IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Morgan v. Morin,*
2025 BCSC 267

Date: 20250219
Docket: M60114
Registry: Kamloops

Between:

Marlene Gwyneth Morgan

Plaintiff

And

Patrick Homer Morin and Doug Morin

Defendants

- and -

Docket: M58799
Registry: Kamloops

Between:

Marlene Gwyneth Morgan

Plaintiff

And

Kami Cabs Ltd. And Giacomo Marchese

Defendants

Before: The Honourable Justice Whately

Reasons for Judgment

Counsel for the Plaintiff: G. Thomson
C. Gray

Counsel for the Defendants: C. Manning
T. Teja

Place and Date of Trial:	Kamloops, B.C. July 22-26, 2024 and July 29-Aug 1, 2024
Place and Date of Judgment:	Kamloops, B.C. February 19, 2025

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Introduction

[1] The plaintiff, Marlene Morgan, seeks compensation for injuries and losses she sustained as a result of two motor vehicle accidents. The first accident took place on April 18, 2018 (the "2018 MVA"), and the second on April 30, 2019 (the "2019 MVA"), both in Kamloops, British Columbia.

[2] The defendants for both the 2018 MVA and the 2019 MVA (collectively, the "Accidents") admitted liability. Therefore, the only issue before the court is an assessment of the damages Ms. Morgan claims she sustained as a result of the Accidents.

Issues

[3] The issues for determination are:

a) Causation

- Whether Ms. Morgan's pre-existing conditions impact the assessment of damages resulting from the Accidents and, if so, to what extent.

b) Quantum of damages

- Non pecuniary;
- Past and future loss of earning, or earning capacity; and
- Cost of future care.

[4] The parties are far apart in terms of the quantum of damages they say Ms. Morgan is owed as a result of the Accidents. Ms. Morgan claims upwards of $1.8 million in total. The defendants argue that a more appropriate quantum of damages is in the range of $320,000-$330,000. Special damages have been agreed to by the parties in the amount of $13,779.52.

Facts

Prior to the Accidents

[5] Ms. Morgan was 47 years old when the first of the two Accidents occurred. By the time of trial, she was 54 years old.

[6] Ms. Morgan was born and raised in Ontario. She and her family were close-knit and they were active in sports and outdoor activities, including skiing, biking, water skiing and fishing.

[7] Ms. Morgan worked throughout her school years. She started working at the age of nine in a clothing store, and later as a front desk clerk at a hotel in her hometown of Sioux Lookout. Ms. Morgan drove fuel trucks for her dad's business for a brief time after graduation before starting her post-secondary education.

[8] Ms. Morgan attended St .Lawrence College and graduated with a diploma as a child and youth worker in 1992. She then attended Lakehead University and earned a degree in social work in 1995, and obtained her Masters in social work at the University of Calgary in 1996.

[9] After graduation, Ms. Morgan moved to Burns Lake, British Columbia to work for the Ministry for Children and Families (the "Ministry") as a child protection worker. She worked for a time in Burns Lake and then briefly in Smithers, British Columbia. A life-long lover of travel, Ms. Morgan took a four-month leave from work to travel in Australia, before returning to Burns Lake and her position with the Ministry.

[10] As a member of the Ministry's child protection "float team," Ms. Morgan travelled to several British Columbia communities for her child protection work. Ms. Morgan met her husband, Corey Argue, in Mackenzie, British Columbia on one such work trip, and they were married in 2001. The couple moved back to Ontario to be closer to Ms. Morgan's family. They had their two sons in 2004 and 2006. Ms. Morgan took time off for maternity leave, but returned to full time work after.

[11] From 2007 to 2014, Ms. Morgan continued to work as a social worker and discharge planner in Ontario. In 2014, the family moved to Kamloops, British Columbia.

[12] In Kamloops, Ms. Morgan worked for the Interior Health Authority (“IHA”). transitioning from child protection work, to long term care. She worked in various positions and at various facilities over the years. At the time of the 2018 MVA, Ms. Morgan was working full time at the Kamloops Seniors Health and Wellness Centre. Other facilities that she worked at during the relevant period are referred to in the evidence as “Overlander” “Ponderosa” or “South Hills”.

Prior Conditions or Injuries

[13] One of the key issues of this case is the extent to which Ms. Morgan’s pre-existing conditions should be factored into my consideration of causation, and any assessment of similar injuries or impacts she alleges she suffered as a result of the Accidents.

[14] Ms. Morgan acknowledged depression and anxiety as pre-existing conditions in her notice of civil claim. She says that her symptoms were managed at the time of the Accidents.

[15] Ms. Morgan also acknowledged that she suffered from a pre-existing “over-use” injury associated with computer and mouse work. This injury caused pain tightness in her upper back, neck and arm, and radiating tingling down her arm, into her hand and fingers. This condition worsened when work demanded heavy computer use, and lessened when she was away from work.

[16] As of 2017, Ms. Morgan reported that this problem had been ongoing to various degrees for approximately five years. Ms. Morgan received workplace accommodations to help with this issue, including a desk riser and a joystick mouse.

[17] Ms. Morgan said that the overuse injury was being managed as of the time of the Accidents, and further, was a different kind of pain than she currently experiences as a result of the Accidents.

[18] In addition to the overuse injury, defence argues that Ms. Morgan suffered from a plethora of pre-existing conditions and injuries, including:

- "moderate headaches" as well as chronic migraines;
- arthritic changes to her right shoulder;
- symptomatic degenerative disc disease;
- spinal stenosis;
- lower back and bilateral hip pain;
- left leg sciatica;
- Major Depressive Disorder, requiring one extensive period away from work in 2011/2012, and for which she was prescribed Bupropion in 2016 after a difficult episode; and
- generalized anxiety, as well as a severe anxiety attack in the weeks before the 2018 MVA, requiring a two-week leave away from work.

2018 MVA

[19] On April 18, 2018, Ms. Morgan was travelling with her husband in his 2012 Ford F150. Ms. Morgan was in the passenger seat, and Mr. Argue was driving. They were stopped at a red light on Columbia Street West in Kamloops, when they were rear-ended by the defendant, Giacomo Marchese, who was driving a taxi at the time.

[20] At the time of impact, Ms. Morgan was partially turned in her seat, facing her husband in conversation. Ms. Morgan did not see the taxi approaching and did not expect the collision. She described the impact as a "very fast jolt back and forth."

[21] The airbags in the Ford did not go off as a result of the collision. Ms. Morgan says that the seatbelt caught her upper right chest and she went from her rotated position, to being thrust backwards into the seat.

[22] Mr. Argue was in the driver's seat and recalled feeling his head hitting the back of the headrest, which hurt. He took photos of the truck, and conceded that the photos showed minimal to no damage to the Ford. He said that the Ford's hitch was hit head on by the taxi, and that the force of the collision was a lot more than the damage showed in the photos might suggest.

[23] The photographs do not show any physical damage to the Ford. The photos of the taxi show minimal damage to the bumper and possibly the licence plate. There were no costs associated with repairing damage to the Ford as a result of 2018 MVA.

