

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ramos v. South Coast British Columbia  
Transportation Authority*,  
2023 BCSC 966

Date: 20230607  
Docket: S1810643  
Registry: Vancouver

Between:

**Joseph Ramos**

Plaintiff

And

**South Coast British Columbia Transportation Authority  
doing business as Translink,  
British Columbia Rapid Transit Company Ltd. doing business as Skytrain,  
Greater Vancouver Transportation Authority,  
Canadian Pacific Railway Company, ABC Company Ltd.,  
ABC2 Company Ltd., and John Doe**

Defendants

Before: The Honourable Justice Elwood

## Reasons for Judgment

Counsel for the Plaintiff:

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Counsel for the Defendants:

K. Tirmandi

Place and Date of Hearing:

Vancouver, B.C.  
January 16 & 19, 2023

Place and Date of Judgment:

Vancouver, B.C.  
June 7, 2023

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**I. INTRODUCTION**

[1] The plaintiff Joseph Ramos was injured when he tripped and fell on a low concrete ramp leading to a maintenance shed in the passenger interchange area at the Port Coquitlam transit station.

[2] Mr. Ramos claims damages against the defendant South Coast British Columbia Transportation Authority (“Translink”) under the *Occupiers Liability Act*, R.S.B.C. 1996, c. 337. He seeks non-pecuniary damages, special damages and a subrogated health care costs recovery claim. He does not advance a claim for future lost earnings or cost of future care.

[3] Mr. Ramos alleges that Translink knew or ought to have known that the raised edge of the concrete ramp posed a tripping hazard to passengers transferring from the West Coast Express commuter train to a connecting bus. He argues that Translink was negligent in failing to abate the hazard by ensuring that the change in ground elevation to the ramp was visible to passengers or by detouring passengers away from the ramp.

[4] Translink’s position is that it fulfilled its duty of care to Mr. Ramos by providing him with a safe alternate route along a brick walkway connecting the train platform to the bus loop, and that Mr. Ramos assumed the risk of injury by taking a shortcut that took him across a patch of grass and onto the ramp. In the alternative, Translink argues that Mr. Ramos should be held fully or partially at fault for his injuries because, with a modicum of awareness, he ought to have seen the raised edge of the ramp and avoided the fall.

[5] Concerning damages, Translink argues that Mr. Ramos’s injuries were relatively minor and the non-pecuniary damages he seeks are excessive.

[6] Mr. Ramos sought judgement in the action on a summary trial application. At the conclusion of the hearing of the application, I gave oral reasons for judgement in which I held that the issues are suitable for a summary trial. There are my reasons for judgement on liability and damages.

**II. LIABILITY**

[7] I find the following facts based on Mr. Ramos' affidavit, security camera video footage, photographs of the scene, evidence of Translink's representative on examination for discovery and a report by a professional engineer specializing in accident reconstruction, Michael Araszewski.

**A. The Incident Scene**

[8] The Port Coquitlam station is an intermodal public transit station, connecting the West Coast Express commuter train with transit buses and park-and-ride lots. Hundreds of passengers pass through the station each day. It serves five trains in the morning and five trains in the evening. There are six bays for transit buses and 280 parking spots for private vehicles.

[9] Pedestrian pathways facilitate the movement of passengers through the interchange area of the station. The place where Mr. Ramos tripped and fell is located between the train platform and a bus stop. The incident scene is depicted in an aerial view prepared by Mr. Araszewski, a copy of which is attached as the Appendix to this judgement.

[10] As shown on the Appendix, a fence along the train platform directs disembarking passengers to an opening where two card readers are positioned for them to tap their Compass Cards. From this opening, a brick pathway crosses a landscaped space of approximately eight metres to where it meets a sidewalk that adjoins the nearest bus loop running perpendicular to the pathway. The pathway has an inverse funnel shape, narrowest at the opening in the fence where passengers leave the train platform and widest where it meets the bus loop sidewalk. There is grass on both sides of the pathway.

