnoses of PTSD, major depressive disorder, unspecified neurocognitive disorder and unspecified somatic symptom disorder are founded, in my view, on a combination of symptoms I find to have been both misstated and overstated.

[474] With respect to the plaintiff’s psychological symptoms, I adopt the opinion of Dr. Laban and reject the more expansive diagnosis of Dr. Karapeddy. The plaintiff, I conclude, suffers from a treatable moderately severe major depressive disorder. Its presence is, in part, attributable to his failure to follow medical direction or seek counselling early on and, possibly, his ongoing use of THC. He has, despite ongoing suggestions of counselling, actively avoided such to the present time, including missing two of three scheduled virtual sessions.

[475] As to the claimed erectile dysfunction and urinary/bowel issues, I find that if the plaintiff is in fact experiencing sexual dysfunction, an improbability in view of the birth of his two children and denial of same when asked about sexual function

by Dr. Bouls in 2019, he has not proven same is causally linked to the accidents. Dr. Nigro opined the only causative link would be with the plaintiff taking Effexor, chronic pain or anxiety. None of those were present at the time of what the plaintiff suggested an immediate onset of sexual dysfunction following the First Accident. His pain was, by then, not chronic; he had not begun a course of treatment with Effexor; and his anxiety, if any, had, according to the records of Dr. Nobar, abated prior to the first noted complaint of sexual dysfunction. Even when advised by Dr. Nigro of the possible remediation by drug therapy, the plaintiff has seemingly done nothing to follow through with what might prove to be a reasonably simple fix.

[476] As to the diagnosis by Dr. Singla that the plaintiff sustained an MTBI in the First Accident, I conclude he, too, has relied on unproven assertions as to a possible altered state of consciousness, a prerequisite of a brain injury, based upon the plaintiff's unreliable self-report and in the face of contradictory records from both the ambulance attendants and the emergency ward assessment. I also have the advantage of the evidence of the attending officer and the defendant driver, Mr. Fehr, which I find similarly at odds with the evidence of both the plaintiff and Chantal as to the plaintiff's cognitive state immediately following the accident.

[477] Under cognitive symptoms, Dr. Singla was told, in summary, that the plaintiff had memory issues (burning food in oven), does not watch much television or focus on the computer, avoids any physical activity that could result in injury such as riding a dirt bike, has been dizzy and losing his balance since the First Accident, and now has "challenges walking a straight line". All of these assertions are untrue.

[478] Put simply, Dr. Singla assumed the history reported to him was accurate and reliable; I find it was not. None of these underpinnings relied upon by Dr. Singla are proven on the evidence. The plaintiff has a gaming computer and, from postings on Facebook, appears to have significant computer savvy. He plays games on various of the devices available to him. He rides a moped at speed alongside a roadway, video-recording the event as he rides. The recordings and posts on Facebook belie the balance issue he reported; specifically, the video where he reports to Andre "I've got my legs back" while walking across packed snow, without sunglasses, after a ride up a mountain on a snowmobile.

[479] The suggestion by Dr. Singla that the plaintiff "may have had a brief period of post traumatic loss of consciousness" is speculative and wholly inconsistent with the evidence earlier alluded to. The reports of memory issues are anecdotal. Dr. Laban commented favorably on the state of the plaintiff's memory, both short and long-term, as a result of her interview, not the plaintiff's subjective narrative.

[480] In sum, I find the plaintiff has failed to establish a brain injury as a result of either of the two accident.

[481] Having discounted the diagnoses above, I turn to the actual injuries suffered by the plaintiff and, then, their impact on his life including his capacity to earn income both past and prospective.

[482] In short, I accept the conclusions of Dr. Heran as they related to the nature of the plaintiff's objective structural injuries as follows:

> Myofascial injuries involving neck and upper torso.
>
> Myofascial injuries involving lower back.
>
> Mechanical neck pain arising from structural spinal elements, most consistent with facet mediation.
>
> Mechanical low back pain arising from structural spinal elements with associated radiculopathy from likely dynamic disc protrusion, likely L5-S1 with S1 involvement.
>
> Post-traumatic neurogenic-type thoracic outlet syndrome involving left upper extremity versus dynamic radiculopathy with additional post-traumatic neurogenic-type thoracic outlet syndrome.
>
> Chest wall injury from steering wheel impact.
>
> Moderately severe major depressive disorder (Dr. Laban).

[483] I discount the complaints of headaches as a disabling condition, given their subjective nature and my findings with respect to the plaintiff's credibility. They are treated, according to the plaintiff's report to Dr. Heran, with one dose of Tylenol #3 most, not all, days.

[484] While the plaintiff professes to be regularly taking a variety of other medications and, indeed, appears to have been prescribed same from the available clinical records, the last receipts provided for medication are from September 2018. No explanation was offered for the absence of receipts for the medications the plaintiff was prescribed.

[485] As to the recommended treatment, Dr. Heran notes:

> There is still potential for improvement in the long term through disc desiccation and stiffening up of the spinal elements. A review of imaging of the cervical spine and lumbar spine MRI scans will be mandatory prior to any further comments with regard to this.

[486] A subsequent review of an MRI by Dr. Heran confirmed his assessment, although I note the earlier MRI performed in Newfoundland seemingly found no abnormalities.

[487] Dr. Heran's recommendations for treatment included a swimming program together with self-directed exercise. I note again that the nearest swimming pool is a 45-minute drive from Lourdes. Dr. Heran was of the view that active therapies, such as physiotherapy and/or active rehabilitation "will just likely worsen his symptoms overall".

[488] According to Dr. Heran, the mainstay of medical management would be neuromodulating medication; gabapentin. Dr. Heran recommended an increase in the dosage of gabapentin (which he previously noted was not being taken in conformity with directions). Both he and Dr. Laban recommended against the use of cannabinoids which contain THC.

[489] Dr. Heran reports "he had a partial disability that continued thereafter each accident" and then "protracted total disability has arisen more recently following the second motor vehicle accident after the initial partial disability". The latter comment, I conclude, is mainly on self-report. Again, at the risk of overstating the impact of videos, Facebook posts, photos, as well as my findings on the plaintiff's credibility, the description of the residual functionality opined by the experts does not accord with my assessment of the totality of the evidence; specifically, the evidence depicting the plaintiff demonstrating robust exertion, the plaintiff's self-professed recovery concerning his legs, and his report of physical labour beyond what he testified to (e.g. the demolition of the shed outside his Lourdes residence).

[490] While I accept that, in his present state, the plaintiff remains partially disabled – specifically, unable to regularly perform the heavy manual labour (60 hours a week) associated with his former employment at Peace Country – I do not accede to the submission he is, or was, totally precluded from employment after his departure from Peace Country. With treatment, something I have found the plaintiff has consciously avoided, there is room for improvement sufficient to allow

him to return to more robust activities such as those associated with his employment at Peace Country, and in particular in the role of a foreman where less physical activity is required. Here, I note the evidence of both Dr. Heran and Dr. Laban with respect to treatment that might result in restoration of function and psychological well being.

[491] Similarly, while I accept his lifestyle has been impacted by his injuries, I conclude the plaintiff continues to enjoy many of the activities he engaged in prior to the accidents, including snowmobiling, quad riding and off-road moped riding. He also continues to engage in some of his former hobbies, including small engine repair, model building, fishing and video games.

Non-Pecuniary Damages

General Principles

[492] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities.

[493] The compensation awarded should be fair and reasonable to both parties. Fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a guide. Each case must be assessed on its own unique set of circumstances: *Trites v. Penner*, 2010 BCSC 882 at paras. 188–189.