2019 MVA

[24] On April 30, 2019, Ms. Morgan was travelling alone in her 2018 Honda Pilot at or near Victoria Street West, approaching the Overlanders Bridge in Kamloops.

[25] Ms. Morgan was stopped at a red light, waiting to turn right to go over the bridge, when she was rear-ended by the defendant, Mr. Morin.

[26] She described the impact as not as forceful as the 2018 MVA, but still a "jolt forward". She felt her seatbelt engage, and it pulled her back into the seat. Her left knee was bent, and her right leg was extended.

[27] The photo of the Honda Pilot shows some damage to the rear left bumper and light, including scratches and minor displacement of the brake and indicator light housing. The cost of repairs to Ms. Morgan's Honda Pilot totalled approximately $1,100.00.

After the Accidents

[28] Ms. Morgan returned to work after the 2018 MVA, but with difficulty. The pain in her neck and shoulder were different than her previous overuse injury. After the

2019 MVA, she again returned to work after two weeks, but the pain was worse. At this time, she was working at both the Overlander and Ponderosa facilities, but found that her physical accommodations were not equal at each location. She experienced a deterioration in her ability to cope with her pain and discomfort, and as a result, her mental health was in decline.

[29] Ms. Morgan went off work for a period of time in the fall of 2019, unsuccessfully attempted a return in January of 2020, then returned to work in March of 2020. She found the pain to be accumulative through the day, and was experiencing difficulties managing her medical treatments during work hours.

[30] In 2021, Ms. Morgan began looking for positions within the IHA with fewer hours. Her headaches and pain were such that she would come home from work and go straight to bed. She applied for, and received a .8 position at Ponderosa and started this position in March of 2022.

[31] Also at this time, Ms. Morgan was attending a pain clinic, physiotherapy treatments, and receiving cortisone and lidocaine injections in her neck. She attempted needling, with some improvement after the first treatment, but experienced a sharp increase in pain after the second treatment and so was afraid to return.

[32] In March of 2022, Mr. Argue was diagnosed with cancer and Ms. Morgan was off work until March of 2023. She returned to her position at Ponderosa, but was not able to continue past May 28, 2023. She described her return as the opposite of a “graduated return” to work. Instead of increasing hours, her physician kept reducing her hours of work due to her pain and inability to cope. Ms. Morgan has not returned to work since May of 2023.

[33] Ms. Morgan says that as a result of the Accidents, she suffers from neck pain, shoulder pain, chest pain, and headaches. She says that her neck was never the same after the 2018 MVA. Her neck and shoulder pain causes increased pain and heaviness in her right arm. Ms. Morgan constantly adjusts her neck and shoulder, to

the extent that it often appears as a repetitive and involuntary tick. She reports that this repetitive neck movement does not help with the pain she is experiencing, but is rather a reflex response to the pain.

[34] Ms. Morgan's physical symptoms and discomfort tends to worsen over the course of a day. This was evident during her testimony at the trial. Ms. Morgan was on the stand for almost five full days, and often appeared tired, uncomfortable, and sometimes exhibited difficulty in focusing as the day progressed. She was often tearful, and one day it was clear she simply could not continue. She describes the pain as "exhausting" and that it "scrambles her brain."

[35] Ms. Morgan says she is reluctant to engage socially with friends since the Accidents due to her extreme discomfort. Prior to the Accidents she described herself as extroverted. She enjoyed camping, boating and the outdoors with her husband and two sons. She no longer enjoys doing many of the things she used to do. She becomes anxious driving in a vehicle. She loves travel and used to love long road trips. While Ms. Morgan agrees that she has gone on vacations since the Accidents, she says that they have been marred by pain and discomfort. She does not travel to the extent she once planned to do.

[36] When Mr. Argue was diagnosed with cancer, he had to travel to Vancouver for treatment, which required that he and Ms. Morgan stay in Vancouver for an extended period of time. The children stayed in Kamloops, so in late 2022 and early 2023, Ms. Morgan cared for Mr. Argue in Vancouver and travelled back and forth to Kamloops when she was able. This was a very stressful time for everyone. Ms. Morgan had to physically pack and move herself and Mr. Argue more than once within the Lower Mainland. She was doing a lot of driving, while also managing her own physical and psychological symptoms.

[37] Ms. Morgan says that since the Accidents, her relationship with her husband has changed. She is irritable with pain, and she feels guilty about how much her husband must take on, even though he himself is still recovering from his bout with cancer. Their sex life has been seriously impacted.

[38] Ms. Morgan loved her work. Social work was her passion and gave her a sense of purpose. Ms. Morgan maintains her registration as a non-practicing social worker, but she does not have hope that she can return to work in any capacity. She is in constant pain, and is fatigued from the pain and the headaches.

[39] Ms. Morgan says that if she was capable, she would go back to beef up her pension. Before the Accidents, she planned to return to the Ministry when she had five years left before retirement, in order to get the benefit of her five best salary years.

Credibility and Reliability of Evidence

[40] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013) as follows:

> [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

[41] Credibility and reliability are not the same thing. Reliability analysis "is concerned with the accuracy of a witness's testimony; it involves consideration of a witness's ability to accurately observe, recall, and recount the events in issue": *Ford v. Lin*, 2022 BCCA 179 at para. 104; see also *R. v. Khan*, 2015 BCCA 320 at para. 44, leave to appeal to SCC ref'd, 36623 (17 March 2016).

[42] If the plaintiff's account of his or her change in physical, mental, and or emotional state as a result of the accident is not convincing, then the hypothesis upon which any expert opinions rest will be undermined: *Samuel v. Chrysler Credit Canada Ltd.*, 2007 BCCA 431 at paras. 15, 49-50.

[43] The defendants do not suggest that Ms. Morgan was dishonest in her testimony. However, they suggest that Ms. Morgan's reliability is in question, because she had considerable difficulty recalling details of her medical or treatment history, particularly with respect to dates and sequences of events as depicted in her medical records.

[44] In addition, during Ms. Morgan's cross examination, significant time was spent bringing her to reports and records where neck or shoulder pain is not mentioned. I did not find this particularly helpful, as a lack of report or record does not prove the absence of a symptom at any given time, particularly when there are other instances before and after where the symptom is in evidence.

[45] *In Edmondson* v. *Payer*, 2011 BCSC 118, the Court outlined the weaknesses in the use of clinical records to impeach a witness. In addition to the frailties in relying on the absence of a record, it stated:

> [34] The difficulty with statements in clinical records is that, because they are only a brief summary or paraphrase, there is no record of anything else that may have been said and which might in some way explain, expand upon or qualify a particular doctor's note. The plaintiff will usually have no specific recollection of what was said and, when shown the record on cross-examination, can rarely do more than agree that he or she must have said what the doctor wrote.
>
> [35] Further difficulties arise when a number of clinical records made over a lengthy period are being considered. Inconsistencies are almost inevitable because few people, when asked to describe their condition on numerous occasions, will use exactly the same words or emphasis each time. As Parrett J. said in *Burke-Pietramala v. Samad*, 2004 BCSC 470, at paragraph 104:
>
> > ... the reports are those of a layperson going through a traumatic and difficult time and one for which she is seeing little, if any, hope for improvement. Secondly, the histories are those recorded by different doctors who may well have had different perspectives and different perceptions of what is important. ... I find little surprising in the variations of the plaintiff's history in this case, particularly given the

> human tendency to reconsider, review and summarize history in light of new information.

