

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Evans v. Graham*,  
2023 BCSC 277

Date: 20230224  
Docket: 53464  
Registry: Kamloops

Between:

**Brittney Evans**

Plaintiff

And

**Sean Graham**

Defendant

- and -

Docket: 55313  
Registry: Kamloops

Between:

**Brittney Evans**

Plaintiff

And

**Peter Wayne Rezunyk**

Defendant

Before: The Honourable Madam Justice Donegan

## Reasons for Judgment

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Place and Date of Trial: Kamloops, B.C.  
March 21-25, March 28-30  
and May 16, 2022

Place and Date of Judgment: Kamloops, B.C.  
February 24, 2023

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**Introduction**

[1] The plaintiff, Brittney Evans, is a nursing student at Thompson Rivers University (“TRU”) in Kamloops, British Columbia. She was involved in two motor vehicle accidents. The first occurred in 2014, when she was a passenger in a vehicle that rolled on the Coquihalla Highway (the “First Accident”). The second accident occurred in 2017, when the vehicle she was driving was rear-ended (the “Second Accident”). Neither accident was her fault.

[2] Ms. Evans claims damages for injuries she sustained in these accidents. She contends that her injuries are chronic and that they have negatively impacted her life, including her ability to work to full capacity as a registered nurse in the future. She seeks substantial awards for pain, suffering and loss of enjoyment of life, loss of future earning capacity, loss of future housekeeping capacity, cost of future care and special damages.

[3] The defendants do not dispute that Ms. Evans sustained injuries as a result of the First Accident and that some of her injuries were temporarily aggravated in the Second Accident, but they say any damages awarded in this case should be modest. While her quality of life may have been affected by her injuries, the defendants contend that they have not disabled her from continuing with any of her desired recreational activities, education, employment, or housekeeping tasks. They take the position that Ms. Evans' damages should be limited to reasonable awards for non-pecuniary damages, cost of future care and special damages only.

### **Background**

#### **The Plaintiff**

[4] Ms. Evans is currently 27 years old. She grew up in Kamloops with her parents and her brother. Ms. Evans currently lives in a separate suite in her family home with her father, Robert Evans. She is attending TRU in the nursing program and supports herself through student loans and some part-time work at a local hospice.

[5] Ms. Evans is in a committed relationship with her boyfriend of a few years, Evan Bryenton.

#### **Pre-Accident Health, Activities and Employment**

[6] The First Accident occurred when Ms. Evans was 19 years old. Prior to this, she was healthy. She had no physical or mental health difficulties or limitations.

[7] Ms. Evans was very active growing up. She helped out with typical chores around the house, including outdoor chores like lawn maintenance, pruning, lifting

heavy bags of debris, and shovelling snow. She had no difficulty doing any of these tasks.

[8] Ms. Evans graduated from high school in 2013. While her marks were not as they could have been for a time, she obtained good grades in her graduating year.

[9] Ms. Evans was also very active recreationally throughout her elementary and high school years. As her father put it, she did almost everything a young person could do. She played competitive volleyball, skied, swam and hiked. Her family spent a lot of time at their cabin on Shuswap Lake each summer where she enjoyed boating, camping, tubing and time on the beach. She had no limitations doing any of these activities. Her father described Ms. Evans as a motivated, stubborn, high-energy and outgoing person. He had high expectations of her. She had high expectations of herself.

[10] While attending high school, Ms. Evans volunteered with Big Brothers and Sisters of Kamloops for several months in 2011. She also worked part-time. Ms. Evans first worked at A & W during the summer and then, in May 2012, began working at the Cineplex Odeon theatre, first in the concession and box office areas and then later as an assistant manager. Ms. Evans had no limitations or difficulties in performing any of her volunteering or employment functions before the First Accident.

[11] After graduating from high school, Ms. Evans initially pursued a degree in business at TRU. After completing her first year of this program, she recognized it was not the career path for her, so she decided to enrol in TRU's administrative assistant program. Ms. Evans began this program in September 2014, shortly before the First Accident. She continued with the program after the First Accident and completed it on time in April 2015.

### **The First Accident**

[12] The First Accident occurred during the afternoon of October 26, 2014 on Highway 5 (the Coquihalla Highway) near Lac Le Jeune, between Merritt and

Kamloops. Ms. Evans was 19 years old. She was living at home, attending TRU in the administrative assistant certificate program and working at Cineplex. She was active and healthy. She also had a boyfriend at the time, one of the defendants, Sean Graham. She and Mr. Graham had been dating for approximately six months at the time of the First Accident.

[13] Mr. Graham was driving Ms. Evans' vehicle when the First Accident occurred. Ms. Evans was beside him, seated in the front passenger seat. She was wearing her seatbelt. Road conditions at the time were not ideal. The roadway was slushy, with rain and snow coming down. Mr. Graham was driving the vehicle in the right lane of travel and then moved into the left lane in order to pass another vehicle. He was operating the vehicle at approximately 120 kilometres at the time and lost control. The vehicle hit the ditch, overturned and eventually came to rest on its tires in the opposing side of the highway. The airbags did not deploy. The vehicle sustained extensive damage and was not repairable.

[14] As the vehicle was overturning and before it came to rest, Ms. Evans recalls thinking that she was going to die. When it finally came to rest on the opposing side of the highway, Ms. Evans stayed inside the vehicle until someone came to open her door. She noticed immediate pain in her left foot and bleeding in her mouth. She walked to another vehicle, then waited there until the ambulance arrived. She was taken by ambulance to Royal Inland Hospital in Kamloops.

#### **After the First Accident and Prior to the Second Accident**

[15] Ms. Evans was seen in the emergency department of Royal Inland Hospital immediately following the First Accident. She had x-rays of her left foot and her spine. She was discharged that same day. Ms. Evans had suffered a fracture of the big toe of her left foot, bruising to her right arm, soft tissue injuries to her lower back, upper back, shoulders and neck, and headaches. She also injured two front teeth, which later required root canals.

[16] Ms. Evans saw her family doctor, Dr. Botha, on October 28, 2014. She did so because of the ongoing pain she was experiencing in her lower and upper back,

neck, and headaches, as well as the fracture of her toe. She continued to see her family doctor after this, who referred her for different types of treatments for her accident-related injuries, including massage therapy, physiotherapy and others I will discuss.

[17] Ms. Evans began massage therapy for treatment of her lower and upper back pain and headaches on October 30, 2014 and continued these treatments regularly until the end of the year. She began physiotherapy on January 20, 2015 for treatment of these same conditions, and continued these treatments regularly through to the spring of 2015. She had further massage therapy and physiotherapy treatments in 2016. Part of Ms. Evans' physiotherapy treatments included dry needling along the particularly painful upper back area and her jaw as well.

[18] In accordance with Dr. Botha's recommendation, Ms. Evans obtained a gym membership commencing in February 2015. Since then, she has attended the gym regularly, on average three to four times per week, to incorporate the exercises and stretching she has learned into a whole body exercise routine.

[19] Ms. Evans also required treatment for the two teeth she had injured in the First Accident. The pain, particularly when chewing harder foods, was not tolerable. In May 2015, she saw a dentist, Dr. Bell, who performed the first of two root canals to repair her teeth.

[20] Ms. Evans also suffered from driving-related anxiety following the First Accident. She found that she avoided driving on the highway or in winter conditions and was emotional when driving. She told Dr. Botha about this and he referred her to attend counselling. Ms. Evans eventually did attend for two counselling sessions. Her first session was on December 12, 2016, about a month before the Second Accident. Her second session was on March 1, 2017, following the Second Accident.

[21] Ms. Evans explained that her delay in seeking counselling was because she was initially in denial and that she was concerned about the perceived stigma. It was after a couple of emotional breakdowns on the highway that she came to recognize

that she needed help. She found the counselling helped her and she now uses strategies she learned from it when she experiences anxiety while driving.

[22] Through all of her medical appointments and treatments, Ms. Evans continued her full-time studies in the administrative assistant program at TRU and obtained her certificate in April 2015. She also continued to work part-time at Cineplex, without missing any scheduled shifts. Her shifts were about six hours long. Fortunately, her employer was able to accommodate her by moving her to the box office where she could use a chair and take breaks, as she found it difficult to manage the pain associated with her injuries while working in the more physical environment of the concession. Her concession duties included running the cash register, making popcorn and cleaning.

[23] Ms. Evans worked in the box office for approximately two months before returning to the concession. While she found the ability to sit and take breaks in the box office helpful, she preferred the concession even though she found it more difficult with her injuries.

[24] In addition to her full-time studies, part-time employment, and medical appointments and treatments, Ms. Evans also spent a great deal of time with her mother in the months that followed the First Accident. Ms. Evans and her mother were always very close and they were devastated to learn of her mother's cancer diagnosis in December 2014. Ms. Evans' mother passed away several months later, in August 2015. Ms. Evans spent a great deal of time caring for her mother during these months, including an extended period of time by her side in hospice.

[25] A short time after her mother's death, Ms. Evans decided to end her relationship with Mr. Graham. She explained that Mr. Graham was using and addicted to opiates during this time and, following her mother's death, she realized she had to cut him out of her life. Other than in passing, they have not seen each other since then. I will discuss Mr. Graham and his evidence later in these reasons.

[26] In October 2015, Ms. Evans began working part-time as an administrative assistant at Sumas Environmental Services Inc. (“Sumas”). She had worked her way to the position of assistant manager with Cineplex, but decided to end her employment there in December 2016. She began working full-time at Sumas in February 2016.

[27] In September 2016, while still working at Sumas, Ms. Evans enrolled in another full-time course of studies at TRU: the executive assistant diploma program. The Second Accident occurred a few months later.

[28] By the time of the Second Accident, Ms. Evans had fully recovered from some of the injuries she suffered in the First Accident. The contusions on her right arm had healed after about a month, the fracture of her toe had resolved after about three months, her lower back pain had resolved after approximately a year and she had the tools necessary to manage her driving-related anxiety. She had not, however, recovered from some of her other injuries.

[29] By the time of the Second Accident, Ms. Evans was continuing to experience some difficulties with her teeth. More significantly, she was continuing to experience chronic pain in her upper back, shoulders and neck, as well as chronic headaches. These symptoms remain today. Ms. Evans explained that just prior to the Second Accident, the pain she experienced in her upper back, shoulders and neck had plateaued. Her normal pain experience was about a 3/10, but she would have flare ups where her pain would be a 5 to 10. Her headaches were usually at a 4 or 5/10.

### **The Second Accident**

[30] The Second Accident occurred on January 11, 2017. At the time, Ms. Evans was working about 30 hours per week at Sumas and attending full-time studies at TRU. She had just left work and was driving to a physiotherapy appointment. She was wearing her seatbelt. Conditions were icy. Ms. Evans stopped her vehicle at a stop sign and, as she waited for traffic to clear so she could proceed, the defendant, Peter Rezunyk’s vehicle struck her vehicle from behind. The force of the impact pushed Ms. Evans’ vehicle four or five feet into the intersection.



[31] After exchanging information with Mr. Rezunyk, Ms. Evans continued on to her physiotherapy appointment. The repairs to her vehicle cost approximately \$2,000 to \$3,000.

#### **After the Second Accident**

[32] As a result of the Second Accident, Ms. Evans experienced a temporary aggravation of her neck, shoulder and upper back pain. She continued to attend her physiotherapy treatments and, after approximately one month, her symptoms reduced to the level they had been prior to the Second Accident.

[33] Ms. Evans returned to work at Sumas the day following the Second Accident. She did not miss any work, but at some point she found sitting for her eight-hour work day too difficult, so her employer acquired a sit-stand desk for her to use.

[34] Ms. Evans moved out of her family home and into her own accommodation in 2017.

[35] In terms of medical treatments for her neck, shoulder, upper back and headache pain, Ms. Evans continued to attend physiotherapy sessions through 2017 and 2018. She received massage therapy through 2018 and 2019. Commencing in April 2017 and continuing through to 2019, she participated in an active rehabilitation program with a kinesiologist, as recommended by her doctor. Her kinesiologist recommended that she see a chiropractor as well, which she did on three occasions. She continued to regularly attend the gym to manage her symptoms, alleviate her pain and continue gaining strength.

[36] Regarding her damaged teeth, Ms. Evans required a second root canal in 2019.

