COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Storey v. Singh,*
2023 BCCA 485

Date: 20231219
Docket: CA48521

Between:

John Charles Storey

Appellant/
Respondent on Cross Appeal
(Defendant)

And

Ravinder Kaur Singh

Respondent/
Appellant on Cross Appeal
(Plaintiff)

Before: The Honourable Justice MacKenzie
The Honourable Justice Dickson
The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia, dated August 8, 2022 (*Singh v. Storey*, 2022 BCSC 1338, New Westminster Docket M214298).

Oral Reasons for Judgment

Counsel for the Appellant/ Respondent on Cross Appeal:	C.C. Godwin
Counsel for the Respondent/ Appellant on Cross Appeal:	B.J. Yu
Place and Date of Hearing:	Vancouver, British Columbia November 28, 2023
Place and Date of Judgment:	Vancouver, British Columbia December 19, 2023

Summary:

This appeal arises from deductions made under s. 83 of the Insurance (Vehicle) Act from damages awarded in a negligence claim arising from motor vehicle accidents. The appellant on cross appeal argues that the judge erred in deducting certain Part 7 benefits as they are not covered by the Regulation. Held: Appeal dismissed. The trial judge made no reviewable errors of fact or law with respect to the challenged deductions.

DICKSON J.A.:

Introduction

[1] This appeal concerns deductions made by a trial judge under s. 83 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, as amended [*Act*], from damages he awarded in a negligence claim arising from motor vehicle accidents. The issues relate to the deductibility of no-fault benefits payable under Part 7 of the *Insurance (Vehicle) Regulation*, B.C. Reg. 447/83, as amended [*Regulation*], from the sums awarded for the future cost of care.

[2] In 2017, Ravinder Singh was injured in two motor vehicle accidents. In 2021, the judge awarded her a total of $601,621 in damages, which included $80,176 for the cost of future care: 2021 BCSC 1825. One of the defendants, John Storey, applied for an order reducing the entire cost of the future care award pursuant to s. 83 of the *Act*. In reasons indexed at 2022 BCSC 1338, the judge reduced that award by $68,906.

[3] Mr. Storey appealed the post-trial order, but later abandoned the appeal. Ms. Singh cross-appealed, contending the judge erred in making the deductions by applying the wrong legal test and failing to account for contingencies. In Ms. Singh's submission, given those errors, we should set aside the deductions made for medications, vocational counselling, and a chronic pain clinic, and apply a 30% contingency to the physiotherapy and massage therapy deductions. The primary issue for determination is the meaning of "rehabilitation" for purposes of assessing the deductibility of Part 7 benefits.

[4] In my view, the judge made no errors of fact or law with respect to the challenged deductions. For the reasons that follow, I would dismiss the cross-appeal.

Legal Framework

[5] Pursuant to s. 83(2) of the *Act*, a defendant may apply to deduct from the amount of a judgment certain Part 7 benefits that correspond to sums compensated in damages awarded against a tortfeasor. As Justice Saunders explained in *Blackburn v. Lattimore*, 2023 BCCA 224, the purpose of the deduction is two-fold: to determine the amounts payable to the plaintiff immediately, and to prevent double compensation: at para. 5.

[6] Section 83 of the *Act* provides, in relevant part:

> 83 …
>
> (2) A person who has a claim for damages and who receives or is entitled to receive benefits respecting the loss on which the claim is based, is deemed to have released the claim to the extent of the benefits.
>
> …
>
> (4) In an action in respect of bodily injury or death caused by a vehicle or the use or operation of a vehicle, the amount of benefits paid or provided or to which the person referred to in subsection (2) is or would have been entitled, must not be referred to or disclosed to the court or jury until the court has assessed the award of damages.
>
> (5) After assessing the award of damages under subsection (4), the amount of benefits referred to in that subsection must be disclosed to the court, and taken into account, or, if the amount of benefits has not been ascertained, the court must estimate it and take the estimate into account, and the person referred to in subsection (2) is entitled to enter judgment for the balance only.
>
> (5.1) In estimating, under subsection (5), an amount of benefits that has not been ascertained, the court may not consider the likelihood that the benefits will be paid or provided.

