IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Beaudoin v. Adams,*
2021 BCSC 414

Date: 20210309
Docket: M178708
Registry: Vancouver

Between:

Brigitte Beaudoin

Plaintiff

And

Bradley Adams and Bruce Rushton

Defendant

Before: The Honourable Madam Justice Marzari

Reasons for Judgment

Counsel for the Plaintiff:	A.D. Brine I Kordic
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Place and Date of Trial/Hearing:	Vancouver, B.C. January 25-29, 2021; February 1-5 and 8-10, 2021
Place and Date of Judgment:	Vancouver, B.C. March 9, 2021

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INTRODUCTION

[1] The plaintiff, Ms. Beaudoin, claims for damages arising from a motor vehicle accident that occurred on October 2, 2016, in Maple Ridge, BC. Ms. Beaudoin was the passenger of the defendant, Mr. Adams, in a small Nissan Micra owned by the defendant Mr. Rushton. The Micra rear-ended a van after the van collided with a vehicle in front of it. It was a write-off. The defendants admit liability.

[2] Ms. Beaudoin claims for losses associated with her ongoing physical and mental injuries, including past wage loss, future wage loss, loss of housekeeping capacity, cost of future care, non-pecuniary damages, and special damages.

FACTUAL FINDINGS

[3] Much of the evidence before me in this trial was unchallenged and uncontroverted. Ms. Beaudoin's credibility was not put in issue. Her reliability with respect to dates and sequences of events was inexact, but the parties had extensive records of Ms. Beaudoin's work, business and medical records, to assist with refining these matters. I note that only those portions of the records that were relied upon in evidence were made exhibits, but a much larger documentary record was available to counsel. With only a few exceptions, noted below, that record was generally consistent with Ms. Beaudoin's account of relevant events. As such, I was able to make the findings of fact relevant to my determinations in this case in reference to the evidence as a whole, without having to address conflicts in the factual evidence.

Prior to the Accident

[4] Ms. Beaudoin was 52 years old at the time of the accident, and had recently turned 57 at the time of this trial.

[5] The evidence of Ms. Beaudoin, her long-time friends, and the defendant Mr. Adams establish that prior to the accident Ms. Beaudoin was energetic, a good friend and excellent listener, very fit, helpful, hard-working, and had a good sense of humor. She was described by friends as a "mama bear": nurturing, fearless, tough,

protective, and in charge. She was a “very positive” person. She would engage strangers that needed help, and make friends out of neighbours. She enjoyed volunteer work, both through agencies and of her own making. She went dancing, hiked and walked great distances. She also rode motorbikes, a passion she picked up in her teens and that she pursued throughout her life, owning various Harley Davidson motorbikes when her finances allowed, and borrowing others’ bikes when she could not afford a bike of her own. She had a strong support network of friends and an active social life.

[6] Ms. Beaudoin was also a single mother. Ms. Beaudoin herself was also raised by a single mother, who at times was unable to raise Ms. Beaudoin. Ms. Beaudoin left high school and entered the workforce around the age of 14 or 15. She was financially supporting herself at the age of 17, working as an exotic dancer first in Montreal, then Toronto, and finally in Vancouver where she settled in her twenties. The evidence establishes that Ms. Beaudoin had to re-train and re-invent herself numerous times in numerous careers, but she always managed to work and to support herself and her son. She continues to financially support her son. Her financial independence is a point of pride for her. Overall, I find that Ms. Beaudoin’s life prior to the accident was marked by her independence, her resourcefulness and her resilience.

[7] In the four months prior to the accident, Ms. Beaudoin had begun attaining qualifications to become a member of the International Alliance of Theatrical Stage Employees (“IATSE”) Union as a First Aid/Crafts Services worker (known as "FACS”) for the Lower Mainland film industry. FACS provides first aid services as well as beverage, snacks and meals throughout the filming day. Ms. Beaudoin achieved the required 60 days of work (averaging close to 13 hours a day) to become a full member of IATSE in the week prior to the accident.

[8] As a FACS worker, she succeeded early on, managing her own FACS team as a lead (or key) on a production even while she was qualifying to be a union member. This was a job that demanded but also rewarded hard work and

independence, provided the protection of a union without the hierarchy of the seniority system, and allowed her to be self-sufficient. As a team lead, or a second-in-command, Ms. Beaudoin had a lot of autonomy. I accept her evidence that she was enthusiastic about this work, that she felt financially secure for the first time in many years, and believed that she had found her future calling.

[9] Mentally and emotionally, Ms. Beaudoin was in a very happy place just prior to the accident. Although she had experienced bouts of depression in her past, her mood had been stable for several years. She was also in a new and promising relationship with one of the defendants, Mr. Adams.

Pre-existing Conditions

[10] The evidence establishes that Ms. Beaudoin had some lower back pain before the accident that was resolving. Imaging after the accident showed that she had marked degenerative disc disease in her neck prior to the accident that had not been symptomatic. The evidence also establishes that neither the underlying disc disease, nor the lower back pain, limited her activities prior to the accident. She worked long days for the film industry and pursued her regular recreational pursuits.

[11] Ms. Beaudoin also experienced bouts of depression in her past, which her previous family doctor referred to as “situational” but agreed might also be called “cyclical”. I find that these incidents arose from particularly difficult periods in Ms. Beaudoin’s life, most notably the suicide of her fiancé approximately 20 years before the trial, and her bankruptcy approximately 10 years before the trial. The latter involved one or more suicide attempts by Ms. Beaudoin in or around 2010–2012. (I note that, although various hospital and out-patient records were admitted into evidence pursuant to a fairly standard document agreement, none of the suggested diagnoses in these records were put to or adopted by any of the medical experts at trial, including Ms. Beaudoin’s family physician).

[12] Dr. Ganeson, who reviewed Ms. Beaudoin’s extensive medical history records and performed an independent psychiatric assessment of Ms. Beaudoin, opined that these records established that prior to the accident Ms. Beaudoin was

vulnerable to what he termed “emotional difficulties.” However, his expert opinion establishes, and I find, that Ms. Beaudoin was not suffering from or being treated for a psychiatric or mental injury for years prior to the accident.

The Accident and Injuries

[13] Ms. Beaudoin heard a snapping sound in her neck and felt tingling throughout her body immediately upon impact. Mr. Adams described her as screaming in pain, although she does not have a specific memory of this. She unfastened her seat belt and “fell” out onto the sidewalk where she lay until help arrived. Her neck was immobilized and she was transported by ambulance to the hospital.

[14] Imaging established that she had non-displaced fractures of vertebrae in her neck at C3 and C4. She was told to keep a neck collar on until she could speak with the neurosurgeon, Dr. Heran. Dr. Heran required Ms. Beaudoin to wear the neck collar on for approximately two months. She did this, though she found the collar physically painful, and she also experienced anxiety and panic attacks associated with the collar and the injury.

[15] Dr. Heran provided expert evidence to the Court based on his treatment of Ms. Beaudoin after the accident, in follow-up a year after the accident in October 2017, and during an examination for the purposes of his report in late January 2019. Dr. Chaudhary, another neurosurgeon, conducted an independent medical examination of Ms. Beaudoin commissioned by the defendants in September 2020, closer to trial. Other than the changes in Ms. Beaudoin’s condition noted between January 19, 2019 and September 2020, the two expert opinions are remarkably aligned with respect to Ms. Beaudoin’s physical injuries, their cause and their prognosis.

[16] At the time of Dr. Heran’s examination of Ms. Beaudoin in January 2019, a little over two years after the accident, he noted the following physical injuries caused by the accident:

a) Left sided C2-3 facet fracture;

b) Myofascial injuries involving the neck;

c) Mechanical structural neck pain;

d) Right-sided C6 radiculopathy (numbness in her right arm and hand);

e) Right-sided neurogenic thoracic outlet syndrome; and

f) Cervicogenic headaches.

[17] Dr. Heran considered that all of the above diagnoses were directly or indirectly attributable to the accident. This includes the acceleration of previously asymptomatic degenerative changes in Ms. Beaudoin's neck, adding to the development of persisting neck pain and headaches, and her right-sided nerve symptoms. He opined that, but for the accident, Ms. Beaudoin "would have remained well in the long term without the development of symptoms". He found that as of January 2019, her pain had become chronic, "with little likelihood of further improvement." To the contrary, there was a risk of accelerated degeneration of her arthritis arising from the fracture and Ms. Beaudoin's symptoms that dictate caution and may require future management.

[18] Dr. Chaudhary's examination of Ms. Beaudoin, and her history, is closer in time to the trial, and therefore takes into account the developments in Ms. Beaudoin's physical health and treatments since early 2019. Dr. Chaudhary also engaged in a comprehensive review of Ms. Beaudoin's medical records and history both prior to and after the accident. Dr. Chaudhary concluded that the accident caused the following injuries:

a) Left sided C2-3 facet fracture;

b) Cervical myofascial and lumbar myofascial injuries;

c) Aggravation of pre-existing degenerative disease resulting in mechanical structural neck and low back pain;

d) “Right C8 radiculopathy vs neurogenic thoracic outlet symptom”; and

e) Cervicogenic headaches, originating from multifactorial sources, referencing both neck injuries and occipital nerve sources.

[19] Other than a minor difference in opinion as to whether the source of Ms. Beaudoin’s numbness and tingling in her right pinky finger originates from the cervical vertebrae, or neurogenic thoracic outlet syndrome, and the identification of an additional lumbar myofascial injury that is noted as mild in Dr. Chaudhary’s report, the diagnosis of Ms. Beaudoin’s symptoms and injuries caused by the accident are notably similar to those of Dr. Heran.

[20] Dr. Chaudhary notes a possibility of some of these symptoms arising absent the MVA as a result of Ms. Beaudoin’s degenerative disc disease, but notes that Ms. Beaudoin was asymptomatic prior to the accident and that her degenerative disc disease was quiescent. The defendants do not suggest a physical pre-existing condition affecting the cause of Ms. Beaudoin’s physical injuries.

