

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ghaly v. Mand*,
2023 BCSC 451

Date: 20230324
Docket: M189170
Registry: Vancouver

Between:

**Wagih Ghaly, on behalf of all persons entitled to benefit from the Estate of
Mariam Ghaly, deceased**

Plaintiffs

And

**Paul Mand, John Doe, Jane Doe, and The Insurance Corporation of British
Columbia**

Defendants

- and -

Docket: M191035
Registry: Vancouver

Between:

**Wagih Ghaly, Marina Ghaly, an infant, by her Guardian ad litem, Wagih Ghaly,
and Kyrollos Ghaly, an infant, by his Guardian ad litem, Wagih Ghaly**

Plaintiffs

And

**Paul Mand, John Doe, Jane Doe, and The Insurance Corporation of British
Columbia**

Defendants

Before: The Honourable Madam Justice Burke

Reasons for Judgment

Counsel for the Plaintiffs: N.A. McQuarrie

Counsel for the Defendant, Paul Mand: S.M. Katalinic

Place and Date of Trial/Hearing: Vancouver, B.C.
September 26–29, 2022
October 3–7 and 11–14, 2022

Place and Date of Judgment: Vancouver, B.C.
March 24, 2023

Table of Contents

I. INTRODUCTION	5
II. ISSUES.....	6
III. BACKGROUND.....	7
A. Pre-Accident Life.....	7
1) Wagih Ghaly	7
2) Marina Ghaly	10
B. The Accident and Its Immediate Aftermath	11
1) Wagih Ghaly	13
2) Marina Ghaly	13
3) Kyrollos Ghaly	15
4) Kereisha Gordon	17
5) Father Bisenty	18
6) Mary Bisenty Gerges	19
IV. TORT ACTION.....	20
A. Plaintiffs' Injuries	20
1) Wagih Ghaly	20
2) Marina Ghaly	22
(i) Doctor's Notes	24
(ii) Dr. Iris Sharir	26
3) Kyrollos Ghaly	29
(i) Dr. Tigerson Young.....	32
B. Causation.....	36
C. Non-Pecuniary Damages	37
1) Legal Principles	37
2) Wagih Ghaly	38
3) Marina Ghaly	41
4) Kyrollos Ghaly	42
D. Future Loss of Earnings or Income Capacity	44
1) Legal Principles	44
2) Application.....	45
(i) Marina Ghaly.....	49
(ii) Kyrollos Ghaly	51

E. Aggravated Damages..... 54

F. Cost of Future Care..... 55

V. FAMILY COMPENSATION ACT CLAIMS 56

A. Loss of Financial Support..... 58

 1) Legal Principles 58

 2) Positions of the Parties 59

 3) Economic Evidence 60

 (i) Robert Wickson..... 60

 (ii) Mark Gosling 65

 4) Analysis 69

B. Loss of Inheritance..... 73

 1) Legal Principles 73

 2) Positions of the Parties 74

 3) Analysis 75

C. Loss of Guidance, Care, and Companionship..... 75

 1) Legal Principles 75

 2) Positions of the Parties 75

 3) Analysis 76

VI. CONCLUSION 76

I. Introduction

[1] On October 1, 2017, Wagih Ghaly, Mariam Ghaly, and their two children, Marina Aziz Ghaly and Kyrollos Ghaly, were involved in a catastrophic motor vehicle accident in Surrey, British Columbia. (For clarity, I will refer to Wagih Ghaly as “Mr. Ghaly” and Mariam Ghaly as “Ms. Ghaly”. I will refer to the Ghaly children by their first names.)

[2] The accident resulted in Ms. Ghaly’s death, and injuries to the plaintiffs Mr. Ghaly, Marina, and Kyrollos. At the time of the accident, Marina was 15 and Kyrollos was 13.

[3] The plaintiffs have filed both a tort action and an action for damages under the *Family Compensation Act*, R.S.B.C. 1996, c. 126. The plaintiffs have joined the two actions and the evidence introduced at trial pertains to both.

[4] The parties filed an agreed statement of facts, which can be summarized as follows.

[5] On the date of the accident, the Ghaly family was driving from St. George Coptic Orthodox Church in Surrey, British Columbia, to Bellingham, Washington, where the family resided. Ms. Ghaly was driving a 2011 Honda CRV with Mr. Ghaly, Marina, and Kyrollos.

[6] The Ghaly’s vehicle left the road after a series of events created by the defendant Paul Mand, who was riding a Honda motorcycle and weaving through traffic on King George Boulevard at or near 48th Avenue. Mr. Mand attempted to pass on right side of the vehicle, causing it to leave the road and go tumbling down an embankment.

[7] The vehicle came to rest upside down. The Ghaly family was suspended in the air by their seatbelts, and water filled the vehicle.

[8] The family was extricated from the vehicle and transported to Royal Columbian Hospital in New Westminster, BC. Ms. Ghaly died on October 6, 2017, at

the age of 42, as a result of the injuries sustained in the accident. The cause of death was hypoxic encephalopathy, with the antecedent cause being drowning.

[9] The defendants have admitted liability for the accident. They also concede that the plaintiffs were injured in the accident. They, however, contest the nature, extent, and duration of the injuries. They also dispute the amounts the plaintiffs seek under certain heads of damages.

[10] The parties have reached agreements with respect to several issues under both actions. With respect to the tort claim, they have agreed to the quantum of special damages for all three plaintiffs and past wage losses of \$34,374 for Mr. Ghaly.

[11] They have also agreed to the amount of certain damages awarded under the *Family Compensation Act*, including \$59,975.56 for hospital expenses, \$19,945.78 for funeral expenses, \$83,400 for past loss of household services, and \$370,000 for future loss of household services.

[12] The remaining issues to be determined are the quantum of damages in both the tort and statutory actions.

II. Issues

[13] The issues in the tort action with respect to each of the plaintiffs are:

- 1) What is the nature, extent, and duration of the injuries caused by the accident?
- 2) What is the appropriate award of non-pecuniary damages for pain and suffering for each of the three plaintiffs?
- 3) What is the appropriate award for future loss of earnings or income earning capacity for Marina and Kyrollos?
- 4) What amount, if any, should be awarded for cost of future care for each of Mr. Ghaly, Marina, and Kyrollos?

[14] With respect to the claims under the *Family Compensation Act*, the issues to be determined are:

- 1) What is an appropriate award for the loss of financial support, if any, arising from the death of Ms. Ghaly?
- 2) Is there a claim for loss of inheritance?
- 3) What is an appropriate award for loss of love, guidance, and affection for Marina and Kyrollos following the death of their mother?

III. Background

A. Pre-Accident Life

1) *Wagih Ghaly*

[15] Mr. Ghaly was born on February 7, 1968, in Egypt. Ms. Ghaly was born on September 15, 1975, also in Egypt.

[16] Mr. Ghaly began the process of immigrating to Canada in 1993. Mr. Ghaly had been raised in a Christian family, and the move was motivated by a desire to escape the difficulties he and his family experienced as Christians in Egypt.

[17] Mr. Ghaly met his wife because they had been neighbours in Egypt. He described her as a girl raised in a good family. Ms. Ghaly was the oldest daughter in her family, having two brothers and one sister. While her father died young in 1992, her mother is still alive in Egypt.

[18] Mr. Ghaly told Ms. Ghaly of his plan to immigrate to Canada, as he wanted to see if she was willing to leave her family to immigrate with him. She agreed to the plan, and he told her that he would return in three to four years. In the meantime, Ms. Ghaly went to an Egyptian University and completed a science degree. Her passion was to become a doctor and/or work in the healthcare field.

[19] Mr. Ghaly received his visa and moved to Canada in January 1997. While Mr. Ghaly had completed a civil engineering degree in Egypt, it took some time to

obtain his credentials in Canada. Initially, Mr. Ghaly undertook a draftsman course at Vancouver Community College. After completing the course, he was hired in that capacity by a Vancouver company in February 2000. In November of that year, he was promoted to engineer, working under the supervision of a licensed engineer.

[20] Soon after, Mr. Ghaly returned to Egypt to sponsor his fiancée, Mariam Ghaly. Ms. Ghaly arrived in Canada in January 2001. The two were married on April 4, 2001. Mr. Ghaly said that by moving to Canada, the couple sacrificed the support of their family in exchange for the freedom and promise of a good life.

[21] When Ms. Ghaly arrived in Canada, the couple discussed their desire to have children and Ms. Ghaly's aspirations to get her degree and pursue her career goal.

[22] The couple's daughter, Marina, was born in Richmond, BC, on May 29, 2002. After Marina's birth, Ms. Ghaly attended the British Columbia Institute of Technology part time with the goal of applying for the nursing program.

[23] This plan was, however, affected by her second pregnancy. Their son, Kyrollos, was born on March 24, 2004, in Richmond, BC.

[24] The lack of family support meant challenges for Mr. and Ms. Ghaly while raising their young family, as they had only each other to help with the family duties. Mr. Ghaly worked to provide for the family financially, and Ms. Ghaly supported the household and raised the children.

[25] Mr. Ghaly indicated that while, historically speaking, women in Egypt largely did not enter the workforce, by the 1970s and 1980s, it was more common for women to work, and the couple planned for Ms. Ghaly to eventually pursue her career. In particular, his wife expected to pursue her career once the children had finished their education. In cross-examination, Mr. Ghaly agreed that she would likely have remained in the home supporting the children during university. Eventually, however, the couple had envisioned Ms. Ghaly pursuing a career in healthcare.

[26] Mr. Ghaly said his marriage was one of the happiest events in his life. The couple had been engaged for four years, and he felt fortunate to have found someone who was supportive of his idea to move to Canada. Mr. Ghaly said Ms. Ghaly made him happy in every aspect of his life. She took care of everything with respect to the house, including cooking the family's meals. She also cared for the children, providing assistance with their homework and education as well as spiritual guidance.

[27] Mr. Ghaly's testimony demonstrated his deep love and affection for his wife and the strong family unit she had created. They lived what Mr. Ghaly described as a Christian life where they accepted each other as they were, including their weaknesses. He also made clear he appreciated the sacrifice she had made in leaving her family to come to Canada to support him. In describing Ms. Ghaly, Mr. Ghaly referenced Proverbs 31:10, saying that the worth of a virtuous wife is far above rubies. It is clear that the Ghalys was a uniquely close and special family unit, with Ms. Ghaly being in large part responsible for their cohesion.

[28] Mr. Ghaly's work life took him to a number of different locations. In 2003, he passed the exam to become an engineer-in-training in Washington State. In 2005, he qualified as a licenced professional engineer in Washington. After that, he applied to and became a licenced professional engineer in Canada.

[29] In September 2005, Mr. Ghaly started working at a company in Bellingham. The family continued to live in Canada until March 2006 when, due to Mr. Ghaly's consistently long commute, the family moved to Bellingham. Mr. Ghaly then worked for Anvil Corporation from 2006 to 2009.

[30] In April 2010, Mr. Ghaly was hired by Solaris Management in Surrey until February 2012. Due to the vagaries of the economy, he was forced to look for work elsewhere, finding a job in Calgary from February 2012 to January 2015. He returned to Anvil Corporation in Bellingham, working there from March 2015 to August 2015. He then worked at another company in Lynnwood, Washington, from October 2015 to January 2017. In April 2017 he began to work for Associated

Consultants Corporation in Vancouver, Washington, until the time of the motor vehicle accident in 2017.

[31] Wherever Mr. Ghaly was working, he would return to the family home in Bellingham, Washington, each weekend, so he could continue to be an essential part of his family's life.

[32] A large part of the family's life involved their church, which Mr. Ghaly referred to as the Apostolic Church. Mr. Ghaly indicated the Apostolic Church is well-established in North America, having more than 150 places of worship across Canada. As the family initially lived in New Westminster and Richmond, they established ties to and attended the St. George Coptic Orthodox Church in Surrey, BC, which belonged to the Western Canada Diocese.

[33] The family would attend services commencing around 8:00 AM and lasting until 11:15 AM or 11:30 AM on both Saturday and Sunday. In addition, Ms. Ghaly was a "Sunday servant", a role roughly equivalent to a Sunday school teacher which she would undertake after church services. The family would attend special events for Christmas, Easter, and other important dates, where they would socialize with other members of the congregation.

[34] Despite the family's move to Bellingham, they continued to drive to Surrey to attend the St. George Coptic Orthodox Church every Saturday and Sunday. Indeed, it was when they were returning home from a Sunday church service that the accident occurred.

2) Marina Ghaly

[35] Ms. Ghaly's daughter, Marina, testified in this matter. At the time of the accident, she was 15. At the time she testified, she was 20.

[36] Marina testified that her parents had instilled in her values that included the need to get an education and work hard to get good grades so she could become a well-respected professional. They also taught her that she should one day start her

own family and pass these values on. Her mother helped her everyday with her homework and gave her tips to help better understand her assignments. Marina noted her mother would even take time during the day to research some of the topics that Marina was studying so she could better assist and support her.

[37] As Mr. Ghaly noted in his testimony, Marina said that the family was very involved with the St. George Coptic Orthodox Church in Surrey, and spent Saturdays and Sundays at church services and activities. Like her mother, Marina was also a “Sunday servant” at the church, providing general assistance and teaching the Coptic language. During the summer, she would also attend church on Tuesdays and Thursdays, to assist with the activities involving the children of the church.

[38] Marina testified she had a special bond with her mother. The two enjoyed a strong relationship, with Ms. Ghaly essentially being Marina’s best friend. Marina said her mother was always there for her, being particularly helpful when it came to her daily studies and any issues that she had.

[39] Marina said her mother lived a simple lifestyle, always putting others before herself. She provided Egyptian-style cooking to the family and, when a household purchase was required, Ms. Ghaly would discuss it with the family, who would as a group make a decision.

[40] Marina indicated that her mother inspired her to want to be a doctor. Ms. Ghaly loved being a nurse and was passionate about healthcare and helping others. Marina said her mother told her that she hoped to return to school at the Bellingham Technical College to transition from a licenced practical nurse (“LPN”) to a registered nurse (“RN”) once Marina and Kyrollos had finished their education.

B. The Accident and Its Immediate Aftermath

[41] The accident occurred on October 1, 2017, on King George Boulevard at or near 48th Avenue in Surrey, British Columbia. The family was returning to their residence in Bellingham, Washington, from a service at St. George Coptic Orthodox.

Ms. Ghaly was driving, Mr. Ghaly occupied the front passenger seat, Marina was in the rear driver-side seat, and Kyrollos the rear passenger-side seat.

[42] King George Boulevard is a two-lane arterial roadway that approaches Surrey in a north-south orientation. It is bordered by a thin gravel shoulder, which separates the road from a grassy embankment leading to a ditch through which flows stagnant farm runoff. Both the plaintiffs and an eyewitness, Kereisha Gordon, testified to the condition of the water, with Ms. Gordon describing it as “non-viscous” and “sludge”. The speed limit for the section of King George Boulevard where the accident occurred was 70 kilometres per hour. At the time of the accident, the road was in good repair, and weather conditions were clear.

[43] As the Ghaly vehicle was approaching 48th Avenue, Ms. Ghaly changed lanes into the right slow lane. According to Kyrollos, Marina, and Ms. Gordon, Mr. Mand, who was driving on his motorcycle on King George Boulevard, overtook the Ghaly vehicle on the rightmost side of the right lane of the roadway while speeding. Ms. Gordon, whose testimony is set out in detail later in these reasons, confirmed the motorcycle was bobbing and weaving through traffic before and after the accident. Ms. Gordon’s testimony on this point is corroborated by video footage reflecting these actions, which was captured by a front-facing camera located on a bus operated by Coast Mountain Bus Company and entered as evidence in this case.

