IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Moise v. Black Top and Checker Cabs Ltd.*
2026 BCSC 604

Date: 20260408
Docket: M211758

Registry: Vancouver

2026 BCSC 604 (CanLII)

Between:

Emilie Moise

Plaintiff

And

Rajnesh Ram and
Black Top and Checker Cabs Ltd.

Defendants

Before: The Honourable Justice Jones

Reasons for Judgment

Counsel for the Plaintiff:	J. Noble E. Holden
Counsel for the Defendants:	D. Addison G. Christofferson M. Shi, articled student
Place and Date of Trial:	Vancouver, B.C. February 10-14, 18-20, 2025
Place and Date of Judgment:	Vancouver, B.C. April 8, 2026

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I. INTRODUCTION

[1] The plaintiff, Emilie Moise, was injured in a motor vehicle accident on February 5, 2021 (the "Accident"). The defendants admit liability for the Accident.

[2] The Accident occurred when Ms. Moise was riding a motorcycle northbound on Hemlock Street in Vancouver, shortly after 5:00 p.m. The defendant, Rajnesh Ram, the driver of a taxi, was stopped at a stop sign on West 8th Avenue at the intersection with Hemlock Street, eastbound. The taxi proceeded into the intersection, striking the plaintiff and the motorcycle, causing the plaintiff to be thrown off the motorcycle.

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[3] The defendants dispute the extent of Ms. Moise's injuries and quantum of damages.

II. BACKGROUND

A. The Plaintiff's Circumstances Before the Accident

[4] Ms. Moise was born in 1990 and raised in Ontario. She was 30 years old at the date of the Accident, and 34 at the time of trial.

[5] She testified that she started skiing at a young age, later starting to snowboard as a teenager. In her teens she played numerous sports, including badminton, soccer, volleyball and basketball.

[6] After high school, she left home to study at Algonquin College in Nepean, Ontario. She experienced some difficulty and anxiety in her first year away from home. She started playing soccer and volleyball and worked out at the gym, which helped with her anxiety. In her fourth year she became interested in Olympic weightlifting.

[7] She completed four years of college, earning an advanced diploma in business administration in materials and operations management.

[8] In 2015 she moved to Vancouver, where she worked for a year as an office manager at an architectural company earning $38,000, increasing to $40,000 or $42,000 over the course of the year.

[9] She continued training at Olympic weightlifting, later getting into cross-fit. She played soccer in a recreational league. She also hiked, snowboarded, cycled and skateboarded.

[10] In about late 2015, Ms. Moise started working for Canada Post as a letter carrier, working there until the Accident in 2021. She enjoyed working as a letter carrier, she loved being outside, working alone at a physical job, walking on average twenty kilometres a day, up to thirty kilometres or more with overtime work.

[11] While working at Canada Post she did less weightlifting because of time constraints, and she lost interest in competing, so she spent more time with cross-fit after work, three to four days a week. She also continued to play soccer in a recreational league, snowboarded at Whistler, bicycled, skateboarded and hiked.

[12] In her over five years at Canada Post her income increased to approximately $50,000 from her starting salary of $45,000.

[13] During Ms. Moise's time at Canada Post working as a letter carrier, she had applied to five different positions at Canada Post more geared to her education, including positions in sales, management and health and safety. She was interviewed for two of those positions, but she was not hired for either of them. She described herself testing the waters and not yet ready to move from outdoors being active. She was preparing herself to move into management and higher paying positions.

[14] She had planned to continue to work at Canada Post and build up a pension.

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B. The Accident

[15] The Accident occurred shortly after 5:00 p.m. on February 5, 2021 when Ms. Moise was riding her 500cc Honda Rebel motorcycle northbound on Hemlock Street at a speed of approximately 40-50 kmh.

[16] At the intersection of Hemlock Street and West 8th Avenue, Hemlock Street is a through street with no stop sign. For any east or westbound traffic on West 8th Avenue, there is a stop sign at Hemlock Street.

[17] Ms. Moise's evidence is that she saw a taxicab to her left, eastbound on West 8th Avenue, beginning to roll out from the stop sign. The taxi then darted through, and she slammed on her brakes. The taxi struck her on her left side, she then went flying to the right, landing on her head and right hip on the pavement. She remembers hitting her head and then opening her eyes and being screamed at, and someone telling her not to move. She remembers she was lying on her back and not able to feel her legs.

[18] The ambulance report indicates that Ms. Moise was lying on her side on the ground when the ambulance attendants arrived, with her spine stabilized by a bystander. Ms. Moise complained of numbness her entire right side. The ambulance attendants found point tenderness at "T1" – thoracic vertebrae #1, pain in the pelvis, and instability on her right femur and ankle, with abrasions on her leg. They gave her pain medication and mobilized her for transport including a cervical collar, pelvis binding, legs splinted together, and clamshell.

[19] She does not remember being driven to Vancouver General Hospital ("VGH"), she recalls screaming for her partner in the hospital, but she does not really remember anything else about being there.

[20] Ms. Moise was discharged from VGH shortly before midnight the evening of the Accident.

[21] She remembers her partner taking care of her at home as she was in bed for what felt like two months, but she does not remember much about that time.

C. The Plaintiff's Injuries and Treatment

[22] Shortly after the Accident, Ms. Moise recalls she had pretty bad neck pain, and pain in her right shoulder, right elbow bruising, severe pain in her right hip and coccyx/pelvis area, and pain in her mid to lower back. She partially tore her right hip flexor.

[23] VGH records indicate she arrived at the hospital by ambulance at 6:06 p.m. She was assessed at 6:10 p.m. with a GCS (Glasgow Coma Scale) score of 15. The VGH record of her GCS indicates that she opened her eyes spontaneously, was verbally oriented and obeyed commands. She had pain in her right pelvis, right hip, buttocks, left shin and ankle, and abrasions to her lower left leg.

[24] The VGH final report refers to "No LOC" – no loss of consciousness. Imaging of her CT scans and x-rays were reported to be normal, and she was reported to be ambulating well around the emergency department. The report refers to her having some tenderness and difficulty with flexion of her hip, but capable of a full range of motion.

[25] Ms. Moise recalls her first treatment was physiotherapy, which occurred about two to three months after the Accident, twice a week. After a year of that, in conjunction with the physiotherapy she began counselling as well as seeing a pelvic floor specialist.

[26] The pelvic floor treatment involved painful muscular stimulation, but she liked it as it was helpful.

[27] After a year and a half, she reduced the frequency of physiotherapy to once per week for a year, then once every two weeks. Now, four years after the Accident, she is doing physiotherapy, once or twice a month, and if she needs it more frequently, she goes two to three times per month.

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[28] Two and a half years after the Accident she started active rehabilitation with a kinesiologist.

[29] She still sees the kinesiologist one to two times per week, averaging once per week, and the pelvic floor specialist roughly once every three weeks.

[30] She continues to exercise by herself at home doing exercises recommended by the pelvic floor specialist. She has done no weightlifting since the Accident, and no volleyball or basketball. She has done some stationary biking. She tried soccer, but it aggravated everything, so she had to quit after the second game.

[31] Ms. Moise moved back to Ontario in November 2024 to live in a house owned by her father. She was able to find a kinesiologist about 30 minutes from where she lives, and a physiotherapist about 40 minutes away. She wants to keep doing those treatments.

[32] In cross-examination, Ms. Moise agreed that she had tried anti-anxiety or anti-depression medications for a month, but did not like the way it made her feel, and she prefers to not go the prescription route, in part because of the negative impact of medications on her sister she had previously seen.

[33] Before the Accident, she had some anxiety and depression in her life. She said that occurred when she had doubts about her life, there were small manageable instances here and there, but she had managed with physical activity and socializing. It was never severe.

[34] Ms. Moise did counselling for almost two years in 2022 and 2023, but stopped because the counsellor left the practice or moved. She tried with another counsellor, but she did not vibe with them. She is aware that medication and counselling is recommended by Dr. Spivak and Dr. Riar, and agrees she should be returning to counselling.

[35] She has suffered headaches and light sensitivity.

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[36] In cross-examination, she stated that headaches come and go, but are a lot better now. She agreed that in an examination for discovery on March 28, 2024, she answered “no” to a question if she was still getting headaches, and when asked when they stopped, she answered mid-2022, or end of 2022.

[37] She then stated she was not getting headaches as consistently as after the Accident, but they do come on in stressful situations, for example during panic attacks, and when staring at a computer for too long, but there has been marked improvement since mid-2022.

[38] She is a bit better with the light sensitivity and a little bit better with the sound sensitivity, but still struggles with sound.

[39] In cross-examination, when asked about her neck, she said it is a revolving door, mostly no pain, but sometimes if she is too stressed out or working too hard, the neck pain comes back predominantly on the right side. It comes and goes, but it is not debilitating.

[40] She has no problems with her shoulder and upper back. Her mid-back has continued to improve considerably with kinesiology; it comes and goes.

[41] In cross-examination she stated that she no longer has problems with memory and cognition, sometimes problems with short term memory, cognition is 80% back, but if stressed she can blank and forget anything. At her discovery she answered that she was not currently having problems with memory or cognition.

[42] In cross-examination, when asked whether her depression and anxiety are a lot better than soon after the Accident, she agreed that they have progressed, but are not a lot better. At discovery, she said it had gotten better because she was excited by her new job, and she had reported to Dr. Cameron it was 70% improved, but she stated that depression fluctuates. Driving anxiety has improved a lot, but she still gets triggered when other vehicles approach her at an intersection from a perpendicular angle, but that has gotten way better.

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[43] In the Fall of 2022, she bought a motorcycle because it was less expensive at that time. She rode it once in 2022, but it was painful and she could barely get off. In cross-examination, she agreed that she rode it at least 3 times in 2022, and reported to Dr. Riar that she rode it 5-10 times in the summer of 2023.

[44] She was initially prescribed hydromorphone at the hospital for pain, and took it for a few days, then a prescription for Tylenol 3s for a month or too, then she has taken over-the-counter Tylenol and Advil for pain.

D. The Plaintiff's Circumstances After the Accident

[45] After the Accident, Ms. Moise was on short-term leave from Canada Post. She then went on a gradual return to work in approximately June 2021, working three days a week, two to four hours a day, not as a letter carrier, but light modified duties inside sorting mail, sorting and collating flyers, and doing address change cards.

[46] She found that work difficult as it was a loud environment and she was sensitive to loud noises and the warehouse lighting. The repetitive motions aggravated her lower back. She did that until January 2022, then she was on long-term leave before she left Canada Post, and they paid out her pension.

[47] She received long-term disability payments for under a year, until the end of August 2023, or the beginning of September.

[48] She could not sustain herself financially after the Accident, and in addition to the long-term disability payments she received assistance from her father.

[49] In March and April 2022, she worked at Parallel 49 microbrewery doing purchasing for the production side. Her treatment interfered with her work, and her employer would not allow her to work from home. She testified that she struggled with back pain, and the work on the computer resulted in her experiencing migraine headaches.

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[50] She then began working as a bouncer at the Red Room nightclub. Her role was to assist intoxicated women in the restroom to make sure they were okay. She was also there to observe patrons and report to the larger male bouncers if any problems arose.

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[51] She worked at the Red Room from May or June 2022 until late summer that year. As winter approached, she did not want to be outside in the cold with her back and head injuries.

[52] She then worked at Vancouver Auto Credit as a financial assistant, which was commission-based cold-calling every day, and on the computer all day. She only wanted to work four days a week, but ended up working seven days a week, much of it on the computer which she testified brought on migraine headaches.

[53] She left that job in January 2023, then went back to the Red Room nightclub to do the same job. She worked there to the end of November 2023, earning $27 per hour.

[54] In December 2023, after she left the Red Room, she moved to UBC to work as a patrol officer for higher pay, guaranteed steady hours and a pension. The hourly pay was $26.30, lower than the Red Room, but guaranteed hours, forty hours per week. She was a patrol officer and first aid responder. She worked there for twelve months from December 2023 to December 2024.

[55] She worked two days and two nights, four on four off. That job included everything from responding to suicide calls to removing unhoused individuals from buildings they were not supposed to be in, giving access to students and staff, and dealing with protests.

[56] She received basic security training through the Justice Institute, and took a first aid course.

[57] She had the opportunity to take an advanced security training course, or AST, a three-day course involving more physical aspects of self-defence, disarming

persons, and take-downs. She did not take the course because she was not confident, and her doctor told her it was not a good idea because of her pelvic floor injury. In approximately September 2024 she deferred taking the AST course and continued to work, patrolling on foot and in vehicles. She would walk for 20-30 minutes, then would rest and do pelvic floor exercises.

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[58] During this time she was having discussions with her father about her moving back to Ontario. She wanted to go home and be there with her family. She testified that half-way through training as a security guard she knew that it was not something she could do long term. Ms. Moise was concerned about the physical aspects of the job, including the AST course, and the possibility of having to deal with aggressive protesters and persons with mental health issues. She was aware of assaults occurring on the UBC campus.

[59] In early December 2024 she wrote a letter of resignation to the senior director in her area, explaining that she had tried various positions over the four years, but she was struggling physically and mentally. She testified she received a letter back thanking her for her service and expressing sadness on her leaving. She stated that she was not aware of having been offered any accommodations.

[60] In early 2024, her father was trying to open up a room for her in one of his houses in Ontario, but a dispute between her father and the tenants delayed that plan until the tenants moved out in late 2024, opening it up for her.

[61] In her discussions with her father, they came up with an idea together that they could be involved in fixing up houses to sell or rent. Her father had successfully done home renovations in the past, renovating them and flipping them, or continuing to own and rent them.

[62] When Ms. Moise was younger, she had helped her father with about five or six homes, and she had very much enjoyed doing that.

[63] As far as she knew, her father's most recent two home renovations were financially successful, he still owns the two and rents suites in them. In one of these

houses there are four rental apartments generating monthly revenue of $10,000 - $12,000. The second house is being paid for from the rent from the downstairs tenant, and the upstairs is available to her.

[64] The idea to work with her father would see her in a role as a project manager, which fits with her diploma program in business administration.

[65] Ms. Moise also testified about her relationship with her former partner, Lola. They had been together for about three years, co-habiting for about a year and a half before the Accident. They separated in July 2023, over two years after the Accident.

[66] Ms. Moise described the relationship as great, amazing, she wanted to marry Lola, but after the Accident she described it as becoming toxic and abusive, which she attributes to her not being pleasant on account of her pain and mood swings from pain medication, and she was angry and anxious. She could not clean the house or exercise. Lola would come home after a full day of work and have to take care of Ms. Moise, causing Lola, Ms. Moise believes, to become resentful. The two began to verbally abuse each other, which grew into Lola physically abusing Ms. Moise. Ms. Moise described an upsetting incident after the breakup during Pride Week in 2023. Ms. Moise testified that Lola assaulted Ms. Moise's then-partner, pulling her hair and punching her in the head. Ms. Moise attempted to intervene to protect her, but others grabbed Ms. Moise's arms and restrained her. Ms. Moise was not punched or physically harmed in the incident.

III. WITNESSES

[67] At trial, the plaintiff called two non-expert witnesses, and five expert witnesses.