[37] In June 2017, Ms. Evans began volunteering at the Kamloops Hospice Association, baking in the hospice kitchen three hours a week. She also continued her full-time studies in the executive assistant diploma program and her part-time

work with Sumas for 30 hours per week. Ms. Evans obtained her executive assistant diploma in June 2018.

[38] Ms. Evans also made time to pursue her passion for baking. During the years 2017 through 2020, she earned additional income by supplying baking for special events. Although she enjoyed baking, she found it too strenuous on such a large scale, so she discontinued her commercial baking endeavour when she decided to transition into nursing.

[39] In June 2019, Ms. Evans took stress leave from her employment at Sumas, for reasons unrelated to her injuries. Later that summer she decided to end her employment there and shift her career focus. She felt a passion for nursing that had been stoked by caring for her mother and volunteering in the hospice. She felt her personality would make her well-suited for the role and she received encouragement from those around her.

[40] In order to be competitive, Ms. Evans knew she needed to upgrade some of her classes, so she enrolled in TRU to do so in the fall of 2019. At the same time, she obtained new part-time employment at a thrift shop in Royal Inland Hospital. While attending school that year, Ms. Evans worked at the thrift shop approximately 12 to 24 hours per week, either in the role of a cashier or as a receiver and handler of the donated goods. During the summer months, she worked there full-time.

[41] As a cashier, Ms. Evans was required to stand for her shifts. Handling the donated goods involved heavy lifting, cleaning and hanging clothes. Ms. Evans found her symptoms more aggravated in this work environment than they had been at Sumas. She found that it was a physically demanding job, which increased her pain, but she was able to manage the pain by taking breaks and Ibuprofen as needed.

[42] Ms. Evans continued upgrading and working part-time at the thrift shop through the winter semester of 2020, applied to the nursing program at TRU and was accepted for the fall of 2020. The TRU nursing program is a four-year, full-time

course of studies that involves a number of practicums. At the time she testified, Ms. Evans was nearly completed her second year of studies. She was doing very well academically and working very hard. She was just starting her fourth practicum. She clearly has a passion for what she is doing.

[43] In approximately the spring of 2020, Ms. Evans started dating her current boyfriend, Evan Bryenton.

[44] Ms. Evans testified about the impact her injuries have upon her schooling. She testified that her constant headaches interfere with her ability to focus and concentrate. They require her to take more frequent breaks to lie down, which slows the pace of her assignment completion. She feels she has to sacrifice a lot of her personal and social life in order to keep up with her studies. Despite the limitations her injuries impose on her, Ms. Evans testified that she has chosen not to seek any accommodations from the university. She explained that she works very hard for her good grades and is determined to complete her degree, just like everyone else, without seeking any accommodations.

[45] At the end of the first year of her nursing degree, Ms. Evans ended her employment at the thrift shop because she was now qualified to obtain employment as a care aide, a position more closely aligned with her chosen field. In June 2021, Ms. Evans obtained a three-month, three-quarter care aide position at the local hospice.

[46] Ms. Evans testified about her experience during those three months of hospice work, including the impact her injuries had on her. Her “3/4 line shift” required her to work four consecutive days, followed by four days off. Her four work days consisted of two 12-hour day shifts followed by two six-hour night shifts. As a care aide, Ms. Evans was teamed with a registered nurse for her shifts. The work was fast-paced, physical and unpredictable. It was difficult to take regular breaks, particularly on the 12-hour day shifts. Overall, Ms. Evans found that she enjoyed the work, but found the experience was “awful” in relation to her symptoms.

[47] Ms. Evans did not miss any of her shifts that summer, but testified about the toll that took on her. As her shifts progressed, she experienced flare ups of her upper back, shoulder and neck pain, along with her headaches. She spent her time during her four days off simply recovering enough so that she could go back to work. She relied on heating pads, massage therapy, Ibuprofen and CBD oil to try to manage her symptoms.

[48] Ms. Evans testified that she did not want to miss any shifts, so she sacrificed everything else in her life in order to be able to work through the pain. She was so depleted at the end of a shift that she neglected her self-care, did not prepare meals and became isolated. She had no energy to go to the gym, had difficulty scheduling massage therapy appointments and experienced feelings of low mood and agitation. Her relationships suffered.

[49] Having moved back home the year before, Ms. Evans testified that she found herself withdrawing from her father and unable to provide him with the assistance he needed from her at home. She withdrew socially. She withdrew from her boyfriend. She felt her patience was not as it should be and that she was not treating people at work as she normally would. Her sleep was affected. In short, Ms. Evans described that, looking back at how she was during that time, she feels devastated because she loved the work and the people, but her upper back pain and headaches changed her. She feels she sacrificed her own well-being and mental health in order to not miss any of her shifts. It made her question whether she would be able to work full time as a nurse in the future, while managing a home and a family.

[50] Ms. Evans' testimony about how she felt and behaved during this three-month period working as a care aide at the hospice is supported by the testimony of her father, her boyfriend and her two co-workers, Judy Crowe and Krista Houle. I accept the evidence of all of these witnesses. While these witnesses generally align with Ms. Evans, I find that they did not advocate for her. They all testified with balance and candour. I find they were all trustworthy and reliable on material points.

[51] Ms. Crowe has been a registered nurse for approximately 30 years. She worked about 20 shifts with Ms. Evans at the hospice during the summer of 2021. Together they were responsible for caring for six patients. The work was physical. It included meal preparation, cleaning, laundry, stocking the kitchen and all aspects of patient care including transfers, dressing, toileting, bathing and the like.

[52] Ms. Crowe testified that when Ms. Evans first started that summer, she appeared happy to be there, but as the summer wore on, she noticed that Ms. Evans moved slower and she appeared stiff. She was cranky at times, which was unusual for her. She appeared to be in discomfort and Ms. Crowe sometimes saw her stretching. It was not until Ms. Crowe asked Ms. Evans what was wrong that Ms. Evans told her that she had been in a car accident. Ms. Crowe observed that, as the summer wore on, Ms. Evans' mood deteriorated and her movements became slower. It took her longer to do the job. Ms. Crowe also described times where she found Ms. Evans lying down in the lounge, which she found frustrating. Overall though, Ms. Crowe thought that Ms. Evans was trying her best. She was kind and compassionate with the patients and they seemed to like her.

[53] Ms. Houle's testimony was similar to that of Ms. Crowe. Ms. Houle works full-time as a registered nurse at the hospice. She did not know Ms. Evans prior to the summer of 2021, but knew from other staff members that Ms. Evans had been a volunteer at the hospice and that they were excited to learn that she was coming to work as a care aide that summer. Ms. Houle worked about 12 to 15 shifts with Ms. Evans that summer, but Ms. Houle felt that Ms. Evans was not the same person she had been expecting.

[54] Ms. Houle and Ms. Evans worked as a team during the shifts they shared, but Ms. Houle found that she often had to cover for Ms. Evans. She could see that Ms. Evans' heart was into the job, but could tell that she was struggling to perform the physical aspects of the work. She noticed things that told her Ms. Evans was in pain or discomfort, including facial grimaces, groaning and grunting, and slow movements. Ms. Evans asked for Tylenol and Advil nearly every time they worked

together, frequently took opportunities to sit down and walked as if she was pain. When Ms. Houle asked her about it, Ms. Evans shared that she had been in a car accident. Ms. Houle had been unaware that she was injured before this.

[55] After the summer, when Ms. Evans had returned to school, Ms. Houle worked a couple of six-hour shifts with Ms. Evans. She noticed a difference in Ms. Evans. She did not appear burnt out and seemed to be in better spirits than she had in the summer.

[56] The workplace observations of Ms. Crowe and Ms. Houle are consistent with Ms. Evans' testimony about how she was feeling that summer. They are also consistent with the observations of Ms. Evans' father and boyfriend. They both noticed changes in her that summer as well.

[57] Robert Evans is retired. He is very proud of his daughter and how hard she is working to achieve her goals. He described how she was different that summer and how her mood negatively affected their relationship. He found that his daughter was short-tempered with him, had less energy, and was less active than she normally was. When she was home, he felt that she simply "hid" in the basement.

[58] Mr. Bryenton knew Ms. Evans for many years before they started dating in 2020. Their families have cabins near to one another at Shuswap Lake, so they spent some time together as friends during summers when they were younger. Their current relationship is a long distance one, as he lives and works in Alberta.

[59] Mr. Bryenton and Ms. Evans saw one another on several occasions during the summer of 2021 during times when they were both off work and could meet at the lake. On these occasions, Mr. Bryenton found Ms. Evans' mood and energy to be lower than normal. He described seeing her fall asleep in a chair and noted that she went to bed earlier than normal. He found her to be anti-social, irritable, frustrated and exhausted. They argued more frequently. Their relationship was negatively affected.

[60] Following the summer, when Ms. Evans was no longer working regularly at the hospice, Mr. Bryenton noticed an improvement in Ms. Evans' mood and disposition. He saw that she had more time for self-care and that she seemed better as a result.

[61] Ms. Evans returned to her full-time nursing classes in September 2021 and continued to work on a part-time basis as a care aide at the hospice. She worked shorter evening shifts, averaging about 12 to 24 hours each month.

[62] Ms. Evans continued to do well in her classes and felt her schedule gave her more balance in her life. It allowed her time to attend the gym and massage therapy appointments. She could take breaks as needed when she studied and the six-hour evening shifts at the hospice were less hectic and more manageable.

[63] Ms. Evans continues to find that her chronic pain affects her sleep. She testified that she takes cannabis products to assist with her sleep and pain, but feels she still loses about three to four hours of sleep each night as a result of her pain.

[64] As part of Ms. Evans' nursing program, she is required to participate in practicums. At the time she testified, Ms. Evans was just beginning her fourth practicum. Her first practicum was at Kamloops Seniors Village, where she worked as a care aide responsible for one patient for a few hours in the morning. She found this work increased her symptoms, but not to the degree she experienced while working at hospice in the summer of 2021.

[65] Ms. Evans' second practicum was at Royal Inland Hospital in a rehabilitation unit, where she worked two six-hour shifts per week. These shifts had regular breaks. She was assigned one, and then two, patients at a time. She also had the opportunity to watch the demanding pace of registered nurses working around her. She explained that she felt guilty because the work she was doing seemed like a fraction of the work the nurses were doing.

[66] Ms. Evans' third practicum was at Hillside Centre, an acute tertiary mental health facility in Kamloops. Here, Ms. Evans worked two six-hour shifts per week,

again with regular breaks. The pace was much slower and the work much more sedentary than her other practicums or at the hospice. Ms. Evans testified that she found this work intriguing, but did not feel it was the area for her as it was too sedentary. Although it is still early in her career, Ms. Evans feels her passion lies in direct patient care in a fast-paced hospital environment. She was just beginning her fourth practicum in labour and delivery at the time she testified.

[67] Ms. Evans testified that she has dreams of home ownership and a family one day.

### **Expert Evidence**

[68] Both parties adduced expert evidence. Ms. Evans relies on the expert opinion evidence of (a) Dr. James Filbey, an expert in physical medicine and rehabilitation (physiatrist); (b) Mary Richardson Carmen, an occupational therapist and functional capacity evaluator; and (c) Christiana Clarke, an economist who prepared a report setting out future income loss calculations and cost of future care multipliers.

[69] The defendants rely on the expert opinion evidence of (a) Dr. Kaila Holtz, an expert in physical medicine and rehabilitation (physiatrist); and (b) Sheila Branscombe, an occupational therapist who provided a critique of Ms. Carmen's report. All of the expert witnesses attended the trial for cross-examination.

[70] I will discuss some features of the expert evidence here and will refer to other aspects as they arise in the course of my consideration of the various issues.

[71] Dr. Filbey assessed Ms. Evans on May 24, 2017 and July 8, 2020. He prepared two reports dated May 27, 2017 and July 8, 2020. He also testified.

[72] In his first report, in addition to her driving anxiety as reported, Dr. Filbey diagnosed Ms. Evans with chronic cervicospinal pain, including the cervical paravertebral muscles, upper and mid-trapezius and interscapular region, currently lateralizing more to the left. In other words, Dr. Filbey diagnosed Ms. Evans with chronic pain in her neck, shoulders and upper back area, predominantly on the left



side. Dr. Filbey also noted that Ms. Evans' low back pain and left great toe pain had resolved and that there were dental injuries outside the area of his expertise.