[11] There is a metal shed (labelled by Mr. Araszewski as an electrical cabinet) located near where the pathway meets the bus loop sidewalk, on the right side of the pathway as one walks from the train platform to the bus loop. The shed is used by Translink to store maintenance tools. It sits on a concrete pad that is 13 cm above

the ground surface in the grass area to the right of the pathway. A concrete ramp provides access to the shed from the bus loop sidewalk. The ramp is approximately one metre long with a low slope of approximately 12° along its length, left to right in the Appendix, from the level of the bus loop sidewalk to where it meets the pad on which the shed sits.

[12] There is a blue recycling bin positioned on the bus loop sidewalk to the right of the brick pathway from the train platform where the pathway meets the sidewalk and left of where the ramp to the shed meets the sidewalk. The blue bin is located roughly in the middle of the intersection of the grass on the right side of the pathway with the sidewalk, between the edge of the pathway and the edge of the concrete ramp.

### **B. The Trip and Fall Incident**

[13] Mr. Ramos arrived at the Port Coquitlam station on the West Coast Express shortly after 6:00 pm on April 24, 2018. He was commuting home from work. The weather was clear and dry.

[14] As passengers disembarked from the West Coast Express, the interchange area became busy with pedestrians and busses. The sun was low on the horizon, casting shadows across the station. As they passed through the opening in the fence, the passengers fanned out in all directions. Many followed the brick pathway. Some walked across the grass on either side of the pathway.

[15] Mr. Ramos exited the train platform with the intention of catching a bus. The stop for his bus was located to his right as he passed through the opening in the fence. Mr. Ramos left the brick pathway and took a direct line toward the bus stop. His path to the bus would have taken him across the grass, through the gap between the blue recycling bin and the shed, onto the concrete ramp, and across the bus loop sidewalk to the door of the waiting bus. He was walking at a normal pace. He was not rushing to catch the bus.

[16] Mr. Ramos crossed the grass and tripped over the edge of the concrete ramp, near its mid point, where the ramp is about 10 cm above the surface of the ground under the grass. Mr. Ramos fell forward onto the concrete surface of the ramp.

[17] Photographs taken on the day of, or very shortly after, the incident show that the height of the grass was uneven along the edge of the ramp over which Mr. Ramos tripped. On his left as he approached the ramp, the low edge of the ramp where it met the bus loop sidewalk was obscured by the grass. On his right, the full height of the ramp where it met the shed was partially obscured by the grass. Near the middle, slightly to the right of where Mr. Ramos tripped, there was a trough worn in the grass - possibly by other passengers taking a similar route – in which the edge of the ramp is visible.

[18] Photographs taken on an unknown date following the incident show the intersection of the grass with the ramp after the grass had been cut to a uniform height. The edge of the ramp is more visible in these photographs.

[19] Photographs taken by Mr. Araszewski on October 31, 2019, show the scene after the grass had been cut close to the ground along the ramp. The full edge of the ramp along its entire length is clearly visible in these photographs.

**C. Mr. Ramos’ Evidence of How he Tripped**

[20] On examination for discovery, Mr. Ramos testified that he tripped on a “hidden hazard” while walking toward his bus stop.

[21] In his affidavit for the summary trial application, Mr. Ramos deposed that he tripped over a “concrete lip transition point”. He deposed that his eyes were not focused solely on the ground directly in front of him, because he was paying attention to the bus stop and the pedestrian and bus traffic around him. He deposed that he was not expecting to encounter any significant tripping hazard along his path to the bus stop.

[22] Mr. Ramos acknowledged in his affidavit that he was generally aware that there was a transition between the grass and the pathway (which I have referred to as the bus loop sidewalk), but stated that he was not aware there was a “significant ‘cement lip’” at the transition point over which he was walking. He deposed that his foot caught on the cement lip, which caused him to fall forward.

**D. Analysis**

[23] Under s. 3(1) of the *Occupiers Liability Act*, Translink owed Mr. Ramos a duty to take reasonable care to see that he was reasonably safe in using the Port Coquitlam transit station premises.