[21] Dr. Chaudhary opines that “it would be prudent for Ms. Beaudoin to avoid any domestic, employment or recreational activities that require heavy lifting, repetitive bending, twisting, turning, or any other strains on the paraspinal muscles.”

[22] Dr. Chaudhary concludes that Ms. Beaudoin has a guarded prognosis for recovery from her physical injuries, and has a “permanent partial disability given her ongoing pain.” She agreed that this description of Ms. Beaudoin’s disability is based solely on her physical injuries, and does not factor in any mental injuries, which are beyond her scope of practice.

[23] The history and records relied upon by Dr. Chaudhary are generally in accordance with the evidence before me at trial as to the history of the progression of Ms. Beaudoin’s physical condition after the accident. Since that report, Ms. Beaudoin has seen a pain specialist in relation to further potential treatments, but overall, I find I am able to rely on this report as the most up-to-date assessment

of Ms. Beaudoin's current physical symptoms, physical injuries, and prognosis with respect to them.

[24] With respect to Ms. Beaudoin's mental injuries, both parties rely upon the expert opinion of Dr. Ganeson.

[25] Dr. Ganeson, a psychiatrist, conducted an independent medical examination of Ms. Beaudoin for the purposes of this litigation initiated by the defendants. I accept his uncontroverted diagnosis that Ms. Beaudoin is suffering from major depressive disorder (that he found to be in partial remission in July 2020) and adjustment disorder with anxiety features, and that both were caused by the accident and the chronic pain she has experienced since the accident. Until that pain is resolved, it is unlikely that either psychiatric condition will resolve or go fully into remission.

[26] On the stand, Dr. Ganeson explained that his reference to the partial remission Ms. Beaudoin was experiencing in July 2020 was in relation to her more severe depression recorded in 2017 and 2019. In July 2020, her major depressive disorder would still be considered moderate. I note that Dr. Ganeson's examination was conducted at a time when Ms. Beaudoin was not working due to the Covid shutdown of the film industry. I am satisfied on the evidence before me that the indicators relied upon by Dr. Ganeson as showing some improvement in Ms. Beaudoin's psychiatric condition are likely due primarily to the prolonged period during which Ms. Beaudoin had not been working.

[27] Dr. Ganeson's evidence was that when an adjustment disorder lasts more than six months beyond the initial stressor or cause, it could be diagnosed as a more serious anxiety disorder. In this case, Ms. Beaudoin's stressor is her pain, which is persistent. He also agreed that given the length of time Ms. Beaudoin has experienced chronic pain and depression, it will be more challenging for her to recover, and it is more likely that her psychiatric disorders will persist.

[28] I find, on the evidence, that Ms. Beaudoin has already made a number of attempts at using various anti-depression medications that Dr. Ganeson opined indicates a more permanent condition. Based on Dr. Ganeson's opinion evidence and the facts before me, I find that Ms. Beaudoin will likely need to rely on medication and treatment for her depression for the rest of her life.

[29] From 2017 through to October 2019, Ms. Beaudoin also suffered from an addiction to narcotic painkillers, an addiction that was only managed after October 2019 with ongoing medical support and a prescription for Suboxone. When her pain had not subsided one month after the accident with the use of other painkillers, Ms. Beaudoin's doctor prescribed her Percocet, to which she became addicted. She was prescribed half a pill in the morning and half a pill at night. However, when she returned to work in the film industry Ms. Beaudoin was taking up to 14 pills a day, often procuring them from others in the film industry at black market prices. Her evidence was that she was unable to perform her work without the assistance of Percocet, which was the only thing that made her pain manageable.

[30] In October 2019, Ms. Beaudoin walked into the Rapid Access Clinic at St. Paul's Hospital and asked for help with her addiction. She was prescribed Subloxone, which has the effect of making Percocet ineffective and unpleasant, and, within days, she ceased to take Percocet, and has not taken it since. She has since tried to wean herself off of Subloxone, but is currently taking it regularly on doctor's advice more than a year later. The evidence establishes that the Subloxone only partially assists with her pain, and Ms. Beaudoin still has significant difficulties managing her pain without Percocet. This addiction remains a real risk to her.

[31] Similar to her decision to seek help from the Rapid Access Clinic, the evidence establishes that Ms. Beaudoin has taken extraordinary measures to rehabilitate herself from her pain and depression since the accident, including active and passive methodologies, extensive counselling, and the use of various medications prescribed to her.

[32] Given all of Ms. Beaudoin's efforts to date to recover from her physical and mental injuries, and the limited success that she has achieved in that regard, I find that Ms. Beaudoin will likely struggle with both her pain and her mental injuries for the rest of her life. However, the recommendations made by Dr. Ganeson, which include pain treatments, certified cognitive behavioral therapy, and medications, may provide some hope of greater function and a degree of relief, and I take this into account in relation to the damages I award.

[33] The functional impact of these injuries was assessed by a qualified occupational therapist, Ms. Carman, in April 2019. Ms. Carman reviewed the work requirements of those involved in FACS, and concluded that it was a physically demanding job. Ms. Carman concluded that Ms. Beaudoin was currently not employable at that time, due primarily to the limitations of her very limited tolerance for both standing and sitting activities and her inability to cope with her pain, which led to numerous emotional breakdowns during the assessment despite putting in a strong effort.

[34] The defendants questioned Ms. Carman as to Ms. Beaudoin's effort. I find that the evidence establishes that Ms. Beaudoin was putting in her best effort, but she had foregone any Percocet for the purpose of the assessment and was unable to emotionally or psychologically manage her pain throughout the assessment.

[35] The defendants also rely on the fact that Ms. Beaudoin went on to work throughout 2019 and up until March 2020, despite Ms. Carman's conclusion in April 2019 that Ms. Beaudoin was essentially unemployable. I will now turn to Ms. Beaudoin's work history.

Post-Accident Employment

[36] Ms. Beaudoin did not work for three months after the accident while her neck fracture was healing. There is no issue as to Ms. Beaudoin's complete disability from working for this period of time.

[37] The evidence establishes that Ms. Beaudoin returned to work for the film industry for one day in mid-June 2017, approximately eight to nine months after the accident. In July 2017, the union included her as part of a paid delegation to the IATSE international conference in Florida where she attended sessions of two hours in the morning and two hours in the afternoon (with breaks) regarding the work of the union. It was noted that she was unable to sit through the presentations and was often standing at the back. She then returned to work in FACS for the remainder of July 2017, and went on to work between one and five days almost every week until early December 2017, with fewer days per week toward the end of the year. Although the number of days worked per week was substantially lower on average than her pre-accident days, the average hours per day remained fairly consistent at just over 12.5 hours.

[38] In 2018 and 2019, Ms. Beaudoin worked approximately 120 days on average (a few days less in 2018 and a few days more in 2019), with an average working day of just over 12 hours. She worked another 15 days or so in the first three months of 2020, before the pandemic shut down the film industry in Vancouver. Overall, Ms. Beaudoin made more money after the accident working in the film industry than she had made in 2014 and 2015 in the construction industry before the accident. However, she also made more money in the four months prior to the accident in 2016 than she had made in 2014 and 2015.

[39] I find that Ms. Beaudoin's work in the film industry prior to the accident is the best evidence I have of her work capacity and earning potential prior to the accident. Her continued work in the industry, despite her ongoing physical limitations and pain, indicates that this is a career that she would have pursued without the accident. The most significant differences in her work before the accident and after is the sporadic nature of her assignments after the accident, and her employment at lower levels of the FACS pay hierarchy after the accident.

[40] I find that prior to the accident, Ms. Beaudoin worked primarily as the "second in command" or "first assistant" to the lead FACS provider (referred to in evidence as

the “key”) for a production. The evidence establishes that the FACS key is generally secured for an entire production—generally for multiple months, and for up to nine months for a television production. The FACS key hires their own staff, as long as they are a union member. The FACS staff work in a tight team of three to four people in tight quarters. Ability, temperament and compatibility are all essential to being in the crew hired by the key. Because they are responsible for first aid, FACS workers are required on-set early in the day before shooting, and must stay until the last crew member leaves. There are no options to work a part day only.

[41] Prior to the accident, Ms. Beaudoin was part of such a crew as the second in command for many of the weeks leading up to the accident. She also spent a couple weeks doing days of more casual labour as a lower level worker, and even a number of weeks as the key on a production.

[42] After the accident, her work pattern in FACS reflects that she was less frequently hired as an essential part of a team engaged for an entire production, more frequently a casual addition to a team when needed, and more frequently at the third tier of work and pay.

[43] The evidence also establishes that after the accident, Ms. Beaudoin gained a reputation for irritability, negativity, extreme emotional mood swings, controlling behaviour, and as a person that does not work well with others. Three of her former keys were called, one in her case and two through the defence case, and all three expressed significant reservations about hiring her again, despite a high respect for her strong work ethic and, in at least once case, a great deal of affection for her personally.

[44] I do not have evidence from Ms. Beaudoin’s employers before the accident. The evidence I do have establishes that Ms. Beaudoin was an idealist, and may have been prone to perfectionism, in her prior positions. She left many prior jobs for very good reasons, including sexual harassment. But she also expressed disillusion with past jobs when she found out that the ideals she thought they stood for were often compromised by more crass and materialistic purposes. This was true, for

example, of her experience in Human Resources, where she found she was meant to help the employer more than the employee, and in construction safety, where she found that both the union and the employers just wanted to move on with as little disruption due to safety concerns as possible. She turned down an opportunity to be part of a reality TV show about women who ride Harleys in Vancouver when she found out it would be scripted.

[45] Some of this idealism and potential for disillusionment continued with her work in the film industry after the accident, particularly in her time as shop steward for the union, which did not work out. However, there is no evidence of her being a "dark cloud", negative, or unable to work well with others before the accident. To the contrary, the evidence establishes that she was a very positive person with strong social skills as well as a strong work ethic prior to the accident.

[46] I find that Ms. Beaudoin's pain, depression, and her addiction to Percocet were significant factors in her attitudinal changes at work from 2017–2020. Although she was able to manage her pain and her work commitments during long physical days, she relied heavily on Percocet to do this. After she managed to quit Percocet in October 2019, she did continue to work sporadically through to March 2020. However, she also managed to alienate one of her best employers and advocates with her behaviour during this period.