[46] I found Ms. Morgan to be a credible and a reliable witness. Despite her obvious discomfort and emotional volubility, she answered all questions to the best of her ability. I found she had a good grasp of timelines and her medical history. She was candid about injuries or complaints that did not relate to the Accidents, and I believed her pain, frustration and sorrow over how significantly her life had changed since the Accidents.

[47] While her pain responses may be intertwined with her psychological state to a degree that is disputed by the parties, I do not find that Ms. Morgan exaggerated her symptoms. The various lay witnesses, including her husband, friends and coworkers described how Ms. Morgan exists in her day-to-day life, which closely resembled the person who testified at length before me.

Causation

Legal Framework for Causation

[48] Except in the special circumstances discussed below, the plaintiff must establish on a balance of probabilities that the defendant's negligence caused an injury. The defendant's negligence does not have to be the sole cause of the injury so long as it is a necessary cause: *Emil Anderson Maintenance Co. Ltd. v. Taylor*, 2024 BCCA 156 at para. 130. Causation need not be determined by scientific precision: *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183 at paras. 13–17; *Farrant v. Laktin*, 2011 BCCA 336 at para. 9.

[49] The primary test for causation asks: but-for the defendant's negligence, would the plaintiff have suffered the injury? The "but-for" test recognizes that compensation for negligent conduct should only be made where a substantial connection between the injury and the defendant's conduct is present: *Resurfice Corp. v. Hanke*, 2007 SCC 7 at paras. 21–23; *Zenone v. Knight*, 2024 BCCA 200 at para. 55.

[50] Where a defendant's conduct is found to be a contributing cause of an injury, the defendant is liable for the plaintiff's injury even if the injury is unexpectedly severe owing to a pre-existing condition: *Athey* at para. 34. This is known as the "thin skull" rule.

[51] The "thin skull" rule must be distinguished from the "crumbling skull" rule. Under the "crumbling skull" rule, a defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition which the plaintiff would have experienced anyway: *Athey* at paras. 32–35.

[52] Chief Justice McLachlin (as she then was) stated n *Blackwater* v. *Plint*, 2005 SCC 58 at para. 78:

> Even though there may be several tortious and non-tortious causes of injury, so long as the defendant's act is a cause of the plaintiff's damage, the defendant is fully liable for that damage. The rules of damages then consider what the original position of the plaintiff would have been. The governing principle is that the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway: *Athey*.

[53] The "crumbling skull" factor may be addressed in a number of ways, including as a percentage reduction on damages awards, which reflects the likelihood that a pre-existing injury or condition would result in similar losses: see, for example, *Booth v. Gartner*, 2010 BCSC 471 and *Beardwood v. Sheppard*, 2016 BCSC 100.

[54] The concept of "reasonable foreseeability" is subject to a qualification when an injury is psychiatric in nature. As Justice Bennett stated in *Hussack v. Chilliwack School District*, 2011 BCCA 258:

> [74] … where the psychiatric injury is consequential to the physical injury for which the defendant is responsible, the defendant is also responsible for the psychiatric injury even if this injury was unforeseeable. See *White v. Chief Constable of South Yorkshire Police*, [1999] 2 A.C. 455 at 470, *Varga v. John Labbatt*, 1956 CanLII 436 (ON SC), [1956] O.R. 1007, 6 D.L.R. (2d) 336 (H.C.); *Yoshikawa v. Yu* (1996) 1996 CanLII 3104 (BC CA), 21 B.C.L.R. (3d) 318, 73 B.C.A.C. (C.A.); *Edwards v. Marsden*, 2004 BCSC 590; *Samuel v. Levi*, 2008 BCSC 1447.

Injuries

Physical Injury

[55] Dr. Kaila Holtz is a physiatrist with a broad specialization in spinal cord, traumatic brain injury, and complex musco-skeletal complaints with a particular focus on chronic myofascial pain. Dr. Holz conducted an in-person assessment of Ms. Morgan in February 2024, provided a report and testified.

[56] The defendants provided a response report by Dr. Hernish Acharyra, with a similar area of specialization. Dr. Acharya did not see or speak with Ms. Morgan. In his response report, he briefly commented on certain differential diagnoses he felt Dr. Holtz had not considered, as well as positing on how Ms. Morgan's perceived disability may have been conflated with medical disability, and the appropriate treatment given this likelihood.

[57] I found Dr. Holtz to be a particularly thorough and helpful witness. She was careful to limit her opinions to her areas of expertise and was clear about what she relied on when coming to her conclusions. Her opinion and testimony were not materially challenged on cross, nor in the response report. I accept her opinions regarding Ms. Morgan's diagnosis.

[58] Dr. Holtz differentiated between Ms. Morgan's pre-existing occupational myofascial pain and her current right-sided neck, shoulder and arm pain. She was consistent in her opinion that regardless if Ms. Morgan's over-use injury was symptomatic in the Spring of 2018, the injuries she sustained from the Accidents were different.

[59] Dr. Holtz opined that absent the Accidents, Ms. Morgan would have continued to manage the symptoms of her over-use injury as she had in the past, making use of physiotherapy and other treatments, as well as work accommodations. The overuse injury did not, and would not have caused the type of pain Ms. Morgan now experiences, and likely would not have caused a prolonged or permanent absence from work.

[60] Dr Holtz diagnosed Ms. Morgan with cervicothoracic and lumbar strain injuries that were more likely than not caused by the 2018 MVA, and aggravation of those injuries in the 2019 MVA. Ms. Morgan's ongoing symptoms are consistent with myofascial pain and soft tissue injuries, which includes pressure from tight muscles on the vessels of the right thoracic outlet and nerves of the right brachial plexus, otherwise known as thoracic outlet syndrome.

[61] In March 2024, Ms. Morgan also underwent an independent medical exam with a neurologist, Dr. Alina Webber, largely to investigate or explore the cause of her headaches, which Ms. Morgan attributes to the Accidents.

[62] Dr. Webber confirmed, through discussion with Ms. Morgan, that Ms. Morgan did not hit her head, lose consciousness or experience confusion or disorientation after either of the Accidents.

[63] Ms. Morgan reported headaches that began within a day of the 2018 MVA, and an escalation of the headache symptoms following the 2019 MVA. Her headache frequency (as of the date of examination) was once a week, resolved with rest and over-the-counter medication.

[64] Dr. Webber concluded that Ms. Morgan's headaches are potentially multifactorial, likely including components such as pre-Accidents headache disorder, hypertension, non-traumatic cervicogenic factors or sleep apnea. Dr. Webber found that one of the likely components of Ms. Morgan's episodic headaches is whiplash caused by the 2018 MVA. She concluded that there is a likely a significant cervicogenic component, but it is difficult to pinpoint how much of that component is traumatic (related to the Accidents) and how much is non-traumatic.

