IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kim v. Murdoch,*
2023 BCSC 1647

Date: 20230919
Docket: M196122
Registry: Vancouver

Between:

Jiyeon Kim and Myeongsup Shim

Plaintiffs

And

Brandon Geoffrey Murdoch and Toyota Credit Canada Inc.

Defendants

And

Insurance Corporation of British Columbia

Third Party

Corrected Judgment: The text of the judgment was corrected at paragraph 7 on September 22, 2023.

Before: The Honourable Mr Justice Crerar

Reasons for Judgment

Counsel for the Plaintiffs:	T.J. Maledy C.R. Bacon H.K. Nijjar
Counsel for the Defendants and Third Party:	J.E. Fergusson J.A. MacIver
Place and Dates of Trial:	Vancouver January 9-13, 16-18 and 20, 2023
Written Submissions:	March 20, 2023

Place and Date of Judgment: Vancouver
September 19, 2023

I. INTRODUCTION

[1] On March 6, 2019, at the age of 17, just three months before his scheduled high school graduation, Jaeheon Shim was struck and killed by a vehicle operated by the defendant Brandon Murdoch and owned by the defendant Toyota Credit Canada Inc. The defendants have admitted liability.

[2] Jaeheon, who went by "Eric" to his Canadian friends, was by all accounts a generous and hard-working young man.[1] He was active in his church group and high school, played bass in church and rock bands, practiced taekwondo, and enjoyed a strong circle of friends, both Korean-Canadian and otherwise. He was also loyal and helpful to his family. He worked long hours in his parents' sushi restaurant, providing services integral to its operations, without a salary. He broadly assisted his parents, who speak limited English, through translation and other assistance, in business, and in life, for many hours each week, serving as an interpreter and an interface in their dealings with banks, utilities, medical appointments, and other English speakers.

[3] Eric's parents, the plaintiffs, came to Canada primarily to allow him to study and grow outside of the highly competitive and all-consuming Korean education system. Eric and his mother moved to Nanaimo in 2012, to give Eric, then 10 years old, an academic head start in his new English-speaking environment. His father joined them in 2016. The parents purchased their sushi restaurant in 2016, and a second restaurant, a Korean barbeque, in 2021.

[4] Eric was the plaintiffs' only child.

[5] Apart from the sad facts underlying the case, the Court's task is profoundly difficult and inherently hypothetical: what would have been the economic future path of Eric and his parents, had he lived? Central to that abstract issue is the challenging assessment of whether and to what extent Eric would have followed the traditional Korean practice of *hyodo (*효도 in *hanja* characters; 孝道 in traditional characters):

filial piety, which generally compels children to provide economic and other support to their parents.

II. PRELIMINARY EVIDENTIARY ISSUES

A. Expert evidence: *hyodo*

[6] The plaintiffs rely on the expert report and testimony of Dr Ross King, a professor of Korean Studies, in the Department of Asian Studies, at the University of British Columbia. The defendants tendered no contrary or rebuttal evidence on the issue.

[7] Professor King set out the principles, practices, forms, and history of *hyodo* generally, and canvassed studies on *hyodo* practices amongst Korean-American immigrants. He noted amongst the studies a 2010 report based on interviews with first- and second-generation Korean-Americans:

> ….Almost all respondents discussed that when the time came they wished to repay their parents for their harsh hardships and hard work with care and support. Respondents discussed reciprocity and repayment to their parents in several ways including: 1) obligation and duty for all they have done, 2) a form of appreciation for their parental sacrifices, and 3) meeting the expectations of their parents' wishes around care and old age.

[8] He confirmed that the *hyodo* duty traditionally weighs heaviest on the eldest son, and, until the 1990s, was a statutorily-imposed obligation in Korea.[2] The Korean government broadly awards prizes for displays of filial piety. Children in more traditional families that follow *hyodo*, and maintain genealogies, and celebrate traditional holidays are more likely to practice *hyodo* themselves.

[9] The King report reaches the balanced conclusion that while Korean filial piety practices were "*resilient*", and that "*it would be rash to assume that filial piety practices "weaken" automatically in diaspora …the research shows that both attitudes and practices can vary and change according to place, generation, religion, financial considerations, gender, etc."*

[10] The defendants object to Professor King's testimony and report on two bases. First, they argue that he is an expert in Korean languages and not in sociology,

gerontology, genealogy, nursing, or economics in such a way as to properly digest and weigh the academic literature he cites, or to provide testimony about the economic practice of *hyodo*, particularly in Canada amongst young Korean-Canadians. Second, his evidence fails to satisfy the test for expert opinion evidence set out in *White Burgess Langille Inman v. Abbott and Haliburton Co*., 2015 SCC 23 and *R. v. Mohan*, [1994] 2 SCR 9.

[11] With respect to the first objection, Professor King is well qualified to provide evidence about the Korean cultural practice of *hyodo*. He has taught Korean language and literature since 1990, and served as the department head of Asian Studies at the University for 12 years, including serving as Director of the UBC Centre for Korean Research between 2018 and 2021. His central academic work has been an annotated translation of the *Illustrated Account of the Three Confucian Bonds*, a Neo-Confucian ethics text first printed in Korea in 1434. One of those three bonds is *hyodo*. He has had the opportunity to study and observe filial piety in Korean culture for 40 years, personally, professionally, and academically. He has exhaustively canvassed literature on *hyodo* practices amongst Korean émigrés; his general and specific academic qualifications allow him to digest and summarise these studies. These studies, as distilled and summarised in his report, and his report generally, provide the Court with “special or peculiar knowledge” that Professor King has acquired through “study or experience”: *Mohan* at 25 (para. 31). This particular knowledge is outside of the ordinary understanding or knowledge of the Court, and serves to assist the Court on this critical point.

[12] With respect to the second objection, with the exception of a single sentence (“Given all these factors, it would be astonishing if Jaeheon Shim – – had he been able to fulfil his potential as an independent adult in Canada – – did not practice *hyodo* for his parents in their old age, in some significant way or fashion.”), which the plaintiffs voluntarily redacted, the report is not subject to the *White Burgess* analysis. While it provides expert testimony on cultural practices, it does not provide opinion testimony setting out hypotheses on future events or causation or the like, based on inferences and theories drawn from the facts of the case, that is the subject of *White*

Burgess. The first paragraph of *White Burgess* sets out the subject matter of its limitations, tests, and concerns:

> [1] Expert opinion evidence can be a key element in the search for truth, but it may also pose special dangers. To guard against them, the Court over the last 20 years or so has progressively tightened the rules of admissibility and enhanced the trial judge's gatekeeping role. These developments seek to ensure that expert opinion evidence meets certain basic standards before it is admitted.