[494] The guiding principles for the assessment of non-pecuniary damages remain those set out in *Stapley v. Hejslet*, 2006 BCCA 34, leave to appeal to SCC ref'd, 31373 (19 October 2006):

> [46] The inexhaustive list of common factors cited in Boyd that influence an award of non-pecuniary damages includes:
>
> (a) age of the plaintiff;
>
> (b) nature of the injury;
>
> (c) severity and duration of pain;
>
> (d) disability;
>
> (e) emotional suffering; and
>
> (f) loss or impairment of life;
>
> I would add the following factors, although they may arguably be subsumed in the above list:
>
> (g) impairment of family, marital and social relationships;
>
> (h) impairment of physical and mental abilities;
>
> (i) loss of lifestyle; and

> (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

Position of the Parties

[495] Plaintiff's counsel suggests that the injuries suffered by the plaintiff are significant and that he will “live the rest of his life with chronic pain and psychological injuries”. Counsel notes the relatively young age of the plaintiff at the time of the First Accident and submits that the combined effect of the accidents is that the plaintiff has suffered:

> …chronic and functionally limited pain in his neck, shoulders and back. He has neurogenic thoracic outlet syndrome and associated pain and numbness into his left arm, pain radiating into his neck resulting in headaches, light sensitivity, shoulder pain, a mild traumatic brain injury, post-traumatic stress, major depressive order, unspecified somatic symptom disorder and neurocognitive disorder. The result is suicidal ideation, erectile dysfunction and incontinence.

[496] Counsel submits cognitive and concentration problems, problems with memory, driving anxiety and sleeping problems are all as a result of the accidents. The plaintiff describes the injuries as permanent impairments to both his social and vocational life. In the result, the suggested award for non-pecuniary loss is $375,000.

[497] The defendant accepts that the plaintiff was injured in both accidents but paints a picture of those injuries and the effect on the plaintiff's life that more closely accords with that which I have found. The defendant suggests a range for non-pecuniary loss from $75,000 to $100,000.

The Award

[498] Despite my findings as to the plaintiff’s exaggeration and outright misstatement of his ongoing symptoms and their effect on his lifestyle and function, there is no doubt the plaintiff was injured as a result of the two accidents.

[499] Generally, those injuries are as set out in paragraph 482 of these reasons. As per the submissions of counsel, I assess those injuries globally.

[500] I significantly discount the plaintiff’s complaints of subjective pain and reject the opinions of the experts, notably Dr. Heran and Mr. Cole, where they opine the

plaintiff has “catastrophized” his pain, thus explaining his unnatural reaction to the benign touching described by both as genuine reactions despite the absence of a physiological origin. As above, the other explanation, and the one I choose, is exaggeration and intentional overstatement.

[501] Similarly, I reject the opinion of Dr. Heran that the plaintiff suffers from disabling headaches given: (1) the symptoms are self-reported; (2) the paucity of treatment with painkillers suitable for the “migraine-like” headaches described; and (3) the infrequency of reported headaches to the actual treating physicians.

[502] Given the frequency and overstatement of other complaints I find him to have exaggerated, I do not consider the plaintiff a stoic.

[503] Defendant's counsel notes, as I have found, the plaintiff's pain is not as debilitating as the plaintiff has testified, nor has it impacted his independence with many of his daily activities, his ability to complete domestic activities and his return to participation in some recreational activities.

[504] I note again here, as an aside, the complaint voiced by Justice Kent at para. 339 in *Kallstrom*, regarding sole reliance on opinions from medical experts who, in the main, performed assessments on the plaintiff six or seven years following the accidents and, in my view, relied heavily on the self-report of the plaintiff without proper scepticism as to what I perceive are glaring discrepancies between the plaintiff’s self-report and the clinical records each said they reviewed. The video/media evidence I reviewed confirms my assessment of the extent of the plaintiff’s injuries.

[505] As a result, the authorities relied upon by the plaintiff bear no relationship to the injuries I conclude he experienced. As such, a review of those authorities serves no useful purpose.

[506] The defendants’ counsel points to many of the pieces of evidence that lead me to conclude the plaintiff's functionality when unobserved is significantly different than that which he reports to the experts. Counsel characterizes the plaintiff's injuries as soft tissue injuries to the neck, back and lower back area, and referred to a number of cases which he submitted to be comparable, including *Bissonnette v. Horn*, 2012 BCSC 518, *Yip v. Saran*, 2014 BCSC 1283, *Dosangh v. Xie*, 2017 BCSC 1937, and *Jawanda v. Samra*, 2013 BCSC 138. Adjusted for

inflation, the damage awards in ascending order from *Bissonnette* to *Jawanda* range from $66,000–$98,000. As a result, the defendants suggest the appropriate award for non-pecuniary loss is $75,000 to $100,000.

[507] With respect, those authorities also do not align with my assessment of the plaintiff's physical and psychological injuries.

[508] While accepting, largely based upon the opinions of Dr. Heran and Dr. Laban, there are ongoing symptoms which impair the plaintiff's enjoyment of life, I do not conclude that the plaintiff's impairments and pain are necessarily permanent. As noted by both Dr. Heran and Dr. Laban, there is room for improvement, if not recovery, if the injuries are treated. To date, despite the reports being more than a year old at trial, the plaintiff has done little to treat his symptoms in the manner recommended.

[509] The extent of the plaintiff's pain and loss of function needs to be critically examined in light of the minimal prescriptive medication taken from after the First Accident until the last medical receipt proffered, September 2018, together with missed manual treatments in Fort St John, missed counselling sessions in Newfoundland, and visuals such as the trip to Hudson Hope, the trade for a dirt bike and the posting regarding a nature walk.

[510] Given that the comparable cases offered by both counsel do not align with my assessment of the plaintiff's injuries, I note the guidance of Mr. Justice Frankel *Callow v. Van Hoek-Patterson*, 2023 BCCA 92:

> [18] … more recent decisions may be of more persuasive value in determining the present range.
>
> The Appropriate Range
>
> [19] It is important to keep in mind that determining the appropriate range entails ascertaining the "the upper and lower range for damage awards in the same class of case": *Cory* at para. 8 (emphasis added). Given no two cases are alike—either the injuries are more or less severe, or have a greater or lesser impact on the plaintiff's quality of life—defining the class is a generalized exercise that takes place at a high level of abstraction.

[511] With that in mind, I have reviewed more recent decisions of this Court involving the assessment of non-pecuniary damages for injuries which I consider to be comparable to those which I have found for the plaintiff. Those cases include

Aylen v. Mellin, 2022 BCSC 223, *Clough-Smith v. Piton*, 2022 BCSC 953, *Ricketts v. Tatla*, 2023 BCSC 314, and *Riascos v. Raudales*, 2024 BCSC 26.

[512] In *Aylen*, the plaintiff was 22 and thus younger than the plaintiff here. He was diagnosed with chronic myofascial pain and the court accepted that his prognosis for any further significant improvement was unlikely, and that he was likely to experience chronic pain, migraines, poor sleep and mood impairment for the remainder of his life: *Aylen* at para. 117.

[513] Unlike the plaintiff here, Mr. Aylen had been found to be exemplary in managing in his pain, which allowed him to carry on with his life and pursue employment. Nonetheless, his professional, personal and social life were adversely impacted, and he permanently lost his ability to engage “his passion for motorcycle racing”: *Aylen* at para. 118.

[514] The injuries described in *Aylen* are analogous to those here, as found by me, but with a more pessimistic view of the plaintiff’s future. The court awarded general damages of $125,000 which, if adjusted for inflation, would result in an award of $139,000 (rounded) in the present case.

[515] In *Clough-Smith,* the plaintiff was 23 and working as a plumber’s apprentice at the time of the accident. His injuries were described as “ongoing pain in his neck, left shoulder, upper back, left hip, and low back pain of variable intensity, aggravated by certain activities”. He had corresponding functional limitations with poor sleep, decreased energy, impaired motivation and mild to moderate depressive disorder. He was socially active before the accident but became withdrawn. His involvement with recreation activities diminished after the accident but did not cease. At age 30 he had resumed working full time: *Clough-Smith* at paras. 64–65.