[47] In March 2020, Ms. Beaudoin enrolled in the CERB benefits program for those laid off during Covid. She indicated that she was hoping that her preferred key would offer her a position when the film industry started up again in September, but she did not. She turned down another nine-month position in late September that would have started in October because she was not sure how she could manage it with her pain. Instead, she accepted a personal assistant job from an old friend with a speculative proposition, but the work did not come through.

[48] A job that requires reliance on extensive illicit narcotic medication is not a sustainable one. Nor is it sustainable to work in an industry that depends on positive reputation and word of mouth in a state of irritability and depression. I find that while

Ms. Beaudoin managed to do this work for three years after the accident, she was not able to secure or sustain the long-term team contracts that are the ordinary structure of this industry.

[49] In 2018, Ms. Beaudoin began vocational counselling seeking some alternative employment that would avoid the long and physically demanding hours required in FACS. She trained for and was hired as a casual on-call support worker for clients with mental illness in the Downtown Eastside of Vancouver. She achieved this position, despite a lack of formal qualification, as a result of her lived experience, reading up on best approaches to mental health, and through a strong reference from her vocational counsellor. However, she was unable to secure a position that moved her from casual part-time to full-time work, and only worked about 30 days over 11 months in 2018 and 2019. As a casual employee, she made approximately $4,500 in 2018 and less than that in the first months of 2019. Ultimately she found the work very difficult, especially when she was trying to deal with her own mental health and addictions issues, and ceased to take shifts after February 2019.

[50] Ms. Beaudoin continued to look for alternatives to her work in FACS, and continues to work with a vocational counsellor. Together they have reviewed the job qualifications and requirements for many jobs, including in and out of the film industry and the IATSE union. For example, Ms. Beaudoin considered taking a course to get her class 1 drivers licence so that she could qualify as a cast driver, but was unable to do so, at least in part due to her lack of sitting tolerance. As of January 2021, Ms. Beaudoin's vocational counsellor had not identified any further employment opportunities for Ms. Beaudoin to consider that were within her abilities and qualifications.

Relationships and Recreation

[51] Ms. Beaudoin has always worked, and she has always relied upon her body to do what she needed it to. She was in excellent physical condition before the accident. She was fearless. She was also a sensual person. The evidence establishes that the injuries she sustained after the accident effectively severed that

relationship with her body, and her fundamental faith in her self-sufficiency. She has been prone to panic attacks and anxiety ever since.

[52] After the accident, Ms. Beaudoin withdrew from her friends. Before the accident she had a small but tight circle of friends, but after the accident she ceased spending time with them, even her very close friend who lived on the same property and whom she had regularly spent time with almost every day before the accident. When she did go over to a friend's house after the accident, she stood at the counter, unable to sit, and left after only a short time. She would spontaneously burst into tears. She ceased going out for dinners or dancing with friends, or even her boyfriend.

[53] She relied on her boyfriend, the defendant Mr. Adams, to take care of her, something that did not come naturally to her. She resented Mr. Adams for his ability to walk away from the accident uninjured, when her life had been so profoundly changed. Their relationship, new as it was at the time of the accident, lasted approximately two years beyond the accident, and ended badly. Mr. Adams blames the accident for the loss of their relationship.

[54] For a year after the accident, Ms. Beaudoin was unable to drive a car. At some point after she had overcome that fear and was able to drive again, Ms. Beaudoin's friends convinced her to participate in an annual Harley Davidson test drive. She managed the short ride, but concluded that she would not be able to ride again. She was no longer strong enough or fearless enough, and it caused her too much pain.

[55] The evidence establishes that since the accident Ms. Beaudoin has been pre-occupied by her pain, and the need to avoid exacerbating it. She has yet to find a way to manage it without narcotics.

[56] On the stand, Ms. Beaudoin was unable to sit or stand still and shifted frequently from position to position. She was emotionally volatile, stoic and positive

at times, irritable at others, and frequently tearful. She repeatedly described her state of mind since the accident as panicky and terrified for the future.

[57] The unchallenged evidence of the lay witnesses is that Ms. Beaudoin is a markedly different person in virtually every way. She is depressed, in pain, unhappy, tearful, prone to outbursts, and short tempered. If she was once something of a mama bear, she is now more of a wounded and fearful one. I am satisfied that her physical and mental injuries have led to a profound change in almost every aspect of her life.

ISSUES

[58] As stated above, the defendants do not contest Ms. Beaudoin's credibility, or her account of her injuries. Nor do they contest that Ms. Beaudoin's current physical and mental injuries were caused by the accident. However, they argue that Ms. Beaudoin's mental and physical injuries do not give rise to a total disability, and that some of Ms. Beaudoin's current mental injury was likely to have occurred in any event due to Ms. Beaudoin's history of episodes of severe depression. They do not raise any issues with respect to any pre-existing physical injury or condition.

[59] Once I have determined the extent of Ms. Beaudoin' losses that are properly attributable to the accident, I will turn to the question of quantum of non-pecuniary damages, past and future income loss, cost of future care, loss of housekeeping capacity, and special damages.

CAUSATION

[60] Ms. Beaudoin must establish on a balance of probabilities that the defendant's negligence caused or materially contributed to her injury. The defendants' negligence need not be the sole cause of the injury so long as it is part of the cause beyond the *de minimis* range. Causation need not be determined by scientific precision: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13–17; *Farrant v. Laktin*, 2011 BCCA 336 at para. 9.

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

[62] Causation must be established on a balance of probabilities before damages are assessed. As Chief Justice McLachlin stated in *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.*

[63] The plaintiff must be placed in the position that they would have been in if not for the defendant's negligence, no better or worse. Tortfeasors must take their victims as they find them, even if the plaintiff's injuries are more severe than they would be for the average person (also known as the "thin skull" rule). However, the defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition which they would have experienced anyway (also known as the "crumbling skull" rule): *Athey* at paras. 32–35. The Supreme Court of Canada articulated the "crumbling skull" rule in *Athey* at para. 35 as follows:

> The so-called "crumbling skull" rule simply recognizes that the pre-existing condition was inherent in the plaintiff's "original position". The defendant need not put the plaintiff in a position <u>better</u> than his or her original position. The defendant is liable for the injuries caused, even if they are extreme, but need not compensate the plaintiff for any debilitating effects of the pre-existing condition which the plaintiff would have experienced anyway. The defendant is liable for the additional damage but not the pre-existing damage … Likewise, if there is a measurable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence, then this can be taken into account in reducing the overall award … This is consistent with the general rule that the plaintiff must be returned to the position he would have been in, with all of its attendants risks and shortcomings, and not a better position.
>
> [Emphasis in original.]

[64] 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; *Beardwood v. Sheppard*, 2016 BCSC 100.

Parties’ Positions

[65] Ms. Beaudoin says that but for the accident she would not have either her physical or her mental injuries. She would not have become addicted to narcotic painkillers, and would not have to manage that addiction. Prior to the accident, Ms. Beaudoin had no history of unresolved physical pain or physical limitations.

[66] At the time of the accident, Ms. Beaudoin says that she had overcome various challenges in her life, time and again. For several years, Ms. Beaudoin was physically and psychologically stable, hard-working, happy, and independent. She had a robust work life, a bright future in the film industry, a healthy romantic life, and a stable social life. She does not have any of that anymore because of the accident.

[67] While she had a history of some psychological issues, she functioned and was able to live a full and complete life, working at a job she loved and maintaining normal social relationships. All of this had been the case for several years at the time of the accident. While Ms. Beaudoin may have been more vulnerable or susceptible to the effects of her physical or psychological injuries than someone who had no underlying issues, she says that the defendants must take her as they found her.

[68] The defendants agree the accident was the cause of Ms. Beaudoin’s current injuries, but say that Ms. Beaudoin’s history of mental health episodes described in her medical records establishes that she was effectively a “crumbling skull” when it came to her mental health, and this should be taken into consideration with respect to her damages.

Determination

[69] It is uncontentious that the accident caused the fracture of Ms. Beaudoin's vertebrae, and triggered both her neck and back pain, and her mental disorders. It is also uncontentious that but for the injury, Ms. Beaudoin would not have developed an addiction to narcotic painkillers.

[70] I find that Ms. Beaudoin's neck pain and headaches are now chronic, and her major depression disorder and adjustment disorder are likely permanent. In the absence of specific evidence as to the prognosis for her addiction, I am unable to say how long it will persist, but given that her pain is unresolved and has not been successfully managed to date without the ongoing prescribing of Subloxone, it is clear that she will need ongoing vigilance and medical supervision to avoid a relapse for some time.

[71] With respect to mood disorders, the Supreme Court of Canada in *Saadati v. Moorhead*, 2017 SCC 28 at paras. 34 – 36, has clarified that the legal test for a compensable mental injury is no different as for finding a physical injury in that there is no need for proof of a specific diagnosis. It is sufficient that a mental or psychological harm or injury that was caused by the accident is established on the evidence. In this case, Ms. Beaudoin has been diagnosed with major depressive disorder of moderate severity and adjustment disorder.

[72] The main difference in position between the parties is whether Mr. Beaudoin would have experienced some amount of depression even without the accident.

[73] I agree with Ms. Beaudoin that the defendants have not met the burden of proving there is a measurable risk that her history of mental health issues and episodes would have detrimentally affected her in the future. To the contrary, the evidence establishes the following:

a) The plaintiff's previous psychiatric episodes were situational and transient.

b) After each episode, she managed to overcome her difficulties and get on with her life.

c) Ms. Beaudoin's current diagnosis of major depressive order is the first such diagnosis in the evidence before me. Dr. Ganeson's review of her medical history concludes that her previous episodes of depression did not have the permanence necessary to give rise to a diagnosis of a mental disorder. He refers to them instead as "emotional difficulties".

d) Ms. Beaudoin was psychiatrically stable and not taking any psychiatric medication for several years prior to the accident.

e) There is no evidence capable of establishing that Ms. Beaudoin would have eventually experienced health problems affecting her function absent the accident. The defendants presented no expert evidence on this issue. To the contrary, Dr. Ganeson opined that all of Ms. Beaudoin's current psychiatric disorders arose because of the accident, and described her previous episodes as establishing a vulnerability, not an ongoing latent condition.