Psychiatric Injury

[65] Dr. Raymond Ancill was the only psychiatrist to assess Ms. Morgan and to provide a report. His opinion was met with significant resistance by the defendants, who state I should not afford it any weight.

[66] Dr. Ancill opined that Ms. Morgan had somatic symptom disorder, and adjustment disorder with anxiety, and that post-Accidents, her major depressive disorder was now chronic. He pointed out that she had successfully responded to treatment for depression in the past, but her current depression was not responding to adjustments to medications as hoped. He stated that her chronic pain will make treatment of the psychological issues more difficult, and that quality of life should be the focus, rather than finding a "cure".

[67] Dr. Ancill acknowledged Ms. Morgan's pre-existing psychiatric vulnerability, but stated that regardless of whether the condition is entirely separate or a relapse of an earlier state, Ms. Morgan's depression and anxiety are now presenting differently due to the Accidents.

[68] The defendants state that Dr. Ancill took on the role of an advocate when he made reference to Ms. Morgan having a "thin skull", exceeded the limits of his expertise, and that he failed to properly assess her pre-Accident symptoms in relation to her current state.

Findings on Causation

[69] The defendants argue that the minor nature of the Accidents should be considered as a factor with respect to both causation and quantum of damages. See: *Krupinksi v. Randle*, 2024 BCSC 523 at paras. 34–35. The defendants acknowledge that Accidents that entail low or minor impacts do not automatically mean that there were no injuries, or that injuries flowing from low impact accidents can never be serious.

[70] However, the defendants argue that in cases where the plaintiff's injuries are based entirely on self-reporting of subjective pain responses, it is especially necessary to carefully scrutinize the evidence including the low-impact nature of the collisions.

[71] The defendants ask me to focus on Ms. Morgan's pre-existing muscle tightness and pain in her back, neck and down her arm, which she described as a

"chronic over use injury" that required treatment as late as 2017. They also refer to her other issues (listed above at para. 17). In particular, they point to Ms. Morgan's pre-existing major depressive disorder with anxious distress, and criticize several of Dr. Ancill's conclusions on the psychological injuries caused by the Accidents.

[72] Dr. Holtz differentiated between the physical injuries caused by the Accidents and Ms. Morgan's overuse injury. Her opinion is supported by the testimony of Lucki Khurana, Ms. Morgan's physiotherapist, who treated Ms. Morgan both before the Accidents and after the 2018 MVA. Ms. Khurana was firm that while she treated similar areas of Ms. Morgan for her overuse injury, the muscles she targeted, as well as the treatments she administered, were different post-Accident.

[73] I am satisfied that Ms. Morgan's current arm, shoulder and neck injuries and resulting pain were caused by the Accidents. I find that that Ms. Morgan's periodic ongoing headaches are partially related to cervicogenic pain caused by the Accidents. Compared to her neck, shoulder and arm pain, these are manageable with rest and over-the-counter medications and are not her primary area of concern.

[74] Ms. Morgan's psychological complaints are complex and nuanced, both in light of her pre-existing struggles with mental health, and the interplay between chronic pain and mental health.

[75] I took note of Dr. Ancill's tendency to assert a level of expertise in all things medical, which is in contrast to Dr. Holtz and Dr. Webber, who firmly deferred to other experts in medical fields that were not in their speciality. On the stand, Dr. Ancill would also sometimes muse – almost rhetorically – about certain injuries or diagnoses that fall outside his immediate expertise. He would also casually refer to legal terminology in coming to certain conclusions. These tendencies are not particularly helpful to the court.

[76] I accept that Dr. Ancill is medically trained and that the workings of the body, as Dr. Ancill puts it, do not have hard boundaries. That said, I did not place any weight on the portions of Dr. Ancill's opinion or testimony that strayed beyond his

accepted area of expertise. Dr. Ancill's section on concussion in his report was not supported by the evidence, and I preferred Dr. Webber's report in terms of her discussion regarding Ms. Morgan's headaches.

[77] However, I do not agree that the entirety of Dr. Ancill's opinion should be disregarded.

[78] I accept that Ms. Morgan experienced pre-existing depression and anxiety. I agree with Dr. Ancill that the nature of these pre-existing conditions changed due to the Accidents. Further, the evidence of Ms. Morgan, her husband, and her medical practitioners, including her physiotherapist, supports a finding that the current chronic nature of Ms. Morgan's depression and anxiety is now intrinsically intertwined with the physical pain caused by the soft tissue injuries from the Accidents.

[79] It is more likely than not that Ms. Morgan would have experienced periodic work and life interruptions resulting from her depression and anxiety, either in the ordinary course, or caused by other external events unrelated to the Accidents, such as Mr. Argue's cancer diagnosis. However, absent the Accidents, Ms. Morgan would not be experiencing the chronic and acute symptoms that she currently exhibits. Further, but for the Accidents, I find it unlikely that Ms. Morgan's symptoms would be so prolonged, and resistant to the treatments that she found successful in the past.

[80] In particular, given her years of education, hard work, dedication and high performance in her career, I find it exceedingly unlikely that Ms. Morgan would have stopped working many years prior to a more typical retirement date as a result of her pre-existing depression and anxiety, *but for* the Accidents.

Damages

Duty to Mitigate

[81] A plaintiff has an obligation to take all reasonable measures to reduce his or her damages, including undergoing treatment to alleviate or cure injuries: *Danicek v. Alexander Holburn Beaudin & Lang*, 2010 BCSC 1111 at para. 234.

[82] Once the plaintiff has proved the defendant's liability for his or her injuries, the defendant must prove that the plaintiff acted unreasonably and that reasonable conduct would have reduced or eliminated the loss. Whether the plaintiff acted reasonably is a factual question and it involves a consideration of all of the circumstances: *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 202.

[83] *Chiu v. Chiu,* 2002 BCCA 618 sets out the test for failure to mitigate by not pursuing recommended treatment:

> [57] The onus is on the defendant to prove that the plaintiff could have avoided all or a portion of his loss. In a personal injury case in which the plaintiff has not pursued a course of medical treatment recommended to him by doctors, the defendant must prove two things: (1) that the plaintiff acted unreasonably in eschewing the recommended treatment, and (2) the extent, if any, to which the plaintiff's damages would have been reduced had he acted reasonably …

[84] A defendant bears the onus of proving both branches of the *Chiu* test on a balance of probabilities: *Haug v. Funk*, 2023 BCCA 110 at paras. 55 and 61.

[85] Ms. Morgan has undergone many forms of treatment, some of which are still ongoing:

a) Massage therapy;

b) Physiotherapy;

c) Kinesiology;

d) At home exercises;

e) Injections; and

f) Pain medication and anti-depressants.

[86] Ms. Morgan says that she has consistently and carefully tried to treat her injuries since the 2018 MVA, and following the 2019 MVA. She followed her medical practitioners' advice. She attended two pain clinics and a neurosurgeon.

[87] Ms. Morgan acknowledges that she has not attended psychiatry or psychology appointments since 2016, but points to long waitlists and lack of choices for practitioners she feels comfortable with in her town. She turns to her GP to address her mental heath symptoms and medications.