[24] The standard of care does not require Translink to remove every possibility of danger. The test is one of reasonableness, not perfection: *Hickey v. The Roman Catholic Archdiocese of Vancouver*, 2017 BCSC 1176, at para. 27.

[25] The fact that Mr. Ramos fell and suffered an injury does mean Translink breached its duty of care. Mr. Ramos must establish the existence of a hazard that caused the fall, and that Translink negligently caused the hazard to be present: *Newsham v. Canwest Trade Shows Inc.*, 2012 BCSC 289, at para. 96-98.

**i. Alternate Access Route**

[26] In my view, Translink’s duty of care was not fully satisfied by providing a paved pathway between the train platform and the bus loop.

[27] First, it was foreseeable to Translink that some passengers would leave the pathway and take a more direct path to their bus stops. The volume of pedestrian traffic disembarking from the trains, the relatively narrow opening in the fence along the train platform and the layout of the bus loop all made it foreseeable that people would fan out once they passed through the opening in the fence, and not all stay on the pathway.

[28] Second, there was no apparent risk to a passenger in leaving the pathway to take a more direct path to their bus stop. The grass areas on either side of the

pathway were level, dry and maintained. The hard surfaces adjoining the grass areas, including the concrete ramp and bus loop sidewalk, were also apparently level and maintained.

[29] In *Dandell v. Thompson Rivers University*, 2013 BCCA 490, the Court of Appeal held that the existence of an alternate access must be part of all of the circumstances to be considered in applying the legal standard in any given case “where a choice of access - one safe, the other not - is made” (at para 13; emphasis added).

[30] This case is not analogous to *Dandell* on its facts. In *Dandell*, the plaintiff fell down an icy hill while walking from a parking lot to a building on a university campus. As noted by the Court of Appeal, the plaintiff was, by his own admission, “thoughtless” in regard to his safety: he chose to walk down what was a visibly icy slope instead of using a cleared sidewalk (para. 4).

[31] Likewise, in *Thomas v. The Roman Catholic Archbishop of Vancouver*, 2016 BCSC 1466, the plaintiff chose to cut across a grass field rather than following a sidewalk to her car in a parking lot owned by the defendant. Justice Skolrood, then a judge of this Court, noted:

[57] Here, as the plaintiff acknowledged, there was a sidewalk that provides direct access to the parking lot and there was nothing that impeded her use of the parking lot or that compelled her to cut across the grass area. The availability of the sidewalk supports a finding that the defendant took reasonable care to ensure that people attending the parish centre could access the parking lot in a safe manner.

[32] In this case, the direct route taken by Mr. Ramos to his bus stop was a reasonable and apparently safe choice, with no visible risk relative to the pathway. The small grassy area over which Mr. Ramos crossed over was not a sports field or an unmaintained alternate route to his destination. It was an integral component of a high-volume interchange area of a busy transit station. In my view, the existence of a paved pathway to the bus loop did not negate Translink’s duty to ensure that more direct routes to the bus stops were also reasonably safe.

**ii. The Existence of a Hazard**

[33] In my view, the combination of the raised edge of the ramp and the uneven grass height at the transition from the grass to the ramp surface on the day that he tripped created a hazard that caused Mr. Ramos to fall.

[34] In Mr. Araszewski's expert opinion, the 10 cm elevation change from the ground to the raised edge of the ramp where Mr. Ramos tripped posed a tripping or falling hazard to pedestrians.

[35] Further, in Mr. Araszewski's opinion, the raised edge of the ramp may not have been readily detectible during normal walking. In his opinion, the length of the grass at the transition to the ramp would have likely reduced the ability of a pedestrian in Mr. Ramos' position to identify and detect the raised edge.

[36] The photographs show that, on the day that Mr. Ramos tripped, grass obscured the elevation change from the ground to the level of the ramp. It also obscured the slope of the ramp, and the fact that the ramp was higher on Mr. Ramos' right than on his left. The uneven grass created a false impression of a relatively level transition between the grassy area and the concrete ramp surface.