[73] Dr. Filbey opined about the impact of Ms. Evans' injuries and chronic pain. He said that while there are no express medical limitations to what she can do, the pain she experiences does impact her quality of life and alters the way she performs tasks. Typical of myofascial pain, Dr. Filbey opined that Ms. Evans' limitations are, and will be, based upon her symptom level and tolerance of those symptoms. In terms of prognosis at the time of his first report, it was Dr. Filbey's opinion that Ms. Evans was likely to continue to have some level of cervical and cervicospinal pain over the long term and that, while it may reduce further, he felt it was unlikely to ever fully resolve.

[74] In his second report, Dr. Filbey's diagnosis remained largely the same. He wrote at page 8:

Miss Evans has chronic cervicospinal pain and anxiety related to driving. There are no absolute medical contraindications to any given task or activity. Any restrictions or alterations to her tasks are based upon her symptom level and her tolerance. In general, reducing exposure to activities that predictably exacerbate her symptoms, is expected to reduce her overall symptom burden. She is able to continue with her activities as tolerated.

[75] Dr. Filbey added that based upon Ms. Evans' scores on the Neck Pain Disability Index, he believed Ms. Evans had reached the point of maximal medical improvement.

[76] With respect to prognosis, Dr. Filbey offered the following opinions, in part, at page 9:

Based upon her response to treatments to date and the duration of time that has passed, it is my opinion that Miss Evans is more likely than not to continue to have some level of cervical/cervicospinal pain over the long term. It is likely that, with time, this will reduce further, however, it may never fully go resolve. She will continue to have exacerbations with prolonged postures and overuse type activities. She will have ongoing impairment in the form of alterations of her daily activities on an as tolerated basis. There are no absolute medical contraindications and there is unlikely to be any progressive worsening in the future. She is not at risk of increased degenerative changes in the cervical or cervicospinal areas.

[77] Regarding the effect of her chronic pain upon her abilities to work as a nurse, Dr. Filbey opined at pages 9 and 10 of his second report:

She is able to select any career in nursing that she wishes to pursue. It is likely that she will have some symptom exacerbation with clinical tasks and will require ongoing management as she has ongoing at this time. It is likely that she will be able to tolerate full-time work. She is advised to select an area of nursing that she enjoys and that, based on her personal experience during her training, is tolerated to a level she is comfortable with. It is impossible to predict what areas will be tolerated more than others as she has symptoms with prolonged stationary as well as active tasks. She is best suited for work that has varied task types during a workday and allows for intermittent stretch or activity breaks.

[78] Dr. Filbey testified that Ms. Evans' complaints of pain were consistent with his physical findings and that he found no signs of pain amplification during his assessments. He explained that his practice is to encourage his patients to do as much as possible and to such a degree that their symptom burden does not unnecessarily impair them. He has some optimism that Ms. Evans will learn how to better manage her activities to avoid flaring up her symptoms. He agreed it is possible for an individual's tolerance for activities to increase over time. As Ms. Evans' tolerance is linked to the activities, she would have to try them to know how she can tolerate them. The goal is to promote a pattern of activities with less ups and downs so she will have more predictability and reliability with respect to her long-term tolerance.

[79] Dr. Filbey gave evidence that there is nothing to suggest Ms. Evans will suffer future degenerative changes, and will likely not require surgery.

[80] The second physiatrist, Dr. Holtz, assessed Ms. Evans on May 6, 2021 and prepared a report dated June 29, 2021. She also testified. Consistent with Dr. Filbey's diagnosis, Dr. Holtz diagnosed Ms. Evans with neck, upper back and mid-back myofascial pain. She explained at page 10 of her report:

Supporting a diagnosis of myofascial pain is the history of an aching pain in the region of the neck, upper back, and posterior shoulder. The worsening of pain with prolonged postures or with activity is consistent with myofascial pain, as is the improvement with heat or passive therapies like massage or stretching...

[81] Dr. Holtz also opined that Ms. Evans' neck pain and headaches "are in keeping with referred myofascial pain from neck structures".

[82] In terms of Dr. Holtz's opinion on prognosis, she wrote, in part, at page 12:

It is my opinion that Ms. Evans will probably have activity-dependent myofascial pain moving forward for the foreseeable future. Her condition will probably not worsen with time. I think she may be able to improve her pain levels and functional tolerance with ongoing progressive strengthening, myofascial trigger point injections and medications. Despite these treatment recommendations I don't anticipate her to become completely pain-free. I anticipate for the foreseeable future Ms. Evans will need to pace herself throughout her week and will require a brief period recovery following consecutive strenuous days.

[83] Like Dr. Filbey, Dr. Holtz also offered an opinion on the effect of Ms. Evans' chronic pain on her ability to participate in vocational activities. She wrote at page 10:

Ms. Evans is currently employed part-time as a cashier and stocker in a thrift store. After three or four consecutive days of activities requiring prolonged standing and lifting and moving objects in the thrift store up to 50lbs, she requires two to three days of rest to return to baseline. She does not have any restrictions at work and is able to ask for assistance and pace herself as needed.

In my opinion, Ms. Evans is managing her myofascial symptoms appropriately, given her activity-dependent myofascial pain in her mid and upper back. Given her current myofascial complaints, I would expect her to have a worsening of symptoms with consecutive days of activity and then return to baseline with a period of rest or passive modalities.

In my opinion, Ms. Evans' part-time job has demonstrated her ability to meet the physical demands of medium strength work based on the definitions by Ms. Carmen in her Functional Capacity Evaluation report on August 21, 2020. By her self-report, Ms. Evans is tolerating working part-time in addition to the practical days built into her nursing school schedule. In my opinion, Ms. Evans will probably be able to tolerate full-time nursing as an occupation and she should select a career in nursing that allows her to pace herself accordingly with breaks and posture modifications. I agree a vocational consultant may be able to provide additional insights beyond what Ms. Evans might experience as part of her practical training in nursing school.

[84] Occupational therapist Ms. Carmen performed a functional capacity evaluation and cost of care assessment of Ms. Evans on July 7, 2020 and prepared a report dated August 21, 2020. She also testified.

[85] Ms. Carmen based her opinions on her review of the medical and clinical records supplied, her interview of Ms. Evans, her evaluation of Ms. Evans' functional status using testing over the course of a full day, her assessment of Ms. Evans' participation and physical effort, and the fit of Ms. Evans' present Physical Activity Factor titles as listed in the National Occupational Classification.

[86] In terms of Ms. Evans' effort, Ms. Carmen found that Ms. Evans put forth "full and consistent effort". She concluded that the results obtained from her testing could therefore be "relied on as being an accurate representation of her physical function at the time of the evaluation" (page 4).

[87] Ms. Carmen discussed her opinions about Ms. Evans' feasibility for employment at pages 9 to 13 of her report. She began by explaining the three categories that define "feasibility for employment": (1) Feasible for Competitive Employment; (2) Feasible for Non-Competitive Employment; and (3) Not Feasible for Employment. In Ms. Carmen's opinion, Ms. Evans is in the second category – feasible for non-competitive employment. At page 10, she explained that an individual in this category:

...meets most of the physical demands of work within given strength categories but has physical/functional limitations that restrict access to the full range of occupations for which she is otherwise qualified and/or that compromise her workplace productivity or safety. She may require a sympathetic employer, modified work hours, and/or environmental/ergonomic intervention in order to be employable.

[88] Ms. Carmen explained why she categorizes Ms. Evans this way at page 10:

In my opinion, with consideration only to her present physical capacity, Ms. Evans is considered to be feasible for non-competitive employment (i.e., with some physical restrictions) on a part-time or full-time basis with the potential to work in limited, light, and medium strength occupations. Her physical restrictions are listed below and relate primarily to any work that requires significant amounts of stooping or bending and prolonged upper extremity use.

In other words, Ms. Evans would not have the physical capacity to be able to access, in an open labour market, any jobs that have requirements for those restrictions as given below, despite being qualified in other ways (for example, by education, training, interests, and aptitudes). She may require modified job duties or other environmental/ergonomic intervention related to

the restrictions listed below, and this may limit the number of jobs that she is able to obtain or maintain.

[89] Ms. Carmen then explained the restrictions that place Ms. Evans in this category at pages 10 and 11:

1. **Work-Intensive Positions in Sitting and Standing.** Although she is able to work in sitting or standing occasionally or frequently during the day, she would be restricted from work that required frequent and prolonged use of work-intensive postures (mild neck or upper back flexion while working with her hands) while sitting or standing. Ms. Evans experienced increased mid-back pain with 45 minutes of sustained sitting or static standing combined with mild stooping, reaching, and handling. Thus, in order to best manage symptoms, she would require breaks from this type of activity after 30 to 45 minutes.
2. **Stooping/Bending.** Ms. Evans is restricted from work with significant demands for prolonged stooping or bending. She is able to perform stooping or bending occasionally or frequently, but copes best with breaks after 30 to 45 minutes of work using these postures.
3. **Reaching/Handling.** Ms. Evans is restricted from work with prolonged demands for upper extremity use. She is able to perform reaching or handling tasks occasionally or frequently but requires breaks after 30 to 60 minutes of activity for symptom management.

[90] Ms. Carmen then went on to offer opinions about whether Ms. Evans would be able to meet the physical demands of attending nursing school and of different nursing positions. She detailed the job requirements of a variety of different nursing careers, including general duty, psychiatric, community health, and occupational health nurses, as well as nurse consultants. Ms. Carmen opined that Ms. Evans would experience greater symptom aggravation with certain positions. She also opined that there may be some nursing positions where the work hours and job tasks would be within Ms. Evans' demonstrated tolerances, but that she was unable to predict whether Ms. Evans would qualify for these jobs. She agreed that it is possible there are nursing jobs that Ms. Evans will be able to do.

[91] Noting Ms. Evans' positive motivations and attitudes, Ms. Carmen found that Ms. Evans demonstrated "a lot of the physical strengths and meets many of the physical demands of nursing which will facilitate her ability to work in this

occupation”, but she also found that Ms. Evans demonstrated some physical limitations that “will result in symptom aggravation in the course of fulfilling her work duties” (page 12). She ultimately offered the opinion at page 13 that Ms. Evans “would be restricted from some types of nursing and the range of nursing jobs available to her would be reduced because of symptom exacerbation with certain types of tasks”.

[92] The defendants retained Sheila Branscombe, an occupational therapist, to provide rebuttal expert evidence to Ms. Carmen’s evidence. She authored a report dated November 6, 2021 and she testified.

[93] Ms. Branscombe is well-qualified in her field. However, she did not meet with Ms. Evans, nor did she perform her own functional capacity assessment of her. Instead, Ms. Branscombe was asked to review Ms. Carmen’s report and critique it. Although Ms. Branscombe was also sent a number of underlying documents, including other medical reports and records, she did not review them. She only reviewed Ms. Carmen’s report.

[94] In general, I found Ms. Branscombe’s report unhelpful. Some of her comments border on argument in the guise of opinion and none of her comments undermine what I find to be the thorough, careful and informed opinions of Ms. Carmen. Because of the assignment she was given, Ms. Branscombe was unable to provide the court with any informed opinions of her own regarding Ms. Evans’ functional capacity. To the extent there is disagreement between the opinions of Ms. Branscombe and Ms. Carmen, I prefer those of Ms. Carmen.

#### **Credibility and Reliability of Ms. Evans**

[95] The defendants concede that Ms. Evans is a credible witness, but challenge the reliability of central features of her evidence.

[96] Justice Crabtree provided a helpful summary of the principles governing the assessment of reliability and credibility in *Yang v. Duralia*, 2020 BCSC 806:

[40] Reliability is focused on the accuracy of a witness's evidence, while credibility has to do with whether the witness is telling the truth. Credibility involves the consideration whether the evidence is honestly given. Each involves an assessment of the witness's testimony, in the context of the evidence adduced at trial and in the consideration of various factors.

[41] The distinction between reliability and credibility was explained in *R. v. H.C.*, 2009 ONCA 56, by Watt J.A. at para. 41:

[41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

- i. observe;
- ii. recall; and
- iii. recount

events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514, at 526 (C.A.).

[97] Justice Crabtree went on to cite, at paras. 42–43, the well-known decisions of *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) and *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, and then provided the following summary:

[45] In summary, the assessment of a witness's credibility and reliability must include a critical assessment of the witness's evidence in the context of the evidence as a whole. This involves an assessment of whether the witness's evidence is at odds with other evidence in the case, and whether the testimony is implausible or improbable, having regard to the surrounding circumstances. The real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions. A trier of fact must also bear in mind that an apparently honest, confident or convincing witness may not necessarily be an accurate witness.

