

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *S.T.H. v. Ivanhoe Cambridge Inc.*,
2026 BCSC 695

Date: 20260417
Docket: S209750
Registry: Vancouver

Between:

S.T.H.

Plaintiff

And:

Ivanhoe Cambridge Inc. and Paladin Security Group Ltd.

Defendants

Corrected Judgment: These reasons have been initialized for publication purposes
on April 22, 2026.

Before: The Honourable Justice Marzari

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.
January 19-23 and 26-30, 2026

Place and Date of Judgment:

Vancouver, B.C.
April 17, 2026

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INTRODUCTION

[1] This action arises from the civil assault and battery, detention, and arrest of the plaintiff by security guards at Metropolis at Metrotown (the “Mall”) on November 23, 2019 (the “Incident”). The plaintiff had recently turned 18 years old at the time of the Incident. Because of the plaintiff’s young age at the time, I have initialized their name and that of their family. In addition, while the plaintiff is a transgender man, they identified as female at the time of the Incident. At the plaintiff’s request, I refer to the plaintiff using third person pronouns in these Reasons, unless I am referencing a contemporaneous record where it is relevant that the plaintiff identified as female at the time.

[2] The bare elements of the battery, false arrest and false imprisonment of the plaintiff by the security guards at the Mall is not contested. It is conceded that one of the security guards grabbed the plaintiff’s arm while the plaintiff was in a Champs store at the Mall, and that, shortly thereafter, two security guards put the plaintiff into a double arm lock and marched the plaintiff through the Mall and outside to a series of staircases and plazas, including an area known as the “Dolphin Pond” on the exterior of the Mall but still on Mall property. At the Dolphin Pond, the plaintiff was “taken to the ground” by the security guards at least once while the plaintiff’s friends looked on. The plaintiff was then walked to the last set of stairs leading to the sidewalk just off Mall property, where the plaintiff was again held by multiple security guards and handcuffed while lying face down on the ground. The plaintiff was then walked back through the Mall, where the plaintiff was physically searched by a male security guard and held in a small holding cell for approximately 45 minutes until the police arrived. During this period, the plaintiff’s phone was seized, and the plaintiff was not permitted to speak to their mother, who had arrived demanding to speak to her child. The plaintiff was then issued with two permanent “banning notices”, including one backdated to August 2019, and released to the police, who shortly thereafter released the plaintiff to their parents.

[3] The defendants include the Mall owner, Ivanhoe Cambridge Inc. (“Ivanhoe Cambridge”), and their security contractor, Paladin Security Group Ltd. (“Paladin”),

(collectively, the “Defendants”). On the first day of trial, the plaintiff removed the still unnamed individual security guards as defendants, and the remaining Defendants admitted liability for the torts claimed against them, including Paladin’s vicarious liability for the actions of the security guards and Ivanhoe Cambridge’s occupier’s liability for the actions of their security contractors.

[4] The Defendants, who were represented by the same counsel, made no attempt to distinguish the admission of liability of Paladin from that of Ivanhoe Cambridge with respect to any of the incidents or heads of damages. While they admit liability for the torts alleged in the notice of civil claim, including assault, battery, false arrest and false imprisonment, the Defendants say that the plaintiff’s own conduct contributed to their treatment by the guards, and thus their injuries (though they expressly do not seek to advance a claim in contributory negligence against the plaintiff), and the Defendants deny the extent of damages claimed by the plaintiff, including the availability of aggravated or punitive damages.

Admitted Material Facts

[5] In admitting liability in this action, the Defendants were required to state what material facts incidental to the claimed torts were admitted for the purposes of the liability admission. Not all of the plaintiff’s pleaded material facts relating to each tort claimed were admitted by the Defendants, but many were.

Assault and Battery

[6] The following material facts related to the Defendants’ liability in battery were formally admitted:

- The security guards intentionally and unlawfully physically took hold of the plaintiff’s arms with unnecessary and unreasonable force, and refused to release their hold as they walked the plaintiff out of the Mall; and
- One of the security guards lay directly on top of the plaintiff despite the difference in their relative size and weight thus causing the plaintiff pain.

[7] The Defendants did not admit the following alleged material facts: that one of the guards threatened assault by raising their arm to strike the plaintiff, or that one or more of the security guards knocked the plaintiff to the ground causing them to hit their head on the pavement.

[8] Fundamentally, the Defendants argued that, even if excessive force was used to do so, they had grounds to physically remove the plaintiff from the Mall on November 23, 2019, because:

- a) The plaintiff had been banned from being in the Mall on August 2, 2019 after the plaintiff had attempted to climb over an accordion gate in the Mall (the “Gate Event”); and
- b) The plaintiff was non-compliant with the security guards’ demand that the plaintiff immediately leave the Mall on November 23, 2019.

[9] The Defendants also argued that the plaintiff improperly resisted the holds placed on them as they were physically removed from the Mall.

False Arrest

[10] The Defendants admit the following pleading with respect to their arrest of the plaintiff before handcuffing the plaintiff:

- The security guards purported to arrest the plaintiff for an alleged assault and did so with insufficient reason to arrest and with excessive force.

[11] The Defendants nevertheless argued that, while they may not have had legal cause to arrest the plaintiff, the plaintiff did step back onto Mall property after they had removed them from Mall property and struck one of the guards twice in the face before the guards put the plaintiff in handcuffs and performed a citizen’s arrest for assault.

False Imprisonment

[12] The Defendants admit the following pleaded material fact relating to both the pre-arrest and post-arrest actions of the security guards:

- The security guards intentionally and unlawfully placed the plaintiff in a locked detention cell within the Mall.

[13] While making the above admission, the Defendants deny that their physical search of the plaintiff by a male security guard was improper and deny that one of the male security guards intentionally touched the plaintiff's chest during the search. They also argue that the search, the seizure of the plaintiff's phone, and depriving the plaintiff of access to their mother, was justified for "officer safety." The Defendants also deny that the security guards deprived the plaintiff medical assistance during the plaintiff's detention in the cell.

Vicarious and Occupier's Liability

[14] Paladin admits that the security guards were acting in the ordinary course of their employment and that there is a significant connection between the creation or enhancement of the risk of tortious conduct by the security guards and the duties of their ordinary employment. As such, the Defendants admit that they are vicariously liable for all tortious actions of their security guards. Furthermore, the Defendants admit that they were negligent in the "training directions" given to the security guards.

[15] The Defendants admit that they were occupiers of the Mall within the meaning of the *Occupiers Liability Act*, R.S.B.C. 1996, c. 337, and that they owed a duty to take care that the plaintiff would be reasonably safe to use the Mall premises.

[16] The Defendants also admit that they negligently breached their duty as occupiers of the Mall within the meaning of the *Occupiers Liability Act* to take care that in all the circumstances of the case the plaintiff would be reasonably safe to use the Mall premises.

[17] While the Defendants formally admitted at trial to the pleaded facts that they breached their duty of care to the plaintiff specifically “by failing to ensure that the security guards performed their roles without violence, racial or gender stereotyping”, I have not relied on these admissions as they were the subject of evidence at trial, and I prefer to make my findings on the evidence in this regard.

[18] Finally, the Defendants admit that their breach of their “duty to take care to see that the Plaintiff would be reasonably safe in using the Mall” caused the plaintiff’s injuries and losses.

Injuries

[19] The Defendants admit that as a result of the security guards’ conduct, the plaintiff suffered injuries, which included pain, a concussion, bruising, headaches, exhaustion, sleep disturbance, anxiety, depression, and loss of self-esteem. However, the Defendants say these injuries were largely short-lived and resolved within approximately six months of the Incident.

[20] In addition to the admitted injuries, the plaintiff also claims for psychological harm, most notably Post-Traumatic Stress Disorder (PTSD), and for material contribution to the plaintiff’s diagnosis of gender dysphoria. The Defendants deny causation of this diagnosis, as well as the persistence and severity of the other physical and psychological injuries claimed by the plaintiff. They argue pre-existing anxiety and ADHD are contributing factors to the plaintiff’s psychological injuries.

Other Intentional Torts

[21] Although the notice of civil claim also claims for defamation and slander and the intentional infliction of mental suffering (and liability was admitted for all torts alleged in the notice of civil claim, including these), these allegations were not pursued at trial. Despite these admissions, I have only considered the torts that were advanced by the plaintiff at trial and for which there was support in the evidence.

ISSUES

[22] The primary contested factual issues at trial were the extent of the plaintiff's physical and psychological injuries, whether the plaintiff was intentionally touched on the chest during the physical search, and the extent to which the Incident caused the plaintiff to change their gender identity in subsequent years.

[23] Beyond these contested issues, the thrust of the Defendants' defence was one of mitigating their admitted fault by seeking to establish that the plaintiff was responsible for much of the harms that befell them during the Incident, including:

- a) by being present in the Mall on November 23, 2019 despite being banned from the Mall in August 2019 after the Gate Event;
- b) by allowing the guards to believe that the plaintiff was a boy at the time of the Gate Event;
- c) by using racial slurs against the guards;
- d) by not immediately leaving the Mall in November 2019 when told to by one of the guards;
- e) by resisting the guards when they attempted to physically evict the plaintiff from the Mall; and
- f) by returning to Mall property and slapping one of the guards after the plaintiff had been deposited outside of the Mall property.

[24] Against these allegations made by the Defendants, the plaintiff argues that the actions of the Defendants were malicious and high-handed, and that the failures of Paladin in particular to address the physical battery, false arrest, and false imprisonment of a minor, through proper training, supervision, and investigation, ought to attract substantial awards in aggravated and punitive damages.

[25] Thus, while this was nominally a damages-only trial with liability admitted by the Defendants, what specifically happened before, during, and after the Incident,

including what happened in August 2019, was the subject of considerable evidence before me, particularly where those events could be found to mitigate or aggravate the conduct of the security guards, Paladin or Ivanhoe Cambridge in relation to the Incident.

[26] I must also determine the extent of the injuries the plaintiff suffered as a result of the Incident, bearing in mind that the Defendants admit some, but not all, of the claimed injuries.

[27] The Defendants argue that the plaintiff failed to mitigate their damages by failing to seek more timely medical treatment for more persistent injuries, including their headaches and psychological injuries. I must therefore consider whether the Defendants have established a failure to mitigate in this regard.

[28] Finally, I must consider the issue of damages, including:

- a) What is an appropriate damages award for the plaintiff's non-pecuniary losses, and are aggravating factors present that should increase that award?
- b) Is the plaintiff entitled to damages for loss of earning capacity, either in the past or in the future and, if so, how much?
- c) What are the plaintiff's costs of future care?

[29] Finally, I must consider whether this is a case that should attract a significant award of punitive damages against the Defendants, and if so, whether such an award would be joint and several against both Defendants.

RELIABILITY AND CREDIBILITY

[30] Madam Justice Dillon summarized the leading authorities regarding credibility and reliability in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to

observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 198 at para. 13 (Alta. Q.B.)). I have found this approach useful.

[Emphasis added.]

[31] I found the plaintiff to be both credible and reliable. They admitted when they could not remember something, but for the most part had a good memory of the key events at issue. The plaintiff did not attempt to exaggerate, and in some cases understated, the effect of their injuries, saying for example that they could live with their nightmares now that they were down to occurring only once per week. The plaintiff's optimism that they would be able to overcome the most limiting aspects of their PTSD and be able to work actively with the public again was also contrary to their legal interests and reflective of the plaintiff's general effort to testify without adornment or legally-motivated glosses to relevant evidence.

[32] Although the plaintiff admitted to not disclosing their full mental health struggles to their medical team when seeking gender affirming care, and to not admitting in their examination for discovery to what they then believed were their own racist reactions to men who reminded them of the guards, I found that the

plaintiff's evidence under oath before me at trial was generally credible and complete.

[33] The plaintiff's direct evidence about the Incident went largely unchallenged, with the exception of the plaintiff's testimony that the male security guard who had physically searched the plaintiff had patted their chest, which the plaintiff interpreted as the guards trying to determine if the plaintiff was male or female. When challenged with the security camera video of that search, the plaintiff did not resile from their evidence and pointed out where they believe this occurred. Ultimately, I accept the plaintiff's evidence of what they experienced and how it affected them, even if the intentions of the guards in this regard were not what the plaintiff attributed to them.

[34] The plaintiff's evidence was not challenged on many other aspects of the Incident, including what came before or after it. For example, it was not put to the plaintiff that they had used racial slurs when speaking to the guards at any time, that the plaintiff had lied to the guards about being willing to leave the Mall when they had no intention of doing so, or that the plaintiff headbutted or otherwise posed a safety threat to the guards. The plaintiff's evidence that their head was intentionally struck against the pavement by a guard, and that they were kicked, and that they suffered all of the physical injuries described, was also not challenged.

[35] I found the evidence of the plaintiff's witnesses to be thoughtful and credible. I did not find that these witnesses exaggerated their evidence, and the plaintiff's twin brother, I.H., was honest, perhaps to a fault. For example, when asked if he had ever jumped a gate at a mall again, his answer was "not at Metrotown".

[36] I.H. was present for the Gate Event in August 2019, but not for the Incident. The only witness called by the plaintiff who was present for the Incident was the plaintiff's friend, Ms. Vasic. I found that Ms. Vasic only testified about what she could remember and that she was credible with respect to those things she could remember.

[37] The Defendants did not call any member of the management team of Ivanhoe Cambridge or Paladin, but sought to, and were permitted to, rely on the entirety of the examination for discovery transcript of M. Forward, who was Paladin's Vice President of Operations and Mr. Kelly's boss. Mr. Forward unfortunately died before the trial, and the plaintiff ultimately consented to the Defendants' reliance on the entirety of this transcript, in addition to the portions of the discovery read in as part of the plaintiff's case, based on the principles set out in *Carnival Corporation v. Vancouver Fraser Port Authority*, 2021 BCSC 643 at para. 20. I have reviewed that transcript, and although Mr. Forward is unsure about many aspects of what occurred during the Incident, I accept his evidence as to standard operating procedures and corporate expectations for Paladin's guards, as well as his role in ensuring the proper investigation of complaints at the time of the Incident, together with Mr. S. Kelly.

[38] Mr. Kelly, the Director of Retail Accounts for Paladin in 2019 (in which role he still continues), was called by the plaintiff as an adverse witness in the plaintiff's case. Like Mr. Forward, he gave evidence as a representative of Paladin and spoke to management's role in the investigation of complaints regarding the use of force by Paladin guards, including the complaint regarding this Incident.