A. Plaintiff's Non-Expert Witnesses

Jerry Moise – plaintiff's father

[68] Jerry Moise is the plaintiff's father. He gave evidence by videoconference from the island of Saint Kitts in the Caribbean, where he works as an engineer at a

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resort. His duties include managing a power plant, a waste-water plant and a desalination plant.

[69] Mr. Moise described his daughter growing up in Ontario. She had a natural affinity for athletics, excelling at many sports. Her favourites were volleyball, shotput and soccer.

[70] Mr. Moise was obviously proud of his daughter's accomplishments. He testified at length about the many activities in which she was involved after finishing high school.

[71] He also gave evidence about his knowledge of her treatment following the Accident, and his concern about seeing her in pain, and her physical and mental challenges.

[72] He gave evidence about his knowledge of Ms. Moise's life after the Accident, including his financial assistance to her, and his discussions with her about possible job opportunities.

Sydney Williams – plaintiff's friend

[73] Sydney Williams has been a friend of the plaintiff since 2016. Ms. Williams gave evidence about her knowledge of the plaintiff before and after the Accident.

[74] She met the plaintiff in the summer of 2016. Their friendship centred around athletics and fitness, including soccer, skateboarding, hiking, yoga and going to the gym.

[75] Ms. Williams described the plaintiff before the Accident as positive, kind and outgoing, with positive goals for her life, finances and travel.

[76] She was aware the plaintiff wished to move into management at Canada Post.

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[77] Ms. Williams described her perception of how the plaintiff had been affected by the Accident mentally. She was not the same happy-go-lucky person she had known, she appeared to be more sombre and sad.

[78] In the first two months after the Accident, she appeared to be in pain, mentally and physically, hanging out on her couch a lot with less energy. She appeared to be struggling with work. Her father was helping her financially, and that seemed to affect her confidence and mental health. Ms. Williams did not consider Ms. Moise to be the same goal-oriented person she had known before the Accident.

[79] Before the Accident, Ms. Williams had witnessed the plaintiff with her partner, and they seemed happy. After the Accident she witnessed a strain in the relationship.

[80] Three to four months after the Accident, Ms. Williams moved to a rural area in Langley. The plaintiff visited her there. They did some short duration bicycling, but the plaintiff was still sore so they would more often sit on the deck in nicer weather, talk and relax, or sit around a fire in the back, and sometimes go for a slow walk for twenty to thirty minutes. They did not go to the gym or do the sports they did together before the Accident.

[81] After about a year after the Accident their friendship tapered off, and she did not see Ms. Moise regularly in 2023 and 2024.

B. Plaintiff’s Expert Witnesses

Derek Nordin – vocational rehabilitation

[82] Derek Nordin was qualified to give expert opinion evidence as a vocational evaluator regarding future earnings.

[83] Mr. Nordin conducted a vocational assessment of the plaintiff on July 16, 2024.

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[84] Mr. Nordin's report dated October 7, 2024, describes his assessment of Ms. Moise, and his opinion that she had a reasonable expectation of eventually getting into a supervisory/managerial position with Canada Post.

[85] His evidence is that the entry level annual salary for managers at Canada Post is $47,640, the average is $70,001, and those with several years of experience have average annual earnings of $108,396.

[86] Mr. Nordin's report also refers to other security guard companies not requiring advanced security training. In his opinion, the median wage for security guards and related security occupations is $20 per hour, with a high wage of $28.85 per hour. This is closely consistent with defence expert, Samantha Gallagher, see below, who refers to the median and high hourly wage rates for security guards at $20 and $30, respectively.

[87] Mr. Nordin has no retraining recommendations for Ms. Moise.

Darren Benning – economist

[88] Darren Benning was qualified to give expert opinion evidence in the area of economics and future loss of income. Mr. Benning prepared a report dated October 4, 2024. His calculations regarding past and future income loss, and future cost of care, are discussed below in the relevant sections of the damages assessment.

Louise Craig - functional capacity

[89] Louise Craig was qualified to give expert opinion evidence in the area of functional capacity and evaluation, and the cost of future care.

[90] Ms. Craig assessed the plaintiff on May 7, 2024. She prepared a report dated May 15, 2004.

[91] Ms. Craig gave evidence at trial by videoconference from Australia.

[92] Ms. Craig's opinion on Ms. Moise's functional capacity in relation to her former letter carrier role is that Ms. Moise's lower back limitations and the physical

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demands of the job make it unlikely that she would be able to return to that work, even with accommodations for pacing, breaks and stretching.

[93] Regarding Ms. Moise's work as a security guard, Ms. Craig's opinion is that without accommodations of pacing and breaking every day, she would not be able to stay in that job.

[94] Regarding Ms. Moise's competitive employability generally, Ms. Craig states that Ms. Moise's limitations reduce her ability to work at sedentary, light and more physically demanding jobs. Occupations with light physical strength demands would require accommodation allowing for frequent positional and task changes, regular stretching, and proper ergonomics.

[95] Ms. Craig's report refers to Ms. Moise self-assessing her abilities and limitations, which include her abilities to sit for four hours, stand for two hours and walk for two hours. Her pain diagram indicates pain in the anterior left hip, sacral and lower back areas.

[96] Ms. Craig's opinions on future costs of care are discussed in the damages section below.

Dr. Mitchell Spivak - psychiatrist

[97] Dr. Mitchell Spivak was qualified to give expert opinion evidence as a psychiatrist in the field of psychiatry.

[98] Dr. Spivak conducted a virtual assessment of the plaintiff on May 6, 2024. He prepared a report dated May 7, 2024.

[99] Dr. Spivak's report states that the plaintiff reported to him that she had a prior history of having had anxiety and depressive symptoms throughout her life, but without any period of functional impairment.

[100] She reported experiencing depressive symptoms after the Accident, which were related to the changes in her life following the Accident, including the impact on

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her work, her recreational activities including her exercise and physical activity routine, and her personal relationship with her partner.

[101] Dr. Spivak reports she described diminished social contacts; however, she described her overall inclination was a preference to be alone, with the exception of one or two people in her life.

[102] She reported challenges with cognitive function and sleep, including nightmares. She described recurrent suicidal ideation since the Accident.

[103] She had returned to driving a motorcycle in the past year, but limited to 45 minutes because of physical discomfort, and she described anxiety going through intersections.

[104] Dr. Spivak's opinion on brain injury, from Ms. Moise's report of a brief loss of consciousness after being thrown 10-12 feet in the Accident, and feeling dazed in the aftermath, is that her account is suggestive of her having sustained a mild traumatic brain injury in the Accident.

[105] From the plaintiff's accounts of pain and the impact on her recreational and work activities, and her relationship with her partner, Dr. Spivak's opinion is she developed depressive symptoms and anxiety. In his opinion her presentation is consistent with a diagnosis of a major depressive disorder with anxious distress, with the symptoms of anxiety having improved, but still persisting to some degree.

[106] Elements of posttraumatic stress disorder, including nightmares, flashbacks and vehicular avoidance and anxiety, have partly resolved.

[107] Dr. Spivak sees the challenges in Ms. Moise's employment as not due to psychological factors, as much as her psychologic symptoms are in response to the physical issues that she is having related to her employment.

[108] Dr. Spivak recommends that the plaintiff return to psychotherapy, and trial a different antidepressant.

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[109] His prognosis for depression is that it will be tied to her potential for physical improvement.

Dr. Donald Cameron – neurologist

[110] Dr. Donald Cameron was qualified to give expert opinion evidence in neurology.

[111] Dr. Cameron assessed the plaintiff by videoconference on April 9, 2024. He prepared an expert report dated April 28, 2024.

[112] Select portions of Dr. Cameron's report regarding the plaintiff's reports to him include the following:

- She has been suffering with decreased memory, concentration, and attention span since the Accident. The cognitive problems were quite severe for the first year. They subsequently improved. At the time of Dr. Cameron's assessment, they were largely resolved but not completely resolved. Her memory is normal as of the date of the assessment.

- She initially had headaches after the Accident, but they have almost resolved prior to the assessment. She gets headaches now associated with increased stress.

- The neck pain is ongoing on an intermittent basis as of the date of the assessments.

- She had ongoing symptoms of depression, about 70% improved. She stopped taking antidepressant medication after a month because of adverse effects.

- She is able to do household chores reasonably normally.

- She has ongoing pelvic and low back pain.

- She is still improving to a mild degree at the date of the assessment.

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[113] Dr. Cameron’s opinion is summarized as follows:

- The plaintiff probably suffered a brief altered state of consciousness or loss of consciousness at the time of the Accident. She has a partial recall of the impact with the other vehicle, no recall of the ambulance crew checking her out or putting her in the ambulance, or the ride to the hospital, or being taken into the emergency department. She has no recall of her partner picking her up and taking her home after she was discharged from the hospital.

- The plaintiff does fulfil the criteria to make a diagnosis of a mild traumatic brain injury at the time of the Accident.

- The plaintiff developed symptoms of post-traumatic syndrome following the Accident, including headaches, dizziness, anxiety, decreased memory, decreased concentration and attention span, multi-tasking difficulties, irritability, mood swings, anger outbursts, and disturbed sleep pattern.

- As of the date of the assessment, the plaintiff is not suffering with ongoing symptoms residual to the mild traumatic brain injury that she sustained at the time of the Accident.

- As of the date of the assessment, Ms. Moise was working full-time as a first aid responder and a security guard. She indicated that the walking activity requirements of her job aggravate her ongoing pain, but overall, she is able to perform this job without significant problems working full-time.

- Ms. Moise reported that her cognitive problems including memory problems have largely resolved prior to the assessment. Her pain and discomfort has not complete resolved, but it is only intermittent in nature at the time of the assessment. She is still suffering with ongoing psychological problems in the form of anxiety and symptoms of depression as of the date of the assessment.

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- Ms. Moise has probably been rendered permanently partially disabled due to the ongoing symptoms present as a result of the physical injuries she sustained at the time of the Accident. Her ongoing partial disability has been mild in severity.

C. Defendants' Non-Expert Witness

[114] At trial, the defendants called one non-expert witness and three expert witnesses.

Glenn MacNeill

[115] Glenn MacNeill is a Security Manager at UBC. Mr. MacNeill testified that he interviewed and hired the plaintiff. He stated that Ms. Moise was good at her work as a security officer. He was sorry she left because it is hard to find female security officers. He stated her performance was good, and he thought she could have a long career in security.

[116] Mr. MacNeill also gave evidence about the advanced security training certification. He stated that it was not mandatory for the UBC security officers to be certified, he has about fifteen officers not certified because of health reasons. He stated he would like them to take the course, even if not certified, because they would have another tool to protect themselves if they had to.

[117] He stated that some of the officers are accommodated through workplace health services, for example some workers are limited to sitting or walking for a period of time.

[118] Mr. MacNeill stated that the plaintiff never asked for accommodations or told him she was having any physical difficulty with performing the job.

D. Defendants' Expert Witnesses

[119] The defendants called three expert witnesses: Dr. Kulwant Riar, a psychiatrist; Dr. Bas Masri, an orthopaedic surgeon; and Samantha Gallager, an expert in vocational rehabilitation.

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Dr. Kulwant Riar – psychiatrist

[120] Dr. Kulwant Riar is a psychiatrist. He was qualified at trial to give expert opinion evidence on the diagnosis and prognosis of mood issues.

[121] Dr. Riar examined the plaintiff on June 3, 2024. He prepared a report dated November 14, 2024.

[122] Regarding Ms. Moise's mental health issues, Dr. Riar categorizes her anxiety and depression as generalized anxiety disorder and major depressive disorder, of mild intensity.

[123] Dr. Riar's stated opinion in his report is that he does not believe that Ms. Moise suffered any mild traumatic brain injury, but if she did, it was non-consequential and did not leave her with any post-injury symptomology.

[124] On cross-examination, Dr. Riar agreed that MTBI is diagnosed with three criteria: loss of consciousness, loss of memory, or alteration in mental state.

[125] He agreed that only one of the three criteria need to be met for the diagnosis. He also agreed that confusion is considered an alteration in mental state.

[126] He agreed that the plaintiff reported to him that in the Accident she hit her head and was out for two to five seconds, and she does not remember being loaded to the ambulance or being transported to the hospital.

[127] My impression of Dr. Riar is that although he agreed in cross-examination that only one of the three factors was needed for a diagnosis of MTBI, and although he appeared to agree that she met at least one of the factors, he then referred to other symptoms needing to be considered such as complaints of nausea, vomiting, dizziness, and headaches. His report opines that he does not believe that she suffered any MTBI; however, in cross-examination, he ultimately agreed that she could have suffered an MTBI.

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[128] Dr. Riar's recommendations for treatment of her anxiety and depression are psychotropic medication and cognitive behavioural therapy, recognizing it will be a challenge to engage her in psychiatric treatment, especially taking medication.

[129] An option is antidepressant medications, and cognitive behavioural therapy for 14-16 one-hour sessions.

[130] Dr. Riar does not consider Ms. Moise disabled due to psychiatric reasons, although they limit aspects of her life.

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Dr. Bas Masri – orthopaedic surgeon

[131] Dr. Bas Masri is an orthopaedic surgeon. He was qualified at trial to give expert opinion evidence regarding physical injuries suffered as a result of accident.

[132] Dr. Masri examined Ms. Moise on August 15, 2024. His report dated August 22, 2024 provides his opinion on the plaintiff's orthopaedic injuries caused by the Accident.

[133] Dr. Masri refers to Ms. Moise's resolved injuries including right elbow and right shoulder, which resolved within a relatively short period of time; whiplash, almost all resolved with only minimal residual pin that is not particularly problematic; and right hip pain that has resolved.

[134] Dr. Masri refers to Ms. Moise's ongoing pain symptoms caused by the Accident as being relating to the coccyx and the buttocks, as well as the low back.

[135] The low back pain caused by the Accident he describes as persistent myofascial pain as evidenced by muscular tenderness.

[136] His opinion is that any left hip pain she had is not caused by the Accident, it relates to an anatomic abnormality in her hip.

[137] He does not consider physiotherapy or massage to be of any use, he describes the mainstay of treatment to be active rehabilitation.

[138] Dr. Masri describes Ms. Moise's current recreational disability as being that she cannot be as active as before. He reports she has pain with housekeeping chores, but she can do them.

[139] His opinion is that she has a current disability with reference to work as a letter carrier, but from an orthopaedic point of view she has no disability with reference to sedentary work, or with reference to her occupation as a security guard and first aid attendant at UBC, doing it full time with overtime hours. For an office setting, she may require a sit-stand deck and comfortable chair.

[140] Dr. Masri testified that the plaintiff suffers from chronic pain, which is not expected to go away completely, but with active rehabilitation and core strengthening she should be able to function better. Her low back pain will improve, but is not expected to go away, while her coccyx and pelvic pain is unlikely to improve.

Samantha Gallagher – vocational rehabilitation

[141] Samantha Gallagher was qualified to give expert opinion evidence as a vocational evaluator regarding future earnings.

[142] Ms. Gallagher assessed Ms. Moise on October 22, 2024. She prepared a report dated November 6, 2024.