[44] Upon seeing Mr. Mand passing on her right, Ms. Ghaly turned left to avoid a collision, which directed the Ghaly vehicle towards the centre concrete median. Ms. Ghaly corrected the direction of her vehicle again to avoid impacting the median. Subsequently, her vehicle swerved to the right, ultimately leaving the roadway. The vehicle came to a rest upside down in the ditch running alongside the roadway. Each of the plaintiffs testified that they feared for their lives as farm runoff began to fill the vehicle. The occupants’ heads were submerged in this runoff, and the family was trapped in the car for approximately eight minutes. They were eventually freed from

the vehicle when good Samaritans smashed the window located on the rear hatch of the vehicle, allowing them to be extricated.

1) Wagih Ghaly

[45] Mr. Ghaly testified that Ms. Ghaly had volunteered to drive to and from the St. George Coptic Orthodox Church in Surrey, as she knew that her husband had a long five-to-six-hour drive back to his workplace in Vancouver, Washington.

[46] Mr. Ghaly does not remember much of the accident itself. He does, however, recall the “flash” of the motorcycle. He also recalls Ms. Ghaly’s attempts to avoid both the motorcycle and the concrete barrier in the middle of the roadway before the vehicle left the road. Ultimately, the vehicle landed in the ditch adjacent to the roadway, and Mr. Ghaly did not realize they were upside down. He described how he was initially unable to breathe because he was submerged in water when, all of a sudden, the water went down and he was just able to breathe if he moved his mouth slightly. He heard his wife praying. He heard her last words as she extended her hand to his and then held his hand without speaking further. He heard his children yelling for help, and he started to see people. Ultimately, the family was extricated from the vehicle. Despite the fact that CPR was being performed on Ms. Ghaly, he felt she had died.

[47] Mr. Ghaly testified his wife was his life. When she died, he felt it was the end of the world for him, and the life they had built together had collapsed.

2) Marina Ghaly

[48] Marina’s recollection of the accident is similar to that of her father. She indicated that prior to the accident, it was a normal Sunday for the family, who were heading to a service at their church. The church service lasted from 8:30 AM to approximately 11:45 AM. After some socializing and a visit to the church’s prayer chapel, Ms. Ghaly began to drive the family back to Bellingham.

[49] Marina testified that her mother was about to switch lanes when a motorcycle, which Marina had noticed weaving back and forth between lanes, came from behind

and swerved to pass the Ghaly vehicle on its right side. Marina said her mother attempted to avoid the motorcycle. The vehicle left the road, rolled down the embankment and, after turning over a couple of times, landed upside down in the roadside ditch. Marina indicated that she could hear her brother's voice crying for help, but she could not hear her parents.

[50] Marina testified she was suspended by her seatbelt and noted that the seatbelt likely saved her life. She noted that there was dirty water in the ditch and the vehicle, but she was able to breathe. While she could feel water on some parts of her face, the front of her face was above water level. She assumed her parents were submerged because she could not hear them, and she thought she had lost them.

[51] Marina said a good Samaritan was able to cut off her seatbelt and pulled her out of a window. Once she was out of the vehicle, she observed the front of the vehicle, where the passenger and driver would sit, were in the deepest part of the ditch. She then observed workers performing CPR on her mother, but could not watch. Marina said she "knew [Ms. Ghaly] was gone", as she had studied the circulatory system and understood the harm caused by oxygen deprivation.

[52] Marina was taken to Royal Columbian Hospital in an ambulance by herself. All of her clothing was caked in mud, and hospital staff helped clear the mud off. She was given her own room and provided with a hospital gown and blankets because she was shivering. At this time, she was scared and felt she had lost her mother. She testified that she could not believe that the accident had happened.

[53] Relatively soon after her arrival, Father Bisenty Gerges, the parish priest to the St. George Coptic Orthodox Church, came to Marina's room. At that point, she believed her mother had died.

[54] She testified that someone then came into her hospital room and said her mother had a weak pulse, but Marina she said she felt she knew where this would end.

[55] Ultimately, Father Bisenty and his wife took Marina and Kyrollos to his house to care for them. He and his wife purchased the Ghaly children clothes. They also attempted to distract the children from thinking about the accident by having them visit the home of the Bisenty's adult daughter and grandchildren.

[56] Later, Marina returned to the hospital and saw her mother lying in a hospital bed. She stated that she felt horrible, as she was unable to hug her. Mr. Ghaly was spending all day at the hospital during this time. On October 6, 2017, Mr. Ghaly returned to the house early and advised the family of Ms. Ghaly's death. Marina indicated her younger brother "exploded at the moment". While Marina tried to stay composed, that evening she also fell apart emotionally. While Father Bisenty's wife attempted to comfort her, Marina testified that these emotions have never gone away, and she is still crying.

[57] Marina said she was shattered after her mother died. She felt she had lost a part of herself. She was unable to sleep, eat, or do anything. She says these feelings have persisted since the accident. In addition, Marina has a sense of guilt, as she felt she had a responsibility to warn her mother about the approaching motorcycle once she noticed it approaching them. She felt she could have prevented the accident, and she feels guilt and regret despite having been told it is not her fault.

3) *Kyrollos Ghaly*

[58] Kyrollos Ghaly testified in this matter. At the time of the hearing, he was living in the Ghaly family home in Bellingham and had just commenced his first year as a student at Western Washington University. Presently 18, he was 13 when Ms. Ghaly died in the accident.

[59] Kyrollos also testified regarding his recollection of the accident. He recalled a motorcycle cutting the Ghaly vehicle off causing Ms. Ghaly to lose control. The vehicle swerved towards the concrete median. Ms. Ghaly steered to avoid it, causing the vehicle to leave the road.

[60] The vehicle then flipped and ultimately came to rest in the ditch. He recalls being upside down. There was dirty water in the vehicle, and he was holding his breath. He could hear his sister screaming and his father calling for help.

[61] He attempted to move, so he could open the door, but was restrained by his seatbelt. He testified that he had serious neck pain and an abrasion on his left hand. He remembered thinking he was not going to survive because of how much water was in the vehicle and the length of time he had to hold his breath.

[62] Kyrollos was eventually extricated from the vehicle. His clothes were cut off, and he was very cold. He was shaking, sad, upset, and scared because of the accident. He and his father were taken to the hospital by ambulance. His sister was placed in a separate ambulance.

[63] He thought his mother's condition was extremely bad, as he had not heard her speak during the accident. He felt sure there would be a terrible outcome.

[64] He said he and Marina stayed with Father Bisenty and his family, who took care of them and tried to distract them. On October 6, 2017, Mr. Ghaly returned to the house, gathered Kyrollos and Marina, and told them that Ms. Ghaly had passed away. Kyrollos said he was very angry, upset, very sad and cried along with his father and sister.

[65] After his mother's funeral, Kyrollos said he felt worse. He said he is still in denial about the accident: He still can not believe that it happened and that his mother has passed away.

[66] Kyrollos consistently described Ms. Ghaly as very nice, kind, compassionate, and supportive, academically and otherwise. Accordingly, to Kyrollos, she spent all her time taking care of the Ghaly children. While his father does his best, as he said, the care he provides "is not the same."

4) Kereisha Gordon

[67] Kereisha Gordon, a third-party witness to the accident, testified in this matter. She stated that she was driving on King George Boulevard at the time of the accident. As she was driving in the left lane of the roadway, a motorcycle cut her off, and she had to brake to avoid a collision. She described how the motorcycle repeatedly changed lanes as it weaved through traffic. As the motorcycle changed lanes for the last time that she observed, she was also changing lanes and caught a glimpse of something leaving the road. She then saw a splash from the ditch beside the road. Initially, she thought this was the motorcycle leaving the road, but then realized it was a car. She observed that the motorcycle continued to drive, and she did not see it stop. In her estimation, the accident took place within 15 to 30 seconds of the motorcycle initially cutting her off and forcing her to brake.

[68] Ms. Gordon confirmed that a video taken from the forward-looking camera of a bus depicting a motorcycle driven by the defendant Mr. Mand, weaving through traffic, was consistent with the behaviour of the motorcyclist she had observed just prior to and during the accident.

[69] After seeing the splash, Ms. Gordon pulled over to the side of the road, along with a sports utility vehicle which also stopped to assist. She ran down the embankment and observed a vehicle upside down in the ditch. She could hear voices coming from the vehicle, which was surrounded by sludge runoff from the surrounding farmlands that smelled like sewage. She and the driver of the other vehicle were unable to open the doors as the sludge was too thick.

[70] Ultimately, a good Samaritan was able to smash the vehicle's rear window with a hammer, and the Ghaly children were extricated. Ms. Gordon stated that Kyrollos was bleeding on one side of his face and covered in sludge.

[71] Soon after, first responders arrived, took control of the rescue, and freed Mr. Ghaly from the vehicle. Ms. Ghaly was the last to be rescued. Ms. Gordon noted her body was limp when she was placed on the ground. Mr. Ghaly appeared to be in shock.

[72] Bystanders tried to shield Ms. Ghaly from her children's view while she was defibrillated. Ms. Ghaly was then placed in an ambulance and taken away. Ms. Gordon indicated eight minutes elapsed from the time she stopped her car and ran down to the Vehicle to when the Ghaly children were freed.

5) Father Bisenty

[73] Father Bisenty Gerges, the parish priest for St. George Coptic Orthodox Church in Surrey, has known the Ghaly family for over 15 years. He met Mr. Ghaly when he first joined the church. Father Bisenty corroborated much of the family's testimony, including their strong connection to the church, regular participation in its activities, and the strength of the love and warmth between the family members. Father Bisenty called them a wonderful family who loved each other very much. He described Ms. Ghaly as sweet, gentle, and a real support to her children.

[74] Father Bisenty and his family played an essential role in supporting the family after Ms. Ghaly's death. In the aftermath of the accident, he allowed the Ghaly children to live in his home, and he supported Mr. Ghaly, who remained largely at the hospital during this time.

[75] Father Bisenty described Marina and Kyrollos' reactions to the trauma of the accident and Ms. Ghaly's eventual death. Immediately after the accident, when they still held out hope for Ms. Ghaly's survival, Father Bisenty said they were terrified and very afraid to lose their mother. When Ms. Ghaly died on October 6, 2017, the children initially could not believe it. These feelings of denial then dissipated, and Father Bisenty described them as devastated, terrified, and angry about Ms. Ghaly's death.

[76] Father Bisenty said he was also very sad and wept as Ms. Ghaly "was so close to me as a spiritual daughter". He and his family tried to provide support to Mr. Ghaly, Marina, and Kyrollos through regular visits and Bible study, and joining them in prayer—supports that he continued to provide to the Ghaly family at the time of the hearing. Father Bisenty's wife has had regular phone calls with Marina since

the accident, and has tried to take on a motherly role to support Marina. However, as Father Bisenty said, “nothing can compensate the loss of a mother”.

[77] Father Bisenty stated the family continues to be affected by Ms. Ghaly’s death. He also noted that while Mr. Ghaly’s religion allows him to remarry after the death of a spouse, Ms. Ghaly remains single due to his love for his deceased wife.

6) *Mary Bisenty Gerges*

[78] Mary Bisenty Gerges, the daughter of Father Bisenty, corroborated much of what Marina said with regards to her reaction to Ms. Ghaly’s death.

[79] Ms. Gerges has known the Ghaly family for many years, having met them through her involvement in the St. George Coptic Orthodox Church community.

[80] Ms. Gerges described Ms. Ghaly as a very kind, gracious human being who was very committed to her religion and devout. Ms. Gerges said that she was “always there” for Marina.

[81] With respect to Marina, Ms. Gerges noted that while she was generally quiet and studious, she was very mature for her age. She was also curious, asked many questions, and was generally very engaged in the church youth group. She noted that Marina consistently sat with her mother during church.

[82] With respect to Kyrollos, Ms. Gerges described him as very outgoing, bright, and friendly; sweet and kind.

[83] Ms. Gerges described the Ghalys as very kind and gracious people. She said that the Ghalys’ family dynamic was very close and tightknit, and that they largely kept to themselves.

[84] Ms. Gerges indicated that after the accident, she stepped up to assist the family. She would call Marina to chat with her about her emotions and pain. She attended Ms. Ghaly’s funeral.

[85] Ms. Gerges indicated that Marina told her she did not know how to move on. Marina's mother was her rock and best friend, and her death had caused a lot of sadness and anger. Marina had trouble falling asleep and focusing in class. Racing thoughts kept her up at night. She was in deep pain and sadness.

[86] Ms. Gerges became concerned and recommended to Mr. Ghaly that someone with expertise in supporting a person with trauma should be engaged to support Marina.

IV. Tort Action

A. Plaintiffs' Injuries

1) *Wagih Ghaly*

[87] Dr. Laura Klubben, a registered psychologist, assessed Mr. Ghaly on January 24, 2020. She conducted a clarification interview on November 18, 2020, by virtue of a structured interview and questionnaires over a three-to-five-hour period.

[88] Dr. Klubben indicated Mr. Ghaly was pleasant, polite, cooperative, and emotional throughout the assessment. As part of the assessment, Mr. Ghaly completed a clinical screening device called the Beck Depression Inventory, where he endorsed a number of items, including "I am sad all the time", resulting in a score that indicated a level of depressive symptoms in the "Severe range". His score on the Beck Anxiety Inventory suggests that he is socially detached with anxiety in the "Mild range".

[89] Mr. Ghaly also completed the Personality Assessment Inventory, resulting in a score that suggested he was probably despondent much of the time and had withdrawn from activities that were previously enjoyable. In addition, Dr. Klubben noted that Mr. Ghaly's clinical scores reflected a tendency to present himself as doing better than he actually was.

[90] On February 17, 2020, Dr. Klubben conducted a collateral interview with Father Bisenty as part of her practice of getting data from a variety of different sources. The interview corroborated Dr. Klubben's other findings, particularly that

Mr. Ghaly was depressed, became tearful when discussing the accident, lacked motivation, and was less social than he was prior to the accident.

[91] Based on the results of the assessment, questionnaires, and collateral information, Dr. Klubben was of the opinion that at the time of her assessments in 2020, Mr. Ghaly's psychological symptoms met the DSM-5 criteria for Posttraumatic Stress Disorder ("PTSD"); Persistent Depressive Disorder with Persistent Major Depressive Episode, Severe; and Generalized Anxiety Disorder. Prior to the accident, Mr. Ghaly had no history of psychological problems. If not for the accident, Dr. Klubben was of the opinion that Mr. Ghaly would not have the psychological problems with which she diagnosed him.

[92] With respect to Mr. Ghaly's prognosis of returning to his pre-accident psychological condition, Dr. Klubben was of the view that Mr. Ghaly's prognosis was "somewhat guarded". In her view, "[t]he course of his long-term psychological recovery will be based on a number of factors, particularly the availability of psychological intervention and rehabilitation services to help him with respect to his emotional recovery, and the absence of experiencing other traumatic events."

[93] Accordingly, Dr. Klubben recommended that Mr. Ghaly receive an initial block of 80 weekly-to-biweekly sessions of psychological intervention over the course of several years. The goals of treatment would be to improve his mood, anxiety, and trauma issues; to help him process the loss of his wife; to provide him with adaptive coping strategies; and to improve sleep hygiene. Following the sessions, an update assessment was recommended. Dr. Klubben noted it is not uncommon for individuals with chronic conditions to require an additional block of treatment beyond this point. Preferably, the treatment would be provided by a registered psychologist.

