

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Insurance Corporation of British Columbia*
v. Roy-Noel,
2026 BCCA 32

Date: 20260120
Docket: CA49911

Between:

Insurance Corporation of British Columbia

Appellant
(Third Party)

And

Shelley Ann Roy-Noel

Respondent
(Plaintiff)

Before: The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Gomery
The Honourable Justice Brundrett

On appeal from: An order of the Supreme Court of British Columbia, dated
May 7, 2024 (*Roy-Noel v. Buckle*, 2024 BCSC 752, Vancouver Docket M198738).

Oral Reasons for Judgment

Counsel for the Appellant: K.E. Jamieson, K.C.

Counsel for the Respondent: Y. Wong
K. Stewart

Place and Date of Hearing: Vancouver, British Columbia
January 12, 2026

Place and Date of Judgment: Vancouver, British Columbia
January 20, 2026

Summary:

The respondent was awarded damages payable by the appellant to compensate her for injuries suffered in a motor vehicle accident. The appellant appeals a portion of the award intended to compensate her the cost of psilocybin capsules and psilocybin assisted therapy as future care costs. Held: appeal allowed and psilocybin claim remitted for redetermination by the trial judge. Future care costs must be medically justified and reasonable. Psilocybin is a controlled drug and the judge recognized that its cost would only be reasonable if it were purchased pursuant to Health Canada authorization. However, while the reasons contemplated payment only on proof of Health Canada authorization, the entered order required payment without conditions. The judge erred in making an award that did not satisfy his own prerequisite for reasonableness. The claim must be redetermined, possibly through the application of a negative contingency to reflect the possibility that Health Canada authorization will not be obtained. The trial judge is in the best position to make the necessary factual determination.

GOMERY J.A.:

Overview

[1] Ms. Roy-Noel suffered serious injuries in a motor vehicle accident. She sued and was awarded damages of approximately \$1.428 million. The appellant appeals one small aspect of this award. It objects to a portion of the award for the cost of future care. This portion is a lump sum compensating Ms. Roy-Noel for the cost of psilocybin capsules and psilocybin assisted therapy to address her depression, suicidal ideation, and difficulty in managing her pain. The amount in issue is \$35,158.55.

[2] The psilocybin award was supported by expert evidence that the trial judge accepted. The judge described the evidence favouring the award as “compelling”: Reasons at para. 143. He found that, while psilocybin is a prohibited Schedule III substance under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, s. 4, it can be prescribed by a physician with special permission granted by Health Canada. He found that “there is no reason to think that a request made for treatment of the plaintiff would be rejected by Health Canada”: Reasons at para. 139. He concluded that “psilocybin, if and as prescribed by a physician in accordance with Health Canada protocols, is a reasonably necessary expense.” He described it as “literally ... life-saving, in staving off her suicidal thoughts”: Reasons at para. 143.

[3] The appellant argues that the judge misapplied the test for an award for the cost of future care by failing to conduct a proper analysis of the medical justification for and reasonableness of the claim, including the application of contingencies. Ms. Roy-Noel submits that the judge did not err.

[4] In my view, the judge erred in his reasoning. He assumed that his award in respect of psilocybin capsules and therapy would result in payment to Ms. Roy-Noel only as and when psilocybin was properly prescribed with Health Canada authorization and therefore lawful. However, that is not consistent with his order, which simply requires payment of a lump sum that includes \$35,158.55 for psilocybin capsules and therapy. An appeal lies from the order, not the reasons, and the order does not reflect the contingency contemplated in the reasons, that psilocybin will only be obtained as medically prescribed with Health Canada authorization. The appeal must therefore be allowed. I would remit this issue to the trial judge for redetermination.

Background

[5] Ms. Roy-Noel was injured on May 1, 2018, when a light truck driven by Mark Buckle rear-ended the parked vehicle she was exiting. Her claim against Mr. Buckle was defended by the appellant. Liability was not disputed. The trial took place to quantify Ms. Roy-Noel's claim for damages.

[6] Ms. Roy-Noel's injuries include pain in the left arm, neck, and head, tinnitus, dizziness, constant migraine headaches, and a condition described as "central sensitization syndrome" involving greater sensitivity to pain and diminished ability to cope with pain. She also suffered psychological injuries including a major depressive disorder, generalised anxiety disorder, and post-traumatic stress disorder. She experiences suicidal thoughts.

[7] Ms. Roy-Noel was 39 years old at the time of the collision and 45 when the trial took place. Her injuries have upended her life. She lost her employment and her home, because she could not afford to pay rent, and at the time of trial was being

supported by family members in their homes. The judge summarized the personal impact of her injuries as follows (Reasons at para. 54):

The plaintiff is at the young end of middle-aged: she will likely live with her difficult conditions for many decades. Her conditions are omnipresent, severe, and disabling, imposing emotional suffering, and destroying her previous vital and enjoyable lifestyle. She is continually anxious about her pain, and the prospect of the pain and symptoms worsening in the future. Her conditions have severely impaired her personal and social relationships.