[143] Ms. Gallagher's report states her retainer was to provide an opinion regarding the plaintiff's pre-accident, present and future employment potential.

[144] Ms. Gallagher's report reviews in detail Ms. Moise's background and employment history, including the difficulties she was facing with her then-current job as a UBC security officer. She observed that Ms. Moise enjoyed being outdoors, and enjoyed the freedom of the security job.

[145] Ms. Gallagher summarizes the reports of Dr. Cameron, Dr. Spivak and Ms. Craig, taking into account their opinions and her own vocational testing in her recommendations for potential employment for Ms. Moise.

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[146] Ms. Gallagher suggests that Ms. Moise is best suited to sedentary or light work, where she has the opportunity for postural flexibility throughout the day.

[147] Given Ms. Moise's training and experience in business administration, Ms. Gallagher also reports that Ms. Moise could seek out other logistics or administrative positions without the need for further training, with most office-based jobs offering the opportunity for postural flexibility thought the day, and she would need to take regular breaks to get up and move around.

[148] Ms. Moise's work at Parallel 49, although sedentary, did not work out because in part she had little training, it was very stressful, and she was working long hours. Selling cars, also sedentary, was stressful due to working long hours and having people call her at all hours of the day.

[149] Ms. Gallagher referred to Ms. Moise's demonstrated ability to continue to successfully find full-time work since the Accident, with different factors contributing to a lack of long-term success, including the symptoms from the Accident.

[150] Ms. Gallagher considers the most important factor moving forward is to find a good fit between Ms. Mosie's physical abilities, her interests and the work environment, suggesting as one example that she consider moving to a different security position, the biggest problem with the UBC job being the amount of time she had to spend walking, noting that there are security officer positions that require significantly less walking than the UBC job, giving as an example a security job that decreased her walking time by combining monitoring video cameras and foot patrols, and allowing for postural flexibility.

[151] Ms. Gallagher's report refers to a number of different jobs for which it is her opinion Ms. Moise can do, and the wages that are paid for these jobs. This aspect of Ms. Gallagher's report is discussed in more detail in the "with-Accident" future earning capacity section of these reasons, below.

[152] Ms. Gallagher notes the office-based jobs she refers to are consistent with Ms. Moise's pre-Accident vocational goal of an office-based management position.

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IV. CREDIBILITY and RELIABILITY

[153] Credibility and reliability are separate concepts. Credibility relates to honesty and the willingness of a witness to speak truthfully. Reliability relates to the ability of a witness to accurately observe, recall and recount the events in issue: see *Mand v. Cheema*, 2024 BCSC 1701 at para. 25.

[154] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, as follows:

> Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (BCCA) [*Faryna*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[155] The defendants refer to *Mather v. MacDonald,* 2016 BCSC 948 at para. 18 regarding the difference between credibility and reliability, which I have noted above with reference to the *Mand* case.

[156] The defendants submit that aspects of the plaintiff's testimony may be unreliable, and express some concern about her credibility.

[157] The defendants refer to the following discrepancies between the plaintiff's answers in cross-examination, as compared to her answers at an examination for discovery on March 28, 2024, and other testimony the defendants submit displays inconsistencies which impact on the reliability of the plaintiff's evidence:

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a) In cross-examination the plaintiff stated her headaches are a lot better, but still come and go. On discovery she answered that she does not still get headaches, she stopped getting headaches in mid-2022, end of 2022.

b) In cross-examination she stated her neck problems are a lot better, but they still come and go. On discovery she answered “no” to the question whether in the past month she was having problems with her neck.

   I note that the two answers are not necessarily inconsistent if the coming and going of the neck problems occurs less frequently than monthly.

c) In cross-examination she was asked about any memory or cognition problems, and she agreed that her discovery answers were true in that she was not then having any memory or cognitive problems.

d) At trial she could not remember the paramedics asking the cab driver and bystanders to move to the sidewalk, but a note in Dr. Riar’s report refers to her recalling that point.

e) In cross-examination the plaintiff disagreed whether she had a good memory of events immediately after the Accident, then conceded that on discovery she agreed that she felt she had a good memory of events immediately after the Accident.

f) The plaintiff was asked about nausea in the week following the Accident being caused by pain medication she was taking. She answered that the pain medication exacerbated the nausea, but she did not deny what she had stated at discovery that she believed the nausea to have been from the pain medication.

g) She agreed on cross-examination that she could not recall fogginess in the first two months following the Accident. On discovery she answered “not really” to the question whether she had any problems with thinking or fogginess the first week after the Accident.

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h) She was asked if at the time of her discovery she had missed any shifts at UBC. She answered two shifts in February 2024, but stated on discovery that she had not missed any shifts because of her symptoms because her work was very accommodating, when she got flare-ups she was able to rest in the change-room or the coffee room, or ask a partner if she could ride with them in a vehicle.

i) The plaintiff stated that she was told that the advanced security training course was mandatory, or would become mandatory, but the UBC security manager, Glen MacNeill testified that passing the advanced security training course was not mandatory and that guards are not punished for not taking the course, she could take the course and merely watch during the more active aspects of the course.

   I note that the plaintiff was stating what she had been told, as compared to Mr. MacNeill's understanding of the course and job requirements.

j) In direct examination the plaintiff testified that if you did not include her first year marks at Algonquin College, her grade point average ("GPA") would have been 4.0. In cross-examination she stated that her GPA at Algonquin College was 3.7; however, the cumulative GPA on Ms. Moise's academic record from Algonquin College is 2.75, including some grades in years 2, 3 and 4 with C grades (2.0), B grades (3.0) and A grades (4.0).

k) The Plaintiff recalled seeing Louise Craig for the functional capacity evaluation on May 7, 2024, but she could not recall giving a self assessment to Ms. Craig, which Ms. Craig stated would have been prepared by the plaintiff on-line for Ms. Craig. When the self assessment from Ms. Craig's report was put to the plaintiff she denied being able to perform kneeling, crawling, lifting for an hour, carrying for 30 minutes as stated in the self assessment form, but she did not deny giving the answers to Ms. Craig.

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l) In direct examination the plaintiff stated that she had only ridden her motorcycle one time since the Accident. In cross-examination she testified it was one season, but only 2 to 3 times. The physiotherapy records from 2022 were put to the plaintiff showing that she told her physiotherapist she used her motorcycle three times in 2022. The report of Dr. Riar was put to the plaintiff where Dr. Riar recorded the plaintiff told him that in the summer from June to October in 2023 she had ridden her motorcycle five to ten times. Dr. Riar recorded that she told him she could only ride for forty-five minutes before her back started to hurt.

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[158] The defendants submit that the plaintiff’s evidence raises issues not just about reliability of her reporting, but there are some concerns about credibility.

[159] The defendants submit that the plaintiff’s newest version of events was not backed up by having employers, co-workers, her family doctor or treatment providers who cared for her speak to her matter. In addition, the plaintiff’s claim for physical injuries is not supported by any expert reports from the plaintiff. There is no physiatrist report from the plaintiff. It all comes down to her testimony in court and how it aligns with the rest of the evidence.

[160] The defendants refer to the plaintiff being asked to account for the discrepancies in her reporting to doctors and at her examination for discovery. She stated that the facts she relates are based on her feelings on that specific day.

[161] The defendants’ position is that based on the plaintiff’s inconsistent evidence summarized above, the subjective reporting cannot be relied upon; however, if the subjective reporting is to be relied upon, the defendants submit that the discrepancies reported as facts at trial consistently stray from prior reports in a manner that favours her litigation interests, concluding that it is not reasonable to think that all inconsistent and testimony in trial should lean in one direction, denying prior facts and history that had been established.

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[162] I am mindful of the Court of Appeal's recent decision in *McGlue v. Girvan*, 2024 BCCA 208 at paras. 47–50, citing *Mariano v. Campbell*, 2010 BCCA 410, referring to the need to take care in cases where there is limited objective evidence of continuing injury, the correct approach being that "there must be evidence of a 'convincing' nature to overcome the improbability that pain will continue, in the absence of objective symptoms, well beyond the normal recovery period, but the plaintiff's own evidence, if consistent with the surrounding circumstances, may nevertheless suffice for the purpose."

[163] Similarly, defendants' submissions refer to *Bhandal v. Charlebois*, 2015 BCSC 2315 at paras. 66-67 regarding the need to exercise caution where credibility is in issue, and examining a plaintiff's evidence carefully where the injuries claimed to have been caused by an accident primarily rest on the plaintiff's subjective complaints, particularly where the foundation of medical expert reports are based on the plaintiff's subjective reports of pain and psychological symptoms, citing *Samuel v. Chrysler Credit Canada Ltd.*, 2007 BCCA 431 at paras. 15 and 43-44.

[164] Here, I agree with the defendants that some of Ms. Moise's evidence at trial suffered from reliability issues. Given the passage of time, some inconsistency in the evidence of a witness is to be expected, and Ms. Moise's explanation about the temporal aspect of her reporting is understandable to a degree; however, I also agree with the defendants that some of Ms. Moise's answers at trial gave the appearance of exaggerating the negative effects of the Accident, and downplaying some of the positive aspects of her recovery, for example, her answer at trial regarding very limited motorcycle riding post-Accident, appears to be clearly inconsistent with her report to the physiotherapist and Dr. Riar of more instances of riding in 2022 and 2023.

[165] I am not obliged to reject all of a witness's evidence simply because I have concluded that on some issues the witness is not credible or not reliable. I can accept (or reject) some, all or none of a witness's evidence. In assessing a witness's evidence, the witness's demeanour can be a factor. A witness's credibility may be

adversely affected if the witness is imprecise, evasive, long-winded or argumentative in response to questions.

[166] As a result, the reliability and credibility issues referred to above relating to Ms. Moise's evidence are a concern, and requires that I consider with caution Ms. Moise's evidence and how it relates to the expert's opinions; however, on the key issues of the ongoing impact of Ms. Moise's physical injuries caused by the Accident, there is little or no dispute that Ms. Moise continues to experience a partial disability as a result of low back and coccyx/pelvic pain, which affects her mental health in terms of anxiety and depression. One of the key questions here is to what extent these issues affect her ability to work and earn income.

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V. ANALYSIS - DAMAGES

A. Causation and Findings of Fact

[167] The primary test for causation asks: but-for the defendants' negligence, would the plaintiff have suffered the injury? The "but-for" test recognizes that compensation for negligent conduct should only be made where a substantial connection between the injury and the defendants' conduct is present: *Resurfice Corp. v. Hanke*, 2007 SCC 7 at paras. 21–23.

[168] The most basic principle of tort law is that the plaintiff must be placed in the position she would have been if not for the defendants' negligence, no better or worse. Tortfeasors must take their victims as they find them, even if the plaintiff's injuries are more severe than they would be for a normal person (the thin skull rule). However, the defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition which the plaintiff would have experienced anyway (the crumbling skull rule): *Athey* at paras. 32–35.

[169] The defendants concede that the Accident caused the plaintiff a possible MTBI, anxiety and depression, and physical injuries including ongoing pain in the low back and pelvic/coccyx area.

[170] The parties spent a great deal of time at trial on the question of whether or not Ms. Moise suffered an MTBI, a definition for which is included in Dr. Cameron's report from the Journal of Head Trauma and Rehabilitation, Vol. 8, no. 3, 1993, as follows:

> A patient with mild traumatic brain injury is a person who has had a traumatically induced physiological disruption of brain function, as manifested by at least one of the following: any period of loss of consciousness, any loss of memory of events immediately before or after the accident, any alteration in mental state at the time of the accident (e.g. feeling dazed, disoriented or confused), and focal neurological deficits that may or many not be transient, but where the severity of the injury does not exceed the following: loss of consciousness for approximately 30 minutes or less, after 30 minutes an initial Glasgow Coma Scale of 13-15, and post traumatic amnesia not greater than 24 hours.
>
> [Emphasis added.]

[171] Dr. Cameron's opinion is that Ms. Moise fulfilled the criteria to diagnose a MTBI in the Accident.

[172] Dr. Spivak's opinion is that Ms. Moise's account of the Accident is suggestive of having sustained an MTBI.

[173] Dr. Riar's report stated that he does not believe that she suffered any MTBI, and even if she did it was non-consequential and did not leave her with any post-injury symptomology; however, I attach little weight to this aspect of Dr. Riar's opinion. In cross-examination he appeared argumentative and reluctant to agree with relatively straightforward propositions regarding Ms. Moise's condition, and he appeared selective in his diagnosis.

[174] For example, he agreed with the definition of MTBI quoted above, but in stating his opinion in his report he does not mention some of his assumed facts which include Ms. Moise's report of hitting her head and being "out for two to five seconds," nor her report of not remembering being loaded into the ambulance or the ride to the hospital.

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[175] Here, it is clear that Ms. Moise suffered a head injury in the Accident. She was wearing a motorcycle helmet. The taxi collided with the left side of her motorcycle, including her leg. She was thrown approximately 10-12 feet off the motorcycle, landing on her right side, with her helmet striking the pavement.

[176] It is also clear that the after-effects of her helmet striking the pavement manifested in a brief period of loss of consciousness, some loss of memory following the Accident, and an alteration in her mental state.

[177] The severity of the head injury did not exceed the parameters of the above MTBI definition in that her GCS assessed by the first responders was 15, and later at VGH was also 15. The loss of consciousness was for a few seconds at most, and she did not appear to suffer post-traumatic amnesia greater than 24 hours.

[178] More importantly than the label of "MTBI" is the post-Accident impact on Ms. Moise of the injuries she suffered, and the extent of her recovery from those injuries.

[179] At the time of trial, I find that a significant factor in limiting Ms. Moise's ability to return to her pre-Accident level of activities, both recreational and employment, is chronic pain in her low back and pelvic/coccyx area, which also negatively impacts on her emotions, resulting in periods of anxiety and depression.

[180] I accept the following expert's opinions on aspects of Ms. Moise's injuries and prognosis, as follows:

a) Dr. Masri's opinion that Ms. Moise's ongoing pain symptoms caused by the Accident relate to the coccyx and the buttocks, as well as the low back, which he describes as persistent myofascial pain evidenced by muscular tenderness. Her chronic pain is not expected to go away completely, but with active rehabilitation and core strengthening she should be able to function better. Her low back pain will improve, while her coccyx and pelvic pain is unlikely to improve.

b) Dr. Cameron's opinion is that the plaintiff fulfilled the criteria for a mild traumatic brain injury at the time of the Accident. She developed symptoms of post-traumatic syndrome following the Accident, including headaches, dizziness, anxiety, decreased memory, decreased concentration and attention span, multi-tasking difficulties, irritability, mood swings, anger outbursts, and disturbed sleep pattern.

c) Dr. Cameron's opinion is that Ms. Moise is not suffering ongoing symptoms residual to the mild traumatic brain injury that she sustained at the time of the Accident. Ms. Moise's cognitive problems, including memory, have largely resolved. She is still suffering with ongoing psychological problems in the form of anxiety and symptoms of depression.

d) Dr. Riar's opinion is that Ms. Moise's psychological problems limit some aspects of her life.

e) Dr. Spivak's opinion is that her prognosis for depression is that it will be tied to her potential for physical improvement.

f) Louise Craig's opinion is that while Ms. Moise has some limitations relating to sedentary, light and more physical strength demands, occupations with light physical strength demands would require some accommodations to allow for frequent position and task changes, stretching and proper ergonomics. This is consistent with Samantha Gallagher's opinion that Ms. Moise is best-suited to sedentary or light work where she has the opportunity for postural flexibility and breaks throughout the day, which she considers is the case for most office-based jobs.