[88] The defendants state that Ms. Morgan failed to undertake cognitive behavioural therapy or other psychological treatment since her psychiatrist went on sabbatical prior to the Accidents. They say that it is unlikely Ms. Morgan's condition will improve until she properly treats her pre-existing depression and anxiety, which contributes to her (perceived) pain.

[89] The defendants also state that Ms. Morgan failed to undergo botox treatments within a reasonable period of time, in preparation for "first rib" surgery. Ms. Morgan states that she recently confirmed her referral to a pain clinic for botox treatments for her neck and shoulder, but that there is a four-month waitlist. She commented that not all clinics provide botox treatments, and so the referral was somewhat delayed. Ms. Morgan further said she is open to "first rib" surgery, but she prefers to proceed conservatively, and monitor her response to the botox treatments.

[90] Ms. Morgan consistently sought treatment for various conditions and injuries throughout her life. The period following the Accidents was no different. Her efforts to obtain counselling or psychiatric care may not have been as persistent as her efforts with regard to her physical ailments, but she has historically consulted with her GP on these matters. She has not neglected her mental health, and her comments regarding difficulties associated with obtaining such services in a smaller centre were not seriously challenged.

[91] Mitigation is not to be assessed to a standard of perfection. Ms. Morgan did not fail to seek treatment, nor did she unreasonably resist the advice of her medical team. The defendants have not met the onus of establishing, on a balance of probabilities, that Ms. Morgan acted unreasonably, nor the extent to which any of the above treatments would have reduced Ms. Morgan's injuries. I will not apply a deduction for failure to mitigate.

Non-Pecuniary Damages

[92] Ms. Morgan submits that she is a broken individual. None of the treatments she completed or still undergoes have been successful in alleviating her symptoms. She is suffering mentally as a result of her constant physical pain, and vice versa. She has not worked since May 2023. She is on long-term disability and receives Canada Pension Plan disability benefits. I accept that Ms. Morgan loved her work and did not want to retire early.

[93] Ms. Morgan's friend, Meaghan Von Somer, testified about the change in Ms. Morgan since the Accidents. She says she does not see her friend very much, that she is constantly adjusting her neck, and must be very intentional with respect to where and how she sits. She dresses differently and rarely leaves her house. She does not like to drive places.

[94] Carla Martin, a friend and co-worker, recounted Ms. Morgan's continuous neck movements, and recalled seeing her in significant pain at work, taking breaks to stretch or lie down during a break. She expressed dismay that Ms. Morgan is unable to work, and said that Ms. Morgan tried to stay with the IHA, but that her pain seemed to worsen over time.

[95] Corey Argue, Ms. Morgan's husband, says that his wife used to do most of the household chores, and now relies on him to do them. He says that she is very particular about cleanliness and will sometimes clean up after their son, but then pays for it later. She cannot make the beds, or do dishes. She is easy to cry, and becomes irritable with pain. She is often cranky and miserable. She feels guilty for what she cannot do, and for how their life has changed.

[96] Mr. Argue is worried that his cancer will come back, and he will not be able to help her.

[97] The defendants state that Ms. Morgan tends to focus on the negative, and engages in "avoidance" behaviour, rather than attempting to improve in several

areas. They say she is capable, and yet has not attempted a gradual return to work, and that she self-limits herself from being active in the ways she is able to.

Law

[98] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities: *Langford (City) v. Matthews*, 2024 BCCA 214 at para. 44. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a rough guide and damage awards in each case will vary to meet the specific circumstances of that case: *Howes v. Liu*, 2023 BCCA 316 at para. 26.

[99] In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal outlined the factors to be considered when assessing non-pecuniary damages:

> [46] The inexhaustive list of common factors cited in *Boyd* that influence an award of non-pecuniary damages includes:
>
> a) age of the plaintiff;
> b) nature of the injury;
> c) severity and duration of pain;
> d) disability;
> e) emotional suffering; and
> f) loss or impairment of life;
>
> I would add the following factors, although they may arguably be subsumed in the above list:
>
> g) impairment of family, marital and social relationships;
> h) impairment of physical and mental abilities;
> i) loss of lifestyle; and
> j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[100] An award for non-pecuniary damages is determined by a functional approach that depends not only on the gravity of an injury but also on the plaintiff's circumstances: *McCliggot v. Elliott*, 2022 BCCA 315 at para. 44;

Langford (City) v. Matthews, 2024 BCCA 214 at para. 44. Assessment of non-pecuniary damages is necessarily influenced by the individual plaintiff's personal experiences in dealing with his or her injuries and their consequences, and the plaintiff's ability to articulate that experience: *Dilello v. Montgomery*, 2005 BCCA 56 at para. 25.

[101] The correct approach to assessing injuries that depend on subjective reports of pain was discussed in *Price v. Kostryba*, 70 B.C.L.R. 397, 1982 CanLII 36 (S.C.), (recently referred to with approval in *McGlue v. Girvan*, 2024 BCCA 208 at para. 48). In referring to an earlier decision, Chief Justice McEachern said:

> In *Butler v. Blaylock*, [1981] B.C.J. No. 31, decided 7th October 1981, Vancouver No. B781505, I referred to counsel's argument that a defendant is often at the mercy of a plaintiff in actions for damages for personal injuries because complaints of pain cannot easily be disproved. I then said:
>
> > I am not stating any new principle when I say that the court should be exceedingly careful when there is little or no objective evidence of continuing injury and when complaints of pain persist for long periods extending beyond the normal or usual recovery.
> >
> > An injured person is entitled to be fully and properly compensated for any injury or disability caused by a wrongdoer. But no one can expect his fellow citizen or citizens to compensate him in the absence of convincing evidence - which could be just his own evidence if the surrounding circumstances are consistent - that his complaints of pain are true reflections of a continuing injury.

[102] Ms. Morgan relies on three cases to support her claim for non-pecuniary damages of $200,000. The cases involve non-pecuniary awards in the range of $120,000 to $170,000 ($142,000-$205,000 adjusted for inflation): *Hauk v. Shatzko*, 2020 BCSC 344*, Morrison v. Koschzek*, 2019 BCSC 945*, Noftle v. Bartosch,* 2018 BCSC 766*.*

[103] The defendants rely on *Dhingra v. Hayer,* 2024 BCSC 160, *Murray v. Doe,* 2023 BCSC 918 and *Kalsey v. Byra*, 2021 BCSC 2170, and argue that a more appropriate range for non-pecuniary damages would be $80,000–$90,000, with a 25% reduction for Ms. Morgan's pre-existing conditions and failure to mitigate. They

submit that Ms. Morgan should be awarded non-pecuniary damages in the range of $60,000 to $67,500.

Conclusion

[104] All of the cases cited by the parties have some relevance to the case at bar. I note that the cases presented by the defendants involve similar injuries with, as is to be expected, less deleterious effects on the plaintiffs' lives. The most critical difference between the two sets of cases is the prognosis of the plaintiff.

[105] Ms. Morgan's prognosis is guarded, with limited expectations of significant recovery, even with more or different treatments. There are some suggestions that Ms. Morgan could return to part-time work, and regain some enjoyment in the activities she used to participate in, but I found this possibility to be largely speculative in nature. It involves Ms Morgan learning to cope with her current state, or perhaps experiencing minor improvements, either after undergoing major surgery or other ongoing therapies, as opposed to a concrete expectation that she will fully recover over time.

