

SUPREME COURT OF NOVA SCOTIA

Citation: *Morris v. Primmum Insurance Company*, 2026 NSSC 206

Date: 20260626

Docket: Hfx No. 514891

Registry: Halifax

Between:

Jennifer Ann Morris

Plaintiff

v.

Primmum Insurance Company

Defendant

Decision

Judge:

The Honourable Justice John Keith

Heard:

December 1, 2, 3, 4, 8, and 9, 2025, in Halifax, Nova Scotia

**Further Written
Submissions:**

December 29, 2025, by the Plaintiff
December 31, 2025, by the Defendant

Final Written Decision:

June 26, 2026

Counsel:

Nicolle Snow and Lathia Stubbs-Deveaux, for the Plaintiff
Derek Vihvelin and Ryan Hamilton, for the Defendant

BY THE COURT:**INTRODUCTION AND BRIEF CONCLUSION**

[1] At about 8:35 p.m. on November 13, 2021, the Plaintiff, Jennifer Morris, was struck by an unidentified vehicle while walking along a marked crosswalk in the parking lot for a collection of retail stores in Bedford South, Halifax.

[2] At the time of the accident, Ms. Morris was 41 years old and was raising her two sons with minimal financial assistance from their biological father. Her eldest son was 13 years old and her youngest was almost 9. She provided for her family by working full-time as a supervisor and server at a restaurant called “The Terrace” in the Prince George Hotel.

[3] The vehicle fled the scene, leaving Ms. Morris unresponsive on the pavement. Neither the hit-and-run vehicle nor the driver of the vehicle were found.

[4] Because Ms. Morris was the victim of a hit-and-run, she was compelled to advance a claim under Section D of her own insurance policy issued by the Defendant, Primmum Insurance Company (“**Primmum**”), for injuries caused by an uninsured and unidentified automobile. Thus, Primmum does not defend this claim as insurer for the tortfeasor but, rather, as insurer under the contractual and statutory indemnification provisions (“Section D”) of Ms. Morris’ own insurance policy. The terms of Section D limit Primmum’s exposure to \$500,000.

[5] The parties agree that the unidentified vehicle was entirely liable for the accident. There is no allegation of contributory negligence on the part of Ms. Morris. The dispute reduces to questions of damages (including causation) and the proper quantum of damages.

[6] Two medical experts testified at the trial. Ms. Morris presented expert evidence from Dr. Richard Leckey, neurologist. The Defendant presented expert evidence from Dr. Dale Robinson, who is also a neurologist. Both medical experts agreed that Ms. Morris suffered a significant traumatic brain injury involving a basilar skull fracture, bilateral frontal and temporal lobe contusions, occipital lobe contrecoup injuries, and intracranial hemorrhaging. They also agreed that her injuries resulted in permanent loss of smell, impaired taste causing nausea, prolonged amnesia, a right-sided sigmoid sinus thrombosis, petrous bone and ear injuries, temporary vision problems related to sixth cranial nerve damage, and minor

leg injuries with residual scarring. These experts further agreed that Ms. Morris continued to experience headaches, dizziness, and ongoing cognitive and emotional symptoms affecting her memory, concentration, mood, anxiety, irritability, and depression. Although her initial recovery and return to work were remarkable, both experts concluded that her injuries would continue to have a meaningful and lasting impact on her functioning, and that she was unlikely to return to her pre-accident level of health.

[7] The experts differed primarily in their assessment of the severity, cause, prognosis, and treatment of Ms. Morris' ongoing impairments. Dr. Leckey characterized the injury as a severe traumatic brain injury and attributed her persistent cognitive, emotional, and behavioural difficulties directly to that injury, viewing them as substantial, largely permanent, and potentially subject to future deterioration. He recommended medication and long-term multidisciplinary rehabilitation. By contrast, Dr. Robinson classified the injury as a complicated mild-to-moderate traumatic brain injury that had stabilized, acknowledged permanent impairments but anticipated some potential for improvement. He emphasized that Ms. Morris' early return to work limited her recovery by creating a suboptimal healing environment. He recommended targeted medical and therapeutic interventions, continued specialist oversight, and management of work-life balance, while also noting that non-neurological factors such as sleep issues, leg pain, and pre-existing psycho-emotional concerns may have contributed to her ongoing symptoms.

[8] In the end, the parties remain somewhat divided on Ms. Morris' prognosis but even more divided on the quantification of damages. The following table reveals the extent to which these issues influenced the measure of damages in this case (excluding pre-judgment interest and costs):

Head of Damage	Plaintiff's position	Defendant's position
General Damages	\$250,000 - \$300,000	\$100,0000
Lost Past and Future Income	\$832,000 ¹	\$50,000

¹ The Plaintiff's pre-trial brief claimed \$300,000 - \$350,000 for lost past and future income. However, at trial, Plaintiff's counsel stated that this figure did not include tips which the Plaintiff earns in the service industry (food and beverage supervisor at the Prince George Hotel in downtown Halifax). The Plaintiff testified that 60% of her income is comprised of tips. Based on this oral evidence, Plaintiff's counsel increased the claim to \$832,000.

Cost of Future Care	\$1,316,356 \$1,942,710	-	\$25,000 - \$50,000
Loss of Valuable Services	\$102,546 - \$125,284		\$25,000 - \$30,000
TOTAL	\$2,500,902 \$3,199,994	-	\$200,000 - \$280,000

[9] For the reasons which follow and having carefully reviewed the evidence and the parties' submissions, my conclusions on damages may be summarized as follows:

- General Damages: \$175,000
- Lost Income Earning Capacity: \$200,000
- Loss of Valuable Services: \$25,000
- Cost of Future Care: \$35,000

Total, excluding pre-judgment interest: \$435,000

[10] I have considered the parties' post-hearing submissions on pre-judgment interest and conclude that it shall accrue at a rate of 3% per annum, calculated simply from the date the cause of action arose (November 13, 2021).

[11] If the parties are unable to agree on costs, I will accept brief written submissions on this issue within a month of releasing this decision.

FINDINGS OF FACT

Pre-November 13, 2021 (Pre-Accident)

[12] Prior to the accident, Ms. Morris was an energetic and positive person at home, at work, and in general. She was a single mother who received some childcare support, but little financial support from her sons' biological father. Ms. Morris was primarily responsible to (and, I find, did) maintain a clean and orderly home environment. At the same time, she was working full-time as a server with the Prince George Hotel. All of the witnesses at trial who knew Ms. Morris before the accident

spoke convincingly of her positive outlook and capacity for work. Those witnesses included her work supervisor (as indicated), her mother, and her two sons.

[13] Ms. Morris began working as a server with the Prince George Hotel in May, 2013. She typically worked the breakfast shift beginning at about 5:30 a.m. each morning. Her supervisor, Shawn Levy, testified that the breakfast shift typically waited upon 400 guests in a span of about 2 hours. It was fast-paced and hectic or, as Mr. Lewis testified, “go, go, go”. I accept Mr. Levy’s evidence that, prior to the accident, Ms. Morris was upbeat, eager, and “near to perfect in terms of dealings with challenges that arise during a shift”. And, as well, that she was highly trusted to the point that Mr. Lewis spent very little time supervising her.

[14] In May 2019, Ms. Morris was promoted to supervisor in recognition of her leadership skills and competency.

[15] As will be seen, I find that the accident carved a clear dividing line in her life. She became a different person. She certainly was not totally disabled and there are aspects of her recovery that were remarkable. However, she suffered (and still suffers from) significant impairments. The medical experts agree (and I find) that Ms. Morris is unlikely to return to her baseline or pre-accident level of function. The subsequent, residual impacts, including ongoing headaches, loss of sense of taste, mood (including patience and mood regulation), and capacity for work. I return to these issues below.