[516] Justice Douglas described the plaintiff's condition as follows:

> [67] The medical evidence establishes that Mr. Clough-Smith’s pain is now chronic and that his prognosis is guarded if he continues to engage in physically demanding work. He is likely to experience some degree of pain for the rest of his adult life; given his young age, this means most of his lifetime. He is no longer suited to heavy strength plumbing work and his chosen career path is likely unsustainable because of his dominant, left-sided, Accident-related injuries. Driving aggravates his left shoulder and occasionally his neck, left hip and low back pain. His career options are now more limited and he faces substantial vocational uncertainty. I accept

> that the combined effect of his Accident-related injuries has resulted in a significant permanent partial disability.

[517] The award for general damages was $120,000 (present value $133,000).

[518] The plaintiff in *Clough-Smith* also sought an award for loss of housekeeping capacity. Justice Douglas accepted the plaintiff had limitations in performing home renovations, yard work and other domestic chores since the accident, but considered it more appropriate to address the claim for loss of housekeeping capacity as part of the non-pecuniary award given the plaintiff's ability to continue to participate in light housekeeping duties with some accommodation: *Clough-Smith* at para. 78.

[519] In *Ricketts*, the plaintiff was 51 and thus considerably older than the plaintiff in this case at the time of the accident. He was physically active and employed. Following the accident, the plaintiff complained of light sensitivity, noting he was unable to drive in bright conditions, a loss of concentration and pain in his neck and back, which had not improved from the date of the accident to the date of trial (a span of almost 6 years). He was diagnosed with chronic post concussion syndrome which accounted for headaches, emotional deterioration, chronic pain, chronic sleep disruption, recurring headaches and a diminishment of recreational activities as well as the ability to perform some household chores: *Ricketts* at para. 51.

[520] Unlike my assessment of the plaintiff in this case, Justice Basran found the plaintiff credible in all regards: *Ricketts* at para. 14.

[521] The consensus of all doctors, the physiatrist and psychiatrist was that the plaintiff’s prognosis for a full recovery was “guarded”, and he was expected to experience ongoing pain in his neck and back. Justice Basran concluded:

> [72] The Accident dramatically and negatively affected Mr. Ricketts’ life. In addition to the chronic pain he experiences in his neck and back, he lacks energy and is short-tempered with those who are closest to him, including Ms. Munro. He experiences light and sound sensitivity and, as a consequence, he no longer socializes in bars, restaurants, or comedy clubs.

Justice Basran continued to find:

> [76] As a result of the Accident, Mr. Ricketts is a fundamentally different person physically, mentally, cognitively, and socially. Having considered all of the relevant cases referred to by the parties and taking into account

> Mr. Ricketts' circumstances and prognosis, I conclude that he is entitled to $130,000 in damages for pain and suffering caused by the Accident.

[522] The award of $130,000 has a present-day value of $136,000.

[523] Finally, in *Riascos*, the plaintiff was involved in a series of three accidents between 2016 to 2021. At the time of the first accident, he was 39 years age and worked in a physically demanding job.

[524] According to the physiatrist, the combined effects of the three accidents were chronic musculoskeletal pain in the neck and lower back; post-traumatic headaches in keeping with chronic migraine; moderate depression and severe anxiety; sleep disruption; and bilateral knee pain and right-hand pain: *Riascos* at para. 84. The result was "the plaintiff's partial disability of activities of daily living, instrumental activities of daily living, recreation, social and vocational functions was elevated to permanent": *Riascos* at para. 87.

[525] While Justice Girn found the plaintiff's evidence was overstated in some areas, she found him overall to be a credible witness in describing his symptoms. In particular, she found that those symptoms were supported by credible corroborative evidence from lay witnesses: *Riascos* at paras. 145–146.

[526] Justice Girn set out her findings with respect to the plaintiff's injuries as follows:

> [175] I make my findings based on the opinions of the experts in regards to their prognosis of the plaintiff's symptoms. Their opinions support a conclusion that plaintiff sustained the following injuries arose as a result of the 1st Accident:
>
> a) Mild traumatic brain injury;
>
> b) Post-concussive symptoms including lack of concentration, memory difficulties, and fatigue;
>
> c) Chronic daily pain in his neck and low back and shoulders;
>
> d) Chronic migraine headaches; and
>
> e) Depressed mood, sleep disturbances, and moderate anxiety.
>
> [176] As a result of the 2nd Accident and the 3rd Accident, I find that there was an aggravation of the above injuries and new pain in the plaintiff's left elbow which he sustained from the 2nd Accident. In particular, I find that the 3rd Accident resulted in further worsening of his low back pain symptoms, posterior neck pain symptoms, chronic migraine symptoms and mood symptoms. I accept Dr. Foley's opinion that the plaintiff's anxiety symptoms worsened from moderate to severe anxiety following the 3rd Accident.

[527] While Justice Girn accepted that the plaintiff might improve in some areas with further treatment, she found that his physical and psychological symptoms would not fully resolve and would continue to impact him in all aspects of his life, including socially, personally, and in his work: *Riascos* at paras. 177–178.

[528] General damages were assessed at $170,000 inclusive of loss of housekeeping capacity. The present-day value would be $173,000.

[529] The foregoing cases represent the upper and lower ranges for the injuries I have found the plaintiff experienced as a result of the two accidents.

[530] In my view, the plaintiff's injuries are most closely aligned with those found in in *Aylen* and *Clough-Smith*, however, I find that, with treatment, the plaintiff has a more positive outlook than found in either of those two cases. Accordingly, noting the age of the plaintiffs in those cases, and adjusting both upward for inflation and downward given my conclusion there is more optimism for improvement here, I award $130,000 for the plaintiff's non-pecuniary loss.

[531] Further, I adopt the reasoning of Douglas J. in *Clough-Smith* and conclude that, given my finding the plaintiff’s injuries have had little to no impact on his housekeeping duties, this award ought to be inclusive of the claim for loss of housekeeping capacity.

Loss of Earning Capacity

General Principles

[532] In *Meckic v. Chan,* 2022 BCSC 182, Mr. Justice Kent synthesized the general principles applicable to the assessment of loss of earning capacity, both past and future, as follows:

> [142] Most personal injury lawsuits include a claim for damages for loss of past and future income that the plaintiff would have earned if the defendant's negligence and the resulting injuries had not occurred. As noted in *Kallstrom v. Yip*, 2016 BCSC 829:
>
> > [388] ... Since *Andrews v. Grand & Toy Alberta Ltd.*, 1978 CanLII 1 (SCC), [1978] 2 S.C.R. 229, it has been acknowledged that, technically speaking, it is not loss of earnings for which compensation is being made, but rather it is for loss or impairment of a capital asset, namely, the plaintiff's capacity to earn income.
> >
> > [389] Valuation of the loss may be measured in different ways depending on the circumstances of each particular case. Generally speaking, the value of a particular plaintiff's capacity to earn is

> equivalent to the value of the earnings that he or she would have received, whether in the past or in the future, had the tort not been committed. The essential task of the court is to compare what would have been the plaintiff's past and future working life if the accident(s) had not happened with the plaintiff's actual past and likely future working life after the accident(s). The difference between the two scenarios represents the plaintiff's loss and the resulting monetary award is thus consistent with the basic principle of tort law compensation, which is to restore the injured plaintiff to the position he or she would have been in but for the defendant's negligence, at least insofar as a monetary award is capable of doing so.
>
> ....
>
> [393] There is a discrete, two-step process that is required with respect to these past and future loss of earning capacity claims:
>
> > 1.the court must first determine whether, as a result of the injuries sustained in the accident(s), the plaintiff's past or future earning capacity has been or will likely be impaired, such that there has been an actual loss of income in the past and/or a real and substantial possibility of a loss of income in the future; and
> >
> > 2.if so, then the court must then determine the amount of past loss that has been incurred to the date of trial and, on a present value basis, assess the amount to be awarded for any possible future financial loss.