[106] Prior to the Accidents, Ms. Morgan was working full-time, had completed a course of physiotherapy for her overuse injury and, despite some periodic waxing and waning of her mental health, maintained an active and happy life with her family. Post-Accidents, Ms. Morgan still travels occasionally, but she reports experiencing significantly less enjoyment in this activity than before. Almost every other aspect of her life has been substantially altered following the Accidents, most particularly, her inability to return to her career in social work since 2023.

[107] While the defendants did not prove that Ms. Morgan failed to mitigate her damages, I agree that Ms. Morgan had pre-existing conditions that I must take into account when assessing the damages resulting from the Accidents.

[108] I found that the physical injuries caused by the Accidents are different in nature to the pre-existing overuse injury related to computer work. However, Ms. Morgan's history of depression and anxiety is not so easily delineated between pre

and post-Accidents. These conditions impact her ability to manage her current circumstances and will continue to play a role in her struggle to improve her quality of life.

[109] Also, given recent stresses, including Ms. Morgan's husband's cancer diagnosis and treatment, I find that Ms. Morgan's pre-existing depression and anxiety would have affected her quality of life absent the Accidents, albeit to more periodic extent than it does currently. As result, I agree with the defendants that it is appropriate to make an adjustment to the non-pecuniary award to account for Ms. Morgan's "original condition".

[110] The non-pecuniary award will be inclusive of a notional amount to reflect loss of housekeeping capacity.

[111] Ms. Morgan has included a claim for amounts for homemaking/cleaning, seasonal housecleaning, yard maintenance and home upkeep within her claim for cost of future care. This claim appears be $85-90,000 of the $200,000 total sought for cost of future care.

[112] I am not satisfied, based on the evidence before me that this amount is justified.

[113] I heard testimony from Ms. Morgan and Mr. Argue about the changes to Ms. Morgan's ability to do household chores, and the work that Mr. Argue and son now do because Ms. Morgan cannot. The evidence also shows that Ms. Morgan and Mr. Argue employed housecleaning services prior to the Accidents. The defendants point out that Mr. Worthington White did not do a home visit or virtual tour and that his conclusions on Ms. Morgan's housecleaning needs should be given no weight.

[114] In some circumstances, it is appropriate to augment a non-pecuniary award with an award for loss of housekeeping capacity, or to make an award for loss of housekeeping under a separate head. The Court of Appeal provided guidance on whether a discrete award should be made in *McKee v. Hicks*, 2023 BCCA 109:

> [112] To sum up, pecuniary awards are typically made where a reasonable person in the plaintiff's circumstances would be unable to perform usual and

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

See also *Kim v. Lin*, 2018 BCCA 77 at para. 33.

[115] I find that Ms. Morgan is able to do some limited household tasks with difficulty and frustration. I find it likely that this ability will increase as she is not working and can pace or time her activities, and I also consider that she and Mr. Argue employed housecleaning services prior to the Accidents. Mr. Argue has stepped in to take over many tasks that, while they were not part of his role before, are reasonably within his capabilities, such as making the beds. Ms. Morgan's loss of housekeeping capacity is therefore appropriately factored into an award for non-pecuniary loss. I notionally grant $20,000 to reflect this loss, which is included in the total non-pecuniary award. I will address some additional amounts for larger maintenance items in reference to the discussion concerning cost of future care.

[116] I consider that an appropriate award for Ms. Morgan to be $175,000. To that, I apply a 15% deduction to reflect the likelihood that Ms. Morgan's depression and anxiety would have caused ongoing periodic disruptions to her quality of life and work. The non-pecuniary award will therefore be $148,750.

Past Loss of Earning Capacity

[117] Compensation for past loss of earning capacity is based on what the plaintiff would have earned but for the injury that was sustained: *Hartman v. MMS Homes Ltd.*, 2023 BCCA 400 at para. 64 citing *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49.

[118] Compensation for past loss of income, or more accurately past loss of earning capacity, is based on what the plaintiff would—not could—have earned had

the injury not occurred: *Rowe v. Bobell Express Ltd.* 2005 (BCCA) 141, at para. 30; *M.B. v. British Columbia* 2003 SCC 53, at para. 49.

[119] The burden of proof of actual past events is a balance of probabilities. An assessment of loss of both past and future earning capacity involves consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. The future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation: *Athey* at para. 27; *Dornan v. Silva*, 2021 BCCA 228 at para. 94.

[120] Ms. Morgan claims $165,000 in past wage loss. She relies on the report of economist, Darren Benning, who testified at trial, and provided a report on past and future income loss. Ms. Morgan's claim is slightly less than Mr. Benning's conclusion of $169,231 in past wage loss, to reflect additional limited absences due to COVID-19 or other non-Accident related illness in the time period.

[121] The defendants argue that Ms. Morgan has failed to prove that her past wage losses are attributable to absences caused by the Accidents. They state that Ms. Morgan's total past wage loss is more in the range of $3,500.00.

[122] At trial, counsel for the defendants did not challenge Mr. Bennings qualifications or conclusions, but put to him that if either of the assumptions he relied on was found to be incorrect, or if it was found that Ms. Morgan had residual earning capacity, his conclusions would have to change. He agreed with that proposition.

[123] It is difficult to reconcile the positions of the parties under this head.

[124] For example, in 2018, the defendants suggest that some of the sick/medical appointment time claimed by Ms. Morgan "could be" related to non-accident related matters. They also point to an unpaid six-week vacation to St. Martin at the end of the year. In 2019, Ms. Morgan agreed she took two weeks off work as a result of a back injury unrelated to the Accidents. There was another unpaid leave for a vacation in 2019, followed by compassionate leave from the end of 2020 through to

2022, for the purpose of caring for Mr. Argue after his cancer diagnosis. All of these events and resulting deductions are accounted for in Mr. Benning's report.

[125] The defendants also call into question Ms. Morgan's testimony regarding why she reduced her full-time hours, and state that it is more likely than not that she reduced her hours because she simply wanted to work less, and not for reasons relating to her injuries. I accept Ms. Morgan's evidence on this point.

[126] I am satisfied that Mr. Benning's report accurately reflects Ms. Morgan's time off work, and, given my findings on Ms. Morgan's credibility, I am not convinced by the defendants' suggestion that she simply wanted to work less during this time period. I also consider that pre-Accidents, Ms. Morgan had limited periods where she took time off work, but she always returned to full-time hours.

Conclusion on Past Loss of Earning Capacity

[127] I rely on the conclusions in Mr. Benning's report, and award $165,000 for past wage loss.

Loss of Future Earning Capacity

Law

[128] In order to prove entitlement for a loss of earning capacity, a plaintiff must demonstrate both (a) an impairment to their earning capacity, and (b) that there is a "real and substantial possibility", and not "mere speculation", that the diminishment in earning capacity will result in a pecuniary loss: *Perren v. Lalari*, 2010 BCCA 140 at paras. 11, 31–32.