November 13, 2021: The Accident

[16] Ms. Morris was walking through a marked cross-walk in the parking lot just outside the Dollarama store, 55 Peakview Way, in the South Bedford retail district. A motor vehicle struck her. Paramedics found Ms. Morris unresponsive on the pavement. The hit and run vehicle was never found.

November 13, 2021 – February 27, 2022: The Immediate Aftermath

[17] Ms. Morris was hospitalized for ten days immediately following the accident. Immediately following the accident, Ms. Morris did not require surgery but the physical and cognitive impairments were significant.

[18] Ms. Morris presented expert opinion evidence from the neurologist, Dr. Richard Leckey. The Defendant, Primmum, presented expert opinion evidence from the neurologist, Dr. Dale Robinson. As mentioned, there was much the medical

experts agreed upon. Both generally agreed as to the nature of the brain injuries suffered by Ms. Morris. Each identified a traumatic brain injury associated with a basilar skull fracture causing bilateral contusions to both the left and right sides of Ms. Morris' frontal and temporal lobes; contusions to her left orbital frontal gyrus; and "contrecoup" contusions² on the occipital lobe and intracranial bleeding (including subdural and subarachnoid hemorrhage). The experts also agreed that Ms. Morris' injuries also involved:

1. A permanent loss of sense of smell;
2. A distorted or impaired sense of taste which, at times, results in nausea or even vomiting;
3. Prolonged amnesia regarding certain events and particularly with respect to the accident itself;
4. A right-sided sigmoid sinus thrombosis, and a fractured petrous bone which injured her external auditory canal and resulted in bleeding from the ear and a ruptured ear drum;
5. Temporary double vision requiring an eye-patch and other eye problems caused by damage to her 6th cranial nerve (also called the abducens nerve. This nerve controls the muscle which moves the eye outward, to the side. Thus, immediately following the accident, Ms. Morris' right eye turned inward towards her nose. By the time she was discharged from hospital, this specific eye problem resolved such that her right eye was again centered; and
6. Minor injuries to her shins, with some scarring being left as a more physical reminder of the accident.

[19] On November 23, 2021, Ms. Morris was discharged from hospital. She wore an eye-patch to assist with her ongoing vision problems and was experiencing hearing issues. She also suffered significant fatigue, headaches, and dizziness.

² A "contrecoup" contusion is a brain bruise that occurs on the opposite side of the brain from the initial impact. It frequently occurs when the brain is violently pushed in one direction and then suddenly stops - possibly because the skull has hit the ground or another stationary object. In this case, the bruising in Ms. Morris' occipital lobes was directly opposite the contusions caused by the basilar skull fractures and related contusions in Ms. Morris' frontal and temporal lobes.

[20] Ms. Morris required assistance at home, including help with cooking, bathing and toileting. Ms. Morris' mother temporarily moved from her home in Cape Breton, Nova Scotia to help.

[21] The medical experts agreed that Ms. Morris immediately showed signs of significant recovery. At the same time, certain sequelae³ also followed her discharge from hospital including headaches and dizziness. As time marched on, other symptoms of cognitive or emotional impairment affecting memory, concentration, and mood dysregulation began to emerge with greater intensity. They were manifested in irritability, anxiety, concentration, and depression. The medical records reveal Ms. Morris' notable recovery but also document her ongoing impairment. For example:

1. On December 3, 2021, Ms. Morris was assessed at home by Kendra Lever, Coordinator for the Acquired Brain Injury (“ABI”). Ms. Morris continued to experience fatigue, dizziness and daily headaches but also reported improvement and was, for example, completing some light housework.
2. By December 8, 2021, Ms. Morris began to report improvement in her condition. She attended at the hematology clinic and spoke of continuing light-headedness and headaches. However, she also expressed an interest in returning to work.
3. On January 11, 2022, Ms. Morris met with the attending neurosurgeon who treated Ms. Morris while in hospital (Dr. G. Pickett). Ms. Morris was unable to stand or walk for a long period of time; still experienced headaches; would become dizzy and nauseated; and could not look at screens for prolonged periods of time. It was also becoming clear that her total loss of smell and that her sense of taste would be permanently impaired. However, she suggested a return to “pre-injury sleep patterns” but equally discussed difficulty getting to sleep. In addition, she showed normal strength and reflexes. Overall, while Dr. Pickett found Ms. Morris was making “definite progress”, symptoms lingered and she was not ready to either drive or return to work.
4. On February 9, 2022, Ms. Morris reported further improvement to her family physician, Dr. Rizk. This included reduced dizziness, improved

³ Sequelae refer to certain secondary or residual conditions that result from the initial trauma.

energy, and returning to light housework. Ms. Morris expressed her desire to return to work in early March 2022.

5. On February 15, 2022, Dr. Pickett (neurosurgeon) spoke with Ms. Morris over the phone. Ms. Morris spoke of her recovery, stating that she no longer had regular headaches. She spoke of a good energy level, a return to “normal housework”, and “normal sleep patterns”. Dr. Pickett concluded that she would likely be able to return to work and driving in the near future.

[22] On February 27, 2022, Ms. Morris returned to part-time work at the Prince George Hotel – even before a CT scan on March 4, 2022 confirmed that her brain bleed had resolved. I find that Ms. Morris’ early return to work was motivated by, at least in part, to:

1. Financial reality and the need to support herself and her two sons;
2. Job satisfaction and the positive feedback she historically received for her performance at work; and
3. An overly optimistic belief that recovery and a return to normalcy could be achieved by returning to work. In fact and regrettably, I find that Ms. Morris’ brain injuries were still healing when she returned to work and, more importantly, her accelerated return to work affected both her health and her prognosis in a significant and negative way. I return to this issue below.

February 28, 2022 forward: Continued Recovery but Serious Residual Impairment

[23] All of the medical experts (Dr. Leckey whose opinion evidence was filed by the Plaintiff, Dr. Robinson whose opinion evidence was filed by the Defendant, and also Ms. Morris’ attending neurosurgeon, Dr. Pickett) described Ms. Morris’ initial steps towards recovery as “remarkable” – certainly when compared against the traumatic brain injuries she suffered. Within months of the accident, she had returned to work.⁴ That said, both experts confirmed that Ms. Morris’ injuries would also have an ongoing, meaningful, and functional impact on her life and that it was unlikely that Ms. Morris would ever return to her pre-accident level of function.

⁴ Dr. Leckey’s report at p. 12 and Dr. Robinson’s report at pp. 4 - 5. See also the written comments of Ms. Morris’ neurosurgeon (Dr. G. Pickett) on April 19, 2022 when reporting on the status of Ms. Morris’ recovery.

More specifically, a number of impairments (headaches, some dizziness, fatigue) continued and additional impairments emerged with growing intensity, particularly in terms of anxiety, and emotional dysregulation. As will be seen, it was here that the experts began to diverge somewhat in terms of characterizing the cause and severity of these ongoing problems, the prognosis for further recovery, and the recommended course of future treatment.

[24] On March 11, 2022, Ms. Morris met with Melanie Dunlop, a licensed nurse practitioner with the ABI Clinic. Nurse Dunlop reported that “things are going well” and that Ms. Morris now walked with a “largely normative gait”. That said, Ms. Morris still suffered sleep impairment, headaches, memory, and attention were still impaired. In addition, her appetite was affected by the loss of taste. Ms. Morris was cautioned about the importance of nutrition, pacing herself, and maintaining an exercise regime to promote brain health.

[25] On April 19, 2022, Ms. Morris’ neurosurgeon, Dr. Pickett, called Ms. Morris and reported “reasonably good recovery” noting her part-time return to work and resumption of driving. However, Ms. Morris continued to have “more frequent headaches than before the accident” and “has no sense of smell”.