[74] In addition, Ms. Beaudoin's mental injury has a number of components, and includes some symptoms of Post Traumatic Stress Disorder ("PTSD"), and a significant component of adjustment disorder relating to pain avoidance. There is no suggestion that these disorders can be extricated from her diagnoses of depression. To the contrary, her diagnosis of major depression disorder is directly connected to her adjustment disorder and both are directly connected to Ms. Beaudoin's experience of her chronic pain, according to Dr. Ganeson as well as the evidence before me.

[75] I find that there is no basis to reduce Ms. Beaudoin's entitlement to non-pecuniary damages or any damages in respect of future losses as a result of her past mental health episodes.

Loss of Homemaking Capacity

[76] Damages for loss of homemaking capacity are conceptually distinct from other heads of damage and this award may be given both prospectively and retrospectively. In *McTavish v. MacGillivray*, 2000 BCCA 164, the Court of Appeal discussed loss of housekeeping capacity as follows:

> [68] In my view, when housekeeping capacity is lost, it is to be remunerated. When family members by their gratuitous labour replace costs that would otherwise be incurred or themselves incur costs, their work can be valued by a replacement cost or opportunity cost approach as the case may be. That value provides a measure of the plaintiff's loss. Like the trial judge I would prefer to characterize such compensation as general damages assessed in pecuniary terms, reserving special damages for those circumstances where the plaintiff actually spent money or incurred a monetary liability, although I do not wish to state a settled view on that question in the absence of full submissions as to the consequences of the distinction, if any.

[77] Our Court of Appeal affirmed that the law in respect of loss of housekeeping capacity is conceptually distinct from costs of care in *O'Connell v. Yung*, 2012 BCCA 57 at para. 67:

> … As I understand the principle, it is the loss of a capacity – an asset – that is compensated. Accordingly, because the award reflects the loss of a personal capacity, it is not dependent upon whether replacement housekeeping costs are actually incurred. Damages for the cost of future care serve a different purpose from awards for loss of housekeeping capacity. Unlike loss of housekeeping capacity awards, damages for the cost of future care are directly related to the expenses that may reasonably be expected to be required (*Krangle* at para. 22)…

[78] Most recently, in *Kim v. Lin*, 2018 BCCA 77, the Court of Appeal considered the proper approach to valuing a loss of housekeeping capacity:

> [33] Therefore, where a plaintiff suffers an injury which would make a reasonable person in the plaintiff's circumstances unable to perform usual and necessary household work — i.e., where the plaintiff has suffered a true loss of capacity — that loss may be compensated by a pecuniary damages award. Where the plaintiff suffers a loss that is more in keeping with a loss of amenities, or increased pain and suffering, that loss may instead be compensated by a non-pecuniary damages award. However, I do not wish to create an inflexible rule for courts addressing these awards, and as this Court said in *Liu*, "it lies in the trial judge's discretion whether to address such a claim as part of the non-pecuniary loss or as a segregated pecuniary head of damage": at para. 26.

> [34] Whichever option a court chooses, when valuing these different types of awards, courts should pay heed to the differing rationales behind them. In particular, when valuing the pecuniary damages for the loss of capacity suffered by a plaintiff, courts may look to the cost of hiring replacement services, but they should ensure that any award for that loss, and any deduction to that award, is tied to the actual loss of capacity which justifies the award in the first place.

[79] In *Riley v. Ritsco*, 2018 BCCA 366 at paras. 101–103, which was issued by our Court of Appeal after *Kim*, but which does not reference *Kim*, the Court stated as follows:

> [101] It is now well-established that where a plaintiff's injuries lead to a requirement that they pay for housekeeping services, or where the services are routinely performed for them gratuitously by family members or friends, a pecuniary award is appropriate. Where the situation does not meet the requirements for a pecuniary award, a judge may take the incapacity into account in assessing the award for non-pecuniary damages.
>
> [102] In my view … segregated non-pecuniary awards should be avoided in the absence of special circumstances. There is no reason to slice up a general damages award into individual components addressed to particular aspects of a plaintiff's lifestyle. While such an award might give an illusion of precision, or suggest that the court has been fastidious in searching out heads of damages, it serves no real purpose. An assessment of non-pecuniary damages involves a global assessment of the pain and suffering, loss of amenities, and loss of enjoyment of life suffered by a plaintiff. By its nature, it is a rough assessment and not a mathematical exercise.

[80] More recently in *Ali v. Stacey*, 2020 BCSC 465, Justice Gomery summarized the principles relating to this head of damage as follows, at para. 67:

> [67] Read together, these two judgments establish that a plaintiff's claim that she should be compensated in connection with household work she can no longer perform should be addressed as follows:
>
> a) The first question is whether the loss should be considered as pecuniary or non-pecuniary. This involves a discretionary assessment of the nature of the loss and how it is most fairly to be compensated; [*Kim v. Lin,* 2018 BCCA 77, at para. 33].
>
> b) If the plaintiff is paying for services provided by a housekeeper, or family members or friends are providing equivalent services gratuitously, a pecuniary award is usually more appropriate; [*Riley v. Ritsco,* 2018 BCCA 366, at para. 101]
>
> c) A pecuniary award for loss of housekeeping capacity is an award for the loss of a capital asset; *Kim* at para. 31. It may be entirely appropriate to value the loss holistically, and not by mathematical calculation; *Kim* at para. 44.

> d) Where the loss is considered as non-pecuniary, in the absence of special circumstances, it is compensated as a part of a general award of non-pecuniary damages; *Riley* at para. 102.

Parties' Positions

[81] Ms. Beaudoin testified that she has managed all of her housework since the accident, but that she has had to do it differently by breaking up the tasks over several days. Her son now helps with some of the heavier tasks such as laundry and taking out the garbage. He also helps with the dishwasher and cooking.

[82] She says that both the occupational therapist, Ms. Carman, and the independent examination of the neurologist, Dr. Chaudhary, establish that Ms. Beaudoin lacks the functional capacity to do the repetitive bending, turning and heavy lifting involved in household cleaning.

[83] The plaintiff submits that an independent non-pecuniary award of $20,000 for her loss of housekeeping capacity to the date of trial is fair in the circumstances to date, relying upon *Bruno v. Diamzon*, 2014 BCSC 1270 and *Gill v. Huber*, 2020 BCSC 519 at paras. 185–188. After the date of the trial, Ms. Beaudoin seeks to include bi-weekly and annual housekeeping assistance as part of her costs of future care.

[84] In the alternative, Ms. Beaudoin seeks an increase in her overall pecuniary damages by $20,000 to compensate for this loss.

[85] The defendants say that Ms. Beaudoin lives with her adult son, who is able to assist her, and there was no evidence as to her actual requirements for cooking, cleaning or shopping. The defendants say that Ms. Beaudoin's loss of housekeeping capacity is best addressed through her non-pecuniary award, both up to the date of trial and in the future.

Determination on Loss of Housekeeping Capacity

[86] I am satisfied on the evidence that prior to the accident Ms. Beaudoin kept a very clean home and took care of all her own shopping, cooking and housekeeping needs.

[87] Since the accident, she has managed with some help from her son and without the assistance of paid help. She is able to cook and clean, but she goes more slowly and spreads the tasks out through the week. Her son is fully grown, and his assistance with cooking, loading the dishwasher, and changing sheets is not extraordinary.

[88] I do not consider this to be a case where a pecuniary loss of capacity claim is appropriate, nor is it claimed. I do not have evidence, for example, that Ms. Beaudoin has lost a capital asset in the form of a calling or her self-identity as a result of her restrictions and limitations with respect to her contributions to parenting her children or her housekeeping abilities. She is still able to manage these tasks.

[89] I agree with Ms. Beaudoin that in this case, the award to date is more appropriately considered as a non-pecuniary loss. I agree with the Court of Appeal in *Riley* that non-pecuniary awards are global awards that take into account many factors affecting quality of life, and that it would serve no purpose to try and slice one aspect of this award off from the others. I therefore include this factor in my award for non-pecuniary damages.

[90] Ms. Beaudoin is also seeking housekeeping assistance as a cost of her future care, and I will address that below in relation to that head of damages.

NON-PECUNIARY DAMAGES

[91] 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 to all parties, and 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: *Trites v. Penner*, 2010 BCSC 882 at paras. 188–189.

[92] In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal outlined the factors to be considered when assessing non-pecuniary damages at para. 46:

> The inexhaustive list of common factors cited in *Boyd* [*Boyd v. Harris*, 2004 BCCA 146] that influence an award of non-pecuniary damages includes:
>
> (a) age of the plaintiff;
>
> (b) nature of the injury;
>
> (c) severity and duration of pain;
>
> (d) disability;
>
> (e) emotional suffering; and
>
> (f) loss or impairment of life;
>
> I would add the following factors, although they may arguably be subsumed in the above list:
>
> (g) impairment of family, marital and social relationships;
>
> (h) impairment of physical and mental abilities;
>
> (i) loss of lifestyle; and
>
> (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[93] The 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: *Dilello v. Montgomery*, 2005 BCCA 56 at para. 25.

[94] Ms. Beaudoin must be placed in the position that she would have been in if not for the defendants’ negligence, no better or worse. Tortfeasors must take their victims as they find them, even if the plaintiff’s injuries are more severe than they would be for another person. However, the defendants need not compensate the plaintiff for any debilitating effects of a pre-existing condition which she would have experienced anyway: *Athey* at paras. 32–35.

Parties' Positions

[95] Ms. Beaudoin is seeking a non-pecuniary damages award of $200,000, or $220,000 if her loss of housekeeping capacity to the date of trial is not considered under a separate head of damages.