[13] Generally, witnesses are only permitted to provide evidence on facts. They may not draw inferences from those facts, in the form of opinions. As set out in *White Burgess*:

> (1) The Exclusionary Rule for Opinion Evidence
>
> [14] To the modern general rule that all relevant evidence is admissible there are many qualifications. One of them relates to opinion evidence, which is the subject of a complicated exclusionary rule. Witnesses are to testify as to the facts which they perceived, not as to the inferences — that is, the opinions — that they drew from them. As one great evidence scholar put it long ago, it is "***for the jury to form opinions, and draw inferences and conclusions, and not for the witness***": J. B. Thayer, *A Preliminary Treatise on Evidence at the Common Law* (1898; reprinted 1969), at p. 524; see also C. Tapper, *Cross and Tapper on Evidence* (12th ed. 2010), at p. 530. While various rationales have been offered for this exclusionary rule, the most convincing is probably that ***these ready-formed inferences are not helpful to the trier of fact and might even be misleading: see***, e.g., *Graat v. The Queen*, [1982] 2 S.C.R. 819, at p. 836; *Halsbury's Laws of Canada: Evidence* (2014 Reissue), at para. HEV-137 "General rule against opinion evidence".
>
> [15] Not all opinion evidence is excluded, however. Most relevant for this case is the ***exception for expert opinion evidence on matters requiring specialized knowledge***. As Prof. Tapper put it, "the law recognizes that, so far as matters calling for special knowledge or skill are concerned, ***judges and jurors are not necessarily equipped to draw true inferences from facts stated by witnesses***. A witness is therefore allowed to state his opinion about such matters, provided he is expert in them": p. 530; see also *R. v. Abbey*, [1982] 2 S.C.R. 24, at p. 42.
>
> [emphasis added]

[14] An expert may give non-opinion evidence about facts without engaging the *Mohan/White Burgess* edicts. As stated in *Ford v. Lin*, 2022 BCCA 179:

> [62] It is well-established that persons such as Dr. Comeau and Dr. Raabe will often be in a position to give both opinion and fact evidence that is

relevant. Apposite is the following from judgment of Justice Fenlon in *Luis v. Marchiori*, 2018 BCCA 317, 19 B.C.L.R. (6th) 345:

> [5] It is useful to begin by distinguishing between expert fact evidence and expert opinion evidence. Witnesses who become involved in litigation due to their profession—such as a treating doctor or an engineer overseeing a construction project—may be called to testify about their observations. Although the observations may be beyond the knowledge of a layperson, that testimony is not opinion evidence. Examples include a witness describing radiological images, identifying a microbe seen under a microscope, or identifying the pathological process seen on surgery or autopsy. ***Such evidence is sometimes described as "non-opinion expert evidence***": Robert B. White, *The Art of Using Expert Evidence* (Toronto: Canada Law Book, 1997), ch. 2 at 16–21.
>
> [emphasis added]

[15] *Luis v. Marchiori*, in turn, cited Justice Schultes's useful distinction in *Anderson v. Dwyer*, 2009 BCSC 1872 at para. 14:

> . . . However, the witness's factual narrative of the actions he took and the observations he made, including describing without interpretation, the anatomical features he observed in the x-rays does not amount to offering an opinion and does not offend the Rule. The fact that he brings special training or experience to bear in having taken those actions and made those observations is not determinative. ***It is whether he draws inferences or offers opinion beyond what the actual evidence itself is capable of revealing.***
>
> [emphasis added]

[16] By analogy, in *Eco-Zone Engineering Ltd. v. Grand Falls – Windsor (Town)*, 2000 NFCA 21 at para. 14, the Court permitted expert evidence providing "overview of the mechanics of [the Goods and Services Tax]". Such evidence was factual, not opinion, evidence:

> While the source of information is an expert, it is not opinion evidence and it is not the evidence to which the rules of admissibility of expert evidence are directed.

[17] Courts not infrequently admit evidence about cultural practices, although some have described such evidence as expert opinion evidence. For example:

a) *A.S.P. v. N.N.J.*, 2013 BCSC 120 at paras. 343–373, aff'd 2015 BCCA 415: the Court qualified three experts to give evidence on Sikh naming practices;

b) *Her Majesty the Queen v. Shafia*, 2012 ONSC 1538 at paras. 11–12, 32, aff'd 2016 ONCA 812: the Court qualified an expert on honour killings. The purpose of the evidence was to "educate the jury on the general phenomenon of honour killing … Dr. Mojab is not going to be asked, whether or not based on the evidence in the trial, that this was an honour killing.": para. 32;

c) *R. v. Sadiqi*, 2009 CanLII 37350 (ONSC), aff'd 2013 ONCA 250: the Court qualified an expert on the intersection of honour killings, patriarchy, and violence in the Middle East. The expert had no connection to the parties, and "will not testify about the facts of the case or any similar hypothetical facts, but is tendered only to impart her socio-cultural learning to the jury. It is not classic opinion evidence in which the expert is asked to draw conclusion about an issue in the case": para. 46.

[18] *Lax Kw'alaams Indian Band v. The Attorney General of Canada et al*., 2006 BCSC 1961 is the closest case to the present, both with respect to compilation and distillation of studies, as well as precision of qualifications. There, Satanove J permitted the evidence of a professor on the social organization, economy and trade of the Tsimshian tribes of the north coast of British Columbia. Much like the present objections, the professor did not possess qualifications and expertise on every aspect of the report: specifically, areas of economics and anthropology. Nonetheless, her in-depth study of the culture and history of the Tsimshian tribes, gathered from her studies, as well as 20 years living in the community, made her an appropriate expert witness:

> [5] I respectfully disagree. Most of the defendant's submissions, in my opinion, go to the weight to be given to Dr. Anderson's report, not to its admissibility. In my view, the defendant is asking me to apply an impossibly high standard of expertise as the threshold over which a witness must cross before being allowed to tender an opinion to the court. ***The threshold test***

> ***has never been that the proffered expert must have academic training in a precise sub-discipline or on a specific issue that arises at trial.*** As the Supreme Court of Canada said in *Regina v. Marquard*, [1993] 4 S.C.R. 223 at para. 35 quoting from Sopinka on the *Law of Evidence in Canada*:
>
> > ***The admissibility of expert evidence does not depend upon the means by which that skill was acquired. As long as the court is satisfied that the witness is sufficiently experienced in the subject matter at issue, the court will not be concerned with whether his or her skill was derived from specific studies or by practical training, although that may affect the weight to be given to the evidence.***
>
> [6] In my view, it is the ***experience of the witness that is key***. This includes academic training, if any, but more importantly, such other things as practical study, collaboration with colleagues, ongoing research, writing and publishing. For example, Dr. Anderson's experience living amongst the contemporary Tsimshian while ***exploring and studying their oral histories, language and culture in the broadest sense has some value and far exceeds any knowledge or expertise that I may have in this area.***
>
> [emphasis added]

[19] These words speak directly as to how Dr King's qualifications, experience, and expertise provide necessary and reliable assistance to this Court on this central issue.