[129] In the trilogy of *Dornan*; *Rab v. Prescott*, 2021 BCCA 345, and *Lo v. Vos*, 2021 BCCA 421, the Court of Appeal clarified the approach to assessing claims for loss of future earning capacity by setting out a three-step analysis. In *Rattan v. Li*, 2022 BCSC 648 at para. 148, Justice Horsman, then of this Court, summarized that analysis as follows:

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

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

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

[130] As the final step of the analysis, the court must consider whether the award of damages is "reasonable and fair": *Lo* at para. 117.

[131] Regarding the first step, the court in *Rab* stated:

> [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. Yet it may still be necessary to assess the possibility and likelihood of future hypothetical events occurring that may affect the quantification of the loss, such as potential positive or negative contingencies. Dornan was such a case.

[132] The second step of the analysis requires the plaintiff to prove there is a real and substantial possibility that the future event in question will give rise to pecuniary loss. Here, after determining that the plaintiff may suffer a loss of capacity, the court evaluates the likelihood that it will affect the plaintiff's ability to earn income. The standard of proof "is a lower threshold than a balance of probabilities but a higher threshold than that of something that is only possible and speculative": *Gao v. Dietrich*, 2018 BCCA 372 at para. 34; *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 15.

[133] At the third step – the valuation stage – there are two possible approaches to assessing loss of future earning capacity, being the earnings approach and the capital asset approach: *Davies v. Penner*, 2023 BCCA 300 at para. 28; *Perren v. Lalari*, 2010 BCCA 140 at para. 32. The earnings approach will generally be more

useful when the loss is easily measurable: *Lamarque v. Rouse*, 2023 BCCA 392 at para. 38; *Perren* at para. 32. Where the loss "is not measurable in a pecuniary way", the capital asset approach is more appropriate: *Perren* at para. 12.

[134] The earnings approach is often appropriate where there is an identifiable loss of income at the time of trial. This occurs when a plaintiff has an established work history and a clear career trajectory. This is the case here.

[135] Ms. Morgan claims $1,250,000 for loss of future earning capacity, which she says is reduced slightly from what she would otherwise claim, in a nod to various possible positive contingencies. However, Ms. Morgan does not concede that there is evidence to support any specific positive contingency.

[136] Mr. Benning's report assumes that Ms. Morgan would have worked full time to the age of 60, then she would have moved back to the Ministry to increase her pension until retiring at age 65. Mr. Bennings assumes that Ms. Morgan has no residual earning capacity. He concludes that Ms. Morgan's pre-retirement income loss is $974,404, with an additional $263,059 of losses to municipal and public service pension plan benefits.

[137] The defendants argue that the evidence demands that the "starting point" used in Mr. Bennings' report, which is based on assumptions about Ms. Morgan's retirement plans that are not supported by the evidence, is too high. The defendants propose a "rough and ready" starting point of $900,000 to reflect pre-retirement income loss, and pension benefit loss, as opposed to the $1.2 million in Mr. Benning's report.

[138] The defendants then apply a further reduction of 50% to reflect Ms. Morgan's residual earning capacity, another 50% reduction to account for Ms. Morgan's "original position", as well as the likelihood of unpaid leave for vacations or other non-Accident related reasons. The total proposed by the defendants for Ms. Morgan's loss of earning capacity, after all deductions are applied, is $225,000.

[139] Ms Morgan submits that steps one and two of *Rab* have been met. Ms. Morgan is unable to work at the time of trial, and she states she is not employable into the future.

[140] The defendants point to the fact that both Dr. Holtz and Mr. Worthington White, who conducted a functional capacity assessment, suggest that Ms. Morgan could potentially return to part time work in the future. Dr. Ancill's outlook for Ms. Morgan is less positive, stating that as she has developed a chronic depressive disorder, even with more aggressive treatment for her depression and anxiety, her pain will likely not resolve, and that "at best" her clinical trajectory will be one of partial remissions and relapses.

[141] Mr. Worthington-White conducted functional testing with Ms. Morgan, which included pain response to testing, postural tolerance, symptom responses to the assessment, and emotional presentation. He concluded that Ms. Morgan's overall employability had been "notably impacted", and that Ms. Morgan appears to be better suited for part-time work.

[142] He continued:

> With appropriate support, both physically and psycho-emotionally, improved pain management, independence with exercise and symptom management, as well as addressing her emotional status, attempting to return to physically suitable part-time work in the future would not appear to be unreasonable.

[143] He qualifies this conclusion by saying: "even regular part-time work would likely result in some degree of symptom aggravation, as well as fatigue, and likely have an impact on her participation in household tasks, activities of daily living and leisure pursuits. He commented that while Ms. Morgan is more capable of sedentary work, she is not well suited for the job specific tasks, or the physical and postural demands of the social work field. He suggested exploration of positions that do not require as much computer or desk work, such as a community or youth support worker.

[144] The difficulty with this suggestion can be summarized by the blunt responses provided by Ms. Morgan's final supervisor, Ms. Waddington, who was unable to find

a suitable position for Ms. Morgan just before she stopped working. She made it clear that any social work position in her division requires charting or reporting, requiring the use of a computer in some form. When asked about alternative positions or accommodations that could avoid computer or desk work, she was not encouraging. She said: “We could try, but the tasks are the tasks.”

[145] Ms. Morgan points to the heavily qualified nature of Mr. Worthington-White’s proposition that she could return to part time work. She says that she already failed in her attempts to return to her social work career, even with adjusted hours and other accommodations.

[146] The defendants point out that Ms. Morgan is still “job-attached” and could return to her position at Ponderosa. Further, they say that when she stopped working, she had not yet received all of her accommodations (sit stand desk), and that she had not properly learned or attempted others (voice to text dictation tools) that may yet assist her with computer tasks.

[147] Ms Morgan agrees that the following are possible positive contingencies:

a) Ms. Morgan may learn to manage and live with her mental health and physical injuries to the point that she can work part-time periodically;

b) Ms Morgan would not have worked she was 65; and

c) Ms. Morgan would not have been able to return to the Ministry for her final 5 years at or around age 60.

[148] The defendants rely on response reports from Mr. Thomas Steigervald, economist, who concluded that by assuming that Ms. Morgan had no residual earning capacity, Mr. Benning over estimated her potential loss. Further, Mr. Steigervald stated that the assumption that Ms. Morgan would work to the age of 65, or that she would commence a new career at the age of 60 at the Ministry, runs contrary to the behavior of public sector workers with respect to longevity in the workforce.

[149] The defendants say that Ms. Morgan did not establish that she would have worked to the age of 65, as opposed to the average retirement age of 62 for Members of the BC Municipal Pension Plan. Nor did she establish beyond speculation that she would move to the Ministry for her final five years, thereby earning future Public Service Pension Plan benefits.

Conclusion on Loss of Future Earning Capacity

[150] I find that Ms. Morgan proved that there is a real and substantial possibility that she will suffer future pecuniary loss as result of her injuries.