[8] Ms. Roy-Noel claimed \$594,022 for the cost of future care. The judge allowed capitalized future care costs totalling \$367,916, less a 15% allowance to reflect contingencies.

[9] Two elements of the claim for the cost of future care were \$33,321 reflecting the cost of psilocybin capsules, and \$8,042 for psilocybin assisted therapy. They total \$41,363. The amount becomes \$35,158.55 after deduction of the 15% contingency allowance.

Legal framework for an award for the cost of future care

[10] As the trial judge noted (Reasons at para. 103), an award for the cost of future care is intended to compensate a plaintiff for costs to be incurred that are reasonably necessary to promote the plaintiff's health: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.), 1985 CanLII 179. The costs must be medically justified and reasonable: *Milina* at para. 211; *Tsalamandris v. McLeod*, 2012 BCCA 239 at para. 63.

[11] An award for the cost of future care is assessed once and for all at the time of trial: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21. It is a matter of prediction based on evidence of what costs are likely to be required and incurred in the plaintiff's best interests. The present value of these costs is determined and then adjusted having regard to contingencies such as the possibility that the plaintiff's health may improve. If there is doubt as to whether future costs will be incurred, the court evaluates the possibility in the same way as it addresses all hypothetical events for the purpose of assessing damages: first, by determining

whether the event is a real and substantial possibility; and if it is, by assessing the likelihood of the event and discounting it accordingly: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 27, 1996 CanLII 183; *O’Connell v. Yung*, 2012 BCCA 57 at paras. 55–56, 72; *Grewal v. Naumann*, 2017 BCCA 158 at paras. 48–49. The exercise is judgmental rather than strictly mathematical or actuarial because damages are assessed and not calculated: *Ibbitson v. Cooper*, 2012 BCCA 249 at para. 19.

[12] The judge considered and the parties agree that only lawfully incurred costs can be considered as having been reasonably incurred: *Murphy v. Hofer*, 2018 BCSC 869 at paras. 216–218; *Joinson v. Heran*, 2011 BCSC 727 at para. 422.

The reasons for judgment and the entered order

[13] The judge noted Ms. Roy-Noel’s evidence that she had been taking daily doses of a psilocybin product “through a private, presumably unauthorised, supplier, since her first dark spell of suicide ideation, in late 2018”: Reasons at para. 134. Before the collision, she had tried magic mushrooms a few times but was not a regular user. Afterwards, she found them effective in alleviating her migraines and dark thoughts and described them as critical for her ability to function.

[14] Ms. Roy-Noel’s claim was supported by the evidence of an independent expert, Dr. Kryskow, whose evidence was uncontroverted. The judge noted that the appellant “does not deny that psilocybin is the subject of many promising mainstream medical trials and studies for therapeutic treatment of various pain and psychological conditions”: Reasons at para. 138.

[15] The judge wrestled with the difficulty that psilocybin is a controlled substance. He requested and obtained from Ms. Roy-Noel, through her counsel, an undertaking “that if she is awarded this head of damage, she would only obtain psilocybin using those funds through the legal and prescribed means described by Dr Kryskow, through a physician”: Reasons at para. 140. The judge concluded:

[143] Based on the compelling evidence of the plaintiff and Dr Kryskow, psilocybin, if and as prescribed by a physician in compliance with Health

Canada protocols, is a reasonably necessary expense, and appropriately the subject of a cost of future care award. Apart from its assistance in relieving her individual conditions, it has literally been life-saving, in staving off her suicidal thoughts.

[144] That said, consistent with *Joinson [v. Heran, 2011 BCSC 727]*, ICBC need only pay the plaintiff if and when presented with written confirmation from a physician of their prescription for the psilocybin treatment obtained pursuant to Health Canada authorisation and all other federal requirements, the official documentation of which must also be presented. Even then, ICBC need only pay an amount for the period of the medical prescription. It is contemplated that this amount will be paid out in several installments, over many years.

[Emphasis added.]

[16] The conditions contemplated in paras. 143 and 144 of the Reasons, that the appellant need only pay Ms. Roy-Noel “if and when presented with written confirmation from a physician of their prescription for the psilocybin treatment obtained pursuant to Health Canada authorisation and all other federal requirements” are not contained in or consistent with the entered order of the court. The order imposes on the appellant an unconditional obligation to pay the expense up front as a lump sum. It states merely:

THIS COURT ORDERS that:

1. The plaintiff is granted judgment in this action and awarded damages as follows:

...

Cost of Future Care: \$367,916.00;

...