[94] In addition, Dr. Klubben recommended that when Mr. Ghaly is more emotionally stable, he become involved in a driver rehabilitation program in conjunction with psychotherapy. She recommended he begin with an "Active Passenger program," so that an occupational therapist could work collaboratively with his psychotherapist with the goal of lessening Mr. Ghaly's anxiety in vehicles.

[95] When cross-examined on the amount of treatment recommended, Dr. Klubben said her recommendations were not unusual, as it would require several layers of treatment over multiple days along with the maintenance program. Cross-examination also centred on whether Mr. Ghaly was suffering from grief and not PTSD. Dr. Klubben was clear that Mr. Ghaly was not suffering from a traditional grief pattern and was still suffering clinically significant psychological impacts attributable to the accident.

2) Marina Ghaly

[96] Marina testified that while Mr. Ghaly has attempted to fill the place in her life once occupied by Ms. Ghaly, no one can replace her mother. Mr. Ghaly has done everything he can to support her. However, she misses being able to discuss women's issues with her mother as well as the warmth and generous support Ms. Ghaly provided to the family. While she is able to discuss these issues with Father Bisenty's wife, Magdalene, who provided essential support in the days and months after her mother's death, it is still no substitute for her mother.

[97] After the accident, Marina did relatively well in high school. During the academic year following Ms. Ghaly's death, her teachers were understanding and would accommodate her requests if she could not do a test or assignment. Ultimately, Marina progressed through high school, receiving good grades and taking college-level courses in Grades 11 and 12 through "Running Start", a program aimed at lessening her university workload. Marina indicated she had planned on participating in "Running Start" with the support of Ms. Ghaly.

[98] Marina obtained her driver's license when she was 16. Despite this, she says that she has a fear of driving. Her driving anxiety is triggered when switching lanes, when drivers brake suddenly, when cars are going fast, and even when she is a passenger with her father driving. She freezes when changing lanes and refuses to drive unless absolutely necessary because she is afraid she could be hit or make a mistake. Since the accident, she also cannot bear to see videos or television shows that include motor vehicle accidents.

[99] Marina's future plans revolve around becoming a doctor. This was Ms. Ghaly's dream for her, and she wants to accomplish that.

[100] As part of her efforts to become a doctor, Marina has undertaken the Medical College Admission Test ("MCAT"). She found preparing for the exam to be difficult, and noted that her mother would have provided her with assistance, including insight into some of the subject matter (particularly biology and molecular biology) and tips on writing tests. She no longer has Ms. Ghaly's support and has found it challenging to pursue her studies.

[101] At the time of trial, Marina was in her third year at Western Washington University and has a grade point average of 3.5. In order to become a doctor, she indicated that she will need to improve her grade point average and/or her MCAT score. At present, she is not taking a full course load. She expects to graduate in 2024.

[102] To attend any of the medical schools in Washington State, Marina would have to move out of the family home. While all of these schools are difficult to get into, the University of Washington is both closest to her family and has the medical school to which acceptance is the most difficult to secure.

[103] Marina has also had two part-time jobs during the summers, working as both a dietary aid at an assisted living facility and a pharmacy assistant. In addition, she has shadowed an ophthalmologist. She plans to apply to be a medical scribe, as this would increase her chances of attending medical school.

[104] If she is unable to get into medical school, Marina has indicated she would consider becoming a physician assistant, although she was not as clear on the requirements for this career. She also noted the significant difference between salaries for physician assistants and doctors.

[105] Marina indicated that in the wake of her mother's death, she had turned to her church for support. She had regular conversations and visits with Father Bisenty, his wife, Magdalene, and another priest, who would allow her to discuss her feelings.

They would also provide her with messages and advice to relieve her emotional pain and provide her some peace. She noted that they had advised her not to keep her feelings bottled up. In addition, the Bishop of the Diocese visited the family in January 2018, which also gave her comfort. Marina also indicated that she took solace in reading the Bible and prayers.

[106] Marina has maintained contact with her family in Egypt, and was supported by her aunt (her late mother's sister).

[107] Marina said that she cries a lot at night. She indicated that for three years after the accident, the three remaining members of the Ghaly family slept in the same room at night to draw comfort from one another. Marina and Kyrollos would sleep in their own beds, while Mr. Ghaly would sleep on the floor. While Marina now has her own room and is attending university, she still cries regularly at night and has difficulty falling asleep.

[108] With respect to her social life, Marina indicated she initially avoided her friends after the accident, as she did not wish to talk about Ms. Ghaly's death and was concerned she would burst into tears. She has not maintained her relationships with her friends at the time of the accident. She does, however, have a friend from church with whom she maintains a relationship.

[109] Marina was also cross-examined about her visit to a registered psychologist, Dr. Iris Sharir, who provided expert evidence in this matter. Marina agreed with certain comments, including that she had told the doctor that a mental health referral was not necessary, as she relied on her church for support; that she was busy and distracted by school so she could not fall asleep; and that she had friends in college.

(i) Doctor's Notes

[110] Marina did not receive any medical treatment after the accident. She did not suffer any physical injuries. However, during a December 21, 2017, doctor's visit, Marina was noted as displaying PTSD symptoms as follows:

Story: [Patient] and her entire family (parents and younger brother) were involved in a life threatening [motor vehicle accident] 2 months ago. Her mother did not survive the accident. [Patient] has been bereaving her mother's death. Reports having difficult time falling asleep, and also feeling some anxiety during the day. Has had some flashbacks of the car accident. Reports having a good support system through their church community. Father and [patient] spent evenings together chit chatting and having good conversations.

Impression: Her appetite and sleep [have] been affected. Also seems to be having some anxiety with irregularity in her menses now.

[111] The doctor also "[r]ecommended establishing care with a mental health counsellor" and noted that a "Mental/Behavioral Health Referral" had been made.

[112] Doctor's visit notes of December 17, 2018, indicate that Marina was screened for the risk of depression, with the doctor asking her whether, within the prior two weeks, she had felt: (1) down, depressed or hopeless, or (2) little interest or pleasure in doing things. The doctor recorded Marina's answer to both questions as "No".

[113] Marina did not recall being asked these questions. She also said that these answers did not accurately reflect her emotional state at the time. In Marina's recollections, she had told the doctor she did not want to do anything about her feelings of depression.

[114] Both Marina and Mr. Ghaly indicated that Mr. Ghaly did not consent to Marina receiving treatment from a mental health counsellor. Instead, he emphasized the church as sufficient to provide the necessary support. Marina noted that when she told the doctor that her church was her support, the doctor indicated the referral to a mental health counsellor remained available for her to utilize should she ever need it. Marina also indicated that if her condition worsened such that Mr. Ghaly felt God could not help her manage the pain, he would consider allowing her to see a psychologist.

[115] Marina also took exception to some of the information included in the doctor's notes. Marina disagreed that she had told the doctor that she had no cognitive issues, as she identified suffering from concentration issues as a result of

Ms. Ghaly's death. Further, when it was noted that she had told the doctor she was well rested, Marina indicated she may well have been well rested that day, but every day was different.

[116] With respect to the doctor indicating that Marina had said her mood is usually happy, she indicated she may well be happy some days but she also feels sad. She was also adamant that she did not tell the doctor she did not worry much, as she was clear that she does worry. With respect to experiencing flashbacks of the accident, she noted that while she initially had flashbacks, they were less common over time. Marina also indicated she did not realize that the doctor had indicated she should go for psychological testing. She also noted that while she was aware of the recommendation to attend driver rehabilitation, she was unable to really explain why she did not do so other than she did not want to drive.

(ii) Dr. Iris Sharir

[117] Dr. Iris Sharir, a registered clinical psychologist, provided an opinion with respect to the nature and extent of the injuries sustained by Marina due to the accident. In doing so, she administered a number of clinical questionnaires and interviewed Marina on February 1, 2020. Dr. Sharir's opinion can be summarized as follows:

- 1) Based on her initial assessment with Marina, self-report questionnaire data, and questionnaire data completed by her father, she found that Marina meets criteria for a Specific Phobia, Situational (Vehicles) as well as a subclinical level of depressive and trauma symptoms, and that these conditions are referable to the accident.
- 2) With respect to case formulation, Dr. Sharir concluded that prior to the accident, Marina was functioning well. She had a close relationship with her family. She had friends. She was actively involved with her church, and religious observance was an important part of her life. She was a motivated and high-achieving student. She had her driving permit, and she had started driving lessons. She did not have anxiety in vehicles, sleep

problems, or prior mental health issues, and she had never seen a counsellor or taken medication for psychiatric issues.

- 3) Following the accident and Ms. Ghaly's death, Marina experienced sadness. For a period of time, it was more difficult for her to concentrate. At times her motivation was low. She experienced nightmares and intrusive thoughts about the accident, and developed depressive and trauma symptoms. She appeared to manage her sadness and other depressive and trauma symptoms through a number of strategies, such as distraction and avoidance, which included keeping herself extremely busy with school and studying. She also had a number of protective factors, including her religious faith, specific goals around her education that she was determined to achieve, and consistent and ongoing support from her father, her priest, and members of the priest's family. Dr. Sharir found these strategies and protective factors provided Marina with sufficient resilience to maintain her psychological symptoms of trauma and depressed mood at a subclinical level, allowing her to cope and continue to function in her life.

[118] Dr. Sharir stated that Marina's ongoing subclinical depressive and trauma symptoms—including low mood, tearfulness, nightmares, and avoidance of stimuli that remind her of the accident—had persisted since the accident, placing her at increased risk of developing mental health difficulties, particularly at times of major transition (*e.g.*, graduating from high school or college, marriage, and the birth of the child) or at times of higher stress. Dr. Sharir also noted that should Marina be unable to achieve her goals, this would be an additional stressor that could exacerbate her symptoms.

[119] Given the nature of her loss, the duration of her symptoms, and her tendency to use avoidance as a primary coping strategy, Dr. Sharir assessed Marina's prognosis for returning to her pre-accident psychological functioning as "fair". However, until Marina received psychological treatment specifically addressing her

psychological difficulties, the likelihood of further recovery from her current psychological conditions remained unclear.

[120] Turning to the question of treatment, Dr. Sharir opined that Marina required psychological treatment of her vehicle-related anxiety and her depressive and trauma symptoms, and recommended she be referred to a registered psychologist. Dr. Sharir noted that because of the long period over which Marina's symptoms has persisted, she recommended a longer duration of treatment than would be typical. She recommended a block of 20 to 24 psychological treatment sessions at a cost of \$225 per hour, as recommended by the BC Psychological Association. Dr. Sharir recommended Marina enroll in a driving rehabilitation program to assist with the treatment of her vehicle-related anxiety.

[121] In cross-examination, Dr. Sharir agreed that Marina continued to do well in school. She also noted that Marina had told her that she did not need the psychologist referral that her doctor had given her in December 2017. When taken to the DSM-5 and the requirements for a specific phobia diagnosis, Dr. Sharir indicated that Marina met all the requirements for a diagnosis of specific phobia of motor vehicles/driving. In particular, she noted that while Marina may drive as necessary, she avoids it and experiences significant distress when doing so, behaviour which fulfills diagnostic criteria "F", which requires that "[t]he fear, anxiety or avoidance causes clinically significant distress or impairments in social occupational, or other important areas of functioning".

[122] Dr. Sharir was also cross-examined on the Beck Depression Inventory II questionnaire that Marina filled out on February 1, 2020. Dr. Sharir agreed that Marina's score of 7/63 put her in the "Minimal" range. With respect to idiosyncratic responses to another questionnaire, the Personality Assessment Inventory–Adolescent, Dr. Sharir indicated that Marina's view of herself was influenced by her religious and cultural background, which in turn informed her responses to the questions.

[123] Dr. Sharir does not evaluate individual responses to questions but rather, as is the practice, the overall questionnaire score placed the answerer somewhere on a scale that is then interpreted.

[124] While Dr. Sharir agreed that Marina did not meet the criteria for child PTSD, she noted, as stated in her report, that the subclinical symptoms of trauma and depression put Ms. Ghaly at an increased risk of developing mental health difficulties, particularly at times of major transition. Dr. Sharir pointed to how Marina had received a low score on the MCAT as an example of this effect, as someone who did well in school would be expected to do well on exams. The amount of studying (which Marina often did with her mother) and/or sleep difficulties linked to the accident may have also impacted Marina's MCAT results.

[125] Dr. Sharir indicated that it was difficult to predict Marina's future occupational functioning difficulties. It was put to Dr. Sharir that the change in Marina's social friends was caused by her transition to the preparatory "Running Start" program. Dr. Sharir responded that there was a change in social functioning and that, while this change may have been related, in part, to this change in her schooling, there could also be other contributing factors, such as mood difficulties or her reaction to being with people who she knew prior or subsequent to Ms. Ghaly's death. Further, while Marina may attribute these negative social impacts to her schooling, Dr. Sharir indicated that her explanation may not necessarily be accurate.

3) *Kyrollos Ghaly*

[126] Kyrollos testified that Ms. Ghaly's death has had a significant effect on him. Before her death, he aspired to be a doctor. He was happy, sociable, and did well in school with the help of his mother.

[127] After the accident, Kyrollos has continued to do well in school. Like Marina, he too attended the "Running Start" program. He was attending university at the time of trial and taking general science courses. However, he does not know what field he would like to ultimately specialize in or what occupation he would undertake.

[128] While he acknowledges that his grades have remained the same since the accident (a fact which he attributes to his father's assistance), Kyrollos testified that he does not have the same support as before. At the end of every day, his mother would feed him and help with his homework.

[129] Kyrollos described a number of adverse impacts to his ability to complete his schoolwork that he attributes to the accident. He said he now experiences test anxiety, difficulties with certain assignments, and a general fear that the worst will happen. He also reported difficulty in making and maintaining eye contact when completing assignments, like oral presentations, where this is required. He has a particular fear of final exams that make up more than 50 percent of the course grade, which, he reports, began after the accident.

[130] Generally speaking, prior to the accident, he had more confidence, both with regards to making life decisions and, more specifically, to choosing the correct answer on tests. Since the accident, he said that his confidence has been shaken, and he always thinks the worse will happen. This has affected his schooling: While he might know the relevant principles and think he knows the correct answer, his lack of confidence means he will sometimes select an alternate answer which adversely affects his grades.

[131] Kyrollos described Ms. Ghaly in a similar manner to Mr. Ghaly and Marina, saying she was nice, compassionate, and lived a simple life, as indicated by her clothing and the décor of the family home.

[132] Kyrollos also testified that the accident had affected his ability to drive. He does not want to drive at all and only drives as necessary. If possible, he will drive to a bus stop to take a bus instead of driving to his university. Both he and Marina insist that Mr. Ghaly drive when they are in the vehicle together.

[133] Kyrollos is also involved with the St. George Coptic Orthodox Church, and has had the benefit of support from church members and clergy, with whom he has

regular visits. He was fluent in the Coptic language before the accident and helped with the teaching of church hymns.

[134] The accident has, however, affected his relationships. He has lost friends and no longer likes to be with others. During conversations, he is largely silent. He also reported not wanting to discuss the accident with his school friends. While the family has become stronger, Kyrollos said he is still very sad all the time. He has no plans for the future, but tries to keep busy.