[37] I accept Mr. Ramos' evidence he did not see the raised edge of the ramp. It was obscured by the grass. While the edge of the ramp was visible where a trough had been worn in the grass, this small glimpse of the edge would not have alerted Mr. Ramos to the tripping hazard unless he was looking at his feet.

[38] One could not reasonably expect Mr. Ramos, while navigating his way through a busy transit station, to be looking at his feet. Rather, one would expect him to be maintaining an awareness, as he says he was, of the bus traffic and other pedestrians around him.

[39] Mr. Araszewski also opined that the position of the sun and the shadow cast by a nearby bus would likely have further reduced Mr. Ramos ability to detect the raised edge of the ramp. However, Mr. Ramos did not provide any evidence that the

sun was in his eyes or that he had difficulty seeing where he was going because of the shadows. Accordingly, I put no weight on these additional opinions by Mr. Araszewski.

**iii. Breach of the Duty of Care**

[40] I find that Translink breached its duty of care and is liable to Mr. Ramos for the injuries caused by his fall.

[41] Translink's duty under the *Occupiers Liability Act* was to take reasonable care to ensure that the premises were safe. What constitutes reasonable care will vary on the facts of each case. The duty is premised on three elements:

- a) actual or constructive knowledge of the hazard;
- b) foreseeability of the consequences of failing to abate the hazard; and
- c) the ability to abate the hazard.

*Wilson v. Canadian Motor Inn Ltd.*, 2010 BCPC 46, at para. 22.

[42] Translink knew or ought to have known of the tripping hazard in this case. It knew that there was a concrete ramp in the interchange area of the transit station, with an elevation change from the adjacent ground surface. It also knew that grass abutted the concrete ramp and that grass will grow and may obscure the raised edge of the ramp.

[43] Further, as stated, it was foreseeable to Translink that some passengers would leave the brick pathway and take a more direct path to their bus stops. Translink knew or ought to have known that passengers followed various paths through the interchange area, including the direct route to the bus stop across the grass on the right side of the brick pathway that would take them onto the low concrete ramp.

[44] Accordingly, it was reasonably foreseeable to Translink that a passenger could injure themselves if the raised edge of the concrete ramp was obscured by the grass.

[45] Translink points out that there is no evidence of anyone else injuring themselves by tripping and falling on the concrete ramp. Mr. Ramos himself passed through this station on a regular basis, presumably taking a similar route to his bus, for approximately two years, without injuring himself.

[46] Prior safe use is a relevant factor in determining whether premises are reasonably safe; however, it is not determinative: *Cahoon v. Wendy's Restaurant*, 2000 BCSC 629, at para. 16. The fact that there were no prior incidents may be fortuitous, but it does not mean that the risk was not present: *Gelowitz v. Revelstoke*, 2022 BCSC 46, at para. 169; aff'd on other grounds, 2023 BCCA 139.

[47] In this case, the tripping hazard existed when the grass obscured the raised edge of the concrete ramp and a pedestrian approached the ramp at a particular angle. This may explain why there is no evidence of prior incidents. However, it does not mean that a hazard was not present on the day that Mr. Ramos injured himself.

[48] Translink had the ability to abate the hazard by cutting the grass at a uniform height low to the ground to ensure that the raised edge of the concrete ramp was clearly visible to a pedestrian accessing the bus stop.

[49] Translink cut the grass in this way following the incident in question. The difference in visibility is noticeable in the photographs. In particular, the edge and slope of the ramp are very clearly visible in the photographs taken by Mr. Araszewski on October 31, 2019.

[50] Remedial measures taken after an incident are not necessarily determinative that such steps were taken to comply with a duty of care. Remedial steps are only a factor to consider: *Cahoon*, at para. 21.

[51] In this case, the photographs of the scene of Mr. Ramos' fall demonstrate that the risk of injury was foreseeable to Translink and that Translink could readily have abated the hazard at a nominal cost.

**iv. Contributory Negligence**

[52] Translink argues, in the alternative, that Mr. Ramos failed to exercise due care in traversing over the grass area, and is fully or partially at fault for his injuries. I disagree.