Less 15% contingency to all present and future heads of damage (in bold above):

Issues on appeal

[17] In respect of the \$33,321 claim for the future cost of psilocybin capsules, the appellant concedes that medical necessity was established. It contends that the judge erred in failing to conduct a proper analysis of the reasonableness of the claim, including the application of contingencies. In respect of the \$8,042 claim for psilocybin assisted therapy, it maintains that the judge erred in failing to conduct a

proper analysis both of the medical justification for and reasonableness of the claim, again including the application of contingencies.

[18] While the appellant disputes the reasonableness of both aspects of the award on evidentiary grounds, its central complaint is that the judge failed to address negative contingencies expressly recognized in the reasons, namely, the possibility that Ms. Roy-Noel would not seek to obtain psilocybin lawfully by applying for a Health Canada authorization or, if she did, would not obtain the authorization. This argument affects both aspects of the award: the claim for the cost of capsules, and the claim for the cost of psilocybin assisted therapy.

[19] I would state the issues as follows:

1. Did the judge err in awarding an amount assessed without reference to the possibility that Ms. Roy-Noel would not seek to obtain psilocybin lawfully by applying for a Health Canada authorization or, if she did, would not obtain the authorization?
2. Did the judge otherwise err in awarding an amount to compensate for the future cost of psilocybin capsules?
3. Did the judge otherwise err in awarding an amount to compensate for the future cost of psilocybin assisted therapy?
4. If the judge erred, what should this Court order?

Analysis

[20] The appellant does not suggest that the judge erred in his articulation of the legal framework. The alleged errors involve the judge’s findings of fact and application of the legal framework to the facts. To succeed in respect of such errors, the appellant must show that they are palpable and overriding which is to say, obvious and determinative of the result: *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 25, 36; *Salomon v. Matte-Thompson*, 2019 SCC 14 at para. 33.

- 1. Did the judge err in awarding an amount assessed without reference to the possibility that Ms. Roy-Noel would not seek to obtain psilocybin lawfully by applying for a Health Canada authorization or, if she did, would not obtain the authorization?**

[21] The judge expressly contemplated the possibility that Ms. Roy-Noel would not seek to obtain psilocybin lawfully. She had been consuming it up unlawfully up to the time of trial. Her undertaking to apply for Health Canada authorization was only given through counsel after she had testified. It was not legally binding. There was also, in principle, the possibility that, if she applied to Health Canada for special permission, she would not obtain it. Dr. Kryskow testified to a 100% success rate on applications in which she was involved, but this was essentially anecdotal.

[22] The judge clearly viewed the possibility that psilocybin would not be lawfully obtained for one reason or the other as real and substantial. He expressly found that psilocybin was a reasonably necessary expense only “if and as prescribed by a physician in compliance with Health Canada protocols”: Reasons at para. 143. In his reasons, he thought to address the possibility that psilocybin might not be obtained under prescription by making the award conditional, but that was not the effect of his order.

[23] In the result, the judge made an award for claimed expenses that did not meet his own prerequisite for reasonableness. This was a palpable error fundamental to the granting of the award and its quantification. The judge might have addressed the matter by discounting the award to reflect a significant negative contingency but did not. His order is unconditional. As noted, the law requires that an award for the cost of future care be assessed once and for all at the time of trial. Ms. Roy-Noel accepts that the order had to be unconditional, and the judge erred in supposing in his reasons that the order could allow for the payment out of the amount awarded in stages over time and on conditions.

2. Did the judge otherwise err in awarding an amount to compensate for the future cost of psilocybin capsules?

[24] The appellant submits that the award is also unreasonable “due to shortcomings in the evidence as to product, dosages, and frequency” of consumption. This is an argument about the quantification of the award. The appellant submits that Dr. Kryskow made no recommendation as to the dose Ms. Roy-Noel should take. It points to discrepancies between Ms. Roy-Noel’s evidence of her consumption and the dosages assumed in the report of an occupational therapist, Ms. Szarkiewicz, who offered evidence quantifying the claim.

[25] I am not persuaded that the judge committed an obvious or palpable error in his assessment of the evidence bearing on the quantification of the award. He found that Ms. Roy-Noel was taking a daily 0.25 g microdose of psilocybin, and a larger 1.25 g dose when her migraines were particularly bad. Dr. Kryskow stated in her report that Ms. Roy-Noel’s reports of usage and benefits received were consistent with the evidence she had accumulated from other patients. The \$33,321 award for psilocybin capsules (before application of the 15% contingency reduction) assumes an annual cost of \$1,218 and is grounded in Ms. Roy-Noel’s evidence of the cost she was incurring to acquire psilocybin: it assumes 12 months of microdoses at \$79 a month, and 90 1.25 g doses at \$90 for a bottle of 30. The evidence bearing on quantification was not without difficulty and different judges might have weighed it differently, but it was open to the trial judge to come to the conclusions he reached.