[135] In cross-examination, Kyrollos confirmed that he relied on the support of the church, but he did not continue his summer church activities as they reminded him too much of his mother. While he continued to serve the church and teach hymns in the Coptic language, the closure of the US-Canada border caused by the COVID-19 pandemic interrupted his ability to attend the St. George Coptic Orthodox Church in Surrey. As a result, the family began going to the Coptic church in Lynnwood, Washington, which is an hour and 20 minutes away from Bellingham. He has made friends there and very recently started teaching the church's Sunday school. When the border reopened, the family again began to attend the St. George Coptic Orthodox Church on alternating weekends.

[136] In cross-examination, Kyrollos acknowledged he had not sought medical attention for any injuries since the accident. He had only visited one registered psychologist in Canada, Dr. Young, who produced a medical legal report in this matter. As was the case with Marina, his medical records contained a notation that he had answered in the negative when asked whether he had depressed mood in the previous two weeks. He stated that he did not recall being asked these questions by the doctor.

[137] He also acknowledged that, other than the first week after the accident, he had not missed any school and he had continued to receive good grades. He also acknowledged that he drove when necessary to Westmont College, which was five to ten minutes away from his home. He had a part-time job at the time of trial, working Saturdays at a pharmacy, which he started in the summer of 2022. He had

previously worked for a short time as a dietary aid at the Orchard Park Assisted Living in the summer of 2021.

[138] It was clear Kyrollos was nervous while testifying. While not unusual, he spoke in a somewhat “wooden” fashion, which appeared to be a protective mechanism clearly designed to keep his feelings in check. This is consistent with the testimony of Dr. Tigerson Young, which I turn to next.

(i) Dr. Tigerson Young

[139] Dr. Tigerson Young, a registered psychologist, provided a medical report with respect to Kyrollos Ghaly. His opinion is based on an examination conducted on February 1, 2020, along with psychological questionnaires and measures, and information taken from Kyrollos’ own questionnaire data at the time of the examination.

[140] Dr. Young’s report included a list of facts and assumptions that informed his opinion, including Kyrollos’ description of the accident and the death of his mother, which left Kyrollos feeling very sad and upset. While Kyrollos did not report any physical complaints or significant physical changes at the time of his examination by Dr. Young, he did report developing stomach problems in the aftermath of the accident that he still experienced occasionally.

[141] Based on his examination of Kyrollos, his questionnaire data, and questionnaire data provided by Kyrollos in February 2020, Dr. Young was of the opinion that Kyrollos’ psychological symptoms met the DSM-5 diagnostic criteria for an Other Specified Trauma- and Stressor-Related Disorder, which are “Adjustment-like disorders with anxiety and mood symptoms and with prolonged duration of more than 6 months”. While Kyrollos did not meet the full DSM-5 diagnostic criteria for PTSD, the diagnosis he did receive is similar, representing a different disorder on the same clinical spectrum. Kyrollos also continues to have ongoing residual trauma-related symptoms.

[142] Dr. Young noted that Kyrollos had no reported history of any other traumas or psychological issues that impacted on his functioning. There was no reason to believe that he had any psychological disorder or that his functioning level was impaired in any degree right before the accident. While acknowledging that it is difficult to diagnose retrospectively, Dr. Young was of the view that Kyrollos' psychological symptoms in the month subsequent to the accident likely met the DSM-5 diagnostic criteria for "Adjustment Disorder with mixed Anxiety and Depressed Mood or Acute Stress Disorder".

[143] Dr. Young also noted that Kyrollos mentioned a number of times during his examination that he was trying to act as normally as possible in front of his family and his friends after the accident. Dr. Young was of the view this is more than likely a form of trauma-related behaviour. Instead of presenting his trauma related symptoms externally or behaviourally, Kyrollos tries to avoid adding more distress to his family, causing him to internalize his distressful thoughts and depressed mood.

[144] Dr. Young noted that at the time of the examination, which occurred almost two and a half years after the accident, Kyrollos continued to report ongoing psychological symptoms and limitations, including hypervigilance and avoidance behaviours and depressed mood symptoms.

[145] Dr. Young was of the view that the accident caused Kyrollos' symptoms for two reasons. First, there was no indication that Kyrollos had any limitations or diagnostic symptoms prior to the accident and his symptoms were reported to have arisen after the accident. Second, there had been no other intervening factors or events that would explain the continuation of Kyrollos' psychological presentation.

[146] Dr. Young noted that while Kyrollos' school function at the time had not been significantly affected, this was not uncommon, as youth sometimes overcompensate by hyper-focusing on their academic achievements as a distraction from their psychological issues and/or to lighten the burden on their family. While understandable, such behaviour is not sustainable in the long run, particularly when such behaviour is an individual's sole coping mechanism.

[147] Dr. Young opined that the prognosis for Kyrollos' short-term psychological recovery (typically defined as three to six months) was "extremely poor", as evidenced by the chronicity of his ongoing emotional symptoms at the time of the examination. He further noted that, given the tragic nature of the accident and the chronicity of his emotional symptoms, it was also his opinion that a long-term prognosis of a complete positive psychological recovery was "extremely poor".

[148] Dr. Young specifically noted a number of risk factors that had adversely affected a positive prognosis in the future, including Kyrollos' young age at the time of the accident, the death of his mother as a result of the accident, and his ongoing hypervigilance and avoidance presentation. As a result, he noted "it is only reasonable to expect that [Kyrollos] is at risk of developing more severe psychological symptoms and functional limitations in the future as a result of these risk factors".

[149] While Dr. Young noted the existence of a number of protective factors—including a high functioning level prior to the accident, a supportive family environment, the stability of his schooling and his religious beliefs—he maintained his opinion that Mr. Ghaly is very unlikely to have a complete resolution of his current psychological symptoms in the future.

[150] With respect to treatment, Dr. Young went on to note that, while Kyrollos is very unlikely to have a complete resolution of his current psychological symptoms in the future, he will be more successful in maintaining at least his current functioning level if he is able to retain a variety of recovery promoting factors, such as a continuous and uninterrupted availability of psychological interventions, the absence of other traumatic events, and the continued support of his school and church. As a result, he recommended that Kyrollos receive 12 sessions of psychological treatment each year for at least the next two years from a psychologist that specializes in motor vehicle accident-related trauma issues and is familiar with Arabic youth cultures. If his psychological symptoms are stable after these two years of treatment have passed, Dr. Young said that Kyrollos may receive maintenance

treatment of six sessions per year for another two years. Dr. Young noted the current cost of treatment is \$210 per session.

[151] In the worst-case scenario, Dr. Young noted it is not uncommon for individuals with complex and multiple risk factors to require at least two or three additional blocks of psychological intervention. Thus, after the initial four years of recommended treatment arrangements, Dr. Young recommends that, if Kyrollos is still not entirely symptom-free, he should receive at least four to six sessions of psychotherapy each year for as long as his emotional symptoms persist.

[152] In addition to this, Dr. Young recommended a driver rehabilitation course that specializes in working with youth. These courses typically consist of 12 to 24 sessions, and the current cost of a driver rehabilitation course is around \$100 per hour. Furthermore, Dr. Young recommended that Kyrollos meet in the future with a psychiatrist that specializes in Arabic youth cultures and trauma- and motor vehicle accident-related issues, especially if he is not able to make any improvement following the recommended trauma-focused psychological treatment. Dr. Young noted that psychological recovery is often optimized when judicious use of medication is combined with psychological treatment.

[153] Finally, Dr. Young recommended that Kyrollos and his family receive family therapy from a registered psychologist proficient in addressing complex family-related issues stemming from a motor vehicle accident and specializing in Arabic cultures. He noted that the typical duration of family therapy is around 12 to 24 sessions at a current cost of around \$210 per session. Dr. Young noted that the accident had affected not just Kyrollos but his entire family. As a result, better results would be achieved if his entire family participated in counselling on this matter.

[154] In cross-examination, Dr. Young acknowledged that in the Beck Youth Inventory–2nd Edition questionnaire, Kyrollos had indicated stomach and hand trembling issues at a level somewhere between “never” and “sometimes”. Dr. Young was also taken to doctor’s notes indicating that in both May and December 2018, Kyrollos had answered in the negative to two depression screening questions asking

if he had felt: (1) down, depressed or hopeless, or (2) little interest or pleasure in doing things. Dr. Young acknowledged these questions were relevant to assessing Kyrollos' psychological state, but he was not sure how much weight could be put on these assessments as they refer only to the two weeks prior to the appointment and consist of only two questions.

[155] Dr. Young agreed that Kyrollos did not identify any issues with sleep, concentration, or memory. He does, however, still have some ongoing trauma-related symptoms, such as his avoidance behaviour and distressful thoughts that remind him of the accident and Ms. Ghaly's subsequent death.

[156] While Dr. Young agreed Kyrollos does not meet the full diagnostic criteria for PTSD, his diagnosis of "Other Specified Trauma- and Stressor-Related Disorder" is, like PTSD, on the spectrum of trauma-related disorders. Further, while Dr. Young did agree that he did not have specific information as to how much time Kyrollos had spent on school work before the accident as compared to the time of the examination, in his view, Kyrollos' comments that he now focuses on school work indicate that he is using his studies to distract himself from his struggles arising from the accident.

B. Causation

[157] In *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13–16, 1996 CanLII 183, the Supreme Court of Canada set out the approach to assessing causation in a negligence action, which can be summarized as follows:

- 1) Causation is established where the plaintiff proves on a balance of probabilities that the defendant caused or contributed to the injury.
- 2) The general, but not conclusive, test for causation is the "but for" test, which requires the plaintiff to show that the injury would not have occurred but for the negligence of the defendant.

- 3) In circumstances where the “but for” test is unworkable, causation is established where the defendant’s negligence “materially contributed” to the occurrence of the injury.
- 4) The plaintiff must prove that the defendant’s tortious conduct caused or contributed to the plaintiff’s injury; however, the causation test is not to be applied too rigidly. Causation need not be determined by scientific precision, as it is a question of fact that can be determined using common sense.
- 5) Although the burden of proof remains with the plaintiff, in some circumstances an inference of causation may be drawn from the evidence without positive scientific proof.

[158] With respect to all three plaintiffs, the registered psychologists testified and filed corroborating reports that indicated none of the individuals had a record of previous injuries or pre-existing physical or psychological conditions prior to the injuries that resulted from the October 1, 2017, accident. All three registered psychologists conducted a variety of tests that confirmed the reliability and validity of the reports provided by the plaintiffs. While Dr. Klubben reported that Mr. Ghaly’s profile may be indicative of distortion and her interpretive hypothesis should be viewed with caution, she noted that it is likely that the Personality Assessment Inventory profile of Mr. Ghaly means he “will underrepresent the extent and degree of significant findings”. This was confirmed by testimony from Father Bisenty Gerges and Mary Bisenty Gerges.

[159] Accordingly, in my view, the medical evidence as set out above establishes that the catastrophic accident caused the injuries of all the plaintiffs.

C. Non-Pecuniary Damages

1) Legal Principles

[160] In *Trites v. Penner*, 2010 BCSC 882 at paras. 188–89, the court succinctly summarized the nature and purpose of non-pecuniary damages:

[188] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities. The compensation awarded should be fair and reasonable to both parties

[189] For the purposes of assessing non-pecuniary damages, fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a rough guide. Each case depends on its own unique facts:

[161] *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46 sets out a framework for the assessment of non-pecuniary damages. This includes consideration of the following non-exhaustive list of factors:

- (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;
- ...
- (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: ...

[162] Personal injury at law connotes serious trauma or illness: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 9, citing *Hinz v. Berry*, [1970] 2 Q.B. 40 (C.A.) at 42. Accordingly, to be compensable, psychological injuries “must be serious and prolonged and rise above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept”: *Mustapha* at para. 9. A plaintiff need not prove a recognized psychiatric injury in order to seek redress for psychological injuries: *Saadati v. Moorhead*, 2017 SCC 28 at para. 2.

2) *Wagih Ghaly*

[163] Taking into account inflation, the plaintiffs seek \$140,000 in non-pecuniary damages to compensate Mr. Ghaly for his profound psychological injuries. The

plaintiffs submit that Mr. Ghaly's situation is analogous to that of the plaintiff in *Marcena v. Thomson*, 2019 BCSC 1287, who was awarded \$125,000 in non-pecuniary damages as a result of psychological injuries caused by a motor vehicle accident.

[164] In *Marcena*, the plaintiff was found to suffer from “a variety of complex, intersecting mental and physical ailments” (para. 92), including major depressive disorder that caused “poor concentration, inadequate sleep, decreased energy levels, lack of motivation, headaches and forgetfulness” (para. 95). He was also found to have symptoms of PTSD and generalized anxiety: *Marcena* at para. 93. The court held that the plaintiff's depression “had a significant impact on his physical well-being”: para. 94.

[165] The defendants maintain, however, that *Marcena* is distinguishable from this case and seek an award of \$40,000. They submit that Mr. Ghaly's level of function far exceeds that of the plaintiff in *Marcena*, who suffered both physical and psychological symptoms and was disabled from work for five years before the trial.

[166] They also dispute the evidence of Dr. Klubben, who diagnosed Mr. Ghaly with PTSD, Persistent Depressive Disorder with Persistent Major Depressive Episode, Severe; and Generalized Anxiety Disorder. The defendants say that Dr. Klubben's diagnosis is inconsistent with Mr. Ghaly's actual function. This diagnosis was made in January 2020 and her prognosis as of that time was “somewhat guarded”. Despite this, Mr. Ghaly has been gainfully employed, drives distances regularly (from his home in Bellingham to church in Lynnwood and Surrey) and has a close relationship with his children. Because of these factors, the defendants submit that his level of function far exceeds that of the plaintiff in *Marcena*, who suffered both physical and psychological symptoms and was disabled from work for five years before the trial. The defendants submit that the award in *Marcena* is well above the high range of what is appropriate in the facts of this case.

[167] While the defendants acknowledged the accident and Ms. Ghaly's death were traumatic events causing considerable distress and disruption to Mr. Ghaly's life,

they sought to characterize Mr. Ghaly's condition as grief rather than depression, maintaining that Dr. Klubben did not address the distinction between the two emotional states.

[168] In support of this proposition, they relied on *Ulmer v. Weidmann*, 2011 BCSC 130, where a court lowered the damages awarded to the plaintiff on the basis that, while she did suffer from post-traumatic stress disorder initially, "this was significantly mingled with her grief and bereavement ..., and was completely overtaken and replaced by that continuing grief and bereavement in the long-term": para. 216. The plaintiff was then awarded \$10,000 as compensation for the six months she was found to have suffered from post-traumatic stress disorder.

[169] I cannot accept the defendants' submissions. Dr. Klubben clearly explained how Mr. Ghaly fell within the parameters of the disorders with which she diagnosed him. In particular, in cross-examination, Dr. Klubben referenced the length of time of Mr. Ghaly's depression as differentiating it from grief. Furthermore, the defendants did not present any expert evidence, including any that would cast doubt on the diagnosis made with respect to Mr. Ghaly.

[170] I also do not find the defendants' reliance on *Ulmer* to be convincing, as the Supreme Court of Canada has confirmed that there is no need for a plaintiff to be diagnosed with a recognized psychiatric illness to recover damages for psychological injury: *Saadati* at para. 2. Much of the reasoning in *Ulmer* relies on the presumption that a recognized psychiatric illness is required, causing me to give it little weight.

[171] In my view, an award of \$140,000 is appropriate in the circumstances. As noted in *Stapley* at para. 46, a stoic plaintiff should not be penalized for his or her stoicism. While Mr. Ghaly has done his best to continue living his life, it would be repugnant in the circumstances to not to acknowledge his deep pain, which continues to this day and has been medically diagnosed as affecting his day-to-day functioning relative to his pre-accident life.

