# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Gustafson v. MacFarlane,
2023 BCSC 1524

Date: 20230830
Docket: S199677
Registry: Vancouver

Between:

**Sharlene Gustafson**

Plaintiff

And

**Doreen MacFarlane**

Defendant

Before: The Honourable Mr. Justice Gomery

Supplementary Reasons to *Gustafson v. MacFarlane*, 2022 BCSC 1872.

## Reasons for Judgment

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| Counsel for the Plaintiff: | J.S. Stanley<br>E. Emery |
| Counsel for the Defendant: | J.A. Doyle<br>A. Gubeli |
| Place and Dates of Trial: | Vancouver, B.C.<br>July 24-27, 2023 |
| Place and Date of Judgment: | Vancouver, B.C.<br>August 30, 2023 |

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## Introduction

[1] Ms. Gustafson suffered catastrophic injuries when she was struck and run over by a farm utility vehicle driven by Ms. MacFarlane. Following a trial in September 2022, I found that Ms. MacFarlane was solely at fault. The circumstances of the incident and injuries suffered by Ms. Gustafson are described in my reasons for judgment indexed at 2022 BCSC 1872. I awarded Ms. Gustafson substantial damages. These reasons should be read in conjunction with my earlier reasons.

[2] Ms. Gustafson's injuries include a high-level spinal cord injury that has deprived her of the use of her legs and limited the use of her arms and hands. She is able to operate a powered wheelchair. It is a bulky device, and she cannot get around without it. She sleeps in a special bed and requires lifting equipment and assistance to move between her wheelchair and the bed at the beginning and end of the day. She requires the presence of a caregiver all day and at night.

[3] Prior to the collision, Ms. Gustafson and her partner, Mr. Blanes, resided together in a farmhouse in Abbotsford rented from Ms. MacFarlane. She returned to the farmhouse when she was discharged from institutional care at the GF Strong Rehabilitation Centre, but it was not suitable accommodation. Ms. Gustafson's injuries, needs, and financial means limited her housing options.

[4] At trial, Ms. Gustafson claimed a $2 million allowance for accommodative housing as an element of the cost of her future care. The defence conceded that a housing award was necessary and submitted that an allowance of $200,000 to $250,000 would suffice to enable Ms. Gustafson and Mr. Blanes to either rent a suitable place or renovate a house they might decide to purchase. I concluded that the evidence at trial was inadequate to permit proper quantification of the allowance, and that any award I would make on the record at hand would be an exercise in speculation. I gave the parties leave to continue the trial and adduce further evidence and argument concerning the magnitude of an appropriate allowance for accommodative housing as a cost of future care.

[5] I awarded Ms. Gustafson $5.4 million in damages. A portion of the award – $315,000 – was an in-trust award recognising care and services provided to Ms. Gustafson by Mr. Blanes since she was injured. In addition to the question of the amount of a housing allowance, I granted the parties leave to address three other issues at the further trial. Two of those issues concerned claims that Ms. Gustafson has now withdrawn. The third, involving Ms. Gustafson's claim for a management fee, is now the subject of an agreement.

[6] In February 2023, the continuation of the trial was scheduled to take place in July. In April 2023, Ms. Gustafson and Mr. Blanes purchased a three-bedroom house on a large lot in Chilliwack that is suitable to her needs. Inclusive of property transfer tax, the purchase price was $1,018,000, funded from money received from the defendant in partial satisfaction of the judgment. Ms. Gustafson and Mr. Blanes took title to the property as joint tenants.

[7] Under this head of damage, Ms. Gustafson now seeks an award of $1,018,000. She says that her decision to purchase the house in Chilliwack was reasonable and that the cost is, in effect, an additional element of special damage incurred by her in consequence of her injuries. She submits that the evidence at the continued trial establishes that rental accommodation suitable to her needs was not reasonably available in the Fraser Valley where she lives, and that the price she paid is reasonable considering the costs of acquiring and adapting housing to her needs.