[96] The plaintiff has provided a series of cases for non-pecuniary damages for chronic pain that range from $175,000–$200,000 ($228,000 when adjusted for inflation). These include:

a) *Felix v. Hearne*, 2011 BCSC 1236 at paras 31–38, in which $200,000 ($228,000 adjusted for inflation) was awarded to a 49-year-old plaintiff who sustained multiple injuries but no fractures in the accident and, like Ms. Beaudoin, had limited her ability to sit for any extended period of time and suffered from depression. There was also a significant loss in respect of her vocation, family life and social activities.

b) *Pike v. Kasiri*, 2016 BCSC 555 at paras. 309–323, where the plaintiff was awarded $190,000 ($203,000 adjusted for inflation) which was then subject to a 20% reduction due to an independent hip injury. That plaintiff was 40 years old, experienced pain and stiffness in his neck and back, particularly on the lower right side, as well as pain in his knees, mainly his left knee. He developed a problem in his left hip, which required two surgeries and remained symptomatic, but was found to be a pre-existing injury resulting in a crumbling skull deduction. At the time of trial, five-and-a-half-years post-accident, simple physical movements and chores still caused him considerable pain and discomfort. His relationships, including his marriage, suffered, and his personality changed in negative ways. He also suffered PTSD symptoms, depression, and chronic pain, for which he continued to require medication and counselling.

c) *Manoharan v. Kaur*, 2016 BCSC 692, where the plaintiff was awarded $170,000 ($182,000 adjusted for inflation). Ms. Monoharan was about to embark as a certified general accountant at the time of accident but had

not yet done so. She suffered similar injuries to Ms. Beaudoin and was diagnosed with major depression and chronic pain.

d) *McCullagh v. Rozinbaum*, 2020 BCSC 429, where the 37-year-old plaintiff was awarded $175,000. He suffered a herniated disc and associated nerve damage, and other soft tissue injuries. His injuries led to depression and anxiety, and damaged his sense of self-worth. His relationships with family and friends, particularly his children, suffered.

[97] Although Ms. Beaudoin acknowledges that the plaintiffs in the above cases were younger than she was at the time of the accident, she says that none of the above cases involved an actual fracture of the vertebrae. Most cases that involve a vertebrae fracture also involve spinal cord injuries, which place them near the limit for non-pecuniary damages, which the plaintiff concedes is not appropriate in this case.

[98] The defendants rely on a case that involved an undisplaced vertebrae fracture similar to Ms. Beaudoin's, as well as a low back injury that was contributed to by a pre-existing condition: *Sommerville v. Munro*, 2018 BCSC 457. That case involved a 66-year-old retired RCMP officer who also had to wear a neck collar for a number of months, but whose neck did not heal as successfully as Ms. Beaudoin's in that he had a slight tilt to his head. Like Ms. Beaudoin, Mr. Sommerville had chronic pain. Unlike Ms. Beaudoin, his lower back pain was his main source of that chronic pain, and it disabled his physical activity, but not sedentary activity. His lower back pain was contributed to by a pre-existing condition. He had no mental injuries, though his mood changed for the worse, and overall his life was found to have changed profoundly. He also had a successful response to various pain treatments and was scheduled for a rhizotomy with a guardedly optimistic prognosis.
Mr. Sommerville was awarded $150,000 in non-pecuniary damages, which was then discounted by 10% for the contribution of his pre-existing condition.

[99] Taking all of this into account, the defendants say an award of $170,000 in non-pecuniary damages is appropriate, including Ms. Beaudoin's losses related to her difficulties with housekeeping up to the trial.

Determination on Non-Pecuniary Damages

[100] I find on all the evidence that Ms. Beaudoin's injuries arising from the accident have resulted in chronic pain and significant mental injuries, including ongoing major depressive disorder. Ms. Beaudoin's chronic pain and depression act on each other in a cycle, and the prognosis is poor for a full resolution.

[101] While the authorities cited by the parties are of assistance in establishing a range of damages, every case must, of course, be decided on its facts.

[102] I am satisfied that the range of damages awards for the chronicity of Ms. Beaudoin's pain are in the range suggested by Ms. Beaudoin. Ms. Beaudoin's mental injuries are significant, her prognosis more guarded, and her range of physical limitations more significant than that in *Sommerville*, and a higher award is warranted.

[103] The impact on Ms. Beaudoin's emotional and mental health has been profound, and the accident has negatively impacted key relationships in her life, and, perhaps most significantly, her relationship with her own body and its ability to get her through anything. She has lost the resilience, fearlessness and self-reliance that had marked her life thus far.

[104] I award Ms. Beaudoin **$200,000** in non-pecuniary damages, including compensation for her loss of housekeeping capacity to date.

PAST WAGE LOSS

[105] Compensation for past loss of earning capacity is to be based on what the plaintiff would have, not could have, earned but for the injury: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49.

[106] Pursuant to s. 98 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, the plaintiff is entitled to recover damages for only her past net income loss. In exercising this discretion, I must keep in mind that the plaintiff is to be put back in the position she would have been in had the accident not occurred: *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 106 at paras. 185–186.

[107] The plaintiff need not establish earnings loss on a balance of probabilities, since what would have happened between the date of the accident and prior to the trial is essentially hypothetical, as are predictions regarding future losses. As stated in *Smith v. Knudsen*, 2004 BCCA 613 at para. 29:

> … What would have happened in the past but for the injury is no more "knowable" than what will happen in the future and therefore it is appropriate to assess the likelihood of hypothetical and future events rather than applying the balance of probabilities test that is applied with respect to past actual events.

[108] A 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; *Morlan v. Barrett*, 2012 BCCA 66 at para. 38.

[109] A plaintiff in a personal injury action has a duty to take reasonable steps to limit their loss. The defendant has the burden of proof on the issue of mitigation. This involves proving two elements: first, that the plaintiff acted unreasonably, and second, that the plaintiff's loss would in fact have been eliminated or reduced had the step been taken: *Janiak v. Ippolito*, [1985] 1 S.C.R. 146; *Chiu v. Chiu*, 2002 BCCA 618 at para. 57. 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.

Plaintiff's Position

[110] Ms. Beaudoin is claiming $102,761 for past loss of earnings based on amounts she says she would have earned had she been able to work more consistently in the film industry since the accident.

[111] In coming to this amount, Ms. Beaudoin relies on the estimate of an expert economist, Mr. Benning. Mr. Benning opined that it would be inappropriate to simply extrapolate from her pre-accident earnings in FACS because of the seasonal nature of the film industry. Instead, he took her actual workdays in the four months leading up to her accident, and then built assumptions about the work season from her work in subsequent years, suggesting these busier times most likely reflected her baseline. He concluded that, but for the accident, Ms. Beaudoin would have worked 2,400 straight time equivalent (STE) hours per year at the rate applicable to each year, which is equivalent to working 160 days, or approximately seven months a year in the film industry when working an average of 12.5 hours a day, for 15 STE hours after overtime bonuses are applied.

[112] Mr. Benning then applied an hourly wage of $38.23/hr to the 2,400 STE hour year to determine Ms. Beaudoin's annual baseline income. This hourly rate is the rate established by the IATSE collective agreement for the job with the most responsibility (a key or second-in command who gets key rates), but at the third-tier wage for lower-budget productions. He considered that this rate would reflect the variability in hiring position and tier of production that Ms. Beaudoin could have been expected to work in, and account for the fact that she would have received payments in lieu of holiday, vacation, and benefits, which he estimated at around 20% on top of paid salary.

[113] In his estimate, Mr. Benning also relied on an assumption that Ms. Beaudoin would have worked part-time as a support worker for the MPA society. However, Ms. Beaudoin agrees that assumption is not borne out by the evidence. After taking that into account, Mr. Benning's estimate of her wage loss is closer to $75,000.

[114] However, Ms. Beaudoin says that Mr. Benning also made assumptions that tend to underestimate what her baseline earnings would have been based on the evidence at trial. That evidence included that in the past few years, with the exception of the Covid shutdown from mid-March to mid-August, there is work in FACS year round, and a high demand for qualified workers. The keys that gave

evidence at trial tended to work closer to 11 months a year. Mr. Benning's assessment does not account for the work the plaintiff would have been able to do from the time the film industry re-opened in 2020 to the time of trial. That would have been an additional five months at approximately 200 STE hours per month, which represents a loss of an additional $26,761 net.

Defendants' Position

[115] The defendants accept that the accident did affect Ms. Beaudoin's ability to earn income, but say that it is impossible to determine the extent of this loss on the evidence before the Court. Overall, the defendants argue that Ms. Beaudoin's past (and future) income losses should be assessed on the capital asset approach, rather than on the earnings approach. They would value that loss at one year of Ms. Beaudoin's baseline earnings, using her 2019 income of $69,000.

[116] The defendant says that Ms. Beaudoin's short time in the film industry before the accident, and the substantial hours and wages she earned in that time, should not be used to indicate her pre-accident baseline earning capacity. They note her substantially lower annual salaries in the two years prior to the accident, and say that she must have been working less than full-time in those years (although there is no direct evidence in this respect). They say that, given Ms. Beaudoin's varied and inconsistent work history, together with the variability of work in the film industry more generally, it would be purely speculative to extrapolate Ms. Beaudoin's pre-accident earnings from her pre-accident work in FACS. They say it is also purely speculative to construct a baseline from her post-accident work history, as was done by Mr. Benning.

[117] They note that in 2018 and 2019, Ms. Beaudoin, despite her injuries, was still making more than she had made in any previous year for which there is evidence. They say I should imply that she took all the work that was offered to her, and that would have been offered to her absent the accident, and that her baseline earning capacity can therefore be determined by reference to her best year, in 2019, when she earned $69,000.

[118] The defendants also note that this amount is slightly more than the 2015 census data included in their expert economist Mr. Hildebrand's file, which indicates an average income of about $60,000 for female workers in their 50's working as support for the performing arts, broadcasting and film production sector. They seek to rely on this as a relevant baseline for Ms. Beaudoin's pre-accident earning capacity.

[119] Finally, the defendants raise a failure to mitigate defence with respect to Ms. Beaudoin turning down a significant contract in September 2020 slated to last approximately seven months. This would have been a five-days-a-week, 12-plus-hours-a-day job, which Ms. Beaudoin herself valued at $125,000 in income to her. In addition, there was evidence at trial that in or around the time of the trial, one of her former keys had offered a position on his team for a few days a week on a one-month production and had received no response. They also say that Ms. Beaudoin has not been pro-active in seeking out work in FACS since the film industry re-opened.