[98] Ms. Evans was a very honest witness. She was careful, fair and balanced. She did not exaggerate or minimize her evidence. She did not testify in such a manner that she appeared to have an agenda. She conceded personally difficult facts, as well as facts that could be construed as harmful to her case. I am satisfied she did her best to provide truthful answers to all questions asked. In short, she was a very credible witness.

[99] The defendants urge me to find that Ms. Evans' evidence about her perceptions of her functional capabilities, in particular with respect to her ability to work full time as a nurse in the future, is unreliable. They point to several things in support of this position.

[100] First, the defendants say that Ms. Evans' evidence about her functioning is inconsistent with both the functional capacity data obtained by Ms. Carmen and inconsistent with her own evidence about her busy and full work history and lifestyle both before and after the accidents. Second, they argue that Ms. Evans' perceptions of her abilities are clouded by her unrealistic and unattainably high expectations, expectations that even someone in perfect health could not necessarily achieve. The defendants also emphasize that Ms. Evans' claims have no objective basis of measurement and could be exaggerated. Finally, the defendants say that aspects of Ms. Evans' evidence are inconsistent with that of Mr. Graham's evidence, which is evidence they argue I ought to accept.

[101] I respectfully disagree. When I assess Ms. Evans' evidence against the balance of the evidence as a whole, I find the defendants' criticisms of her do not serve to undermine the reliability of her evidence, including her evidence about her ongoing symptoms and their impact on her.

[102] I will address the last of the defendants' submissions first. Mr. Graham was the only lay witness called by the defendants. I find that Mr. Graham was not a particularly credible witness, nor was his evidence on material points reliable.

[103] Other than one time in passing, Mr. Graham has had no contact with Ms. Evans since the fall of 2015, approximately 11 months after the First Accident. In examination-in-chief, Mr. Graham testified about some of his perceptions of Ms. Evans during those 11 months. In summary, Mr. Graham conveyed that he was unaware that Ms. Evans had injuries from the First Accident and that he was caught by surprise when she made this claim. Mr. Graham testified that following the First Accident, Ms. Evans did not tell him she was in pain. He also said that he did not



notice her to be in pain and did not observe any changes to her behaviour or activities during that time that would suggest she was in pain.

[104] Through cross-examination, it became clear that Mr. Graham's perceptions lacked foundation and his memory was poor. It was revealed that while they remained together as a couple for approximately 11 months after the First Accident, he and Ms. Evans began to spend less and less time together during this time. This was owing, largely, to Mr. Graham's addiction to fentanyl and to Ms. Evans' decision to care for her mother in hospice. It was also revealed that drug use often clouded the time he did spend with Ms. Evans.

[105] Fortunately, Mr. Graham has been in recovery since about 2020. Unfortunately, his long-standing addiction has negatively impacted his memory. While he initially claimed that he has a good memory of his time with Ms. Evans, detailed questioning revealed that he actually has a very limited memory of important aspects of Ms. Evans' life from that time. Moreover, Mr. Graham's overall assertion that Ms. Evans acted and appeared uninjured after the First Accident is not only inconsistent with other evidence I accept in this case, it is also inconsistent with Mr. Graham's own evidence where he later acknowledged remembering that Ms. Evans attended for physiotherapy for "aches and stiffness" and his reluctant admission that she may have also attended for massage therapy. In the end, I find it would be unsafe to rely on the evidence of Mr. Graham and I do not rely upon it.

[106] I find that Ms. Evans' evidence is reliable. It has several indicia of reliability. It is internally consistent. Aspects of her evidence are supported by the opinions of the physiatrists. Her evidence also harmonizes with the evidence of the lay witnesses, particularly with respect to their observations of the impact of her injuries and her functioning. I see no indications of exaggeration or embellishment in her evidence.

[107] I do not view Ms. Evans' evidence about her capabilities as inconsistent with Ms. Carmen's data or opinions. Ms. Carmen tested Ms. Evans over a period of eight hours on one day. This was before Ms. Evans had her three-month work experience as a care aide in hospice. As the defendants correctly observe, Ms. Carmen found

Ms. Evans could perform a number of tasks and activities (some requiring breaks). She also found that Ms. Evans had good upper extremity strength, excellent cardiovascular fitness, and normal active range of motion in all major joints, among other things. However, Ms. Carmen did find Ms. Evans presented with certain physical limitations on testing, limitations that pertain to tasks that are required to some degree in nursing.

[108] Ms. Carmen's opinions about the potential effect of these physical limitations on Ms. Evans' ability to function in a nursing job was consistent with how Ms. Evans described her summer working the "¾ line" in hospice, in a job similar in many respects to nursing. For example, in the context of describing the greater physical demands of certain nursing jobs involving 12-hour shifts in a hospital setting, Ms. Carmen opined that she "anticipates that Ms. Evans would experience greater symptom aggravation with more frequent use of these postures and movements over a longer work day which would affect her ability to work successive days and impact her participation in activities outside of work" (page 12). This is entirely consistent with Ms. Evans' evidence about the impact of her work in hospice that summer.

[109] Ms. Carmen also opined that the physical limitations Ms. Evans demonstrated on testing would, in the course of fulfilling nursing duties, result in:

...symptom aggravation...and the need for accommodation on the job; limit her ability to work long shifts, overtime, or pick up extra shifts beyond her normal schedule; restrict her ability to access the full range of nursing jobs available to her; and impact her participation in activities outside of work (page 12).

[110] Again, much of this is consistent with how Ms. Evans described what happened to her when she worked the "¾ line" in hospice that summer.

[111] My assessment in this regard, and of Ms. Evans' evidence overall, was also informed by my understanding of Ms. Evans' background and personality. The evidence overwhelmingly demonstrates that Ms. Evans has always been a self-motivated, driven, stoic and determined individual. She is a compassionate person,

a caregiver by nature. She is not one to complain. She has high, but not unreasonably high, expectation of herself. Contrary to the defendants' assertion, I do not view Ms. Evans' expectations of herself as unrealistic, or something that even someone in perfect health could not achieve. One only need to look at the evidence of Ms. Houle and the life she is leading, to see that Ms. Evans' expectations are not unreasonably high or unrealistic.

[112] Ms. Evans' personality traits motivated her conduct before the accidents and they have motivated her conduct since. Her ability to achieve her employment and educational goals, in spite of her pain, is as a result of these personality traits and her ability to adapt and modify her conduct. Rather than a negative reflection on the reliability of her evidence as the defendants suggest, I see this as an indication of a young woman who is determined to do the best with the unfortunate hand she was dealt on October 26, 2014.

[113] Overall, when I assess Ms. Evans' evidence against the balance of the evidence as a whole, I find it to be reliable. I accept her evidence.

### **Causation**

[114] The plaintiff must establish on a balance of probabilities that the defendants' negligence caused or materially contributed to an injury: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 13. The defendants' negligence need not be the sole cause of the plaintiff's injuries (*Athey* at para. 15), so long as the plaintiff can establish a substantial connection between the injury and the defendant's conduct: *Resurface Corp. v. Hanke*, 2007 SCC 7 at para. 23, citing *Snell v. Farrell*, [1990] 2 S.C.R. 311 at 327.

[115] The principal test for causation is the "but for" test: but for the defendant's negligence, would the plaintiff have suffered the injury?: *Athey* at para. 14. The test must be applied in a robust, common-sense fashion: *Clements v. Clements*, 2012 SCC 32 at para. 9. Legal causation requires a less rigorous standard than medical causation, and need not be determined by scientific precision: *Athey* at para. 16.

[116] However, the court must be wary of inferring causation exclusively or substantially from the sequence of events, for instance by comparing the plaintiff's pre and post-accident condition: *Madill v. Sithivong*, 2012 BCCA 62 at para. 20.

[117] Causation is not in issue here. The parties agree, and I find, that the evidence establishes Ms. Evans suffered the following injuries in the First Accident:

- a) a fractured toe on her left foot, which resolved within two to three months;
- b) right arm contusions, which resolved within approximately one month;
- c) soft tissue injuries to her lower back, which resolved within approximately one year;
- d) dental injuries to two of her lower teeth, which required two root canals;
- e) driving anxiety, which she has learned to manage; and
- f) soft tissue injuries to her upper back, neck and shoulders that have resulted in chronic cervicospinal pain including the cervical paravertebral muscles, the upper and mid-trapezius and interscapular region, lateralizing more to the left side, and headaches.

[118] The Second Accident caused a temporary aggravation of her neck and upper back pain and headaches. These aggravations lasted approximately one month after the Second Accident. No new injuries were caused in the Second Accident.

[119] Ms. Evans will most likely suffer from this chronic pain for the rest of her life. Her pain is constant. Its severity is dependant on the type and duration of the activities in which she engages. Ms. Evans' tolerance for activities may increase over time, but as Dr. Filbey opined, any improved tolerance will be owing to Ms. Evans' ability to learn how to avoid or limit certain pain-enhancing activities and manage her symptoms.

## Damages

### **Non-Pecuniary Damages**

[120] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities. Compensation considers not only the plaintiff's damages up to the date of trial, but also those they will suffer in the future as a result of the defendants' negligence. An award of non-pecuniary damages should be fair and reasonable to both parties. Fairness is measured against past awards in comparable cases, but each case depends on its own unique facts: *Trites v. Penner*, 2010 BCSC 882 at paras. 188–189 and *Hunt v. Ugre*, 2012 BCSC 1704 at para. 176.

[121] In *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, Justice Kirkpatrick compiled the following list of common factors that influence an award of non-pecuniary damages:

- (a) age of the plaintiff;
- (b) nature of the injury;
- (c) severity and duration of pain;
- (d) disability;
- (e) emotional suffering;
- (f) loss or impairment of life;
- (g) impairment of family, marital and social relationships;
- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and
- (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[122] The quantum of an award for non-pecuniary damages is the amount necessary to ameliorate the plaintiff's suffering in light of their particular situation. Accordingly, the award does not depend on the seriousness of the injury, but rather an appreciation of the plaintiff's loss. Awards will vary according to the specific circumstances of each individual case: *Taylor v. Peters*, 2021 BCSC 2444 at para. 41, citing *Lindal v. Lindal*, [1981] 2 S.C.R. 629 at 637.

[123] Ms. Evans seeks an award of non-pecuniary damages in the range of \$120,000 to \$130,000. She relies on the following cases in support of her position: *Guenther v. Lasota*, 2021 BCSC 1048 (\$95,000); *Hawkins v. Espiloy*, 2014 BCSC 1804 (\$90,000 or a present-day value of approximately \$104,000); *Xu v. Balaski*, 2020 BCSC 940 (\$145,000); and *Theobald v. Coffey-Lewis*, 2021 BCSC 2491 (\$160,000).

[124] The defendants submit that a non-pecuniary damage award in the range of \$70,000 to \$85,000 is appropriate. They rely on the following cases in support of their position: *Chirhei v. Kachmar*, 2021 BCSC 1720 (\$70,000); *Cheung v. Choy*, 2021 BCSC 2314 (\$82,500); and *Sears v. Olsen*, 2020 BCSC 1289 (\$85,000).

[125] Ms. Evans was 19 years old at the time of the First Accident. She was active and healthy and just beginning her adult life. While some of her accident-related injuries resolved and those that remain have not disabled her, she has had to live with constant chronic pain affecting her upper back and shoulders, more on the left side than the right ever since. She has a consistent baseline of pain of 3/10 but it can flare to much higher. When her pain flares, it radiates and causes pain in her neck, as well as headaches. The headaches, when present, negatively affect her memory and her ability to concentrate. When she exceeds her pain threshold with activity, her symptoms escalate and rest is required for her to return to her baseline. It is probable these symptoms will continue to afflict her for the rest of her life.

[126] Ms. Evans has managed to continue to live a busy, productive life since the accidents. However, the fact that she has not been disabled does not detract from the reality that she must now manage chronic pain every day and that it impacts her ability to perform and enjoy daily activities. Ms. Evans has been required to adapt how she lives in order to manage her pain. She has been dedicated to her exercise program. She attends massage therapy. She takes frequent breaks in her studies and at work. She uses pain medication and heating pads. She has learned how to pace herself and take rest days when her symptoms escalate. She is not able to assist as much, or for as long, with household and yard maintenance chores.