[181] Further findings of fact are included in the following sections of these reasons relating to the assessment of the specific heads of damages.

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B. Damages

1. General (Non-Pecuniary) Damages

a) Legal Principles

[182] A non-exhaustive list of common factors to be considered in assessing non-pecuniary damages was set out in *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, which include the following: the age of the plaintiff; the nature of the injury; the severity and duration of the pain; the degree of disability; emotional suffering; any loss or impairment to life, family, marital or social relationships or physical and mental abilities; and loss of lifestyle. In addition, a plaintiff's stoicism should not generally be used against them.

[183] The purpose of non-pecuniary damages is to put a plaintiff in the same position they would have been had it not been for the defendants' negligence. Awards will have to vary in each case to meet the specific needs and circumstances of each individual. As stated in *Lindal v. Lindal*, [1981] 2 S.C.R. 629, 1981 CanLII 35 at 637, the amount of an award for non-pecuniary damages is not dependent solely on the seriousness of the injury, but must take into account its ability to ameliorate the condition of the victim given their particular circumstances.

[184] Courts also have a duty to approach the issue in a reasonable manner, remembering that one cannot provide a complete or perfect compensation, but make sure that the award is moderate and fair to both parties*: Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229, 1978 CanLII 1 at p. 242.

[185] Non-pecuniary damages are meant to compensate the plaintiff for pain and suffering, loss of enjoyment of life, or loss of amenities. The issue is what, based on the evidence, is needed to put the plaintiff in the position they would have been but for the defendants' negligence: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 22.

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[186] While similar cases can be helpful, they can only serve as a rough guide as each case depends on its unique facts: *Trites v. Penner*, 2010 BCSC 882 at para. 189; and *Boal v. Parilla*, 2022 BCSC 2075 at para. 131.

b) Plaintiff's Position on Non-Pecuniary Damages

[187] The plaintiff submits that an appropriate award for non-pecuniary damages is $250,000.

[188] The plaintiff submits her lifestyle has been significantly impacted by the Accident. She refers to the year after the Accident when she was mostly off work, at home and in chronic pain. Her partner took over all the housework, all the cooking, and took care of the plaintiff.

[189] She refers to the evidence of her friend, Sydney Williams, who testified that the plaintiff presents as a very different person after the Accident. She is no longer involved in sports. She appears to be in pain on a chronic basis, and presents as depressed and irritable.

[190] The plaintiff submits that the chronic pain she suffers made her a different person, angry and irritable, constantly lashing out at her partner, which she believes ultimately ended the relationship after two years.

[191] The plaintiff submits that she has had some recovery, but now seems to be at maximum medical improvement, still experiencing chronic pain, and expects she will always have some degree of chronic pain.

[192] The plaintiff refers to the following caselaw regarding non-pecuniary damages:

- *Valdez v. Neron*, 2022 BCCA 301 at para. 58, for the general principle that more recent cases are more persuasive as awards have increased over time to a greater extent than inflation.

- *Roussin v. Bouzenad,* 2005 BCSC 1719: $200,000, now **$299,628**.

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The plaintiff is a 40 year old woman with fractured skull, complicated mild brain injury, soft tissue injuries, lacerations that left scars; in counsel's submission overall slightly worse than Ms. Moise.

- *Lines v. Gordon*, 2006 BCSC 1929: $225,000, now **$331,553.**
  The plaintiff is a 33 year old man with brain injury precluding future employment. Headaches, depression, sexual dysfunction; in counsel's submission slightly worse than Ms. Moise:

- *Donaldson v. Grayson,* 2023 BCSC 1675: **$250,000.**
  The plaintiff is a 49 year old woman with chronic pain in her neck, back, and shoulders; occasional pain/numbing in face. MTBI causing ongoing neurocognitive disorder (sound/light sensitivity, tinnitus, headaches, fatigue). Mental health "significantly compromised" with depression, anxiety, and somatic symptom disorder. Can exercise and recreate, but not at same level. No longer participating in decision-making or everyday finances because she becomes too frustrated and angry and cannot do it. No concentration or focus, reduced intellectual abilities; in counsel's submission very close to Ms. Moise:

- *Sirna v Smolinksi,* 2007 BCSC 967: $200,000, now **$287,857**
  The plaintiff is a 22 year old woman at the time of the loss, 25 at time of trial. Pedestrian struck by car while rollerblading through crosswalk. Pre-MVA she was an extremely accomplished athlete. Injuries: neck, upper back and lower back pain made chronic. Brain injury resulting in cognitive difficulties, including forgetfulness and loss of sense of smell; this caused her great difficulties at school and in her job as an administrative assistant. In addition, depression since the accident. The Court concluded that although she was currently employed, her performance was so poor that she was likely to lose her job; in counsel's submissions very close to Ms. Moise**.**

c) Defendant's Position on Non-Pecuniary Damages

[193] The defendants submit that an appropriate range for an award for non-pecuniary damages is $140,000 to $150,000.

[194] The defendants concede that prior to the Accident, the plaintiff was very active and athletic, and many of these activities are no longer available to the plaintiff.

[195] The defendants refer to the following evidence:

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- The plaintiff sustained the following injuries as a result of the Accident: a possible MTBI; anxiety and depression, with room for improvement with treatment; and physical injuries including ongoing pain in the low back and pelvic/coccyx area, permanent although with room for improvement in the low back.

- It is not disputed that especially in the first year following the Accident the plaintiff suffered a number of symptoms including light and sound sensitivity and cognitive and memory problems. Dr. Riar's opinion is that these are related to her psychological issues; Dr. Cameron's opinion is that these are related to an MTBI, with Dr. Cameron conceding that the longer these symptoms develop after the Accident the less likely they are due to the Accident, but that the plaintiff is no longer suffering from ongoing symptoms residual to the MTBI.

- Both Drs. Riar and Spivak diagnose major depression and anxiety, major depression referring to the type of depression, not its severity.

[196] Both Drs. Riar and Spivak believe that with proper psychotherapy and anti-depressants there is room for some improvement. Dr. Riar is more optimistic and believes that with proper CBT psychotherapy and anti-depressants the plaintiff may at some point be in complete remission of her depression and anxiety.

[197] Both Drs. Riar and Spivak comment on the interaction of the physical symptoms and the psychological symptoms; the improvement in one would lead to improvement in the other.

[198] In her cross-examination, the plaintiff agreed that both her psychological and physical symptoms have continued to improve at least to some extent.

[199] In the ICBC Physiotherapy Extension Request dated February 6, 2024, it was reported that the plaintiff felt she was "much improved".

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[200] Dr. Masri's opinion is that with proper active rehabilitation the low back symptoms would at least partially improve.

[201] The defendants refer to the following cases:

- *Kaiser v Williams,* 2015 BCSC 646: $130,000, now **$165,660**.
  The plaintiff is a 30 year old pedestrian thrown "just over 19 meters", hospitalized for 28 days; multiple fractures, broken pelvis, fractured fibula, ongoing hip/pelvis pain; ongoing PTSD and depression; may not be able to have children as a result of the pelvic injuries.

- *Scott v. Cheng*, 2019 BCSC 697: $125,000, now **$148,000**.
  The plaintiff is a 34 year old motorcyclist; right hand and several fractures to the right foot, may require surgery to the right foot in the future; ongoing low back pain at the time of trial; plaintiff active and athletic at the time of the accident. As a result of the accident he had to give up many of his recreational activities.

- *Ward v. Walker*, 2017 BCSC 484: $125,000, now **$142,000**.
  The plaintiff is a 52 year old motorcyclist; injuries included a serious fracture to the left ankle and a possible meniscus tear to the left knee; plaintiff very active prior to the accident, but subsequently has had to curtail his recreational pursuits.

d) Analysis of Non-Pecuniary Damages

[202] Referring to the factors to consider from *Stapley*, the plaintiff was 30 years old at the date of the Accident, and 34 at trial.

[203] Her injuries she experienced after the Accident were neck pain, and pain in her right shoulder, right elbow, bruising, severe pain in her right hip as well as the pelvis area, and pain in her mid to lower back.

[204] Following the Accident, she suffered decreased memory, concentration, and attention span, subsequently improving, and now largely resolved, but not completely. She initially had headaches after the Accident, but they have for the most part recovered, now periodically associated with increased stress.

[205] She had ongoing symptoms of anxiety and depression, about 70% improved at the time of Dr. Cameron's assessment in April 2024. She has emotionally suffered

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from the Accident, negatively affecting her relationship with her partner at the time of the Accident, Ms. Moise believing the effects of the Accident to have been the cause of their breakup.

[206] Ms. Moise suffers from a permanent partial disability, primarily from chronic coccyx/pelvic and low back pain. Her low back pain is expected to improve, while her coccyx/pelvic pain is unlikely to improve.

[207] Ms. Moise had been very physically active throughout her life before the Accident, but the pain associated with her injuries and partial disability has constrained her physical activities post-Accident.

[208] She has demonstrated stoicism in pursuing a number of different employment opportunities, with some success, with limitations related to Accident-related issues, and some difficulty in part because of job-related issues, for example, the stress and time demands of the car sales position, and the limited training and stress of the Parallel 49 job.

[209] As a result of the Accident, Ms. Moise has suffered an impairment to her quality of life, including a negative impact on her personal relationship with her former partner.

[210] In my view, the cases cited by the plaintiff—*Roussin*, *Lines*, *Donaldson* and *Sirna*—all involve plaintiffs with more significant injuries than Ms. Moise, and more seriously affecting their lives.

[211] For example, plaintiff's counsel submits that *Donaldson*, is "very close to Ms. Moise"; however, in my view, the plaintiff's injuries in *Donaldson* were more severe than Ms. Moise, and the impact on Ms. Donaldson's life was also more severe.

[212] In that case, Ms. Donaldson experienced chronic pain in her neck, back and shoulders and occasional pain and numbing in her face. Her face twitched and she stuttered when under stress. She suffered from headaches, fatigue, sound

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sensitivity, light sensitivity, tinnitus and the multiple symptoms of an ongoing neurocognitive disorder. Her mental health was significantly compromised due to depression, anxiety and somatic symptom disorder.

[213] The impact of Ms. Donaldson's injuries on her activities is similar to Ms. Moise, described as Ms. Donaldson being able to exercise and recreate, but not at the level she did before the accident, and she tries to avoid things that will trigger neck pain, shoulder pain and headaches through physical activity.

[214] Ms. Donaldson's mental capabilities appear to have been more seriously impacted than Ms. Moise, the impact described as markedly diminished, and she lacks the ability to concentrate and focus, with decreased intellectual abilities, and with the effects of the brain injury on her cognition found to be permanent.

[215] Ms. Donaldson suffered traumatic injuries to both inner ears, which were found to be responsible for her tinnitus and noise sensitivity, and in part responsible for the difficulty she has communicating, and with her balance.

[216] The explosion of the air bag resulted in pain behind Ms. Donaldson's eye and in her face, followed by a numb face, and development of eye twitching and head movement. The mild traumatic brain injury and her ongoing vision issues included light sensitivity and intolerance for busy visual environments.

[217] As a result, because I consider the impact on Ms. Moise to be less than Ms. Donaldson, it is my view that an award lower than $250,000 for non-pecuniary damages is warranted.

[218] Similarly, while the plaintiff refers to *Sirna* as very close to Ms. Moise's circumstances, considering the *Stapley* factors, it is my view that in *Sirna* and the other cases referred to by plaintiff's counsel, *Roussin* and *Lines*, the plaintiffs in those cases were injured, and their lives were impacted to a greater extent than in Ms. Moise's case.

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[219] By contrast, the cases referenced by defence counsel can generally be described as involving plaintiffs whose injuries have impacted their lives to a lesser extent than Ms. Moise.

[220] For example, defence counsel refers to *Scott*, a 2019 decision in which, similar to Ms. Moise, the 34 year old plaintiff was a motorcyclist struck by a motor vehicle at an intersection. The plaintiff and his passenger were thrown to the ground The plaintiff was awarded $125,000 for non-pecuniary damages, adjusted to approximately $148,000 presently.

[221] In *Scott*, the plaintiff's injuries have some similarities to Ms. Moise's case, specifically he had ongoing low back pain at the time of the trial. The plaintiff had been active and athletic at the time of the accident. As a result of the accident, he had to give up many of his recreational activities, but he appears to have more successfully recovered his ability to be active and to work.

[222] After the accident he had hiked half the West Coast Trail with some difficulty, and he returned to playing recreational hockey, also with some difficulty. He was unable to work at his previous employment involving heavy physical labour, but approximately one year after the accident he started doing his own contracting work doing small jobs like decks and small renovations, which he continued to do at the time of trial, with plans to expand the business.

[223] Defence counsel also refers to *Kaiser*, in which the plaintiff was awarded $130,000 for non-pecuniary damage, approximately $165,660 presently.

[224] In *Kaiser*, the plaintiff was a 30 year old pedestrian who was struck by a vehicle and thrown about 19 metres. She was hospitalized for 28 days. She suffered multiple fractures including a broken pelvis and a fractured fibula. She had ongoing hip/pelvis pain; ongoing PTSD and depression; and she may not be able to have children as a result of the pelvic injuries.

[225] The Court found that Ms. Kaiser was in significant pain from her bony injures for three months following the accident, but she appeared to have recovered well

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from these injuries. An orthopaedic surgeon who saw the plaintiff in hospital described seeing the plaintiff in his office in April 2010, approximately 11 months after the accident. He described her as “doing very well” and having “no pain from her pelvic injury”. She had returned to running and had “no symptoms from the pelvis”, although she continued to have symptoms in her left leg. In the physician’s view she had “excellent function and comfort level” and “no significant effects on her daily activities, work or lifestyle”.

[226] The Court concluded that her orthopaedic injuries had largely resolved by the time of trial, which was approximately five years after the accident, with some lingering pain in her pelvic and sacral area that tended to flare up with prolonged exercise.

[227] Regarding psychological or cognitive symptoms, the Court concluded that it was more likely than not that Ms. Kaiser’s cognitive difficulties would subside, and her cognitive difficulties were associated with the pain she experienced, which would diminish, but would not disappear. The Court was not satisfied that her cognitive difficulties were permanent, but would require some further time before they resolved entirely.

[228] Given the positive resolution of most of the plaintiff’s injuries in *Kaiser*, compared to Ms. Moise, I consider the *Kaiser* case to be lower than Ms. Moise, resulting in an award for Ms. Moise greater than the $166,000 awarded in *Kaiser*.

[229] No two cases are identical and each case must be decided on its own merits. The comparison with similarly situated plaintiffs in other cases is a guide for the court to assess an appropriate figure for non-pecuniary damages.