[8] The defence proposes an award in the range of $200,000 to $300,000. It submits that rental accommodation in the Lower Mainland was an option for Ms. Gustafson. The defence further argues that the reasonable cost of acquiring and adapting a two or three-bedroom house in Chilliwack was lower than Ms. Gustafson paid, and that an adjustment is necessary "to reflect the fact that at least half the value of the property would be in the land, which would be an appreciating capital asset accruing to the plaintiff and her heirs".

[9] At the continued trial, the parties and expert witnesses distinguished adaptable or adaptive housing from accessible housing. What Ms. Gustafson requires is housing that is fully accessible, in light of her needs and disabilities. Adaptable or adaptive housing is housing that can be made fully accessible to a person with disabilities with some work.

[10] Location matters. At the farmhouse in Abbotsford, Ms. Gustafson was close to family, friends, and her care providers. In my reasons at para. 119, I commented that it would be reasonable for Ms. Gustafson and Mr. Blanes to consider other locations in the Lower Mainland in reasonable proximity to her care providers, including Langley, Surrey, and possibly Chilliwack. What she requires is wheelchair accessible accommodation in one of these Fraser Valley communities.

**Evidentiary Issues**

[11] Ms. Gustafson tendered expert evidence from Lynn Pierce. Ms. Pierce has university degrees in law and social work, and a masters degree in "Ethics and Humanities in Medicine". She has worked since 2011 as a realtor who specializes in finding homes for individuals and families with a broad range of physical abilities. A small but significant proportion of her clientele, say 15%, consists of disabled clients who are looking for accessible housing. Most of these clients have required a wheelchair. I found that Ms. Pierce is qualified to give expert evidence as a realtor concerning the cost and availability of adapted or accessible housing for rent or purchase within British Columbia.

[12] The defence objected to Ms. Pierce's report and evidence on the ground that she states opinions outside the scope of her expertise. The plaintiff asked me to disregard the objection because the defence had not given timely notice of it, as required by Supreme Court Civil Rule 11-6(10). Notice was given only on July 21, three days before the trial began, Ms. Pierce's report having been served in April. Subrule 11-6(11) provides that, unless the court otherwise orders, an objection to expert evidence must not be permitted if reasonable notice of it could have been

given under subrule (10) but was not. I received Ms. Pierce's evidence under reserve of the objection to be addressed in these reasons for judgment.

[13] Considering the lateness of the objection, I decline to accede to it and exclude any part of Ms. Pierce's report from evidence. The defence's failure to give notice is unexplained, appears to stem from inadvertence, and offers no cogent excuse for the defendant's non-compliance with the general requirement in subrule 11-6(11); *Pausch v. Vancouver Coastal Health Authority,* 2014 BCSC 2036 at paras. 15-16. To the extent that Ms. Pierce's report and oral evidence venture opinions outside the scope of her expertise, I have given them no weight. She has not assisted clients to find residential real estate in the Fraser Valley, and I have taken that into account in assessing her evidence.

[14] Ms. Gustafson tendered Richard Galan as qualified to give expert evidence concerning the cost of adapting properties to make them wheelchair accessible. The defence objected that he is not qualified and I heard his evidence under reserve of the objection, to be addressed in these reasons.

[15] I accept that Mr. Galan is qualified as an expert and his evidence is admissible. The objection is that his direct experience with costing projects ended in 1996. Between 1972 and 1996, Mr. Galan was involved in managing projects to build accessible housing through the Vancouver Resource Society for the Physically Disabled. Since 1996, he has made a career of preparing costing opinions for use in court. He estimates that he has prepared 170 such opinions and been qualified to testify 10 or 12 times. I think that this experience matters because it signifies that, through research, he has kept up to date. I place no weight on the fact that judges in other cases have found him to be qualified. Mr. Galan's lack of recent direct experience in costing building projects goes to the weight to be afforded his evidence, and not its admissibility.

[16] I should add that, Mr. Galan's evidence on the cost of adapting properties to make them accessible parallels that of a quantity surveyor, Mr. Stregger, who testified in the original trial. In my reasons, I described this aspect of Mr. Stregger's

evidence as helpful (at para. 121) and in final argument, both sides placed greater weight on Mr. Stregger's costing evidence than on Mr. Galan's. I agree. Mr. Stregger is the more qualified witness, and his analysis is more precise and more useful.