[127] Ms. Evans has experienced emotional suffering as well. Her family and work relationships have been strained at times. Her social life has suffered at times. She has periods of frustration and unhappiness related to her pain, loss of stamina and energy. Her sleep has been affected. She has suffered a loss of lifestyle in that she no longer enjoys her physical activities to the same degree she once did. While she did return to seasonal beach volleyball, going to the gym, hiking, skiing, kickboxing, snowmobiling and other activities after the First Accident, her participation was not to the same degree as it once was or could have been were she not injured. She has been able to perform household and yard tasks, but often not to the same degree that she once could.

[128] I attribute Ms. Evans' ability to complete and excel in her academic programs, hold down various jobs without missing shifts, volunteer, perform household and yard tasks, and engage in activities in the face of her injuries, to her determination and stoicism. She has endured her suffering largely without complaint. She has studied and worked through pain when possible, and takes steps to adjust to constraints caused by her pain. She pushes through her limitations notwithstanding that she may suffer the consequences of doing so later.

[129] In *Werner v. Ondrus*, 2013 BCSC 100 at para. 43, the court emphasized that a plaintiff's ability to remain active after an injury does not necessarily preclude a damages award, particularly where there is evidence, as in this case, that a plaintiff is required to manage pain and pace herself in order to carry on with these activities after her injury. The remarks of Justice Goepel, as he then was, in *Guthrie v. Narayan*, 2012 BCSC 734 are apt:

[30] ...Ms. Guthrie is seeking compensation for what she has lost, not what she can still do... She should not be punished for trying to get on with her life and enjoying it the best she can regardless of the limitations imposed on her as a result of the accident.

[130] In this case, there is little question that Ms. Evans has demonstrated considerable stoicism by moving forward with her education, work, activities and volunteerism in spite of her pain. There is also little question that her quality of life

has been negatively impacted by the injuries she suffered as a result of the defendants' negligence.

[131] Although each case is unique, I think that among the authorities provided to me by counsel, the decisions of *Guenther*, *Hawkins*, *Chirhei* and *Cheung* most closely align with the case at bar. They are of some assistance in assessing an award of non-pecuniary damages here, but I am mindful of the oft-cited principle that each person who endures a debilitating injury is unique and no two cases are the same: *Guenther* at para. 69.

[132] I am satisfied that given Ms. Evans' age, the impact of her injuries upon her for these years leading to trial, and the unlikely prospect of future relief from the effects of those injuries for the remaining many years of her life, an award of \$95,000 will appropriately compensate her for her past and future pain and suffering and loss of enjoyment of life. I find that this award encompasses and accounts for the difficulty Ms. Evans experiences in carrying out certain household and yard tasks.

### **Pecuniary Damages**

#### ***Loss of Future Earning Capacity***

[133] Ms. Evans seeks an award for loss of future earning capacity in the range of \$1 million to \$1.2 million. The defendants say that no award should be made, but if any award is warranted, they submit that Ms. Evans' loss should be assessed, at most, as representing two years salary of a British Columbia unionized registered nurse, or up to \$150,000.

[134] The assessment of an individual's loss of future earning capacity involves comparing the plaintiff's likely future had the accident not happened to their actual future after the accident. While this is an assessment that depends on the type and severity of a plaintiff's injuries and the nature of the anticipated employment at issue, and is not a mathematical exercise, economical and statistical evidence can help



determine what is fair and reasonable: *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 7.

[135] In *Rab v. Prescott*, 2021 BCCA 345 at para. 47, Grauer J.A. set out a three-step test that a trial judge must undertake when assessing the plaintiff's loss of future earning capacity. Justice Burke summarized the three steps in *Choi v. Ottawa*, 2022 BCSC 237 at para. 182.

[136] First, does the evidence disclose a potential future event that could lead to a loss of capacity? This step queries whether the plaintiff may hypothetically suffer from long-term health issues that may affect her ability to meaningfully gain employment or remuneration.

[137] Second, does the evidence demonstrate that there is a real and substantial possibility that the potential loss of capacity will cause a pecuniary loss? After establishing that the plaintiff may suffer from a long-term loss of capacity at the first step, the court here evaluates the likelihood that this loss of capacity will affect the plaintiff's ability to earn income.

[138] Third, what is the value of the possible future loss? After establishing a loss of capacity and resultant loss of capacity to earn income, the court should consider the appropriate basis for compensation, contingencies, and the relative likelihood of the loss occurring. The court should reduce the damages award based on the relative likelihood that the hypothetical future would not occur.

[139] The third step may involve one of the two accepted bases for compensation: the "earnings approach" or the "capital asset approach". The earnings approach is more appropriate where there is an identifiable loss of income at the time of trial, often because the plaintiff has an established work history and a clear career trajectory: *Ploskon-Ciesla* at para. 16. Where no loss of income has occurred at the time of trial, the capital asset approach is generally more appropriate. The capital asset approach allays the risk of under-compensation where the plaintiff lacks a

settled career path by creating a more holistic picture of the plaintiff's potential future: *Ploskon-Ciesla* at para. 17.

[140] Justice Grauer, for the Court, discussed the third step in *Steinlauf v. Deol*, 2022 BCCA 96 as follows:

[55] As for the quantification, this Court described the process in *Gregory v Insurance Corporation of British Columbia*, 2011 BCCA 144 at para 32:

...An award for future loss of earning capacity thus represents compensation for a pecuniary loss. It is true that the award is an assessment, not a mathematical calculation. Nevertheless, the award involves a comparison between the likely future of the plaintiff if the accident had not happened and the plaintiff's likely future after the accident has happened: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 11; *Ryder v. Paquette*, [1995] B.C.J. No. 644 (C.A.) at para. 8....

[56] Accordingly, as discussed in *Dornan* at para 156, it became necessary to assess the respondent's without-accident earning potential, and what the respondent was likely to earn as a result of the accident. At the same time, as discussed in *Andrews v Grand & Toy Alberta Ltd*, [1978] 2 SCR 229 at 251: "It is not loss of earnings but, rather, loss of earning capacity for which compensation must be made".

[141] In *Dornan v. Silva*, 2021 BCCA 228, Grauer J.A. discussed the role of contingencies in the analysis:

[92] In approaching this part of the appeal, it is useful to remember that we are dealing with specific contingencies, not general contingencies. The importance of evidence in cases involving a specific contingency was discussed in *Graham* (and cited with approval by this Court in *Hussack*):

46 ...[C]ontingencies can be placed into two categories: general contingencies which as a matter of human experience are likely to be the common future of all of us, e.g., promotions or sickness; and "specific" contingencies, which are peculiar to a particular plaintiff, e.g., a particularly marketable skill or a poor work record. The former type of contingency is not readily susceptible to evidentiary proof and may be considered in the absence of such evidence. However, where a trial judge directs his or her mind to the existence of these general contingencies, the trial judge must remember that everyone's life has "ups" as well as "downs". A trial judge may, not must, adjust an award for future pecuniary loss to give effect to general contingencies but where the adjustment is premised only on general contingencies, it should be modest.

47 If a plaintiff or defendant relies on a specific contingency, positive or negative, that party must be able to point to evidence which supports an allowance for that contingency. The evidence will not prove that the potential contingency will happen or that it would have happened had the tortious event not occurred, but the evidence must be capable of supporting the conclusion that the occurrence of the contingency is a realistic as opposed to a speculative possibility: *Schrump v. Koot*, supra, at p. 343 O.R.

[Emphasis added.]

[93] The process, then, as discussed above at paras 63–64, is one of determining whether, on the evidence, the contingency or risk in question is a real and substantial possibility. If it is, then the process becomes one of assessing its relative likelihood, as we saw from the excerpt from *Athey* quoted above at paragraph 64.

[142] Therefore, the application of a specific contingency, whether positive or negative, engages the “real and substantial possibility” analysis, and not simply the “relative likelihood” analysis that follows. “If the contingency is a real and substantial possibility, the process becomes one of assessing its relative likelihood”: *Boal v. Parilla*, 2022 BCSC 2075 at para. 166.

[143] The burden of proof in establishing that a contingency should apply lies on the party seeking to assert it: *Lo* at para. 39

[144] Following this three-step test, the court must determine whether the proposed damages award is fair and reasonable: *Lo v. Vos*, 2021 BCCA 421 para. 117.

***Step 1: Does the evidence disclose a potential future event that could lead to a loss of capacity?***

[145] The defendants concede that Ms. Evans has met the burden in step one and that the chronic pain she now suffers as a result of her accident-related injuries could lead to a loss of capacity to earn income in the future. The evidence clearly supports this finding.

[146] Ms. Evans suffers from daily chronic pain that flares with both static postures and repetitive activity, increasing with the duration of these activities. When flares occur, she suffers from neck pain and headaches as well. Headaches negatively affect her ability to concentrate and her memory. The evidence clearly demonstrates

that these injuries have left her with some functional impairment and these limitations are likely permanent.

[147] Ms. Evans' condition, being chronic, limits her ability to take advantage of all job opportunities which might otherwise be open to her, makes her less marketable or attractive to some potential employers and makes her less valuable to herself as a person capable of earning income in a competitive labour market. There has clearly been an impairment of the capital asset.

***Step 2: Does the evidence demonstrate that there is a real and substantial possibility that the future event in question will cause a pecuniary loss?***

[148] Ms. Evans submits that she has established a real and substantial possibility that this loss of capacity as a result of her injuries will cause a pecuniary loss. She says that the evidence establishes that she is on track to complete her nursing degree in April 2024 and that she will work as a registered nurse. Her career path is settled. There is a shortage of nurses and little doubt she could have secured full-time employment as she wanted. Her passion is in bedside nursing in a high-paced environment. Ms. Evans argues that the evidence shows a real and substantial possibility that had she not been injured, she would have worked full-time as a bedside nurse in a hospital ward upon graduation and to retirement, and the probability of such a scenario is high.

[149] Ms. Evans submits that the evidence also shows a real and substantial possibility that the loss of capacity she now suffers will prevent her from ever working in that type of busy bedside nursing position, other than on a very casual basis, with shorter shifts if available. Further, she says the evidence also shows a real and substantial possibility that the loss of capacity she now suffers will prevent her from working as a full-time nurse, in any position, over the long term. At most, she will be capable of bedside nursing half of full time. Ms. Evans points to the contrast between her intolerable experience working in a three-quarter position at the hospice for three months with her more tolerable casual and shorter shifts at the same location as strongly supportive of her position in this regard. She says that

probability of all of these possibilities is high and will clearly result in a pecuniary loss.

[150] The defendants accept that their negligence has caused Ms. Evans' chronic pain and resulting loss of capacity, but say that the evidence falls short of supporting a real and substantial possibility that her loss of capacity will cause any pecuniary loss.

[151] The defendants point to several features of the evidence that are indicative of Ms. Evans' capacity to find fulfilling full-time employment as a nurse, features that they say weigh against the possibility that she will suffer any pecuniary loss, including that: Ms. Evans did not miss any time from work, from any of her jobs, as a result of the accidents; there is no evidence from any of her employers that she did a poor job; since the First Accident, Ms. Evans has been able to manage the various physical and mental tasks required of her several different jobs, largely while also pursuing full-time post-secondary education; Ms. Evans has suffered no delay in her educational pursuits; the type of nursing position Ms. Evans will do in the future is uncertain and speculative; Ms. Evans is functionally capable in many respects and remains capable of tolerating some types of full-time work as a nurse and that such work would be available to her; and her condition is not expected to worsen over time.

[152] The defendants also emphasize that, as Dr. Filbey opined, Ms. Evans needs to try activities before she would know if she can tolerate them. Outside the "¾ line" hospice position and her brief clinical practicums, they say that Ms. Evans has not tried any nursing jobs to know how she would tolerate them. They also point to the existence of multiple types of nursing positions available in Kamloops, some of which would be within her capabilities.

[153] The defendants further submit that Ms. Evans' reliance on her three-month experience working a "¾ line" as a care aide in hospice to support her position here is flawed. They point to Ms. Wyle's evidence that it takes new graduates from six months to a year to get on their feet and feel comfortable in their new role and Dr.

Filbey's evidence that tolerance for activities can improve over time, to suggest that the time Ms. Evans spent working in hospice is insufficient to ground any of the real and substantial possibilities she advances. They also emphasize that Ms. Evans missed none of her "¾ line" shifts in hospice and that there is no evidence to suggest any supervisors were concerned about her ability to perform the job duties.