[533] Our Court of Appeal addressed loss of earning capacity in a recent trilogy of cases: *Dornan v. Silva*, 2021 BCCA 228, *Rab v. Prescott*, 2021 BCCA 345, and *Lo v. Vos*, 2021 BCCA 421. In *Rab*, Justice Grauer summarized the correct analytical framework as follows:

> [27] As this Court observed in *Dornan v Silva*, 2021 BCCA 228 at para 134, the process of determining whether a hypothetical future event is a real and substantial possibility can be a difficult task:
>
> > By definition, we are dealing with possibilities, and there is no one right answer. But the law provides one right process, which, of course, must be tethered to the evidence….
>
> [28] Difficult as it is, that task is a necessary first step in the analysis of whether a plaintiff has established a claim for loss of future earning capacity. This was explained by Mr. Justice Goepel, dissenting but not on this point, in *Grewal v Naumann*, 2017 BCCA 158:
>
> > [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.

Position of the Parties

[534] Based on the assumption the plaintiff would continue outperforming statistical averages earned by males of his age and education, Mr. Benning provided a model of past earning capacity suggesting that, on the plaintiff's projected course of progression as an employee of Peace Country, he would have continually experienced pay increments such that by the time of trial he would, based on a 60-hour work week, be earning over $100,000 annually.

[535] For past loss of earning capacity, Mr. Benning "calculated" the difference between the plaintiff's actual income for the years 2017 to the time of trial and his projected earnings, with the result that the plaintiff submits his past loss of earning capacity ought to be assessed at $376,273. Such includes the loss of $23,313.42, conceded by the defendants, for the period following the First Accident until the plaintiff's departure from Fort St. John.

[536] For future loss of earning capacity, the plaintiff submits the loss be assessed in excess of $3 million on the assumption that the plaintiff would have, during his ongoing employment with Peace Country, entered and then completed a heavy-duty mechanics apprenticeship so as to increase his hourly earning to $45 per hour (at the time of trial). According to the plaintiff, he would have continued working 40 hours weekly at regular time and 20 hours per week at over time rates, with a resulting annual income of $163,800 by 2029.

[537] The defendants submit the only proven past loss is the $23,313.42 before deduction for income tax payable. In support of that submission, they argue that the plaintiff failed to mitigate the further loss claimed by returning to work.

[538] The defendants argue there should be no award for future loss but, were such warranted, the calculation should be based upon the capital loss model referenced in *Brown v. Golaiy*, 26 B.C.L.R. (3d) 353, 1985 CanLII 149 (S.C) as opposed to the earnings approach. Such, they say, would result in an award of one to two years income ($55.000-$130,000) reduced by a contingency of 15% for "uncertain pre-accident earnings, the labour market contingencies of part time work, early retirement, and unrelated health issues".

Past Loss of Earning Capacity

[539] Here, I have no difficulty concluding that the plaintiff's past earning capacity has been impaired as a result the injuries sustained in the accidents. The assessment of the past loss that has been incurred to the date of trial is, however, made more complex by virtue of the plaintiff's blatant overstatement of his injuries and the effect on his earning capacity.

[540] I accept the evidence of Mr. Soule and Mr. Smalls that, visually, they noted the difficulties the plaintiff was experiencing and performing the tasks he previously completed at Peace Country. Accommodations were offered but, no doubt in part because of the 60-hour work week and the lack of medical treatment, the plaintiff seemed incapable of even lesser duties following the Second Accident in 2018.

[541] The only controversial contingency raised by the defence relates to how long the plaintiff (and Chantal) were likely to stay and work in Fort St. John.

[542] All of the plaintiff's submissions concerning past and future loss contemplate the plaintiff and Chantal remaining in Fort St. John until he reached 70. I find that scenario highly unlikely. While I accept that the plaintiff was a good, if not model, employee, I also conclude, based on the evidence of both the plaintiff and Chantal, that their travel out west for work was not viewed by either as a permanent move but rather as a means to an end, namely sufficient funds for home ownership in their native province.

[543] Chantal saw their stay in Fort St. John as lasting three to three-and-a-half years, so as to accumulate sufficient funds to buy a house and car. Such was accomplished on roughly the timeline she specified, although the return to Newfoundland was possibly accelerated because of the plaintiff's injuries. The plaintiff said he anticipated staying no less than the time required to obtain his "gold watch" from Peace Country; five years.

[544] Other known events relevant to the assessment of past loss of earning capacity inform my conclusion that it was highly probable that the plaintiff and Chantal would have returned to Newfoundland regardless of the accidents.

[545] For instance, despite the period of time spent by them in Fort St. John, the plaintiff, presumably, retained his snowmobile and quads in Newfoundland. If not,

the purchase of two quads and a snowmobile upon his return would even further undermine the plaintiff's claimed functional impairments.

[546] More importantly, neither the plaintiff nor Chantal considered the birth of their children in their respective timelines. In my view, Connor's birth in March 2019 added an extra impetus to the parties' return to Newfoundland and would have accelerated the timeline for their return. Connor has significant learning challenges by virtue of his diagnosis of autism. I agree with the defendants that the likely course of action after Connor's birth would have been for the plaintiff and Chantal's to return to Newfoundland for the support of their respective families. Peyton, their second child, was born in March 2020. For the same reasons, Chantal's pregnancy with a second child would have provided further incentive for the parties to return. By March 2020, the plaintiff and Chantal would have been in Fort St. John for approximately five years, the plaintiff's suggested timeline for their stay.

[547] A return to Newfoundland, which I find to be a high probability by no later than early 2020, would have significantly impacted the plaintiff's earning capacity. He acknowledged the struggles he encountered obtaining and maintaining employment prior to traveling west. Given my findings as to his residual capacity, the training received at Peace Country would have enhanced his employability but would not have eliminated any of the impediments the plaintiff earlier encountered in maintaining steady work in Newfoundland.

[548] The defendants also raised the issue of mitigation, arguing that any award under this heading must be reduced to reflect the plaintiff's failure to mitigate his losses by returning to work. In particular, defence counsel pointed to *Mullens v. Toor*, 2016 BCSC 1645, aff'd 2017 BCCA 384, where this Court discussed the failure to mitigate in relation to job opportunities as follows:

> [105] Questions of mitigation also arise in the context of a plaintiff's failure to return to work. In *Parypa v. Wickware*, 1999 BCCA 88, the Court stated:
>
> > [67] These cases demonstrate that the trier of fact, in determining the extent of future loss of earning capacity, must take into account all substantial possibilities and give them weight according to how likely they are to occur, in light of all the evidence. However, in calculating such likelihoods, the plaintiff is not entitled to compensation based solely on the type of work she was performing at the time of the accident. There is a duty on the plaintiff to mitigate her damages by seeking, if at all possible, a line of work that can be pursued in spite of her injuries. If the plaintiff is unqualified for such

> work, then she is required, within the limits of her abilities, to pursue education or training that would qualify her for such work. If the plaintiff claims she is not able to mitigate by pursuing other lines of work or by retraining, she must prove this on a balance of probabilities. The requirement for mitigation is addressed by this court in *Palmer*, *supra*, at 59:
>
> > A plaintiff is not entitled at the cost of the defendant to say, "The only sort of work I like is such and such. I cannot do that. Therefore, you must give me sufficient capital to replace the income I cannot earn on that sort of job".
> >
> > What the respondent proved in this case was that he had lost his capacity to follow the sort of occupation he was pursuing at the time of the accident. But that did not prove, on a balance of probabilities, that he could not earn by pursuing some other sort of occupation, as much as before.