[7] The onus is on a defendant seeking a s. 83 deduction to establish that the plaintiff is entitled to Part 7 benefits in the amount they say should be deducted from the damage award. Uncertainty as to whether a particular benefit will be paid in the future is to be resolved in favour of the plaintiff: *Watson v. Fatin*, 2023 BCCA 82 at paras. 12, 15. In some circumstances, uncertainty may be reduced or eliminated by

an authorized person irrevocably, unequivocally, and unconditionally waiving various future procedural requirements on behalf of the Insurance Corporation of British Columbia ("ICBC") and committing to future payment of the benefit in question, although such an agreement cannot expand Part 7 entitlements: *Blackburn* at para. 8; *Aarts-Chinyanta v. Harmony Premium Motors Ltd.*, 2020 BCSC 953 at paras. 80–81. Uncertainty may also be addressed by applying a contingency reduction to the amount deducted from a damage award: *Blackburn* at para. 9.

[8] For present purposes, the relevant benefits referred to in s. 83 of the *Act* are medical or rehabilitation benefits to which a plaintiff is entitled under s. 88 of the *Regulation*. Section 88 provides for both mandatory and discretionary medical or rehabilitation benefits. Pursuant to s. 88(1), ICBC must pay all reasonable expenses incurred as a result of the injury for all necessary health care services from listed health professionals and for necessary medication. Pursuant to s. 88(2), ICBC may pay for services where, in the opinion of its medical advisor, they are likely to promote the plaintiff's rehabilitation.

[9] Sections 88(1) and (2) of the *Regulation* provide, in relevant part:

> 88 …
>
> (1) If an insured is injured in an accident for which benefits are provided under this Part, the corporation must, subject to this section, pay as benefits all reasonable expenses incurred by the insured as a result of the injury for necessary
>
> a) health care services listed in Column A of Tab 1 or Tab 2, as applicable, of Schedule 3.1 and provided by the applicable health care practitioner,
>
> b) occupational therapy provided by an occupational therapist, and
>
> c) medical, surgical dental, hospital, ambulance and professional nursing services, speech therapy, medication, prostheses and orthoses.
>
> …
>
> (2) Where, in the opinion of the corporation's medical advisor, provision of any one or more of the following is likely to promote the rehabilitation of an insured who is injured in an accident for which benefits are provided under this Part, the corporation may provide any one or more of the following:
>
> …

> d.1) reimbursement to the insured for costs incurred from time to time by the insured for the purchase of health care supplies or health care services not referred to in subsection (1), not exceeding the amount set out in section (3) of Schedule 3;
>
> e) funds to the insured for vocational or other training that
>
> (i) is consistent with the insured's pre-injury occupation and post-injury skills and abilities; and
>
> ii) may return the insured as nearly as practicable to the insured's pre-injury status or improve the post-injury earning capacity and level of independence of the insured;
>
> f) funds for any other costs the corporation in its sole discretion agrees to pay.

[10] Column A of Table 1 of Schedule 3.1 to the *Regulation* includes as mandatory benefits under s. 88(1) acupuncture, chiropractic, counselling, kinesiology, massage therapy, physiotherapy and psychology services. As outlined above, medication is included as a mandatory benefit under s. 88(1)(c). Section 88(6) of the *Regulation* creates an exception pursuant to which ICBC is not liable to pay certain expenses covered through another insurance plan. Section 88(6) provides:

> 88(6) The corporation is not liable for any expenses paid or payable to or recoverable by the insured under a medical, surgical, dental or hospital plan or law, or paid or payable by another insurer, except expenses referred to in subsection (1)(a) and (b).

[11] The *Regulation* previously included a definition of the term "rehabilitation". However, by B.C. Reg. 62/2021, as of May 1, 2021, that definition was repealed. Accordingly, "rehabilitation" is no longer a statutorily defined term.

Background

[12] Ms. Singh sustained injuries to her neck, shoulder and back in the accidents. She also developed psychiatric conditions, including depression, anxiety and chronic pain. The medical evidence established that she had a poor prognosis, with pain, fatigue and other difficulties expected to continue indefinitely in the future. According to Dr. Anderson, a psychiatrist, as a result of the accident, Ms. Singh suffers from a permanent partial disability.