[39] I found Mr. Kelly to be casual in his evidence, giving the impression that he did not consider that the Incident merited his particular attention or concern. For example, Mr. Kelly testified that the plaintiff's mother had made racial slurs against the guards, but this statement was clearly hearsay and rather than concede this, Mr. Kelly appeared to make up some words that might have been said by the plaintiff's mother but that were not substantiated anywhere in the record.

[40] Neither of Paladin's representatives made significant efforts to review Paladin's records about the Incident before testifying (or being discovered in Mr. Forward's case), and I find that they had incomplete knowledge of their contents. Mr. Kelly also testified that he receives many complaints like this one, and many of them are baseless or exaggerated, so he does not worry about them until they are

internally substantiated. Both of Paladin's representatives, Mr. Kelly and Mr. Forward, relied primarily on an oral assurance from a subordinate that the use of force in this case was reasonable, and had little knowledge of the Incident beyond that.

[41] Neither Paladin representative suggested that Paladin saw this Incident as an opportunity to correct its actions. To some extent, this honesty was refreshing, as it so rarely accompanies a liability admission.

[42] The Defendants also called four of the security guards involved in the Incident to testify at trial (none of whom are still employed at Paladin, though many continued in that employment for several years after the Incident): E. Lai, L. Holmatov, A. Sadiq and R. Milette. The Defendants did not call the senior guard involved in the plaintiff's detention, A. Hassan, who took physical charge of the plaintiff for much of the Incident, although his contemporaneous notes of the Incident were included by consent in evidence as business records. The Defendants also did not call the person delegated by Paladin, through Mr. Kelly, to investigate the complaint made by the plaintiff's parents, Mr. I. Henderson. I was given no evidence or submissions about any efforts the Defendants made to locate either of these two key witnesses, though I note that Mr. Henderson, at least, was still employed by Paladin at the time of Mr. Forward's examination for discovery.

[43] All four security guards provided somewhat different versions of the Incident in their direct evidence. In some cases, their evidence also varied in material respects between their written narratives created at the time of the Incident, and between direct and cross-examination. I found one of these guards, Mr. Lai, who encountered the plaintiff in August 2019 during the Gate Event, and who was the dispatcher running the CCTV cameras during the Incident but who had no direct interaction with the plaintiff during the Incident, to be credible and reliable within the limits of his memory of these two events. However, I found that the other three guards had very little independent recollection of the events and were largely self-serving in the evidence they did remember. Notably, the three guards who were

involved in “taking the plaintiff to the ground” and/or restraining the plaintiff while on the ground outside, gave no account of doing so (or of observing anyone doing so) in their direct evidence relating to the Incident, and only acknowledged these events in cross-examination.

[44] The Defendants’ position relies on the Court picking and choosing the most favourable evidence of the guards with respect to various aspects and rejecting other parts. For example, the Defendants argue that I should rely on the evidence of Mr. Sadiq in some instances, because he was the guard closest to the plaintiff throughout the detention and arrest, but that I should outright reject Mr. Sadiq’s evidence that the plaintiff was not asked to leave the Mall until they entered Champs. On the Defendants’ own submissions, there is not a single witness that I can rely on to give me a credible and reliable account of the Incident.

[45] I find that the contemporaneous records of the security guards directly involved in the Incident are more reliable in many respects than their testimony, given the admitted limits to their memories. However, even these reports contain notable inconsistencies and omissions, particularly with respect to the extent of the physical handling of the plaintiff, including the number of “take downs” and other efforts made to subdue and ultimately handcuff the plaintiff. While I find that most of the events recorded in these reports likely occurred (with a few notable exceptions noted below), they are far from a complete accounting of the extent to which the plaintiff was intentionally touched, restrained and struck by the guards.

[46] The video recordings in evidence also suffer from a lack of completeness and poor angles in some cases. Nevertheless, this evidence provides some of the most reliable evidence before me where it is available.

FACTUAL FINDINGS

[47] I make the following factual findings on the whole of the evidence.

The Gate Event

[48] In August 2019, I find that the plaintiff and I.H. were attempting to walk through the Mall on the way to the Skytrain station to go to a drop-in basketball game at Edmonds Community Centre, as they often did on Friday nights. Based on the security footage of that evening and the evidence of one of the guards present, I find that the Mall was about to close, and that an accordion gate had been drawn across a portion of the Mall walkway separating a number of stores that were still open near the entrance to the Mall, and the portion of the Mall leading to the Skytrain station. Mall patrons still milled on either side of the accordion gate, when the plaintiff and their brother approached the gate, briefly turned away to look for other routes to the Skytrain station, and then returned to the accordion gate. I find that they decided to see if they could climb over the accordion gate, and that they moved a planter closer to the gate for this purpose. The plaintiff first attempted to use the planter to climb over the gate and then gave up for the moment. I.H. then climbed over the gate and the plaintiff was in the process of passing their backpack over the gate to I.H. when two security guards, Mr. Holmatov and Mr. Lai, arrived to talk to them.

[49] The interaction between the plaintiff, I.H., Mr. Lai, and Mr. Holmatov at the accordion gate was captured by a security camera that then followed the plaintiff and I.H. some distance beyond the accordion gate, but not all the way to the Skytrain station. I find that Mr. Lai and Mr. Holmatov arrived at the gate, opened the gate and let a number of Mall patrons through it, from both sides. The security guards waited while the plaintiff replaced the planter in its original location, then let the plaintiff through as well to join their brother. I.H. almost immediately raised his hands and placed them behind his head throughout his interaction with the guards. No threatening behaviour is apparent throughout the interaction. I find that after letting the plaintiff through the gate, the guards followed both the plaintiff and I.H. to the Skytrain station.

[50] Although not captured on the security video, the plaintiff, I.H., Mr. Lai and Mr. Holmatov testified that there was a verbal exchange at the entrance to the Skytrain

station. Mr. Holmatov recorded in his contemporaneous notes that one of the young people said the words “fuck security these guys are clowns.” None of those present could recall if the plaintiff said these words or whether it was I.H., but I.H. agreed that one of them may have referred to the guards as “wannabe cops” and may have swore at them. I find that Mr. Holmatov accurately and completely recorded the extent of the offensive language used by I.H. or the plaintiff on that occasion. The guards then asked for their names, and I.H. told the guards their names were “Jackson and Jason”, the names used by twin brothers on a Disney show that I.H. and the plaintiff watched growing up. I.H. also identified the plaintiff as his twin “brother”. He did not think the guards were entitled to demand their real names or their ID. The plaintiff did not correct their brother.

[51] Mr. Holmatov was then authorized by the security dispatcher to issue a “verbal ban”, and I find that Mr. Holmatov communicated to I.H. and the plaintiff that they were banned from the Mall as the young people were entering the Skytrain station. This was recorded in the contemporaneous dispatch records as the issuance of a 24-hour verbal ban.

[52] I find this is the extent of the misconduct of the plaintiff. Contrary to the assertions of the Defendants, the plaintiff did not actually jump the gate (and was in fact allowed to pass through the gate with several other Mall patrons by the guards), and neither the evidence of those present at the time, nor the contemporaneous records made at that time, support the assertion that the plaintiff or I.H. used racial slurs in speaking to the guards. However, the plaintiff did not correct I.H. as to their correct names or sex and left the guards with the impression that they were one of two twin brothers named Jackson and Jason. The plaintiff acknowledged receiving the verbal ban in testimony but did not understand it to be a long-term or indefinite ban.

[53] According to the Mall’s standard operating procedures, which Paladin guards are expected to know and comply with, a verbal ban is a 24-hour ban. Any longer ban is required to be issued in writing and served personally. This was

acknowledged by several of the Defendants' witnesses, including one of the guards involved in the Gate Event and Mr. Kelly. I find that the ban imposed on the plaintiff and I.H. on August 2, 2019 was a 24-hour ban and expired on August 3, 2019.

[54] The plaintiff returned to the Mall the following week. Between August and November, the plaintiff continued to regularly spend time at the Mall. The plaintiff would often go to a sushi restaurant above the McDonalds with friends and regularly used the Mall to access the Skytrain station from their home.

[55] In early November 2019, the plaintiff turned 18.

The November Eviction from the Mall

[56] On November 23, 2019, the plaintiff was at the Mall with three friends, looking at dresses at Aritzia. Mr. Holmatov was patrolling the Mall with Mr. Sadiq and recognized "the look" of the plaintiff as one of the young people he had banned in August 2019. Although his evidence is somewhat confusing on this point, I find that he approached the plaintiff outside of Aritzia and told the plaintiff they had to leave the Mall because they were banned. I find that the plaintiff did not agree that they were banned but agreed to leave and asked if they could leave via the McDonalds exit.

[57] I find that Mr. Holmatov then told the security dispatch, which included Mr. Lai that day, that they had identified a banned individual in the Mall and had told the plaintiff to leave, and requested that dispatch follow the plaintiff with CCTV cameras to ensure the plaintiff left the Mall. I accept Mr. Lai's evidence that he was unable to recognize the plaintiff relying only on the security cameras and was not the one to identify the plaintiff. I find that it is likely that Mr. Holmatov identified the plaintiff from among the very many Mall patrons he had dealt with in the previous three months in part because the plaintiff is young and Black.

[58] I find that the plaintiff and their friends then started to leave the Mall, but the plaintiff remembered that they needed to first stop at the Champs store to pick up a house key from a friend working at Champs, and because they were waiting for

some special shoes to come in and received a message that they had arrived. The plaintiff and their friends then diverted to the Champs store.

[59] Mr. Holmatov and Mr. Sadiq were informed through dispatch that the plaintiff had entered the Champs store rather than going straight to the exit of the Mall. Mr. Holmatov and Mr. Sadiq then also went to the Champs store, accompanied by Mr. A. Hassan, a senior guard, to insist that the plaintiff leave the Mall because they were banned. At that point, the plaintiff verbally objected to the suggestion that they were banned from the Mall, and the plaintiff and their friends explained that they needed to pick up a key in the store. Staff at Champs also objected to the security guards requiring the plaintiff to leave their store.

[60] Shortly thereafter, Mr. Hassan grabbed the plaintiff by the arm, demanding the plaintiff leave. I find that the plaintiff responded that it was not necessary to grab their arm, to which Mr. Hassan said “shut the fuck up” to the plaintiff, but did release the plaintiff’s arm. Mr. Hassan’s grabbing of the plaintiff’s arm and foul language was captured on handheld video and was also recorded in Paladin’s records as Mr. Hassan going “hands on”. In the handheld video, one of the guards can be heard repeatedly demanding “do you know what a ban is?” and the plaintiff can be heard saying “don’t tell me to shut the fuck up.” I find that the plaintiff then walked out of the Champs store followed by Mr. Hassan and Mr. Sadiq. Mr. Holmatov and the plaintiff’s friends left the store several seconds later.

[61] The whole of the evidence before me does not support the Defendants’ allegation that the plaintiff insulted the guards inside the Champs store, or that the plaintiff’s teenaged girlfriends threatened to “kick” the guards’ “ass” or to hit or assault the guards in Champs.

[62] The evidence establishes that the plaintiff left the Champs store voluntarily and ahead of the guards but had stopped for several seconds outside the store (perhaps waiting for their friends) when Mr. Hassan and Mr. Sadiq exited the Champs store and abruptly took hold of the plaintiff. Mr. Hassan and Mr. Sadiq each took one of the plaintiff’s arms, and soon thereafter placed both of the plaintiff’s arms

into an arm lock behind the plaintiff's back, and began marching the plaintiff through the Mall. The security camera evidence confirms that the plaintiff was not pushing, kicking or "throwing" themselves onto the ground at this point. At one point, the plaintiff is bent forward with their arms lifted awkwardly behind their back by Mr. Hassan and Mr. Sadiq, but then is able to regain their upright position.

[63] Although Mr. Kelly and some of the guards testified that it was standard operating policy of the Mall to not go "hands on" a Mall patron or to attempt to detain them until they had been asked to leave many times, in different ways and by different guards, and all efforts at persuasion had failed, I find that this policy was not followed in the plaintiff's case. The entire interaction between the guards entering the Champs store and the plaintiff exiting Champs lasted approximately 50 seconds, and Mr. Hassan had once again grabbed the plaintiff within 10 seconds of the plaintiff walking out of the Champs store.

[64] Although the Defendants argue that the plaintiff never had any intention of leaving the Mall and was lying to the guards when they said they would, this was not put to the plaintiff and is not supported by the evidence. The plaintiff's evidence was that they disagreed that they were banned but agreed to leave the store. Ms. Vasic confirms that before they were accosted by the guards, they were planning to leave the Mall after getting the key from a friend at Champs. I accept this evidence.

[65] It is clear, however, that the plaintiff sought to loosen the hold used by Mr. Hassan and Mr. Sadiq as they were walked through the Mall. This hold involved holding the plaintiff's shoulders and arms backward in a position that looks painful and that two of the guards testified is intended to elicit pain, particularly if the person in the hold struggles to get out of the hold. I find that the plaintiff objected to being physically held, said that they were being hurt, and complained that the guards were going to break their arm. I find that the guards' reaction to these complaints, and the plaintiff's efforts to loosen their arms from the hold, was to increase the pressure of the hold and to thereby deliberately increase the pain caused to the plaintiff by the hold. The guards considered complaints of this sort and demands to be released to

be “resistance” warranting greater restraint. Mr. Milette and Mr. Sadiq agreed that the pain caused by the holds used could be “excruciating”.

[66] I do not consider the plaintiff’s complaints of pain or their efforts to loosen the hold of the guards to be misconduct on the plaintiff’s part. I reject the testimony of some of guards that the plaintiff did more than attempt to loosen the guard’s grip by headbutting the guards, or otherwise perpetrating acts of physical violence. None of this is supported by the security camera video which followed the plaintiff’s physical eviction from the Mall over several minutes.

The Take Downs

[67] Once outside the Mall, in the area of the Dolphin Pond, the evidence establishes that Mr. Hassan “took” the plaintiff “to the ground” because the plaintiff continued to complain and object. Mr. Hassan, in his contemporaneous report made shortly after the Incident, recorded that he told the plaintiff that he would take them down at this location if they did not stop resisting, and that Mr. Hassan in fact took the plaintiff to the ground twice before reaching the property line because the plaintiff would not stop “resisting”. I reject the evidence of several other guards that the plaintiff is the one who “threw” themselves onto the ground.