[549] In *Mullens*, Justice Verhoeven found that the plaintiff could reasonably have attempted return to work and that a successful return to work would have been very beneficial to her mental and physical health: see *Mullens* at para. 161. He concluded that mitigation was therefore a “very large factor” in his assessment of the plaintiff’s past loss of earning capacity and made a reduction of 50% on that basis: see *Mullens* at paras. 169–170.

[550] The defendant bears the onus of proving that a plaintiff failed to take reasonable steps to avoid or mitigate his loss. The defendants must prove on a balance of probabilities:

1. that there were steps the plaintiff could have taken to mitigate;
2. that the plaintiff acted unreasonably in failing to take steps; and
3. the extent to which the loss would have been avoided by taking those steps.

See *MacKinnon v. Swanson*, 2022 BCSC 1821 at para. 65, aff’d 2024 BCCA 95; citing *Yeomans v. Buttar*, 2021 BCSC 343 at paras. 143–148.

[551] In a case involving an alleged unreasonable failure to return to work or pursue more gainful employment, the defence must therefore establish on a balance of probabilities that the plaintiff’s income loss would have been smaller, had he acted reasonably. If that is established, the court must assess the extent of the likely loss: see *Johansen v. Lee*, 2024 BCSC 1310 at para. 100.

[552] In this case, I am satisfied that there were steps that the plaintiff could have taken to mitigate his loss. Contrary to the submissions of his counsel, I do not accept that the plaintiff was totally disabled for any significant length of time following his departure from Peace Country in June 2018. I come to that conclusion, in part, because of the activities he is known to have conducted while still in Fort St. John, including lengthy drives, driving side-by-side vehicles over rough terrain, nature walks, etc., as well his demonstrated ability to drive even long distances such as the return trip to Newfoundland, seemingly without fear.

[553] While I accept the nature and time demands of work at Peace Country were beyond the plaintiff's capabilities by virtue of his injuries, he was, and remains, able to perform less strenuous work. As a result, I find that he could reasonably have mitigated his loss by (1) seeking work commensurate with those abilities, (2) continuing to properly treat his symptoms and follow medical advice, and (3) where necessary, re-train for employment requiring less physical strength or endurance.

[554] The evidence suggests the plaintiff has not done any of those things. He has failed to make reasonable efforts to return to any sort of employment commensurate with his residual abilities; he has not followed medical advice that might have accelerated his recovery; he has not sought any form of retraining in areas where I find he has demonstrated skills (e.g. brazing, engine repair, fabricating); and he has, in my view, treated his long term disability, which equates to approximately 80% of his take-home pay at the time of the accidents, as a pension obviating his need to return to work and minimize his loss. I find that he acted unreasonably in doing so.

[555] In short, he has failed to mitigate his loss.

[556] The work of a foreman at Peace Country, although not thoroughly described by Mr. Smalls, seems supervisory and within the residual capabilities of the plaintiff, as I have found them, both then and now.

[557] Looking to the schedule prepared by Mr. Benning, the plaintiff's projected full-time earnings for 2018 were $70,917. Mr. Benning added in benefits and non-wage benefits, primarily travel allowance, which I find was not payable based on the evidence of Mr. Soule.

[558] There is no disagreement that the plaintiff's pre-tax loss from after the First Accident to his departure from Peace Country was $23,313.42.

[559] The plaintiff's loss for the remaining months of 2018, assuming no other lesser employment in Fort St. John, would amount to approximately $38,000, based upon gross salary as per Mr. Benning's report (less travel allowance) of $71,000 less the amount actually earned. Despite some misgivings as to whether the plaintiff ought to have mitigated his losses by seeking a less physically demanding type of employment, given my assessment of the extent of his disability in the second half of 2018, I allow $38,000 for the period of June through December 2018.

[560] Thereafter, for the year 2019, Mr. Benning assumed income for the plaintiff of $74,882. The plaintiff reported no earnings for 2019 but, as noted, I find that by 2019 the plaintiff could have obtained employment either with retraining or relying on the more sedentary work which I find he was capable of, as described above. Even at or near minimum wage, he could and should have earned $30,000 working an average work week. I therefore assess his loss for 2019 at $45,000.

[561] By 2020, for the reasons above, I conclude it is far more likely than not that the plaintiff and Chantal would have returned to Newfoundland. As a result, I find that while Mr. Benning's projections as to his earnings, both past and future, is a possible scenario to be considered, it is a scenario I find to be far less likely than the plaintiff's return to Newfoundland, where he could expect to earn significantly less income based on his historical pattern of employment.

[562] For the purpose of assessing the impact of the plaintiff's residual earning capacity from January 2020 until trial, I also note he had two children to care for and thus, presumably, less ability and/or enthusiasm for a work week of the duration at Peace Country even if able bodied.

[563] Recognizing the assessment of past economic loss is just that, an assessment, not a calculation, I assess the plaintiff's loss from January 2020 until the date of trial at $20,000 annually, based upon his inability to perform heavy manual labour or work hours in excess of what is generally considered a normal 40-hour week, his residual ability to obtain gainful employment and unreasonable failure to mitigate his losses by pursuing such employment, and his and Chantal's

anticipated move to Newfoundland regardless of the accidents and resultant loss of economic opportunity.

[564] Accordingly, I find his past loss as follows:

2017–June 2018	$23,313.42
June–Dec 2018	$38,000
2019	$45,000
2020	$20,000
2021	$20,000
2022	$20,000
2023	$20,000
January–June 30, 2024	$10,000
Total	$196,313.42

[565] I leave it to the parties to calculate the appropriate net of tax award for those periods. If they are unable to do so, they are at liberty to return and make submissions as to the appropriate total for the plaintiff's past loss of earning capacity.

Future Loss of Earning Capacity

[566] The central task for the court in assessing a claim for loss of future earning capacity is to compare the claimant’s likely future working life with and without the accidents. To prove an entitlement for a loss of earning capacity, a plaintiff must demonstrate both an impairment to their earning capacity and a real and substantial possibility that the diminishment in earning capacity will result in a pecuniary loss: see *Lamarque v. Rouse*, 2023 BCCA 392 at paras. 37–38; citing *Dornan* at paras. 156–157; and *Perren v. Lalari*, 2010 BCCA 140 at paras. 4 and 32.

[567] In *Rab* at para. 47, the Court of Appeal set out a three-step process for considering claims for loss of future earning capacity:

1. Does the evidence disclose a potential future event that could give rise to a loss of capacity?

2. Is there a real and substantial possibility that the future event in question will cause a pecuniary loss to the plaintiff?

3. What is the value of that possible future loss, having regard to the relative likelihood of the possibility occurring?

[568] Once this analysis is complete, the court must consider the overall fairness and reasonableness of the award in light of all of the evidence: see *Lewis v. Gibeau*, 2025 BCCA 127 at para. 20; citing *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 60; and *Lo* at para. 117.

[569] Because I have concluded that the plaintiff has clearly lost capacity and income as a result of the accidents, albeit not to the degree that he claims, this case falls into the category of more straightforward cases in which the first and second steps of the *Rab* analysis are easily satisfied: see *Ploskon-Ciesla* at para. 11.

[570] More specifically, the first evidentiary step is a given where, as here, the event giving rise to a future loss is manifest and continuing at the time of trial: *Steinlauf v. Deol*, 2022 BCCA 96 at para. 52. The second step is also easily met in this case as I am satisfied that the accidents caused the plaintiff a significant and lasting injury, and therefore that there exists a real and substantial possibility of an event giving rise to a future loss: see *Steinlauf* at para. 53.

[571] The third and final step is the quantification of the damages suffered based on the relative likelihood of future events occurring, positive and negative. On the issue of quantification, *Steinlauf* cites with approval *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32, as follows:

> …An award for future loss of earning capacity thus represents compensation for a pecuniary loss. It is true that the award is an assessment, not a mathematical calculation. Nevertheless, the award involves a comparison between the likely future of the plaintiff if the accident had not happened and the plaintiff's likely future after the accident has happened: *Rosvold v. Dunlop,* 2001 BCCA 1 at para. 11; *Ryder v. Paquette*, [1995] B.C.J. No. 644 (C.A.) at para. 8….