[20] In any case, if the above analysis is incorrect, I would permit Dr King's evidence under the *White Burgess/Mohan* analysis. In the first step, the King report is of central relevance to the dispute. It is necessary, setting out special knowledge beyond the ordinary knowledge and experience of the Court. No exclusionary rule applies. Dr King is a properly qualified expert in Korean studies, including cultural practices. In the second step, the expert evidence is sufficiently beneficial to the trial process to warrant its admission despite the potential harm to the trial process that may flow from the admission of the expert evidence. The evidence was brief, and consumed little court time. As stated above, the King report and testimony did not overstate its conclusions; it presented a balanced overview of the concept and practice of *hyodo*, and did not attempt to usurp the role of the trier of fact.

B. Hearsay evidence

[21] The defendants indicated their anticipated objection to hearsay evidence, recounted by, for example, Eric's pastor, that Eric had made specific statements about his concern and care for his parents, as well as his academic and vocational intentions. As noted by the defendants, these generally were not attributed to specific conversations, times, or places, as would ordinarily be required for acceptance of a hearsay statement.

[22] At the end of the day, there were in fact few specific hearsay statements recounted by witnesses as attributable to Eric. Most were descriptions of sentiments and feelings expressed by Eric of his concern for his parents, or of his possible academic or vocational future not entirely within his control: not assertions of past ascertainable facts that form the more typical subject matter of hearsay inquiries.

[23] None of the statements are central to the findings this Court must make. For the most part, such statements merely corroborate the actions attributed to Eric as exhibiting a devotion to helping his parents. The vocational and academic statements are similarly consistent with the overall evidence, including the likelihood that Eric would continue in the family business.

[24] In any case, the statements are both necessary and reliable, and admissible under the principled approach to hearsay. They are necessary, given Eric's death. While the statements could be attributed to Eric's desire to exhibit proper norms and sentiments of *hyodo*, such statements were consistent with and corroborated by his demonstrated manifestations of filial duty; the usual hearsay concerns about a motivation to lie are largely absent. Further, such statements of future intention, with respect to both parental support and future studies, would be for the most part admissible under the hearsay exception of a statement of intention by the declarant going to the declarant's state of mind at the time that the statement was made: see *Park v. VW Credit Canada Inc*., 2017 BCSC 1733 at para. 10.

III. LAW: FAMILY COMPENSATION CLAIMS

[25] The plaintiffs claim under the *Family Compensation Act*, RSBC 1996, c. 126 (the "***Act***")[3]:

> **Action for death by wrongful act, neglect or default**
>
> 2 If the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not resulted, have entitled the party injured to maintain an action and recover damages for it, any person, partnership or corporation which would have been liable if death had not resulted is liable in an action for damages, despite the death of the person injured, and although the death has been caused under circumstances that amount in law to an indictable offence.
>
> **Procedures for bringing action**
>
> 3 (1) The action must be for the benefit of the spouse, parent or child of the person whose death has been caused, and must be brought by and in the name of the personal representative of the deceased.

[26] Compensation under the *Act* is not intended to accomplish the impossible task of replacing or placing a value on the life of the deceased, or assuaging the pain of survivors through a financial reward. Nor does it compensate for loss of love, care, or companionship. Nor does it seek to punish or condemn the defendants. The *Act* focusses solely on compensation for economic losses suffered by the survivors: *S.L.B. v. M.A. Estate*, 2016 BCSC 1193 at para. 20; *Ghaly v. Mand*, 2023 BCSC 451 at para. 252. As stated in *Skelding (Guardian of) v. Skelding* (1994), 118 DLR (4th) 537 (BCCA) at para. 18:

> ….the amount which will provide at least the equal of what might have been expected to have been provided by the deceased person but for the accident. The assessment of the appropriate amount is to be "neither punitive nor influenced by sentimentality. It is largely an exercise of business judgment".

[27] As stated in *Lian v. Money Estate,* [1994] 8 WWR 463 (BCSC) at para. 18, rev'd on other grounds 15 BCLR (3d) 1 (CA):

> [18] There is no doubt that the value of a child's life, and the richness that child brings to the lives of her parents, cannot be measured in dollars. Nevertheless, what must be measured in this case is the financial benefit, if any, that Ms. Lian, had she lived, might reasonably have been expected to contribute to her parents.

[28] As stated in *Smith v. Vance*, 2022 BCSC 12:

> [45] It is important at the outset to acknowledge that this claim, as with all claims of this nature, arises from tragedy. In relation to these plaintiffs, much could be said about the impact of that tragedy upon them from a personal and emotional perspective. The close and loving relationship between the plaintiffs and their daughter Erin is not in dispute. That is not, however, the purpose of this litigation or this decision. This claim is for the pecuniary loss to the plaintiffs as a result of that personal tragedy.

[29] Where the death of a person deprives a surviving spouse and children of an existing income stream of support, entitlement to, if not quantification of, damages is usually uncontroversial. The exercise is much more difficult in the case of the death of a child, particularly one who has not yet established a steady stream of income, or a regular pattern of support for their parents. In such cases, with manifold future events and decisions that may make support more or less likely, and to what extent, "the claim may be pressed to extinction by the weight of multiplied contingencies": *Barnett v. Cohen*, [1921] 2 KB 461 at 472; *Chudleigh v. Ross*, [1955] 4 DLR 437 (BCSC); *S.L.B.* at para. 22. Awards are thus often modest: see, for example, the jurisprudential survey in *Smith* at paras. 104-108.[4]

[30] A rare category of cases where courts have awarded more than nominal family compensation damages for the death of a child is based on the deceased child's practised adherence to filial piety, entrenched in particular cultural norms. As stated in *Lian* (BCSC):

> [22] The concept of filial piety has been accepted by this court in other cases. In *Lai v. Gill* (1978), 28 B.C.L.R. 11 (S.C.), reversed as to the amount of damages (1979), 28 B.C.L.R. 17 (C.A.), which was reversed (1980), 28 B.C.L.R. 21 (S.C.C.), the plaintiff made a claim under the *Families' Compensation Act*, R.S.B.C. 1960, c. 138 [now the *Family Compensation Act*, R.S.B.C. 1979, c. 120], for the death of her 14-year-old daughter. In that case Berger J. accepted evidence that among people of Chinese descent it is customary for children to contribute a large part of their earnings to the family and to look after their parents in old age. He noted that the deceased, who was born and raised in Canada, had already been turning all of her earnings from part-time work over to her mother. Berger J. found that the deceased would have made constant and substantial contributions to her mother, based on this cultural tradition, even though the contributions may have been fluctuating, varying in the size and form they took, but likely to decrease with the passage of time, as the mother reached old age. He awarded the mother $25,000.
>
> [23] The concept of filial piety was also discussed by McKenzie J. in *Fong Estate v. Gin Brothers Enterprises Ltd*. (18 May 1990), Vancouver B890132