## Analysis

[17] The fundamental question is the determination of an amount of money that is reasonably sufficient to allow Ms. Gustafson to pay for the extra housing cost she will incur for the rest of her life by reason of her injuries. The amount must be fair to both parties. The objective is compensation for Ms. Gustafson's pecuniary loss, not solace; *Andrews v. Grand & Toy Alberta Ltd.,* [1978] 2 S.C.R. 229 at 261-262 [*Andrews*]. Ms. Gustafson's non-pecuniary loss has already been the subject of a separate award.

[18] Neither party takes issue with the legal analysis in para. 128 of my reasons, in which I concluded that an award in respect of the housing needs of a catastrophically injured plaintiff may be based on the purchase price of a suitable home, or on future rental costs. The correct approach depends on evidence as to the plaintiff's age, needs, what housing options are available, what those options will cost, and the potential for overcompensation by funding the acquisition for the plaintiff and her heirs of an appreciating capital asset. Para. 128 states:

> [128] There are cases involving catastrophic injuries in which courts have included the purchase price of a home in an award for the cost of future care, among them: *Thornton v. School District 57 (Prince George),* [1978] 2 S.C.R. 267 at 281-282; *Stevenson v. Hunter,* [1981] B.C.J. No. 357 (S.C.) at paras. 32-38; *Dennis v. Gairdner,* 2002 BCSC 1289 at paras. 102-104 and 111; and *Aberdeen v. Township of Langley, Zanatta, Cassels,* 2007 BCSC 993 at paras. 220-234. There are other cases in which equivalent claims have failed, such as *Scarff v. Wilson* (1986), 10 B.C.L.R. (2d) 273 (S.C.), at para. 24, aff'd (1988), 33 B.C.L.R. (2d) 290 (C.A.). In my view, these cases turn on the evidence as to the plaintiff's age, needs, what housing options are available, what those options will cost, and the potential for overcompensation by funding the acquisition for the plaintiff and her heirs of an appreciating capital asset (noted by the Court of Appeal in *Scarff*). For example, in *Thornton,* the plaintiff was a young man and the trial judge accepted evidence that the cost to purchase a home ($45,000) was much less than the expected cost of renting an apartment for the rest of the plaintiff's life ($117,342). In *Stevenson,* at paras. 35-37, Paris J. considered

> expert evidence that apartments appropriate to the plaintiff's needs were extremely difficult to find and concluded, on that basis, that there was no reasonably available alternative to a house for the plaintiff. The question of whether it is better to posit purchased or rented accommodation for the purpose of valuing a just allowance for accommodative housing cannot be answered in the abstract. …
>
> [Emphasis added.]

[19] As is always the case in awarding compensation for economic loss, the assessment is a matter of judgment, not mathematical calculation; *Rosvold v. Dunlop,* 2001 BCCA 1 at para. 18.

[20] Before tackling the main issue of quantification, it is helpful to begin by addressing the following preliminary questions on which the parties join issue:

1. Was suitable rental accommodation reasonably available to Ms. Gustafson?

2. On the footing of purchased accommodation:

   (a) Is a negative adjustment required to reflect the acquisition of an enduring capital asset?

   (b) Is a negative adjustment required "for the plaintiff's pre-accident style of living"?

   (c) Is a negative adjustment required for rental cost that would have been incurred in any event?

**Was suitable rental accommodation reasonably available to Ms. Gustafson?**

[21] In my reasons at para. 127, I stated that:

> [127] … It is possible, but not obvious, that appropriate rental accommodation is simply unavailable, so that Ms. Gustafson will be forced to purchase, but I cannot assume that. If the real estate market offers both appropriate rental accommodation and suitable houses to purchase, it would not be fair to the defendant to require her to pay the higher cost.

[22] On the evidence now brought forward, I am persuaded that wheelchair accessible rental accommodation in a suitable location has not been reasonably available to Ms. Gustafson.

[23] Four witnesses testified to the difficulty of obtaining wheelchair-accessible accommodation in the Fraser Valley, or at all.