[26] On May 1, 2022 (less than 6 months after her accident), Ms. Morris resumed full-time work at the Prince George. I find that Ms. Morris’ natural work ethic, job satisfaction (including positive feedback and elevation to the role of supervisor), personal desire for “normalcy”, and the practical realities of being a single mother inspired her desire to work part-time and quickly resume a full-time work schedule. At the same time and in a discouraging twist, I also find that her drive to return to work set in motion a pivotal lost opportunity in terms of optimal recovery.

[27] On May 4, 2022, Ms. Morris spoke with her family doctor, Dr. Rizk. The predominant emerging concern was emotional dysregulation. I find that Ms. Morris began to increasingly and frequently become anxious and “edgy”, in her words. She lacked patience, especially with her children. Among other things, Dr. Rizk prescribed Zoloft for anxiety.

[28] Nevertheless, between May and July, 2022, Ms. Morris worked tirelessly - often 6 days a week and sometimes worked a double shift.

[29] On July 12, 2022, Ms. Morris met her neurosurgeon, Dr. Pickett, for the last time. I find that Ms. Morris continued to suffer headaches which Ms. Morris attributed to bright lights. Ms. Morris also experienced “recurrent symptoms of light-

headedness and dizziness whenever she has to undergo truly heavy lifting at work, specifically of chairs and tables” - but not, by comparison, lifting groceries at home. These symptoms resolved in a few minutes. Otherwise, Dr. Pickett reported that Ms. Morris’ “function in her day-to-day life...has returned to virtually normal”. That said, I also find that Ms. Morris’ sense of taste remained problematic and led to periodic feelings of being “consistently nauseous”. As to mood, I find that Ms. Morris had the inability to manage her emotions and related impatience. These issues manifested themselves in outward signs of irritability such as yelling. Family members and coworkers bore the brunt. Ms. Morris began taking the medication sertraline to try and control these problems.⁵ Two things are notable regarding Ms. Morris’ increased sense of irritability:

1. It was new and, Dr. Pickett remarked, was not a “major issue” when Ms. Morris last saw the ABI Clinic nurse, Nurse Dunlop, in March, 2022; and
2. The problems being reported to Dr. Pickett coincided with Ms. Morris’ return to work on a full-time basis as a supervisor and server at the Prince George. Moreover, her workload was heavy and about to become more onerous during the summer months, the busiest time of the year for the restaurant. I return to this issue and the correlation between Ms. Morris’ work and recovery.

[30] Regardless, throughout July⁶, August, and into September, the Prince George was in the midst of its busiest “peak” or “high” season. Ms. Morris continued to work 6 days a week, except during the week, beginning July 17, 2022 when she took 2 days off.

[31] In the two weeks leading up to August 12, 2022, she worked all 14 days straight. I mention August 12, 2022 specifically because that is the day Ms. Morris met with the ABI Clinic’s licensed nurse practitioner, Nurse Dunlop, last seen on March 11, 2022. It was also identified by the Defendant’s neurological expert, Dr. Dale Robinson, as an important turning point.

[32] Ms. Morris was tearful and emotional when describing her ongoing work schedule to Nurse Dunlop. Ms. Morris also described increased irritability at home

⁵ I note Ms. Morris was previously prescribed sertraline for depression following her divorce but had to renew her use of this medication following the accident.

⁶ Ms. Morris’ work records for July 10 – 16, 2022 were not available at trial.

and at work and general inability to cope. Ms. Morris agreed that “she has not been able to complete the ABI Day Clinic or see a social worker due to the pace of her work....” Ms. Morris testified that her original optimism was misplaced and that she was driven (both emotionally and, as a single mother, financially) to return to work. Now, however, she was now prepared to see an ABI Clinic social worker and accept a referral to the ABI Clinic’s day program “at lower volume times of her work”. However, there was no suggestion that Ms. Morris reduce her work hours. Beyond that, Nurse Dunlop discussed the “importance of self-care and managing her fatigue”, the side-effects of certain medications, blood testing, and elevated blood pressure.

[33] From a medical perspective, I find that Ms. Morris’ early return to work and her work schedule through 2022 diminished her recovery and contributed to certain significant, persistent, and negative symptoms including headaches, mood dysregulation and relative cognitive stress.

[34] During his oral testimony at trial, Dr. Robinson zeroed in on this concern and characterized its impact on Ms. Morris’ recovery as a “missed opportunity” for creating a more favourable environment for healing the effects of Ms. Morris’ neurological injuries. In discussing this issue, Dr. Robinson pointed out that the underlying brain injury itself was “static”, meaning that the damaged brain cells would not heal (i.e. were permanently dead), but that the damage was also neither expanding nor worsening. In addition, Dr. Robinson testified, the brain exhibits amazing plasticity and is capable of developing alternate neural pathways (or “work arounds”) in an effort to mitigate potential loss of function. And, importantly, the brain’s capacity for recovery can depend on the extent to which the external conditions for healing are supported and optimized, particularly in the months following an injury where the brain’s capacity for recovery is most robust and potential is greatest. Conversely, the same healing process is compromised by adverse conditions including, for example, overwork in the months following an injury. With Ms. Morris, these problems manifest themselves in headaches which re-emerged with increasing frequency and intensity, sleep disturbance, mood dysregulation and cognitive strain. If ignored or left untreated, Dr. Robinson agreed that these same symptoms may worsen and/or persist over time. I find as a fact that this occurred with Ms. Morris.

[35] The evidence corresponded with Dr. Robinson’s opinions. Between May 16 - June 22, 2023, Ms. Morris enrolled in a course called the “Emotional Regulation Series” offered by the ABI Clinic. During that program, she identified “her primary

trigger as dealing with work related stress” and related problems around fatigue, headaches, and an inability to keep her anger and frustration in check. She candidly expressed guilt over the way she “bottles up much of her stress and frustration throughout the workday” and then releases them with exaggerated negative verbal reactions to small problems at home. She regretted that her young sons bore the brunt of many of these outbursts.

[36] Ms. Morris fought through these challenges and continued to work breakfast shifts through the Prince George’s “high season” normally for about 6 days a week. During the week of August 28, 2022, she worked all 7 days. The following week, she worked 6 days but also one double shift.

[37] Beginning around September 11, 2022, Ms. Morris began to “slow down” in the sense that she often took two days off a week and sometimes three days. At the same time, she worked every day from December 25, 2022 (Christmas) to January 3, 2023, and including one double shift on New Year’s Day, 2023.

[38] During this same period of time, on November 14, 2022, Ms. Morris met Nurse Dunlop of the ABI Clinic again. Ms. Morris reported “daily throbbing headaches in the bitemporal lobes with some pressure on the back of her head.” Ms. Morris described “some improvement” due to an increase in her sertraline (mood and anxiety) medication but that “she remains more emotionally reactive than she was in the past”. Ms. Morris’ altered sense also continued.

By the end of the year, Ms. Morris’ total employment income was \$33,648, excluding tips. This figure is notable for the fact that it represents a material increase from the year before (more than \$10,000). I find that this figure resulted largely from an overly ambitious and, in terms of recovery, counterproductive work schedule. It cannot be fairly used to infer that Ms. Morris’ pre-accident, baseline capacity for work had miraculously returned.

[39] It should also be noted that while Ms. Morris’ 2022 income represented a \$10,063 increase from her 2021 total employment income of \$23,585, excluding tips, Ms. Morris did not work from November 13, 2021 to the end of the year, so this income figure was lower than what Ms. Morris might otherwise have been expected. Extrapolating this figure to the end of the year would have resulted in total income of about \$27,156 (i.e. an increase of \$6,492).