> (B.C.S.C.). In that case a 16-year-old girl was killed as she attempted to cross a busy intersection. Her family came to Canada from Hong Kong when the girl was an infant. McKenzie J. stated that although there was evidence that the younger generations of Oriental families have been influenced by North American culture, and no longer adhere rigidly to the customs which prevail in Hong Kong, he did not doubt that in Canada there is some adherence to the filial obligation to show gratitude or respect to one's parents by way of money. Notwithstanding evidence to the contrary, he found that need is a consideration in determining the scale of such contribution. Although McKenzie J. found that the parents in that case were not in need, he did not dismiss the possibility that their deceased child might have become a provider for them, had she survived. However, as this possibility was speculative, he awarded the parents $20,000.
>
> [24] I have concluded that filial obligations of a child, or the obligation to be filial, may be satisfied in a number of ways, none of which is exclusive of the other, for example, monetary contribution, career success, respect; all of which honour the parents. I find, on the evidence, that the quantum of the monetary aspect of filial obligation is based on need and ability to pay. Both poor and well-off parents may expect monetary contributions from a child; the amount will be determined by their respective circumstances.

[31] In *Lian*, the Court awarded the plaintiff parents (aged 56 and 59) $175,000 for future support lost on the death of their 20-year-old daughter in a motor vehicle accident. The Court accepted the evidence of a professor of Chinese studies that filial duty is ingrained in Chinese children, and that the children of families recently immigrated to Canada from China may have a stronger sense of obligation to their parents than do children who have lived in western culture for a longer time. The Court concluded:

> 25. I find that prior to her death Ms. Lian exhibited such a filial obligation to her parents by word and deed. She contributed to their monetary support and to their day-to-day needs. She wrote letters to her friends at Tianjin University, commenting on her filial obligations. I have concluded that the economic strategy of the Lian family was to invest in Qian-Lei Lian's education with the expectation that she would assume a major role in the support of her parents. I accept that even if she had married, or if she had children, her responsibility to contribute to her parents' support would be ongoing during their lifetimes. Accordingly, I find the plaintiffs in this case had a reasonable expectation of support from Ms. Lian.[5]

[32] Similarly, in *Sum v. Kan* (1995), 8 BCLR (3d) 91 (SC) at 92-94, aff'd (1997) 44 BCLR (3d) 250 (CA), the Court awarded the plaintiff parents $90,000 for loss of future support on the death of their 23-year-old son; the amount was less than that in

Lian, based on the deceased's less promising prospects for future earnings. The Court accepted the evidence of experts on Chinese culture to the effect that amongst Chinese families in which filial traditions are observed, a symbolic financial contribution to the parents of between 10 percent and 20 percent of a child's gross income was a minimum expectation, and that while that practice may be altered among Chinese-Canadians, the primary determinant would be the practice within the specific family.

[33] Turning to the quantification of damages, in *Killeen v. Kline* (1982), 33 BCLR 225 (CA) at paras. 20-22, Lambert JA quoted with approval from *Keizer v. Hanna,* [1978] 2 SCR 342 at 351, where Dickson J (as he then was) stated that a strictly mathematical approach to the calculation of damages should be subordinate to the overriding principle that the final damages award be "fair and adequate". Lambert JA also endorsed the unanimous opinion in *Lewis v. Todd*, [1980] 2 SCR 694 at 708, where the Court stated that an award of damages is not simply an exercise in mathematics which leads to a "correct" global figure. Although greatly aided by the evidence of actuaries and economists, a trial judge should be accorded a wide range of freedom in adjusting the figures presented by the experts either upwards or downwards.

[34] In *Valencia-Palaciao v. KCP Heavy Industries Co. Ltd*., 2022 BCSC 1171, Kirchner J usefully summarises the methodology for such assessments:

> [34] In *Keizer*, Justice Dickson discussed the methodology for calculating loss of financial support. He said:
>
> > An assessment must be neither punitive nor influenced by sentimentality. It is largely an exercise of business judgment. The question is whether a stated amount of capital will provide, during the period in question, having regard to contingencies tending to increase or decrease the award, a monthly sum at least equal to that which might reasonably have been expected during the continued life of the deceased.
>
> [35] In *Johnson v. Carter,* 2007 BCSC 622, Justice Slade outlined the following "conventional approach" to determining an award for loss of future earning under the *Act,* based on *Coger Estate v. Central Mountain Air Services Ltd.,* 1992 CanLII 1611 (B.C.C.A.) [*Coger Estate*]:

> 1. A calculation is made of the income which has been lost up to the date of trial.
>
> 2. A calculation is made of the loss of future earnings.
>
> 3. A reduction is then made for personal consumption of the deceased.
>
> 4. Contingencies are reviewed to determine if a further reduction is required.
>
> [36] *Coger Estate* adds a fifth step, being to apply the tax gross up to the award. Counsel seek the opportunity to make further submissions on the appropriate tax gross-up after judgment. I give leave to do so.
>
> [37] ***Assessing loss of earning capacity is always an "inquiry into the unknowable":*** *Morrison v. Moore*, 2009 BCSC 1656 at para. 30 [*Morrison*]. ***Courts are required to consider future hypothetical events, assessed on a standard of real and substantial possibilities and weighted "according to the percentage chance they would have happened or will happen."***: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 9. ***The task is even more challenging when the deceased is young and there is little in the way of a work history from which inferences might be drawn as to future events***: *Cox v. Fleming,* 1995 CanLII 3127 (B.C.C.A.).
>
> [emphasis added]

[35] *Park* provides useful recent guidance for the quantification exercise, and has strong factual parallels. While also arising from the death of a Korean child studying in British Columbia, the claim was not based upon filial piety, but rather the proposition that the deceased daughter would have taken over the family wholesale food supply business in Korea as a gift from her parents, and thereafter supported them in consideration of that gift: see para. 36. Grauer J (as he then was) set out the judicial task:

> [43] Notwithstanding the many doubts raised by these and other questions, I conclude on the basis of the evidence of the plaintiffs, Song-Yi's brother and the counsellor that the scenario upon which the plaintiffs rely was a real and substantial possibility. The defendant did not seriously contend otherwise. Rather, the defendant took the position that while the contingency was indeed possible on the evidence, it was very unlikely.
>
> [44] It then falls upon me to assess the likelihood of the possibility. That likelihood, expressed as a percentage, must then be applied to any loss I find established by the evidence on the assumption that the contingency would in fact take place.
>
> [45] I turn first to assess what future loss is established by the evidence before considering to what extent any such loss must be reduced in accordance with the percentage likelihood of the contingency taking place.