[68] The handheld video recorded by the plaintiff’s friend shows Mr. Hassan, who is much larger than the plaintiff, straddling the plaintiff, who is face down on the ground. Mr. Hassan covers the plaintiff’s torso and hips, while Mr. Milette is holding onto the plaintiff’s legs and another guard bends over and covers the plaintiff’s head. Throughout, the plaintiff emits high pitched wails, screaming for them to get off. The plaintiff’s friends can be heard demanding that the guards “stop” and “let her go” and crying “what are you doing to her” and “she’s hurt” and explaining that they “were going to leave”. Other guards (by this time, approximately five to six guards had gathered around or on the plaintiff) stand in front of the plaintiff’s friends preventing them from reaching or recording what was happening to the plaintiff.

[69] I accept the plaintiff’s evidence that they felt very afraid throughout this encounter, that the weight of Mr. Hassan was very heavy, and that they struggled to

breathe. The plaintiff remembers their head striking the ground when being forced to the ground at the Dolphin Pond, and this also was not challenged on cross-examination.

[70] Another handheld video clip shows the plaintiff bent over double with their arms jutting out backwards at an extremely awkward angle and both Mr. Hassan and Mr. Sadiq taking the plaintiff down the stairs near the Dolphin Pond, and both repeatedly shouting “this is all you.” This is something the plaintiff recalls being told repeatedly throughout this Incident and it is apparent that the plaintiff internalized this message afterward.

[71] There is no security camera footage of the Dolphin Pond. I am satisfied that this is not because this area is not covered by CCTV cameras, and Mr. Lai, who was controlling the cameras from dispatch during the Incident, testified that he would ordinarily have captured security video of this area and that he does not know why it was not available in this case. While it is of some concern that I do not have better evidence of why this footage was not made available for the purposes of this trial, I have not been asked to infer anything about what happened during the Incident itself from its absence, and I decline to do so. The evidence I have is sufficient to establish that the guards used an overwhelming level of force against the plaintiff at this location because of the plaintiff’s verbal protests of their treatment.

The Arrest

[72] After approximately two minutes the security camera video resumes with a long-distance shot that has been zoomed in to follow the plaintiff, showing the guards and the plaintiff at the edge of the Mall property at the top of a set of stairs leading down to a bus loop on Central Boulevard. The CCTV does not show the bottom of the stairs but does show persons on the stairs and at the top of the stairs.

[73] I have considered the evidence of the three guards present and of the plaintiff regarding what happened next. I have also reviewed the CCTV footage of this area. I find that once at Central Boulevard, the guards deposited the plaintiff at the bottom of the stairs and off of the Mall property and told the plaintiff to leave. The plaintiff

responded that they wanted to wait for their friends and they were already off the property, but a number of guards continued to stand at the top of the stairs taunting the plaintiff and using derogatory and threatening language. One guard told the plaintiff to take one step back onto the property. I find that the plaintiff then took several steps back up the stairs towards the guards and lifted one arm up to approximately waist height. At this point, Mr. Sadiq struck out with his leg towards the plaintiff, and the plaintiff raised their right arm towards Mr. Sadiq as Mr. Sadiq pushed the plaintiff down the stairs and onto the sidewalk below.

[74] Mr. Sadiq says that after he struck out with his leg toward the plaintiff, he turned away, and that the plaintiff then tapped him on the back and then struck or slapped him twice in the face. This is unsupported by the video evidence. The video evidence establishes that there is almost no time between Mr. Sadiq kicking out toward the plaintiff with his leg and then proceeding to rush the plaintiff down the stairs and out of the view of the video camera. The plaintiff remembers being told that they had struck a guard, though not which one, but they had no independent recollection of doing so (though the plaintiff conceded that they were already feeling confused and disoriented from their head hitting the ground at the Dolphin Pond).

[75] I have reviewed the CCTV video at slower speeds, and it is difficult to see both of the plaintiff's arms in the short time between Mr. Sadiq's kick and his push down the stairs. While it is possible that the plaintiff touched or slapped Mr. Sadiq after Mr. Sadiq kicked his leg towards the plaintiff, if any such contact occurred it would have been extremely brief and at essentially the same time as Mr. Sadiq was driving the plaintiff back down the stairs. I find the Defendants' evidence that Mr. Sadiq was struck twice by the plaintiff to be internally inconsistent, heavily led by counsel at times, and unsupported by the video evidence.

[76] Once on the sidewalk below the stairs, the plaintiff and the guards were beyond the view of the CCTV cameras. I accept the plaintiff's unchallenged evidence that several guards climbed on top of the plaintiff. I also accept the plaintiff's evidence that at this point, the plaintiff subjectively feared for their life and

was terrified of what would happen if the guards controlled both of their arms. I find that one of the guards kicked the plaintiff in the ribs while the plaintiff was lying on the ground. Another guard hit the plaintiff's head down against the ground, causing the plaintiff to become concussed and disoriented, at which point the guards secured the plaintiff's hands behind the plaintiff's back and placed the plaintiff in handcuffs. The plaintiff was lifted to their feet and informed that they were under arrest for assaulting an officer and would go to jail.

[77] I find that there were no grounds to arrest the plaintiff. Even if the plaintiff touched or slapped Mr. Sadiq as the plaintiff was being pushed backward down the stairs, I find that this was not grounds to arrest the plaintiff (as has been admitted by the Defendants).

[78] After their arrest, the plaintiff was walked back through the Mall in handcuffs accompanied by a group of guards. The plaintiff says their face and body was pressed into the doors and used to open doors ahead of the guards. I accept this evidence.

The Search and Detention in the Cell

[79] At some point after performing this arrest of the plaintiff, I find that one or more of the guards asked for the plaintiff's name and then accused the plaintiff of lying about both their name and their sex—insisting that the plaintiff's real name was Jason.

[80] I also find that the guards did not accept the plaintiff's statement that they were a girl at that time. The handheld video evidence and several witnesses in addition to the plaintiff establish that the guards appeared to be convinced that the plaintiff was a boy named Jason, rejecting the words of the plaintiff's friends that they were hurting "her" and the plaintiff's mother's demand to see her "daughter". Furthermore, although there was a female guard present at the time of the plaintiff's physical pat down, no one asked the plaintiff for clarification as to their sex or whether they would prefer to be searched by a female guard.

[81] The search of a female detainee by a male guard at the Mall was a breach of the Defendants' standard operating procedures.

[82] The plaintiff was placed facing the wall of a small cell by two male guards, and Mr. Holmatov spread the plaintiff's legs and proceeded to physically pat down the plaintiff. The plaintiff recalls the guards specifically touching their chest. This is denied by Mr. Holmatov, who conducted that search.

[83] I have reviewed the video of this search, which is captured from above on CCTV. The video shows Mr. Holmatov conducting the pat down. At one point, while Mr. Holmatov is unzipping the front of the plaintiff's vest, the plaintiff can be seen to flinch or curve inward over their chest. At this point, it is not possible to see the precise placement of Mr. Holmatov's hands. It is possible that Mr. Holmatov briefly touched the plaintiff's chest at this time, though the video is not determinative of this. Regardless of whether there was any *intentional* touching of the plaintiff's chest, I find the following:

- a) Mr. Holmatov believed that the plaintiff was male at that time, and therefore had no reason to avoid touching the plaintiff's chest.
- b) Mr. Holmatov unzipped the plaintiff's puffy vest down the front of the plaintiff's chest and stomach, and then the zipper on the front of the plaintiff's hoodie, and searched the plaintiff's waist band and bare stomach. Mr. Holmatov also used his hands to search the inside breast pockets of the plaintiff's vest on both sides, while the plaintiff was still wearing their vest. In doing the above, it is not only possible, but likely, that some part of Mr. Holmatov's hand touched the plaintiff's chest area more than once.
- c) The entirety of the search, including the pat down of all the areas of the plaintiff's body, was unjustified, unnecessary and intrusive. The plaintiff was smaller than the guards and had done nothing to indicate that they were a physical threat to the guards.

[84] Furthermore, there was no legal basis for the guard's seizure of the plaintiff's personal items, including their phone. The seizure of the plaintiff's phone, in particular, robbed the plaintiff of their ability to communicate with their friends or their mother while being unlawfully held.

[85] The plaintiff was held for just under an hour in total, 45 minutes of which was in the cell. During that time, the plaintiff's friends had contacted the plaintiff's mother, who had rushed to the Mall, as did the plaintiff's stepfather. The plaintiff's mother was not permitted to see the plaintiff when she arrived, and the plaintiff was even prevented from trying to speak to their mother through the door of the cell.

[86] The plaintiff was kept handcuffed throughout this entire period, with handcuffs behind their back. At one point, a guard entered the locked cell to better secure the handcuffs, but no offer was made to remove them, or to secure them in front of the plaintiff instead of behind.

[87] The plaintiff was not released into the care of their parents until the police arrived. The plaintiff was issued a promise to appear on charges of assault on the strength of the guards' assault complaint, but these charges did not proceed any further. The RCMP file was not entered or relied upon by either party.

[88] At the Mall, the police provided the plaintiff with two formal banning orders signed by Paladin guards banning the plaintiff from the Mall indefinitely. The first was dated and signed that same day, November 23, 2019. The second was dated August 2, 2019. It purported to be an indefinite ban issued to the plaintiff on August 2, 2019 and included the untrue statement that the plaintiff had refused to accept it on that date. This written ban was presented to the police (and then to the plaintiff) on November 23, 2019 as if it was, in fact, an indefinite ban created and issued in August 2019, but I find that it was not.

[89] I furthermore find that the sequential numbering of this written ban had been torn off the top of this banning notice so that it was not apparent that this post-dated August banning order was in fact written after the Incident. At the request of the

plaintiff's stepfather, the police retrieved from the Paladin guards the torn off corner of the second banning order showing the sequential numbering for the August banning order, which confirms that it was prepared after the November banning order, and backdated. This was not contested at trial.

The Complaint and Investigation

[90] Shortly after the Incident, the plaintiff's stepfather, J.G., wrote a formal complaint to Paladin through an online portal. In that complaint, J.G. set out details of what he described as a "vicious assault" on his child, in which his child was beaten, punched and stomped on by security guards at the Mall, and his concerns that the plaintiff had been targeted because they were Black and queer. While J.G. suggested in his complaint that the plaintiff identified as male at that point, this was not based on anything the plaintiff had told him at that time, and the evidence as a whole (including that of the plaintiff) establishes that through high school and up until after the Incident, the plaintiff identified as female and lesbian, and not as male. J.G. also complained about the guards' attempted cover-up regarding the absence of a banning order in effect at the time of the Incident through the creation of a backdated banning order and the absent serial numbers.

[91] The evidence establishes that Mr. Kelly would have received this complaint (though he does not recall this). Mr. Kelly explained that, although J.G.'s description of what occurred was concerning, he has read "lots of complaints like this and many of them are baseless and exaggerated" such that he does not worry about them until there is an investigation that establishes the facts. I find that this is how Paladin approaches these types of complaints.

[92] Mr. Kelly delegated the investigation of this complaint to the account manager for the Mall, Mr. I. Henderson. Mr. Kelly expected Mr. Henderson to review the CCTV footage and conduct an investigation and then report back to him and Mr. Forward.

[93] Mr. Henderson was not available to testify at this trial. Based on the evidence I do have, I find that Mr. Henderson met with J.G. and O.H., the plaintiff's mother, at

which time they showed Mr. Henderson the handheld video of the guards on top of the plaintiff at the Dolphin Pond. Mr. Henderson did not request a copy of that video.

[94] Several days later, Mr. Henderson sent J.G. an email in which he concluded that there was no misuse of force or racial profiling by the guards, but that he did consider that his guards needed better training in gender sensitivity and would provide that. The email makes no reference to any use of force by the guards against the plaintiff at the Dolphin Pond. It relies on the assertion that it was the plaintiff who struck one of the guards after they had been escorted off the Mall property but refused to leave.

[95] Mr. Kelly also received that email. No other report was ever provided, but Mr. Kelly believes he received an oral report from Mr. Henderson, which was sufficient in his mind. Nor did Mr. Kelly's boss, Mr. Forward, raise any concerns with him or Mr. Henderson about the investigation.

[96] From whatever information he received from Mr. Henderson, Mr. Kelly was satisfied that the claim that an assault of the plaintiff had occurred was baseless. His understanding of the Incident at trial was that two people who had been banned from the Mall had been spotted by a guard in the Mall sometime later and asked to leave "leading to an altercation by the Dolphin Pond" where a security guard was slapped and the plaintiff was then arrested and held in a cell. Mr. Kelly also testified that when the plaintiff's mother attended the Mall she was abusive and called the guards "racially motivated" words like "go back to your own country".

[97] There is no direct evidence that anyone reviewed the CCTV footage, officer reports or notes of the Incident, or banning notices at any time proximate to the Incident. Mr. Kelly testified that had there been CCTV footage "that showed us in the wrong" he would have viewed it, but that he would not have looked at the footage if Mr. Henderson said the footage showed there was no issue.

[98] Mr. Kelly was also not concerned about the allegation in the complaint that a written banning order had been made to seem like it had been issued in August,

because there was likely a “misunderstanding” about how banning orders work. He explained that bans are typically only 24 hours if people are not compliant when asked to leave the Mall. He did not believe that security guards would have grounds to detain someone short of witnessing a shoplifting or other criminal activity. Any such ban would require approval by a senior officer, be in written form signed by and provided to the banned person, and be kept in a Paladin and Ivanhoe Cambridge database. His evidence did not explain or excuse a backdated written banning order created more than three months later purporting to ban the plaintiff indefinitely from the Mall.

[99] Based on the evidence of the guards themselves, I find that no one, including Mr. Kelly, Mr. Forward or Mr. Henderson, interviewed any of the guards involved in the Incident who testified at the trial. Nor did any of the guards who testified recall being subjected to any disciplinary action or additional training as a result of the Incident. Although Mr. Henderson had indicated that he thought some further gender-sensitivity training was warranted at the time, there is no evidence that this was done either.

[100] Because Mr. Henderson was not called to testify, and neither Mr. Kelly nor Mr. Forward followed up with Mr. Henderson regarding the nature or substance of his investigation, I have no evidence of what was actually done to investigate this complaint. However, I do have evidence of what was *not* done as part of any investigation, including any interviews of the four guards who testified at trial.