[40] Indeed, Ms. Morris’ income continued to grow through 2023 and 2024:

1. By the end of 2023, Ms. Morris' employment income (excluding tips) increased to \$41,599 – an increase of \$7,951 from the year before; and
2. By the end of 2024, Ms. Morris' employment income (excluding tips) increased to \$41,948 – an increase of only about \$350 from the year before.

[41] That said, in my view, this positive income growth exaggerates her current capacity and income earning potential.

[42] On February 11, 2023, Ms. Morris' supervisor, Shawn Lewis, conducted her annual performance review. His evidence provides considerable insight into Ms. Morris' post-accident condition. In contrast to Mr. Lewis' observations of Ms. Morris' pre-accident job performance, his comments during this review were muted. Mr. Lewis alluded to the stress Ms. Morris was experiencing and encouraged her to take the time "to dig into performance issues and spend time with those reporting to you with the goal of building stronger relationships". He also offered his support and offered to help as she continued her rehabilitation.

[43] Similar concerns arose in her May 17, 2024 performance review where Mr. Lewis referred to Ms. Morris' tendency to being "quite excitable" was "getting in the way of [her] problem solving during service". He asked her to "remain calm" and "try to put the small stuff aside and focus more on the solution to the problem other than the root cause."

[44] On January 24, 2024 and for the first time in her career at the Prince George, Ms. Morris was formally "written up" for lashing out at kitchen staff. She was cautioned that "...no matter what the circumstances, professionalism and respect must be adhered [*sic.*] without exception".

[45] I accept Mr. Lewis' testimony that Ms. Morris remained capable of fulfilling her role as a supervisor and waitress and, as well, that Ms. Morris was marketable in the sense that she could work elsewhere as a server. However, I also accept his evidence that Ms. Morris' abilities at work and potential for increased leadership opportunities were significantly diminished and impaired as a result of the accident. Prior to the accident, Mr. Lewis completely trusted Ms. Morris to easily navigate through her shift and supervise the people working with her. She could cope with the fast-paced stress of her breakfast shift and the inevitable problems that would arise with customers and/or staff. After the accident, Mr. Lewis could no longer rely upon Ms. Morris in the same way. She had become much more emotional, fatigued,

and prone to panic. Minor issues would escalate into crisis. For the first time, Mr. Lewis would have to address and mediate confrontations between Ms. Morris and other employees - particularly kitchen staff. Mr. Lewis was suddenly required to now accommodate Ms. Morris' impairments. He testified that he "probably coddles" Ms. Morris because he "doesn't want to give up on her". He began having many ("dozens") one-on-one discussions with Ms. Morris to manage her new behaviours. In addition, Ms. Morris began to take on less work. After the "high season" in 2022, Ms. Morris realized that she could not handle double shifts or work for a week straight. Overall, I find that the accident caused a deterioration in Ms. Morris' performance and capabilities at work. She required increased supervision, managerial patience, support, and coaching.

[46] Ms. Morris demonstrated similar problems at home. Both Ms. Morris' sons testified at trial. I accept their description of Ms. Morris pre-accident as energetic, confident, productive, and independent. It is consistent with the evidence of those other witnesses who knew Ms. Morris prior to the accident. One son recounted Ms. Morris working long hours in a physically demanding supervisory role, managed virtually all household responsibilities, cooked for the family, and remained active through frequent walks, hikes, drives, movies, and family trips. The other son described how Ms. Morris happily and regularly engaged in family outings and activities. Both sons remember their mother at that time (pre-accident) as stable, approachable, and capable of balancing work and home.

[47] Following the accident, both sons described their mother as persistently fatigued, frequently in pain, prone to headaches and migraines, and far less active than before. Family trips and other recreational activities became very rare. They also observed memory difficulties, including forgetfulness regarding daily tasks and medications, as well as a loss of smell that affected everyday activities. Both sons testified that she had become more irritable, emotionally volatile, and likely to react angrily to minor stresses. As a result, the sons assumed greater household responsibilities, including cleaning, garbage removal, grocery assistance, and helping her remember medications.

[48] I also accept the evidence of Ms. Morris and her description of similar clusters of persistent complaints including daily headaches, chronic fatigue and disrupted sleep. Certain of Ms. Morris' evidence must be tempered by the fact that, while she located almost all of her medical issues in the accident, certain factors impeding recovery cannot reasonably be attributed the accident. For example:

1. Ms. Morris has diabetes, a condition obviously unrelated to the accident. Moreover, in the past (i.e. pre-accident), Ms. Morris was also known for lapses in the disciplined regime required for certain medication;
2. The medical records reveal that Ms. Morris suffered a degree of sleep disturbance prior to the accident; and
3. I do not attribute Ms. Morris' more recent complaints around leg pain to the accident.

Nevertheless, I find that these issues (sleep disturbance and forgetfulness with medications) became worse and exacerbated the effects of her brain injury - all of which negatively impacted her recovery and ensured that the residual impacts had an effect of the accident endured with greater intensity.

[49] Ms. Morris also spoke compelling to poor concentration, reduced ability to process information, and difficulty multitasking. Emotionally, she struggles with marked emotional instability, irritability, and psychological frailty discussed above. She also has experienced social withdrawal and a diminished sense of her prior positive and outgoing personality. Physically, she has reduced stamina.

[50] I accept the evidence of Ms. Morris (corroborated by many other witnesses) that, after the accident, lost her positivity, resiliency, and capacity for work. She became increasingly prone to fatigue, emotional outbursts over comparatively minor matters, anxiety, and depressive thoughts. These post-accident problems contributed to strained relationships with her children and her colleagues at work.

[51] In short, while the medical records reveals initial, remarkable steps toward recovery, they were clearly neither complete nor followed a consistently linear, upward trajectory. Ms. Morris was overly optimistic in her desire to return to work and a sense of normalcy. She reported that initial optimism to the medical professionals following her progress. However, as time wore on and as Dr. Robinson confirmed, by August, 2022, Ms. Morris was also openly reporting the re-emergence and worsening of symptoms - all of which roughly corresponded to her return to full-time work.

[52] Finally, I do not find that Ms. Morris failed to mitigate her damages in any respect either by unreasonably refusing medical advice or stubbornly insist on working against professional recommendations. I find that Ms. Morris did the best she could in the circumstances both in terms of medical advice and fulfilling her own

responsibilities regarding medications and therapy. As mentioned, she actively began participating in programming through the ABI Clinic as soon as more negative symptoms emerged with greater intensity. As to Ms. Morris' return to work specifically, there were no recommendations that she immediately stop working when more troubling symptoms began to appear during the summer of 2022. Moreover, after the 2022 "peak" season ended the Prince George and through 2023, Ms. Morris began to engage consistently and regularly in numerous programs offered by the ABI Clinic.⁷ However, by this time, her core complaints did not abate. Overall, Ms. Morris' return to work and desire to earn an income, cannot, in a strange reversal, be held against her.

GENERAL DAMAGES

[53] I find that Ms. Morris suffered serious injuries with significant, persistent impairments to her employment and more limited effects on household activities.

[54] Generally speaking, an award of damages seeks to restore an injured party to the position they would have been had the tort not occurred, compensating for losses reasonably flowing from tortious conduct. This broad principle is theoretical in the sense that the Court obviously cannot restore health or return an injured party to their original condition. Instead, as the reasonable practical alternative, the Court must try to approximate the value of what has been lost in monetary terms – sometimes referred to as the "functional approach".

[55] In *Vogler v. Szendroi*, 2010 NSSC 390; aff'd 2011 NSCA 98 ("*Vogler*")⁸, the Plaintiff was involved in a car accident resulting in a severe, traumatic brain injury. Although he made a "remarkable recovery" (para. 4. See also paras. 59 and 62), he permanently lost many of his former qualities. He lost an equally "remarkable capacity to instantly communicate" his positive, good nature spirit and, as well, his quick wit. He also suffered significant physical injuries, most notably a badly torn

⁷ They included the "Core Program" (March 21 – April 27, 2023) and the "Emotional Regulation Series" (May 16 – June 22, 2023). On July 27, 2023, Ms. Morris also again met with Michelle Titus, a social worker with the ABI Clinic. Ms. Morris' primary complaint continued to be fatigue emotional dysregulation which manifested itself in feelings of anxiety, stress and an inability to control her anger.