[120] The defendants do not seek to reduce the past or future wage loss awards by these amounts if the awards are made on the basis of a general loss of capacity measured as one year of baseline earnings in the range they suggest. However, if the earnings approach is used, as the plaintiffs argue, the defendants say that no loss of earnings should be awarded for the latter part of 2020, or the early months of 2021, when Ms. Beaudoin could and should have been working on the full-time production she was offered in September, calling her contacts about other options, or at least working the part-week position offered around the time of trial.

Determination

[121] I find that Ms. Beaudoin has established that, if not for the accident, she would have pursued the career in FACS that she had embarked on at the time of the accident, and that her baseline income as a FACS team member would have been substantially higher than the income that she in fact earned after the accident.

[122] I agree with the defendants that the basis for Mr. Benning's calculation of 2,400 STE hours is problematic, based as it is on a compilation of the hours Ms. Beaudoin worked post-accident. In my view, this reliance tends to underestimate the amount of work Ms. Beaudoin would have been capable of performing and likely would have performed had she not been injured in the car accident. Overall, Ms. Beaudoin's reliance on this value for her past wage loss is favourable to the defendants.

[123] In addition, the crews that Ms. Beaudoin worked on had leads and teams that tended to work substantially more than 2,400 STE hours. As noted above, 2,400 STE hours works out to an average of seven months in the film industry. I find that, if not for Ms. Beaudoin's addiction, mental injuries and change in demeanor caused by the accident, the reluctance that the leads expressed about continuing to work with her would not have been a factor, and Ms. Beaudoin's established hard-working nature could have resulted in employment at a similar pace to theirs, albeit at a lesser hourly wage, and without the part-time work at the MPA Society.

[124] 2,400 STE hours also coincides with a seven-month year with typical FACS hours, which is, coincidentally, what Ms. Beaudoin considered to be an average year for those working in FACS. I also note 2,400 STE hours is equivalent to 160 12.5 hour days, and this would be would be approximately 2,000 working hours per year. Mr. Hildebrand, the expert economist called by the defence, suggested that a 2,000 hour year is equivalent to a typical full-time job. Overall, I consider that the 2,400 STE baseline is appropriate for Ms. Beaudoin.

[125] The defendants did not take any issue with the wage rate used by Mr. Benning. The use of the wage rate from third-tier level of productions also tends to underestimate this baseline, because the evidence of the Union representative called by the defendants indicates that feature film and higher budget television productions, which are required to pay a higher rate, make up the significant majority of the productions in the Lower Mainland.

[126] I disagree with the defendants that the evidence establishes that Ms. Beaudoin was working at her pre-accident baseline capacity in 2018 or 2019. To the contrary, the evidence establishes that she attempted to sign on with a FACS team full-time on a longer-term contract in the fall of 2017, but her pain and mental health issues did not allow her to do so, and she ended up in conflict with her key. Throughout 2018 and 2019 she was not taking on full contracts or full hours. She was also relying on Percocet more and more. The number of days Ms. Beaudoin worked after the accident reflect a significant change in her ability to work, and I find that change was caused by both her mental and physical injuries. I also find that those injuries and their impact on Ms. Beaudoin's ability to work led to her addiction.

[127] With respect to the mitigation argument, I agree with the plaintiff that although she initially accepted this seven-month full-time contract in September 2020, she would not have been able to manage this position, based on the expert evidence before me, regardless of her optimism and determination to try. Though she turned it down for a more speculative position, I find it was unlikely that she would have been able to manage the seven-month contract in any event. She has done her utmost to mitigate her damages by working even when she likely should not have, to the point of using harmful medications to do so and contributing to the severity of her major depressive disorder.

[128] Overall, I find that Ms. Beaudoin has established that a loss of earning approach is justified in this case, and that her losses are in the range she suggests. Taking into account all of the above factors, I award Ms. Beaudoin **$100,000** for loss of past earning capacity.

LOSS OF FUTURE EARNING CAPACITY

[129] A claim for loss of future earning capacity raises two key questions: 1) has the plaintiff's earning capacity been impaired by her injuries; and, if so, 2) what compensation should be awarded for the resulting financial harm that will accrue over time? The appropriate means of assessment will vary from case to case: *Brown v. Golaiy* (1985), 26 B.C.L.R. (3d) 353 (S.C.); *Pallos v. Insurance Corp. of British*

Columbia (1995), 100 B.C.L.R. (2d) 260 (C.A.); *Pett v. Pett*, 2009 BCCA 232. The plaintiff must establish that there is a real and substantial possibility of a future event leading to an income loss: *Perren v. Lalari*, 2010 BCCA 140 at para. 32.

[130] The assessment of damages is a matter of judgment, not calculation: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18.

[131] Insofar as possible, the plaintiff should be put in the position he or she would have been in but for the injuries caused by the defendant's negligence: *Lines* at para. 185. The essential task of the court is to compare the likely future of the plaintiff's working life if the accident had not happened with the plaintiff's likely future working life after the accident: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32; *Rosvold* at para. 11.

[132] There are two possible approaches to assess loss of future earning capacity: the "earnings approach" and the "capital asset approach". Both approaches are correct. The "earnings approach" will generally be more useful when the loss is easily measurable: *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.

[133] The capital asset approach involves considering factors such as:

i. whether the plaintiff has been rendered less capable overall of earning income from all types of employment;

ii. whether the plaintiff is less marketable or attractive as a potential employee;

iii. whether the plaintiff has lost the ability to take advantage of all job opportunities that might otherwise have been open; and

iv. whether the plaintiff is less valuable to herself as a person capable of earning income in a competitive labour market.

Brown; *Gilbert* at para. 233; *Morgan v. Galbraith*, 2013 BCCA 305 at paras. 53, 56.

[134] Though the capital asset approach is not a “mathematical calculation”, the court must still set out the factual basis of the award: *Morgan* at para. 56.

[135] The principles that apply in assessing loss of future earning capacity were summarized by Justice Low in *Reilly v. Lynn*, 2003 BCCA 49 at para. 101:

> The relevant principles may be briefly summarized. The standard of proof in relation to future events is simple probability, not the balance of probabilities, and hypothetical events are to be given weight according to their relative likelihood: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 27. A plaintiff is entitled to compensation for real and substantial possibilities of loss, which are to be quantified by estimating the chance of the loss occurring: *Athey v. Leonati, supra*, at para. 27, *Steenblok v. Funk* (1990), 46 B.C.L.R. (2d) 133 at 135 (C.A.). The valuation of the loss of earning capacity may involve a comparison of what the plaintiff would probably have earned but for the accident with what he will probably earn in his injured condition: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 at 93 (S.C.). However, that is not the end of the inquiry; the overall fairness and reasonableness of the award must be considered: *Rosvold v. Dunlop* (2001), 84 B.C.L.R. (3d) 158, 2001 BCCA 1 at para. 11; *Ryder v. Paquette*, [1995] B.C.J. No. 644 (C.A.) (Q.L.). Moreover, the task of the Court is to assess the losses, not to calculate them mathematically: *Mulholland (Guardian ad litem of) v. Riley Estate* (1995), 12 B.C.L.R. (3d) 248 (C.A.). Finally, since the course of future events is unknown, allowance must be made for the contingency that the assumptions upon which the award is based may prove to be wrong: *Milina v. Bartsch, supra*, at 79…

Plaintiff’s Position

[136] Ms. Beaudoin seeks an award for loss of earnings based on a total loss of earning capacity to the age of retirement at 67. Overall, Ms. Beaudoin says that a fair award for her diminished future earnings is approximately $932,000.

[137] Counsel for Ms. Beaudoin say that the fact that Ms. Beaudoin managed to work until early 2020 is not indicative of her capacity to work. They say that Ms. Beaudoin’s work activity was not sustainable and relied heavily upon her use of harmful, addictive, and illicit narcotics.

[138] Ms. Beaudoin relies upon the case of *Johnstone v. Rogic*, 2019 BCCA 469, where the Court of Appeal upheld a substantial award for future loss of earning capacity for a 38-year-old plaintiff with a strong work ethic who had continued to work full-time almost up to the point of trial, and had not experienced a loss of

income at the time of trial. Like Ms. Beaudoin, Ms. Johnstone had also relied upon an opioid to manage this level of performance, though she never exceeded the prescribed amounts. Like Ms. Beaudoin, Ms. Johnstone found that, even with the maximum dose of prescribed medication, working full-time was not sustainable for her long-term. Ms. Johnstone also had a guarded and uncertain prognosis. The trial court found that there was a real possibility that Ms. Johnstone would experience a loss of income as a result of not being able to work full-time. An award for loss of future income was made on the basis of her working an alternative part-time consulting position.

[139] Ms. Beaudoin says her situation is very similar, but that she has been working at a reduced capacity since the accident, and that she properly rejected further FACS work in 2020 and 2021 because she is, in fact, unable to perform that work. She says that at this point she does not have other employment options, such as doing the FACS work part days. Nor can she get another job with her GED education level and with such a low physical tolerance for sitting or standing. Sedentary work is not an option for her.

[140] Ms. Beaudoin says her future losses should be awarded on the earnings approach. She relies on the 2,400 STE hour year for these calculations, but says that the rate applied should be higher than Mr. Benning used for her past earnings losses. Specifically, she seeks a rate based on the average of the rates for FACS leads on feature films and high-budget television production: $41.47/hour. An hourly rate of $41.47 multiplied by 2,400 STE hours per year results in a baseline salary of $99,516 per year.

[141] Ms. Beaudoin says this higher rate is appropriate because the evidence of the IATSE representative, called by the defence, is that the majority of the productions in the Lower Mainland are at either the feature film or high budget TV rate. Her evidence was also that most FACS teams pay both the key and the second in command at the highest rate. At the time of the accident, Ms. Beaudoin had plans to buy and build her own truck, which would have enabled her to start her own

business as a key or lead that supplies the truck and hires the staff for the FACS department. Doing so would have guaranteed her these rates; however, she did not need the truck to be hired as a key or second in command at those rates. She also says that the IATSE collective bargaining agreement is being re-negotiated, which will likely result in higher hourly rates beyond the increases for inflation included in the various multipliers provided by the economists.