[230] Considering all of the impacts of the Accident on Ms. Moise, and the case law to which I have been referred, I consider $210,000 to be a fair and reasonable assessment of the plaintiff’s non-pecuniary damages, which has been augmented by having considered the impact of the Accident injuries on Ms. Moise’s housekeeping capacity.

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[231] As discussed in more detail below in the future costs of care section, Ms. Moise's capacity for housekeeping and other household tasks has been negatively impacted by the Accident, but not to the degree that I make a separate award for loss of housekeeping capacity. I have considered the loss of housekeeping capacity in the assessment of the $210,000 award for non-pecuniary damages.

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2. Past Loss of Earning Capacity

[232] The parties agree that the quantum of an award for the plaintiff's net past loss of earning capacity is $27,461. This figure is based on an annual salary of $50,000 for the years 2021 to 2024, less long-term disability payments and her earnings from employment in those years.

[233] The plaintiff's T4 earnings from 2021 to 2024 were: $38,583; $15,769; $10,402; and $50,000, respectively. In the four years prior to 2021 the plaintiff's annual earnings had increased from approximately $43,000 in 2017, to approximately $50,000 in 2020.

3. Future Loss of Earning Capacity

a) Legal Principles

[234] In *August-Mansfield v. Yun*, 2023 BCSC 1633, Justice Brongers summarized the assessment of a claim for future loss of earning capacity, as follows:

> [68] Assessing a plaintiff's prospective loss of earning capacity requires an examination of two hypothetical futures: one in which a plaintiff is assumed to be living with the aftermath of the injuries caused by a defendant, and another in which a plaintiff is assumed to be living as if these injuries had never been sustained. As stated by our Court of Appeal in *Gregory v. Insurance Corporation of British Columbia,* 2011 BCCA 144 at para. 32:
>
>> … 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.
>> …

> [69] The Court of Appeal prescribed a three-step test for assessing future loss of earning capacity in a trilogy of cases decided in 2021 indexed as: *Dornan v. Silva,* 2021 BCCA 228; *Rab v. Prescott,* 2021 BCCA 345 [*Rab*]; and *Lo v. Vos,* 2021 BCCA 421. The questions to be asked at these three steps were summarized in *Rab* at para. 47 as follows:
>
> > 1) Is there a potential future event that could lead to a loss of earning capacity?
> >
> > 2) Is there a real and substantial possibility that the future event in question will cause a pecuniary loss?
> >
> > 3) If there is a such a possibility, what is its value? Included in this step is what is the relative likelihood of the possible future loss occurring? (*Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at paras. 33 and 47-48.
>
> [70] Valuation of the loss can be done using either the "earnings approach" or the "capital asset approach": *Brown v. Golaiy* (1985), 1985 CanLII 149 (BC SC), 26 B.C.L.R. (3d) 353 (S.C.) [*Brown*] at para. 7; *Perren v. Lalari,* 2010 BCCA 140 at paras. 11–12. The earnings approach involves a calculation of the present value of a plaintiff's annual loss of income over the remaining years of employment, and is more appropriate when the loss is more easily measurable: *Westbroek v. Brizuela,* 2014 BCCA 48. The capital asset approach involves consideration of a person's lost ability to work in a certain position in their field of work as the loss of an income earning asset, and is more appropriate where the loss is less easily measurable: *Park v. Targonski,* 2017 BCCA 134 at para. 123. Under either approach, the plaintiff must prove that there is a real and substantial possibility of various future events leading to an income loss (*Perren* at para. 33), and damages are assessed, not calculated (*Rosvold v. Dunlop,* 2001 BCCA 1 at para. 18).
>
> [Emphasis added.]

[235] The capital asset approach considers the four *Brown* factors:

a) whether the plaintiff has been rendered less capable overall of earning income from all types of employment,

b) whether the plaintiff is less marketable or attractive as a potential employee,

c) whether the plaintiff has lost the ability to take advantage of all job opportunities that might otherwise have been open, and

d) whether the plaintiff is less valuable to themselves as a person capable of earning income in a competitive labour market.

See *Morgan v. Galbraith*, 2013 BCCA 305 at paras. 53, 56.

[236] The considerations in *Brown* are not intended to be exhaustive: *Sinnott v. Boggs*, 2007 BCCA 267 at para. 9, per Mackenzie J.A.

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[237] In *Rab*, the Court of Appeal described the method for the assessment of a loss of future earning capacity, and distinguished between the capital approach and earnings approach, 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. <u>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:</u> *Perren v. Lalari*, 2010 BCCA 140 at para. 32.
>
> [29] Some claims for loss of future earning capacity are less challenging than others. <u>In cases where, for instance, the evidence establishes that the accident caused significant and lasting injury that left the plaintiff unable to work at the time of the trial and for the foreseeable future, the existence of a real and substantial possibility of an event giving rise to future loss may be obvious and the assessment of its relative likelihood superfluous</u>. Yet it may still be necessary to assess the possibility and likelihood of future hypothetical events occurring that may affect the quantification of the loss, such as potential positive or negative contingencies. *Dornan* was such a case.
>
> [30] <u>But in other cases, assessing the possibility of a future income loss is less straightforward. Among these are cases involving plaintiffs whose injuries have led to continuing deficits, or have exposed them to future problems, yet whose income at the time of the trial is at or near the level of earnings they enjoyed before the accident. These tend to be cases that lend themselves to the capital asset approach to quantifying the loss</u>. *Grewal* was such a case, as were *Pallos, Brown* and *Perren*. This one is also such a case. The respondent advanced no claim for past loss of income, and her income at the time of trial, all of which was passive, was greater than it had been at the time of the accident.
>
> [Emphasis added.]

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b) Plaintiff's Position on Future Loss of Earning Capacity

[238] The plaintiff submits the assessment of her future loss of earning capacity should be based on the earnings approach, citing the Court of Appeal's decision in *Jurczak v. Mauro*, 2013 BCCA 507.

[239] In *Jurczak*, the Court of Appeal overturned the trial judge's assessment of the plaintiff's future loss of capacity on the capital asset approach because the trial judge did not make clear how he had assessed the plaintiff's loss of capacity claim. The Court of Appeal stated that the plaintiff had proven her loss, and the loss was easily measurable based on the trial judge's findings of fact.

[240] Here, the plaintiff emphasizes paras. 36 – 38 of *Jurczak*, as follows:

> [36] This process is "an assessment rather than a calculation" and "many different contingencies must be reflected in such an award": *Barnes v. Richardson*, 2010 BCCA 116 at para. 18. "Ultimately, the court must base its decision on what is reasonable in all of the circumstances. Projections, calculations and formulas are only useful to the extent that they help determine what is fair and reasonable": *Parypa v. Wickware*, *supra*, at para. 70.
>
> [37] With that said, if there are mathematical aids that may be of some assistance, the court should start its analysis by considering them. For example, in *Henry v. Zenith* (1993), 1993 CanLII 1434 (BC CA), 31 B.C.A.C. 223 at paras. 44-48, 82 B.C.L.R. (2d) 186 (C.A.), this Court held that a trial judge's failure to consider an economist's projections of a plaintiff's lost future earning capacity contributed to the judge committing an error in principle, which "resulted in a wholly erroneous estimate of the damages".
>
> [38] In cases where the future is hard to predict, a global approach to assessing the loss of future earning capacity is preferable. However, in this case, given the trial judge's findings of fact, the future is not hard to predict. Ms. Jurczak intended to become a DIR consultant prior to her injuries and because of those injuries she can only work 15 hours per week. The trial judge found as fact that if she was physically able to work 23 hours per week, there was sufficient demand for her skills that she would be able to bill for those hours.
>
> [Emphasis added.]

[241] The plaintiff's counsel submits that, as a result of her injuries, she will not work to age 70, submitting it is more reasonable that she will work to age 60.

[242] The plaintiff submits that $140,000, not $108,386, should be considered as the basis of an assessment of her without-Accident annual income, based on an assumption that the plaintiff, but for the Accident, would have attained a management position at Canada Post, and over the years her management pay would increase over time.

[243] The plaintiff submits that her with-Accident earnings should be based on $50,000 per year based on what she earned at UBC, resulting in an annual future income loss of $90,000 annually to age 60, and $140,000 annually from age 60 to 70.

[244] Using the multiplier tables in Darren Benning's report at $90,000 for 25 years, with a multiplier of 19.210, then $140,000 for 10 years with a multiplier of 5.256, the plaintiff submits that her total loss of future earnings is $2,464,740.

[245] The plaintiff's second future loss scenario, assuming a with-Accident income of $28,000 instead of $50,000, resulting in a loss of $112,000 annually for 25 years to age 60, and a loss of $140,000 for 10 years from age 60 to 70, the total loss is calculated with the same multipliers at $2,887,360.

[246] The plaintiff's third future loss scenario, submitted to be the "most beneficial to the defendant", assuming without-Accident annual income of $108,386, and with-Accident earnings of $50,000, equals an annual loss of $58,386, the "lowest possible number for the loss." Based on a loss of $58,386 for 25 years to age 60, then $108,386 from age 60 to 70, results in a total loss of $1,801,271 [*sic*].

[247] I note the correct figure for the total loss for this third scenario should be $1,691,271. The calculations in the plaintiff's written submissions at p. 95 appear to include an error, showing $58,386 multiplied by 19.210 as equalling $1,232,595; however, the correct total is $1,121,595, which combined with the sum of $108,386 multiplied by 5.256, or $569,676, equals $1,691,271.

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[248] The plaintiff's fourth scenario is the plaintiff not working at all from now to age 70, for a loss of $140,000 annually, for a total loss of $3,435,240. Plaintiff's counsel concedes they are not suggesting that this is a realistic scenario.

[249] However, the plaintiff submits that the above calculations result in a range of $1,801,271 [*sic* - $1,691,271] to $3,435,240, with the "most reasonable position" being the first scenario above, that is, her with-Accident earnings of $140,000 annually, with residual earnings of $50,000 annually, for an annual future income loss of $90,000 to age 60, and $140,000 annually from age 60 to 70, for a present value loss of $2,464,740.

[250] Finally, the plaintiff in reply referred to *Anderson v. Steffen*, 2021 BCSC 2248 and *Dinnissen v. Lee*, 2019 BCSC 1729, both cases primarily relating to the plaintiff's submission that the Court should apply the earnings approach to the assessment of the plaintiff's future loss of earning capacity.

c) Defendants' Position on Future Loss of Earning Capacity

[251] The defendants concede that the plaintiff has met parts one and two of the *Rab* test, that is, that there is a potential future event that could lead to a loss of earning capacity, and there is a real and substantial possibility that the future event in question will cause a pecuniary loss.

[252] The defendants also concede that the plaintiff will not be able to return to her career as a letter carrier with Canada Post, but submits that she has a large amount of residual capacity based on her following positive attributes:

- she is bright and articulate;
- she has a diploma in business administration;
- she speaks French;
- she is a good worker;
- with some minor accommodations she is capable of working in almost any office environment; and

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- given the right circumstances, she is not limited to working only office jobs.

[253] The defendants submit that valuation of the loss should be assessed on the capital asset approach, referring to the following uncertainties which they say favour the capital asset approach over the earnings approach:

1. How is the plaintiff's without accident earning to be calculated? At the time of the Accident she earned $50,000 per year as a letter carrier. She alleges that she could have become a manager and made much more than this.
2. How are the Plaintiff's with accident earnings to be calculated?
3. How much is the future income loss to be calculated once the correct assumptions are made?

[254] The defendants submit that the appropriate application of the capital asset approach is to use the average salary of Canada Post managers at $70,000 annually for three years, for a loss of future capacity award of $210,000.

[255] The defendants point to the following evidence:

- Dr. Cameron agrees the plaintiff is no longer suffering from ongoing symptoms residual to the MTBI.
- Dr. Riar and Dr. Spivak agree that the plaintiff's depression and anxiety are not affecting her vocationally.
- Louise Craig states that with some accommodations the plaintiff is capable of sedentary to light work.
- Dr. Masri opines that from an orthopaedic point of view there is no disability with respect to sedentary work or even her job as a security guard.
- The plaintiff claims that she gets migraines when looking at a computer screen and in particular in her office jobs in 2022. There is no medical basis

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for this. She has never been diagnosed with migraines. In discovery, she said that her headaches stopped by mid to late 2022.

[256] In support of the defendants' submissions that the Court should apply the capital asset approach, the defendants referred to *Rix v. Koch*, 2020 BCSC 1976 and *Herd v. Saroya*, 2021 BCSC 1267, in which the capital asset approach was applied in both cases.

[257] In *Rix*, the plaintiff was injured in two motor vehicle accidents approximately 13 months apart. She was found to be no longer capable of working as a flight attendant, but she was not precluded from working at sedentary jobs in the aviation field. The plaintiff had worked in sedentary positions in the aviation field since the accidents, and her income had increased every year since the accidents.

[258] The Court found that the plaintiff had not allowed her injuries to significantly affect her income, and she continued to work since the accidents following an initial period of absence after each accident.

[259] As a result, the Court awarded the plaintiff $138,000, two years' salary, as compensation for the diminishment of her capital asset, and for a potential loss of income earning capacity as she aged.

[260] In *Herd*, the plaintiff was 38 years old at trial. The plaintiff had worked part-time at different jobs, including housekeeping at a hospital and an extended care facility, earning modest income, while she was responsible for household and childcare duties for her two children. Her husband was often away from home for long stretches for his employment. She was motivated to increase her hours of work and gain more independence as her children grew. Her long-term career goal was to work in the health care field, perhaps as a care aide; however, by the time of the accident she had not obtained her high school equivalency diploma, which would be a first step to securing a position as a care aide or nurse. After the accident she did not consider that goal feasible because of the physical demands of the job.

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[261] The Court awarded the plaintiff an amount sufficient to compensate her for two years of future income loss to cover a period of vocational retraining, based on two years of full-time income as a housekeeper with the local health authority.

[262] I consider both *Rix* and *Herd* to be distinguishable from the case at bar.

[263] In *Rix*, the plaintiff had continued to work after the two accidents, her income had increased every year since the accidents, and her injuries did not significantly affect her income, this latter factor constituting a different circumstance from Ms. Moise's case.

[264] In *Herd*, before the accident the plaintiff had worked at part-time jobs paying modest income. The award for two years' full-time income as a housekeeper was intended to compensate her for what she might reasonably have been expected to earn during a two-year period of vocational retraining, which is quite different from Ms. Moise's circumstances.

[265] The defendants also quote *Best v. Jerzyk*, 2015 BCSC 1877, and *Sawires v. Paris*, 2021 BCSC 240, regarding accommodations in the workplace.

[266] I agree with the defendants' reference to Louise Craig's assessment that Ms. Moise is capable of working at jobs involving sedentary or light physical strength, with accommodations allowing for positional changes and task changes, stretching and proper ergonomics.

[267] Beyond that, the *Best* and *Sawires* cases are distinguishable from the case at bar because in both cases the Court found that the plaintiffs had failed to demonstrate that their earnings had been impaired, and the plaintiffs had failed to demonstrate a real and substantial possibility of any pecuniary loss.