[24] Stuart Carmichael gave expert evidence as a real estate appraiser with particular expertise respecting the cost and availability of accessible and adaptable housing for rent or purchase in the Lower Mainland. In late 2022, he searched for rental accommodation that would meet Ms. Gustafson's needs and was unable to turn up any plausible properties. His general observation is that there are insufficient spaces available to meet the demand, low turnover, and long waitlists. On the waitlist point, Mr. Carmichael speaks with the authority of long personal experience developed in working with people looking for adaptive or accessible housing in the Lower Mainland. He says that he views waitlists as a waste of time, and finds it better to pound the pavement, looking for a place.

[25] The defence points out that, on instructions, Mr. Carmichael was searching for a three bedroom unit, while a two bedroom unit would house Ms. Gustafson and Mr. Blanes, and damages for the cost of personal support have been assessed on the basis of live-out, not live-in, care, Under cross-examination, Mr. Carmichael doubted that expanding the search parameters would make much difference because accessible rental accommodation is so scarce. Adapting rental accommodation to make it accessible is not usually an option, because landlords are usually unwilling to undertake the structural adaptations required for wheelchair accessibility such as widening hallways and doorways, eliminating door jams, and installing ramps.

[26] Ms. Pierce confirms Mr. Carmichael's observation that wheelchair accessible rental accommodation is always challenging to find. While she lacks direct experience specific locating residential accommodation in the Fraser Valley, she describes the same general challenges: a shortage of supply, low turnover, and

reluctant landlords. She notes that Ms. Gustafson would likely face a further challenge in finding rental accommodation that would accept her dog. Ms. Gustafson's dog is an important source of emotional support for her and I think it would be reasonable for this to weigh heavily for her.

[27] Ms. Chan is an occupational therapist who searched for wheelchair-accessible rental accommodation suitable for Ms. Gustafson on-line in December 2022 and June 2023. She searched 16 sites, ranging from ones maintained by Spinal Cord Injury BC and BC Housing, through general rental sites, to Craigslist and Kijiji. She was searching for three or four-bedroom units in Abbotsford and Chilliwack, but her search parameters were general enough that they turned up two-bedroom units in Vancouver, Victoria, and Fort St. John. They turned up nothing that was remotely suitable in a location of interest.

[28] Mr. Blanes describes efforts he made to find rental accommodation for himself and Ms. Gustafson beginning in November 2019 through the summer of 2020. He was looking in Abbotsford, Aldergrove, and Langley but not, at the time, in Chilliwack. He was unable to find anything that would accommodate Ms. Gustafson's wheelchair, or permit alteration of door jams, hallways, and bathrooms to make a unit wheelchair accessible. He adds that keeping a pet was also a problem. After 2021, Mr. Blanes' focus changed to searching for accommodation to purchase.

[29] While Mr. Blanes did not enroll Ms. Gustafson and himself on rental waitlists maintained by organisations such as Spinal Cord BC, based on Mr. Carmichael's evidence concerning the efficacy of waitlists, I do not think that likely would have made a difference.

[30] Pulling all this evidence together, I conclude that rental accommodation suitable to Ms. Gustafson's needs was not reasonably available to her in a suitable location in the period from late 2019, when she came home from GF Strong, until the spring of 2023, when she and Mr. Blanes purchased the house in Chilliwack.

[31] It would not have been reasonable for Ms. Gustafson to delay purchasing a property in 2023 against the chance that accessible rental accommodation might become available in the future. She had already endured four winters in the farmhouse. It was poorly insulated and, as I noted in my earlier reasons at para. 114, her physical condition is such that the lack of insulation is a particular problem for her.

[32] It follows from the starting point that a housing allowance is justified and my conclusion that accessible rental accommodation was not reasonably available that an allowance should be based on the reasonable cost of purchasing appropriate accessible accommodation, subject to such adjustments as may be necessary. I turn to the adjustments sought by the defence.

**On the footing of purchased accommodation, is a negative adjustment required to reflect the acquisition of an enduring capital asset?**

[33] The defence seeks an adjustment to reflect the benefit obtained for Ms. Gustafson and her heirs from the purchase of an enduring capital asset. It submits that such an adjustment was approved in principle by the Court of Appeal in *Scarff,* but rejected on the facts of that case because the evidence did not furnish a proper basis for the calculation of an adjustment. It proposes that "a downward adjustment of at least 50% should be made to back out the value of land which is expected to appreciate over time".