[13] The judge awarded Ms. Singh $80,176 for the cost of future care, comprised of: $45,880 for psychological counselling to age 65; $10,196 for physiotherapy and massage therapy for the duration of her working life; $7,000 for medications; $13,800 for attendance at a chronic pain clinic; and $3,500 for vocational counselling. In doing so, he explained that physiotherapy and massage therapy "provide temporary relief that improves Ms. Singh's condition and functioning", that immediate access to a private multidisciplinary pain clinic would "enhance Ms. Singh's ability to cope with and manage her pain symptoms", and that vocational counselling would "facilitate and enable Ms. Singh's ability to work durably and competitively over the long term". He also explained that while Ms. Singh would require pain, antidepressant and other psychiatrically prescribed medication for the rest of her working life, an award for less than the present value of her current spending on medication was appropriate given the experts' recommendation that she reduce her use of over the counter medication.

[14] As noted, after the trial judgment was released, Mr. Storey applied for an order reducing the entire cost of the future care award pursuant to s. 83 of the *Act*. In support of the application, he filed an affidavit of David Forster, the Claims Review Advisor with ICBC who oversees Ms. Singh's tort and Part 7 claims. Mr. Forster deposed that ICBC accepted each item and treatment described in the judgment as reasonable, necessary and arising from the accidents. He also confirmed that: ICBC waived ongoing procedural requirements; would honour new rates set each year for relevant treatments; and would pay up to $7,000 for Ms. Singh's medication, $3,500 for vocational counselling, and $13,600 for her attendance at a pain clinic. In his affidavit, Mr. Forster referred to vocational counselling as a discretionary benefit that would promote Ms. Singh's rehabilitation. He referred to her attendance at a chronic pain clinic as either a mandatory or discretionary benefit.

[15] Ms. Singh also filed an affidavit on the application. Among other things, she deposed that she is a licenced practical nurse and, as such, has extended benefits as part of her contract of employment. She provided the policy number and her ID number, but did not append to her affidavit a copy of the policy or depose to the

terms of reimbursement, if any, it covered for prescription or non-prescription medications.

[16] When the application was heard, Mr. Storey submitted that the future care awards for psychological treatment, physiotherapy, massage therapy, and medications were all deductible under s. 83 of the *Act* as mandatory medical benefits pursuant to s. 88(1) of the *Regulation*. In addition, he submitted, the award for vocational counselling was a discretionary benefit deductible as a reasonable and medically necessary expense pursuant to s. 88(2). As for the award for attendance at a pain clinic, Mr. Storey submitted that it was deductible either as a mandatory benefit or a discretionary benefit.

[17] Ms. Singh responded that none of the deductions sought by Mr. Storey were justified. She argued that she would suffer a shortfall on the psychological treatment award due to differences between the costs paid by ICBC and charged by her psychologist or future counsellor, and that the deduction should be limited to account for contingencies by imposing either a three-year limit or a global 40% reduction in the amount deducted. She also argued that no deduction should be made for: medications, arguing the judgment did not distinguish between prescription and non-prescription medications; vocational counselling, arguing it is not a mandatory benefit and ICBC cannot waive the requirement for a rehabilitative benefit, which it is not; attendance at a pain clinic, arguing it is not a mandatory benefit because the cost is not included in Schedule 3.1 and it is not a discretionary benefit because it lacks the rehabilitative benefit requirement.

Reasons for Judgment: 2022 BCSC 1338.

[18] After setting out the background and relevant legal principles, the judge summarized the positions of the parties and the evidence of Mr. Forster. He accepted that Ms. Singh may not receive Part 7 benefits in the full amount awarded for psychological treatment given ICBC's fee limits and the prospect that she might seek treatment from a counsellor rather than a psychologist. However, he did not accept that her young age justified a three-year limit or global reduction of 40% to

account for contingencies. Consequently, he reduced the deduction sought for psychological treatment by 25%, from $45,880 to $34,410.

[19] As to the other deductions sought, the judge was satisfied that Mr. Storey's evidence had established that Ms. Singh would receive the benefits in question, and, therefore, that the damage award should be reduced accordingly:

> [27] In my view, the defendant is entitled to deductions in respect of physiotherapy and massage treatments because they are mandatory benefits under s. 88(1) of the Regulation. On behalf of ICBC, Mr. Forster waived the various rights and requirements set out in ss. 90, 98, and 99 and he "irrevocably, unequivocally, and unconditionally" agree to pay $10,196 for physiotherapy and massage therapy, under Part 7.
>
> [28] Turning to discretionary benefits, I am satisfied that ICBC will fulfill its commitment to Ms. Singh to pay up to $7,000 for prescription and non-prescription medications and $3,500 for vocational counselling. Similarly, I am satisfied that ICBC will pay for Ms. Singh's attendance at a pain clinic. In my view, this is a mandatory benefit and therefore deductible under s. 88(1). If I am incorrect and it is instead a discretionary benefit, I am satisfied, on the strength of the commitments made by Mr. Forster on behalf of ICBC, and the therapeutic and rehabilitative nature of this treatment, that it is deductible pursuant to s. 88(2).