[101] I find that there are many red flags and obvious lacunae in Paladin’s corporate records of the Incident and other material available to Mr. Henderson that demanded closer attention and further investigation in view of the Defendants’ standard operating procedures. These include:

- a) The CCTV footage in the Mall shows two guards going “hands on” with the plaintiff very shortly after the plaintiff was asked to leave the Mall, and after the plaintiff had voluntarily exited Champs and was standing calmly

outside that store for several seconds. It shows the guards escalating their escort position to an arm-lock known to cause pain shortly thereafter;

- b) The handheld video shared with Mr. Henderson showed a very physical “take down” with the guards physically on top of the plaintiff while taunting the plaintiff, and the plaintiff’s high-pitched wailing, in the Dolphin Pond area;
- c) Paladin’s own records also describe two physical “take downs” by Mr. Hassan of the plaintiff in the Dolphin Pond area;
- d) The Dolphin Pond is the only location on Mall property where there was no CCTV footage produced for the two minutes where these events took place, despite the fact that Paladin’s dispatchers tracked the progress of the plaintiff through the Mall from before the plaintiff entered Champs all the way out to Central Boulevard;
- e) The CCTV shows the plaintiff being pushed down the stairs at Central Boulevard, and out of the range of the CCTV cameras, where the arrest was then affected outside of the view of the cameras;
- f) The CCTV footage does not show the plaintiff slapping any of the guards before the plaintiff was kicked and pushed down the stairs, and the CCTV could not have been relied upon to establish that allegation;
- g) There are obvious inconsistencies and omissions in the narratives of the various guards collected and kept by Paladin on November 23, 2019 with respect to the physical handling of the plaintiff, including the complete absence in several reports of any account of the guards going “hands on” or the plaintiff being “taken down” at all; and
- h) The attempt by a Paladin guard to retroactively write up, and then to pass off to the police, the plaintiff and their parents, a permanent written banning notice backdated to August 2019 to justify the guards’ eviction of

the plaintiff from the Mall in November 2019, when the company's contemporaneous record of that ban shows that only a 24-hour ban was issued on that date.

[102] Overall, I am unable to conclude that anything more than the most cursory investigation into this Incident was conducted by Paladin. Nor am I satisfied on the evidence before me that either Mr. Kelly or Mr. Forward had any basis to conclude that a proper investigation had been completed. They assumed the claim was baseless, as Mr. Kelly says he does with all such complaints (which are numerous) subject to an internal investigation that has proven to have been entirely inadequate.

[103] Nor does it appear that any further corporate investigation was performed by either of the Defendants after this lawsuit was filed in September 2020, or after additional disclosure was made of the handheld video footage and other information.

[104] On May 21, 2025, Mr. Kelly signed a letter to the plaintiff advising that the plaintiff was no longer banned from the Mall.

The Plaintiff's Post-Incident Condition

[105] With respect to damages, the physical injuries pleaded by the plaintiff as caused by the battery are all admitted including a concussion, bruising, headaches, and anxiety. However, the extent and persistence of these injuries is contested.

[106] The evidence establishes that the plaintiff sustained the following injuries in the immediate aftermath of the Incident:

- a) A concussion, including blurry vision and disorientation, and vomiting that same evening. Concussion symptoms, including a severe headache, nausea, and light sensitivity, continued into the following days, including during the plaintiff's attendance at the hospital the day after the Incident;
- b) Red and blue bruising around the plaintiff's left ribs which worsened the following day;

- c) Throbbing pain in the right arm and shoulder;
- d) Broken blood vessels in the right eye;
- e) Bruises, scrapes and lacerations on face, body and wrists;
- f) Severe headaches;
- g) Sleep disturbances, including nightly sleeplessness, nightmares and bedwetting when the plaintiff was able to sleep;
- h) A deep sense of shame and self-blame, and wanting to die; and
- i) Self-isolation and an inability to leave their bedroom.

[107] Most of the plaintiff's physical symptoms resolved within six months, but the plaintiff's headaches continued on a daily basis until more recently. In addition, for the first year after the Incident, the plaintiff experienced nightmares almost every night related to the Incident, which involved struggling to breathe and believing they were going to die, and their mother had to change their sheets due to bed-wetting at least once, and sometimes twice, a night.

[108] The plaintiff's sense of shame and self-hatred and their isolation from friends and family had not resolved by the time of trial, though it had improved. In their testimony, the plaintiff strongly associated the hatred of their body, including the decision to medically transition through hormone treatment and breast removal surgery, with their feeling of physical helplessness during the Incident and the pat down afterward. The plaintiff testified: "I didn't want to be me anymore." When asked 'who did you want to be', the plaintiff responded: "Someone who could be strong and not get assaulted."

[109] By the time of trial, the plaintiff had had a double mastectomy, was taking anxiety medication and testified that they did not want to die anymore. They still had chronic headaches and their nightmares continued but less frequently, but the plaintiff felt that they could live with that. The plaintiff had begun to share more of

their personal struggles with friends and family but still suffered from a deep sense of shame around the Incident and how they could have “let it happen.”

[110] The plaintiff identified a number of things that would still trigger panic attacks that they continued to try to avoid including: security guards in uniforms, men with beards that look like some of the guards involved, and taking transit (which has improved recently). The plaintiff had not returned to the Mall, even to get to the Skytrain and even after receiving the official letter removing their ban in May 2025, until shortly before the trial in 2026. The plaintiff reported that when they tried to return to the Mall they suffered a panic attack, but that they are now able to walk to the Skytrain station through the Mall.

[111] The plaintiff also began to suffer from frequent and severe flare ups of Chron’s disease in the summer of 2023 that took them to the hospital frequently between August 2023 and March 2024, when they underwent emergency bowel surgery. Complications of the surgery and Chron’s continued to disable the plaintiff until the fall of 2024, when they were cleared to work again. The plaintiff does not seek to attribute any exacerbation of their Chron’s symptoms or missed work during this period to the Defendants.

LIABILITY

[112] As stated above, on the first day of trial, the Defendants admitted liability for the torts pleaded against them in the notice of civil claim, but the bulk of the Defendants’ case continued to focus on seeking to establish the plaintiff’s contributions to their injuries and responsibility for the Incident. The Defendants say that, while liability is admitted for their use of force to remove, subdue and arrest the plaintiff, and their confinement of the plaintiff in a cell, the plaintiff’s continued resistance and protests to their removal from the Mall mitigates the extent of the Defendants’ liability for the plaintiff’s damages, including punitive and aggravated damages.

[113] Further, the Defendants say that even if the Paladin guards were incorrect in their belief that the plaintiff was a “banned individual” on November 23, 2019, the

Defendants were still entitled to use force to evict the plaintiff because the Mall is private property.

[114] While not strictly necessary given the admission of liability, including the material facts necessary for liability in assault, battery, false arrest and false imprisonment, as well as vicarious liability, negligence and occupier's liability, in my view, the plaintiff's protestations and resistance to the use of force by the guards, from the grabbing of the plaintiff's arm in Champs to the use of concussive force to subdue the plaintiff to complete their arrest, does not mitigate the egregiousness of the actions of the guards in this case. Even where an arrest is done by police officers, a person has a right to resist an unlawful arrest, which this was: *R. v. Plummer* (2006), 83 O.R. (3d) 528 at paras. 48–49, 2006 CanLII 38165 (C.A.); *R. v. Gibbons*, 2021 NUCA 17 at paras. 32–33. Where such resistance is reasonable in the circumstances, it does nothing to justify the use of force by the arresting party, whose use of force in this context lacks justification from the start and amounts to an assault: *Carr v. Ottawa Police Services Board*, 2017 ONSC 4331 at paras. 6, 179.

[115] Furthermore, while the Mall is privately owned property, it is also property open to the public. Members of the public in the Mall are not trespassers, and the plaintiff was not a trespasser when they attended the Mall in November 2019. The guards' stated grounds for requiring the plaintiff to leave at that time was mistaken, and the guards were informed of that by the plaintiff. In any event, the plaintiff was in the process of leaving the Mall at the guards' insistence when they went to get their key in Champs, and when they left Champs. The stated justification for the plaintiff's eviction and the use of force by the Paladin guards was, from the outset, mistaken and unfounded. The plaintiff committed no offences. It is not open to the Defendants after the fact to suggest that, in the absence of a valid banning order, their use of force and intrusive searching of the plaintiff was justified.

WHAT INJURIES WERE CAUSED BY THE DEFENDANTS' CONDUCT?

[116] With respect to damages, the physical injuries pleaded by the plaintiff as caused by the battery are all admitted, including a concussion, pain in the right arm and shoulder, painful ribs, bruising, and chronic headaches.

[117] The Defendants say that the plaintiff's physical injuries were largely resolved within six months, which is conceded by the plaintiff apart from the plaintiff's headaches. I have found that the headaches continued to persist on a near daily basis until 2025. After the first year, there is no evidence that concussive aspects of the headaches, like photophobia, continued. Overall, I find that after the first year post-Incident, the headaches were milder but chronic.

[118] While causation of the plaintiff's physical injuries, and some of the psychological injuries including anxiety and depression, are admitted, the Defendants urge me not to accept the opinion of Dr. Zoffmann set out in her independent medical examination report diagnosing the plaintiff with severe PTSD as a result of the Incident, as well as gender dysphoria contributed to by the Incident.

[119] The Defendants argue that the plaintiff was likely to seek to medically transition regardless of the Incident. Some of the evidence they rely upon in this regard is that the plaintiff dressed like a tom-boy and liked girls in high school. They primarily rely on J.G.'s complaint to Paladin that describes the plaintiff as "an 18-year-old person of color who identifies as a boy", which suggests that at least the plaintiff's stepfather had the impression that the plaintiff was identifying as a boy at that time.

[120] The Defendants also argue that the plaintiff had ADHD and other health issues that "made the plaintiff vulnerable to developing PTSD in response to the Incident" and more prone to developing anxiety and depression. They rely on the opinion of Dr. Zoffmann in this regard.

Determination

[121] Causation must be established by the plaintiff on a balance of probabilities.

As Chief Justice McLachlin stated in *Blackwater v. Plint*, 2005 SCC 58:

[78] ... Even though there may be several tortious and non-tortious causes of injury, so long as the defendant's act is a cause of the plaintiff's damage, the defendant is fully liable for that damage. The rules of damages then consider what the original position of the plaintiff would have been. The governing principle is that the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway: *Athey*.

[122] The plaintiff must be placed in the position that they would have been in if not for the defendant's negligence, no better or worse. Tortfeasors must take their victims as they find them, even if the plaintiff's injuries are more severe than they would be for the average person (sometimes referred to as the "thin skull" rule). However, the defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition which the plaintiff would have experienced anyway (sometimes referred to as the "crumbling skull" rule): *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 32–35, 1996 CanLII 183. In *Athey*, the Supreme Court of Canada articulated the "crumbling skull" rule as follows:

[35] The so-called "crumbling skull" rule simply recognizes that the pre-existing condition was inherent in the plaintiff's "original position". The defendant need not put the plaintiff in a position better than his or her original position. The defendant is liable for the injuries caused, even if they are extreme, but need not compensate the plaintiff for any debilitating effects of the pre-existing condition which the plaintiff would have experienced anyway. The defendant is liable for the additional damage but not the pre-existing damage Likewise, if there is a measurable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence, then this can be taken into account in reducing the overall award This is consistent with the general rule that the plaintiff must be returned to the position he would have been in, with all of its attendant risks and shortcomings, and not a better position.

[Emphasis in original.]

[123] In this case, the evidence does not establish that the plaintiff would have suffered PTSD, or the anxiety and depression associated with that PTSD, but for the Incident, even though the plaintiff was more vulnerable to incurring these injuries. I

find that Dr. Zoffmann's evidence regarding the plaintiff's pre-existing ADHD establishes a "thin skull", not a "crumbling skull", causation scenario.

[124] Dr. Zoffmann provides the following diagnoses and discussion of those diagnoses and their causes:

1. Diagnosis – DSM 5-TR

1. Post-Traumatic Stress Disorder – previously severe – now moderate - Chronic
2. Generalized Anxiety – severe - Chronic
3. Persistent Depressive Disorder
4. ADHD
5. Complex gender dysphoria

2. Discussion

In my opinion the following items from the DSM-5 TR describe [the plaintiff's] symptoms. The condition was initially severe and now is moderate-severe and chronic.

A. PTSD factors directly experiencing a traumatic event with bodily injury and fearing death by not being able to breathe.

B. Recurrent, involuntary, and intrusive memories of the event plus recurrent distressing dreams in which the content and/or affect (emotions) of the dream are related to the traumatic event. Plus, dissociative reactions where the person feels as if the event is recurring. Intense psychological and physiological distress at exposure to internal or external cues that resemble an aspect of the event.

C. Avoidance of stimuli associated with the event – avoiding talking about and thinking about the event and avoiding external reminders.

D. Negative alterations in cognitions and mood associated with the traumatic event. Persistent negative beliefs about the self, persistent self-blame, persistent anger and shame. Markedly diminished interest or participation in significant activities. Feelings of detachment or estrangement from others.

E. Marked alterations in arousal and reactivity including hypervigilance, exaggerated startle response, problems with concentration, sleep disturbance.

F. The duration has been more than 4 years.

G. The PTSD has caused clinically significant distress and impairment in social functioning and may be related to the loss of interest in hairdressing course.

Generalized Anxiety – Chronic has arisen in the context of suffering untreated PTSD. According to the DSM the chronic anxiety symptoms are subsumed in the PTSD diagnosis.

These anxiety symptoms cause ongoing distress and limit freedom to live without fear-based perceptions.

Persistent Depressive Disorder is diagnosed based on history from [the plaintiff] and [their] mother. In the past 4 years [the plaintiff's] history reveals that [they] felt hopeless, had very poor sleep (and still has insomnia), feelings of shame, low self-worth and suicidal ideation. This condition was worse in the past and has slightly improved but mother's information indicates ongoing low mood and self-isolation.

Attention Deficit Disorder – present by history from [the plaintiff] and Mom. Some improvement noted with treatment. It is entirely possible that the historical acting-out behavior noted by Constable Tarape and the reactivity to the guards at the mall was largely informed by the untreated ADHD condition that fuels impulsivity, emotional reactivity and physical reaction to assault.

I am of the opinion that the decision to change gender was influenced by the deep self-hatred emerging after the traumatic event and the virtual sexual assault as [they were] searched by one of the male guards. [The plaintiff] states that [they were] happy with identifying as lesbian before the event and had no issues with gender identity. With the changes wrought by hormones and surgery, the self-loathing has dimmed somewhat but is not absent.

...

... The sum of the emotional tenor of the guards' actions, their rough language and the physical nature of their actions triggered the Post-Traumatic Stress Disorder.

The nature of the reaction to the trauma included marked self-loathing. The inability to talk about their feelings because of emotional reactivity led to depression and chronic anxious reactivity. Further, their inability to communicate has impaired family relationships. The self-loathing and self-blame meant that they were unable to discuss the gender change decision with family members.