[53] A finding of contributory negligence requires proof of foreseeability of harm to oneself. The defendant must also prove that the plaintiff's failure to take reasonable care contributed to the injuries suffered. *Ackley v. Audette*, 2017 BCCA 283, at para. 24 and 27.

[54] For the reasons discussed above, I would not find that Mr. Ramos breached his duty to take care of himself simply by leaving the brick pathway and taking a more direct route to his bus stop. The direct line to the bus stop was a reasonable choice, with no foreseeable risks to his safety relative to the pathway.

[55] Once he took the unpaved route to his bus stop, Mr. Ramos needed to be aware of transitions to different ground surfaces and of possible ramps or curbs along his route. However, Mr. Ramos could not be expected to avoid a tripping hazard he could not see.

[56] I do not agree with Translink that, had he exercised a modicum of awareness, Mr. Ramos would have seen the raised edge of the concrete ramp. That might be an argument had the grass been cut short and uniform along the edge of the ramp. On the day in question, however, the edge was obscured by the grass.

[57] Mr. Ramos might have seen the raised edge through the grass if he was looking at his feet. However, as discussed above, one could not reasonably expect Mr. Ramos to be looking at his feet as he walked through a busy transit station.

[58] In *Davis v. Kin's Farm Market (Lynn Valley) Ltd.*, 2010 BCSC 677, Justice Bruce commented on the obligation of a patron to keep a proper lookout while walking through a shopping mall:

[62] In my view, it is not reasonable to expect Mr. Davis to be staring at his feet as he walked through the mall towards the Shoppers Drug Mart. Had he positioned his head in a downward direction to detect possible hazards on the floor, Mr. Davis may have stepped over the grapes in his path; however, he may also have run into another mall patron possibly causing damage to himself and the other person. It is also understandable that Mr. Davis would not be cognizant of the risks associated with walking in the common area of the mall adjacent to Kin's Market, particularly as he was three to four feet from the display tables. He was not inside the store where he may have been alerted to the possibility of produce that had fallen to the floor. Lastly, I find Mr. Davis' circumstances are similar to that found by the Court of Appeal in *Coulson*. The tenants in the mall design their displays to attract customers' eyes. They do not encourage patrons to keep their eyes on the floor ahead of their feet. As Bauman J. (as he then was) said in *Dufty v. Great Pacific Industries Inc.*, 2000 BCSC 1474, [2000] B.C.J. No. 1988 at para. 44:

[44] As to the issue of contributory negligence, it has been said many times, most recently by Justice Burnyeat in *Coleman v. Yen Hoy Ent. et al*, 2000 BCSC 276 [In Chambers], that while there is a duty on the plaintiff to be aware of her surroundings, it is not the case that she is required to "glue her eyes to the ground."

[emphasis added]

[59] Although the environment of the unpaved area of a transit station is different from that of the concourse of a shopping mall, the logic of *Davis* and similar decisions is compelling. While there was a duty on Mr. Ramos once he left the pathway to be aware of changing ground surfaces, he was not required to 'glue his eyes to the ground'. If he kept his eyes glued to the ground, he may have seen the edge of the ramp, but he also may have run into another passenger.

[60] For these reasons, I am not persuaded that Mr. Ramos should be held fully or partially at fault for the injuries caused by his fall.

### **III. DAMAGES**

[61] The basic rule of causation for negligence is that the plaintiff must show on a balance of probabilities that "but for" the defendant's negligent act, the injury would not have occurred. Inherent in the "but for" test is a requirement that the defendant's

negligence was necessary to bring about the injury - in other words, the injury would not have occurred without the defendant's negligence. *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13–17; *Clements v. Clements*, 2012 SCC 32 at para. 13.

[62] Mr. Ramos asks the Court to assess his damages on a summary trial.

[63] A court may assess damages on a summary trial, as was done by Justice Garson as a judge of this Court in *Gee v. Elivira and Matzhold*, 2001 BCSC 1210. However, Mr. Ramos bears the onus of proving his damages, and the evidence on the application must satisfy the court as to the nature, extent and duration of his injuries (*Gee*, at para. 34).