[572] There are two possible approaches to assessing loss of future earning capacity: the “earnings approach” and the “capital asset approach”: see *Ploskon-Ciesla* at para. 16. As above, the defendants submit that if an award for future loss of income earning capacity is made, it be made on the basis of the capital asset

approach set out in *Brown*. The suggested figure is two years of income or approximately $120,000. While tempting to assess the plaintiff's loss in that fashion, the approach is not suitable given that there was an identifiable loss of income at the time of trial and my conclusion the plaintiff is unlikely, even with treatment, to be fully restored to the earning capacity he had before the accidents. In such circumstances, the earnings approach is more appropriate.

[573] As to the applicable contingencies, in *Kringhaug v. Men*, 2022 BCCA 186, Marchand J.A. (as he then was) explained that there are two types of contingencies, specific and general, which he described as follows:

> [89] Specific contingencies relate specifically to the plaintiff, may be positive or negative, and must be grounded in the evidence. Where a specific contingency is found on the evidence to be a real and substantial possibility, the judge assesses its relative likelihood: *Steinlauf* at paras. 86–89 and 91.
>
> [90] General contingencies, on the other hand, relate to "the risk that things do not always turn out as expected": *Steinlauf* at para. 90. They account for the reality that everyone's life has ups and downs. A trial judge may, not must, adjust a future pecuniary loss award for general contingencies. And, where an adjustment is based only on general contingencies, it should be modest: *Steinlauf* at para. 91, citing *Graham v. Rourke* (1990), 74 D.L.R. (4th) 1 at 14, 1990 CanLII 2596 (Ont. C.A.).
>
> …
>
> [95] Although the actuarial multiplier accounts for only the contingency of premature death, in my view, it was open to the judge to place little to no weight on general contingencies and, at minimum, use the actuarial multiplier as a starting point. Given Ms. Kringhaug's long history of full-time employment, close attachment to her work and supportive employer, the usual labour market contingencies for non-participation in the labour force, unemployment, part-time work and part-year work had a diminished role in Ms. Kringhaug's case.

[574] The controversial specific contingencies, positive and negative, raised by the parties in this case are as follows:

1. whether the plaintiff and Chantal would have remained in Fort St. John or returned to Newfoundland regardless of the accidents;

2. whether the plaintiff would have obtained a red seal heavy mechanics credential; and

3. whether the plaintiff will achieve full or partial recovery.

[575] Here, for the reasons set out above, I find it highly probable that by no later than early 2020 the plaintiff and Chantal would have returned to Newfoundland. While such happened earlier as a result of the accidents, I find it highly likely it would have occurred in any event either at the time of Connor's birth or, even more probably, after it was known Chantal was pregnant with a second child. In compliance with the authorities, most recently *Lewis*, I assess the likelihood of a return to Newfoundland by the plaintiff in any event by 2020 at 90%.

[576] There remains, of course, the possibility that the plaintiff and Chantal would have remained in Fort St. John with their two children and he would have continued to progress to the position of foreman. While I find that unlikely, it is a contingency that I need assess as part of the overall assessment of his future loss.

[577] The plaintiff's counsel founds his submission for future loss upon the plaintiff achieving a red seal mechanics credential. I find that eventuality highly implausible given the plaintiff’s learning disabilities, his failure to obtain his GED, and his not having finished Grade 10 math, which is apparently a prerequisite to entry into the heavy-duty mechanics apprenticeship program. More generally, based upon the assessment by Ms. Burkatsky, I find it unlikely in the extreme the plaintiff would have been able to successfully perform the classroom components of the mechanics apprenticeship. This contingency is also subject to the plaintiff’s remaining in Fort St. John which, as earlier noted, I conclude is highly unlikely. All in all, I find the likelihood of the plaintiff attaining trade certification as a mechanic does not rise to a real and substantial possibility and therefore will not factor into my assessment of his future economic loss.

[578] Another specific contingency I need consider is that of further recovery, either full or partial, so as to enhance the plaintiff’s future income earning capacity from what I find it to be at present.

[579] The plaintiff’s position in this regard is premised on facts I find unproven, namely that he will never return to work and that he has no residual earning capacity. Plaintiff’s counsel suggests the plaintiff's “neurocognitive issues and psychological injuries caused by the car accidents making his learning disabilities and issues with reading and writing worse. Mr. Woods is not suitable for any type of sedentary employment”.

[580] For reasons already stated above, I reject that proposition. If it is true that he will never return to work, I find that is a matter of choice given the income he receives, not as a result of the actual injuries he has proven. I find his psychological injuries are confined to a treatable moderately severe major depressive disorder coupled with anxiety for which, to date, he has not sought or engaged in treatment, contrary to medical advice. Further, as I have concluded above, the plaintiff retains marketable skills he has chosen not to utilize. He has not, save for a period in late 2018, ever been incapable of some form of employment but rather, as submitted by the defendants, chosen to disregard suggested medical treatment and retreated to a small community that offers him little economic opportunity.

[581] Nonetheless, as I have noted earlier, unless treated, both for his depression/anxiety and his seeming disc related issue (the suspected source of low back pain and leg pain), he will continue into the indefinite future to be unable to perform the heavy manual labour he was previously capable of. His injuries, if left untreated, will likely affect his durability as well. By that I mean he will be unable or less likely to participate in overtime hours when available.

[582] Dr. Laban noted that, with cognitive therapy, the plaintiff's depressed state could be improved. Dr. Heran noted that, with investigative steps, the prospect of surgical intervention could lead to further recovery, expanding the plaintiff's functionality beyond that which I have concluded he has.

[583] In the result, I assess the likelihood of the plaintiff’s recovery beyond what I have found to be his residual capacity at the time of trial at 10%.

[584] Quite apart from those specific contingencies, there are the general contingencies considered by Mr. Benning in his economic multiplier calculations, being periods of unemployment, voluntary reduction of hours to part-time employment, illness, etc.

[585] Given my rejection of the scenario that the plaintiff would have gone on to become a red seal mechanic as beyond his academic capabilities, the best-case scenario for the plaintiff is the calculation performed by Mr. Benning: $2,272,971.

[586] Such presumes the plaintiff would have remained in the employ of Peace Country and achieved the position of foreman, working 60 hours per week, 50

weeks per year, until age 70. It has been adjusted for labour market contingencies and mortality. However, it provides for no future income earned by the plaintiff and, as I noted earlier, incorrectly includes travel benefits of $6,000 annually.

[587] I reject that scenario given my conclusion the claimant would not likely have continued at Peace Country beyond 2020 and would have returned to Newfoundland where his economic opportunity was, historically, significantly less. As noted throughout, I conclude the plaintiff's injuries do not preclude him from all forms of employment.

[588] Further, Mr. Benning used future income multipliers in his report to estimate the present value of the plaintiff's future income loss based on varying assumptions regarding his annual loss. As noted by Mr. Benning:

> Future income multipliers are a convenient, shorthand way of representing the present value of a future income stream, where the stream is constant each year in real (net of inflation) dollars. In this report, multipliers have been calculated to age 70 and are expressed per thousand dollars of annual employment income. We have calculated both economic and actuarial multipliers in this report.
>
> The economic multipliers make allowance for the contingency of premature death, as well as negative labour market contingencies of non-participation in the labour force, unemployment and part-time/part-year work. They actuarial multipliers make allowance only for premature death. The labour market contingencies applied in Table 4 are identical to those given in Table 2. The resulting accumulated economic multiplier to age 70 is $17,708. The resulting accumulated actuarial multiplier to age 70 is $24,513.