3) Marina Ghaly

[172] Marina Ghaly seeks \$100,000 based on the comparable award made in *Lemieux v. Evers*, 2000 BCSC 1464. In that case, the 11-year-old plaintiff was awarded \$65,000 for soft tissue and psychological injuries incurred when he was struck by a vehicle when crossing the road. The plaintiffs submit that Marina's circumstances are distinct from those of the plaintiff in *Lemieux*, as she may have underrepresented her injuries.

[173] Marina's psychological injuries are also said to be comparable to those of the 16-year-old plaintiff in *Miller v. Marsden*, 2014 BCSC 2331, who was awarded \$105,000, in part, due to psychological problems—namely “subsyndromal post-traumatic stress disorder and a cerviogenic headache disorder”—stemming from a motor vehicle accident, with symptoms including “vehicle travel anxiety, problems with concentration, sleeplessness and intrusive recollections of the accident”: para. 25.

[174] With regards to *Miller*, the defendants point out that Marina did not suffer any physical injuries in the accident. The only expert report in support of her tort claim is that of Dr. Sharir dated June 5, 2020. In contrast to the diagnosis received by the plaintiff in *Miller*, Dr. Sharir diagnosed Marina with a Specific Phobia, Situational (Vehicles), not PTSD, depression or anxiety.

[175] The defendants submit an appropriate award for non-pecuniary damages for Marina is \$40,000, relying upon the following cases:

- 1) *Bunnah (Guardian ad litem of) v. Bunnah*, 2016 BCSC 264, in which the court awarded the plaintiff \$31,000 in non-pecuniary damages.
- 2) *Sefton v. Doppelmayr CTEC Ltd.*, 2013 BCSC 781, in which the court awarded \$35,000 in non-pecuniary damages.
- 3) *Folk v. Folk*, 2020 BCSC 1286, in which the plaintiff received \$65,000 in non-pecuniary damages.

- 4) *Nemoto v. Phagura*, 2014 BCSC 262, in which the plaintiff received \$40,000 in non-pecuniary damages.

[176] I conclude that the plaintiffs' cases are preferable as they more closely mirror the circumstances in this case. As set out in *Miller*, Marina has a number of similar issues including vehicle travel anxiety, problems with concentration, sleeplessness persistent thoughts of sadness, and crying. These are unlike the cases cited by the defendants. In addition, Marina has outlined the considerable support, warmth, and love her mother provided. Essentially, she was the center of the family's life and particularly close to her children. Her death has profoundly affected Marina.

[177] Accordingly, I conclude Marina is entitled to an award of \$100,000 in non-pecuniary damages for pain and suffering.

4) *Kyrollos Ghaly*

[178] Counsel for the plaintiffs seek an award of \$120,000 to compensate Kyrollos for the non-pecuniary damages—namely, physical injuries and profound psychological impacts—he suffered in the accident. They again point to *Miller* as an analogous case that justifies this award. These injuries were found to have “interrupted his development to a significant degree”, causing him to delay or cease engaging in school and social activities and affecting his disposition: *Miller* at paras. 33–36.

[179] Because *Miller* was decided in 2014, the plaintiffs say that Kyrollos' damages should account for inflation. Therefore, pursuant to the 2% inflation rate prescribed by *Law and Equity Regulation*, B.C. Reg. 352/81, s. 1(b) [*Regulation*], Kyrollos should receive \$120,000 in pecuniary damages.

[180] In contrast, the defendants submit that an award in the amount of \$50,000 is appropriate. In their view, *Miller* is distinguishable as the injuries suffered by Kyrollos are must less extensive than the plaintiff in that case. The only physical injuries sustained by Kyrollos were neck pain, which was almost completely gone three and

a half hours after the accident, and abrasions to his head and hand, which resolved without issue.

[181] The defendants also note that he has not received any counselling despite the recommendation made by Dr. Young. He also never reported psychological issues or symptoms to his family physician. Further, the depression screening questions in his medical records indicate negative answers.

[182] In considering the jurisprudence cited by the parties, I prefer the cases provided by the plaintiffs. While they largely involve younger individuals, the compensable injuries are generally similar to those suffered by the plaintiffs.

[183] After reviewing the decisions awarding damages where plaintiffs sustained injuries of a similar nature as the present case, I conclude that a similar award of \$100,000 is appropriate.

[184] While the defendants say his level of functioning is largely in line with his life before the accident, Kyrollos continues to experience the symptoms of an “Other Specified Trauma or Stress-Related Disorder”, ongoing sadness, and loss of confidence. As set out earlier, his relationships have been affected. He has lost friends and does not enjoy the company of other people. In conversation, he is silent. He did not want to discuss the motor vehicle accident with his friends when he returned to school. While the family became stronger, he is still very sad all the time. He says he has no plans for the future and tries to keep busy.

[185] This latter point is significant as Ms. Gerges and Mr. Ghaly described him as a cheerful, happy youth. All of this, however, has significantly changed since the accident, affecting his regular activities. He has suffered the profound loss of his mother, which, based on his testimony, has affected him deeply for similar reasons to that of Marina.

D. Future Loss of Earnings or Income Capacity

[186] Counsel for the plaintiffs seek damages to compensate Kyrollos and Marina for loss of future income earning capacity attributable to the accident. This is a significantly contentious issue that requires this Court to resolve some evidentiary issues in reaching its conclusion.

1) Legal Principles

[187] In *Rab v. Prescott*, 2021 BCCA 345 at para. 47, the Court of Appeal for British Columbia endorsed a three-step process for considering claims for loss of future earning capacity, particularly where there is no evidence of income loss at the time of trial, whereby:

- 1) there must be evidence disclosing a potential future event that would impair earning capacity, such as a chronic injury, need for future surgery, or risk of arthritis;
- 2) there must be a “real and substantial possibility” that the potential future event will cause a pecuniary loss; and,
- 3) where steps 1 and 2 have been established, the court must assess the value of the potential future loss, taking account of the relative likelihood of the loss occurring.

[188] Ongoing symptoms alone do not justify an award for loss of future earning capacity—rather, the plaintiffs must demonstrate that the injuries suffered have disabled them from performing required employment functions: *McKay v. Raiwal*, 2015 BCSC 220 at paras. 78–79, citing *Moore v. Cabral*, 2006 BCSC 920 at para. 78.

[189] A “real and substantial possibility” is a lower standard than a balance of probabilities: *Athey* at para. 27. However, mere speculation or subjective apprehensions regarding the occurrence of a future event resulting in a loss of future earning capacity or its capacity to cause pecuniary loss is insufficient to ground a claim under this head of damages: *Athey* at para. 27; *Brooks v. Habib*, 2019 BCSC

1398 at para. 326, citing *Graham v. Rourke* (1990), 75 O.R. (2d) 622 at 636 (C.A.); *Kim v. Morier*, 2014 BCCA 63 at para. 8.

[190] Accordingly, it is insufficient for a plaintiff to establish only that he or she “may” be less capable of employment, since this word connotes speculation: *Kim* at para. 8.

[191] When assessing the value of the potential future loss, the court may use either the earning approach or capital asset approach: *Perren v. Lalari*, 2010 BCCA 140 at para. 32. Whatever approach is applied, the final step in the damage assessment process is whether the award is fair and reasonable in the circumstances: *Lo v. Vos*, 2021 BCCA 421 at para. 117.

[192] Where the plaintiff’s injuries lead to concomitant pain, suffering, and/or loss of enjoyment that arises while working but these symptoms do not actually impact their choice of job or the duration for which they can work, the plaintiff should be compensated under non-pecuniary damages, not loss of future earning potential: *Fontaine v. Van Kampen*, 2013 BCSC 1702 at para. 200.

2) Application

[193] The plaintiffs submit that as a result of the psychological limitations Marina and Kyrollos suffer due to the accident and their mother’s death, future events could affect their earning potential. In particular, the plaintiffs point to the potential impact these conditions could have on the Ghaly children’s ability to perform at the academic level required to pursue a career in medicine.

[194] The plaintiffs ask the Court to assess this head of damage using the asset approach. They point to *Brown v. Golajy*, 26 B.C.L.R. (3d) 353, 1985 CanLII 149 (S.C.), which provides the following guidance regarding how to make this assessment:

The means by which the value of the lost, or impaired, asset is to be assessed varies of course from case to case. Some of the considerations to take into account in making that assessment include whether:

1. The plaintiff has been rendered less capable overall from earning income from all types of employment;
2. [T]he plaintiff is less marketable or attractive as an employee to potential employers;
3. [T]he plaintiff has lost the ability to take advantage of all job opportunities which might otherwise have been open to him, had he not been injured; and
4. The plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market.

[195] For Marina, the plaintiffs submit that the most appropriate assessment of her loss would be to quantify the loss as a delayed entry into the workforce as a physician in Washington State as was done in *Rezaei v. Piedade*, 2012 BCSC 1782 at paras. 87–94. Counsel suggests that adequate compensation under this head of damage for Marina would be \$785,635.16 (representing the loss of the five highest-earning years of Marina’s career as a doctor had she not been affected by the accident) less the amount she would earn as an RN should she be unsuccessful in becoming a doctor during those years.

[196] The defendants respond that the calculations outlined by the plaintiffs in support of this claim cannot be relied on as they are unorthodox and without foundation in the expert reports provided by Mr. Wickson. The defendants also submit that the evidence falls short of satisfying the *Rab* test, as the evidence does not disclose a potential future event that could lead to a delay in Marina’s quest to become a physician and there is no evidence to show a real and substantial possibility that this delay will cause a pecuniary loss. In their view, Marina was not established in a career at the time of the accident, and there is no certainty with respect to whether she will continue on the path of medicine or achieve that goal. They also point to the lack of a vocational assessment or neuropsychological assessment to ground this claim: see *Sefton* at paras. 77–79.

[197] This is no doubt a difficult determination. In considering the three-step process outlined in *Rab* for the determination of future loss of income, I note that evidence of a chronic injury, including an ongoing psychological condition, can be sufficient to establish the first step of the test.

[198] To satisfy the second step of the *Rab* test, the plaintiffs must establish entitlement by demonstrating a real and substantial possibility of an event giving rise to a future loss. As noted previously, the standard of proof is lower than a balance of possibilities but higher than speculation: *Athey* at para. 27.

[199] Once these steps are established, the third step is to assess the plaintiffs' loss. This may involve a consideration of whether to use the earnings or the capital asset approach.

[200] At the outset, I note the defendants rely upon *Nemoto* and *Sefton*. I conclude, however, that both are distinguishable.

[201] *Nemoto* can be differentiated on the basis that the plaintiff in that case, unlike Marina and Kyrollos, was not found to have an ongoing psychological injury: para. 88.

[202] *Sefton* is also distinguishable. For one, there was evidence that the plaintiff in that case was doing well with regards to their employment (para. 77)—a factor that is absent in the matter before me because Marina and Kyrollos have not yet entered the workforce due to their chosen career paths and young ages.

[203] In addition, in *Sefton* there was medical evidence that the effects of the incident would resolve within four to six months: para. 79. In contrast, the plaintiffs have adduced medical evidence that both Marina and Kyrollos are at an ongoing risk of developing mental health difficulties, particularly at times of major transition or stresses. While the defendants say that such adverse health consequences have not come to fruition in the two years and eight months since Dr. Sharir's 2020 report, Marina's recent set back in her MCAT test belies this reasoning. I find that these difficulties represent just such a development, particularly when we consider her level of academic achievement to date.

[204] Accordingly, with respect to the first step, I conclude there is evidence disclosing a potential event—namely, Marina and Kyrollos' ongoing psychological

injuries—that would impair their earning capacity, as reflected in the detailed medical evidence referred to above.

[205] Turning to the second step of the *Rab* test, I note the following passage from that decision:

[29] Some claims for loss of future earning capacity are less challenging than others. 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. ...

[206] I agree with the plaintiffs that the present case is one of these less challenging cases. In my view, the medical evidence has established that it is obvious that there is a real and substantial possibility that Marina and Kyrollos' psychological injuries will give rise to a future loss. As noted by Dr. Young in his report, "it is only reasonable to expect that Mr. Ghaly is at risk of developing more severe psychological symptoms and functional limitations in the future as a result of these risk factors" when discussing Kyrollos' ongoing hypervigilance and avoidance presentation.

[207] With respect to Marina, although Dr. Sharir assessed Marina's prognosis for returning to her pre-accident psychological functioning as "fair", there is uncertainty with regards to whether and how long this would take, and I am satisfied that there exists a real and substantial possibility that her psychological injuries will give rise to a future loss.

[208] It is not disputed that both Kyrollos and Marina have excellent academic records. Both also had high aspirations whose achievement will require success on the high-stakes exams that must be written by individuals pursuing careers in the "Science Technology Engineering and Mathematics" ("STEM") category, which are high stressors even for people without psychological sequelae.

[209] Both Kyrollos and Marina have testified as to the stresses of these tests, which may manifest as triggers for psychological symptoms stemming from the

accident, which would, in turn, cause cognitive decline during exams, affecting their final scores. Kyrollos has yet to attempt a university exam, and it is possible that he will not be successful, thus rendering him unable to pursue a high-paying STEM career.

(i) Marina Ghaly

[210] Marina will have to earn a competitive MCAT score to be accepted into medical school. Marina testified that despite studying for up to 15 hours per day, she was unsuccessful in her first attempt at writing the test.

[211] Marina is now attempting the MCAT for a second time. In addition to this hurdle, I note the demanding curriculum of medical school may act as a trigger for adverse psychological sequelae in the future.

[212] While Marina may well ultimately be successful at gaining admission to medical school, her admission to and completion of medical school will most likely be delayed by potential future stressors or triggers. As Dr. Sharir said, she is “at increased risk of developing mental health difficulties, particularly at times of major transition”. In my view, therefore, the most appropriate assessment of her loss would be to quantify the loss as a delayed entry into the workforce: see *Rezaei* at paras. 87–94; *Parfitt v. Mayes et al*, 2006 BCSC 125 at paras. 144–51.

[213] As Marina is seeking an award for a delayed entry into the workforce as a physician in Washington State, the plaintiffs provided evidence regarding the earnings of a “Physician 4”, an upper level management position that requires a valid license to practice medicine and surgery in the State of Washington as well as completion of an approved residency program in a designated specialty area.

[214] In my view, there is evidence that Marina’s plans to be a doctor, while still viable, will likely be delayed. In both *Rezaei* and *Parfitt*, the court concluded the delay was caused by the accident and awarded damages. The same rationale is applicable in this case.

[215] Unlike *Parfitt*, however, I conclude quantification of that delay should be based on Marina's future employment as a doctor, which I conclude has been established as a real possibility. Marina has established her scholastic record and has already taken the MCAT. While she was not successful in her initial attempt, she has demonstrated a desire and work ethic such that I conclude her becoming a doctor one day is a very real and substantial possibility.

[216] Accordingly, I turn to the third step in the *Rab* framework: the assessment of the value of the potential future loss.

[217] The plaintiffs maintain the quantification of loss should be a five-year delay and an award of \$785,635.16 (US\$573,456.32) based on evidence of the salary of Washington State doctors as follows:

Loss of Future Income Earning Capacity Table: Delayed Entry into Workforce (USD)

	Retirement – 1yr	Retirement – 2yr	Retirement – 3yr	Retirement – 4yr	Retirement – 5yr
Salary	\$268,565.00	\$262,116.00	\$255,720.00	\$249,456.00	\$243,372.00
Tax Deduction	\$67,781.35	\$64,107.4	\$63,253.75	\$60,056.2	\$58,109.32
Present Value Discount Factor	0.576443	0.58509	0.593866	0.602774	0.611816
Loss Incurred	\$115,792.18	\$115,852.85	\$114,299.16	\$114,165.27	\$113,346.86

[218] This amount will need to offset by what Marina would earn should she not be successful in becoming a doctor. The plaintiffs suggest, using the salary of a RN as laid out in Mr. Wickson's expert report.