[34] Citing *Nan v. Black Pine Manufacturing Ltd.* (1991), 55 B.C.L.R. (2d) 241 (C.A.) at paras. 18-30 and *Larchkwiltach Enterprises Ltd. v. F/V Pacific Faith,* 2009 BCCA 157 at para. 36, Ms. Gustafson submits that the defence is seeking an adjustment for "betterment", the defence bears the onus, and has tendered no evidence to support this argument.

[35] The issue is whether the adjustment sought by the defence is supported by the evidence because, in principle, the possibility of an adjustment flows from the need to avoid the potential for overcompensation by funding the acquisition for the plaintiff and her heirs of an appreciating capital asset as noted in para. 128 of my

earlier reasons for judgment. In her written argument, Ms. Gustafson submits that para. 128 “provides a succinct and accurate synopsis of the law”.

[36] The defence relies on evidence elicited in cross-examination of an appraiser called by Ms. Gustafson, Que-Tran Hoang. Ms. Hoang agreed with the cross-examiner that residential property in the Fraser Valley has appreciated in value over various past 11-year periods. Usually, if a residential property holds a building that is more than 45 years old, most of the value in the property will be in the land. There is a continuing high demand for land, and buyers and sellers are likely to anticipate that it will increase in value in the future, subject to considerations such as increasing interest rates, and construction costs.

[37] I accept Ms. Hoang’s evidence. However, notwithstanding the present anticipation of buyers and sellers in the marketplace, I cannot infer, from a history of past increases in land values, that land will continue to increase in value in the future. Sometimes markets turn. I do find that a residential property in the Fraser Valley purchased in 2023 is at least as likely to maintain as to suffer a reduction in its value over the 11.7 remaining years of Ms. Gustafson’s life expectancy.

[38] No matter what happens, the overwhelming likelihood is that Ms. Gustafson’s heirs will benefit from her ownership of the property at the end of her life. The most likely scenario is that Mr. Blanes will survive Ms. Gustafson, and on her death will inherit her interest in the property as the surviving joint tenant. If Mr. Blanes should die first, an even greater benefit will pass to her remaining heirs on her death. If the joint tenancy is severed, Ms. Gustafson’s heirs will still receive a substantial benefit on her death.

[39] In such circumstances, I find that there should be an adjustment to avoid overcompensation of Ms. Gustafson and her heirs at the defendant’s expense. The defendant’s obligation is only to compensate Ms. Gustafson for the additional housing expense she will experience, as a result of her injuries, during her lifetime. The defendant is not required to purchase an asset for the benefit of her heirs.

[40] Assuming as I do that the house purchased in April 2023 (or any other house that Ms. Gustafson might have purchased) will retain its value during Ms. Gustafson's lifetime, at first glance, the expected benefit to her heirs would be the present value of a payment equivalent to the purchase price to be received in 11.7 years' time. If property values have increased in real terms 11.7 years from now, the calculation will turn out to have been conservative, but the defence has not persuaded me that a real increase in value is likely, or forecast the theoretical magnitude of such an increase.

[41] The difficulty with this calculation is that it overlooks Mr. Blanes' position as Ms. Gustafson's spouse and partner, and the interest that he has already acquired in the house purchased in April 2023. In my view, the better approach is to adjust the reasonable purchase price of appropriate accessible accommodation by an amount equal to the present value of 50% of the property's value to be obtained in 11.7 years' time.

[42] The adjustment should be limited to 50% of the property's future value because Mr. Blanes is already a joint owner of the property with Ms. Gustafson and, given their relationship and his role in her life before and since the accident, their decision to take title to their present home (or any other property they might have purchased) as joint owners was natural and entirely appropriate. Ms. Gustafson's relationship with Mr. Blanes is a true familial partnership. From the evidence given by both of them at the earlier trial and Mr. Blanes' description at the continued trial of his role in searching for and purchasing a house, I infer that the family finances are integrated. To the extent that the property was purchased with funds belonging to Ms. Gustafson (as opposed to the in-trust award), the net economic benefit to Mr. Blanes cannot be construed as an advance on an eventual inheritance.