[20] In the result, the judge reduced the award by: $34,410 for psychological counselling; $10,196 for physiotherapy and massage therapy; $7,000 for medications; $13,800 for attendance at a chronic pain clinic; and $3,500 for vocational counselling.

Discussion

Standard of Review

[21] In *Meisters v. Tompkins*, 2023 BCCA 335, Justice Abrioux recently summarized the standards of review that apply on an appeal of a post-trial order on an application brought under s. 83 of the *Act*:

> [17] The interpretation of s. 83 of the *Act* is a question of law that is reviewable on a correctness standard. Where the appellant challenges the factual finds of the trial judge, or where the trial judge is alleged to have erred in applying the correct legal principles to the evidence, the applicable standard is the deferential one of palpable and overriding error: *Warick v. Diwell*, 2018 BCCA 53 at para. 21, citing *H.L. v. Canada (Attorney General)*,

> 2005 SCC 25 at paras. 53-56 and *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 8-9 and 36-37.
>
> [18] Deductions from damage awards on the basis of future payable benefits involve applying the s. 83 framework to particular factual circumstances. Accordingly, the standard of review is deferential.
>
> [19] In *Warick*, Justice Fisher dismissed an appeal from an award for future care costs despite acknowledging that she "may have come to different conclusions on some aspects of the award for future costs", because absent errors of law and palpable and overriding errors of fact, "there is no basis on which this Court should interfere with the award." *Warick* at para. 23.
>
> [20] This Court has emphasized that in assessing future damages, the relevant question is whether the figure falls within the range of reasonable compensation, rather than the providence of each individual step taken to reach the final figure: *Uhrovic v. Masjhuri*, 2008 BCCA 462 at para. 30. The final award is to be assessed for its overall reasonableness: *Uhrovic* at para. 33. The burden is on the appellant to demonstrate error.

Did the Judge err in reducing the Cost of Future Care Award with respect to Medications?

[22] Ms. Singh contends the judge erred by applying the wrong legal test when he reduced the cost of future care award by $7,000 based on ICBC's commitment to pay prescription or non-prescription medications. However, she says, the test is not whether ICBC committed to pay those costs. The test is whether they are covered by the *Regulation*. In her submission, they are not.

[23] In support of her submission, Ms. Singh notes that, pursuant to s. 88(6) of the *Regulation*, ICBC is not liable to pay for medications if a plaintiff has another health plan for extended healthcare benefits. She argues the evidence presented on the application established that she has such a plan. Therefore, she says, ICBC is not liable to pay for her medications, both prescription and non-prescription. Alternatively, she says, the judge failed to distinguish between prescription and non-prescription medications covered by the award, which created uncertainty. According to Ms. Singh, he was obliged to resolve that uncertainty in her favour and deny the deduction sought by Mr. Storey.

[24] I am not persuaded by these submissions. In my view, the judge did not apply the wrong legal test. His review of the applicable legal principles was comprehensive and accurate, and his decision on the deduction sought for medication was

grounded in the evidence. Based on the state of the evidence, he was entitled to conclude that ICBC would pay up to $7,000 for Ms. Singh's prescription and non-prescription medications as required by the *Regulation*.

[25] As Mr. Storey emphasizes, although there was evidence presented that Ms. Singh had an extended benefits plan, it did not address what, if any, portion of her medication costs might be recoverable under the extended benefits plan. Nor did it address what deductibles might be payable before any possible entitlement could arise. In other words, given the absence of evidence regarding the extent, if any, to which Ms. Singh's medication costs would be covered by her plan, it was open to the judge to conclude that Mr. Storey had met the onus of establishing she would be entitled to Part 7 benefits for prescription and non-prescription medication of $7,000.

Did the Judge err in reducing the Cost of Future Care Award with respect to Vocational Counselling?