[64] In approaching the evidence, I adopt the view expressed by Justice Macdonald in *Elyk v. John Doe* (14 March 1996), Vancouver Registry No. B944146, and followed in a number of subsequent cases, including *Bucher v. McClaugherty*, 2001 BCSC 665, that where a plaintiff chooses a summary trial procedure, they bear the risk of any uncertainty arising as a result of that process, and doubt on the issue of damages should be resolved in favour of the defendant.

#### **A. Evidence of Mr. Ramos' Injuries**

[65] Mr. Ramos relies on his affidavit and two reports by Dr. Trevor Stone, an expert in orthopedic trauma and lower extremity reconstruction who also treated Mr. Ramos for his injuries.

[66] The fall occurred on April 24, 2018.

[67] Mr. Ramos fell on his right side. His right hand, shoulder, leg and knee struck the concrete surface of the ramp. He suffered lacerations to the fingers on his right hand. His pants ripped, and blood splattered on the ramp surface.

[68] Mr. Ramos was in immediate pain. He could not move his right arm. He was transported by ambulance to Eagle Ridge Hospital. Medical staff at the hospital reset his right shoulder and he was fitted with a sling to immobilize the right arm.

[69] Mr. Ramos is right hand dominant.

[70] On May 8, 2018, Dr. Stone diagnosed Mr. Ramos with a right anterior- inferior shoulder dislocation with a very small bony Bankart fracture fragment (an injury commonly associated with a shoulder dislocation). Dr. Stone recommended non-surgical treatment, consisting of a sling for two to three weeks, followed by physiotherapy.

[71] Mr. Ramos wore the sling and attended physiotherapy for approximately eight or nine sessions. Despite this, he reported persistent right shoulder pain and limitations to Dr. Stone.

[72] In a report dated April 14, 2020, almost two years after the incident, Dr. Stone wrote:

The current diagnosis of Mr. Ramos' shoulder pain is unclear. Potential causes of pain following a first-time adult shoulder dislocation could include rotator cuff pathology such as a partial or full thickness rotator cuff tear, labral tear or similar internal derangement. Either of these diagnosis could explain Mr. Ramos' current symptoms.

The best manner in which to diagnose these injuries would be through an MRI of the right shoulder and I would recommend that this be undertaken.

Mr. Ramos also describes numbness in the lateral 2-3 digits of the right hand, which he states started after the slip and fall injury of April 24, 2018. The explanation for this numbness is likely nerve entrapment. The source of this nerve entrapment is at the wrist, elbow, shoulder and / or neck. It is not possible to differentiate without further testing. I would recommend an EMG nerve conduction study, which could be done through a neurologist or physiatrist and would provide insight into the level of the nerve entrapment, which would better define its relation to the subsequent trauma sustained in the slip and fall injury

[73] Mr. Ramos attended an MRI of the right shoulder on September 28, 2020. The MRI showed that the tendons of the rotator cuff were intact. It revealed an indent on the humeral head (the ball of the upper arm bone), known as a Hill Sach's lesion, a soft tissue injury in the shoulder known as a Bankart lesion and a partial tear of the long head of biceps.

[74] In an addendum report dated April 20, 2021, Dr. Stone wrote:

A Hill Sach's lesion is common following an anterior shoulder dislocation... This would be graded as a small lesion.

... A Bankart lesion... is also a characteristic finding following an anterior shoulder dislocation.

....

...[T]he probability of Mr. Ramos encountering additional dislocations is low.

...

With regards to Mr. Ramos' shoulder pain, based on the MRI results, it is likely that the source of his pain is the long head of biceps. The long head of biceps is a very common source of anterior shoulder pain and can occur with or without shoulder dislocation.

[75] Mr. Ramos deposed in December 2022 that the symptoms from the injuries he sustained to his right shoulder and right knee plateaued in or around early 2019.