The underlying ADHD and chronic health issues made [the plaintiff] vulnerable to developing PTSD in response to the November 23, 2019 incident.

[125] As to prognosis, Dr. Zoffmann opines:

[The plaintiff] has not undergone any treatment for PTSD, Anxiety or Depression. These conditions have persisted for more than 4 years. There is substantial hope for at least partial remission but complete remission is not likely. This opinion is based on outcome studies of response to treatment for chronic depression, anxiety and chronic PTSD.

Those suffering PTSD may have symptoms lessen to the point they do not interfere with day-to-day functioning but they are more vulnerable to further episodes of PTSD if experiencing other traumas that are not as severe as the triggering event or if exposed to circumstances similar to the triggering event.

Substantial improvement in depression and anxiety is possible but the sufferer may need long-term treatment with antidepressant medications and

they are vulnerable to relapses if treatment stops or if they are exposed to significant psychological stressors.

...

[The plaintiff] has been employed in low-demand work for 1 year. They have been able to sustain this work with some enjoyment. The information provided by [O.H.] suggests a severely constricted life with few social contacts and virtual isolation. This is not sustainable.

It is hard to predict future impairment without seeing the results of good medical treatment. With good treatment there is some risk of set-backs from relapses that may interrupt work and relationships. [The plaintiff's] ability to maintain employment for the past year in spite of serious psychiatric problems is a positive prognostic factor for work adherence in the future.

[126] Initially, the Defendants objected to the admissibility of this report altogether (together with the report of the plaintiff's economist, Mr. Steigervald). During trial, the Defendants abandoned their admissibility objections but maintained their arguments as going to the weight to be given these reports.

[127] Dr. Zoffmann's report includes a summary of records she reviewed, which includes a summary of the RCMP file into Mr. Sadiq's allegation of assault, as well as the plaintiff's own allegation of excessive force. This RCMP file was not before me in this trial, none of the hearsay statements or other details given to police and summarized in this report were put to the plaintiff, and its ultimate conclusions were not relied upon by the plaintiff. I am unable to give weight to this review of the police file contained in the report. I am satisfied, however, that Dr. Zoffmann's opinion with respect to the plaintiff's psychological injuries does not depend on that RCMP file summary.

[128] Dr. Zoffmann's report also includes her own review of some of the video footage I reviewed at trial and the history provided by the plaintiff with respect to the Incident, and expresses Dr. Zoffmann's view of what occurred in this Incident, including that the search, including the touching of the plaintiff's breasts by the male guard, "was felt [by the plaintiff] as a sexual assault". The report also includes Dr. Zoffmann's summary of the plaintiff's account to Dr. Zoffmann of the Incident. Little of what was said to have been relayed to Dr. Zoffmann by the plaintiff was put to the

plaintiff in cross-examination, other than challenging the account of the guards touching the plaintiff's breasts.

[129] I have considered Dr. Zoffmann's factual assumptions about what occurred during the Incident, including the summary of the plaintiff's account of the Incident, not as evidence of what actually occurred, but only in relation to what extent those factual assumptions are established on the evidence before me at trial. I have also considered how any differences between the facts I have found on the evidence and the facts assumed by Dr. Zoffmann, where different, affect the weight I can give to her opinions.

[130] I have given no weight to Dr. Zoffmann's description of what actually happened during the Incident (other than to consider whether her opinions are sufficiently supported by the facts as I find them). I do give weight to Dr. Zoffmann's eliciting from the plaintiff statements about the plaintiff's emotional and psychological responses to the Incident and its aftermath as particularly within Dr. Zoffman's expertise, and I give weight to Dr. Zoffmann's own observations of the plaintiff's mental status. I find that the evidence at trial supports these latter statements and observations.

[131] I find that Dr. Zoffmann's diagnosis of PTSD (previously severe and now moderate), severe and chronic generalized anxiety, and persistent depressive disorder are all based on facts established on the admissible evidence before me.

[132] I accept that diagnostically the plaintiff's anxiety and depression disorder are properly subsumed within their PTSD diagnosis, and that the plaintiff has a good chance of at least partial remission of this disorder with treatment, but that complete remission is not likely.

[133] I find that the plaintiff's chronic PTSD (with anxiety and depression subsumed) was caused by the tortious conduct of the Defendants.

[134] The Defendants spent considerable time at trial challenging Dr. Zoffmann's diagnosis of complex gender dysphoria "influenced" by the Incident. I find that Dr.

Zoffmann's opinion does not establish legal causation with respect to the plaintiff's decision to transition. Nor does the plaintiff seek damages in relation to this decision itself.

[135] As a result of my findings in this regard, I have not included in my assessment of the plaintiff's losses any pain and suffering related to the double mastectomy or the time off work for this procedure. I am not satisfied that these losses would not have occurred but for the Incident, though they may not have occurred when they did, and ideally they would have occurred with better support.

[136] Overall, I find that the evidence as a whole, including the opinion of Dr. Zoffmann, establishes that the Defendants' tortious conduct, including the guards' overwhelming physical dominance of the plaintiff using physical pain and concussive force to achieve compliance, knocking the plaintiff to the ground multiple times and straddling them, and the unwarranted pat down search by a male guard, induced feelings of terror and powerlessness in the plaintiff during the Incident, and caused the plaintiff to feel shame, self-loathing and hatred of their body, which is compensable in general damages. I find that the plaintiff's severe PTSD in the years after the Incident also isolated the plaintiff at a time of transition when they would have greatly benefitted from the support of their family and needed to be able to better express themselves to their medical care givers, and that this harm is compensable.

[137] With respect to the plaintiff's losses due to their chronic PTSD and related psychological conditions, the Defendants' primary argument is one of failure to mitigate.

FAILURE TO MITIGATE

[138] The Defendants argue that the plaintiff failed to mitigate their losses by failing to seek timely medical treatment after their first hospital visit the day after the Incident. The Defendants argue that the plaintiff should have seen a doctor if their headaches continued beyond a few days, as was recommended by the ER doctor, and that when the plaintiff did return to the ER seven months later for ongoing

headaches and photophobia symptoms, the plaintiff failed to report their psychological symptoms to the ER doctors, including nightmares, bedwetting, hating their body, anxiety or depression, and so did not obtain treatment for those symptoms.

[139] The Defendants also note that the plaintiff did not mention these psychological injuries when seeking hormone therapy or their mastectomy. In relation to that treatment, the plaintiff admitted to omitting this information for fear that they would not be approved for this treatment. The Defendants argue that, had the plaintiff disclosed their psychological injuries to a doctor at that time, they would have been able to obtain psychological care through the provincial health care system for their injuries. As such, the Defendants argue they have established a failure to mitigate.

[140] In *Chiu v. Chiu*, 2002 BCCA 618, the Court of Appeal set out the following:

[57] The onus is on the defendant to prove that the plaintiff could have avoided all or a portion of his loss. In a personal injury case in which the plaintiff has not pursued a course of medical treatment recommended to him by doctors, the defendant must prove two things: (1) that the plaintiff acted unreasonably in eschewing the recommended treatment, and (2) the extent, if any, to which the plaintiff's damages would have been reduced had he acted reasonably.

[141] In *Forghani-Esfahani v. Lester*, 2019 BCSC 332, the Court extrapolated on the second stage of the *Chiu* test:

[69] I conclude that in order to meet the second part of the *Chiu* test for failure to mitigate (the extent, if any, to which the plaintiff's damages would have been reduced had he acted reasonably) the defendants must, first, establish a real and substantial possibility that any part of the losses could have been avoided. If that is established, the court will assess the degree of probability that the loss or some part thereof would have been avoided, and assess damages accordingly.

[142] In determining whether it was reasonable for the plaintiff to refuse recommended treatment, the court will consider the degree of risk to the plaintiff from the treatment, the gravity of the consequences of refusing it, and the potential benefits to be derived from it: *Janiak v. Ippolito*, [1985] 1 S.C.R. 146 at 162–63, 1985

CanLII 62. Where a defendant's tortious conduct is the cause of the plaintiff's failure to mitigate, for example by causing an injury giving rise to an addiction to painkillers, the defendant may fail to prove a failure to mitigate on the plaintiff's part: *Pearson v. Savage*, 2020 BCCA 133 at paras. 77–81.

[143] In this case, the only medical treatment recommendation that the Defendants have proven that the plaintiff received but did not follow was to seek out more timely treatment for their headaches. Rather than returning to the ER or seeking out a doctor for these headaches in the days and weeks following their first ER visit the day after the Incident, the plaintiff sought help from their pharmacist and largely relied on over-the-counter headache remedies. The plaintiff also continued to stay in their bedroom for much of this period. They did not return to the ER until approximately seven months after the Incident because their headaches were still daily and disabling.

[144] I have no evidence, however, that had the plaintiff sought out more urgent care for their severe headaches, that this would have resulted in a change in the course of the progression of their injuries or their recovery. The headaches continued to persist, and the plaintiff continued to treat them with over-the-counter medication even after attending at the ER in July 2020. The plaintiff's other injuries, particularly their psychological injuries, continued to dictate their overall health condition.

[145] With respect to seeking out and obtaining treatment for their psychological injuries, the evidence establishes that the plaintiff did not have a family doctor at the time of the Incident and still does not have a general practitioner. While they now have a specialist in gastroenterology to deal with their Chron's symptoms, and a clinic where they largely see a nurse practitioner for gender affirming care, I accept the plaintiff's evidence that they did not know that they suffered from treatable psychological injuries, that no resources were provided to them in this regard, and that, when they looked, they were unable to find a therapist or clinic that did not charge for counselling and they were unable to afford such therapy.

[146] This is also a case where the plaintiff's injuries, which were caused by the Defendants, contributed to the plaintiff's inability to access resources. In particular, their PTSD, deep sense of shame and self-hatred in which they blamed themselves for what happened, and their unwillingness to share even with their loved ones what they were going through, contributed to the plaintiff's delay in accessing treatment. The plaintiff's limitations in disclosing their psychological injuries and seeking treatment for them were caused by the Defendants, including the words and actions of the Paladin guards repeatedly telling the plaintiff that the plaintiff had brought this on themselves even as they battered the plaintiff.

[147] I find that the Defendants have not established a failure to mitigate on the plaintiff's part.

DAMAGES

Non-Pecuniary Losses and Aggravated Damages

Plaintiff's Position

[148] The plaintiff seeks \$200,000 in non-pecuniary damages and an additional \$50,000 in aggravated damages.

[149] The plaintiff says that their physical injuries included a concussion, bruised ribs, contusions and lacerations, all of which resolved within six months, and headaches that have persisted through to the trial. The plaintiff's psychological injuries have had the most significant impact on their daily life and have caused ongoing disability, including severe PTSD with daily nightmares and bedwetting over several years, only recently becoming moderate with weekly recurrences of these symptoms.

[150] The plaintiff relies on the following cases in the \$150,000–225,000 range as comparables and argues that the plaintiff's young age supports an award at the higher end of this range.

[151] Both parties rely on the case of *R.R.S. v. M.D.F.T.*, 2020 BCSC 1235, where the Court awarded \$125,000 (approximately \$150,000 in 2026 dollars) in non-

pecuniary damages to a teenage plaintiff (26-years old at trial) who suffered a concussion, headaches for approximately six months, bruising and abrasions throughout his body, a fracture to his nose, black eyes, and soft tissue injuries to his neck and back as a result of an assault by two adult males. The plaintiff in *R.R.S.* also developed chronic pain which caused frequent, severe and disabling headaches. He also experienced significant mental health issues including anxiety, depression, hypervigilance, social withdrawal, suicidal ideation and panic attacks. He left his group of friends to associate with older tougher friends who he felt could “protect him”. As in the case before me, in *R.R.S.* there were significant physical injuries involved, but the plaintiff’s psychological injuries were the more disabling injuries.

[152] The plaintiff sought and was also awarded aggravated damages in the amount of \$35,000 (approximately \$42,000 in 2026 dollars), for a total of close to \$200,000 in 2026 dollars for those two heads of damages.

[153] In criminal proceedings that preceded the trial of the civil claim, the defendant was convicted in provincial court of two counts of assault causing bodily harm.

[154] In addition to *R.R.S.*, the plaintiff relies on the following cases as comparables for the award of non-pecuniary damages.

a) In *Kempton v. Stuke Estate*, 2020 BCSC 2094, Justice Crerar considered a case dealing almost entirely with psychological injury, specifically severe and continuing PTSD and depression, and found that a compensatory award of \$225,000 was an appropriate starting point. Accounting for the risk that other pre-existing factors (including his previous physical, psychological, and employment challenges) might have eventually led to similar impairment, the Court reduced the award to \$200,000 in non-pecuniary damages.

b) In *Degen v. British Columbia (Public Safety)*, 2023 BCSC 508, Mr. Degen sued the Minister of Public Safety and the Solicitor General of

British Columbia after RCMP officers used force against him (he was tasered and punched) when they responded to a complaint while he was sleeping in his truck. Mr. Justice Crossin found that, although the use of force to break into the truck was reasonable, the use of tasers was disproportionate to the perceived threat of a closed fist strike from the plaintiff. Mr. Degan experienced certain non-specific symptoms that might be associated with PTSD but did not establish other aspects of his claim, including that he suffered from a mild traumatic brain injury. Mr. Degan was awarded \$160,000 for non-pecuniary loss, inclusive of aggravated damages, tied to his chronic headaches and psychological injuries, including aggravation of his pre-existing anxiety.

- c) *Verma v. Friesen*, 2024 BCSC 13, was a damages case based on an admission of liability in a motor vehicle accident. While Mr. Verma's physical injuries resolved within 12–18 months, he suffered severe and lasting psychological injuries, including struggles with depression, anxiety, panic attacks, alcohol use, and suicidal ideation. His family, social, and vocational relationships had been seriously impaired, and his prognosis was guarded. Relying in part on comparable cases involving serious psychological harm, the Court concluded that Mr. Verma was a “changed man” whose pre-accident lifestyle has been completely lost. Emphasizing the seriousness of mental injury, the Court assessed non-pecuniary damages at \$210,000.