[26] Ms. Singh also contends the judge erred by reducing the cost of future care award with respect to vocational counselling because such counselling would not serve a rehabilitative purpose and therefore it is not a discretionary benefit. Despite her poor prognosis and ongoing pain, she says, she is already working full-time and, therefore, there is nothing further to "rehabilitate" related to her ability to work. In particular, Ms. Singh says, the judge awarded the vocational counselling to assist her in managing in her work, which means no more than maintaining the *status quo*, and not to restore a high level of employment and self-sufficiency. According to Ms. Singh, only services that restore function amount to "rehabilitation" for purposes of s. 88(2).

[27] In support of her submission, Ms. Singh relies on Justice Fleming's analysis in *Tench v. Van Bugnum*, 2021 BCSC 501 on the question of whether ICBC can waive the requirement that discretionary benefits serve a rehabilitative purpose. In particular, she emphasizes, this statement made by Justice Fleming:

> [60] … [b]ased on my findings and the expert evidence, I awarded the future care items for the purpose of *managing* [the plaintiff's] permanent

> conditions and maintaining the status quo, not to *rehabilitate* Ms. Tench or restore her to a high level of employment or self-sufficiency ….

[28] According to Ms. Singh, it follows that ICBC cannot waive the rehabilitation requirement for a discretionary benefit under s. 88(2). Therefore, she says, the vocational counselling deduction should be overturned.

[29] I would not accede to this submission.

[30] In the Court below, Mr. Storey argued that vocational counseling is a discretionary benefit that should be deducted in this case based on the evidence. In doing so, he relied on Mr. Forster's affidavit, which, as I have noted, described vocational counseling as a discretionary benefit under s. 88(2). However, on the cross-appeal, Mr. Storey submitted that vocational counseling is a subset of counseling, and therefore a mandatory benefit. Given that this position differs significantly from that advanced below, I would not entertain it on appeal.

[31] Nevertheless, I am persuaded by Mr. Storey's alternative position, namely, that the deduction was justifiable based on the judge's finding that vocational counselling "will facilitate and enable Ms. Singh's ability to work durably and competitively over the long term". In my view, this was an available, evidence-based finding that the vocational counseling award was intended to promote Ms. Singh's ability to function at her pre-accident capacity in the employment context, and thus amounted to rehabilitation. The fact that Ms. Singh was working full-time at the time of trial did not preclude the need for rehabilitative services to support and maintain her level of functioning, either at present or in the future.

[32] As Mr. Storey notes, prior to May 2021, the *Regulation* defined "rehabilitation" as "the restoration, in the shortest practical time, of an injured person to the highest level of gainful employment or self-sufficiency that, allowing for the permanent effects of the injured person's injuries, is, with medical and vocational assistance, reasonably achievable by the injured person". I agree with him that, in repealing that definition, the legislature allowed for a broad and flexible interpretation of "rehabilitation" which extends to the provision of services that assist and enhance

the process of recovery from and compensation for accident-related deficits, at present and in the future. I also agree that pre-repeal authorities are now of limited value for purposes of interpreting the term “rehabilitation”.

[33] That said, I do not accept that Justice Fleming’s pre-repeal analysis in *Tench* excluded the possibility that services that assist in managing permanent conditions and thus maintaining the *status quo* cannot amount to “rehabilitation” for purposes of the *Regulation*. Rather, as I read her reasons, she saw no basis for concluding that the future care items awarded would serve a rehabilitative purpose given the nature of her trial findings and the evidence presented on the s. 83 application. In other words, Justice Fleming’s conclusion in *Tench* was heavily fact-based. It was not expressed as an interpretation of the meaning of “rehabilitation” of general application.

Did the Judge err in reducing the Cost of Future Care Award with respect to attendance at a Chronic Pain Clinic?

[34] Ms. Singh goes on to contend the judge erred in reducing the cost of the future care award with respect to her attendance at a chronic pain clinic. In her submission, in doing so he relied on factual findings that were contrary to his findings at trial, where he held that attendance at a pain clinic “will enhance Ms. Singh’s ability to cope with and manage her pain symptoms”. Based on her argument that services that assist in managing symptoms are not “rehabilitation”, Ms. Singh argues the award for attendance at a pain clinic does not relate to rehabilitation because she is already working full-time and there is nothing further to rehabilitate. In these circumstances, she says, ICBC has no ability to waive the requirement for a rehabilitative purpose and attendance at a chronic pain clinic is not a discretionary benefit.