[76] He deposed that he continues to suffer persistent discomfort and limitation in his right shoulder, right leg and right knee. He can no longer play badminton or squash because of the pain and discomfort in his right shoulder. Longer walks and bike riding are also problematic because of the discomfort in his right leg and knee. His injuries have limited the physical activities with his two young children, because playing with them can aggravate his shoulder. Heavier maintenance tasks around the house can also be difficult and cause pain.

[77] There is no evidence Mr. Ramos attended for an EMG nerve conduction study or consulted with a neurologist or physiatrist to diagnose the residual numbness in his right hand.

[78] Mr. Ramos is not advancing a claim for lost wages; he carried on with his job despite his injuries.

### **B. Findings on Injuries**

[79] Mr. Ramos dislocated his right shoulder and suffered minor, albeit painful, injuries to his right hand, leg and knee when he fell on the concrete surface of the ramp.

[80] The shoulder dislocation restricted Mr. Ramos' use and mobility of his dominant hand for several weeks following the fall. He continued to experience pain in the right shoulder months and years later. His affidavit attesting to continuing complaints was sworn four-and-a-half years after the incident.

[81] There is no reason to doubt the veracity of Mr. Ramos' affidavit evidence. I accept his evidence that he continues to suffer pain in his right shoulder. However, Mr. Ramos has failed to establish a "but for" causal connection between his current shoulder pain and the incident in 2018. Dr. Stone's opinion from April 2021 is equivocal in this regard. According to Dr. Stone, the most likely source of the persistent pain is the long head of biceps, but the long head of biceps is a very common source of shoulder pain that can occur with or without shoulder dislocation.

[82] The evidence is sufficient to find on a balance of probabilities that Mr. Ramos suffered some persistent pain as a result of the shoulder dislocation and minor lesions and soft tissue injuries to the shoulder in May 2018, but not the full extent of the discomfort and limitations he describes in his December 2022 affidavit.

[83] Likewise, Mr. Ramos has failed to establish a "but for" causal connection between his current knee pain and the incident in 2018. There is no mention of any knee pain in either report by Dr. Stone. This is notable because counsel's instructions to Dr. Stone included a request for:

A summary of our client's symptoms and complaints since the accident and that present, including your findings on examination.

...

Your diagnosis of our client's condition.

[84] A knee injury would have been squarely within Dr. Stone's area of expertise. I infer from the lack of any mention of knee pain in either of Dr. Stone's reports that the knee was not a concern for Mr. Ramos when he gave his history to Dr. Stone.

[85] I recognize that a plaintiff need not adduce expert evidence to prove a physical injury. It is open to the court, in the absence of medical opinion, to find that

a plaintiff suffered injuries due to the defendant's negligence: *Saadati v. Moorhead*, 2017 SCC 28.

[86] However, in this case, on a summary trial application, Mr. Ramos' subjective evidence of long-term knee pain and limitations, untested by any cross-examination, is not sufficient on its own to establish causation.

[87] In my view, the evidence is sufficient only to find that Mr. Ramos suffered a painful blow to his knee in May 2018 that resolved normally and without complications.

### **C. Non-Pecuniary Damages**

[88] Non-pecuniary damages (or damages for pain and suffering) are assessed based on a non-exhaustive list of factors set out by the Court of Appeal in *Stapley v. Hejslet*, 2006 BCCA 34. In *Stapley*, Justice Kirkpatrick described the factors as follows:

[46] The inexhaustive list of common factors cited in [*Boyd v. Harris*, 2004 BCCA 146] that influence an award of non-pecuniary damages includes:

- (a) age of the plaintiff;
- (b) nature of the injury;
- (c) severity and duration of pain;
- (d) disability;
- (e) emotional suffering; and
- (f) loss or impairment of life;

I would add the following factors, although they may arguably be subsumed in the above list:

- (g) impairment of family, marital and social relationships;
- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and
- (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[89] More recently, in *Callow v. Van Hoek-Patterson*, 2023 BCCA 92, the Court of Appeal instructed that determining an appropriate range of non-pecuniary damages

“entails ascertaining the upper and lower range for damage awards in the *same class of case*” (emphasis in original): at para. 19. Given no two cases are alike, defining the class is “a generalized exercise that takes place at a high level of abstraction”: *Callow* at para. 19.