[36] The Court rejected the primary scenario advanced by the plaintiffs: that the 26-year-old daughter would return to Korea and be given the family business in exchange for her payment of an annuity to her parents (roughly the same age as the present plaintiffs) for the rest of their lives. The Court noted that this future was far from certain, given the daughter's demonstrated hesitation in following her parents' plan for her in Korea: these included her fine arts studies, her travel to Canada, and her surreptitious cohabitation with a boyfriend. More importantly, however, the Court heard affirmative expert evidence, and evidence from the father, that the parents could avoid pecuniary loss through the sale of their business instead of gifting it to their daughter. The Court did award $37,725, based on a form of anticipated parental support not expressly tied to filial piety, assigning a 75 percent likelihood that she would both achieve an after-tax income of $40,000, and that she would choose to support her parents: paras. 64 - 66.

IV. DECISION AND DISCUSSION

A. Eric's likely hypothetical future

[37] The defendants argue that the claims based on future economic support are excessively speculative, with myriad contingencies cancelling each other out. If any damages are to be awarded, they should be significantly offset against future costs to raise the child, and should be nominal. They point to authorities such as *Mason v. Peters* (1982),139 DLR (3d) 104 (ONCA) at 111:

> The tests applied in estimating the monetary value of future benefits in the case of deceased adults are largely inapplicable in the case of deceased children and severely limit recovery. ***Their future is beset with doubts, contingencies and uncertainties; few indications can be found on which to evaluate, in financial terms, their potential worth to surviving parents or relatives.*** The point is made in *Barnett v. Cohen* et al., [1921] 2 K.B. 461, where the court dismissed a father's action for the death of a four-year-old son saying his claim had been "pressed to extinction by the weight of multiplied contingencies" [at p. 472]. Indeed, scrupulous adherence to the pecuniary loss requirements would make it difficult, if not impossible, save in rare cases, to find any actual or prospective economic loss flowing from a child's death. ***Given the realities of modern family life, the probable cost of raising and educating a son or daughter today exceeds by far the probable pecuniary value of any services they may render or financial contributions they may make in the future to parents or relatives.*** Whatever the situation may have been in earlier times when children were

> regarded as an economic asset, in this day and age, the death of a child does not often constitute a monetary loss or one measurable in pecuniary terms. The most significant loss suffered, apart from the sorrow, grief and anguish that always ensues from such deaths, is not potential economic gain, but deprivation of the society, comfort and protection which might reasonably be expected had the child lived -- in short, the loss of the rewards of association which flow from the family relationship and are summarized in the word "companionship".
>
> [emphasis added]

[38] The defendants also emphasise the Court of Appeal's urge for restraint in awards for losses of children in *Cox v. Fleming* (1995), 15 BCLR (3d) 201 (CA), a case predating its decisions in *Lian* and *Sum*, and without consideration of the trial decisions in those cases:

> 6 We have been referred to a number of cases where damages have been awarded under the Act for loss consequent upon the death of a child. ***Those awards range from $20,000 to $50,000. Those are, in my view, cases at the upper end of the range and many of them involve families of ethnic or cultural origins where there was evidence of a strong tradition of financial support or assistance having been provided by children***. I observe as well, however, that three of those awards were made some years ago.
>
> 7 Dealing with them chronologically, in 1980 *Suzuki et al v. Jackson* (26 March 1980) Vancouver Registry B790256 (S.C.B.C.), the award was $33,000. In 1981, in *Woo v. Walton* (28 January 1981) Vancouver Registry B781174 (S.C.B.C.) the award was $25,000. In 1982, in *Schwab v. Schaloske* (3 May 1982) New Westminster Registry 1470-76 (S.C.B.C.) the award was $30,000.
>
> 8 The more recent awards were in 1990 in *Fong v. Gin Bros*. Enterprises Ltd. et al (19 May 1990) Vancouver Registry B890132 (S.C.B.C.) where the award was $20,000. In 1992, *Bains v. Hansra* (1992), 72 B.C.L.R. (2d) 262, a judgment of this Court, the award was $50,000. The $20,000 award in *Fong* in 1990 was for the loss resulting from the death of a 16 year old daughter.
>
> 9 These cases and others are, of course, ***highly fact specific and the awards depend not only upon such factors as cultural traditions of support and dependency but as well on the particular family circumstances, the age of the deceased and of other children, the age and health of the parents or other survivors, their means, the relationship between the deceased and his survivors, the deceased's education, training, and vocational prospects, and in addition the predictions as to what all of those factors may lead to in the future.***
>
> 10 Looking at all of the factors at play in this case, at the awards that have been made in other similar cases and keeping in mind the many uncertainties which must be taken into account, it is my respectful view that

> $8,000 is so low an award as to amount to a wholly erroneous estimate of the loss. I would allow the appeal under this head and would substitute an award of $20,000.
>
> [emphasis added]

[39] The defendants also emphasise the dissenting judgment of Hall JA in *Sum*, which questioned the $90,000 award for future economic loss:

> 33. In any future loss estimation contingencies have to be considered***. In a case like the instant case, it seems to me that it is particularly important for a trial judge to have regard to various contingencies***. For instance, as noted in the report of Mr. Johnson, whose evidence was adduced on behalf of the defendants, it is pointed out that the obligation of filial piety that is traditional in Chinese culture may and probably would be much attenuated in the particular circumstances of this family in Canada. This was a young person just starting out in life on a career path. ***It is not apparent to me from the evidence that he had demonstrated any likelihood that he would make any net financial contribution to his parents for several years and it seems to me debatable as to whether there could have been well-founded expectation that he would make contributions of any great amount in the future***. In these cases, I believe that a careful consideration of the individual circumstances of the dependents (the plaintiffs) and the deceased must be made by the trier of fact.
>
> …
>
> 36. Given what I view as the ***very substantial negative or doubtful contingencies arising from the evidence in this case, I believe that the awards made at trial for past and future losses cannot stand.*** In my opinion, it was extremely unlikely that any net financial benefit would have accrued to the plaintiff parents from the deceased between the time of his unfortunate death in January of 1990 and the time of the trial in 1995. ***I also view the award of $90,000 for future loss to be unduly optimistic and I believe that it was an inordinately high estimate of damages…***.
>
> 37. I would make no award for past loss because in my judgment there was no substantial possibility demonstrated that any net financial benefit would flow to the plaintiff parents from this young person prior to the date of trial. ***Concerning any award for future loss, which of course must be a present value figure, on my view of the evidence, a figure in the range of $50,000-$60,000 seems to me to be a generous estimate of likely future loss.*** Adopting the most favourable position at the higher end of this range, namely, $60,000 and deducting therefrom the amount of $9,000 received from the estate of the deceased leaves one with a figure of $51,000. I would simply round that off to $50,000 and would award that sum for future loss. I would not interfere with the award made at trial for special damages.
>
> [emphasis added]

[40] For the reasons that follow, the Court largely accedes to the substance of the plaintiffs' claim, if not its damages model, or its quantification. Eric's consistently demonstrated dedication to assisting his parents, coupled with the particular cultural norms of *hyodo*, specifically established through expert evidence, place the present case in those rare circumstances where the loss of a child constitutes a sufficiently certain economic loss of substance. Further, the consistent practice on both sides of Eric's family, and amongst the family's friends, in Korea and in Canada, is that *hyodo* would be realised, to some extent, through regular and meaningful monetary payments. Following the jurisprudential admonitions above, to look to the particular circumstances of the deceased's family, Eric would have almost certainly practiced economic *hyodo* in some form.