[589] The accompanying table in Mr. Benning's report notes the corresponding actuarial figures for retirement at age 65 as $22,597 (actuarial) or $16,996 (economic).The latter, which I adopt, takes into account variables such as negative labour market contingencies including non-participation in the work force, unemployment, part time work; all factors which previously affected the plaintiff's income when working in Newfoundland.

[590] In the result, after considering contingencies I have referenced above, I consider a fair and reasonable award for loss of future earning capacity to be $350,000. By way of cross check, that amounts to a continuing loss of approximately $20,000 annually to age 65, based upon the economic multiplier provided by Mr. Benning.

Special Damages

[591] The plaintiff bears the onus and evidentiary burden to prove his claim for special damages. He is obliged to do more than simply present a bill or invoice: see e.g. *Peake v. Higo*, 2009 BCSC 265 at para. 169; *Broomfield v. Lof*, 2019 BCSC 1155 at para. 100.

[592] The plaintiff claims $9,297.74 as special damages which “the plaintiff testified he paid or was paid on his behalf”. Some of those expenses are “third-party liability service cost invoices” from Newfoundland Hospital Services. Other than describing “professional services”, there is no meaningful description of the service performed or provided, or the date of the service in the invoices, all of which are from 2024. Other than counselling (one visit privately funded), there is no indication the plaintiff received other medical services in Newfoundland in 2024.

[593] The defendants take no issue with the special damages in respect of mileage, the massage therapy treatments attended, the one clinical counselling session he attended, the physiotherapy treatments he attended, and prescription medications other than the receipt produced for a “proton-pump inhibitor” for which the defendants say no relationship to the injuries suffered by the plaintiff has been established. The defendants are also prepared to pay for the massage gun and TENS machine, and say that the total special damages not in issue are $2,869.33.

[594] I find that the plaintiff has failed to prove the invoices for “professional services” in 2024, addressed to the plaintiff’s law firm, constitute special damages for which the defendants are liable. Clearly the plaintiff did not pay those bills. I also agree with the defendants they are not obliged to pay for treatments the plaintiff failed to attend, particularly when I found no causal relationship between the plaintiff's injuries and his failure to attend treatment(s).

[595] In the result, I adopt the defendants’ submission and allow $2,869.33 in respect of the proven special damages.

Cost of Future Care

General Principles

[596] The legal principles applicable to a cost of future care assessment were summarized by Justice Brundrett in *Vo v. Navarro*, 2021 BCSC 1534, as follows:

> [154] The test for determining the appropriate award under the heading of cost of future care, it may be inferred, is an objective one based on medical evidence. For an award of future care, (1) there must be a medical justification for claims for the cost of future care; and (2) the claims must be reasonable: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.) at 84, aff'd (1987), 49 B.C.L.R. (2d) 99 (C.A.).
>
> [155] The court must be satisfied only that the future care is medically justified as opposed to medically necessary. It is not necessary to have a medical opinion respecting each item claimed, but there should be some evidence that the expense claimed is directly related to the disability arising out of the accident: *Gregory* at para. 39; *Rizzolo v. Brett*, 2010 BCCA 398 at para. 74.
>
> [156] The standard of proof to establish a claim for the cost of future care is the same as for any future pecuniary loss: simple probability. The plaintiff must establish a real and substantial risk of pecuniary loss. It is not necessary for the plaintiff to prove on a balance of probabilities that a future pecuniary loss will occur: *Athey* at para. 27.

[597] I add that, in making an award under this heading, the court must be satisfied that the plaintiff will in fact make use of a particular care item: see *Pang v. Nowakowski*, 2021 BCCA 478 at para. 57; citing *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 40 and 54; *Hans v. Volvo Trucks North America Inc.*, 2018 BCCA 410 at paras. 86–87.

Position of the Parties

[598] The plaintiff presented an extensive list of future needs, premised on a degree of incapacity I find unproven, with an accompanying multiplier supplied by Mr. Benning. The proposed costs total $326,694. Included in that amount is approximately $100,000 in future medication costs.

[599] The defendants argue most of the plaintiff's proposed costs are unnecessary and submit that the sum of $15,000, unspecified as to any particular modality of treatment or service, is a proper award for the plaintiff's future care.

The Award

[600] I note at the outset that, given the plaintiff's history of disregarding medical advice concerning treatment, specifically counselling, massage therapy, and filling prescriptions (e.g. Ativan), I am not satisfied that the plaintiff will in fact make use of certain care items claimed.

[601] Firstly, I repeat that I reject the diagnosis and recommendations provided in the report Dr. Karapeddy. In trying to appreciate what is real of the plaintiff's go-forward symptomology and what is either exaggerated or plainly misstated, I rely upon the report and objective findings of Dr. Heran and the findings and opinions of Dr. Laban. Dr. Heran rejected the notion of further passive treatments as providing any benefit to the plaintiff and, as such, I make no allowance for same.

[602] Dr. Heran did recommend neuromodulating medications, specifically gabapentin. Accordingly, I allow a claim for gabapentin estimated at $646 annually, the present-day value of which is $18,377. I similarly allow ongoing treatment by way of Effexor estimated to cost $274 annually, the present-day value of which is $7,787. However, as with the plaintiff's claim for loss of future earning capacity, I find that this aspect of his claim for cost of future care should be reduced on the basis of the contingent possibility of successful treatment and improvement of the plaintiff's psychological or physiological symptoms: see *Mayede v Dominguez*, 2020 BCSC 982 at para. 140; and *Skibeness v Northway,* 2020 BCSC 1825 at para. 99. I therefore reduce the award for future medication costs by 10%, for a cumulative award for the cost of future medication of $23,547.60.

[603] I allow for trigger point injections at a one-time cost of $1,850.

[604] Under the heading therapies, given Dr. Heran's opinion and despite my disbelief of significant of the plaintiff's presenting symptoms, I do allow for the one-time cost of the multi-disciplinary pain clinic in the amount of $20,000 and, based on the report of Dr. Laban, a further sum of $10,860 for cognitive behavioural therapy. As for the recommended treatment, I allow the suggested amounts for a TENS machine and personal massager, for a total of $1,934.

[605] None of the other therapies, in my view, are warranted on the basis of my assessment of the plaintiff's condition.

[606] In terms of services, I am satisfied that the plaintiff continues to be able to contribute to his own needs and some level of housework within the small bungalow which I have found he occupies with Chantal and his two children. I therefore make no allowance for services.

[607] As to the medications claimed beyond those mentioned above, I return to my scepticism that the plaintiff has been taking medications in the past or that he will take them in the future. Many of the suggested medications in the "addendum" are based on the opinion of Dr. Karapeddy, which I reject.

[608] Finally, I allow for a one-time assessment by an occupational therapist and vocational specialist in the amounts of $3,000 and $3,360 respectively.

[609] In total, I award $64,704 in respect of cost of future care.

In-Trust Claims

General Principles

[610] In *Bradley v. Bath*, 2010 BCCA 10, our Court of Appeal stated:

> [43] An in-trust award is one made to a plaintiff in trust for one or more of his or her family members, who are not named as parties to the action, as compensation to the family members for additional work done by them as a result of the impaired capacity of the plaintiff to perform housekeeping chores or to care for themselves. It was affirmed as a recoverable award by this Court in *Kroeker v. Jansen* (1995), 123 D.L.R. (4th) 652, 4 B.C.L.R. (3d) 178 (C.A.).