[43] Deducting the present value of a benefit equal to 50% of the property's future value in 11.7 years' time at an annual discount rate of 1.5% equates to a negative adjustment of 42%.

**Is a negative adjustment required "for the plaintiff's pre-accident style of living"?**

[44] The defence submits that, by purchasing a house, Ms. Gustafson achieves a significant improvement by comparison to her pre-accident circumstances. Before she was a renter, and now she and Mr. Blanes are homeowners. The defence argues that "home ownership was out of reach for the plaintiff, absent the accident". The defence submits that such an adjustment is especially warranted if the starting point is the new home they have in fact purchased, because it is much nicer and more comfortable than the farmhouse. It has an area of 2,849 square feet and sits on a 17,000 square foot lot. The farmhouse had an area of roughly 1,000 square feet and was undoubtedly less comfortable.

[45] There are two propositions embedded in this argument. In my view, both are misconceived.

[46] The first proposition is that Ms. Gustafson's economic loss may be offset by non-pecuniary comforts and benefits associated with the purchase of a home. But, as already noted (and stressed by the defence in another context), economic and non-pecuniary losses are categorically different. Theoretically, non-pecuniary benefits might be taken into account in the assessment of an award for non-pecuniary loss. As a practical matter, that proposition would be a non-starter in a case involving catastrophic injuries in which the non-pecuniary award is capped as a matter of legal policy (since *Andrews v. Grand & Toy Alberta Ltd.,* [1978] 2 S.C.R. 229, 1978 CanLII 1). Any non-pecuniary benefits obtained by Ms. Gustafson through the purchase of a house, such as the pleasures of home-ownership, are irrelevant to the determination of a housing allowance as an element in the cost of her future care.

[47] The second proposition is that the house Ms. Gustafson and Mr. Blanes have purchased is excessive to her need for accessible housing. This is only relevant at a different stage in the analysis, in determining whether the price paid for the house was reasonable, given Ms. Gustafson's needs and circumstances. If a more

modestly priced and accessible house was reasonably attainable, then its purchase price should be the starting point for the quantification of the loss under this head of damage, and no additional allowance would be appropriate. If the price paid was reasonable, then no allowance is appropriate.

**Is a negative adjustment required for rental cost that would have been incurred in any event?**

[48] The defence submits that the present value of the rent Ms. Gustafson and Mr. Blanes would otherwise have paid for the rest of her life expectancy must be deducted from the award. The rent was a very modest $900 a month.

[49] A difficulty with this submission is that Ms. Gustafson never contributed to paying the rent. Mr. Blanes paid it all. Ms. Gustafson does not obtain any economic saving from home ownership in the form of a cost foregone.

[50] A second difficulty is that the argument does not take into account costs of home ownership not borne by residential renters, such as property taxes and costs of maintenance. If there were a cost foregone to be attributed to Ms. Gustafson, the evidence does not permit its calculation.

[51] In the circumstances, the defence has not established that there should be a negative adjustment in respect of rental costs that would have been incurred in any event.

**What was the reasonable cost of purchasing appropriate accessible accommodation?**

[52] Ms. Gustafson submits that the reasonable cost of purchasing appropriate accessible accommodation was the $1.018 million she paid for the house in Chilliwack in April 2023. She submits that, taking Ms. Hoang's evidence and Mr. Stregger's evidence together, the cost of purchasing an adaptable house and modifying it to her needs closely approximates the amount actually paid by Ms. Gustafson.

[53] The defence submits that appropriate accessible accommodation was available at a lower price. It submits that, taking Ms. Hoang's evidence and Mr. Stregger's evidence together, Ms. Gustafson could have acquired an adaptable house and modified it to meet her needs for approximately $619,000 to $656,000.

[54] Neither argument fully comes to terms with the evidence upon which it relies.

[55] In her report, Ms. Hoang estimates the likely range of prices to acquire a detached residence within 10 km of a hospital in Abbotsford, Chilliwack, Langley or Surrey, the home to have three bedrooms on one level and sit on a lot of 4,000 to 7,500 square feet. She estimates a cost of $500,000 to $700,000 in Chilliwack, and substantially more in the other municipalities.