[219] The defendants point out, however, there was no report from Mr. Wickson or any other economist addressing this calculation. On this point, the plaintiffs pointed out that the quantification of damages is not an exact scientific process: see *e.g.*, *Catalano v. Donald*, 2002 BCSC 1232 at para. 24. I agree.

[220] I conclude, therefore, that quantification is more realistically based on Marina's entry into the workforce being delayed by two years, rather than five. I am prepared to accept that the income earned by a "Physician 4" is appropriate, and utilize two years with pay set at the annual average of the five years from the table set out above. The quantification of the amount would, therefore, be approximately

\$314,254.01 (US\$229,382.53). This reflects a capital asset approach, which I conclude is appropriate in the circumstances as there is no evidence of earnings to date.

[221] I do not see the need to deduct any other “potential earnings” as I have no doubt that Marina will use this two-year period to study in the aims of achieving her professional goals.

(ii) Kyrollos Ghaly

[222] For the impact the accident has had on Kyrollos’ prospects of becoming a doctor, the plaintiffs seek “loss of opportunity” damages, which are awarded to a plaintiff who has been denied the opportunity to work in or develop a specific vocation or ability, such as an airline pilot (*Hearndon v. Rondeau*, 54 B.C.L.R. 145, 1984 CanLII 764 (C.A.)), a professional hockey player (*Clark v. Kereiff*, 43 B.C.L.R. 157, 1983 CanLII 365 (C.A.)), a computer program business (*Moyer v. Bosshart*, 7 B.C.L.R. (3d) 201, 1994 CanLII 2196 (C.A.)), a world-class athlete (*Bonham v. Smith*, 50 B.C.L.R. (3d) 350, 1998 CanLII 5368 (S.C.)), a Member of Parliament (*Cameron v. Sivertson (Guardian of)*, 1990 CanLII 1037 (B.C.S.C.)), or a professional golfer (*Le v. Point*, 2015 BCCA 134).

[223] For the loss of a specific opportunity to be compensable, the evidence must show that there was a “reasonable possibility” that the plaintiff would have been successful in their chosen endeavour but for the injury caused by the defendant: *Hearndon* at para. 22; see also *Chaplin v. Hicks*, [1911] 2 K.B. 786 at 796–97 (Eng. CA.).

[224] The next step will be to value that loss of opportunity. In *Smith v. Knudsen*, 2007 BCSC 1270, the court stated that “an assessment of lost opportunity is not a mathematical calculation but an exercise of judgment based on all the facts of the case”: para. 39; see also *Papageorgiou v. Seyl*, 45 B.C.L.R. (2d) 319 at 326, 1990 CanLII 779 (C.A.).

[225] In this case, evidence has been tendered demonstrating that Kyrollos is more than capable of attaining excellent grades. He had constant support academically from both parents, and the value of working hard instilled in him from an early age.

[226] As a result of the accident, however, Dr. Young opined that Kyrollos “was still at the beginning age of developing his role and identity in life at the time of his car accident. Youth at this age still need guidance from adults, especially from their parents. When some of these avenues were taken away from [him] unexpectedly and involuntarily, it is understandable how profound and long-lasting an impact this car accident can affect is life and his future development.”

[227] In his testimony, Kyrollos endorsed the notion that he lacked confidence and had trouble making decisions, something that he had no issue with before the accident.

[228] Similarly, as noted in Dr. Young’s report, Kyrollos’ “trauma-related symptoms persisted over time, such as his distressful thoughts of the car accident and the passing of his mother from the accident and his hypervigilance and avoidance behaviours.” As a result, “[a]t the time of [Kyrollos’] examination in February 2020, which is almost 2 ½ years from his October 2017 car accident, while likely having some stability, [Kyrollos] still has some ongoing psychological symptoms and limitations, such as his hypervigilance and avoidance behaviours and his depressed mood symptoms.” Dr. Young testified that Kyrollos’ symptoms of hypervigilance may ultimately cognitively affect him.

[229] The plaintiffs submit that there was a reasonable possibility that Kyrollos would become a doctor prior to the accident, and that there is a real and substantial possibility that the accident will prevent Kyrollos from achieving this goal. They point to Kyrollos’ excellent pre-accident academic performance, which they submit was only achievable with the support of both of his parents. The loss of Ms. Ghaly’s support has caused him to lose direction, threatening his career goals. Further, there is a real risk that Kyrollos’ ability to succeed in a STEM career will be thwarted by his

lack of confidence, hypervigilance, avoidance behaviors, and depressed mood symptoms.

[230] Acknowledging that “an assessment of lost opportunity is not a mathematical calculation but an exercise of judgment based on all the facts of the case” (*Smith* at para. 39), the plaintiffs submit that, assuming Kyrollos’ medical career would have begun at age 30, an award of \$1,617,021.56 would be appropriate under this head of damage. This amount accounts for currency exchange rates and negative contingencies including: the possibility of part-time employment and the possibility that, but for the accident, Kyrollos would not have been successful in meeting the requirements to become a physician.

[231] In response, the defendants say there is insufficient evidence to ground this claim. They point out how there was no vocational assessment, neuropsychological assessment, or other expert opinion adduced with regards to how the accident affected Kyrollos’ cognitive development, which the plaintiffs submit is key to assessing this claim. They submit that the *Rab* test has not been met, as there is simply no evidence on which the Court can conclude that there is a real and substantial possibility of a future loss of income earning capacity.

[232] This is difficult to determine. I am, however, not convinced that Kyrollos will fail to become a doctor as a result of the accident. While he has indicated a loss of focus and motivation, in my view, there is a realistic chance that he will still succeed in becoming a doctor—but there may be a significant delay in achieving that goal.

[233] Kyrollos still maintains high grades since the accident, which he attributes to Mr. Ghlay’s support. I do not see that reality changing. I do acknowledge, however, the challenges he will face, as noted in Dr. Young’s report, which may impact and delay his path to becoming a doctor. In addition, Kyrollos has just started university, which makes it even more challenging to predict this outcome. As has been repeatedly said, however, the quantification of future loss is not an exact scientific process.

[234] I am, therefore, prepared to conclude that Kyrollos' loss, similar to Marina's, will be more one of delayed entry into the workforce. There is no evidence of Kyrollos' university performance yet, so I conclude that the delay will likely be approximately four years. Using the same table and evidence presented for calculating a similar loss for Marina, I conclude the value of the potential future loss of income is \$628,508.13 (US\$458,765.06).

[235] I similarly do not see the need to deduct amounts he may have earned in this period as, again, I conclude that timeframe would be utilized in school and other training to enable him to achieve this goal.

E. Aggravated Damages

[236] In addition to general damages, the plaintiffs seek aggravated damages to compensate them for the loss they suffered as a result of the defendants' conduct. In *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at paras. 188–89, 1995 CanLII 59, the Supreme Court of Canada noted:

188. Aggravated damages may be awarded in circumstances where the defendants' conduct has been particularly high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety ...

189. These damages take into account the additional harm caused to the plaintiff's feelings by the defendant's outrageous and malicious conduct. Like general or special damages, they are compensatory in nature. ... They represent the expression of natural indignation of right-thinking people arising from the malicious conduct of the defendant.

[237] Aggravated damages are “not meant to set an example or punish the defendant, but instead is meant to enhance the non-pecuniary damage award and to help assuage the resentment, anger, humiliation or loss of pride that the plaintiff feels or experiences as a result of the manner in which the defendant ruined his life”: *Bob v. Bellerose*, 2003 BCCA 371 at para. 26. In other words, the premise of aggravated damages is compensation for the plaintiffs' response to the defendants' harmful actions. The defendants had an opportunity to cross-examine the plaintiffs to specifically address this issue.

[238] Mr. Mand was seen operating his motorcycle with reckless abandon before the accident. After the accident, he failed to stop despite causing the death of Ms. Ghaly and profound psychological injuries to the other members of the Ghaly family. The plaintiffs submit that aggravated damages are warranted for the guilt, humiliation, and loss of dignity they experienced as a result.

[239] In response, the defendants say, there are few cases in which aggravated damages are awarded in the context of a motor vehicle accident. It is submitted that this is so because in the vast majority of cases, the negligent actions of the defendant driver were not malicious, outrageous, high-handed, oppressive or intended to injure the victim's proper feelings of dignity and pride.

[240] I agree there is no evidence that the Mr. Mand intentionally operated his motorcycle in such a way or to cause the Ghaly vehicle to lose control. His conduct was not inherently directed specifically at the plaintiffs unlike the case of road rage that grounded aggravated damages in *Henderson v. McGregor*, 2019 BCSC 1964. While the Mr. Mand's conduct was reckless and negligent, I conclude the damages awarded—particularly, non-pecuniary damages—adequately account for the pain and suffering Mr. Mand's reckless actions caused.

F. Cost of Future Care

[241] Damages for costs of future care are awarded to restore the plaintiff to his or her pre-accident condition, to the extent that this is possible, based on what is shown to be reasonably necessary to preserve or promote the plaintiff's mental and physical health: *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29–30.

[242] The amounts claimed must be justified based on medical evidence as to what is required to reserve or maintain the plaintiff's health, and the claims must be reasonable: *Redmond v. Krider*, 2015 BCSC 178 at para. 174, citing *Milina v. Bartsch*, 49 B.C.L.R. (2d) 33 at 84, 1985 CanLII 179 (S.C.).

[243] I will be brief in this area. The recommendation for each of the plaintiffs is to undertake psychological counselling. While the defendants agree 12 one-hour sessions at \$225 per hour (for a total cost of \$2,700) is appropriate for Mr. Ghaly, they argue the evidence strongly suggests that Mr. Ghaly will not seek therapy or psychological counselling, nor will he seek driver training.

[244] The defendants essentially argue the same for each of Marina and Kyrollos. They also point out that the family receives support from the church, family and friends, so there is no need for family counselling.

[245] I am prepared to award each family member 24 one-hour sessions of psychological counselling at a rate of \$225 per hour. While the defendants only concede Mr. Ghaly is in need of counselling, the medical evidence has established that need for each family member. In addition, each testified they would now avail themselves of that assistance, despite not doing so in the past.

[246] I agree with the defendants, however, that no evidence was adduced with respect to medication, and I decline to order any amounts in that regard.

[247] Accordingly, I award \$5,400.00 to each plaintiff for the cost of future care.

V. *Family Compensation Act* Claims

[248] The *Family Compensation Act* creates a statutory basis for the recovery of damages by the deceased's surviving spouse, parents, and children that abrogates the common law rule that no one has a cause of action in tort against the person who has wrongfully caused the death of a third party: *Family Compensation Act*, s. 2; *Roberts v. Morgan*, 2019 BCSC 2313 at para. 8.

[249] While s. 2 of the *Family Compensation Act* refers only to "damages", the jurisprudence makes clear that only pecuniary losses are recoverable, including "the actual financial benefit of which they have been deprived and includes financial benefit which might reasonably be expected to accrue in the future if the death had not occurred": *Brown v. Finch*, 42 B.C.L.R. (3d) 116 at para. 3, 1997 CanLII 4099

(C.A.) [*Finch*], citing *Cox v. Takahashi*, 5 B.C.L.R. 162 at 164, 1977 CanLII 690 (C.A.).

[250] Damages are assessed according to the facts of the case, not through a comparison to other cases: *I.C.B.C. v. Chan*, 2007 BCSC 1431 at para. 18, citing *Sum Estate v. Kan*, 44 B.C.L.R. (3d) 250 at 255–56, 259, 1997 CanLII 4072 (C.A.).

[251] The usual heads of damage in a claim under the *Family Compensation Act* are:

- 1) loss of financial support (or loss of dependency);
- 2) loss of household services and child care;
- 3) loss of guidance, care and companionship;
- 4) loss of inheritance;
- 5) management fees;
- 6) tax Gross-up.

See *Panghali v. Panghali*, 2014 BCSC 647 at para. 35.

[252] Under the *Family Compensation Act*, there is no compensable claim for loss of love, care, and/or companionship: *Roberts* at para. 37; *Cahoose v. I.C.B.C.*, 1999 BCCA 302 at para. 8; *Bianco Estate v. Fromow*, 56 B.C.L.R. (3d) 12 at para. 10, 1998 CanLII 6171 (C.A.).

[253] The heads of damages at issue in this case are the loss of financial support, loss of inheritance, and loss of guidance, care, and companionship. The parties have agreed on the loss of household services and child care, both past and present.

A. Loss of Financial Support

1) Legal Principles

[254] The goal of an award for loss of financial support is to “assure [claimants] the comforts and station in life which [they] would have enjoyed but for the untimely death of” their relative: *Plant v. Chadwick*, 5 B.C.L.R. (2d) 305 at 308–309, 1986 CanLII 951 (C.A.), citing *Keizer v. Hanna and Buch*, [1978] 2 S.C.R. 342 at 351, 1978 CanLII 28.

[255] The court in *Panghali* elaborated on how an award for loss of financial support is calculated:

[40] Generally speaking, the award for loss of financial support is calculated by determining what income the deceased would have earned but for the death, then reducing that amount to account for the deceased’s personal consumption. The award is meant to reflect the portion of the deceased’s earnings that would have gone towards the financial support of the surviving child. The amount awarded is net of income tax as, had the deceased survived, her contributions to the family and to the child would have drawn on after-tax income. Contingencies should then be considered and an allowance for “grossing up” the award made ...

See also *Valencia-Palacio v. KCP Heavy Industries Co. Ltd.*, 2022 BCSC 1171 at paras. 30–31.

[256] In *Keizer* at 351–52, the Supreme Court of Canada outlined a methodology for calculating loss of financial support, noting that the assessment is

neither punitive nor influenced by sentimentality. It is largely an exercise of business judgment. The question is whether a stated amount of capital will provide, during the period in question, having regard to contingencies tending to increase or decrease the award, a monthly sum at least equal to that which might reasonably have been expected during the continued life of the deceased.

[257] Importantly, in *Rosvold v. Dunlop*, 2001 BCCA 1, the Court of Appeal highlighted how the uncertainty in assessing loss of financial support affected the requisite standard of proof:

[9] Because damage awards are made as lump sums, an award for loss of future earning capacity must deal to some extent with the unknowable. The standard of proof to be applied when evaluating hypothetical events that

may affect an award is simple probability, not the balance of probabilities: [*Athey*]. Possibilities and probabilities, chances, opportunities, and risks must all be considered, so long as they are a real and substantial possibility and not mere speculation. These possibilities are to be given weight according to the percentage chance they would have happened or will happen.

[258] In *Finch* at para. 16, the court cited the following passage from *Daniels v. Jones*, [1961] 3 All E.R. 24 at 30, [1961] 1 W.L.R. 1103 (C.A.), which highlights how the fact a family benefitted materially from the death of a family member (as they no longer consumed a portion of the household budget) is not necessarily conclusive:

The argument for the defendant, if it be sound, proves conclusively that the plaintiff and her family, so far from having suffered a pecuniary loss, are actually better off as the result of the death of the deceased. Such a result is so repugnant to common sense as to cast a good deal of suspicion on the validity of the argument which leads to it. The fallacy of the argument, I think, lies in the fact that it treats the question to be solved in a case such as this as if it were one of precise arithmetical calculation. ... The claim must, of course, be based on the actual known figures, both of the earnings of the deceased and of any pecuniary benefit accruing to the plaintiff as the result of his death. But these figures have to be related to all the other known circumstances of the particular case, and must be considered in the light of a great number of imponderable factors. The result must be largely a matter of estimation, and the jury are directed by the Act to award "such damages as they may think proportioned to the injury resulting from" the death.