[155] In addition, the plaintiff says that the following factors support an award of compensatory aggravated damages:

- The guards' almost immediate resort to hands-on force when the plaintiff was already leaving the Mall, including Mr. Hassan grabbing the plaintiff's arm inside Champs;
- The guards' use of profanity and intimidation during the encounter, including Mr. Hassan telling the plaintiff to “shut the fuck up” in Champs;

- The guards' public, degrading treatment in a crowded Mall, causing the plaintiff to feel shame and humiliation;
- The guards' use of force with the intent to cause pain while escorting the plaintiff out of the Mall;
- The brutality of the force used, including using force to take the plaintiff to the ground two to three times, kicking the plaintiff, pushing the plaintiff down a set of concrete stairs, and striking the plaintiff's head onto the sidewalk to achieve compliance;
- The use of derogatory taunts and threats, including the guards calling the plaintiff names, threatening to "take" their Canada Goose vest, and taunting them;
- The guards misgendering the plaintiff and insisting that the plaintiff was male, including to the plaintiff's mother, even after guards were told that the plaintiff was female;
- The search of the plaintiff by a male guard when a female guard was available and present, and the denial that this male guard touched the plaintiff's chest;
- The length of the confinement of the plaintiff in the cell until the police arrived; and
- The pursuit of criminal proceedings against the plaintiff by the guards, including threatening the plaintiff with jail after their arrest.

[156] The plaintiff argues that these factors warrant an additional award of \$50,000 in aggravated damages.

Defendant's Position

[157] The Defendants argue that the non-pecuniary damages award should be based on the ranges of damages generally awarded in civil assault cases, which tend to be lower than the ranges provided for damages in negligence cases arising from motor vehicle accidents. They say that the intentional nature of the torts in this case are more properly addressed through either aggravated or punitive damages, and does not increase the amount of compensatory damages available for personal injury. The Defendants rely on comparable cases where the non-pecuniary damages award was in the range of approximately \$40,000–150,000 in today's dollars.

[158] The Defendants also argue, relying on *Norberg v. Wynrib*, [1992] 2 S.C.R. 226, 1992 CanLII 65, that aggravated damages should not be awarded as a separate head of damages in tort cases, but instead should be awarded as part of the non-pecuniary damages award. When the aggravated damages awards in the Defendants' cases are taken into consideration, the range of damages under this head increases to close to \$200,000, because they, like the plaintiff, rely on *R.R.S.* as a comparable case.

[159] In addition to *R.R.S.*, the cases that the Defendants say are most comparable are as follows:

- In *Chopra v. T. Eaton Co. Ltd.*, 1999 ABQB 201, the plaintiff was awarded \$23,000 (\$43,000 in 2026 dollars) in non-pecuniary and aggravated damages for injuries caused by the plaintiff's false imprisonment and battery, incurred when security guards arrested the plaintiff in a retail store for causing a disturbance and assault. The plaintiff was also awarded \$10,000 in punitive damages (\$18,000 in 2026 dollars).
- In *Spencer v. Rozon*, 2000 BCSC 674, the plaintiff suffered a number of injuries following an assault, including facial fractures, a concussion resulting in a reading deficit and memory impairment, a mild personality disorder, anxiety, ongoing low grade depression, loss of confidence, and post-traumatic

stress disorder (though at the time of trial he no longer met the criteria for that diagnosis he still had ongoing symptoms). The Court awarded \$75,000 (\$132,000 in 2026 dollars) in non-pecuniary damages, and \$25,000 (\$44,000 in 2026 dollars) in aggravated damages, for a total of \$176,000 in today's dollars.

- In *Besic v. Kerenyi*, 2011 BCSC 1277, Madam Justice Russell awarded \$70,000 (\$98,000 in 2026 dollars) in non-pecuniary damages, which was reduced by 10 percent for failure to mitigate, to a plaintiff who suffered a fractured jaw, the loss of two molars, and permanent nerve damage to his face causing impairment of his speech as a result of an unprovoked battery during a recreational soccer game.
- In *MacKay v. Jhulley*, 2015 BCSC 1114, Justice Kent awarded \$75,000 (\$99,000 in 2026 dollars) in non-pecuniary damages to a plaintiff who, as a result of being struck in the head with a pipe during an assault, suffered from ongoing tinnitus, headaches, dizziness, and fatigue, which severely impacted his work and personal activities and impaired his relationships.
- In *Rycroft v. Rego*, 2017 BCSC 373, Mr. Justice Williams awarded \$70,000 in non-pecuniary damages plus \$2,500 in aggravated damages (cumulatively \$92,000 in 2026 dollars), to a plaintiff who, following a battery, sustained laceration injuries to his head, an injury to his knee, modest soft tissue injuries to his arm, elbow and hand, cuts and abrasions of minor significance, and an injury to his eye requiring surgery.
- In *Andrews v. Shelemey*, 2021 BCSC 2221, the Court awarded \$100,000 in non-pecuniary damages and \$10,000 in aggravated damages (cumulatively \$131,000 in 2026 dollars) for injuries suffered in an assault. The injuries suffered included multiple physical injuries, including a fractured sternum, two fractured ribs, and a compression fracture to his spine causing ongoing pain, and psychological injuries which had mostly resolved. The Court accepted that the plaintiff was no longer able to work as a mechanic and was only

capable of part-time light seasonal work going forward. The Court also awarded \$25,000 (\$30,000 in 2026 dollars) in punitive damages as a result of the assault.

Determination

[160] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a rough guide. Each case depends on its own unique facts: *Trites v. Penner*, 2010 BCSC 882 at paras. 188–89.

[161] In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal outlined the factors to be considered when assessing non-pecuniary damages:

[46] The inexhaustive list of common factors cited in *Boyd [v. Harris]*, 2004 BCCA 146] that influence an award of non-pecuniary damages includes:

- (a) age of the plaintiff;
- (b) nature of the injury;
- (c) severity and duration of pain;
- (d) disability;
- (e) emotional suffering; and
- (f) loss or impairment of life;

I would add the following factors, although they may arguably be subsumed in the above list:

- (g) impairment of family, marital and social relationships;
- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and
- (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[162] The assessment of non-pecuniary damages is necessarily influenced by the individual plaintiff's personal experiences in dealing with their injuries and their consequences: *Dilello v. Montgomery*, 2005 BCCA 56 at para. 25.

[163] The plaintiff must be placed in the position that they would have been in if not for the defendants' tortious conduct, no better or worse. Tortfeasors must take their victims as they find them, even if the plaintiff's injuries are more severe than they would be for another person. However, the defendants need not compensate the plaintiff for any debilitating effects of a condition that the plaintiff would have experienced anyway: *Athey* at paras. 32–35.

[164] The Supreme Court of Canada in *Saadati v. Moorhead*, 2017 SCC 28 at paras. 34–36, has clarified that the legal test for a compensable mental injury is no different than for finding a physical injury, in that there is no need for proof of a specific diagnosis. It is sufficient that a mental or psychological harm or injury that was caused by the tortfeasor is established on the evidence.

[165] Although the plaintiff seeks aggravated damages as a separate head of damages to the non-pecuniary award, I agree with the Defendants that the better approach in the area of intentional torts is to include any compensatory aggravated damages as an element of the non-pecuniary damages award where such an award is warranted. As stated in *Degen* at paras. 626–27, citing *T.W.N.A. v. Canada (Ministry of Indian Affairs)*, 2003 BCCA 670 at paras. 101–102, “aggravated damages are not a separate head of damages, but instead are an augmentation of general damages to compensate for intangible emotional injuries” such that the assessment of aggravating factors is best folded into assessments for the award of non-pecuniary damages to augment these damages.

[166] In *Syngenta AG v. Van Wijngaarden*, 2025 BCCA 334, the Court of Appeal described the scope and purposes of aggravated damages as follows:

[147] Aggravated damages are similar to punitive damages, but are compensatory in nature. They are awarded when the reprehensible or outrageous conduct of the defendant causes the plaintiff additional harm by distressing them: see *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 SCR 1085, 1989 CanLII 93.

[167] In *Glover v. Fell*, 1999 CanLII 5905, [1999] B.C.J. No. 1333 (S.C.), Justice Sigurdson discussed the purpose of aggravated damages:

[70] ... Aggravated damages are an augmentation of compensatory damages for such intangible elements as pain, anguish, grief, humiliation, wounded pride, damaged self-confidence, that are caused by the conduct of the defendant that reasonably ought to have been foreseen. This part of the damage award is for the aggravation of the injury by the defendants' high-handed conduct.

[168] I find that, before the Incident, the plaintiff was, as described by their stepfather, “very outgoing” and someone who always wore their heart on their sleeve. The plaintiff was caring and empathetic and looked for ways to help the “underdog”. They were also a source of good energy in the family—someone that he could go to if he needed some positivity and a pick-me-up. Of the three children, the plaintiff was the more conscientious one. I.H. described his twin before the Incident as the extrovert while he was the introvert. The plaintiff was the social one at parties. O.H. described the plaintiff as a “social butterfly.” The evidence establishes that the plaintiff was open hearted, and close to their twin and family.

[169] The plaintiff’s family members all describe the plaintiff as completely changed and withdrawn after the Incident. The plaintiff stopped coming out of their bedroom, stopped sharing things with their family, and isolated themselves for a very long time. The plaintiff became a small and fragile person instead of the spark of positivity they had been, unsure where they had been optimistic. The plaintiff’s family only sees glimpses of the plaintiff’s former self now, though they say that in the months before trial they were seeing improvements in the plaintiff’s willingness to come out of their shell to talk to them. The plaintiff has lost their faith in the overall goodness of the world and others.

[170] The plaintiff described their suicidal thoughts, panic attacks, incidents of freezing up at work when dealing with certain members of the public (particularly those that looked like or spoke like the guards), and the deep-seated self-loathing and hatred of their own body that they have experienced since the Incident. They blame themselves for not being stronger and not being able to resist the guards’ treatment of them. They are still affected by headaches and nightmares and

bedwetting, though now on a weekly basis instead of a daily basis, which is a source of optimism for them.

[171] I find that the physical injuries inflicted on the plaintiff are only a small part of the plaintiff's losses. It is clear that the entire Incident, from the laying of hands on the plaintiff to their false imprisonment, has had a devastating effect on the plaintiff's ability to grow and to move on with their life. The plaintiff's prognosis for improvement is good with treatment, but they are unlikely to fully recover and are likely to be more vulnerable to other traumatic experiences. The plaintiff is young, and so the term of this psychiatric injury and vulnerability is a long one.

[172] Furthermore, the Incident has robbed the plaintiff of the ability to seek and obtain the support of their family at a critical point in their lives.

[173] I agree with both the plaintiff and the Defendants that *R.R.S.* is the most comparable case on this point. It also involved the intentional tort of battery of a teenager and gave rise to similar physical injuries and lasting psychological injuries. While *Spencer* also has similarities to this case, the plaintiff's PTSD in that case had resolved before trial, whereas before me, the plaintiff's PTSD remained severe for more than five years and has only recently become moderate. It is unlikely to entirely resolve. In this regard, the plaintiff's mental injuries are more similar to those in *Kempton*.

[174] In addition, I find that the high-handed conduct of the guards in this case caused very considerable additional damage to the plaintiff that significantly aggravated the plaintiff's injuries, including damaging their self-worth, through additional, prolonged and unnecessary exposure to public humiliation. Such damage was foreseeable by the Defendants.

[175] Unlike most of the battery cases above, the plaintiff in this case was also subject to a public false arrest and imprisonment and was paraded for several minutes before their peers and the public in the Mall in a painful hold generally

reserved for dangerous people. The plaintiff's tortfeasors did this cloaked in the authority of security guards for the Mall.

[176] In addition to the aggravating factors listed by the plaintiff above, all of which I find were established on the evidence, I would add the following, for which no excuse or explanation was provided by the Defendants:

- a) The repetition of the words "this is on you" by two guards as they took the plaintiff to the ground and held them there while intentionally inflicting pain through their hold, which I find has had an insidious and ongoing effect on the plaintiff;
- b) The search of the plaintiff by a male guard when a female guard was available, without clarifying whether a female guard would be more appropriate, which added considerably to the intrusiveness of this search;
- c) The seizure of the plaintiff's phone, which posed no risk to the safety of the guards and which deprived the plaintiff from being able to seek the support of their friends and family;
- d) The guards' refusal to allow the plaintiff's mother to access the plaintiff, even though the plaintiff was a minor; and
- e) The continued use of handcuffs behind the plaintiff's back, which was used for the walk back through the public areas of the Mall and was maintained for almost an hour, even after the plaintiff was secured in a cell.

[177] Overall, I am satisfied that the plaintiff's physical injuries were significant, including a concussion that was accompanied by severe headaches, bruised ribs, contusions and other physical injuries that took months to heal. The persistence of the headaches continues to affect the plaintiff, but the primary ongoing impact is of the plaintiff's PTSD, with features of both anxiety and depression (including a desire to die), which the plaintiff experiences as self-hatred, regular nightmares and

bedwetting. The plaintiff is young, and their injuries, particularly their PTSD with anxiety and depression subsumed within that diagnosis, has been crippling to them personally, socially, and in their pursuit of employment. It has deprived them of their ability to seek out the support of their family and damaged their family relationships.

[178] I would award the global amount sought by the plaintiff with respect to both general and aggravated damages in this case at \$250,000.

Loss of Earnings and Earning Capacity

Plaintiff's Position

[179] The plaintiff seeks \$25,000 in compensation for loss of past earning capacity and \$700,000 for loss of future earning capacity.

[180] In terms of past income loss, the plaintiff acknowledges that there were periods since the Incident when they likely would not have earned income in any event of the Incident:

- a) a period starting in March 2020 when Covid limited employment opportunities and the plaintiff would not have been able to coach basketball camps on weekends or during spring or summer break;
- b) a period between August 2023 and October 2024 when the plaintiff was suffering from acute flare ups and regularly hospitalized for Chron's disease; and
- c) a six-month period when the plaintiff attended Blanche McDonald to train as a hair stylist/barber, and likely would have done so (though perhaps earlier) even in the absence of the Incident.

[181] The plaintiff argues that, but for the Incident, they would have been able to complete their hairdressing certificate by mid-2021 rather than mid-2023, and that their losses during this period should be considered as the difference between what they would have made using the average wages of a person with a hairdressing certificate starting in mid-2021, and a person making minimum wage from that time

period. The plaintiff says that this amounts to a loss of approximately \$11,000 up until their hospitalizations related to Chron's disease beginning in 2023, and another \$25,000 after they were able to re-enter the workforce full time in October 2024.

[182] With respect to future earning capacity losses, counsel for the plaintiff notes that, although the plaintiff hopes that with sufficient cognitive behavioral therapy they will be able to train and work with the public again, ideally as a paramedic, the expert evidence on this point is less optimistic. Dr. Zoffmann was not confident that the plaintiff's psychological injuries would ever fully resolve.