[151] In terms of contingencies, I find the following:

a) There is some scope for Ms. Morgan to return to some part time work, but it is limited in nature;

b) Given Ms. Morgan's work history, it is more likely than not that she would have worked until 65;

c) There is a measurable risk that Ms. Morgan's pre-existing depression and anxiety would have periodically impacted her earning capacity absent the Accidents; and

d) There is insufficient evidence to include Ms. Morgan's plan to return to the Ministry and earn additional pension benefits in her final working years as a probable future event.

[152] Using Mr. Bennings' calculations with respect to future income loss as a guide, I first reduce his total of $1.2 million by 15% to reflect my finding regarding Ms. Morgan's proposed, but entirely speculative plan to move back to the Ministry five years before retirement.

[153] I then deduct a further 30% to represent the likelihood that Ms. Morgan would have missed lengthier periods of work than already allowed for in Mr. Bennings' report due to her pre-existing mental health conditions, and for the possibility that

she may be able to return to some measure of part-time work in her field, should her health allow, with continued accommodations from her employer.

[154] Under all the circumstances, I consider an award of $715,000 to be a fair and reasonable amount to compensate Ms. Morgan for future loss of earning capacity.

Costs of Future Care

[155] The plaintiff is entitled to compensation for the costs of future care based on what is medically necessary to restore the plaintiff to a position as though the accident had not occurred. When full restoration cannot be achieved, the court must strive to assure full compensation through the provision of adequate future care. The award is to be based on what is reasonably necessary on the available medical evidence to preserve and promote the plaintiff's mental and physical health: *Milina v. Bartsch*, 49 B.C.L.R. (2d) 33, 1985 CanLII 179 (S.C.); *Quigley v. Cymbalisty*, 2021 BCCA 33 at para. 43.

[156] The test for determining the appropriate award under the heading of cost of future care is an objective one based on medical evidence, and it must be fair to both parties: *Pang v. Nowakowski*, 2021 BCCA 478 at para. 58. For an award of future care: (1) there must be a medical justification for claims for cost of future care; and, (2) the claims must be reasonable: *Milina v. Bartsch*, 49 B.C.L.R. (2d) 33 at 84, 1985 CanLII 179 (S.C.); *Tsalamandris v. McLeod*, 2012 BCCA 239 at paras. 62-63; *McGuigan Estate v. Pevach*, 2024 BCCA 106 at para. 92 citing *Paur v. Province Health Care,* 2017 BCCA 161 at para. 109. Future care costs are "justified" if they are both medically necessary and likely to be incurred by the plaintiff.

[157] An award of damages for costs of future care is partly prediction and prophecy: *Pang* at para. 58. In *Pang* at para. 57, Justice Voith identified three additional considerations of which the court must be satisfied in this analysis: first, that the plaintiff would, in fact, make use of the particular care item; second, that the care item is one that was made necessary by the injury in question and that it is not an expense the plaintiff would, in any event, have incurred; and, third, that there is no significant overlap in the various care items sought.

[158] It is not necessary that a medical expert testify to the medical necessity of each and every item of care that is claimed: *Paur v. Province Health Care*, 2017 BCCA 161 at para. 109. Further, an assessment of damages for cost of future care is not a precise accounting exercise: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21; *Pang* at para. 58.

[159] Ms. Morgan claims a total of $200,000 under cost of future care, a "rounded down" amount that is derived from a list of claims under the following categories:

a) Treatment (pain program, psychological care, occupational therapy, symptom management, exercise/conditioning, kinesiology, vocational counselling, botox) – $128,979;

b) Services (household cleaning, seasonal cleaning, yard maintenance, home upkeep) – $88,664;

c) Equipment (home exercise and ergonomic equipment) – $423; and

d) Supplies (non prescription medication) - $831.

[160] From the above, the defendants agree with the following costs as proposed in Mr. Worthington-White's and Mr. Benning's reports, with some modifications from the response report of their expert occupational therapist, Claudia Walker:

a) local pain management program $5,200;

b) occupational therapy to improve Ms. Morgan's function at home - $1,286;

c) symptom management therapies, which include physiotherapy, chiropractic therapy, or massage, at 12 sessions a year for two years - $2,880;

d) botox injections for 1 year - $2,600;

e) Heavier seasonal housekeeping, home/yard maintenance at 10 hours a year, at $30/hour until age 75 - $6300;

f) Home exercise equipment - $423; and

g) Ergonomic home equipment - $1,138.

[161] The total for cost of future care agreed to by the defendants is $13,779.52. The defendants argue that several of the treatments included in Ms. Morgan's claims are covered by other programs or MSP, are not justified or supported by the evidence, or are over and above what Ms. Morgan would actually use.

[162] An example of the latter would be the claim for a gym membership, in light of the fact that Ms. Morgan has her own pool and stated in her testimony that she is more likely to walk outside than on a treadmill.

[163] The defendants also comment that many of the items claimed are aimed at increasing Ms. Morgan's functionality, which should then be considered as a positive contingency in terms of increased function, activity and quality of life over time.

Conclusion on Cost of Future Care

[164] I agree with the defendants that some of the items claimed are in excess of what is supportable by the evidence of what is required, or what will be used by Ms. Morgan. However, I find that most of the items claimed by Ms. Morgan under the treatment category are supported by the evidence.

[165] Considering that pain management and psychological treatment are key in terms of Ms. Morgan quality of life and any hope of improved function, I will award the amounts claimed by Ms Morgan under the Treatment category, except for those for a gym membership, a kinesiologist/trainer or vocational training. The approximate total for this category is $115,000.

[166] As I already factored loss of housekeeping capacity into the non-pecuniary award, I only include the larger yard and home maintenance tasks under this head of damage. As they age, Ms. Morgan may not be able to entirely rely on Mr. Argue or her sons for larger or more physically demanding tasks to maintain the home and yard. I will allow the claimed amount for home upkeep and maintenance, and 50% of

the yard maintenance claim, to reflect the larger outdoor tasks over time, for a total of $15,000.

[167] The total award for cost of future care will be $130,000.

Special Damages

[168] It is well-established that an injured person is entitled to recover the reasonable out-of-pocket expenses he or she incurred as a result of an accident. This is grounded in the fundamental governing principle that an injured person is to be restored to the position he or she would have been in had the accident not occurred.

Conclusion on Special Damages

[169] The parties agreed that Ms. Morgan should be awarded $13,779.52 for special damages, and I accept that amount.

Summary

[170] In summary, damages are awarded as follows:

Non-pecuniary damages:	$148,750
Past loss of earning capacity:	$165,000
Future loss of earning capacity:	$715,000
Cost of future care:	$130,000
Special damages:	$13,779.52
Total:	**$1,172,529.52**

Costs

[171] Ms. Morgan has been successful, if not to the full extent sought. She is presumptively entitled to her costs at Scale B. If any party wishes to dislodge this presumption, that party will advise the others within 20 days of these reasons, and schedule with the Registry a date as soon as reasonably practicable to argue the

matter, with provision of written arguments to the other side and to the court at least seven days before the hearing date.

[172] Further, if there are any remaining issues dealing with pension, taxes, benefits or other matters that may be related to, or impacted by the above calculations, the parties may similarly contact the Registry to request an appearance before me.

"J. Whately J."