[611] This Court therefore has jurisdiction to make an in-trust award as a separate head of damages to compensate any individual who provides to the injured plaintiff care and services such as housework, nursing and other assistance made necessary by the plaintiff's injury: *Meckic* at para. 213. In *Meckic*, Justic Kent explained that:

> [214] Generally speaking, the requirements for making such an in-trust award include the following:
>
> - the assistance provided must be necessary for the care of the plaintiff as a result of her injuries;
> - the services must be over and above what might be ordinarily expected from a family member or friend;
> - quantification of the award should reflect the true and reasonable value of the services performed, taking into account the time required and the quality and nature of the work;

- the maximum value of such services will generally be the cost of obtaining them from a professional third-party service provider; and,
- it is not necessary for the person providing the services to have foregone other income in order to qualify for an award.

Position of the Parties

[612] The plaintiff advances claims in-trust for Chantal, Ms. Woods, and Ms. Hefferan. All of the claims are based on services alleged to have been provided to the plaintiff from the date of the First Accident until trial. Based on a rate of $35 an hour and 10 hours a week, for 387 weeks, it is suggested Chantal receive $135,450, Ms. Hefferan receive $34,256, and Ms. Woods receive $12,500.

[613] The defendants argue no award should be made for any of the three, given the weight of the opinion evidence that the plaintiff could (and did) perform those chores without the need of assistance. The defendant notes that the claimed costs of future care make no allowance for housekeeping (as opposed to yard work or heavy-duty cleaning).

The Award

[614] At the outset, to demonstrate what I perceive to be the overreach of the plaintiff with respect to his in-trust claims, I note that the expert opinion advanced in support of his claim for cost of future care estimates $3,500 annually for “services” such as those purported to have been provided by the three women, yet the suggested award in trust for the services said to be necessary (and performed), by comparison, works out to be approximately $30,000 annually.

[615] Even though Dr. Heran and Mr. Cole’s conclusions as to the plaintiff’s capabilities concerning housework were founded upon their opinions that the plaintiff’s abilities were/are significantly more impaired than I have found, both were of the view that, with pacing, the plaintiff can perform daily household chores. Mr. Cole concluded that, for the most part, the plaintiff was able to manage basic housework with accommodation (sitting to do dishes and showering on a stool). The videos in evidence belie the suggestion that the plaintiff has injuries so severe as to not allow him to complete basic household chores including cooking and laundry.

[616] The evidence of the plaintiff, while I view all that he says with scepticism given my findings on credibility, supports the proposition that the plaintiff's father did the majority of heavy work (e.g. wood cutting, outside maintenance) beyond the scope of the plaintiff's abilities, but there is no in trust claim advanced on his behalf.

[617] The submission as to the amount of time spent by each of the three at the plaintiff's residence ignores his evidence that he "sometimes went weeks without seeing anyone". None of the three witnesses on behalf of whom the in-trust claim is made performed, or at least described performing, "household repairs", a sub-category in the suggested cost of future care of the plaintiff estimated at $800 annually. More importantly, none of Chantal, Ms. Woods nor Ms. Hefferan gave evidence that they provided any service that exceeded the scope of the plaintiff's ability to perform those tasks on his own.

[618] On behalf of Chantal, the plaintiff argues that, "following the collisions, she has been unable to work because she feels she has three full-time jobs caring for their two children and Mr. Woods. She also testified that Mr. Woods is unable to assist with childcare. Given that their son is diagnosed with autism, Chantal Hefferan is not able to share any childcare responsibilities with Mr. Woods." I contrast that with the plaintiff's own statement to Dr. Heran that he is co-parenting the children with Chantal. Nevertheless, the plaintiff went on to submit that, since the accidents, Chantal has "undertaken virtually all of the household work that Mr. Woods used to share with her."

[619] That submission was presumably made on the assumption I found the evidence of both the plaintiff and Chantal credible as to (1) the degree of disability experienced by the plaintiff, and (2) the degree of necessary support provided by Chantal over the period of that disability. As noted above, I have found neither. Further, Chantal provided no detail of the chores she provided or when. There was, according to both Chantal and the plaintiff, a period of time they were separated.

[620] Ms. Hefferan says that, following the plaintiff's departure from Stephenville, she travelled to Lourdes one to two times a week, averaging 78 days per year, delivering "groceries and other items he needs". However, other than isolation in a small community, a matter of choice, there is nothing precluding the plaintiff from

purchasing “groceries and other items he needs”. Further, while not privy to the amenities available in Lourdes, I agree with the defendants’ submission that a plaintiff cannot isolate himself so as to render unavailable proper medical care to assist in his recovery and simple amenities such as proximity to a grocery store, and then expect a defendant to subsidize that decision by compensating a family member for delivery of groceries from a location requiring two hours of travel time.

[621] Plaintiff’s counsel asserted that Ms. Hefferan and her husband helped the plaintiff take out garbage, mow the lawn, shovel snow, stack firewood and bring it into the house. The plaintiff made no mention of Ms. Hefferan or her husband doing any of those things, and instead attributed performance of those tasks to his father and said that he paid for the delivery of wood. Ms. Hefferan’s evidence on this point also does not harmonize with that of Chantal. More specifically, because I conclude Chantal lives in Lourdes with the two children and the plaintiff a minimum of five days and nights per week, I find it implausible that Ms. Hefferan would attend with the frequency they testified to “assist the plaintiff”.

[622] As for the claim that Ms. Hefferan continues to “assist with childcare, including bathing and feeding children, taking them out to play and hosting sleepovers”, I note that, with respect, they are her grandchildren. I do not think such activities or duties go over and above what might be ordinarily expected from a family member.

[623] With respect to Ms. Woods, it is acknowledged she worked in Alberta until September 2023. By then, Chantal was in residence four days a week.

[624] In submissions, the plaintiff notes that “despite her previous work schedule and subsequent plan to have more time for herself, Ms. Woods stepped in to provide increased support. Mr. Woods’ father, Eugene, also supports Mr. Woods above and beyond a normal parent and their duties. Mr. Woods testified Eugene continues to assist with physical tasks such as shoveling snow, collecting and bringing in firewood”. The submission carries on to say Ms. Woods and her daughter assist the plaintiff with “all other tasks”. Such tasks include bringing Mr. Woods groceries, cooking, cleaning, laundry, vacuuming, mopping and taking out the garbage. In addition, Ms. Woods assists him with keeping track of his appointments, paying his bills and getting him what he needs from town. Finally, it

is asserted “Ms. Woods often dedicates one to four days per week to providing assistance for Mr. Woods”.

[625] As with Ms. Hefferan, I find that Ms. Woods’ attendance as such is implausible given my conclusion that Chantal lives in Lourdes with the two children and the plaintiff a minimum of five days and nights per week.

[626] In sum, I find the plaintiff has grossly exaggerated his state of disability and is capable of, and likely does, all of the tasks on which the three in-trust claims are founded. Even if I were to find the plaintiff required the assistance the three say they provide, I conclude that the devotion of time suggested by all three is both unlikely (particularly given the distance from Stephenville to Lourdes) and unnecessary. The only tasks for which an in-trust claim might find support, given my conclusions as to the scope of the plaintiff’s ongoing disability, are those said to have been performed by the plaintiff’s father. No claim is advanced on his behalf. He did not testify to performing the tasks the plaintiff says he did.

[627] Returning to *Meckic*, I conclude that the assistance alleged to have been provided for the care of the plaintiff does not flow from the plaintiff's injuries given his residual capacities and, in any event, the majority of services provided are not “over and above what might be ordinarily expected from a family member or friend”.

[628] Accordingly, the in-trust claims for all three are dismissed.

Summary of Damages

[629] In summary, I make the following award:

Non-pecuniary loss:	$130,000
Past Loss of Economic Opportunity:	$196,313.42
Future Loss of Economic Opportunity:	$350,000
Special Damages:	$2,869.33
Cost of Future Care:	$64,704
Total Award:	$743,886.75

Costs

[630] Unless there are offers which affect the issue of costs, the plaintiff is entitled to costs at Scale B.

[631] If the parties wish to make submissions on the issue of costs they should do so through Scheduling within 60 days of the release of these reasons.

"Harvey J."