[26] The appellant further submits that the evidence grounding the award was unreliable because it was for illegally produced and marketed product, and there was no evidence of the likely cost of lawfully prescribed product. Lawful or not, psilocybin would come at a cost and fairness required that the cost be taken into account. While Ms. Roy-Noel’s evidence was imperfect, the judge did not obviously err in relying on it to assess the likely cost to be incurred to purchase lawfully prescribed product. The appellant does not suggest that there is more reliable evidence that the judge was bound to prefer.

3. Did the judge otherwise err in awarding an amount to compensate for the future cost of psilocybin assisted therapy?

[27] The appellant submits that the judge erred in awarding \$8,042 for psilocybin assisted therapy because it lacked a medical justification substantiated by expert evidence. Apart from quantifying it separately in a table (Reasons at para. 105), the judge's reasons do not address this aspect of the psilocybin award.

[28] The quantification of the award adopted by the judge comes from Ms. Szarkiewicz's report which describes the therapy contemplated. The cost reflects 14 sessions with a therapist over the course of a year to prepare for and guide the subject through psychedelic experiences and subsequently work through insights. It does not include the cost of the psilocybin.

[29] Contrary to the appellant's submission, Dr. Kryskow's evidence offered a medical justification of psilocybin assisted therapy. In her evidence in chief, she described positive outcomes achieved in offering psilocybin assisted therapy to patients with a palliative care diagnosis or treatment-resistant depression. The therapy is offered in conjunction with psilocybin acquired with special permission from Health Canada.

[30] Having regard to this evidence, it was open to the judge to find that psilocybin assisted therapy was medically justified and a cost of future care award of \$8,042 warranted, so long as it was open to Ms. Roy-Noel to lawfully acquire and take psilocybin. This would require Health Canada's authorization.

4. If the judge erred, what should this Court order?

[31] In brief, the judge erred in making an unconditional lump sum award for the psilocybin portion of the award for the cost of future care that did not meet the prerequisite he established for reasonableness.

[32] The appeal must be allowed and this Court is left to choose among three possible outcomes:

- a) Eliminate the psilocybin portion from the cost of future care award, reducing it by \$35,358.55;
- b) Come to our own conclusion as to the reasonableness of the claimed costs without evidence of Health Canada permission or an appropriate negative contingency to reflect the possibility that Ms. Roy-Noel will acquire psilocybin without Health Canada authorization; or
- c) Remit the case to the trial court to make the necessary factual determination.

[33] The first possible outcome would not be fair to Ms. Roy-Noel, because it is entirely possible that she will apply for and obtain Health Canada authorization or has already done so. She undertook to apply and the judge could see no reason she would not obtain authorization, if she applied. It is fundamental to an award for the cost of future care that it be fair to both parties: *Krangle* at para. 22.

[34] As between the second and third possible outcomes, I would remit the case to the trial court for the following reasons.

[35] What remains to be decided is a simple question: on the facts of the case, is a lump sum award for psilocibin capsules and psilocibin therapy a reasonably necessary expense without proof of Health Canada permission at the time of trial? The answer to that question may depend on the Court's assessment of the likelihood that Ms. Roy-Noel will apply for and obtain the requisite permission. The trial judge is in a better position to address this question than we are, because he saw and heard Ms. Roy-Noel give evidence over the course of several days, and will have a better sense of her inclinations and motivations than we could acquire from a review of the transcript. Answering the question should not require a lengthy further hearing in the court below.

[36] The appellant submits that the judge's apparent unwillingness to make an unconditional award signals, at the least, his doubt that she would apply for Health Canada authorization unless she had to. In my view, that inference is not

compelling. The judge might have viewed a conditional award as a convenient backstop even if he viewed the likelihood that Ms. Roy-Noel would not obtain Health Canada authorization as very small. We cannot tell what the judge was thinking, but he will know.

[37] It has been 21 months since Ms. Roy-Noel testified at trial. If the matter is remitted, both sides should be at liberty to adduce further evidence in respect of the question to be addressed. It may be that what has happened or has not happened since April 2024 will shed light on the question.

[38] Taking everything into account, in my view, it will further the interests of justice to have the question decided by the trial judge.

Disposition

[39] For these reasons, I would allow the appeal, reduce the award for the cost of future care by \$35,158.55 subject to further consideration of Ms. Roy-Noel's psilocybin claim, and remit further consideration of that claim to the trial judge for determination on the basis of the evidence at trial and such further evidence as he may permit the parties to adduce.

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

[41] **BRUNDRETT J.A.:** I agree.

[42] **DEWITT-VAN OOSTEN J.A.:** The appeal is allowed in the manner set out by Justice Gomery at the conclusion of his reasons.

“The Honourable Justice Gomery”