[41] The plaintiffs, along with family friend Sunioung ("Sunnie") Choi and pastor Soo Yeon Lee, confirmed that Eric had demonstrated early and consistent adherence to *hyodo* generally, and contribution to his parents' economic well-being specifically. As their only child, he expressed, through words and actions, particular concern for his parents' immediate and long-term well-being.

[42] Eric worked at their sushi restaurant without pay. His duties were integral to its incorporation and day-to-day operations: his assistance included legal communications, computer work, establishing online delivery and point-of-sale systems, dealing with health inspections, connecting with suppliers, communicating with non-Korean speaking staff about scheduling, registering the business on Google, translating customer reviews, and creating menu items. This work dedicated to the family business occupied 3 or 4 hours after school and on weekends, for a total of around 20 hours a week. In addition to his direct economic assistance to the family business, he assisted his parents with their translation needs, housework, and generally helped with all aspects of their interactions with Canadian society. He similarly assisted his grandparents when they visited Canada and when he visited them in Korea.

[43] Beyond his sacrifice and assistance to his parents, he generally exhibited a strong sense of generosity, loyalty, and duty. He assisted his pastor at the Nanaimo Korean Presbyterian Church, played bass guitar in the band, and volunteered as a youth leader, as well as on church missions to Mexico and Port Alberni. He was immersed in traditional Korean values and culture, studying Korean at the church language school, and recognising with his family traditional Korean holidays at home. He stood out in consistently providing traditional forms of deference to more senior church members, bowing, using traditional honorifics, and offering assistance. He was described as a particularly loyal and supportive friend.

[44] Eric would have witnessed and understood the specific practice of economic support for parents demonstrated by his immediate and broader family members. The family witnesses confirmed that *hyodo,* including financial support of parents, is an important and deep-set value in their families, taught and practiced from generation to generation, including by the plaintiffs to Eric. Eric's father and paternal aunt have regularly given their parents money since starting work. For Eric's father, these amounts range from 10 to 20 percent of his earnings, depending on his ability; Eric's aunt provides approximately $1,000 monthly. In 2017, as a stated manifestation of his *hyodo* obligations, Mr Shim paid 747,000,000 Korean won, or about $700,000 Canadian, for an apartment near Seoul for his retired parents to live in, rent and mortgage free. The property is held in 50/50 ownership with his father. He continues to give his parents approximately $5,000 to $6,000 annually. Eric's mother and maternal uncle similarly all send money to their parents on a regular basis. She provides her parents approximately $5,000 to $7,000 annually. Both parents, along with other family witnesses, confirmed that they made these payments out of a deep-set traditional filial piety, regardless of parental need.

[45] This practice extends beyond Eric's traditional family, to Korean-Canadians of Eric's own generation.

[46] Brian Lee, aged 30, is a Kim family friend who served as Eric's tutor; he immigrated to Canada around the same age as did Eric. Mr Lee confirmed that he

provides his parents roughly $12,000 a year, or 10 percent of his salary, as well as through housekeeping assistance, gifts, and capital asset purchases, to realise *hyodo*: he calculates the total amount given to his parents as roughly 20 to 25 percent of his income (which amount includes payments that would be considered rental payments, as he lives at home). He and the plaintiffs describe him as a surrogate big brother to Eric; his *hyodo* example is not only evidence to the Court of the practice amongst the younger generation, but would serve as an influential exemplar to young Eric beyond the teachings and examples of his parents and relatives.

[47] Mr Lee confirms that his 15 closest friends, all born in Korea but having spent the majority of their life in Canada, also provide money to their parents on a regular basis.

[48] Eric's pastor's son, aged 23, also confirmed that he himself plans to provide his parents with one-third of his income once he obtains stable employment.

[49] At the time of his death, Eric did not have clear academic or vocational plans or aspirations: his stated interests were to study the culinary arts or, perhaps, to study psychology like his aunt. He required some tutoring in high school, and his marks were middling. His math and science marks in particular were not strong. He had been accepted in Vancouver Island University in Nanaimo, conditional on maintaining a C average, but had been declined by another university. The evidence, limited as it was, did not presage a career in psychology, or other field requiring extensive academic studies or qualifications.

[50] A restaurant future, and specifically one in the existing family restaurant, is far more likely, on the totality of the evidence. Eric had years of in-depth experience working on all aspects of his parents' restaurant. He expressed enthusiasm for that work, and shared ideas for expanding the business. He consistently obtained rare "A" grades in "Professional Cooking" class each year at school. He had expressed interest and researched possible studies at a Le Cordon Bleu cooking school, and told his friend that he intended to study culinary arts at university in the upcoming

year. It is more likely than not that he would follow his parents' vocations, and, specifically, join them in running the family restaurant.

[51] Under that scenario, or whether he pursued other culinary vocations, or psychology or another vocation, his demonstrated personal and business support of his parents presaged generous and regular financial contributions to his parents, in order to realise *hyodo.*

[52] At the same time, these generous futures must be balanced with multiple negative contingencies, the most relevant of which include:

a) Eric moving away from home and receiving less financial assistance from his parents, thus potentially decreasing his inclination to provide support in turn (see, for example, *Sum Estate* at para. 16);

b) Canadian values diminishing his sense of obligation in the form of payments (see, for example, *Sum Estate* at para. 16; *Yu* at para. 38); and

c) Eric establishing his own family, thus decreasing the share of income available to support his parents, or otherwise not having sufficient income to do so, through a failure of the restaurant or otherwise (see, for example, *Sum Estate* at para. 16; *Haczewski v. British Columbia*, 2012 BCSC 380 at para. 150; *Park* at para. 65).

[53] The Court also accepts and must incorporate in its hypothetical quantification the fact that *hyodo* may be demonstrated through myriad non-pecuniary means, such as assistance, companionship, gifts, or flowers, and that the amounts of payments, in aggregate, or as expressed as a percentage of income, varies widely, even within the Kim family and their friends' families.