[154] The defendants also highlight Ms. Evans' acknowledgement that she thinks there may be some full-time nursing work of which she is capable, such as psychiatric nursing. Although Ms. Evans testified she is not interested in those types of more sedentary positions, the defendants submit that this demonstrates that it is impossible to know at this stage what kind of nursing Ms. Evans will pursue, the physical demands of that particular nursing job and whether she would be capable of tolerating it full-time or not. They say that there is nursing work available to Ms. Evans, including the psychiatric unit and other possible positions, both unionized and non-unionized, that are real and substantial possibilities for her future and would not lead to a pecuniary loss.

[155] In *Rab*, the Court observed that there will be cases where the existence of a real and substantial possibility of an event giving rise to future pecuniary loss will be "obvious and the assessment of its relative likelihood superfluous", such as cases where a plaintiff is significantly injured and unable to work at the time of trial and for the foreseeable future: para. 29. There will also be "less straightforward" cases, where, for example, a plaintiff's injuries have led to continuing deficits, yet whose income at the time of trial is at or near their pre-accident earnings: para. 30.

[156] This is one of those "less straightforward" cases. Although Ms. Evans' injuries are chronic and have led to continuing deficits, she has experienced no loss of income prior to trial and has yet to start her nursing career.

[157] Nevertheless, I am satisfied that Ms. Evans has met the burden here and that, on the evidence, there is a real and substantial possibility that her loss of capacity will cause a pecuniary loss.

[158] I have accepted Ms. Evans' evidence about her intended career path. She is completing her second year of her nursing degree and achieving excellent grades. She has learned to take breaks, rest, go to massage therapy, exercise and other ways of managing her symptoms in order to maintain those grades. She has enjoyed her practicums so far. I accept that she has every intention to pursue her career as a registered nurse. She will be 28 years old when she graduates and begins her career.

[159] Ms. Evans testified about her intentions to work full-time as a nurse. I am satisfied on the evidence that there is a real and substantial possibility that were it not for her injuries, she would do so. The likelihood of this possibility is high. I have made findings about Ms. Evans' work ethic, which has been strong both before and after the accidents. She has either been employed, attended school, or both, since the age of 15. She supports herself through student loans and part-time employment. There is nothing in the evidence to suggest that she would not have dedicated the same commitment toward her nursing career.

[160] Ms. Evans also testified about where her current interests in nursing lie, bedside nursing in a busy hospital environment. I am satisfied there is a real and substantial possibility that Ms. Evans' nursing career would have been focussed in this area and that the likelihood of this possibility is moderately high. I say moderately high because, while I accept that Ms. Evans is currently drawn to, and suited for, this type of nursing, as she acknowledged and the evidence shows, there are many different types of nursing positions available. Ms. Evans has not yet started her career and has not yet been exposed to all of the positions that could be available to her.

[161] Ms. Evans clearly has some residual earning capacity as a registered nurse. In terms of that residual capacity, I am satisfied on the evidence that there is a real and substantial possibility that, as a result of her injuries, Ms. Evans will not be able to perform high intensity bedside nursing on a full-time basis in the future. I am satisfied this possibility is highly likely.

[162] Ms. Evans suffers daily chronic pain in her upper back and shoulders. The severity of her pain in these areas increases with strenuous repetitive activity, as outlined by Ms. Carmen in her report. This is also Ms. Evans' own experience. When her pain flares, she has neck pain and headaches that impair her concentration and memory.

[163] I disagree with the defendants' position about the relevance of Ms. Evans' work experience, particularly her experience in hospice working as a care aide. This position is, in many ways, very similar to a nursing position.

[164] Ms. Crowe and Ms. Houle, both registered nurses, testified about their job duties and demands. Kimberley Wyle, a registered nurse who does not know Ms. Evans, also testified about these duties and demands. Currently the interim manager for in-patient surgical wards at Royal Inland Hospital, Ms. Wyle's experience is as an acute care nurse, the field in which Ms. Evans is interested. From this reliable and large body of evidence, I am satisfied that many of the physical and mental tasks required of nursing in bedside care positions are the same as those required of care aides. Ms. Evans' experience as a care aide and the observations of her co-workers are good, reliable evidence of how functionally restricted Ms. Evans is, and will be, in a bedside nursing role as a result of her injuries.

[165] I do not see an evidentiary gap, as the defendants submit, by the lack of a vocational assessment in this case. Ms. Evans' actual lived experience, particularly in her three-month work trial at hospice, provides very good, reliable evidence of her physical and mental abilities to do the job and of her functional tolerance and capacity. The probative value of her lived experiences is supported by the expert evidence. Dr. Filbey opined that it is impossible to predict what areas of nursing Ms. Evans will tolerate more than others, and that her own experience will be the best gauge of her tolerance level such that she does not create unnecessary impairment. Dr. Holtz also agreed that the observations of Ms. Evans' colleagues and Ms. Evans' own experiences would be valuable in understanding her capabilities.



[166] Ms. Evans' experience in the thrift store is helpful evidence as well. In that position, Ms. Evans worked shorter hours and had less physically and cognitively demanding tasks than she did working as a care aide and that she would have working as a registered nurse. At the thrift store, Ms. Evans could pace herself, take breaks as needed, sit or stand as she wished and ask for assistance. In these conditions, Ms. Evans experienced an aggravation of her pain when working consecutive shifts, to the point that she required a couple of days of rest to return to her baseline pain.

[167] Ms. Evans' injuries clearly affected her capacity to perform her "¾ line" care aide duties at the hospice. She could perform the basic duties, there is no evidence to suggest any supervisor complained, but she performed those duties more slowly. She required frequent breaks and needed additional medication. The long, consecutive shifts and repetitive activities of the job increased her pain such that by her third week, her neck pain flared and she developed a headache that remained with her for the duration of the summer. Her headache impaired her concentration and her memory. Her co-workers were frustrated working with her because they had to look for her, or perform her duties. Over the course of the three months, her appearance became worn and she seemed burnt out. Ms. Houle felt that while her heart was in the job, Ms. Evans could not meet its physical requirements.

[168] Consistent with her personality, Ms. Evans refused to miss any of her hospice shifts, but this came at a personal cost. She spent her time off shift simply trying to get ready for her next shift. She increased her use of Tylenol. She slept poorly. She neglected her self-care, her home and her social life. Ms. Evans testified that now, looking back at the experience, she realizes that working at that level was not healthy and not sustainable.

[169] Ms. Wyle has worked in medical and surgical wards at the hospital. She testified about the job duties of bedside nursing in a hospital setting, the various shifts available and the high expectations placed on new graduates. Ms. Wyle's current position also includes management duties, such as hiring nurses. She

described some of the factors she considers when hiring. She testified about the nursing shortage at the hospital.

[170] Ms. Wyle testified that the large majority of the nursing shifts at the hospital are 12 hour shifts, available three-quarter or full-time, with full-time constituting four consecutive shifts, two days and two nights. Although this is the norm, Ms. Wyle explained that some areas in the hospital have nursing positions that offer eight-hour shifts, such as the operating room, the ambulatory care unit and others. Nurses can also transition to casual shift work as well.

[171] However, Ms. Wyle explained that regardless of the shift length, the roles are physical and each nurse must be physically healthy, mentally sharp and have the ability to pull their weight as part of a team. There is a high patient to nurse ratio, higher than Ms. Evans experienced in hospice. Ms. Wyle described many of the stationary and movement-based tasks, both predictable and unpredictable, that nurses must perform, including supporting and transferring patients, administering medications properly, reacting quickly to someone falling, and holding a limb while applying a dressing for example. There are no regular breaks. While not identical, many of the duties she described are similar to those performed by Ms. Evans as a care aide.

[172] I am also satisfied on the evidence that there is a real and substantial possibility that as a result of her injuries, Ms. Evans will not be able to perform nursing duties, generally in any field, on a full-time basis in the future. As all of her work experience demonstrates, the longer, consecutive shifts aggravate her pain and could compromise her ability to consistently meet the physical and cognitive demands to perform the role safely. I find the likelihood of this possibility moderate. This lower likelihood accounts for the possibility, which I find to be low, but a possibility nonetheless, that Ms. Evans might find a nursing position for which full-time hours, under the right circumstances, may not be beyond her capacity to sustain in the long-term.

[173] It is also a real and substantial possibility that Ms. Evans will experience difficulties in securing part-time employment. The likelihood of this possibility is high, at least at first, until she gains some seniority, at which point the likelihood of this possibility would be reduced.

[174] Ms. Evans, as a soon-to-be new graduate, will have to compete with candidates who have no limitations. Ms. Wyle was asked about her hiring practices at the hospital. When asked whether part-time employment (four to six hour shifts) as a registered nurse is available in the hospital, Ms. Wyle testified that if someone came to her and said she was only available for a six-hour shift, Ms. Wyle would not hire that person. If, however, a nurse was working for awhile and “owns” a partial or full line position, and a six-hour shift was available, it may be possible. Ms. Wyle further testified that if she interviews three candidates for one nursing job and one candidate has physical limitations, this would factor into who she would hire. This is consistent with Ms. Carmen’s opinion that Ms. Evans is not competitively employable.

[175] For all of these reasons, I find that Ms. Evans has discharged the burden of proving a real and substantial possibility that her loss of capacity as a result of her injuries will cause a pecuniary loss. Her loss of capacity has rendered her less capable overall from earning income in her chosen field. There are real and substantial possibilities, to different degrees of likelihood, that she will be unable to work full time as a bedside nurse in a busy hospital environment, or full time in any nursing position as she intended. She is also less marketable as a result of these injuries and will not be able to take advantage of all of the job opportunities that would have been open to her. She is less valuable to herself as a person capable of earning income in the labour environment.

***Step 3: Assessing the value of the future loss***

[176] I turn now to assess the value of the future loss.

[177] Ms. Evans led expert opinion evidence about her loss of earning capacity framed around an earnings approach and submits that this approach is appropriate

here. She submits that her loss is easily measured through a comparison of her probable future without-accident earnings as a full-time registered nurse to age 67 as set out by Ms. Clarke and accounting for contingencies, to her probable with-accident earnings as a result of her loss of capacity, which are likely to be earnings as a half-time, or less (40% to 50%) registered nurse to the same retirement age. She seeks an award in the range of \$1 to \$1.2 million.

[178] The defendants submit that if I have reached this stage of my assessment, the capital asset approach is to be preferred because Ms. Evans' loss is not easily measured. They emphasize that Ms. Evans did not miss any time from work as a result of the accidents. She is a nursing student who has not yet completed her degree and who has not settled on a path within her chosen career. She has no demonstrated employment history as a nurse and has had no meaningful opportunity to try working as a nurse in any of the varied positions available to her. Her belief as to the type of position she wants now, before her career has even started, very well may change.

[179] The defendants also urge me to give Ms. Clarke's estimates and opinions no weight. They say that Ms. Clarke's estimates are inflated and thus unreliable because she failed to account for non-unionized nursing positions and failed to account for the higher attrition of nurses at present when providing her projections.

[180] In *Plosken-Ciesla*, Harris J.A. stated the following with respect to the approaches to be taken:

[16] As touched upon above, depending on the circumstances, the third and final step—valuation—may involve either the “earnings approach” or the “capital asset approach”: *Perren* at para. 32. The earnings approach is often appropriate where there is an identifiable loss of income at the time of trial, that is, the first set of cases described above. Often, this occurs when a plaintiff has an established work history and a clear career trajectory.

[17] Where there has been no loss of income at the time of trial, as here, courts should generally undertake the capital asset approach. This approach reflects the fact that in cases such as these, it is not a loss of earnings the plaintiff has suffered, but rather a loss of earning capacity, a capital asset: *Brown* at para. 9. Furthermore, the capital asset approach is particularly helpful when a plaintiff has yet to establish a settled career path, as it allays

the risk of under compensation by creating a more holistic picture of a plaintiff's potential future

[181] While I disagree with the defendants' position about the weight to be given to Ms. Carmen's opinions and estimates, I agree with their position that the capital asset approach is more appropriate in the circumstances of this case. Ms. Evans' loss is not easily measurable and there are a number of uncertainties.

[182] Ms. Evans was only 19 at the time of the First Accident. She was working in a different field and attending school thereafter. She did not miss any time from work, nor were her educational pursuits delayed. She has suffered no loss of income to the time of trial. Ms. Evans settled on her career path, nursing, after the Second Accident. She is the process of completing her degree. While her chosen profession is firm, she has had no opportunity to work within it. She has a strong interest in bedside nursing at present, but as the defendants point out, Ms. Evans' belief as to the type of position she wants now, before her career has even started, may change. In light of these circumstances, it is necessary for me to take a more holistic view of Ms. Evans' potential future.