[183] The plaintiff relies on the difference between the average earnings of persons with a post-secondary certificate and those earning only minimum wage in a low demand job to establish their future loss. The plaintiff would still have the Court apply all statistical negative labour market engagement factors, actuarial factors, and present value discounts. If one uses the plaintiff's economist report, this results in a loss of approximately \$635,000 for females over their lifetime, or just over \$816,000 using gender neutral averages. The plaintiff suggests that \$700,000 is therefore an appropriate assessment of this loss.

Defendants' Position

[184] The Defendants say that the plaintiff has not established any loss of earning capacity.

[185] The plaintiff had graduated in the summer prior to the Incident and was not employed at the time of the Incident. No evidence was presented that the plaintiff intended to start work in the near future had the Incident not occurred. They say there is no evidence that the plaintiff missed any employment opportunities due to the Incident or their alleged injuries.

[186] Moreover, the Incident occurred just prior to the COVID-19 pandemic, such that it was unlikely that the plaintiff would have worked for several months in any event.

[187] Starting in the summer of 2020 until August 2023, the plaintiff obtained part-time employment at several different companies including Save-On-Foods, Lordco, Amazon, and Lush, earning minimum wage or just above minimum wage. The plaintiff voluntarily left each of these jobs or was fired for reasons the Defendants say were unrelated to the Incident.

[188] While the plaintiff went on to pursue a certificate in hairstyling and barbering, including an apprenticeship and securing employment in this area, during their examination for discovery the plaintiff did not cite PTSD as the reason for why they left their barbering position in 2023. Instead, the plaintiff said that there was not enough work for them.

[189] The Defendants further argue that the plaintiff's base line earning capacity should be assumed to be the same as that of their twin brother, I.H., who works part-time for a moving company, and does extra work for the film industry. However, I.H.'s employment history since 2019 was not explored in evidence and his income is not known, including whether he earns more than minimum wage for these jobs. I am therefore unable to make use of this comparison or to assume that it would be favourable to the Defendants.

[190] The plaintiff currently works full-time as a product recycler in the back room at Value Village making slightly more than minimum wage. They have worked in this position since October 2024. They have required no accommodations to do so.

[191] If loss of earning capacity is proven, the Defendants argue for a capital asset approach. They rely on the case of *Healey v. Mault*, 2021 BCSC 2197, aff'd 2024 BCCA 100, where the Court set out to determine the appropriate award for loss of future earning capacity given the fact that the plaintiff was 24 years old at the time of the accident, had a sporadic work history, no post-secondary education, and no clearly defined career path at the time of the accident. The Defendants suggest this accurately reflects the case at bar. The plaintiff in *Healey* was ultimately awarded \$80,000 for loss of capacity (two years earnings) based on evidence from the

plaintiff's physiatrist and vocational rehabilitation consultant that the plaintiff was limited in pursuing physically demanding work as a result of the accident.

Determination

[192] Plaintiffs are entitled to recover damages for their loss of earning capacity caused by the tortious acts of a defendant. Compensation for past loss of earning capacity must be based on what the plaintiff would have, not could have, earned had the injury not occurred: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49.

[193] The plaintiff need not establish an earnings loss on a balance of probabilities, since what would have happened between the date of the accident and the date of the trial is essentially hypothetical, as are predictions regarding future losses. As the Court of Appeal stated in *Smith v. Knudsen*, 2004 BCCA 613:

[29] ... What would have happened in the past but for the injury is no more "knowable" than what will happen in the future and therefore it is appropriate to assess the likelihood of hypothetical and future events rather than applying the balance of probabilities test that is applied with respect to past actual events.

[194] An assessment of future loss of earning capacity always involves a consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. Rather, the future or hypothetical possibility will be considered as long as it is a real and substantial possibility and not mere speculation: *Morlan v. Barrett*, 2012 BCCA 66 at para. 38, citing *Athey* at para. 27.

[195] The Court of Appeal in *Rab v. Prescott*, 2021 BCCA 345 at para. 47 set out a three-step process to assess damages for loss of future earning capacity, which I find equally helpful (with some modification) for the hypothetical exercise I must engage in to consider the past losses as well. Those factors, with appropriate modification, are as follows:

- a) Does the evidence disclose a hypothetical event that could have given rise to a loss of capacity?
- b) Is there a real and substantial possibility that the hypothetical event would have caused a pecuniary loss to the plaintiff?
- c) What is the value of that possible loss, given the relative likelihood of it having occurred?

[196] Where the plaintiff has already suffered a loss of earnings caused by tortious conduct, the answer to the first two questions is generally more apparent.

[197] Finally, once the court determines the relative likelihood of the possible loss, the court must then also review the overall fairness and reasonableness of the award: *Lo v. Vos*, 2021 BCCA 421 at para. 117.

[198] The plaintiff worked part-time throughout much of high school and was coaching basketball during school breaks at the time of the Incident. As a result of the Incident, and the plaintiff's PTSD, which has been severe until recently, the plaintiff has been hobbled in their ability to work with the public, including with many clients in their chosen field of barbering.

[199] In addition, as a direct result of the Defendants' actions and its ban, the plaintiff has also been unable to work at any of the stores at the Mall, which is a major employer near the plaintiff's home.

[200] I find that the plaintiff made a real effort to pursue employment as a barber specializing in Black and brown hair, but that the plaintiff's PTSD, including suffering from anxiety attacks when required to service men who looked or spoke like the guards involved in the Incident, prevented them from continuing in this employment.

[201] When confronted with their discovery evidence on this point during cross-examination, the plaintiff stated that at the time of their examination for discovery they were unable to explain their limitations in providing barber services to many of the shop's clientele who reminded them of the guards in the way they looked or

spoke. The plaintiff believed they had no good reason to “freeze up” around these men, and believed they were just being racist. It was not until they met with Dr. Zoffmann in October 2025, who explained PTSD to them, that they felt that they could articulate their limitations in this regard, and see a way past them in the future.

[202] I accept the plaintiff’s evidence that they had felt ashamed of their reaction and believed that they were being racist in being unable to cut hair for this clientele, and so had not volunteered this information in explaining why they had not been able to get enough work from the barber shops where the plaintiff worked. I also find that the plaintiff’s limitations in serving this customer base was directly related to the plaintiff’s severe PTSD at the time that the plaintiff was trying to advance themselves as a barber.

[203] I find that although the plaintiff still enjoys cutting hair, and continues to do so for friends and family, the plaintiff is currently limited to employment that limits their interaction with the general public.

[204] I find that the plaintiff’s current full-time employment in the back room of a Value Village sorting donations, which pays barely more than minimum wage, is not fulfilling or commensurate with their employment potential without PTSD. Nevertheless, the plaintiff’s commitment to this position since October 2024 shows a diligent work ethic and effort to remain employed to the greatest extent possible.

[205] With respect to past loss of income, I find that the best assessment of the plaintiff’s loss is the difference between the annual earnings of a barber or other person with a certificate of less than one year, and the annual earnings of a person earning minimum wage. I would use the gender-neutral tables to make this determination because the plaintiff does not suggest that I use the male tables, and there is no reason to use the female earnings tables in this case given that the plaintiff had always sought to work as a barber for men, and began to socially transition in the summer of 2020 to being a man.

[206] Mr. Benning, an economist called by the Defendants, provided average earnings for “hairdressers and barbers” but said that incomes would actually be higher than what is statistically shown because it is known that there is a significant amount of tip income that is not captured in the data. After including this income, Mr. Benning opined that female hairdressers would on average make approximately \$25/hour and \$50,000 annually after considering tips and the tax benefits of this income. The income for males in this field, he opined, would be 30 percent higher, and approximately 15 percent higher if one was to use gender neutral averages.

[207] Mr. Benning’s evidence in this regard is consistent with that of Mr. Steigervald, who did not consider earnings for hairdressers and barbers specifically, but who provided statistical earnings based on level of education. He opined that a female with a post-secondary educational program of three months to one year would earn approximately \$47,000 annually in 2025, and slightly more with a hairdressing certificate, and that this amount would increase if one used gender neutral statistics.

[208] I consider that the plaintiff’s claim of approximately \$36,000 gross loss and \$25,000 of net loss after taxes on this basis accords with the expert evidence and is overall a conservative one. I would not apply any negative labour market contingencies to this loss, as it already excludes substantial periods of non-labour market participation for illness, training and the COVID-19 pandemic.

[209] With respect to the plaintiff’s future loss of earning capacity, I find that the evidence establishes a present loss of earning capacity that can be expected to extend indefinitely into the future. I find that there is a real and substantial possibility that this loss of capacity will continue to cause a pecuniary loss to the plaintiff.

[210] In order to value that future loss, I must consider the relative likelihood of various losses and their extent.

[211] In this regard, I find that Mr. Steigervald’s tables showing the difference between the earnings of a person with a certificate of less than one year (like the

one earned by the plaintiff in hairdressing) and the earnings of a person who is only able to earn something close to minimum wage in low-stress jobs not dealing with the public, like fabric sorting and recycling, is a useful predictor of one real and substantial possibility of loss for the plaintiff. I find that the full value of such a loss is best expressed through the use of the averages provided by Mr. Steigervald for both males and females with full labour market, actuarial and present value negative contingencies and discounts applied, resulting in an estimated loss of \$816,000 over the plaintiff's lifetime.

[212] On the other hand, I also find that there is also a real and substantial possibility that, even if the plaintiff is unable to fully recover from their crippling PTSD symptoms with treatment, the plaintiff will be able to regain sufficient capacity to fulfill some of their ambitions to work with the public again, either as a barber or as a paramedic. I would place the likelihood of the plaintiff being able to earn income without limitation due to the Incident at less than even, given that, even if it should come to pass and the plaintiff recovers their ability to work with the public more broadly, there is an ongoing chance of relapse and an ongoing vulnerability to PTSD symptoms leading to further disability.

[213] Overall, I assess the plaintiff's loss of future earning capacity at just over 60 percent of their maximum loss at \$500,000.

Cost of Future Care

[214] The purpose of a cost of future care award is to provide for assistance, equipment, and facilities directly related to the injuries: see *Kallstrom v. Yip*, 2016 BCSC 829 at para. 429. As stated in *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 at 78, 1985 CanLII 179 (S.C.), aff'd 49 B.C.L.R. (2d) 99 (C.A.), the primary focus of the cost of future care inquiry is the provision of adequate future care. "The award for future care is based on what is reasonably necessary on the medical evidence to promote the mental and physical health of the plaintiff": *Milina* at 78. There must be some evidentiary link between the medical assessments and recommended

treatment: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 39.

[215] The extent, if any, to which a cost of future care award should be adjusted for contingencies depends on the facts: *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 253. An assessment of damages for cost of future care is not a precise accounting exercise: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21. Rather, in assessing damages, the court does the best that it can based on the evidence before it.

[216] The plaintiff seeks \$25,000 for their costs of future care for medications, psychiatric treatment, family counselling and cognitive behavioural therapy recommended by Dr. Zoffmann.

[217] Dr. Zoffmann recommended the following treatment in her report:

1. [The plaintiff] states that the occasional dose of Mirtazapine helps with insomnia and also reduces anxiety. Mirtazapine is not a treatment for insomnia but could be effective in treating depression and anxiety if taken consistently.
2. [The plaintiff] needs to see a psychiatrist familiar with treatment modalities for PTSD, Depression and Anxiety plus ADHD.... Psychiatric treatment should be paired with Cognitive Behavioural Therapy provided by a skilled Psychologist.
3. [The plaintiff] and [their] family would benefit from assistance from a Family Therapist to open up the lines of communication and to shore up important familial and social supports.

[218] The Defendants argue that the above treatments are covered by MSP. Furthermore, they argue that because the plaintiff has taken no steps to date to pursue treatment for their injuries, if an award for future care is made, it should be discounted on the basis that the plaintiff may never use these services.

[219] While care by a psychiatrist should be available through MSP, the evidence establishes that it is not simple or common to obtain a referral for such treatment. The evidence establishes that even if one can obtain psychiatric care by a doctor,

the type of family counselling and cognitive behavioural therapy recommended by Dr. Zoffmann is not covered by MSP.

[220] In addition, the evidence establishes that, in the absence of the above treatment, the plaintiff is unlikely to ever be able to work in a public facing job, including to achieve their goal of becoming a paramedic. Should I refuse to order costs of the above care to the plaintiff, I find a substantial increase in their loss of future earning capacity award would be required.

[221] Unfortunately, Dr. Zoffmann did not provide any direct evidence of the cost of the treatments that she recommends for the plaintiff. The plaintiff seeks to rely on recent decisions of this Court where cognitive behavioral therapy costs were awarded at the cost of over \$200/session. The plaintiff seeks a total of \$25,000, inclusive of medication costs, and other recommended therapy. I am satisfied that this amount is the minimum amount that the plaintiff will require for medication and therapy costs recommended by Dr. Zoffmann given the severity of their PTSD and its now chronic condition, and I would make that award.

[222] The Defendants admit that they are also liable for the provincial claim of \$481 under the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 7 for the plaintiff's initial hospital visit on November 24, 2019.

Punitive Damages

[223] The plaintiff seeks punitive damages of at least \$1 million dollars against the Defendants "to ensure that not only the behaviours displayed here are corrected" but also to ensure "that no further person is subjected to the violence [the plaintiff] suffered at the hands of these Defendants." The plaintiff roots their claim not simply in the conduct of the guards themselves, but in the Defendants' corporate response to this Incident.

[224] In response, the Defendants argue that, because Paladin has admitted vicarious liability for the conduct of its guards, and the action was not maintained against the individual guards, no punitive damages are available because punitive

damages cannot be awarded on the basis of vicarious liability, citing *Blackwater* at para. 91.

[225] If punitive damages were nevertheless to be awarded against the Defendants, then they say they should be minimal, and in line with the damages awarded in *Chopra*. As noted above, in that case the plaintiff was awarded an additional \$10,000 (\$18,000 in 2026 dollars) in punitive damages, for injuries received when security guards arrested that plaintiff in a retail store, resulting in a false imprisonment claim arising from the length of time held and a battery claim arising from use of excessive force. The Alberta Court of Queens Bench awarded punitive damages at paras. 234–240 on much the same factors that were found to be aggravating in that case, including:

[222] ... the excessive force used by Frauenfeld in making the initial arrest, the overuse of handcuffs on Chopra, Frauenfeld's refusal to allow Chopra to phone his wife, Frauenfeld's initial refusal and then delay in giving Chopra a drink of water despite knowing that Chopra had been bleeding from the mouth area, Frauenfeld's taking Chopra's wallet and removing his driver's licence without Chopra's consent, Frauenfeld's extensive delay in calling the police despite Chopra's numerous and early requests that he do so, photographing Chopra without permission, and Frauenfeld's comments about the country from which Chopra had come.