⁸ The Court of Appeal unanimously and briefly confirmed the trial judge's findings on general damages. At para. 6, the panel wrote:

The trial judge had very extensive medical and other evidence before him, and was in an ideal position to determine the severity of the injuries for assessment purposes. His assessment was \$150,000.00, for the combination of brain injury and loss of vision - each of which would alone command a significant award - and for the other injuries suffered. The appellants say this award is too high. We disagree. It is within the range of reasonable outcomes for the severe injuries suffered by the respondent.

right forearm requiring grafting and resulting in lasting stiffness, and permanent vision loss in one eye.

[56] Moir, J. canvasses the jurisprudence and concluded that “...awards over \$100,000 [approximately \$145,000 adjusted for inflation] were for injuries and impairments that appear to have been more severe” (at para. 154). The jurisprudence bears this out. See, for example, *Parnell et al. v. Singer*, 1992 CANLII 4630 (NSSC), (\$240,000, adjusted for inflation), *Afonina v. Jansson*, 2015 BCSC 10 (\$250,000 adjusted for inflation), *Payne v. Miles*, 2013 BCSC 1545 (\$282,000 adjusted for inflation); *James v. Harper*, 2010 ONSC 4785 (\$282,000 adjusted for inflation); *Ward v. Ward*, 2010 ABQB 654 (\$289,000 adjusted for inflation); and *Van v. Howlett*, 2014 BCSC 1404 (\$461,000 adjusted for inflation). These comparator cases involved catastrophic injuries far exceeding those suffered by Mr. Vogler – or by Ms. Morris, in this case. The plaintiffs in these cases sustained, for example, severe traumatic brain injuries accompanied by prolonged comas, lengthy hospitalizations, multiple fractures, invasive surgeries, organ damage, collapsed or punctured lungs, and profound cognitive and physical impairments. Many were required to relearn basic functions such as walking, talking, feeding themselves, using the toilet, or performing simple arithmetic. Several were left permanently disabled, unable to work, live independently, or manage ordinary daily activities, with some experiencing hallucinations, permanent memory deficits, swallowing difficulties, or brain lesions associated with a vegetative state.

[57] That said, in *Vogler*, Moir, J. continued that there were two additional features that seem to be unique to this brain injury case: “... the combination with loss of vision in one eye and the impact of the memory and processing impairments on a person who was once remarkably quick-witted” (at para. 154). The effects of losing an eye did not require further explanation. However, Moir, J. concluded that the less physical losses (communicative, quick wit) were also “palpable and serious” (at para. 156). Moir, J. eventually set generally damages at \$150,000 (\$211,000 today).

[58] In my view, the injuries suffered by Ms. Morris were serious, traumatic, and persistent. They are neither mild nor temporary. She was hospitalized for 10 days following the collision. As mentioned, the medical experts agree that Ms. Morris suffered a traumatic brain injury associated with a basilar skull fracture, causing bilateral frontal and temporal lobe contusions, a left orbital frontal gyrus contusion, occipital lobe contrecoup contusions, and intracranial bleeding, including subdural and subarachnoid hemorrhages. Moreover, it was agreed that there were certain

contusions to Ms. Morris’ frontal temporal lobes that likely resulted in scarring of brain tissue and the related, permanent death of neurons. These brain injuries haunt Ms. Morris in the form of a permanent loss of smell and an impaired sense of taste which has caused periodic nausea or vomiting. She also continues to experience headaches, dizziness, and symptoms of certain relatively limited cognitive impairment affecting memory and concentration. Of perhaps even greater significance, Ms. Morris suffers from persistent and serious problems with mood regulation which have significantly and permanently affected her personality and her life at work and at home.

[59] In my view, fair compensation for Ms. Morris’ pain and suffering in this case is \$175,000.

LOST INCOME EARNING CAPACITY

[60] The Plaintiff approached the quantification of any lost income within “the overall global total of future income losses” (Plaintiff’s pre-trial submissions at para. 109).

[61] Future income losses: “... is not an award for loss of earnings but... compensation for loss of earning capacity... [which] may never in fact occur” (*Newman (Guardian ad litem of) v. LaMarche*, 1994 NSCA 198, at para. 21). These types of awards have been characterized as compensation for the loss of a capital asset, with the “capital asset” being more specifically defined as the Plaintiff’s capacity to earn income. See *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229 (“*Andrews*”) at para. 63.

[62] The governing evidentiary standard, consistently articulated across the cases: the Plaintiff must demonstrate a “real and substantial possibility” of future income loss. As noted by Boudreau, J. in *Vigneault v. Mitchell*, 2025 NSSC 9, the Plaintiff “must only show ‘a real and substantial possibility’... and does not need to meet the ‘balance of probabilities’ onus” (at para. 207). Similarly, *Morgan v. Galbraith*, 2013 BCCA 305 emphasizes that a Plaintiff must prove that there is a real and substantial possibility of a future event leading to an income loss (at paras. 49 - 53).⁹

[63] The analytical process for determining future loss of income is inherently predictive and probabilistic in nature and therefore gives rise to certain challenges.

⁹ The same characterization and conceptual approach applies to claims for lost housekeeping services as both involve the loss of a person’s physical ability to perform a function). See *Leddycote v. Nova Scotia (Attorney General)*, 2002 NSCA 47 at para. 50.

In *Andrews*, the Supreme Court of Canada introduced its discussion around prospective loss of earnings by acknowledging at para. 58 that:

[58] [w]e must now gaze more deeply into the crystal ball. What sort of career would the accident victim have had? What were his prospects and potential prior to the accident.

[64] In *Vogler v. Szendroi*, 2010 NSSC 390; aff'd 2011 NSCA 98 ("*Vogler*"), the trial judge acknowledged the underlying challenges and uncertainties (at paras. 169 - 170) - as did the Nova Scotia Court of Appeal when upholding the trial judge's decision and confirming that the exercise ultimately "...involved making educated guesses about the life trajectory that [the plaintiff] would have enjoyed but for the accident, and comparing this to the life that [s/he] is currently living" (at para. 7).

[65] The analysis is further complicated by the fact that quantification of damages may occur according to a more mathematical calculation based largely on actuarial evidence or, by contrast, a "global approach" where damages cannot be measured with actuarial precision. To the extent actuarial evidence offers the objectivity and consistency of mathematical formula and statistical analysis, they reduce the risks associated with more discretionary decision-making. However, again, there are cases in which a "global approach" is required. The parties agree that this is one such case.¹⁰

[66] That said, the analysis is neither arbitrary nor entirely. The evidentiary standard discussed above serves both as a gatekeeping function to help exclude speculative claims and to ensure the court fairly weighs hypothetical future events in a focussed manner, anchored in the evidence. This means that, when assessing damages for future loss, courts must estimate the likelihood of future events and reflect those probabilities or contingencies based on the evidence and common sense – not speculation. In *Campbell-MacIsaac v. Deveau*, 2004 NSCA 87, Saunders, J.A. confirmed that contingencies must rest on cogent evidence demonstrating a realistic possibility, not mere conjecture. Courts distinguish between general contingencies, which are common features of human experience such as aging, illness, or career advancement, and special contingencies, which are unique to the individual

¹⁰ I note that the Plaintiff argued that the "mathematical approach" and the "global approach" were equally possible and effectively resulted in the same damage award. Respectfully, I disagree. The Plaintiff's "mathematical approach" was predicated on the opinions of Carmel O'Keefe, Registered Occupational Therapist, who provided expert evidence at trial and who proposed that the Plaintiff reduce her working hours to 20 hours per week combined with several additional hours of daily "programming" and "therapeutic programming" (Carmel O'Keefe's expert opinion report dated October 25, 2024 at para. 18). For reasons given below, I do not accept this evidence.

claimant. Ultimately, the governing objective is to achieve a damages award that is fair and adequate in a manner that is anchored in the evidence and the particular circumstances of the case (at paras. 100 – 102).