[183] Ms. Evans' capital asset has clearly been impaired as I have described above. In order to value this impairment, I must first consider her probable without-accident career path and earning capacity.

[184] As I have found, there is a real and substantial possibility that were it not for her injuries, Ms. Evans would have worked full time as a nurse and the likelihood of this possibility is high. There is also a real and substantial possibility that were it not for her injuries she would have worked full time specifically as a bedside nurse in a busy hospital environment and the likelihood of this possibility is moderately high.

[185] Ms. Clarke has provided a present value table of earnings that Ms. Evans could have earned if she worked as a full-time registered nurse in British Columbia, in a unionized position, from the time of her graduation and through all of her years to age 67. I do not agree with the defendants' position that I ought to give Ms. Clarke's evidence no weight. They criticize her estimates for failing to account for

non-unionized nursing positions and for failing to account for currently higher attrition rates for nurses.

[186] Regarding the first of these criticisms, I am satisfied it does not undermine the weight to be given to Ms. Clarke's evidence. Ms. Clarke testified that 96% to 97% of all nursing positions in British Columbia are unionized. This is no evidence that Ms. Evans intends to work in private nursing and the evidence supports a finding that there is a very high probability that Ms. Evans will pursue a unionized position.

[187] Regarding the second criticism, while Ms. Clarke agreed that attrition rates for nurses are currently higher and that her tables do not reflect this, the impact of this omission was not explored in any depth. Even if I accept that Ms. Clarke's figures are not perfectly precise as a result of her failure to consider either or both of these things, I am mindful that this is an assessment and not a mathematical calculation. I am satisfied that Ms. Clarke's estimates provide me with reliable evidence in which to ground my estimation of Ms. Evans' without-accident earning capacity.

[188] Ms. Evans testified that she would like to retire at age 60 if possible. While her counsel argues that this evidence is unhelpful and I should find her likely retirement age to be 67, I find it most likely that Ms. Evans would have succeeded in achieving her desire of retiring at age 60. As I hope my findings have made clear, Ms. Evans is a determined and driven individual, even with her injuries and their consequent limitations. Were she not injured, I am satisfied that Ms. Evans' work ethic, drive and determination would have allowed her to retire when she hoped.

[189] Using the estimates found in Table 2 of Ms. Clarke's report, the present value of wages that Ms. Evans could potentially earn as a full-time registered nurse from mid-2024, when she is expected to graduate, to age 60, is \$2,188,743. Ms. Clarke also opined, at page 17 of her report, that these career earnings values should be adjusted up to account for the potential value of non-wage benefits, which in this case would constitute a 10% allowance for employer-paid pension contributions. With this adjustment, the present value of Ms. Evans' potential earning capacity would be approximately, \$2,400,000. This does not account for contingencies.

[190] Given the high likelihood that Ms. Evans would have worked as a full-time nurse to retirement, I am satisfied this projection is a good reflection of what Ms. Evans' without-accident earning capacity, before consideration of contingencies, would have likely been.

[191] Ms. Clarke also provided, at Table 2, present value potential earnings calculations adjusted each year to account for negative labour market contingencies, including withdrawal from active participation in the market, unemployment, and the income effects of part-time work. She then provided estimates of probable earnings taking these contingencies into account, categorizing them as either average "risk and choice" contingencies, or "risk only" contingencies.

[192] Ms. Clarke explained that the "risk and choice" contingencies take into consideration the average probabilities that a B.C. female may choose to be out of the labour market or to work part-time. They also take into account the "average probabilities that risk factors may cause a B.C. female to be out of the labour market, unemployed (i.e., without a job, but looking for work), or a part-time worker" (page 11). Ms. Clarke further explained that the "risk-only" contingencies account for the average probabilities that a B.C. female could be forced out of the labour market, into unemployment or part-time work. Ms. Clarke's estimates of labour market contingencies are based upon Census data from all British Columbia females with a "Bachelors degree or university certificate or diploma above bachelor level (excluding legal professions and studies)" (page 11).

[193] The "risk-only" contingencies that have been applied total 8.9%. The "risk and choice" contingencies that have been applied total 32.7%.

[194] Ms. Evans submits that on the facts of this case, a 32.7% reduction to her potential earning capacity for these statistical, general negative contingencies is not warranted. Ms. Evans submits that the "risk-only" contingencies that include her not being able to find employment or only be able to find part-time employment do not apply in light of the evidence about the abundance of work and shortage of nursing candidates. She also submits that there is no basis in the evidence to support a

negative discount for the choice that in a without-accident world she would have chosen not to work, work part-time, or retire early. Ms. Evans testified that she wants to have two children and that, after a standard maternity leave, would return to the work force. She did not testify about any intention to work only part-time, leave the workforce, or retire early and, to apply any reduction for these, would be speculation.

[195] The defendants submit that the “risk and choice” contingencies should apply in considering Ms. Evans’ without-accident earning capacity. Emphasizing that these contingencies represent an average person with a bachelor’s degree, they say that there is no evidence to suggest that Ms. Evans will make anything other than average choices in the future. As it is impossible to know what the future will bring for Ms. Evans, they argue that to suggest there is no risk she will not find employment or no possibility that she will not make the choice, at some point over the course of her 30-year-plus career, to voluntarily leave the labour force or perhaps work part-time at some point, would be unrealistic and inappropriate on the evidence.

[196] I am satisfied the hypothetical events associated with “risk and choice” contingencies, as identified by Ms. Clarke, are real and substantial possibilities on the evidence that must be considered in this assessment. They are general contingencies, but they are applicable in this case, for the reasons expressed by the defendants. That does not end the matter. Once found to be real and substantial possibilities on the evidence, I am to now determine the relative likelihood of the events occurring in order to determine the appropriate adjustment.

[197] Regarding the “risk only” contingencies that Ms. Evans could be forced out of the labour market, into unemployment, or into part-time work, I find the likelihood of these possibilities slightly lower than the average expressed by Ms. Carmen, in light of the evidence pertaining to the availability of nursing positions and the limited number of candidates.

[198] Regarding the “risk and choice” contingencies, I find the likelihood of these possibilities to be average in Ms. Evans’ case. While Ms. Evans is a driven



individual, she has chosen to be out of the labour market in the past, to attend school. She has not yet entered the labour market in her nursing career and has not yet been faced with any of the usual choices. There is nothing to suggest she will make anything other than average choices.

[199] Weighing all of the above, I find that a reduction of 30% to the value of Ms. Evans' potential without-accident earning capacity is necessary to reflect the relative likelihood of these contingencies.

[200] I would, therefore, assess Ms. Evans' without-accident earning capacity at \$1,680,000.

[201] I must next determine the loss to that earning capacity that has been suffered by Ms. Evans by reason of the accidents. In assessing this reduction in earning capacity, I have considered the following real and substantial possibilities and their relative likelihood.

[202] There is a real and substantial possibility that Ms. Evans will be unable to work as a bedside nurse in a busy hospital environment other than on a casual or part-time basis where she can access shorter shifts. I find the likelihood of this possibility to be high.

[203] There is a real and substantial possibility that Ms. Evans will be unable to work in other nursing positions other than on a part-time basis, from perhaps a half-time to a three-quarter time position, depending on the conditions, shift and hours. I find the likelihood of this possibility to be moderate. I find this to be moderately likely to reflect the possibility that as Ms. Evans is exposed to more nursing positions, she may find a three-quarter time or even a full-time nursing position within her capabilities, although I found the possibility of the latter rather low. It also reflects the possibility that as Ms. Evans gains more experience, she may develop strategies to increase her tolerance and thus her capacity for additional hours.

[204] There is a real and substantial possibility that it will be difficult for Ms. Evans to secure part-time consistent employment. I find the likelihood of this possibility to

be high when Ms. Evans first enters the workforce, but to become lower as she gains seniority.

[205] Weighing all of the above, I assess a 25% diminution in the capital asset of Ms. Evans' future income earning capacity as a result of the accidents. Twenty five percent of her assessed without-accident lifetime income is \$420,000.

[206] I am satisfied that an award of \$420,000 for future loss of earning capacity is a fair and reasonable assessment of Ms. Evans' loss. I note that this award approximates four years of earnings and pension loss (based on an average of the annual earnings set out by Ms. Clarke), which I find to be a fair estimate of her overall loss of future earning capacity.

### ***Loss of Housekeeping Capacity***

[207] A loss of homemaking award is properly characterized as an award for loss of capacity, distinct from a cost of future care claim. An award for loss of homemaking capacity is intended to reflect the value of the work that would have been done by the plaintiff but which he or she is incapable of performing due to the injuries caused by the accident. It is not dependent upon whether replacement costs are actually incurred: *Westbroek v. Brizuela*, 2014 BCCA 48, at paras. 72–78.

[208] A cautionary approach is to be taken in assessing damages for loss of homemaking capacity to ensure the award is commensurate with the loss. Where homemaking can be done, although with pain, it may be more appropriate to reflect that in the award for non-pecuniary damages, rather than make a separate pecuniary award for loss of housekeeping capacity.

[209] Justice Gomery helpfully summarized the legal framework addressing claims for loss of housekeeping capacity recently in *Chirhei*. He wrote:

[108] In *Ali v. Stacey*, 2020 BCSC 465, I considered two recent considered decisions of the Court of Appeal addressing claims for loss of housekeeping capacity; *Kim v. Lin*, 2018 BCCA 77 at paras. 27-37, and *Riley v. Ritsco*, 2018 BCCA 366 at paras. 96-103. I concluded:

[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* 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* 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.

[210] In this case, I agree with the position taken by the defendants and find Ms. Evans has not suffered a true loss of capacity relating to loss of housekeeping capacity. The loss she has suffered is more in keeping with a loss of amenities to be compensated by the non-pecuniary damages award. The award I have made reflects this loss.

[211] Prior to the First Accident, Ms. Evans lived with her parents in her childhood home. She helped out around the home and yard. She continued to do this following the First Accident, albeit at times with increased pain and to a lesser degree than she had before. Following her mother's passing, she remained in the family home for a time before moving out in 2017 to live alone, and then later with roommates. She was able to maintain her home without assistance and, when she had roommates, they shared the tasks. Ms. Evans has also been able to assist a friend, perhaps four

or five times at an hour at a time, with their housecleaning needs since the First Accident.

[212] Since Ms. Evans has moved back into the basement suite of her childhood home, with her father upstairs, she has been able to perform housekeeping and yard keeping tasks, including such things as vacuuming, mopping, dusting and dishes, albeit at times with increased pain and pacing required. Her father hired assistance for the yard once in 2021, but Ms. Evans has not had to hire anyone for assistance with housekeeping and yard keeping tasks.

[213] This evidence is insufficient to ground a claim for loss of housekeeping capacity. Ms. Evans testified that she would like to move into a home with a yard and have children in the future, hopefully in five years, but did not give evidence that she and her current partner had any imminent plan to do these things, or have the financial resources to do so. Her overall plan, while not unrealistic, remains quite speculative in its details. If she did purchase a home at some point, such details such as its size, whether it had a yard, the individuals that might live there with her, and the extent to which the chores would be shared by others are all unknown.

[214] If, for example, Ms. Evans and Mr. Bryenton shared a home and both worked, they might expect to share the household chores. If Ms. Evans required breaks or performed tasks slower in her future home, these circumstances would reflect what has been referred to in the authorities as the “normal give and take” that is necessarily part of family life, especially where both partners work outside the home.

[215] I find that this loss is in the nature of a loss of amenities and properly addressed as part of the non-pecuniary award I have made. Accordingly, I award no pecuniary damages for loss of housekeeping capacity

### ***Future Care Costs***

[216] The purpose of an award for costs of future care is to restore, as best as possible with a monetary award, the injured plaintiff to the position they would have been in had the accident not occurred. The award is based on what the medical

evidence shows to be reasonably necessary to promote the mental and physical health of the plaintiff: *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29–30, citing *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (SC). The test for determining the appropriate award is an objective one based on medical evidence. For an award of future care, claims must be reasonable and have a medical justification: *Tsalamandris v. McLeod*, 2012 BCCA 239 at paras. 62–63, citing *Milina* at 84.