B. Damages

[54] The plaintiffs seek the following damages:

Loss of future financial assistance a) profit share from business b) *hyodo* payments c) loss of restaurant labour services	 $416,191 to $832,383 $240,000 to $350,000 $61,527
Loss of housekeeping services	$186,456
Loss of translation services	$137,100
Loss of driving services	$27,420
Loss of guidance	$40,000
In-trust claim: Brian Lee	$7,980
In-trust claim: Sunnie Choi	$5,915
Special damages	$18,025.28
TOTAL	**$1,140,614.28 - $1,666,806.28**

[55] In support of these future loss claims, the plaintiffs relied upon a report of Kevin Turnbull, a chartered accountant and economist, supported by a report of Dr Tom Elliott with respect to the life expectancy of the parent plaintiffs. The defendants provided no rebuttal expert reports.

1. Loss of future financial assistance

[56] The parents hypothesise three losses of anticipated contributions from Eric flowing from his participation in the family restaurant.

[57] First, in the period between university and his assumption of daily operations, they argue that he would likely have paid between 30 and 50 percent of his wages to his family as pecuniary *hyodo*: $240,000 to $350,000.

[58] Second, they envision that they would have received 30 to 50 percent of the restaurant profits after the parents turned 55, at which point they would have gradually eased out of the business and Eric would have taken over its primary operations. The present value loss of profit ranges between $416,191 (25 percent) to $832,383 (50 percent).

[59] Third, the plaintiffs claim $61,527 for loss of Eric's labour contributions to the restaurant business. As this category represents a loss to the corporation, and not to the parents directly, it must fail.

[60] Returning to the first and second categories of loss claimed by the plaintiffs, even accepting that Eric would likely have followed this path into the family business, and remitted some form of payment as a means of *hyodo*, there are fundamental challenges with the damages quantification approach urged by the plaintiffs. Ultimately, this approach fails for the same reason as did the plaintiffs' damages model in *Park*.

[61] The present evidence is less clear than in *Park* about the mechanics of asset transfer to Eric within his lifetime: the father had not turned his mind as to whether he would wholly or partly gift or transfer ownership of the restaurant business to Eric during his lifetime. That said, the assumptions provided for the Turnbull Report to bring this case closer to that in *Park*: "you have instructed me to assume that in the absence of the accident Jaeheon *would have been gifted* his parents' restaurants, which she would then have owned and operated…" [emphasis added]. And although it is not wholly analogous to the gifting of a business, the father and grandfather co-own the Seoul apartment gifted by the father as a form of *hyodo*. Any assessment of whether damages have occurred, and any quantification of damages, will have to acknowledge that the parents remain in possession of the asset represented by the restaurant business that they otherwise may well have given wholly or partly to their son.

[62] Further, as in *Park*, the loss of economic contribution flowing from a desired transfer of a family business to the next generation, in whatever form, can be efficiently mitigated through the sale of that business, which the parents presently own and will retain. As such, the parents have not suffered a pecuniary loss: the sale of the business, which they would not have done had Eric survived, will provide an alternative retirement annuity in lieu of Eric's ongoing support. As stated in *Park*:

> [57] I agree with Mr. Hildebrand. On the evidence, ***I do not see any pecuniary loss arising from the scenario put forward by the***

> ***plaintiffs. What they lost through the tragedy of Song-Yi's death, I find, is not a future annuity from the business, because that can be fully replaced through the sale of the asset that they no longer have to transfer to Song-Yi, without having to take into account the income she would pay herself***. Rather, what they lost is the intangible benefit of keeping the business they built in the family and helping their daughter succeed in it. ***As significant a loss as that is, regrettably it is not one for which the plaintiffs can be compensated under the Family Compensation Act;*** see in relation to a similar claim the discussion in *Dolker v Pekrul*, 2001 BCSC 681, rev'd in part 2003 BCCA 296.
>
> [emphasis added]

[63] The plaintiffs stress, with some evidence, that the restaurant business has been increasingly successful, even through the pandemic, and will continue to grow, beyond the acquisition of the second restaurant. The *Park* Court had the advantage of specific evidence with respect to the value and potential sale of the business, and the tax treatment of such sales: para. 56. Such evidence is absent in the present case. But, as noted in *Park*, the Court must nonetheless consider that scenario, even in the absence of such evidence:

> [55] On behalf of the plaintiffs, Mr. Wiseman objected that we really cannot take into account the value of the company because we have no evidence about the tax consequences and the costs involved in selling it. But we also have no evidence about the tax consequences and costs involved in gifting the company to Song-Yi, and it seems to me that the onus was on the plaintiffs to adduce that kind of evidence, without which their claim could not properly be assessed. ***That the plaintiffs' experts chose to ignore it does not mean that the onus shifts to the defence, or that the court should also ignore it. It is not simply a matter of mitigation. It is fundamental to assessing the plaintiff's alleged loss based on the scenario they advanced--a scenario that included the disposition of the company.***
>
> [emphasis added]

[64] Given the authority of *Park*, and the present evidentiary gaps, and the fundamental difficulty with the plaintiffs' primary damages model, the Court will base its analysis on table 9 of the Turnbull report, which sets out alternative scenarios of Eric providing 25 percent, 33.3 percent and 50 percent of his restaurant income to his parents until his mother reaches age 87: a range of $416,191 to $832,383 in present value. Those figures exceed those in table 10, which are based upon the earnings generated by the average bachelor degree: $337,626 to $675,252.

[65] While Eric would likely be generous in his payments, even the lowest scenario of 25 percent of his income exceeds the *hyodo* amounts provided by most of the witnesses. Further, the Court must apply the contingencies set out above. Eric's income or own child support obligations or otherwise might limit his ability to provide as much money as he wished. As a member of a younger generation immersed in western culture, his sense of *hyodo* obligation, particularly in economic form, might be diluted. Both possibilities might lead to the predominant provision of *hyodo* in non-pecuniary form, such as gifts or companionship. As an exercise of the *Morrison* "inquiry into the unknowable", based on the evidence, the Court forecasts that Eric would have provided 20 percent of his future income were he able: with a present value of $332,952.80 by Mr Turnbull's calculations. This amount will be reduced by 25 percent to reflect the chance that some combination of the negative contingencies above or otherwise would make him unable or disinclined to make those payments in those amounts. The Court accordingly calculates future support losses at $249,714.60. This amount exceeds the recent awards in *Park, Smith*, and *S.L.B.,* buoyed by the added consideration of Eric's demonstrated adherence to the cultural imperative of *hyodo*, not present in those cases.

[66] From this amount must be deducted the costs the parents would have otherwise spent on Eric, including university costs. Mr Turnbull provides an estimate of $12,000 a year, with the cost of a four-year university programme at $28,000. The Court deducts $80,000 from the award to represent these costs not incurred, recognising that Eric may have lived with the family for a few, or many, years, or, on the other hand, grown more financially independent.