[142] Ms. Beaudoin also says that I should consider the likelihood that she would have been able to build, buy or rent her own truck, negotiate better rates, and work more hours than the 2,400 STE that are the foundation of Mr. Benning's opinion. She notes that her two of her former keys called to give evidence do all of these things, and they made $160,000 and $195,000 in their last full year. She says I should calculate her lost earning as the average between $160,000 and the rate of $99,516 that she would have earned as a second in command on the bigger budget productions.

[143] With respect to her assumed retirement age of 67, Ms. Beaudoin argues that she would have continued working as much as she could for as long as she could had the accident not happened. Ms. Beaudoin testified she was "not privileged enough to have" retirement plans before the accident. She loved the FACS job and needed to provide for herself and, for the time being, her son. She does not have any savings or pension to rely on.

[144] Using a retirement age of 67, and an annual likely earning based on the average of 2,400 STE hours at the FACS rate for higher tier productions, and the lower paid key of the two whose earnings were in evidence, Ms. Beaudoin says a fair and reasonable assessment of her losses is $931,792.

Defendant's Position

[145] The defendants concede that Ms. Beaudoin continues to be disabled in her ability to work, but says that for the same reasons that make it impossible to engage in an earnings approach for past wage loss, that her future loss of income should

also be valued as a loss of capacity claim. They say that Ms. Beaudoin's loss should be valued at $130,000 on the basis of two years of her "baseline" income.

[146] The defendants say that she has the residual ability to work, and even to work full-time. She has managed, since the accident, to work five days in a week, and up to 300 STE hours in a month at various times. Whether that could be sustained is not known, because she has not attempted to work full-time since November 2019. However, the defendants say it should be assumed that she could do so. Furthermore, Ms. Beaudoin expressed a desire to work full-time in the summer of 2020 when speaking with Dr. Ganeson, and even accepted a job in September of 2020 on that basis (although she did not follow through on that position).

[147] The defendants also say that there was no reasonable prospect of Ms. Beaudoin being able to raise the capital or to develop the contacts necessary to start her own business as a key or lead that supplies the truck and hires the staff for the FACS department. They note that in her vocational testing after the accident she scored poorly on entrepreneurial interests. She has also not started her own business prior to the accident, and had to declare bankruptcy approximately five years before the accident.

[148] The Defendants agree that Ms. Beaudoin has no pension or savings, and agree that she is therefore more likely to work past the age of 65.

[149] The defendants also rely on the evidence of their expert economist, Mr. Hildebrand, who opined that anything more than 2000 hours a year should not be assumed. He also provided lower multipliers for loss of future earning capacity that depreciated the participation rate in the workforce more quickly on the basis of an average woman's participation rate at Ms. Beaudoin's age, and included a negative contingency factor based on the average woman's likelihood to work part-time instead of full-time. He also included rates based on males of her age on the basis that, as a single woman, Ms. Beaudoin might be more statistically similar to those rates.

[150] Overall, the defendants argue that while the accident has likely affected her overall earning capacity, it has not done so in a materially measurable way, and that a moderate award for loss of capacity is all that is appropriate in this case.

Determination

[151] I am satisfied on the evidence that Ms. Beaudoin is significantly disabled from participating in the workforce. I find on all the evidence that she is not capable of working full-time, or in FACS. Any full-time job, including in FACS, would be unsustainable for Ms. Beaudoin, and would probably worsen the mental disorders caused by the accident and result in a relapse in her addiction to Percocet. A moderate loss of capacity award is not appropriate. Ms. Beaudoin has lost significant earning potential, and it is measurable.

[152] I agree that Ms. Beaudoin is likely to have worked past the average retirement age, particularly given her bankruptcy in her late 40's. A retirement age of 67 is reasonable. With respect to the gender-based negative income contingencies, I note that the courts are properly wary of using gendered income data that often reflects a historical pattern of undervaluing women's work, rather than an accurate prediction of the plaintiff's circumstances: *Hau v. Patterson*, 2020 BCSC 1069 at paras. 151–152.

[153] I find this case is similar to the facts in *Manoharan*. In that case, the plaintiff was 53 at the time of trial and was found to have an "intense work ethic". She had a low pre-accident income, was the sole breadwinner, and had no savings or pension. She had recently embarked on a new career path before the accident. The court found those factors, which are also present in Ms. Beaudoin's case, established that there was a real and substantial possibility that she would have sustained her employment past the usual retirement age of 65, and increased the future income loss award based on that possibility.

[154] While I am not convinced that Ms. Beaudoin would have been able to raise the capital to buy her own truck by the time of trial, I am convinced that she would have been in a position to earn the top FACS rates. Therefore, an annual salary of

approximately $100,000 based on that rate and approximately 2,400 STE hours would very likely have been achieved by the time of trial. There is also a reasonable possibility that she would have made more than that.

[155] I would assess her annual loss at between $100,000–$125,000 and her disability at between 80–90%. It is a significant disability, and there is no evidence before me of a likely career path for Ms. Beaudoin at this time. On the other hand, although it has been at considerable cost to herself, Ms. Beaudoin had managed to continue working at a demanding rate, even after she was in treatment for her Percocet addiction. In addition, her inability to manage her pain is her primary source of her disability, and, while a complete resolution to this disability is not likely, she may regain some functional capacity through treatment of both her mental injury and her pain symptoms as contemplated in her award for future care costs.

[156] To this loss, I would apply the multipliers based on a combination of Mr. Benning's suggested participation rate, and some factor for the negative contingency that Ms. Beaudoin might have worked fewer hours absent the accident prior to her retirement as described by Mr. Hildebrand. The plaintiffs have provided me with various tables taking into account different ways to calculate this negative contingency.

[157] In the end, I have considered the range of Ms. Beaudoin's potential earnings, the extent of her disability, and her potential negative contingencies that might apply. I have calculated Ms. Beaudoin's losses based on those ranges in numerous ways with surprisingly consistent results. This is not a calculation but an assessment, and my overall assessment of Ms. Beaudoin's loss of future earnings is **$650,000**.

COST OF FUTURE CARE

[158] The plaintiff is entitled to compensation for the cost of future care based on what is reasonably necessary to restore her to her pre-accident condition insofar as that is possible. 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 medical evidence to preserve

and promote the plaintiff's mental and physical health: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.); *Williams v. Low*, 2000 BCSC 345; *Spehar v. Beazley*, 2002 BCSC 1104 at para. 55; *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29–30.

[31] The test for determining the appropriate award under the heading of cost of future care is an objective one based on medical evidence. 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* at 84; *Tsalamandris v. McLeod*, 2012 BCCA 239 at paras. 62–63.

[159] Future care costs are "justified" if they are both medically necessary and likely to be incurred by the plaintiff. The award of damages is thus a matter of prediction as to what will happen in the future. If a plaintiff has not used a particular item or service in the past, it may be inappropriate to include its cost in a future care award. However, if the evidence shows that services previously rejected by the plaintiff will become essential or required in the future, the plaintiff can recover for such services: *Izony v. Weidlich*, 2006 BCSC 1315 at para. 74; *O'Connell* at paras. 55, 60, 68–70.

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

[161] An assessment of damages for cost of future care is not a precise accounting exercise: *Krangle v. Brisco*, 2002 SCC 9 at para. 21.

Parties' Positions

[162] Ms. Beaudoin seeks to recover her anticipated costs for ongoing treatments and therapies, including various recommended treatments, medications, pain

therapies, counselling sessions, and ergonomic equipment. For most of these items she seeks the annual cost for the rest of her life (based upon multipliers provided by Mr. Benning that are not controversial). Ms. Beaudoin seeks over $300,000 for these costs.

[163] The defendants agree that many of these items are supported by the recommendations of Dr. Ganeson, but disagree as to the length of time required or their cost. They say a total award of $20,000 for costs of future care is supported, although in oral argument they agreed to additional years for some of the medications and pain treatments.

[164] As can be seen from the significant discrepancies between these figures, there is no agreement between the parties on the cost any of these items. I will therefore go through each individual claim.

Medications

[165] Ms. Beaudoin seeks approximately $57,000 for the costs of three medications recommended by Dr. Ganeson for the treatment of her depression and insomnia symptoms. The most expensive of these is brexpiprazole, which has an annual cost of $2,265, and a lifetime cost of $49,590. The defendants agree that all of these medications are medically necessary, but initially endorsed their cost for only two years. In oral argument, they agreed that the expert evidence indicates that they may be required for a longer period, and on that basis endorsed the award being made for five years.

[166] On the basis of Dr. Ganeson's expert evidence on the issue of medications, and all the evidence at trial, I find that it is more likely than not that Ms. Beaudoin will need the three recommended medications, or some variant of them, for most of her life. I note that the dosage of brexpiprazole is dependent on Ms. Beaudoin's response to that medication as well as to the recommended increase in mirtazapine. Taking this into account, I consider that the cost estimate of the mid-range dose provided by Ms. Carman to be the more appropriate estimate, at $1,509 annually.

This would reduce the lifetime cost of these medications to just under **$39,500**, and I make that award.

Pain Program

[167] Ms. Beaudoin seeks approximately $15,000 for the cost of a private multi-disciplinary pain clinic program as recommended by Ms. Carman.

[168] The defendants say that there are public pain programs that are covered by public health and so the cost of the private pain clinic is not warranted.

[169] Ms. Beaudoin has already been referred to the St. Paul's pain clinic, where Dr. Yu treated her with injections, some of which were beneficial and some of which were not. I am convinced that the private programs described in Ms. Carman's report that take a multi-disciplinary and intensive approach, and have modules addressing addiction issues, would be of significant additional benefit to Ms. Beaudoin. I agree with Ms. Beaudoin that she has already done a great deal of the work to address her addiction issues, and so the lower module option would be suitable. I award her **$15,000** for these costs.