[217] Awards for the cost of future care may be adjusted for positive or negative contingencies depending on the plaintiff's specific care needs. The court may decrease an award based on the chance of the plaintiff's condition improving, or increase one based on the chance that the plaintiff will need additional care. Each case falls to be determined on its particular facts: *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 253.

[218] Dr. Filbey and Dr. Holtz both made recommendations in this area. Ms. Carmen also provided an opinion about the residual effects of Ms. Evans' injuries on her current and future ability to function independently in everyday life activities and made recommendations with cost summary ranges for services, equipment, and supplies that she believes will help restore her level of independence to one that approximates her pre-injuries status and potential. Ms. Clarke provided a report estimating the present values of these costs of future care. She also testified that whatever is awarded, the amount should be grossed up by 6.3% to reflect inflation from the time of her report to the time of trial.

[219] Ms. Evans claims compensation for future treatments, equipment, services and medications. Specifically, she claims for massage therapy; kinesiology/physiotherapy; gym passes; an ergonomic assessment and ergonomic equipment; counselling; homemaking assistance; house and yard maintenance assistance; medications; and cannabis products.

***Massage Therapy***

[220] Ms. Evans seeks compensation for future costs related to massage therapy (26 sessions annually) to the age of 75 in the amount of approximately \$75,000. The defendants say no award should be made.

[221] I am satisfied future massage therapy is medically justified, reasonable and is a cost likely to be incurred by Ms. Evans. Ms. Evans has attended for regular message therapy treatments since the First Accident. She continues to do so, one to two times per month, to manage her pain symptoms. She derives temporary pain relief from this therapy and it is an important aspect of her ability to manage her ongoing pain and exacerbations of that pain as they arise.

[222] Ms. Carmen opined that Ms. Evans is likely to continue to experience exacerbations of symptoms of pain into the future and recommended provision of funding for massage therapy for pain management on an ongoing basis.

[223] Dr. Filbey also opined that Ms. Evans would benefit from massage therapy as needed for symptom reduction during her schooling. He recommended 18 to 24 sessions per year while she was in school. He also recommended she be given access to a therapy of her choice, such as massage therapy, for acute exacerbations of symptoms in the future. He recommended 12 such sessions per year.

[224] Ms. Carmen agreed that 12 sessions per year for the future would be adequate if Ms. Evans ended up working in an area of nursing that does not result in significant symptom exacerbation, but suggested that in the early stages of her career she may have to take less than physically ideal nursing jobs, which would increase her symptoms and require a greater number of sessions, between 18 to 24 each year would be appropriate.

[225] The cost of a 45-minute massage therapy session is \$90. I am satisfied an award reflecting 18 sessions each year, to age 70, is reasonable, justified and likely to be incurred by Ms. Evans. This reflects Ms. Evans' current use of this therapy and

the very high likelihood that she will continue to require it to manage her ongoing symptoms and symptom exacerbation that will arise. It also reflects that some years Ms. Evan' will require less than 18 sessions, but in other years she may require more. At \$90 per session, and using Ms. Clarke's present value multiplier from the time of trial, as grossed up to account for inflation, I award \$48,932.34.

***Kinesiology/Physiotherapy and Gym Passes***

[226] Ms. Evans seeks compensation for future costs related to kinesiology or physiotherapy. Specifically, she submits that the evidence supports an award to cover the cost of attending two such sessions per year in order for the physiotherapist or kinesiologist to provide oversight of her self-directed exercise program until age 75, for an award of approximately \$4,900. Ms. Evans also seeks compensation for an annual gym pass until age 75, in the amount of approximately \$17,000.

[227] The defendants submit the evidence supports that Ms. Evans have access to kinesiology two times per year to the age of 70, for an award of \$3,410. They also agree a gym pass is reasonable, but only for the two remaining years of Ms. Evans' school program. They submit that once Ms. Evans completes her education and transitions to the workforce, she will be able to work with her kinesiologist to help structure a self-directed home workout program that does not require machines or weights. She could then perform her exercises at home and on her own schedule.

[228] I am satisfied that future kinesiology treatments, two times per year, along with an annual gym pass until age 70, are medically justified, reasonable and are costs likely to be incurred by Ms. Evans.

[229] Ms. Evans has attended kinesiology treatments in the past and found them helpful. Through those treatments, she learned how to perform self-directed exercises, which helps her manage pain symptoms and overall health and well-being. Ms. Evans has conducted her self-directed exercise program at the gym, a location which provides her with not only external motivation, but with specialized equipment she requires for her program. Ms. Evans has been diligent with this

program and she finds it an effective strategy for managing her symptoms. Ms. Carmen recommended kinesiology twice a year, as well as a gym pass on a long-term basis. I am satisfied Ms. Evans will continue with her gym-based exercise program in the long-term and will continue to derive pain management benefits from it. The oversight of a kinesiologist will be beneficial to her ensuring she is implementing and performing her self-directed exercise program properly. All of this is medically justified and reasonable.

[230] Based upon Ms. Carmen's low-cost estimates and using Ms. Clarke's present day values grossed up for inflation, I award \$3,624.62 for kinesiology treatments and \$15,948.19 for an annual gym pass.

#### ***Ergonomic Assessment and Equipment***

[231] Ms. Evans seeks compensation for an ergonomic assessment in the amount of \$450. She also seeks an award for the cost of purchasing ergonomic equipment, in the amount of \$600, for a total of \$1,050. The defendants agree, and I find, that such an award is medically justified and reasonable. They are a cost that is likely to be incurred.

#### ***Counselling***

[232] Ms. Evans seeks an award for costs of future counselling in the amount of approximately \$2,100. The defendants oppose any award for counselling, arguing that such an award is not medically justified and too speculative.

[233] Ms. Evans has experience with counselling and has demonstrated that she is amenable to receiving assistance with her mental health as needed. She attended counselling for her driving-related anxiety in late 2016 and early 2017. She chose not to continue that counselling because she felt she had obtained the tools necessary to continue working on her driving anxiety on her own. Ms. Evans also attended for grief counselling following her mother's passing.

[234] Ms. Carmen recommended a provision of an allowance of 12 sessions, as needed, for future counselling support. In her opinion, Ms. Evans may need this



support to address any mood issues that may develop in relation to her living with chronic pain or her inability to pursue the type of work she wants to pursue.

[235] Ms. Evans was asked about this recommendation and whether she was interested in counselling for these purposes. She testified that she would be, if she were to repeat what she went through while working at the hospice during the summer of 2021. She then added that, at the same time, she needed balance in her life that summer. If she had that balance, then she would not need counselling.

[236] I am satisfied, from the whole of the evidence, including the challenges Ms. Evans will be facing in the future managing her pain and finding the right balance in her life, that an allowance for 12 sessions of counselling is medically justified, reasonable and a cost likely to be incurred by Ms. Evans. It is not too speculative. Based on Ms. Carmen's low-cost estimate and using Ms. Clarke's present value multiplier from the time of trial, as grossed up to account for inflation, I am satisfied an award of \$2,126 is reasonable.

***Homemaking Assistance Including Housekeeping, House and Yard Maintenance***

[237] Here, Ms. Evans seeks an award for one-hour per week, from age 28 to age 67, of homemaking assistance. She also seeks an award for 16 hours per year, beginning at age 32 to age 75, of house and yard maintenance assistance. The total award she seeks is approximately \$70,000. The defendants oppose any award here on the basis that it is speculative, unreasonable and not medically justified. For the reasons I set out earlier, at paras. 207–215, I decline to make such an award.

***Medications***

[238] Ms. Evans seeks compensation for the future costs of over-the-counter medications of Ibuprofen and Voltaren Emulgel to the age of 75. The defendants agree these claims are medically necessary, reasonable and likely to be incurred by the plaintiff. I award \$1,000 for the cost of Ibuprofen and \$2,910 for the cost of Voltaren Emulgel.

[239] Ms. Evans also seeks compensation for the future costs of a drug called Nortriptyline, an award opposed by the defendants. I agree with the position taken by the defendants here.

[240] Dr. Holtz recommended, at page 12 of her June 29, 2021 report, that Ms. Evans considers, among other things, “centrally acting medications, like Nortriptyline, a tricyclic antidepressant medication or Cymbalta, which is an SNRI anti-depressant medication particularly if sleep is disturbed”. She was asked about this recommendation in cross-examination and opined that the drug may be beneficial to Ms. Evans for her sleep-related symptoms.

[241] While Dr. Holtz’s evidence may be sufficient to establish a medical justification for this drug, there is no evidence that it is a cost likely to be incurred by the plaintiff in the future.

[242] There is no evidence to suggest that Ms. Evans has been taking Nortriptyline. Although she was asked about Dr. Holtz’s recommendation for Cymbalta, she was not asked about Dr. Holtz’s recommendation for Nortriptyline. With respect to Cymbalta, Ms. Evans testified that she was aware of the recommendation, but opted against trialing the drug because she knew of its adverse side effects and was uncomfortable taking the drug for pain. She was not asked about Nortriptyline. I decline to make any award for any costs related to this drug.

### ***Cannabis Products***

[243] Ms. Evans seeks the annual cost of CBD “gummies” to age 75, as well as the cost of a “cannabis annual membership fee” to age 75 as well. The defendants dispute an award here.

[244] Ms. Evans used marijuana recreationally before and after the accidents. She testified that since the accidents, she uses cannabis products to assist her with pain reduction and sleep. In 2014, she sought a prescription for medicinal marijuana from her family doctor, but was denied. Nevertheless, Ms. Evans began to use a cannabis oil product containing equal parts THC and CBD. She has since switched

to a mainly CBD product, of which she currently ingests one or two “gummies” each day.

[245] In 2018, Ms. Evans obtained a prescription for cannabis products from Dr. Burlin, a physician out of Vancouver. She pays an annual fee to this doctor’s clinic to be able to maintain this prescription. Ms. Evans has seen Dr. Burlin virtually on an annual basis, but there is no evidence from Dr. Burlin before the court. None of Ms. Evans’ treating or assessing physicians have recommended cannabis products for use in treating her pain or assisting with her sleep, or for any other purpose.

[246] While I find that Ms. Evans genuinely believes that her use of cannabis products is helpful for pain management and sleep, I am not prepared to order any damages for cost of future care for this item.

[247] Similar to the decisions of Justice Davies in *Culver v. Skrypnyk*, 2019 BCSC 807 and Justice MacDonald in *Bernatchez v. Chisholm*, 2022 BCSC 105, Ms. Evans’ use of cannabis products was not recommended by any of the medical experts who testified at trial. Although Dr. Filbey noted in his second report that Ms. Evans’ use of such products did not appear to be unreasonable, he also noted that there is “limited and conflicting evidence on the use of marijuana for sleep and pain”. He was also clear that he did not recommend this for Ms. Evans. I also recognize that Dr. Holtz agreed with the suggestion in cross-examination that CBD to assist with sleep would “not be an unreasonable choice”, but this is a far cry from recommending its use.

[248] I agree with the defendants’ submission that a prescription alone is insufficient to establish medical justification here. There is no evidence surrounding the circumstances of this prescription other than that Ms. Evans pays an annual fee to allow her to obtain such a prescription. There is no evidence that Ms. Evans’ past cannabis use was recommended by a doctor. I find the plaintiff’s claim here is not medically justified nor reasonable given the evidence adduced.

### ***Special Damages***

[249] Special damages must be both reasonable and necessary. While not every expense needs to have been recommended by a healthcare professional, there must be a medical justification for each expense claimed: *Taylor* at para. 86.

[250] Ms. Evans' claim for special expenses has been partially agreed upon by the parties at \$13,655.48. The only contentious claim is with respect to cannabis-related products in the amount of \$485.49.

[251] For the reasons I explained earlier, I agree with the defendants' position that the evidence does not support a finding that Ms. Evans' claim for cannabis products is justified or reasonable. I am not satisfied these cannabis-related products should be included in special damages. The award for special damages is, therefore, \$13,655.48.

### **Conclusion**

[252] In summary, the damages awarded to Ms. Evans are:

Non-pecuniary damages:	\$95,000.00
Loss of future earning capacity:	\$420,000.00
Future care costs:	\$75,591.15
Special damages:	\$13,655.48
<b>Total:</b>	<b><u>\$604,246.63</u></b>

### **Costs**

[253] Ms. Evans is entitled to costs and pre-judgment interest at the prevailing rate. If the parties are unable to agree on the matter of costs, they may make

arrangements through Supreme Court Scheduling to speak to that issue within 60 days of today's date.

"S.A. Donegan J."

DONEGAN J.