[67] The jurisprudence provides further assistance in sharpening the legal and factual inquiries. In *Earnshaw v. Despins*, [1990] BCJ No 944, 1990 CarswellBC 104 (BCCA), the British Columbia Court of Appeal distilled the core inquiry as follows:

Has the plaintiff's earning capacity been impaired to any degree by his injuries?"
and, if so, "what amount... should be awarded for that impairment?"

[68] In *Brown v. Golaiy*, [1985] BCJ No. 31, 1985 CarswellBC 830 (BCSC), Finch, J. helpfully articulated some of the four, more specific indicia to take into account:

1. Is the Plaintiff less capable overall of earning income;
2. Is the Plaintiff less marketable or attractive as an employee to potential employers;
3. Is the Plaintiff less able to take advantage of opportunities; and
4. Is the Plaintiff less valuable in the competitive labour market.

These factors provide a rational, consistent framework for translating medical impairment into some employment related and economic consequence.

[69] I have considered the evidence carefully.

[70] Finally, and as the Court in *Morgan* makes clear at para. 24, a Plaintiff may still prove diminished capacity despite returning to their historic or usual employment although, to be clear, continued stable employment without demonstrated vulnerability may negate the claim.

[71] In my view, Ms. Morris is less capable overall of earning income, in comparison to her pre-accident experience and potential. She is also less attractive as a employee and less able to take advantage of opportunities that arise, making her less valuable in a competitive market.

[72] It is true that Ms. Morris returned to her former job in 2022, earned more income upon her return to work in 2022, and again in 2023 and 2024. In addition,

Mr. Lewis, Ms. Morris' supervisor, described Ms. Morris as marketable in what he said was a tight market for experienced servers. This evidence is probative.

[73] However, in a dramatic change from her pre-accident condition, Ms. Morris is no longer defined by either her reliability, work ethic, leadership skills, or positivity. Rather, she has become more defined at work by her impairments than her potential. Ms. Morris accelerated return to an intensive (often greater than 40 hours/week) schedule did generate positive income growth, but it came at a significant cost to her longer-term recovery – resulting in a material deterioration to her health which Dr. Robinson described as a “missed opportunity” for healing. Ms. Morris can no longer endure or maintain this pace of overtime work and double shifts. Her ability to excel and progress in the service industry has, in my view, been compromised because her injuries exposed those negative qualities and undermine the quality of her job performance, render her increasingly exposed to criticism, and diminish her future opportunities. Those negative qualities include emotional instability manifesting itself in confrontational frustrations or anger and fatigue.

[74] In my view, the evidence demonstrates a real and substantial possibility of ongoing impairment to Ms. Morris' income earning capacity.

[75] As to quantum, Ms. Morris' losses are significantly more serious than those described in certain cases relied upon by the Defendant which involved relatively modest awards.

[76] In *Zwicker v. Canada (Attorney General)*, 2023 NSSC 44, Gabriel, J. awarded the Plaintiff a modest \$20,000 for the loss of earning capacity, before then applying a discount for failure to mitigate. The distinctions between the Plaintiff in that case and Ms. Morris are stark. The Plaintiff's employment history was unstable (the Plaintiff was incarcerated at the time of his injuries). The Plaintiff's related employment prospects were similarly uncertain and diminished by an ongoing dependency on drugs. Gabriel, J. observed at para. 385:

[385] ...The odds of him finding the resolve or discipline necessary to attain such a skilled and demanding position seem to me to be rather remote, even if he had not been injured, and even if he is indeed now addiction free, as he claims.

None of these concerns could be fairly or reasonably linked to Ms. Morris.

[77] In *Cameron v. Pratt*, 2023 NSCA 90, the Plaintiff was employed as a long-haul truck driver who later pursued retraining as an electrician. He sustained

multiple injuries in the 2017 accident, including abrasions and bruising, fractured ribs, soft-tissue injuries to the neck and back, a significant knee ligament sprain (including torn LCL/ACL), and a concussion (mild traumatic brain injury).

[78] At paras. 26 – 34, the Court affirmed the trial judge’s \$25,000 award for diminished earning capacity, emphasizing that such losses are inherently imprecise and are properly assessed as a loss of a capital asset rather than through exact calculation. The Court notes the trial judge’s factual findings and focussed on the more physical nature of the Plaintiff’s functional work limitations - particularly due to his knee injury - which restricted activities like crouching, climbing, and performing certain electrical tasks, even though he was able to complete retraining with accommodations (at para. 31). The judge further found that the knee injury was ongoing, would likely deteriorate (including a risk of osteoarthritis and possible future knee replacement), and would continue to impair his ability to earn income. Importantly, the Court accepted that these limitations were causally related to the accident rather than a subsequent 2019 incident, and that the later accident would not necessarily preclude future employment.

[79] In my view, Ms. Morris’ injuries are connected to ongoing brain injuries and much more impactful, particularly given the nature of her work in the service industry. Ms. Morris is prone to fatigue. Despite her work ethic, she cannot maintain her historic pace at work. Perhaps more significantly, she is greatly impaired in her ability to interact appropriately in the fast-paced service industry, which includes often stressful social encounters with staff and customers. Her ability to advance into leadership roles has been similarly compromised.

[80] In *Mawdsley v. McCarthy’s Towing & Recovery Ltd.*, 2010 NSSC 168, the Plaintiff was approximately 40 years old at the time of the accident. He sustained severe crushing injuries to his head and upper body, including a fractured jaw, severed facial nerve with permanent loss of sensation on the right side of his face, rib fractures, pneumothorax, shoulder injury, and neurological symptoms in his arm, along with mild but permanent brain trauma and ongoing neck, shoulder, and back pain. Prior to the accident, he had a predominantly manual labour employment history, working in a wide range of physically demanding jobs including truck driving, factory work, maintenance, construction-related work, and operating a garbage truck. After the accident, he returned to work in a reduced capacity, undertaking lighter roles such as janitorial work, animal care, and part-time seasonal farm labour, but with persistent limitations affecting his ability to perform heavy or sustained physical tasks.

[81] At paras. 102 - 104, the Court emphasized that although the Plaintiff was not totally disabled, his injuries created a meaningful risk of future economic disadvantage, particularly because his earning capacity was tied to manual labour requiring physical strength and endurance. The Court stressed the distinction between physical impairment (“function”) and earning capacity, noting that while the Plaintiff retained the ability to work and could theoretically earn income comparable to his pre-accident level, his lingering physical limitations reduced the range and type of jobs realistically available to him, thereby impairing his future earning capacity.

[82] At paras. 105–106, the Court distilled the practical impact of those principles, finding that the Plaintiff remained capable of full-time work, but only in less physically demanding roles, and that his injuries - particularly his reduced stamina and inability to perform heavier tasks - would limit his competitiveness and productivity in the labour market over time. The Court did “not consider that [the plaintiff’s brain injury] has had a significant impact on his earning capacity” (at para. 106), but accepted that the combined physical limitations would have some ongoing, though not catastrophic, effect on earning capacity. Balancing these factors, the Court arrived at a \$57,000 award for diminished earning capacity or about \$83,000, adjusted for inflation.