[268] Here, the defendants have conceded that the plaintiff has met parts one and two of the *Rab* test, that is, that there is a potential future event that could lead to a loss of earning capacity, and there is a real and substantial possibility that the future event in question will cause a pecuniary loss.

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[269] The defendants refer to Glenn MacNeill's evidence of accommodations that could have been made for Ms. Moise at the UBC security job; however, the evidence about the possibility of accommodations at UBC, as between the evidence of Mr. MacNeill, Ms. Moise and Louse Craig, was mixed as to whether accommodations could have, or would have been made in support of Ms. Moise continuing to work at that job. The defendants did not frame their submissions in terms of mitigation, the submissions were that the question of possible past accommodations raise uncertainties in assessing Ms. Moise's future earning capacity, in support of their submissions that the capital asset approach should be used in this case.

[270] In further intended support of that submission, the defendants refer to Samantha Gallagher's conclusion that there are career options open to the plaintiff that could match or even exceed her pre-Accident future capacity, submitting that this is support for the use of the loss of a capital asset approach in this case.

[271] However, the question of the method of valuation of Ms. Moise's future loss of earning capacity does not focus on whether her with-Accident future earnings could be greater than her pre-Accident earnings, the question is what her without-Accident <u>future earning capacity</u> would have been but for the Accident, as compared to her future earning capacity after the Accident, and, referring to *Jurczak*, whether there is evidence and mathematical aids that the Court can consider to make findings of fact and a decision on valuation that is reasonable in all of the circumstances.

[272] Here, there is evidence that but for the Accident, Ms. Moise would have earned a higher income than what she earned before the Accident, and there is evidence and mathematical aids that this Court can consider to make findings of fact and a decision on valuation that is fair and reasonable in all of the circumstances.

[273] Included in the analysis is the possibility that some of her with-Accident earning capacity at some point could be greater than her pre-Accident earnings.

[274] For these reasons, and the reasons that follow, I consider the earnings approach to be the appropriate method for an assessment of the valuation of Ms. Moise's loss of future earning capacity.

d) Analysis of Future Loss of Earning Capacity

i. "Without-Accident" earnings

[275] As a starting point, I note some difficulties with the plaintiff's position, in addition to the comments above.

[276] For the plaintiff's first scenario, if the starting point is the plaintiff's most recent income at $50,000 earned in 2024 working as a security guard, the assumption that an assessment of future loss should be based on $140,000 for 35 years to age 70, less 25 years of earning capacity at $50,000 annually, and not being able to work from age 60-70, the scenario is not reasonable based on the appropriate means of assessment being what is a real and substantial possibility of future events, and the relative likelihood of the future events.

[277] In my view, it is not a real and substantial possibility that the plaintiff's without-Accident earnings would have been $140,000 annually from age 35, or that she would have worked to age 70, but will be unable to do so.

[278] There is no evidence supporting a finding that she would have been earning $140,000 from age 35.

[279] Also, Mr. Benning was asked to assume a retirement age of 70 for the purposes of his report, but there was no evidence that Ms. Moise would work to age 70. Ms. Moise did not give evidence about whether she had any expectation when she might retire.

[280] Mr. Benning's evidence at trial was that Ms. Moise would be in a position to retire at age 62, having at that age worked at Canada Post for 35 years, the maximum years of pensionable service at retirement.

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[281] Ms. Moise testified that an important consideration for her in seeking a job in management at Canada Post was her understanding that Canada Post had the best employer pension contribution she had ever seen, and her goal was to stay with Canada Post, move up the management ladder, and build up that pension.

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[282] As a result, I consider it a real and substantial possibility, and highly likely, that once Ms. Moise reached the age at which she would be entitled to a full pension, in Mr. Benning's view roughly 70% of her salary, she would take that opportunity to retire from Canada Post at that time.

[283] Mr. Benning's evidence, from a job search website, talent.com, is that the average Canada Post entry level management salary is $47,640, the average management salary is $70,001, and the average income for managers with several years of experience is $108,396. Consequently, assuming a without-accident income of $140,000 for Ms. Moise from age 35 to age 70 is not supported by the evidence.

[284] The plaintiff's second scenario suffers from the same faulty assumption of a long-term annual salary of $140,000 and work to age 70. The second scenario assumes a residual capacity of $28,000 instead of $50,000, which results in a loss of $112,000 annually, again in my view, not a real and substantial possibility because of the assumption that the plaintiff's residual capacity is only $28,000. An assessment of the plaintiff's residual capacity is included below in this analysis.

[285] The third scenario, which the plaintiff submits is the "most beneficial to the defendants", assumes without-Accident annual income of $108,386, and with-Accident earnings of $50,000, equals an annual loss of $58,386, the "lowest possible number for the loss." Based on a loss of $58,386 for 25 years to age 60, then $108,386 from age 60 to 70, the plaintiff submits the result is a total loss of $1,801.271 [*sic* - $1,691,271, above].

[286] In this third scenario, the $108,386 is less than the $140,000 of the other scenarios, but is still above Mr. Nordin's evidence of the average Canada Post

managerial average of $70,000, rising to $108,386 after several years, and also assumes an inability to work between age 60 and 70, the combination of these assumptions not in my view, a real and substantial possibility based on the evidence at trial.

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[287] The fourth scenario assumes $140,000 income loss and no residual capacity, also not a real and substantial possibility, which is conceded by plaintiff's counsel.

[288] The plaintiff's submissions also refer to Ms. Moise's intention to move into management at Canada Post, stating that "we have expert vocational opinion about exactly what these earnings would be"; however, as the plaintiff's own scenarios above reflect, while there is useful evidence of Canada Post management salaries from Mr. Nordin, which I find can be the basis for a fair and reasonable assessment of Ms. Moise's future loss of earning capacity, there is some uncertainty in that Mr. Nordin's figures are limited in context about what management positions were included in those averages, and what range of salaries are reflected in the averages.

[289] Darren Benning's report on future losses for Ms. Moise includes calculations based on assumptions provided to Mr. Benning by plaintiff's counsel about Ms. Moise's income prospects based on without-Accident and with-Accident scenarios.

[290] Mr. Benning's calculations are useful in demonstrating how his multiplier tables can be used to assess a present value for future losses; however, as of course conceded by counsel, since the Court's assessment of Ms. Moise's future losses may differ from the assumptions given to Mr. Benning, the Court's assessment does not use Mr. Benning's income assumptions, the Court's assessment uses Mr. Benning's multiplier tables as applied to the Court's findings for the purpose of the assessment of Ms. Moise's future loss of earning capacity and future cost of care.

[291] An award for future loss of earning capacity represents compensation for a pecuniary loss. The analysis is an assessment, not a mathematical calculation.

Nevertheless, the award involves a comparison between Ms. Moise's likely future if the Accident had not happened, and Ms. Moise's likely future after the Accident.

[292] The three-step test for assessing future loss of earning capacity is again as follows:

> 1. Is there a potential future event that could lead to a loss of earning capacity?
>
> 2. Is there a real and substantial possibility that the future event in question will cause a pecuniary loss?
>
> 3. If there is a such a possibility, what is its value? At this stage consideration must also include the relative likelihood of the future loss occurring and whether any contingencies apply.
>
> *Rab v. Prescott*, 2021 BCCA 345 at para. 47

[293] Here, as conceded by the defendants, parts 1 and 2 of this test are met.

[294] I agree that there is a potential future event that could lead to a loss of earning capacity, that future event being the continuing effects on Ms. Moise, with a real and substantial possibility that those continuing effects on Ms. Moise will cause her a pecuniary loss.

[295] The third step of the assessment of the value of the loss includes a determination of the relative likelihood of the future loss occurring and whether any contingencies apply, and whether the award should be reduced to account for the relative likelihood that the future event will not occur: see *Haynes* at para. 136.

[296] What is the value of the pecuniary loss? And, what is the relative likelihood of the possible future loss occurring?

[297] I am mindful of the need to consider an award for the future loss of capacity to earn income based on what is fair and reasonable in all the circumstances: *Parypa v. Wickware*, 1999 BCCA 88 at paras. 62–70.

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[298] I consider the earnings approach to be the appropriate approach. At the time of the Accident, Ms. Moise had an established work history, and she planned to continue to work. After the Accident, she attempted to work at a few different jobs, with some difficulties caused by the impact of the Accident, and other job-related factors.

[299] Mr. Moise's income at the UBC job increased to her pre-Accident level, but her partial disability from the Accident made the physical demands of the UBC job difficult, and that partial disability continues to limit her job prospects.

[300] There is expert vocational and functional capacity evidence in the form of Derek Nordin's vocational assessment report, Samantha Gallagher's vocational rehabilitation report, and Louise Craig's functional capacity report, all of which provide some guidance on Mr. Moise's future employment and income prospects.

[301] There are also mathematical aids in the form of Mr. Benning's multiplier tables to assist with the assessment to determine a fair and reasonable amount of Ms. Moise's damages, taking into account contingencies and the relative likelihood of the future loss occurring.

[302] The starting point is to assess the total earnings that Ms. Mosie could have earned, but for the Accident.

[303] Before the Accident, Ms. Moise took some preliminary steps to advance her career at Canada Post in management.

[304] The term "management" is somewhat amorphous, but Mr. Nordin refers to "supervisory/management" position.

[305] As a starting point, the positions for which Ms. Moise gave evidence she had applied at Canada Post, with the approximate timing of her having expressed interest in those positions, is as follows:

- January 2018: Administrative coordinator;

- August 2019: Analyst, Employee Relations and Benefits Administration;
- September 2019: Officer, Delivery Services;
- November 2019: Officer, Health and Safety;
- June 2020: Assistant to General Manager.

[306] In cross-examination, Ms. Moise explained that she interviewed for two of these jobs, but none of them went further than that.

[307] Ms. Moise reported to Samantha Gallagher that she had been offered letter carrier supervisory positions, but had declined them because there was a lot of tension and animosity between letter carriers and supervisors. As a result, her preference was to move directly to a manager position, but she would have worked in a supervisory position, if necessary, to eventually move up to a manager.

[308] She also reported to Mr. Nordin that she had been offered a management position, but at the time she was not ready to return to work in an office environment, and thus declined.

[309] There was no evidence at trial about the pay for these positions for which Ms. Moise had applied at Canada Post.

[310] The factors favouring Ms. Moise achieving a supervisory/management position at Canada Post include that she was motivated to pursue a management role, in large part because of the security of a pension.

[311] Ms. Moise has an advanced diploma in business administration in materials and operations management. She described that program as broad, with subjects touching on logistics, procurement, purchasing, supply chain management, warehouse operation, production lines, inventory, and Six Sigma, all of which appear suited to an organization such as Canada Post involving the operational logistics of handling large volumes of mail throughout the country.

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[312] She has exhibited some stoicism, and appears to be a hard worker, getting favourable reviews from her former supervisor at UBC, Glenn MacNeill, who testified that the plaintiff was good at her work as a security officer and her performance was good.

[313] She is bilingual, which I infer is an asset in seeking a job in a federal Crown corporation. She has the experience as a mail carrier for over five years, and in that role, she could apply internally for supervisory and management positions at Canada Post.

[314] She had applied for the Canada Post positions noted above, and had been interviewed for two of them. Her evidence is that she was receiving positive comments and was encouraged to apply for management positions.

[315] The factors which could potentially limit Ms. Moise's advancement to more senior levels of management at Canada Post include the results of Mr. Nordin's assessment of Ms. Moise, one aspect of the assessment being vocational interest themes categorized as "Conventional, Realistic and Artistic". Ms. Gallagher assessed Ms. Moise as "Realistic, Conventional and Enterprising".

[316] As one example, Mr. Nordin describes "conventional" people working well in large organizations, but preferring subordinate roles rather than leadership positions.

[317] Mr. Nordin's report refers to Ms. Moise stating before she started at Canada Post as a mail carrier that she did not enjoy working in an office environment.

[318] Prior to the Accident, she stated that her reason for applying for the Canada Post management jobs was to prepare herself for a move into management. She did not consider herself ready to move from the outside and be less active, but she was testing the waters.

[319] Ms. Moise had also expressed she liked more solitary roles, for example she enjoyed the Canada Post mail carrier job because of its freedom and physical activity outside. She testified that what attracted her to the job as a mail carrier was

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that "you get to walk around all day, there's job freedom, and you get to work alone, so it's a very physical job which I loved, outside which I loved, and you get to work alone which I loved."

[320] This is consistent with Dr. Spivak's report, in the context of her report of diminished social contacts since the Accident, but appearing to be stating more generally that her overall inclination is to keep away from people, with her preference to be alone, with the exception of one or two people in her life.

[321] Ms. Moise reported that she did not accept a Canada Post supervisory position because of the tension and animosity between letter carriers and supervisors; however, supervisory and management roles by definition involve supervising and managing other employees. An aversion to contentious interactions with others could be a limiting factor in advancement at Canada Post.

[322] Ms. Gallagher also observed that Ms. Moise enjoyed being outdoors, and enjoyed the freedom of the UBC security job.

[323] Ms. Nordin's report states that he does not consider a three-year diploma as markedly different from a four-year degree program; however, I take judicial notice that employers often require a university degree and/or related experience in a specific specialty area for management positions, or an advanced degree for more senior positions.

[324] As a result, while there are factors supporting Ms. Moise's goal of achieving a management position at Canada Post, and I consider it a real and substantial possibility, and likely, that she would have achieved such a position, the likelihood of her advancing to higher income levels is subject to the negative contingency of the limiting factors discussed above, likely limiting Ms. Moise's advancement to more senior levels of management at higher income levels, making it more likely that her income would trend to the averages in Mr. Nordin's report regarding Canada Post management salaries.

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[325] The defendants point to Canada Post's financial difficulties and recent management layoffs, to which Mr. Benning in cross-examination agreed that those factors meant there was no guarantee of continuing employment with Canada Post; however, given that Ms. Moise was applying for existing supervisory/management jobs with Canada Post, and there is no evidence of Canada Post's imminent demise, I consider these factors may be considered as part of the limited labour market negative contingencies considered by Mr. Benning in his assessment of appropriate multipliers in his report.

[326] Considering the evidence of Ms. Moise's intention to pursue a management position at Canada Post, and having taken steps in that direction before the Accident, I agree that Ms. Moise was unlikely to continue as a mail carrier as a long-term option, and but for the Accident she would have continued to pursue a management job at Canada Post.

[327] I accept Derek Nordin's opinion that while Ms. Moise was not quite ready to move into an office environment, she had a very reasonable expectation of eventually getting into a supervisory/management position with Canada Post.

[328] Ms. Moise was 30 years old at the time of the Accident in 2021. Based on her education, work history, motivation and previous applications for management positions at Canada Post in the years 2018 to 2020, I consider it a real and substantial possibility, and highly likely, that within approximately five years of the date of the Accident she would have secured a supervisory or management position with Canada Post, at a salary roughly equivalent to her income as a mail carrier, possibly higher, but the only evidence of Canada Post entry level management salaries is Mr. Nordin's evidence of $47,640.

[329] Ms. Moise testified that the positions she applied for were “higher paying”, but she gave no specific evidence about the pay for those positions.