[90] In *Callow*, the Court described the plaintiff’s situation as follows at para. 22:

A person in their 20s who sustained moderate soft tissue injuries to their neck, back, and shoulders which, despite treatment, remained symptomatic for years. Although their condition has improved, they will continue to experience some pain flare-ups and the likelihood for future improvement is poor. With caution, can continue to participate in previous activities while monitoring physical exertion for pain.

[91] Based on this description, the Court found that the range of non-pecuniary damages for a person in the situation of the plaintiff in that case was \$50,000 to \$60,000 (at para. 23).

[92] At the high level of abstraction recommended by the Court in *Callow*, Mr. Ramos’ situation can be described in the following terms:

A person in their early 50s who sustained a dislocated shoulder in their dominant arm, lacerations to their hand and a minor knee injury. Despite treatment, the shoulder remained symptomatic for several years. A causal connection was not shown between the incident and persistent complaints five years after the event.

[93] Mr. Ramos seeks \$75,000 in non-pecuniary damages. He relies on: *Thomas v. Foskett*, 2020 BCCA 322 (non-pecuniary award of \$60,000); *Mitchell v. Martin*, 2016 BCSC 1544 (\$85,000); and *Legault v. Brock Shopping Centre Ltd.*, 2010 BCSC 687 (\$110,000).

[94] In my view, the range of non-pecuniary damage awards in the cases cited by Mr. Ramos is too high for this case. Although the cases involved shoulder injuries, as a generalized class, they concern injuries that were more severe and more lasting, with greater consequences to the injured person.

[95] Translink proposes an award of between \$25,000 and \$45,000. It relies on: *Hill v. Swayne*, 2012 BCSC 1126 (\$20,000, approximately \$25,000 adjusted for inflation); *Cegielka v. Grace*, 2020 BCSC 115 (\$40,000; approximately \$45,000 adjusted for inflation); *Assadimofrad v. Cowan*, 2020 BCSC 1276 (\$40,500; approximately \$45,000 adjusted for inflation); and *Saopaseuth v. Phavongkham*, 2014 BCSC 887 (\$30,000; approximately \$37,000 adjusted for inflation).

[96] In my view, the cases cited by Translink provide an appropriate range of non-pecuniary damages in this case. While the cases largely involved mild to moderate soft tissue and whiplash injuries causing chronic pain, as a generalized class, they fairly represent Mr. Ramos' situation on the evidence in this application.

[97] Taking the mid-point of the awards in those cases, I award Mr. Ramos \$38,000 in non-pecuniary damages.

#### **D. Special Damages and Health Care Costs**

[98] Mr. Ramos seeks special damages in the amount of \$5,822.03. All of his claimed expenses are uncontroversial: they include physiotherapy, imaging, therapeutic injections, acupuncture and registered massage therapy. I allow the claim in full.

[99] The Ministry of Health advances a claim of \$1,644.29 pursuant to the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27. I allow this claim in full as well.

#### **E. Costs**

[100] Mr. Ramos seeks an award of special costs or increased costs.

[101] I see no basis on which to depart from the usual scale of costs. Mr. Ramos made use of the summary trial procedure to obtain a cost-effective resolution of his claim on its merits. Translink argued that the case was not suitable for a summary trial. Its position in this regard was neither frivolous nor obstructionist. Translink did not unreasonably delay or complicate the proceedings. The submissions by its counsel were reasonable and helpful to the Court.

**IV. CONCLUSION**

[102] I have found that Translink breached its duty of care to Mr. Ramos and is 100% at fault for the injuries caused by his fall.

[103] I award the following damages to Mr. Ramos:

- a) \$38,000 in non-pecuniary damages;
- b) \$5,822.03 in special damages; and
- c) \$1,644.29 in health care costs, subrogated to the Ministry of Health.

[104] Mr. Ramos is entitled to costs of the action at scale B.

“Elwood J.”

Appendix