[67] The defendants urge the further deduction of a portion of the family house, with an assessed value of $828,000, on the basis that it might in future have been gifted to Eric. Further and alternatively, they urge a deduction of the value of a new home that the groom's family would customarily purchase for a newlywed couple. The evidence does not sufficiently establish these specific negative contingencies. There is, however, sufficient evidence to establish a real and substantial possibility that Eric would likely marry, and that there would be some significant parental

contribution at the time of that event that would not otherwise be incurred. Marriage, a wedding ceremony, and a parental contribution, possibly towards a home, are made more likely by the very adherence of the plaintiffs and their family to traditional norms, on which the *hyodo* award is founded, as well as the fact that Eric had a girlfriend. The Court deducts a further $60,000 to reflect these probable costs that will not be incurred.

2. Loss of services

[68] As set out above, the plaintiffs claim for loss of housekeeping ($186,456), translation ($137,100), and driving ($27,420) services.

[69] The Court accepts that the parents have suffered measurable loss in each of these services, on which they formerly extensively relied upon Eric. He provided 3.5 to 7 hours of household tasks a week, and roughly the same amount of time for personal translation services.

[70] At the same time, the parents can largely perform these tasks themselves, presently, or in the future. They are not elderly (they turn 51 and 52 this month), and are in good health. Both have driver's licences. Both have some English capacity; while not fluent, they use English, at work and in shopping and in life. They live in a community where English is predominantly spoken, and most of their customers do not speak Korean; in some centres hosting a large community of like-speakers, it is difficult to learn and use the language of one's adopted country, but Nanaimo offers no such hindrance. The plaintiffs are industrious and intelligent, as exhibited by their successful business. They have no physical impediments to working towards taking over these services that Eric previously provided, to some extent: the plaintiffs' thin skull comparison is inapposite. Just as they can to some extent mitigate the loss of household assistance, they can to some extent mitigate the loss of language and driving assistance, directly or through the help of others.

[71] The Court also accepts the defendants' argument that housekeeping, translation, and driving, and other home duties are more in the nature of chores that would be offset by benefits received from the parents.

[72] With these principles in mind, given that there is an economic value to this loss, particularly for the period when the parents are elderly and will need assistance in all areas, particularly in housekeeping and other domestic help, the Court, with the assistance of the Turnbull calculations, makes the following present value awards for loss of housekeeping ($100,000), translation ($30,000), and driving ($20,000) services.

3. Loss of guidance

[73] Where the surviving plaintiff was particularly reliant on the deceased as a cultural liaison with Canadian society, the court may award damages for loss of guidance: *Haczewski* at paras. 141-43, where $15,000 was awarded to a spouse who relied heavily on her husband in this regard. The mother in *Lian* was awarded $5,000.

[74] The evidence establishes the plaintiffs' similar reliance on Eric in business and life. That said, the observation with respect to translation and language assistance above also applies; the parents' need for assistance are neither static nor immutable, as they themselves interact more and more with their adopted country, or rely on friends or employees providing gratuitous assistance. An amount of $18,000 each is appropriate on the facts, and commensurate to the *Haczewski* and *Lian* awards on similar facts, awarded one and three decades ago, respectively.

4. In-trust claim

[75] The plaintiffs claim for driving, translation, meal preparation for the weeks following the accident, to the funeral date several months later, by family friends Mr Lee ($7,980) and Ms Choi ($5,915).

[76] In *Frankson v. Myer*, 2008 BCSC 795 at para. 51, Savage J, as he then was, sets out the relevant factors for such a claim:

> (a) the services provided must replace services necessary for the care of the plaintiff as a result of a plaintiff's injuries;
>
> (b) if the services are rendered by a family member, they must be over and above what would be expected from the family relationship;

> (c) the maximum value of such services is the cost of obtaining the services outside the family;
>
> (d) where the opportunity cost to the care-giving family member is lower than the cost of obtaining the services independently, the court will award the lower amount;
>
> (e) quantification should reflect the true and reasonable value of the services performed taking into account the time, quality and nature of those services;
>
> (f) the family members providing the services need not forego other income and there need not be payment for the services rendered.

[77] The in-trust claims are granted as sought. The Court accepts that these services went above and beyond non-compensable assistance provided by family or friends out of natural sympathy to a bereaved family. Both took time off work to provide many hours of necessary assistance, particularly in the area of translation, not only with respect to day-to-day functioning, but to address the additional logistical complications of medical and funerary interactions, documentation, and communications. For the most part, they replaced services that would be provided in part by Eric, which could not be reasonably mitigated immediately following his death. The amounts are calculated based on hourly rates reasonable to the services provided.

5. Special damages

[78] The parties agree on special damages, for funeral and other expenses, at $18,025.28.

V. CONCLUSION

[79] The plaintiffs are awarded:

Loss of future financial assistance	$249,714.60
Less: child expenses not incurred	*-$140,000*
Loss of housekeeping services	$100,000
Loss of translation services	$30,000
Loss of driving services	$20,000
Loss of guidance	$36,000
In-trust claim: Brian Lee	$7,980
In-trust claim: Sunnie Choi	$5,915
Special damages	$18,025.28

TOTAL	**$327,634.88**

[80] The plaintiffs have been successful in result, if not to the extent sought. They are presumptively entitled to their costs at Scale B. If either party wishes to dislodge this presumption, they will advise the other within 20 days of these reasons, and schedule a date with the Registry for a date as soon as reasonably practicable to argue the matter, with provision of written arguments to the other side and to the Court at least seven days before the hearing date.

"Crerar J"

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[1] These reasons will refer to the plaintiffs' son by "Eric", as that was the name predominantly used at trial.

[2] Even today, the concept of filial piety permeates Korean legislation. See for example, the *Welfare of Senior Citizens Act*, Act No. 17199.

[3] The Act, the British Columbia equivalent of United Kingdom legislation flowing the *Fatal Accidents Act 1846* (9 & 10 Vict. c. 93) (Lord Campbell's Act), abrogates the common law principle that there is no action for wrongful death.

[4] Where, outside of the context of cultural practices of providing money to parents, the Court awarded $90,000 to the parents: "*I have no doubt that Erin would have provided assistance to the plaintiffs and that her death has resulted in a pecuniary loss to them. The fact of Erin's actual assistance and her willingness to consider the proposal support this conclusion…"*

[5] While granting the appeal in part, in ordering a new trial, the Court of Appeal did not set aside or question an award of damages, or its quantification at $175,000, based upon demonstrated filial piety. The basis for the new trial was the trial court's erroneous acceptance of an expert witness's damages model which wholly excluded possible contributions of the older sister of the deceased.