[330] As a result, in my view, the assessment of Ms. Moise's without-Accident earnings begins with five years at a salary of approximately $50,000, from 2025–

2029, at which time she would be age 38. During this time, I consider it a real and substantial possibility, and likely, that she would have continued as a mail carrier while pursuing a supervisory/management position with Canada Post.

[331] If, during the five-year period, she did move into a supervisory/management role, I consider it likely that it would have been at or near the same $50,000 level, consistent with Mr. Nordin's evidence of entry level management salary at $47,640.

[332] Starting with the first five years from the date of trial, the applicable economic multiplier from Mr. Benning's Table 4 for 5 years from the trial date, 2025-2029, is 4,585, hence the calculation is $50,000/1,000 x 4,585 equals $229,250.

[333] Mr. Benning's report assumes no loss in non-statutory non-wage benefits such as medical or dental insurance, except for a loss in the private pension at Canada Post, for which Mr. Benning has incorporated an allowance equivalent to 4.22% of future employment earnings to represent net benefits from the Canada Post pension plan.

[334] Moving forward from 2029, over time I consider it a real and substantial possibility, and highly likely, that Ms. Moise would have gained experience and seniority and her income would have increased towards, and likely beyond Mr. Nordin's evidence of an average management salary of $70,000.

[335] Assuming that over an eleven-year period from 2030 to 2040, her salary in a management position, or positions, would increase at least incrementally, I consider it a real and substantial possibility, and the likelihood high, that over that eleven-year period her income would rise from $50,000 to a range of approximately $60,000 - $80,000. The low end of the range assumes a nominal increase based simply on an assumed consumer price index of approximately 2%, the higher end of the range assumes approximately 5.5%, and the average of that range is $70,000, consistent with Mr. Benning's $70,001 average for Canada Post managers.

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[336] The calculation from Mr. Benning's multipliers from Table 4 for that eleven-year period for the years 2030 to 2040, assuming an average income of $70,000, is $70,000 /1000 x 8,776 (the multiplier is 13,361 – 4,585) equals $614,320.

[337] Mr. Nordin's evidence is that Canada Post managers with "several years of experience" have average earnings of $108,396. While Mr. Nordin does not provide any guidance on "several years", I consider it a real and substantial possibility, and likely, that assuming Ms. Moise continued to work in management at Canada Post, gaining further experience and seniority from age 50 to 62, her income would continue to increase.

[338] It is also a real and substantial possibility that her annual income could have exceeded $108,396; however, given the factors discussed above that could limit or advance Ms. Moise's prospects for higher levels of management at Canada Post, that is, negative contingencies, and the limited evidence of management salaries at Canada Post generally, and over $108,396 specifically, I consider the relative likelihood of that advancement above $108,396 to be similar to the real and substantial possibility of her income plateauing at, or below $108,396.

[339] The $108,396 average for a manager with several years of experience obviously indicates some managers in the data set being at a higher level of income than that figure, and some below that level.

[340] Consequently, for that 13 year period from 2041 to 2053, the multiplier is 8,051 (21,412 – 13,361) x $108,396/$1,000 = $872,696.

[341] Considering the factors that could influence Ms. Moise's without-Accident income summarized above, I consider that taking an average income level of $108,396 for her ages 50-62, is a fair and reasonable assessment of Ms. Moise's without-Accident future earning capacity in management at Canada Post.

[342] For this assessment, age 62 is used as the upper limit for Ms. Moise's work at Canada Post before retirement. As discussed above, Ms. Moise did not give evidence about whether she had any expectation when she might retire. She would

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be in a position to retire at age 62. An important consideration for her in seeking a job in management at Canada Post was the pension. Mr. Benning's view was that her pension at age 62 would be roughly 70% of her salary. I consider it a real and substantial possibility, and likely, that she would have retired at 62 with her maximum pension.

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[343] Adding the three figures for future income loss results in a total without-Accident future income assessment as follows:

- 2025 to 2029 at $50,000: $ 229,250
- 2030 to 2040 at $70,000: $ 614,320
- 2041 to 2053, at $108,396: $ 872,696
- **TOTAL: $1,716,266**

[344] As a result, I consider that $1,716,266 for the full-time without-Accident future earnings to be a fair and reasonable assessment of what Ms. Moise would have earned but for the Accident.

[345] The general contingences in Mr. Benning's report include labour market contingencies of participation and unemployment, but not part-time work, which assumes that Ms. Moise would work full-time until retirement.

[346] The present values are also adjusted for Ms. Moise's probability of survival, assuming normal life expectancy.

[347] For these reasons, I have used Mr. Benning's Table 4 economic multipliers to age 62 to take into account general contingencies for this assessment of future loss of earning capacity, above, and below.

[348] Regarding specific contingencies, a deduction is required if Ms. Moise is capable of earning employment income despite the injuries she suffered in the Accident.

ii. *Residual* "with-Accident" earnings

[349] After the Accident, Ms. Moise took a number of months off work to recover from the injuries she suffered in the Accident.

[350] In approximately June 2021 she returned to work at Canada Post. Her physical limitations resulted in her being unable to continue as a mail carrier. She worked inside sorting mail at Canada Post for approximately six months, then worked at an office job at Parallel 49 for two months in March and April 2022. In the summer of 2022, she worked as a bouncer at the Red Room club, as a salesperson at Vancouver Auto Credit in 2022, back to the Red Room from January to November 2023, and she then started in December 2023 as a security officer at UBC, working there for approximately a year before leaving that job and moving to Ontario.

[351] A common issue negatively impacting her work was her low back and coccyx/pelvic pain. Other Accident-related factors, including light and noise sensitivity and headaches were factors after the Accident, diminishing with time. Other job-related factors also affected her performance, for example the nature of the work as a commissioned salesperson, and the stress and hours were factors limiting her success in that job. At Parallel 49, limited training, hours of work, stress and supply-chain issues were negative job-related factors.

[352] For her work at the Red Room in 2023, and UBC security in 2024, she was able to work for a number of months, up to a year at those jobs. Her stoicism in trying different jobs and working at jobs in which she experienced pain is not to be taken against her; however, she has demonstrated an ability to work, with some limitations.

[353] Both Louise Craig's report and Samantha Gallagher's report state that Ms. Moise's physical abilities demonstrate she has some limitations for physical work and reduced competitive employability, but she has capacity for light physical strength demands, and capacity, with limitations in sitting, standing and walking.

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[354] I have summarized Ms. Gallagher's report above with most office-based jobs offering the opportunity for postural flexibility thought the day, and she would need to take regular breaks to get up and move around.

[355] I consider that Ms. Moise's injuries from the Accident, being a permanent partial disability, will have some limitation on her earning abilities; however, I consider it a real and substantial possibility, and highly likely that, given that she is capable of working at a sedentary or light physical job, there are jobs at which she is capable of working.

[356] Given Ms. Moise's intention to work with her father in a role like a project manager for the purchase, renovation and resale or renting of houses, I consider it a real and substantial possibility, and the likelihood very high, that Ms. Moise will earn income from working as a project manager with her father in buying houses, renovating them, and either renting them out or reselling them. Ms. Moise's father has had experience doing just this, and Ms. Moise has been involved at times with her father in this type of endeavour, and she enjoyed it.

[357] There was no evidence regarding what Ms. Moise expected to earn as a project manager, either as assisting or employed by her father, or as a principal in a business of home renovation. The limited reference to the economics of this activity concerned rental income from one of the houses, not what, if any, income Ms. Moise expected to earn from that endeavour.

[358] Plaintiff's written submissions submit that the plaintiff, as a project manager working with her father, is "simply helping her father with his occasional interest in house flipping", also submitting that "[h]er pay is living rent free and probably sharing in some of the rental income she manages." However, there was no evidence about any financial or work arrangements between Ms. Moise and her father, other than Mr. Moise's evidence they had discussed her "coaching and guiding trades people, computer time, Home Depot time, talk Dad time."

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[359] As a result, in order to assess Ms. Moise's "with-Accident" potential earnings, more useful is Samantha Gallagher's report, which provides a non-exhaustive table of examples of jobs for which Ms. Gallagher considers Ms. Moise capable of working, consistent with Louise Craig's assessment of Ms. Moise's abilities.

[360] Ms. Gallagher's table of jobs does not refer to any positions at Canada Post, but there appears to be no reason why Ms. Moise could not again apply for jobs at Canada Post.

[361] Ms. Gallagher's report refers to Government of Canada hourly wage data for the occupational group including supervisors of letter carriers being $25.00 low, median $25.15, and high at $36.67, the median hourly wage for a 37.5 hour week equating to a gross annual income of approximately $49,000.

[362] Ms. Gallagher's table lists a number of potential post-Accident jobs where the physical aspects are sedentary or light and that could be available to Ms. Moise; for example, the jobs that Ms. Gallagher refers to with "good" or "very good" outlooks include a security guard supervisor and an insurance sales agent, with hourly wage rates of $17.40 low, $21.50 median, and $34.62 high for the security guard supervisor, and $18.97 low, $28.00 median, and $45.45 high for the insurance sales agent.

[363] Hourly wage rates for other jobs listed with a "moderate" job outlook include a low range of $17.40 to $22.56; a median range of $21.00 to $37.00; and a high range of $27.00 to $52.88.

[364] The average of all the "low hourly rate" jobs in Ms. Gallagher's table is approximately $19.00. Assuming a 37.5 hour week the annual gross income is approximately $37,000.

[365] The average of all the "median hourly rate" jobs is approximately $26.00. Assuming a 37.5 hour week the annual gross income is approximately $51,000.

[366] A rough average of all the “high hourly rate” jobs is approximately $36.00, with the annual gross income at that rate approximately $70,000.

[367] For this “with-Accident” analysis, using the same time periods and multipliers as the “without-Accident” earnings analysis above, that is, 2025-2029, 2030-2040, and 2041 to 2053, the “with-Accident” potential earnings can be assessed.

[368] I consider it a real and substantial possibility, and highly likely, that Ms. Moise’s capacity for the first five-year period from 2025-2029, taking the median wage between the average “low” and “median” wage rate jobs in Ms. Gallager’s report, at $22.50, is a relatively conservative $44,000 annually.

[369] This is less than Ms. Moise was earning at the UBC security officer job, but considers her moving into a different area of work, and is not far below Mr. Nordin’s reference to the entry level management salary at Canada Post at $47,640.

[370] For the “with-Accident” potential earnings for that period, using the same multiplier of 4,585 times $44,000/1000 equals a present value of future earnings at $201,740.

[371] I also consider it a real and substantial possibility that Ms. Moise’s income will not remain static over time. Her permanent partial disability will continue to impact her ability to earn the level of income that she likely would have achieved, but for the Accident; however, I consider it a real and substantial possibility that her income will increase as she gains experience and seniority, and her income will increase, but likely at a slower rate than if she did not have a disability.

[372] It is possible that her income will increase at a faster rate, or to a higher rate than is being assessed here, either because she does well, or because her physical injuries improve and she has greater opportunities as a result of that healing; however, for the purposes of this assessment, I consider that positive contingency to be offset by the potential negative contingency that she will not advance and her income will not increase, or that she may have a setback or her injuries do not improve.

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[373] As a result, I consider it a real and substantial possibility that her income will increase during the second period of future earning, 2030 to 2040, ages 39-49, and for the assessment I consider the median hourly rate of $26.00 from Ms. Gallagher's table to be an appropriate figure. At approximately $51,000 annually, the potential earnings for the period, using the same multiplier as above, 8,776, is $447,576.

[374] Finally, for the period 2041 to 2053, ages 50 to 62, I consider something less than the highest average hourly rates is appropriate.

[375] The median hourly wage rate between the average "high" wage rate of $36.00, and the average "median" rate at $26.00 is $31.00. For a 37.5 hour week, at $31.00 per hour, the annual figure is approximately $60,000. Using the same multiplier as above, 8,051, the potential earnings for the period are $483,060.

[376] As a result, the total with-Accident earnings for the three future periods, is as follows:

- 2025 to 2029 at $44,000: $ 201,740
- 2030 to 2040 at $51,000: $ 447,576
- 2041 to 2052 at $60,000: $ 483,060
- **TOTAL: $1,132,376**

[377] As a result, I consider that $1,132,376 for the full-time with-Accident future earnings to be a fair and reasonable assessment of what Ms. Moise is capable of earning after the Accident.

[378] Subtracting the with-Accident figure of $1,132,376 from the without-Accident figure of $1,716,266, the assessment of the award for future loss of earning capacity on account of the Accident for Ms. Moise is $583,890, which I consider to be a fair and reasonable assessment of an award for Ms. Moise's future loss of earning capacity.

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4. Future Cost of Care

a) Legal Principles

[379] The legal principles applicable to an assessment of a cost of future care claim are summarized in Justice Adair's judgment in *Golkar-Karimabadi v. Bush,* 2021 BCSC 990, as follows:

> [107] An award for cost of care is based on what is reasonably necessary, on medical evidence, to promote the mental and physical health of the claimant. The award must (1) have medical justification, and (2) be reasonable. The medical necessity of future care costs may be established by a health care professional other than a physician, such as an occupational therapist, if there is a link between a physician's assessment of pain, disability and recommended treatment, and the health care professional's recommended care item. See *Gao v. Dietrich*, 2018 BCCA 372, at paras. 69-70. No award is appropriate for costs that a plaintiff would have incurred in any event: *Shapiro v. Dailey*, 2012 BCCA 128, at paras. 51-55. Moreover, future care costs must be likely to be incurred by the plaintiff. The onus is on the plaintiff to show that there is a reasonable likelihood that she will use the suggested services: see *Lo v. Matsumoto*, 2015 BCCA 84, at para. 20.
>
> [Emphasis added.]

[380] In considering a cost of future claim, the Court is concerned in ensuring that the plaintiff is provided with adequate future care for which the plaintiff has objectively demonstrated need based on the evidence tendered: *Andrews* at 261; and *Gregory* at para. 39.

[381] The extent, if any, to which a future care costs award should be adjusted for contingencies depends on the specific care needs of the plaintiff. In some cases negative contingencies are offset by positive contingencies and, therefore, a contingency adjustment is not required. In other cases, however, the award is reduced based on the prospect of improvement in the plaintiff's condition, or increased based on the prospect that additional care will be required. Each case falls to be determined on its particular facts: *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 253.

[382] An assessment of damages for cost of future care is not a precise accounting exercise: *Krangle* at para. 21.

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b) Plaintiff's Position

[383] The plaintiff's position on future cost of care in counsel's final written submissions is that Ms. Moise should be awarded the sum of $280,414, relying on Louise Craig's recommendations and Darren Benning's present value calculations, but Mr. Benning's figures are slightly different than Ms. Craig's figures.

[384] Mr. Benning's report refers to a present value of $235,544 for the future care expenses listed in Ms. Craig's report; however, his Table 6 costs differ slightly from Ms. Craig's amounts, in part on account of Mr. Benning's figures including GST/PST where applicable, and the present value multiplier for 2025 from the date of trial in February is less than one: .990.

[385] For Mr. Benning's calculations for annual costs to the end of Ms. Moise's life, his multipliers assume a normal life expectancy of 85 years, 50.92 years from the date of trial.