2) Positions of the Parties

[259] The plaintiffs rely on the expert report of Mr. Wickson to submit that the future loss to the estate as a result of Ms. Ghaly's death is either \$722,706 (assuming she would have worked as an RN) or \$510,600 (assuming she would have worked as an LPN). The plaintiffs also noted that the Court could award an amount somewhere between these two numbers should it find that Ms. Ghaly would have worked for some period of time as both an LPN and then later as an RN.

[260] The plaintiffs took issue with several aspects of the economic evidence adduced by the defence's expert, Mr. Gosling. In particular, they point to the large portion of income which Mr. Gosling receives in testifying for ICBC, which they submit should weight adversely against his credibility. They also allege that Mr. Gosling used a variety of techniques to decrease the loss of the Ghaly estate, including inflating wages, failing to apply the Employment Income Rate to

Ms. Ghaly's income to make it grow in the future, improperly applying a divorce and remarriage contingency despite the absence of any evidence the couple would have divorced, and ignoring the possibility that Ms. Ghaly could become a higher-earning RN.

[261] In response, the defendants submit that many of the assumptions made in Mr. Wickson's report lack an evidentiary basis, including those relating to the costs of the Ghaly children's schooling and the prospects for Ms. Ghaly's return to work. In particular, the defendants describe Ms. Ghaly's returning to work as either a full-time RN or full-time LPN by the valuation date as "two very unlikely scenarios". In their view, Mr. Gosling's assumptions (that Ms. Ghaly would not have worked and, if she worked, it would have been as either a full- or part-time LPN) are better supported by the preponderance of the evidence. The defendants submit because in two of the three scenarios considered by Mr. Gosling, Ms. Ghaly's death actually led to a net financial gain for the Ghaly family, there should be no award for loss of financial support.

3) Economic Evidence

(i) Robert Wickson

[262] Robert Wickson, a consulting economist, testified as an expert in this matter to assist in determining the value of the financial losses sustained by Mr. Ghaly, Marina, and Kyrollos as a result of Ms. Ghaly's death. Mr. Wickson filed a report dated January 3, 2020, and an updated report dated July 28, 2022.

[263] As noted in the July 28, 2022, report, Mr. Wickson is qualified to provide expert evidence, based on statistical information, that may assist the Court in estimating the earning capacity of individuals based on their age, sex, occupation, level of education, and past earnings. He can also provide estimates of the quantitative impact of work limitations and normal employment contingencies on the earnings of individuals along with discounted values of forecast future income or income loss, making allowances for the possibility of death.

[264] The valuation date (*i.e.*, the presumed date for the purposes of making his opinion) for the July 28, 2022, report was set at September 26, 2022.

[265] Mr. Wickson provided his opinion based on a number of assumptions regarding the Ghalys' age, sex, occupation, level of education, and past earnings provided to him by counsel, which included the following:

- 1) Ms. Ghaly possessed a Bachelor of Science degree, had been certified as an LPN and intended to become certified as an RN.
- 2) At the time of the accident, Ms. Ghaly was a homemaker. It was her intention to return to the labour market, either as an LPN or RN, after Kyrollos turned 18. Accordingly, for the calculations in this opinion, Mr. Wickson assumed Ms. Ghaly would have entered the workforce by the valuation date.
- 3) Marina and Kyrollos both intended to attend university for four years and then to attend medical school for four years. Mr. and Ms. Ghaly would have provided financial support until the two completed their schooling. Accordingly, Mr. Wickson and his team researched the cost of attending university and medical school for Washington residents.

[266] With respect to the calculation of Mr. and Ms. Ghaly's income, Mr. Wickson assumed that Ms. Ghaly's future earnings after Kyrollos turned 18 could be represented by the average annual earnings of women working as RNs in the U.S., adjusted to reflect the earnings of women in this occupation group in Washington State using reported wage rates. In addition, based on a Statistics Canada study regarding the relative impact of age and experience on earnings, Mr. Wickson concluded that work experience is a better predictor of hourly earnings than age. As a result, he assumed that when Ms. Ghaly would have entered the workforce, her earnings would have been equivalent to the earnings of a 25-year-old woman and then move toward those of a woman her actual age over a period of 25 years. In addition, Mr. Wickson applied average employment contingencies associated with

part-time work, participation work, unemployment, and the probability of working past age 70. Mr. Wickson undertook a virtually identical process with respect to Ms. Ghaly's earnings if she instead became an LPN.

[267] Mr. Wickson made an allowance for income taxes and other deductions from income, and an adjustment for share of family income. As Mr. Wickson testified and set out in his report, the calculation of the family's loss must recognize that part of the family's earnings during Ms. Ghaly's lifetime would have been used to provide for her own personal consumption. The Ghaly family should only be compensated by an amount that allows them to maintain the same standard of living as before, given that Ms. Ghaly's personal consumption is no longer needed. Accordingly, Mr. Wickson estimated Ms. Ghaly's share of family income based on the total family income under the various household compositions that are relevant to the case.

[268] Mr. Wickson also determined the value of annual future incomes when discounted by present values (leaving aside possible mortality) based on the discount rate of 1.5% prescribed by the *Regulation*. Mr. Wickson also made separate adjustments that took account of the risk that Ms. Ghaly, Mr. Ghaly, Marina, and/or Kyrollos would die of other causes after the accident.

[269] Mr. Wickson's report states that the loss to Mr. Ghaly and his children is equal to the difference between the income they would have benefited from while living with Ms. Ghaly and the income that now remains to them as a result of Ms. Ghaly's death. According to Mr. Wickson's sample calculations, the losses to Mr. Ghaly and his children are as follows:

- 1) From the date of the accident to the date of valuation, the remaining members of the Ghaly family experienced a net gain of \$85,400 (US \$66,300).
- 2) The total future loss to the family assuming Ms. Ghaly began working as a RN after Kyrollos turned 18 would be \$674,700 (US\$523,700).

- 3) The total future loss to the family assuming Ms. Ghaly began working as an LPN after Kyrollos turned 18 would be \$477,400 (US\$370,600).

[270] These values were converted to Canadian dollars from U.S. dollars using the exchange rate as of July 26, 2022.

[271] The estimates of the family's future net loss account for possibility that at least one of the children might survive Mr. Ghaly during the period between the valuation date to the date Kyrollos completed his schooling, during which Ms. Ghaly would have been providing them with support in the absence of the accident. Mr. Wickson estimated the loss to the children under the assumption that they will survive Mr. Ghaly separately as being US\$9,900 under the assumption that Ms. Ghaly would have worked as an RN and US\$7,300 under the assumption that Ms. Ghaly would have worked as an LPN. These values are included in the above calculations of total future loss.

[272] Mr. Wickson notes that the calculated amounts represent compensation for loss of after-tax income earned by Ms. Ghaly. Compensation paid to Mr. Ghaly in the form of award will, therefore, need to be increased to allow for any income taxes to be paid on the earnings of the fund. As these calculations are very complicated, the parties propose that the award be made and the tax implications be dealt with by the parties later.

[273] In cross-examination, Mr. Wickson agreed that the report was based on certain assumptions, including that Ms. Ghaly had been certified as an LPN and it had been her intention to become certified as an RN. Furthermore, he agreed that he did not factor financial assistance into the cost of the Ghaly children attending university.

[274] Mr. Wickson also agreed that he had prepared the report with the assumption that Ms. Ghaly would return to full-time work, and acknowledged that the numbers would be different if she only worked part time. However, he also indicated that the above sums had already been reduced to account for the chance that Ms. Ghaly

would work part time, and it was, therefore, unnecessary to apply the part-time work contingency as he would not want to double count this variable.

[275] When questioned as to whether the families gain of \$85,400 between the date of Ms. Ghaly's death and the valuation date would need to be subtracted from any future loss award, Mr. Wickson indicated that he was not sure how the Court should deal with it, as the question may be whether the plaintiffs should be rewarded for the death of Ms. Ghaly.

[276] Mr. Wickson was cross-examined on the pretrial consumption rates of Ms. Ghaly, which he set at 12%, and the consumption rate for the future, which he set at 5%. When questioned as to why there was such a low consumption rate at the time of future loss, he indicated that as income goes up, the percentage share of consumption goes down. He also noted that more important in this case is the cost of the schooling of the children. That cost would be substantial—between US\$25,000 and US \$70,000 per year depending how far in school the children progressed. During cross-examination, counsel for the defendants put to Mr. Wickson that if 35% of the family's budget consumption is for common expenses, this would leave 60% available for Mr. Ghaly and the children (or 20% each) versus 5% for Ms. Ghaly. Mr. Wickson disagreed and reiterated his point that the children's schooling would consume most of the family's budget.

[277] The essential question with respect to Mr. Wickson's report is whether the Court can find that Ms. Ghaly was intending to return to work on a full-time or part-time basis, when her return to work would occur, and whether she was going to do so as an RN or LPN. On this point, Mr. Wickson said if there was some question as to whether she would have initially worked for some time as an LPN and then some time as an RN, the Court would establish the probability of that event. For example, if the Court were to conclude that Ms. Ghaly would have worked 60% of the time as an LPN and 40% time as an RN, one could take the amounts provided in the table and multiply them by that percentage amount. The sum of these two amounts, converted into Canadian dollars, would represent the future loss award.

(ii) Mark Gosling

[278] Mark Gosling, an economist with 20 years of experience in estimating economic damages in personal injury and fatal accident cases, testified as an expert in the valuation of financial loss on behalf of the defendants in this matter. He prepared a report dated June 29, 2022, that provided estimates of the loss of financial support arising from Ms. Ghaly's death.

[279] Mr. Gosling's report was based upon assumptions that differed in some key respects to those relied on by Mr. Wickson, including the following:

- 1) Either Ms. Ghaly would not have worked or she would have worked starting as of the date of trial.
- 2) For the years that Ms. Ghaly worked, she would have had earnings consistent with the average licensed practical/licensed vocational nurse in Washington State. Based on data from Occupational Employment and Wage Statistics, May 2021, and changes in the Employment Cost Index for wages and salaries for civilian workers, the average earnings in this occupation would be US\$66,223 for full-time work and US\$33,112 for part-time work.
- 3) Mr. Ghaly's earnings in 2017, 2018, 2019, and 2020 were US\$44,251, US\$122,182, US \$115,671, and US \$116,500 respectively. By applying the Employment Cost Index to Mr. Ghaly's 2020 earnings, Mr. Gosling estimated his earnings for 2021 and 2022 to be US \$120,800 and US \$124,400. For future years, he presumed Mr. Ghaly would continue to earn US \$124,400.
- 4) It was presumed that Mr. and Ms. Ghaly would have worked to either to their 65th or 70th birthdays.
- 5) In setting the dependency factor, Mr. Gosling set common expenditures of benefits to all family members at: 70% of spending on shelter, household

operation, household furnishings/equipment, and miscellaneous; 30% of spending on transportation; 20% of spending on recreation; and 33% of spending on gifts of money contributions and support payments. On this basis he estimated common expenditures at about 35% of family after-tax income. The remaining 65% of family after-tax income was split between the personal consumption of the family members, assuming that each child consumes about one third less than each adult. These percentages were based on his review of anonymized microdata from Statistics Canada's 2009 and 2017 Surveys of Household Spending. Accordingly, he concluded that had the accident not occurred, spending of benefit to the surviving family members would have been 80.5% of family disposable income in a four-person household, 75.6% of family disposable income in a three-person household, and 67.5% of family disposable income in a two-person household.

- 6) The children would remain financially dependent on their parents to age 22.

[280] Mr. Gosling also prepared tables adjusting future losses on statistical marital contingencies of divorce and remarriage based on Statistics Canada's 2001 Divorce and Remarriage Tables for Canadian females and males. Mr. Gosling indicated that he was not aware of similar tables based on US data despite having looked into this in the last couple of years.

[281] After explaining the details of his estimates, noting US federal income tax and other contingencies, Mr. Gosling's report summarizes his findings in a table laying out his estimates of future losses based on a number of scenarios that differed as to: whether Ms. Ghaly worked and, if she did, whether she worked part time or full time as an LPN; and whether she would have retired at age 65 or age 70. Before adjusting for the possibility of divorce and remarriage and assuming a retirement age of 65, as a result of Ms. Ghaly's death, Mr. Gosling's reports suggested that the surviving family members actually experienced a net gain of US \$310,017 if

Ms. Ghaly did not work, a net gain of US \$38,793 if Ms. Ghaly worked part time, and a loss of US \$220,149 if Ms. Ghaly worked full time.

[282] As Mr. Gosling noted during his testimony, the net financial gains in two of the three scenarios are due to the loss of Ms. Ghaly's consumption on account of her death.

[283] During cross-examination, Mr. Gosling acknowledged and elaborated on factors relating to the formation and substantive content of his expert report. For one, it became apparent that Mr. Gosling's firm obtains substantial funds from the defendant Insurance Corporation of British Columbia ("ICBC") as part of its work. Further, Mr. Gosling also indicated he did not recall the conversation in which he and counsel determined that he would only provide a report with respect to Ms. Ghaly working as an LPN, rather than one that also considered her earnings should she have become an RN. Mr. Gosling also confirmed the amounts in the report were in US dollars, and he had in error not included a sentence to that effect.

[284] Mr. Gosling also conceded that the contingency for divorce and remarriage was based on average statistics, and if Ms. Ghaly's situation was different from this average, this may be something the Court would take into account. Further, if the Court could conclude there was no evidence of marital issues and accept that divorce is contrary to religious belief, Mr. Gosling agreed that one could conclude that these contingencies should not be applied.

[285] Mr. Gosling acknowledged that the anonymized microdata from Statistics Canada's 2009 and 2017 Surveys of Household Spending was based on averages. He noted that, while average educational expenses may be taken into account as part of this data, if expenses were higher than these averages, those higher costs could be expected to influence household consumption, which would, in turn, affect the dependency factor. However, for this to occur, one would need to know who is paying the tuition, if there is any other support, and/or whether the children are contributing to these expenses.

[286] Mr. Gosling confirmed that his assumptions only included the children as dependents until age 22. Notes indicate that the children were expected to be dependents until they finished medical school, which was estimated to occur in 2031. Accordingly, he concluded that had the accident not occurred, spending of benefit to the surviving family members would have been 80.5% of family disposable income in a four-person household, 75.6% of family disposable income in a three-person household, and 67.5% of family disposable income in a two-person household.

[287] Finally, with regards to the consumption rate, Mr. Gosling noted—contrary to Mr. Wickson—that the consumption rate would remain the same despite the increase in income. For example, with a 67.5% dependency factor, Ms. Ghaly would spend 32.5% of household income. Thus, Mr. Gosling’s report suggests that if the Ghaly household income was \$100,000, her consumption would be \$32,500. If the household income were to increase to \$200,000, her consumption would similarly double to \$65,000. I prefer Mr. Wickson’s reasoning on this: To equate a rise in consumption directly to a rise in income does not necessarily make sense, *i.e.*, while consumption might increase, this increase is not necessarily going to be proportionate.