[35] Ms. Singh also submits that a chronic pain clinic is not a mandatory benefit because it is not listed in Column A of Table 1 of Schedule 3.1. In support of this submission, she relies on the modern principle of statutory interpretation referred to in *Tench*, and the trend toward specific enumeration of mandatory benefits

recognized in *Raguin v. Insurance Corporation of British Columbia*, 2011 BCCA 482: at paras. 44 and 57, respectively. She acknowledges that in *Park v. Targonski*, 2015 BCSC 1531, the Court concluded that the cost of a chronic pain clinic is a mandatory benefit, but argues *Park* pre-dates the legislative changes on April 1, 2019 in which the legislature specifically enumerated the services available under s. 88(1)(a) of the *Regulation*. Given those changes, she says that *Park* no longer applies.

[36] According to Ms. Singh, had the legislature intended to include the cost of a privately funded chronic pain clinic under Schedule 3.1, it would have done so expressly. However, it did not. Therefore, she submits, a chronic pain clinic is not a mandatory benefit.

[37] I do not accept this submission.

[38] I have already addressed and rejected Ms. Singh's argument regarding the meaning of "rehabilitation". To the extent that any of the services provided by a chronic pain clinic could be characterized as discretely discretionary benefits rather than mandatory benefits, her submission would fail on the evidence on that account.

[39] More importantly, however, I agree with Mr. Storey that the reasoning in *Park* applies even more forcefully post-April 1, 2019, when mandatory benefits were expanded to include counselling and psychology services, and listed in Schedule 3.1. As he notes, when *Park* was decided, a chronic pain clinic was also not specifically enumerated as a mandatory benefit in s. 88(1), which described a mandatory benefit as a reasonable expense incurred for "necessary medical, surgical, dental, hospital, ambulance or professional nursing services, or for necessary physical therapy, chiropractic treatment, occupational therapy or speech therapy or for prosthesis or orthosis". Nevertheless, in *Park* the Court emphasized the need to look beyond labels and consider the services actually provided. Applying that approach, despite the fact that counselling and psychology services provided by chronic pain clinics were not then listed as mandatory benefits, the Court held that attendance at a chronic pain clinic is a mandatory benefit under s. 88(1) of the

Regulation. I agree with the approach adopted and conclusion reached in *Park* in this regard.

Did the Judge err in reducing the Cost of Future Care Award with respect to Physiotherapy and Massage Therapy without applying a 30% contingency to the deduction?

[40] Finally, Ms. Singh contends the judge erred by reducing the cost of future care award with respect to physiotherapy and massage therapy without applying a 30% contingency to the deduction. She says the $10,196 amount awarded was based on a present value discount factor, which is the same amount ICBC committed to pay over time and the judge deducted from the award. However, in Ms. Singh's submission, had she been awarded a lump sum currently she could have put the full amount in the bank and earned interest over time, which is no longer possible. It follows, she says, that she has lost the difference between the undiscounted value of future payments of $14,400 and the $10,196 discounted sum ICBC committed to pay, which shortfall should be recognized by a 30% contingency reduction to make up for the difference.

[41] I do not accept this submission. I see no error of fact or law in the judge's decision to reduce the award by the full amount awarded for physiotherapy and massage therapy without reduction for contingencies.

[42] Physiotherapy and massage therapy are mandatory benefits. The application of a present value discount factor is simply a valuation method with respect to the future cost. The judge awarded $10,196 as the value of physiotherapy and massage therapy that will be required and incurred incrementally in the future. ICBC committed to pay up to that full amount and waived the right to reconsider Ms. Singh's entitlement throughout the payment period.

[43] However, as counsel for Mr. Storey argues, this does not mean that Ms. Singh will suffer a shortfall related to future costs of physiotherapy and massage therapy. On the contrary, after the $10,196 has been expended, Ms. Singh may continue to be entitled to these mandatory Part 7 benefits, albeit subject to ICBC's

statutory right to reconsider that entitlement. In other words, depending on her accident-related needs, Ms. Singh may receive more than $10,196 worth of physiotherapy and massage therapy over time. In the circumstances, the judge did not err in simply deducting the full amount of the award.

Conclusion

[44] For all of these reasons, I would dismiss the cross-appeal.

[45] **MACKENZIE J.A.**: I agree.

[46] **ABRIOUX J.A.**: I agree.

[47] **MACKENZIE J.A.**: The cross-appeal is dismissed.

"The Honourable Justice Dickson"