[386] Mr. Benning lists the individual costs from Ms. Craig's report, with the items and present values as follows: physiotherapy ($36,523 based on $1,160 annually); massage therapy ($43,639 based on $1,386 annually); active rehabilitation ($2,032 for one year); occupational therapy ($350 for one year); Tylenol and Advil ($2,152 based on $68 annually); psychological counselling ($2,227 for one year); moving ($2,674 based on $1,523 for years 2 and 12); regular cleaning ($101,339 based on $3,549 annually to age 80); seasonal cleaning ($17,989 based on $630 annually to age 80); handyman services ($11,243 based on $394 annually to age 80); and gym and pool membership ($15,376 based on $488 annually).

c) Defendants' Position

[387] The defendants agree with the following costs from Ms. Craig's report:

a) Physiotherapy: $1,160 annual cost, but not indefinitely, 10-15 years;

b) Active rehabilitation: $1,955.00 one-time cost;

c) Occupational Therapy: $354.00 one-time cost;

d) Psychological counselling: $1,800 - $2,700 one-year cost range;

[388] The defendants agree with Ms. Craig that some physiotherapy will be of benefit to the plaintiff to address occasional flare-ups of the symptoms, allowing the plaintiff to continue working or to continue some of her sporting activities. The defendants strongly disagree that these should be continued indefinitely or until age 85, the normal life expectancy, as proposed by Mr. Benning. The defendants submit that a reasonable time limit should be placed on physiotherapy going forward.

[389] The defendants submit there is no basis for massage therapy, and Ms. Craig agreed on cross-examination that when she stated that Ms. Moise had benefitted from massage she meant physiotherapy, and there was no record of massage.

[390] The defendants oppose funding for a gym and pool membership, the defendants submitting that Ms. Moise was regularly attending the gym before the Accident, so there was no change before and after the Accident.

d) Analysis of Future Cost of Care

[391] The defendants agree with Louise Craig's cost of future care report on the items listed above in relation to Ms. Craig's report; however, as discussed above, some of the figures in Mr. Benning's report are slightly different than Ms. Craig's report.

[392] For the agreed items, the following present value figures are from Mr. Benning's report, except for any one-year costs, for which I consider the award should be the actual undiscounted cost:

1. Active rehabilitation: $2,053 one-time cost;

2. Occupational therapy: $354.00 one-time cost;

[393] For psychological counselling, Ms. Craig provides a range of $1,800 to $2,700 for a one-time cost. Given the importance of this item to Ms. Moise's

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potential improvement in her mental health, I consider the upper end of the range, $2,700, to be appropriate.

[394] The contested items are the length of time for physiotherapy; a gym and pool membership at $488 annually; and Tylenol and Advil at $68 annually. Housekeeping, including household tasks of moving, regular and seasonal cleaning, and handyman services, are addressed in the following separate section.

[395] For physiotherapy, Ms. Moise testified that she has continued to go to physiotherapy since a few months after the Accident. Ms. Craig recommends twelve physiotherapy treatments on an annual basis to address symptom flare-ups. She considers that although Ms. Moise may be near maximum physical rehabilitation, and any further gains will likely be small, further treatment would likely relate to increased comfort during activities and help with flare-ups in her condition.

[396] Given that physiotherapy appears to assist Ms. Moise with her physical symptoms, and potentially assist in further rehabilitation, I consider it reasonable to make an award for physiotherapy as recommended by Ms. Craig, which may assist Ms. Moise in her employment and any recreational activities that she may be able to do; however, since I consider the physiotherapy to be potentially important for the purposes of Ms. Moise's employment, the length of the award for treatment will be limited to Ms. Moise's with-Accident retirement age 62, providing what I consider to be a reasonable frame of reference for that treatment. Mr. Binning's future cost of care multiplier from Table 5, for 28 years from the date of the trial to age 62, is 21,660, multiplied by $1,160/1000 equals $25,123.

[397] I consider $25,125 to be a reasonable award as the present value of an annual sum of $1,160 for physiotherapy for Ms. Moise from the date of trial to her age 62.

[398] For the gym and pool membership at $488 annually, although Ms. Moise regularly attended the gym before the Accident, the gym membership, similar to the

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physiotherapy, will likely assist with Ms. Moise's employment and recreational activities, and her mental health.

[399] Dr. Masri recommends that Ms. Moise be in the gym at least three times per week for active rehabilitation, including keeping her core and pelvic muscles strong, all in aid of helping to improve her physical symptoms.

[400] As a result, I consider a gym and pool membership to meet the criteria for a future costs award at $488 annually, similar to physiotherapy to age 62: $488/1,000 x 21,660 equals $10,570.

[401] For the Tylenol and Advil, Ms. Moise gave evidence that since soon after the Accident she has been taking over-the-counter Tylenol for pain, otherwise she cannot work. Ms. Craig's report states that Ms. Moise reported her current medications are extra-strength Tylenol and Advil twice a day three to four days per week.

[402] I consider the Tylenol and Advil to be reasonably necessary to promote the mental and physical health of the plaintiff, and it is medically justified and reasonable.

[403] Darren Benning's report at Table 6 calculates the present value of $68.00 annually, taking into account average life expectancy, from the date of trial, to be $2,152.00.

[404] I consider $2,152 to be a reasonable award as the present value of an annual sum of $68 for Tylenol and Advil for Ms. Moise from the date of trial for the duration of the average life expectancy.

e) Conclusion on future care costs other than household tasks

[405] Based on the above analysis, using Darren Benning's numbers and multipliers, the present value of each of the future cost of care items is as follows:

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1. Physiotherapy at $1,160 annually to age 62:	$25,125
2. Active rehabilitation, $2,053 one-year cost:	$2,053
3. Occupational therapy, $354 one-time cost:	$354
4. Psychological counselling, $2,700 one-year cost:	$2,700
5. Gym and pool membership, $488 annually to age 62:	$10,570
6. Tylenol and Advil, $68 annually:	$2,152
TOTAL:	**$42,954**

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5. Housekeeping, moving, cleaning and handyman services

[406] The plaintiff claims an award for housekeeping capacity, for which I include household tasks including moving, regular cleaning, seasonal cleaning, and handyman services.

a) Legal Principles

[407] The legal principles applicable to a claim for the loss of housekeeping capacity were recently considered in some detail in *McKee v. Hicks*, 2023 BCCA 109.

[408] Two key points are as follows: first, the loss of housekeeping capacity is the plaintiff's, and not a loss of a family member or friend who assists the plaintiff.

[409] Second, such a claim may be addressed as part of the non-pecuniary loss, or as a segregated pecuniary head of damage. The Court of Appeal in *McKee* addressed these points as follows:

> [98] In *Liu v. Bains*, 2016 BCCA 374, the Court cited para. 63 of Justice Huddart's judgment at para. 25, and said:
>
> > [26] It lies in the trial judge's discretion whether to address such a claim as part of the non-pecuniary loss or as a segregated pecuniary head of damage. In *McTavish* at paras. 68-69, the Court suggested that treating loss of housekeeping capacity as non-pecuniary loss may be best suited to cases in

> which the plaintiff is still able to perform household tasks with difficulty or decides they need not be done, while remuneration in pecuniary terms is preferable where family members gratuitously perform the lost services, thereby avoiding necessary replacement costs.
>
> [Emphasis in *McKee*.]

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[410] At para. 101, *McKee* then refers to *Kim v. Lin*, 2018 BCCA 77 at paras. 27– 37, where the "Court again grappled with the somewhat vexing issue of when a pecuniary award should be made for a loss of housekeeping capacity," including the following at para. 30 of *Kim*, quoted from Jamie Cassels & Elizabeth Adjin-Tettey, *Remedies: The Law of Damages*, 3d ed (Toronto: Irwin Law Inc., 2014) at 187–188:

> Where the plaintiff continues to perform the tasks but with difficulty, requires more time to complete tasks, or manages to get by without doing or intending to do these tasks, the loss may be compensated for as part of non-pecuniary damages for pain and suffering and loss of amenity. Specifically, compensation is intended for the plaintiff's pain in persevering with housework, loss of satisfaction in not contributing to the upkeep of one's home, and/or for having to live with a disordered and perhaps not a well-functioning home. There may be a fine line between situations of diminished capacity to perform tasks and when the plaintiff completes tasks with difficulty. Care needs to be taken in making these distinctions to ensure fairness to both plaintiff and defendant. A pecuniary award may be appropriate where the evidence indicates that a reasonable person in the plaintiff's circumstances should not be expected to continue to perform the tasks in question due to their injuries. Such a position avoids prejudicing plaintiffs who are stoic, or are unable to benefit from gratuitous services or afford to hire replacement services prior to trial.
>
> [Footnotes omitted in *Kim*. Emphasis in original.]

[411] *McKee* concludes:

> [112] To sum up, pecuniary awards are typically made where a reasonable person in the plaintiff's circumstances would be unable to perform usual and necessary household work. In such cases, the trial judge retains the discretion to address the plaintiff's loss in the award of non-pecuniary damages. On the other hand, pecuniary awards are not appropriate where a plaintiff can perform usual and necessary household work, but with some difficulty or frustration in doing so. In such cases, non-pecuniary awards are typically augmented to properly and fully reflect the plaintiff's pain, suffering and loss of amenities.

[412] The defendants refer to *Ali v. Stacey*, 2020 BCSC 465, where Justice Gomery summarized the principles relating to housekeeping awards, including reference to *Kim,* as follows:

> [67] Read together, these two judgments establish that a plaintiff's claim that he should be compensated in connection with household work he can no longer perform should be addressed as follows:
>
> > a) The first question is whether the loss should be considered as pecuniary or non-pecuniary. This involves a discretionary assessment of the nature of the loss and how it is most fairly to be compensated; *Kim* at para. 33.
> >
> > b) If the plaintiff is paying for services provided by a housekeeper, or family members or friends are providing equivalent services gratuitously, a pecuniary award is usually more appropriate; *Riley* [*Riley v. Ritsco,* 2018 BCCA 366] at para. 101.
> >
> > c) A pecuniary award for loss of housekeeping capacity is an award for the loss of a capital asset; *Kim* at para. 31. It may be entirely appropriate to value the loss holistically, and not by mathematical calculation; *Kim* at para. 44.
> >
> > d) Where the loss is considered as non-pecuniary, in the absence of special circumstances, it is compensated as a part of a general award of non-pecuniary damages; *Riley* at para. 102.

[413] The defendants also cite *Hardychuk v. Johnstone*, 2012 BCSC 1359 (CanLII) at para. 173, where the Court declined to make an award for housekeeping reasoning that the special circumstances that warrant a discrete award did not arise in that case. The Court found that as a result of her injuries the plaintiff found heavy housework more difficult than she did before the accident. She was also slower in performing tasks and was left feeling stiff and sore. The plaintiff split the housekeeping chores with her roommate, and her mother sometimes helped her with the housework. The Court took the plaintiff's housekeeping difficulties into account under the non-pecuniary head of damages.

[414] With these principles in mind, the parties' positions and an analysis on the claim for loss of housekeeping capacity, are as follows.

b) Plaintiff's Position

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[415] The plaintiff's final submissions refer briefly to the plaintiff being unable to do household cleaning or yard cleaning and will need help; however, as noted by the defendants, Ms. Moise reported to Dr. Cameron she has continued her housekeeping reasonably normally, consistent with her own evidence, and she has not had to hire cleaners or other housekeeping services for regular housekeeping.

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[416] The plaintiff relies on Louise Craig's recommendations for household cleaning, stated by Darren Benning at $3,549 annually, seasonal cleaning at $630 annually, and handyman services at $394 annually, all to age 80, for present values of $101,339, $17,989 and $11,243, respectively.

c) Defendants' Position

[417] The defendants submit that the plaintiff is able to cook, clean, do laundry and go grocery shopping. Even though she does the chores with some pain there is no special circumstance attracting a segregated award for housekeeping damages.

[418] The defendants submit that the plaintiff has continued her housekeeping despite her injuries. She reported to Dr. Cameron she has continued her housekeeping reasonably normally.

[419] She has not had to hire Moly Maid or other housekeeping service for regular housekeeping.

[420] There is no in-trust claim for family members performing housekeeping for a lengthy period.

[421] Dr. Masri does not recommend housekeeping assistance.

d) Analysis of Future Cost of Care - Housekeeping

[422] Ms. Moise gave evidence about her ability to do housekeeping, and she reported to Dr. Masri, Dr. Cameron and Louise Craig about her housekeeping abilities.

[423] Dr. Masri's report states that she has pain with housekeeping chores, but she can do them.

[424] Dr. Cameron reports that she had difficulty performing household chores since the Accident because of pain, but as of the date of the assessment she is able to do household chores reasonably normally.

[425] In cross-examination, Ms. Moise testified she had hired cleaners after the Accident when she moved into her new place, but on a day-to-day basis she does not need to do that. She can manage the cleaning, but it can bring on pain, for example she can do two loads of laundry before her back is "shot", so she spreads it out over the course of the week.

[426] Ms. Craig's report states that Ms. Moise is independent with self-care. Ms. Craig reports that Ms. Moise is currently "limited" in vacuuming, sweeping, mopping, cleaning the bathroom, dusting, changing bed linens and completing laundry. Vacuuming, cleaning the bathtub and doing laundry aggravates her back.

[427] Ms. Craig's report makes no other reference to household chores other than her recommendation for assistance with housecleaning once per week for regular household cleaning, and twice per year for heavier, seasonal household cleaning.

[428] Ms. Craig's report also refers to Ms. Moise living in an apartment and refers to specific housekeeping chores as noted above; however, the report makes no reference to the rationale for seasonal household cleaning and handyman services, other than quoting a frequency of twice per year for 8 hours and an hourly rate for the seasonal household cleaning, and 5 hours per year and an hourly rate for the handyman services.

[429] Considering all of the evidence regarding Ms. Moise's ability to do housekeeping, I find that she has not proven on a balance of probabilities her claim for a pecuniary award for housekeeping services. As one example noted above, Dr. Cameron states that she has continued her housekeeping reasonably normally. There is no evidence that she has hired others to do that work, or that she requires

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assistance from others; however, I recognize that Ms. Moise's evidence is that she experiences some pain with some of the chores, and for that reason I have augmented the award for non-pecuniary damages, above, to reflect the pain and some difficulty she experiences with her household chores.

6. Special Damages

[430] The parties agree on the quantum of special damages at $3,729.00.

VI. CONCLUSION

[431] In summary, the plaintiff is awarded, and entitled to judgment against the defendants, the following damages:

Non-pecuniary damages:	$210,000
Past loss of earning capacity:	$27,461 (agreed)
Future loss of earning capacity:	$583,890
Future cost of care, itemized above:	$42,954
Special damages:	$3,729 (agreed)
TOTAL:	**$868,034**

[432] Subject to any submissions the parties may wish to make on costs, the plaintiff is entitled to her costs of the action from the defendants at Scale B.

[433] If the parties wish to make further submissions on costs, or if the parties require clarification of any aspect of these reasons, they are granted leave to requisition a hearing through Supreme Court Scheduling before me between 9:00 and 10:00 in person or by MS Teams within 45 days of the date of this judgment.

"Jones J."

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