[288] Overall, I have concerns with Mr. Gosling’s report because: he chose not to account for the fact that Ms. Ghaly may become an RN; he applied a number of contingency factors, *i.e.*, the marriage and divorce factors, which may not be pertinent in this case; his dependency factor needs to be examined more closely especially as he has indicated personal consumption would increase directly related to income increase.

[289] Furthermore, there is a fundamental issue about whether the defendants should benefit from the lack of consumption that occurs because of Ms. Ghaly’s death. In this case, he has included those numbers in his calculation, and those indicated a financial gain to the family, not a financial loss.

4) Analysis

[290] In assessing this matter, there are significant differences between the plaintiffs and the defendants based on the economic reports of their respective experts. Those experts each have outlined assumptions upon which the calculations are based.

[291] The defendants quarrel with several of Mr. Wickson's assumptions, including that it was Ms. Ghaly's intention to return to the labour market after Kyrollos turned 18 as either an LPN or an RN. The defendants maintain that the evidence of Mr. Ghaly strongly suggest that Ms. Ghaly was completely committed to caring for the family and their home and, therefore, would likely not have returned to work. Furthermore, there is no evidence before the Court on which to assess whether it was likely or how long it would have taken for Ms. Ghaly to become an RN but for the accident.

[292] In addition, the defendants quarrel with the assumption that the Mr. and Ms. Ghaly would have funded the education of both children not only for an undergraduate degree but also for medical school. The defendants point out that Mr. Ghaly never testified that he and Ms. Ghaly planned to finance their children's education beyond their bachelor's degrees through to the end of medical school. In addition, the defendants point out that Mr. Wickson did not include any possibility of financial aid to the children in his calculations.

[293] In the result, the defendants maintain there are no factual underpinnings for key assumptions made by Mr. Wickson. His calculations for loss of financial services assumed that Ms. Ghaly would have returned to work full time as either an RN or an LPN. They say he did not consider the possibility of part-time employment or that Ms. Ghaly would never return to the workforce.

[294] In addition, the defendants maintain that Mr. Wickson's treatment of Ms. Ghaly's personal consumption was entirely unrealistic. He assumed that she would have returned to the labour force full time after the accident and apportioned

even less to her for her personal consumption bracket—only 5% for Ms. Ghaly with a dependency factor of 95% for the household.

[295] On these points, I conclude that Ms. Ghaly would have returned to work once the children were in university as either an LPN or an RN. The evidence established that Ms. Ghaly was an intelligent, motivated individual who had attended University in Egypt and obtained a Bachelor of Science degree before she married Mr. Ghaly and immigrated to Canada.

[296] After Marina was born in 2002, Ms. Ghaly started taking part-time courses at the British Columbia Institute of Technology. She had intended to complete her education to become an RN at that time, but this was interrupted when Kyrollos was born, and Ms. Ghaly ultimately became responsible for the care of the two Ghaly children while Mr. Ghaly worked full time.

[297] Once the family moved to Bellingham, Ms. Ghaly studied part-time at Bellingham Technical College and obtained her certificate as an LPN. Mr. Ghaly testified that Ms. Ghaly worked at finishing her degree as an LPN and postponed becoming an RN.

[298] Mr. Ghaly further testified that Ms. Ghaly worked part time one or two days per week from 8 AM to 3 PM, while the Ghaly children were in school.

[299] In evidence is Ms. Ghaly's email application to Dr. Bhola's office, in which she indicated an interest in an LPN position and where she was ultimately hired. In the email, Ms. Ghaly referred to her past experiences as a student nurse. Her résumé listed her clinical education experience, but no previous employers. It also indicated that she obtained a nursing assistant certificate from Bellingham Technical College in June 2006.

[300] Ms. Ghaly appeared happy to be working part time as an LPN while her young children were at school. Dr. Bhola, however, then offered her a full-time LPN position, as per his business needs at the time. Mr. Ghaly testified that Ms. Ghaly quit working for Dr. Bhola because Dr. Bhola needed her to work full time and she

was not prepared to do so. Mr. Ghaly testified that he did not want her to quit working part time, but she wanted to take care of the children. Despite this, however, Mr. Ghaly testified that Ms. Ghaly attempted to find other part-time work for a couple of months after she quit working for Dr. Bhola.

[301] Marina testified that in discussions with her mother, her mother referred to continuing her education at Bellingham Technical College in order to obtain the credentials necessary to work as an RN.

[302] While there is no doubt the evidence describes a very committed mother heavily involved in the church, it also establishes an intelligent woman who wanted to work and pursue a career. This career was put on hold while she attended to the needs of the family. In my view, however, there was a very real likelihood that Ms. Ghaly would have returned to work as an LPN and/or an RN once the children were in university.

[303] Both Mr. Ghaly and his children corroborated Ms. Ghaly's desire to go back to school and return to work as a nurse. Kyrollos noted that she had said she would do so "when [he was] grow[n] up", and Mr. Ghaly said she wanted to make this change once the children had finished school.

[304] Furthermore, while the defendants say there is no evidence that Mr. and Ms. Ghaly would have agreed to fund their children's education through to the end of medical school, the evidence demonstrates that this was a dream or initiative of Ms. Ghaly to inspire her children to do so, and therefore it is likely that the parents would have funded such an endeavour. This financial support would most likely cause Ms. Ghaly to seek full-time employment as either an LPN or an RN to support the family.

[305] It is somewhat more difficult, however, to determine whether there is a real possibility that Ms. Ghaly would have been able to undertake further studies to become an RN. I am of the view that this would have occurred at some point, although precisely when is far from certain. Accordingly, it will be necessary for me

to adjust the calculations as per Mr. Wickson’s recommendation to reflect the possibility that Ms. Ghaly would have spent some of her career working as an LPN and the remainder as an RN.

[306] Overall, I prefer the estimates projected by Mr. Wickson to that of Mr. Gosling. I do so after having concluded that the assumptions made in Mr. Wickson’s reports are supportable despite the arguments of the defendants to the contrary. While the defendants argue that Mr. Wickson was asked to assume two very unlikely scenarios, *i.e.*, that Ms. Ghaly would have returned to work full time as either an RN or an LPN, I have concluded that these outcomes were likely in the circumstances. Mr. Gosling did provide an estimate that Ms. Ghaly would have worked starting at the trial date as an LPN only, which I will consider as part of my assessment in this matter.

[307] There is also a difference between the economists as to the disposable income and the dependency aspects. While the defendants maintain that Mr. Wickson’s treatment of Ms. Ghaly’s personal consumption was entirely unrealistic, I do not agree. I am satisfied by Mr. Wickson’s explanation that his calculations reflect that fact that the majority of the family income would be used to pay for the children’s education, thereby lowering Ms. Ghaly’s proportionate consumption. All of this appears eminently reasonable in the circumstances.

[308] While both economists concluded there was a financial gain to the family—albeit at different rates prior to the likely return to work of Ms. Ghaly in September 2022—there are significant differences at the end of the day on financial loss and gain.

[309] I will, however, comment on the question of the impact of a net financial gain to the calculation of damages. The defendants rely on *MacKinnon v. Tremere et. al.*, 2000 BCSC 743, to argue that in that circumstances, they would ask the Court to make no award for loss of financial support on this basis. In rejecting the argument, I adopt the reasoning of the court in *Daniels* at 30, who concluded that “such a result is so repugnant to common sense as to cast a good deal of suspicion on the validity

of the argument which leads to it.” Accordingly, after taking into account “all the other known circumstances of the particular case, and [considering the issue] in the light of a great number of imponderable factors” (*Daniels* at 30), I find that *MacKinnon* is not binding on this Court nor is it persuasive in this respect. Thus, the defendants’ argument that the alleged net gain to the plaintiffs due to Ms. Ghaly’s death could fully negate this head of damage must fail.

[310] I have concluded that Ms. Ghaly would have likely spent 60% of her remaining working years as an LPN and the remaining 40% as an RN. As per the amounts set out in Mr. Wickson’s report, the future loss of financial support suffered due to Ms. Ghaly’s death would accordingly be \$470,920, representing the sum of \$286,440 (representing 60% of the amount Ms. Ghaly would have earned working only as an LPN) and \$269,880 (representing 40% of the amount Ms. Ghaly would have earned working only as an RN) less the \$85,400 net gain to the Ghaly family between the date of the accident and the date of trial.

B. Loss of Inheritance

1) Legal Principles

[311] Damages for loss of inheritance recognize how “the untimely death of the victim has stopped her from accumulating assets that would eventually have entered her estate”: *Panghali* at para. 76. An award for loss of inheritance is thus aimed at replacing the amount by which the deceased’s estate would have increased in value but for their premature death: *Panghali* at para. 76.

[312] An award for loss of inheritance is however “beset with uncertainty and any award must necessarily be largely arbitrary”: *Kwok v. B.C. Ferry Corp.*, 20 B.C.L.R. (2d) 318 at 361, 1987 CanLII 2535 (S.C.). As the court in *Panghali* elaborated:

[77] ... It is very difficult to predict what assets a person might have accumulated over their natural lifespan, how they might have dealt with them during that period, or predict how they might have dispersed them at death. The deceased may have put aside savings at one point in life only to spend them later, or invested in real estate (the matrimonial home or otherwise) only to consume the value of those assets during retirement. Catastrophes might have arisen that required the deceased to draw on savings; or perhaps the deceased would have spent the majority of her income, rather than saving,

and not accumulated much in the way of assets at all. At the end of a natural lifespan she might have devised her assets entirely on her spouse, if he outlived her. The contingencies and uncertainties associated with the award are very high.

[78] The other side of the inheritance claim is a deduction to account for any financial benefits flowing through the estate to the claimant. The amount deducted is not the actual amount received, but instead, the value of the acceleration of the inheritance -- the value of the fact that the estate has come to the plaintiff much earlier than it would have done absent the wrongful death.

[79] In many cases, these two factors cancel each other out, so that no award or deduction is made with regards to the value of an inheritance; ...

[313] The defendants submit that there is no evidentiary basis to make an award for loss of inheritance, as Ms. Ghaly had no savings or assets on her own and the evidence that she would have returned to the workforce but for the accident does not rise above mere speculation.

[314] I have dealt with this latter point and concluded that there is a reasonable possibility that Ms. Ghaly would have returned to the workforce but for the accident. Accordingly, the question of inheritance will have to be examined with that in mind.

2) Positions of the Parties

[315] The plaintiffs seek damages for loss of inheritance in the amount of \$25,000 for each of Marina and Kyrollos. This award is premised on the fact that Ms. Ghaly would have accumulated equity from her employment, either as an LPN, an RN, or otherwise. The plaintiffs, however, concede that in cases where the deceased had no pattern of saving, the courts have awarded modest amounts for loss of inheritance: see *Foster v. Perry and VSA Highway Maintenance Ltd.*, 2005 BCSC 1214 at paras. 46–52.

[316] The defendants submit that there is no evidentiary basis for an award under this head of damages. In particular, they point to the fact that Ms. Ghaly had no will, minimal earnings while alive, no personal savings or assets, no pre-death pattern of saving, and no bank account. They also point to their submission that Ms. Ghaly's return to the workforce "does not rise above mere speculation".

3) Analysis

[317] As I have concluded that there is a real possibility that Ms. Ghjaly would have returned to the work force, some equity may have been accumulated from her employment. In this case, however, as in others, as there is no established pattern of savings, only a modest amount should accordingly be awarded for inheritance.

[318] Based on the above, I conclude an award of \$40,000 is appropriate as an award for the loss of inheritance in this case.

C. Loss of Guidance, Care, and Companionship

1) Legal Principles

[319] Under this head of damage, the claimant is entitled to compensation for pecuniary losses resulting from the absence of the deceased's guidance, care, and companionship: *Loyie Estate v. Erickson*, 94 B.C.L.R. (2d) 33 at para. 13, 1994 CanLII 330 (S.C.); *Bjornson v. McDonald et al.*, 2005 BCSC 765 at para. 29.

[320] In practice, an award for loss of guidance, care, and companionship is intended to provide the cost of replacing in the open market the care, education, training, and guidance that would have otherwise been provided by the deceased: *Loyie Estate* at para. 12; *St. Lawrence & Ottawa Railway Co. v. Lett*, 11 S.C.R. 422 at 432–436, 1885 CanLII 7; *Roberts* at para. 17.

2) Positions of the Parties

[321] The plaintiffs seek \$60,000 each for Marina and Kyrollos for loss of guidance, relying on *Ruiz v. Bouaziz*, 2001 BCCA 207.

[322] The defendants concede that there has been a loss of guidance. They however maintain that an award of \$30,000 to Marina and \$35,000 to Kyrollos are appropriate. The defendants submit that the maximum conventional award for loss of guidance is \$45,000: *Valencia-Palacio v. KCP Heavy Industries Co. Ltd.*, 2022 BCSC 1171 at paras. 98–100. In terms of assessing the award, they submit that younger children with a greater degree of dependency receive awards closer to the

\$45,000 maximum conventional award while older children typically receive smaller awards due to their lower level of dependence, subject always to the specific evidence of the case.

3) Analysis

[323] It is always difficult to determine an appropriate award under this heading, as one does not wish to evaluate another parent. It is, however, clear that Ms. Ghaly was particularly close and supportive to her children and her guidance was integral to their development. While neither were very young children of the time of her death, each was entering a particularly important and vulnerable stage of their development and relied heavily on their mother. While there is no doubt the church provided support, the Ghalys' closest relations were far away in Egypt, and nothing could replace the strong integral support of their mother.

[324] There is also no doubt that the church that they have spent so much time with provided essential support after the death of Ms. Ghaly. This stoic family should not further suffer because they did not avail themselves of traditional means of support such as counselling. While the church essentially played that role after the tragedy, this did not replace the loss of their mother.

[325] In all the circumstances, I am inclined to award each child \$50,000 for the loss of guidance, care, and companionship of their mother.

VI. Conclusion

[326] In conclusion, I will set out the summary of damages awarded in this matter as follows:

1. Summary of Damages Sought by Plaintiffs in the Tort Action

Wagih Ghaly

Past Wage Loss:	\$34,374.00
-----------------	-------------

Non-pecuniary Damages:	\$140,000.00
Future Cost of Care:	\$5,400.00
Special Damages:	\$1,361.00

Marina Ghaly

Non-pecuniary Damages:	\$100,000.00
Future Loss of Earning Capacity:	\$314,254.01
Future Cost of Care:	\$5,400.00
Special Damages:	\$1,560.25

Kyrollos Ghaly

Non-pecuniary Damages:	\$100,000.00
Future Loss of Earning Capacity:	\$628,508.13
Future Cost of Care:	\$5,400.00
Special Damages:	\$1,015.00
Total:	\$1,337,272.39

2. Summary of Damages under the Family Compensation Act Claim

Loss of Care, Guidance, and Affection:	\$100,000.00
Recoverable expenses pursuant to s. 3(9)(A):	\$59,975.56
Recoverable expenses pursuant to s.3(9)(B):	\$19,945.78
Present value of future loss of financial support of Ms. Ghaly:	\$470,920.00

Death to valuation date loss of Ms. Ghaly’s household services:	\$83,400.00
Present value of future household services:	\$370,000.00
Loss of Inheritance:	\$40,000.00
Tax Owing for Tax Gross up of Future Loss of Income:	To Be Determined
Total:	\$1,144,241.34
Aggregate Total of Both Actions:	\$2,481,513.73

[327] The parties have agreed to defer tax implications following the determinations by the Court in these reasons for judgement.

[328] Costs are to be awarded to the plaintiffs unless there are matters particular to that issue of which the Court should be aware. In that case, the parties are at liberty to file an application to that effect, if done so within 45 days of this judgment.

“Burke J.”