[56] In cross-examination, Ms. Hoang was persuaded to drop the lower end of her range to $450,000. The cross-examiner did not explore the effect of this concession on the upper end of the range. I conclude that the range should be adjusted across the board to $450,000 to $650,000.

[57] In cross-examination, Ms. Hoang rejected a suggestion that the number of bedrooms would make a difference to the price. In her judgment, having regard to sales data, the total area of a house and lot is material. The number of bedrooms is not.

[58] Ms. Hoang's evidence establishes the price range in which one might reasonably expect to acquire a generic adaptable house for Ms. Gustafson. The defence accepts that modifications would be required to turn an adaptable house into a fully wheelchair accessible house suitable for Ms. Gustafson.

[59] Mr. Stregger estimates the costs to modify a single-family home to make it fully wheelchair accessible at $402,820 but, as the defence points out, some of his costs must be excluded. In particular, allowances totalling $82,500 for the installation of an elevator are unnecessary, because we are beginning with a single-story building. In addition, Mr. Stregger allows $12,000 for the supply and

installation of a back-up generator which has already been awarded as a separate head of damage.

[60] The defence submits that Mr. Stregger's allowance of $22,000 in connection with the supply and installation of a ceiling track and lift in the bedroom and bathroom should be eliminated because Ms. Gustafson has already been awarded $263 to remove and replace the track system at the farmhouse and $7,330 to replace the lift apparatus used in transferring her. I think that Mr. Stregger's $22,000 allowance should be reduced to the extent of the $7,593 already awarded, but do not agree that it should be eliminated. The $22,000 amount is reduced to $14,407.

[61] The defence submits that Mr. Stregger's allowances totalling $42,000 for hardening the surfaces of walkways and building ramps to facilitate wheelchair access should be eliminated because "it is unlikely this would be necessary in a single-level rancher-style home". I am unwilling to infer that single-level houses are unlikely to require ramping and harder walkways.

[62] I conclude that Mr. Stregger's estimate of $212,340 in direct costs should be reduced to $105,247. Once contingencies, design costs, fees, permits, contractor's overhead and mark-up, and GST are taken into account, the cost is increased to approximately $206,000.

[63] Putting Ms. Hoang's and Mr. Stregger's estimates, as modified, together, the cost of an accessible home in Chilliwack is in the range of $656,000 to $856,000.

[64] In his investigation of accessible units for sale, Mr. Carmichael notes a fully wheelchair accessible property meeting this description and falling within this range. It is a 1,438 square foot rancher in Chilliwack with three bedrooms that sold for $815,000 in December 2022. He also notes a 1,768 square foot rancher in Chilliwack listed (not sold) for just less than $900,000 in January 2023.

[65] I conclude that it would have been reasonable for Ms. Gustafson to pay up to $850,000 to acquire a fully accessible house in Chilliwack in early 2023. She paid substantially more than that. As already noted, the house she purchased is relatively

large and sits on a very large lot. The large lot likely makes it a good investment. On purchase, it was already fully accessible and did not require adaptation to her needs. The purchase made sense for Ms. Gustafson and Mr. Blanes, but it would not be fair to the defendant to charge her for the entire purchase price, prior to adjustment.

[66] I therefore conclude that Ms. Gustafson should be awarded a housing allowance based on the purchase and adaptation, as necessary, of a house for a total of $850,000, subject to adjustment as described above.

### Quantification of the housing allowance

[67] Accordingly, I find that an award to compensate Ms. Gustafson for the economic loss associated with housing costs occasioned by her injuries that is fair to both parties is $493,000. This amount is equal to $850,000 reduced by 42% to reflect the enduring value that will be obtained by Ms. Gustafson's heirs on her death.

## Disposition

[68] I award Ms. Gustafson an accommodative housing allowance equal to $493,000 as an element of the cost of her future care.

[69] As agreed by the parties, Ms. Gustafson is awarded a management fee of $100,000.

[70] If necessary, the parties may schedule a further hearing to address the question of costs through the registry.

"Gomery, J."