[83] There are similarities between Ms. Morris’ circumstances and those experienced by the Plaintiff in *Mawdsley*. However, there are important distinctions. Most notably, the effects of Ms. Morris’ brain injuries are more serious and more prevalent in explaining her lost earning capacity. However, in my view, Ms. Morris’ lost income earning capacity is much greater.

[84] At the same time, a number of the cases relied upon by the Plaintiff.

[85] The effects of Ms. Morris’ brain injuries are more akin to those suffered by the Plaintiff in *Vogler*. In that case, Moir, J. the judge concluded that the Plaintiff’s injuries had a real and significant diminution of earning capacity. Like Ms. Morris, the Plaintiff in *Vogler* was 20 years old at the time of the accident and described as “a very bright and popular twenty year old from Halifax” (at para. 2). Following the accident, although he made a remarkable recovery, he was left with permanent (though mild) impairments in memory and information processing that affected his functional abilities and career trajectory. Despite these limitations, he eventually secured steady employment at Rainbow Grocery Co-operative in San Francisco, where he earned approximately \$50,000 per year and was generally well regarded

by his co-workers. However, and like Ms. Morris, Mr. Vogler's post-accident employment did not reflect his true potential. While he remained capable of maintaining employment and living independently, his injuries limited his ability to advance, and he struggled with tasks requiring memory and organization, such as cashier work. At para. 132, the judge remarked that: "Mr. Vogler's failure to move beyond his grocery clerk job is not a sign that he is less goal-directed than he was previously." Rather, the evidence showed that he continued to pursue opportunities, including repeated applications to educational programs and ongoing consideration of higher education in the fine arts. Nevertheless, the Court accepted that two main obstacles impeded his advancement: lack of financial resources and the real functional impact of his cognitive impairments. In short, Mr. Vogler's impairments had serious consequences as he struggled daily with memory and had reduced ability to communicate.

[86] These ongoing injuries seriously compromised Mr. Vogler's potential and promise to earn a substantial income. The Court accepted that he would probably have pursued advanced studies leading to a more remunerative career. Adopting the "global" approach, the Court awarded \$180,000 for future loss of income-earning capacity (approximately \$262,000, adjusted for inflation).

[87] In brief reasons bearing citation 2011 NSCA 98, the Nova Scotia Court of Appeal affirmed Moir, J's decision. As to damages for future loss of income, the Court wrote at paras. 7 – 8:

7 Regarding the assessment of damages for loss of future income, or income earning capacity, the trial judge acknowledged the challenging task and noted that it involved making educated guesses about the life trajectory that Mr. Vogler would have enjoyed, but for the accident, and comparing this to the life that he is currently living.

8 On the basis of considerable evidence it was the trial judge's conclusion that the injuries have led to "information processing and memory deficit", and that but for the accident, Mr. Vogler would have been capable of "meaningful work". The result being that his injuries would probably translate into lower earnings in the future. Consistent with the case law, he opted to use a "global" rather than an actuarial approach and arrived at a figure for loss of future income earning capacity of \$180,000.00. The appellants argue that this assessment is contrary to the evidence. Again we disagree. There was more than ample evidence to support the trial judge's findings and conclusions in making his award of loss of future earning capacity.

[88] No two individuals are alike and there are obviously differences between Ms. Morris and the Plaintiff in *Vogler*. In particular, Ms. Morris was older and

established in the service industry and, prior to the accident, had already been promoted to the position of supervisor. While Ms. Morris is ambitious and keen to advance further, her career trajectory was more established and, in my view, limited.

[89] Overall, in my view, a damages for lost earning capacity in the amount of \$200,000 is reasonable and just in the circumstances.

FUTURE COST OF CARE

[90] The most significant component of Ms. Morris' damage claim is the future cost of care. Ms. Morris seeks damages in the range of \$1,441,000 - \$2,000,000. Her claim is grounded primarily in the expert opinion report dated October 25, 2024 prepared by Carmel O'Keefe, Registered Occupational Therapist. Jarrett Reaume, CPA, CAIFA, CBV, CFF assumed that Ms. O'Keefe's report was "... a complete and accurate representation of Ms. Morris' future care costs and valuable services" (Jarrett Reaume's expert report dated November 28, 2024, at para. 19). He then calculated the net present value of Ms. Morris' current requirements over the duration of Ms. Morris' life.

[91] Respectfully, I have significant difficulties with the expert evidence presented in support of a claim for cost of future care. Many of the foundational assumptions in Ms. O'Keefe's report (which then drove Mr. Reaume's calculations) were greatly exaggerated and/or not grounded in a medical opinion. As confirmed by Boudreau, J. in *Vignault v Mitchell*, 2025 NSSC 9 at para 222:

[222] The test for future care costs] is an objective test, pursuant to which the plaintiff must show a) that there is medical justification for the claim(s), and b) that they are reasonable (*Tsalamandris v. McLeod*, 2012 BCCA 239). Again, the plaintiff must only show a "real and substantial possibility" that future care will be needed and accessed.

[92] Several examples will suffice:

1. Ms. Morris regularly takes sertraline for anxiety and mood regulation. Ms. O'Keefe acknowledged that the costs she used for this drug was based on certain research but was actually double Ms. Morris' actual costs;
2. Ms. O'Keefe costed certain medications (Gabapentin) which Ms. Morris had tried but it was not effective;

3. Ms. O’Keefe costed all medications suggested by Dr. Richard Leckey who, as indicated, provided expert opinion report. However, Dr. Leckey did not recommend that Ms. Morris take all of the drugs being recommended. Many were proposed as an “either/or”. Moreover, some could be funded by Province of Nova Scotia at no cost;
4. Ms. O’Keefe priced various “case managers” which were then costed by Mr. Rheume at about \$200,000 - \$285,000. However, none of the medical experts recommended a case manager and I do not find that one is required in the circumstances;
5. Ms. O’Keefe recommended various forms of vision therapy costs, certain treatment that no medical expert recommended; and
6. There is very little evidence regarding how long any particular therapies are required and/or any contingencies for addressing the risks that any proposed therapy treatment may (or may not) achieve its intended result. Yet, Ms. O’Keefe and Mr. Reaume’s reports are largely (not entirely) premised on the assumption that Ms. Morris will require all of the recommended therapies for the rest of her life.¹¹

[93] Returning to the medical evidence, Dr. Leckey recommended:

1. Medications for sleep Mirtazapine or trazodone (sedating antidepressants) and headaches Topiramate (prophylaxis); and
2. Multidisciplinary professional therapy including physiotherapy, occupational therapy for cognitive and functional support, and psychological therapy, which he opined was important and largely absent to date.

[94] Dr. Robinson recommended steps or staged headache management in the form of:

1. Nutraceuticals such as magnesium, vitamin B2, and CoQ10;
2. If nutraceuticals do not achieve their intended result, prescription options would include tricyclic antidepressants

¹¹ For certain therapies, Mr. Reaume provides calculations for up to the year 2030 and then further calculations for life.

(amitriptyline/nortriptyline); antihypertensives (e.g., candesartan); and anticonvulsants (topiramate, with some caution); and

3. Finally, if necessary, advanced therapies could include Botox or CGRP agents.

[95] Dr. Robinson also suggested additional medications that also improve sleep and mood.

[96] Finally, with respect to professional therapy, Dr. Robinson suggested:

1. A Psychiatry consultation (central coordinator of rehab);
2. Psychiatry & psychology assessment/treatment;
3. Neurology follow-up for headache management; and
4. Continued engagement with the ABI Clinic.