Counselling

[170] Ms. Beaudoin seeks just under $12,000 for the cost of 50–60 counselling sessions. This is a service that Ms. Beaudoin has used extensively to assist with her post-accident mental injuries.

[171] The defendants agree to 25 sessions with a registered psychologist able to provide cognitive behavioural therapy as recommended by Dr. Ganeson at a cost of $5,000.

[172] Ms. Carman recommended 20–30 cognitive behavioural therapy sessions with a registered psychologist in conjunction with a pain clinic program that includes psychiatric treatment and related counselling. In the absence of such a pain clinic program, Ms. Carman provided estimates of Ms. Beaudoin's counselling needs for up to 60 sessions. In his evidence at trial, Dr. Ganeson suggested that 25 such

sessions would be needed to manage her acute needs, but acknowledged that another 25 sessions may be required, and that there was the potential that Ms. Beaudoin would continue to need counselling support for the rest of her life.

[173] I award Ms. Beaudoin **$6,000** for 30 sessions of cognitive behavioural counselling to address her more acute needs for this therapy and to help her consolidate the therapy through the private pain clinic. This requirement is established on the evidence.

Lidocaine and Rhizotomy

[174] Ms. Beaudoin seeks $125,000 to cover 50% of the lifetime cost of lidocaine infusions, which is a pain treatment recommended by Dr. Ganeson. She also seeks $3500 for the cost of a facet joint rhizotomy, which is a treatment recommended by both neurologists who examined her, Dr. Heran and Dr. Chaudhary.

[175] The defendant says that both of these medical procedures are covered by public health and their cost through private clinics is not warranted.

[176] I agree with the defendants in this regard.

[177] The lidocaine infusion was suggested for the first time by Dr. Ganeson, and was based on his familiarity with a new program at Vancouver Coastal Health as a hospital administrator, rather than as a physician familiar with the benefits of this potential treatment for Ms. Beaudoin in particular. The recommendations of the neurologists and Dr. Yu who examined and considered the sources of Ms. Beaudoin's physical pain symptoms did not include this treatment in their recommendations. Furthermore, it was recommended as a publicly-funded option, and to the extent that it may become a recommended option, in my view it can be accomplished through the public health system.

[178] The rhizotomy treatment is also a publicly-funded procedure, and Ms. Beaudoin has not satisfied me that the defendants ought to be required to pay for the costs of this procedure through a private program.

Botox

[179] On the other hand, the Botox injections are not publicly funded, and have been consistently recommended for Ms. Beaudoin by Dr. Heran, Dr. Yu and Dr. Chaudhary.

[180] Ms. Beaudoin seeks $47,500 for the costs of the mid-range annual cost of these injections for her lifetime.

[181] With respect to the Botox treatment, the defendants suggest a three year treatment at the lower end of these potential costs, for a total of approximately $5,000.

[182] The evidence establishes that if Botox is a successful treatment for Ms. Beaudoin, it is one that will likely require ongoing treatment. If it is not successful, that would be known after the first few injections. Given the strong consensus amongst the specialists that this treatment should be tried in relation to her myofascial injuries, I consider that the likelihood of success is better than 50% but is not 100%, and so a contingency for the potential lack of success of this treatment should be applied, particularly as an ongoing treatment for her lifetime. I award her 60% of the costs of the mid-range for this treatment in the amount of **$28,500**.

Active and Passive Treatment Therapies and Occupational Therapy

[183] Ms. Beaudoin seeks just under $22,000 for the cost of annual occupational therapist services, massage therapy, and other allied health services at $1,000/year for life. She seeks another $2,000 for the costs of active treatment therapies such as kinesiology, a gym pass and physiotherapy.

[184] The defendants support provision of 15 sessions of occupational therapy services on the basis of Dr. Ganeson and Ms. Carman’s recommendations, which they value at $4,300. They also agree to another $5,000 for costs associated with other related therapies.

[185] I find that Ms. Beaudoin has not established that she needs or will use a lifetime of allied health services. However, she has established the necessity for the occupational therapist coordination services to ensure coordination of the services she needs, especially after she has attended the multi-disciplinary pain clinic. I would award her $5,000 for those costs and another $5,000 in costs collectively for other active and passive therapies as agreed to by the defendants, for a total of **$10,000.**

Vocational Rehabilitation

[186] Ms. Beaudoin seeks approximately $5,500 for vocational counselling based on Ms. Carman's recommendation for this service. The defendants do not agree that these costs are necessary.

[187] I note that Ms. Beaudoin has received vocational counselling on a number of occasions since the accident, and that this led to her successful application to one alternative placement with the MPA Society. She recently was re-referred and met with her vocational counsellor in the month before trial to discuss other vocational directions. The evidence of her counsellor at trial is that this did not result in any new targets for Ms. Beaudoin to pursue.

[188] However, I have found that Ms. Beaudoin is not completely disabled from employment, in part because I am of the view that the treatments recommended by Ms. Carman, Dr. Ganeson, Dr. Heran, Dr. Yu and Dr. Chaudhary are made with the prospect that Ms. Beaudoin will be able to better manage her pain symptoms. Ms. Beaudoin's inability to manage her pain symptoms without the benefit of harmful narcotics are a key reason she is severely limited in terms of her potential for employment. I therefore consider that there is also a reasonable likelihood that she will once again be able to benefit from vocational counselling. Taking into account her recent re-referral and the potential need for further re-assessment after she has had the benefit of the pain clinic and related therapies, I award Ms. Beaudoin **$4,500** for this purpose.

Homemaking

[189] Ms. Beaudoin seeks $1,638 annually for the rest of her life, in the amount of $28,159, for housekeeping assistance of two hours every two weeks and eight hours annually to help with seasonal cleaning. This is a recommendation provided by Ms. Carman on the basis of Ms. Beaudoin's observed functional limitations with lifting, bending and reaching, and Ms. Beaudoin's reporting to her that she has no energy or motivation to cook or clean. Ms. Carman recommended housekeeping assistance to allow Ms. Beaudoin to use some of her time and energy for other pursuits. Ms. Beaudoin also relies on Dr. Chaudhary's recent opinion that Ms. Beaudoin should avoid domestic activities that require heavy lifting, repetitive bending, "or any other strains on the paraspinal muscles." She says the amount requested is reasonable.

[190] The defendants say that there is no evidence as to Ms. Beaudoin's actual needs in terms of cleaning, cooking or shopping.

[191] I agree with the defendants that the evidence in this case in support of such an award is sparse. Significantly, Ms. Beaudoin did not testify that she would like or would use such a service if offered, and she has no history of having done so in the past. However, when a service has not been used, but there is medical evidence that the plaintiff will need the service in the future, the court has the discretion to make an award for that service. In this case, I am convinced by the evidence that Ms. Beaudoin may need assistance with seasonal cleaning, which is described as the heavier cleaning, to maintain the quality of life that she had pre-accident. Applying the cost of care multipliers for this service provided by Mr. Benning to the age of 80, I award Ms. Beaudoin **$4,500**.

Ergonomic Equipment

[192] Ms. Beaudoin seeks the costs of a folding wagon and a slanting work surface to assist her with her activities of daily living, as recommended by Ms. Carman. The defendants do not agree to these costs.

[193] I find that Ms. Beaudoin has established that these devices would serve to restore her to her pre-accident condition insofar as that is possible. I award her **$500** for these costs.

Conclusion

[194] Ms. Beaudoin is entitled to an award of **$108,500** for her cost of future care.

SPECIAL DAMAGES

[195] Ms. Beaudoin entered her accounts for various treatments for which she has incurred costs to date, including extensive counselling costs, physiotherapy, massage therapy and medications. It also included some dental care costs related to clenching her jaw. She testified that all of the services were necessary and related to the accident. After deducting the amounts paid for through her work benefits and PharmaCare, her claim is for $23,785.

[196] The defendants take issue with approximately $1,500 of these costs, including the dental guard and some charges that they say were for missed appointments. These amounts were not put to the plaintiff, however, nor was I taken to any evidence with respect to missed appointments and their related costs. I have no evidence upon which to evaluate the defendant's position.

[197] I award Ms. Beaudoin her special damages claim of **$23,785.**

MANAGEMENT FEES

[198] Ms. Beaudoin seeks management fees in the amount of $30,000, based on the mid-point of the costs provided by Mr. Benning for an interest-only portfolio. She relies upon the reasoning in *Ranahan v. Oceguera*, 2019 BCSC 228, where Justice Mayer awarded the plaintiff, "a professional business-person" $15,000 in management fees to account for the unavoidable costs of managing her award to ensure she received a reasonable rate of return. Ms. Beaudoin argues she is not a business professional and that that she will need these funds to manage her award.

[199] The defendants adduced evidence from Mr. Hildebrand that, for a person who is fully mentally capable, it is generally sufficient for them to manage their funds through obtaining investment advice initially after an award, and then every five years. Furthermore, the more expensive management option proposed by the plaintiff could be expected to result in returns that exceed the cost of the fees themselves. He estimated the cost of this periodic investment advice at $10,000.

[200] Given Ms. Beaudoin's age, and the immediacy with which she will need to draw on substantial amounts of her damages award, the **$10,000** management costs estimated by Mr. Hildebrand ought to be sufficient, and I make that award.

CONCLUSION AND COSTS

[201] In conclusion, Ms. Beaudoin is entitled to **$1,092,285** in damages from the defendant as follows:

a)	Non-pecuniary Damages:	$200,000
b)	Past wage loss	$100,000
c)	Loss of Earning Capacity	$650,000
d)	Cost of Future Care:	$108,500
e)	Special Damages:	$23,785
f)	Management Fees	$10,000
	Total:	**$1,092,285**

[202] Ms. Beaudoin is entitled to any applicable court ordered interest on her past wage loss and special damages.

[203] Ms. Beaudoin is also entitled to her costs, subject to any offers or other matters that may require an adjustment to her costs. If the parties wish to address costs, they may make arrangements with the Registry to appear before me for this purpose within 30 days of receipt of these reasons.

"Marzari J."