[97] Overall, I found that both experts (Dr. Leckey on behalf of the Plaintiff and Dr. Robinson on behalf of the Defendant) were objective, neutral, and largely in agreement. To the extent there is differences between their opinions, it is primarily a matter of degree or approach to ongoing treatments. I conclude that Ms. Morris will reasonably require the following types of medication for life:

1. An appropriate medication for anxiety or mood regulation such as sertraline or a similar medication, but obviously not a combination as implied by the costing models contained in Ms. O'Keefe's report. As a residual (not primary) benefit, these medications may also assist with Ms. Morris' difficulties sleeping. On this, again, I recognize that Ms. Morris suffered from sleep disturbance prior to the accident and, as well, that there may be other contributing factors including leg pain which I find is unrelated to the accident. However, I equally find that the accident and its related sequelae such as anxiety and headaches became a significant contributing factor; and
2. An appropriate medication for headaches such as topiramate or a suitable equivalent therapy given the potential cognitive side-effects mentioned by Dr. Robinson.

[98] I also conclude that Ms. Morris requires some immediate but temporary or limited psychological treatment and physiotherapy – certainly not for life.

[99] In evaluating these recommendations and attempting to determine the nature and cost of future care, I am compelled to also identify a legitimate concern raised by the Defendant: In the years which the Defendant, Primmum, notes that Section B of Ms. Morris' insurance policy entitled her to \$50,000 of certain approved expenses – including psychiatric and physiotherapy. Yet, she only accessed \$662.27 worth of these Section B benefits as of March 26, 2025 as reimbursement primarily the drug sertraline and the cost of blue prism glasses to address certain vision issues. She did not seek either psychiatric treatment or physiotherapy. The concern arises that monies will be squandered as Ms. Morris did not previously avail herself of the same therapies she now claims to require. In *Pelletier v Ontario*, 2013 ONSC 6898, Boswell, J. commented at para. 349:

[349] The reasonableness standard dictates that a consideration of a proposed expense be undertaken with a view to whether a reasonable person of ample means would be willing to incur the expense. Reasonableness would never countenance a squandering of money: see, for instance, *Andrews*, as above, at p. 245 S.C.R., and *Brennan v. Singh*, 1999 CarswellBC 484, [1999] B.C.J. No. 520, 86 A.C.W.S. (3d) 537 (B.C. S.C.) at para. 70.

(Emphasis added)

[100] It is tempting to quickly conclude that Ms. Morris' failure to fully access Section B benefits suggests either a failure to mitigate or, at a minimum, a proven unwillingness to pursue available treatments. Therefore, awarding Ms. Morris money for such treatments should be considered wasteful or squandering. The concern is legitimate although, in the circumstances of this case and in my view, ignores the broader context and certain practical realities. Ms. Morris did not sit idle and casually refuse to engage in treatment and/or reject professional advice. Ms. Morris was also a single mother who was raising two sons on a single income (hers). She was working as much as she could to fulfill these responsibilities. And it should be noted that Ms. Morris was also only paid \$1,314.56 of disability benefits under Section B as of March 18, 2025.

[101] From a strictly economic perspective, the marginal utility of the income loss for time off work were unclear, particularly given that the medical implications were not fully explored or explained at the time.

[102] It is true that Ms. Morris returned to full-time work too quickly, giving rise to a "lost opportunity" (to use Dr. Robinson's phrase) and compromise her recovery. However, the risks associated with this accelerated push to earn an income were not made clear to her at the time. Finally, once Ms. Morris did gain a greater appreciation

of the risks associated with excessive hours at work, she did attempt to cut back as much as reasonably possible and also began attending course with the ABI Clinic. Given these unique facts, it would be unreasonable to condemn Ms. Morris request for limited therapeutic treatments as a squandering risk.

[103] I award Ms. Morris \$35,000 for the cost of future care. In my view, this figure reasonably approximates the specific costs developed in Mr. Reaume's actuarial report, but also applying discounts for inflated medication costs and a more conservative and limited approach to Ms. Morris' therapeutic needs, consistent with the medical evidence.

LOSS OF VALUABLE SERVICES

[104] I agree with the Defendant that Ms. Morris' claim for loss of valuable services (\$102,546 - \$125,284) is excessive. While an award under this category of damages is appropriate, a much reduced figure is more reasonable in the circumstances.

[105] Just as Ms. Morris is capable of working, she still does household chores. For example, she prepared light meals, can do the laundry and the dishes, and empties the litter box.

[106] That said, it is also true that Ms. Morris is decidedly slower and does these tasks less frequently. She is clearly less capable of maintaining her home as she did in the past. In my view, an award of \$25,000 is reasonable in the circumstances and, again, within the range proposed by the Defendant.

PRE-JUDGMENT INTEREST

[107] The parties filed post-hearing submissions on pre-judgment interest.

[108] The parties agree that prejudgment interest is discretionary under s. 41(i) of the *Judicature Act*, R.S.N.S. 1989, c. 240, and generally runs from the date the cause of action arose to judgment. They diverge, however, on the appropriate rate of interest.

[109] The Plaintiff submits that a rate at or above 5% in appropriate circumstances, including *Gold Recruitment Services Incorporated v. QDS Holdings Incorporated*, 2025 NSSC 26 (5% applied, by agreement), as well as *Leddicate v. Nova Scotia (Attorney General)*, 2000 CarswellNS 171, [2000] N.S.J. No. 187 (NSSC) (5.21% based on a weighted average of the interest paid on one year treasury bills), *Inglis v.*

Nova Scotia Public Service Long Term Disability Trust Fund, 2011 NSSC 36 (3.5%), *Murphy v. Optipress Inc.*, 2008 NSSC 75 (3.5% by agreement). The Plaintiff also refers to older authorities such as *MacGillivray v. Butler*, 1994 CanLII 6396 (NSSC) (8%) and *King v. Briand's Cab Ltd. and MacDonald*, 1984 CanLII 5559 (NSSC) (13% on general damages and 6% on specials). Ms. Morris concludes that a rate of at least 5% (and 5.5% on special damages) is justified and reasonable.

[110] The Defendant, Primum, submits that the prevailing practice in Nova Scotia personal injury cases supports a substantially lower range, typically around 2–3% simple interest, citing a consistent line of decisions including *Melanson v. Robbins*, 2009 NSSC 31; *Vogler v. Szendroi*, 2010 NSSC 390; *Warnell v. Cumby*, 2017 NSSC 88; *Robbins v. Bajwa*, 2020 NSSC 311; *Pratt v. Cameron*, 2021 NSSC 129; *Churchill Cellars v. Haider*, 2023 NSSC 32; *Vigneault v. Mitchell*, 2025 NSSC 9; *Ogilvie v. Windsor Elms Village for Continuing Care Society*, 2022 NSSC 144, and *Anderson v. Gagne*, 2025 NSSC 131. Primum also points to *Laudahn v. Chedabucto Homes Limited*, 2024 NSSC 428 (4%) to demonstrate that higher rates are exceptional and fact-specific. Absent evidence to the contrary, Primum argues that the Court should adhere to this established range and fix pre-judgment interest between 2.5% and 3%.

[111] In my view, the bulk of cases which involve higher interest rates are either dated or involve rates established with the parties' agreement or arise out of unique factors such as the impact of delay that do not arise here. The range of pre-judgment interest rates proposed by Primum more closely align with the current jurisprudence over the relevant period of time.

[112] Pre-judgment interest shall be applied at the rate of 3%, calculated simply.

CONCLUSION

[113] I award the following damages to Ms. Morris:

- General Damages: \$175,000
- Diminished Earning Capacity: \$200,000
- Loss of Valuable Services (Past and Future): \$25,000
- Cost of Future Care: \$35,000

Total, excluding any prejudgment interest: \$435,000

[114] Prejudgment interest shall accrue to these amounts at the rate of 3% per annum, calculated simply from the date the cause of action arose (November 13, 2021).

[115] If the parties are unable to agree on costs, I will accept brief written submissions on this issue within a month of releasing this decision.

Keith, J.