[226] The Defendants further argue that the evidence establishes that the guards that testified had all received their basic training before they were employed and most had additional training. The guards' actions during the Incident, particularly with respect to the false arrest, imprisonment and search of the plaintiff, constituted them just "doing their job" according to what they were trained to do, without malice. While I accept this account of the reasons for the guards' actions in this case, the fact that the guards were just doing what they were trained to do by Paladin does not ameliorate Paladin's culpability in this case, but exacerbates it.

[227] Furthermore, *Blackwater* does not stand for the proposition that a corporate defendant that is liable for the acts of its employees or other real persons who act on behalf of the company through the doctrine of vicarious liability can never be liable in

punitive damages. If that were the case, it would be hard to imagine how a corporation might ever be liable for punitive damages in tort.

[228] The question in front of the Supreme Court of Canada in *Blackwater* was whether it was an error to *fail* to award punitive damages against Canada. The Court chose not to disturb the trial judge's decision not to award punitive damages given that the trial judge made no findings that Canada's behaviour met the threshold for punitive damages and "correctly stated that punitive damages cannot be awarded in the absence of reprehensible conduct specifically referable to the employer": at para. 91 [emphasis added]. *Blackwater* does not immunize corporations from awards of punitive damages, but rather requires "conduct specifically referable to the employer" for such an award. Punitive damages against a company, who by definition can only act through its individuals, is available on the basis of such referable conduct: *Ari v. Insurance Corporation of British Columbia*, 2019 BCCA 183; *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419 at paras. 78–85; *Eynon v. Simplicity Air Ltd.*, 2021 ONCA 409 at paras. 17–18.

[229] In such cases, punitive damages are awarded against the employer where the wrongdoing was committed by the company itself through those who control the corporation or otherwise have decision-making authority. In the companion case to *Blackwater* at the BC Court of Appeal, *T.W.N.A.*, which also dealt with damages for sexual abuse at a residential school, the Court of Appeal upheld an award of punitive damages against Canada on the basis that Canada was directly liable for those damages. In so doing, the Court of Appeal characterized the trial decision as finding that the conduct of the principal "was, in fact, the conduct of Canada" and that this conduct was "specifically referable to the employer": at para. 122.

[230] The Court of Appeal in *T.W.N.A.* characterized previous tort cases as utilizing the "identification theory" of corporate liability, where the appropriate question is "whether the wrongdoer was acting as agent or servant of his employer or whether his conduct was the very conduct of the employer itself": at para. 121. At para. 121,

the Court quoted the test set out by Iacobucci J. in *Rhône (The) v. Peter A.B. Widener (The)*, [1993] 1 S.C.R. 497 at 520–21, 1993 CanLII 163, which reads:

... the focus of [the] inquiry must be whether the impugned individual has been delegated the “governing executive authority” of the company within the scope of his or her authority. I interpret this to mean that one must determine whether the discretion conferred on an employee amounts to an express or implied delegation of executive authority to design and supervise the implementation of corporate policy rather than simply to carry out such policy. In other words, the courts must consider who has been left with the decision-making power in a relevant sphere of corporate activity.

[Emphasis added.]

[231] In this case, the Defendants have admitted liability jointly, not only vicariously for the actions of the guards, but also in negligence in relation to the training of the guards. This admission of liability is directly referable to the conduct of the Defendants themselves, and to Paladin most particularly.

[232] Liability for punitive damages referable to the employer has regularly been found in cases where the employer’s response to the tortious conduct of its employees is itself high-handed or reprehensible and offends the court’s sense of decency. For example, in *Boucher*, the Ontario Court of Appeal upheld a jury award against Wal-Mart. The Court found that it was open to the jury to make this award on the basis of Wal-Mart’s refusal to take the plaintiff’s complaints seriously, its dismissal of those complaints as unsubstantiated despite substantial evidence to the contrary, its unwillingness to discipline Wal-Mart’s employee or intervene to stop his continuing mistreatment of the plaintiff, and Wal-Mart’s threatened reprisal against her and its contravention of its workplace policies: at para. 84. These more managerial decisions were found to be “conduct referable to the employer”: para. 82.

[233] Referencing *Boucher*, the Ontario Court of Appeal more recently upheld a jury’s punitive damages award against an employer on the basis that “[t]here was no question that the conduct of the supervisors was the conduct of their employer” and there were findings of a larger company culture “whereby employees failed to place adequate importance on best safety practices”: *Eynon* at para. 18.

[234] In *T.W.N.A.* the British Columbia Court of Appeal provided a useful description of when, and why, courts should award punitive damages:

[104] Punitive damages are triggered by conduct that may be described by such epithets as high-handed, malicious, vindictive, and oppressive. They are awarded where the court feels that the award of compensatory damages will not achieve sufficient deterrence and that the defendant's actions must be further punished. As explained by the Supreme Court of Canada in *Hill v. Church of Scientology*, *supra*:

[196] Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. ...They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

[235] *West Bros. Frame and Chair Ltd. v. Yazbek*, 2019 BCSC 1844, provides a further explanation for the purpose and tailoring of punitive damages:

[223] Punitive damages are unlike any other form of damages. Their purpose is not to compensate, but to punish. Similar to a criminal penalty, punitive damages are driven by a logic of retribution, denunciation and deterrence: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 111.

[224] Courts should only resort to an award of punitive damages in exceptional circumstances. Such an award should only [be] made in response to conduct that [is] "harsh, vindictive, reprehensible and malicious in nature" as well as "extreme in its nature and such that by any reasonable standard it is deserving of full condemnation and punishment": *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 S.C.R. 1085 at 1108. Punitive damages should be awarded to deter conduct only if compensatory damages are insufficient to do so: *Whiten* at para. 94.

[225] Punitive damages must be tailored to the defendant's culpability. In *Whiten*, Binnie J. identified the following factors in assessing the blameworthiness of a defendant's conduct at para. 113:

- (a) whether the conduct was planned and deliberate;
- (b) the intent and motive of the defendant;
- (c) whether the defendant persisted in the outrageous conduct over a lengthy period of time;
- (d) whether the defendant concealed or attempted to cover up its misconduct;

- (e) the defendant's awareness that what he or she was doing was wrong;
- (f) whether the defendant profited from its misconduct; and
- (g) whether the interest violated by the misconduct was known to be deeply personal or irreplaceable.

[226] In addition, an award of punitive damages must be:

- (a) proportionate to the degree of vulnerability of the plaintiff;
- (b) proportionate to the harm or potential harm directed specifically at the plaintiff;
- (c) proportionate to the need for deterrence;
- (d) proportionate, even after taking into account the other penalties, both civil and criminal, which have been or are likely to be inflicted on the defendant for the same misconduct; and
- (e) proportionate to the advantage wrongfully gained by a defendant from the misconduct: *Whiten* at paras. 114-126.

[236] In *Baker v. Blue Cross Life Insurance Company of Canada*, 2023 ONCA 842, the Court upheld a punitive damages award of \$1.5 million. In discussing what constituted an appropriate quantum for a punitive damages award, the Ontario Court of Appeal emphasized the purpose of such an award:

[32] Little was said in oral argument regarding the quantum of punitive damages other than to assert that they are too high. I disagree. Punitive damages are designed to punish wrongful conduct, to denounce that misconduct, and to act as a deterrent for future misconduct.

[33] Deterrence plays an important role when dealing with claims against insurance companies. As Laskin J.A. noted in the Court of Appeal for Ontario decision in *Whiten v. Pilot Insurance Co.* (1999), 41 O.R. (3d) 641 (C.A.), at p. 659, rev'd 2002 SCC 18, [2002] 1 S.C.R. 595,

[V]indicating the goal of deterrence is especially important in first-party insurance cases. Insurers annually deal with thousands and thousands of claims by their insureds. A significant award was needed to deter Pilot and other insurers from exploiting the vulnerability of insureds, who are entirely dependent on their insurers when disaster strikes.

[34] Deterrence is impossible unless the punishment is meaningful. I take judicial notice of the fact that Blue Cross is a large insurance corporation. While a punitive damages award of \$1.5 million might be devastating to a personal defendant or a small business, it is little more than a rounding error for Blue Cross. Indeed, it is difficult to envision how an award of anything less than \$1.5 million would even garner the attention of senior executives, let alone deter future misconduct.

[35] Another point worth emphasizing is that there was ample evidence for the jury to conclude that the problems within Blue Cross are systemic. This was not a case of a rogue disability claim examiner. The many Blue Cross employees who touched this file took the same approach, which ignored the respondent's rights under the policy. This evidence suggests that there may be many other claimants that may have been treated in the same manner by Blue Cross. The difference is that, unlike Ms. Baker, most claimants do not have the stamina to engage in long-term litigation.

[36] The fact that this appears to be a systemic approach to Blue Cross' claims handling process reinforces why a significant award of punitive damages is required. Otherwise, a small award is effectively spread over all the other cases where claimants have decided that it is not worth suing to obtain the benefits they are legally entitled to receive. Put simply, a modest punitive damages award becomes a nominal cost of operating in a way that wrongly and systematically denies policyholders their legal right: see *Whiten*, at para. 72.

[237] I find that Paladin is liable in punitive damages for conduct which is referable to Paladin as the employer. In this regard, Paladin's conduct is deserving of condemnation and punishment, beyond the tortious actions of the security guards themselves, for several reasons including:

- a) Paladin's admitted negligent training of its guards, to the extent that the guards' tortious battery, false arrest and false imprisonment of the plaintiff was characterized by the Defendants as the guards just doing what they were trained to do;
- b) Paladin's lack of concern over the after-the-fact creation of a banning order used to justify the guards' actions, and provided to both the plaintiff and to the police for that improper purpose; and
- c) Paladin's cursory and deficient investigation of this complaint, as detailed above in my factual findings.

[238] Even after this lawsuit was filed, Paladin failed, once again, to carefully consider and review these serious allegations and consider corrective action. Paladin's representatives expressed little concern about the conduct of the guards in this case even after acknowledging procedural failures and misstatements in the corporate records relating to this event.

[239] As in *Baker*, I consider that punitive damages are warranted in this case because of the importance of deterring, at a corporate level, Paladin's corporate indifference toward the excessive use of force by its employees. Paladin's workforce is trained by Paladin to use physical force on members of the public. Paladin is responsible for ensuring their proper training and supervision in that regard.

[240] In providing this unique service, Paladin must be aware that an excessive use of force, or the improper use of detentions and imprisonment by its employees, has a high potential to harm members of the public.

[241] Furthermore, on the evidence before me, Paladin's uncaring attitude is not a one-time occurrence, but part of the culture of how upper management responds to complaints of excessive force employed by their workforce.

[242] In determining the appropriate amount of punitive damages, I must take into account any deterrent effect already created by the compensatory award, the defendant's ability to pay, and what it would take to deter the defendant.

[243] I find Paladin was extremely lucky in this case. Its trained guards pushed a young person to the ground multiple times, used their superior body weight to hold them there, and used concussive force to bring them into compliance. They pushed the plaintiff down a set of concrete stairs. The plaintiff's physical injuries, while serious, were nowhere near what was reasonably foreseeable in these circumstances. The plaintiff's economic losses, based on their age and past labour market participation, are at the lower end for a person of this age. I do not consider that the compensatory damages in this case are sufficient to deter Paladin from allowing similar tortious acts to be performed by its trained workforce.

[244] I am convinced that nothing less than \$1 million will get the attention of Paladin. Paladin did not disclose its current revenues, but Paladin's representative agreed that the company has been awarded platinum status by Canada's Best Managed Companies, which requires that its revenues exceed \$15 million annually, and that those revenues continue to grow. Paladin has approximately 30,000

employees. An award of \$1 million reflects an investment of less than \$50 for each of its employees.

[245] Paladin admits that it failed in the training of its workforce, and I have found that it also failed in its investigation and response to the tortious conduct of its trained employees. This training is essential to the core of the services that Paladin provides, and supervision and accountability for the use of force by Paladin's security guards is essential to the safety of the public in the many private and public spaces that Paladin provides its services. Paladin, by its own admission, was negligent in this regard. The investigation Paladin was responsible for and promised was cursory and incomplete, and there is no record of even the limited sensitivity training that Paladin said would be done actually being done. It was not only some of the individual guards who testified that they believed they had done nothing wrong, Paladin's senior management considered the use of force in this case to have been reasonable.

[246] The plaintiff says that because the Defendants admitted joint and several liability, this award is recoverable from both Defendants, including Ivanhoe Cambridge, even though the plaintiff does not allege that the conduct which attracts punitive damages against Paladin can be attributed, or is otherwise referable, to Ivanhoe Cambridge.

[247] I am satisfied that it would not be appropriate to make the punitive damages award joint and several, despite the Defendants' generally stated admissions.

[248] While there appears to be a paucity of cases where there is an admission of liability by two tortfeasors for the same torts, some guidance may be found in *Runcer v. Gould*, 2000 ABQB 25, where the defendants also admitted liability. In that case, as in this case, there were "some facts which [were] in dispute which have a bearing on the general, aggravated and punitive damages": at para. 2. In deciding punitive damages, the trial judge determined that while the defendants were jointly and severally liable for general and aggravated damages, different amounts should be assessed against each for punitive damages: at para. 75. Different amounts were

awarded based on individual factors such as their level of involvement, existing criminal sanctions, and the means of each defendant: at paras. 67–76. See also *Saskatchewan v. Racette*, 2020 SKCA 2 at paras. 9–10. This approach aligns with the purpose of punitive damages, being to punish and not to compensate, and the case-specific analysis required to determine punitive damages.

[249] Therefore, although the Defendants were represented by the same counsel and did not distinguish between their interests in terms of liability for damages, in my view, it would not be appropriate to make an award of punitive damages against Ivanhoe Cambridge on the evidence before me.

CONCLUSION

[250] In conclusion, I find that the plaintiff is entitled to \$1,800,481 in damages as follows:

Non-pecuniary and Aggravated Damages	\$250,000
Past Income Loss	\$25,000
Future Income and Loss of Earning Capacity	\$500,000
Cost of Future Care	\$25,000
Health Care Costs Recovery	\$481
Punitive Damages	\$1,000,000
Total	\$1,800,481

[251] The Defendants are jointly and severally liable for the first four heads of damages and for the award under the *Health Care Costs Recovery Act*.

[252] The Defendant Paladin is solely liable for the award of punitive damages.

[253] The plaintiff has been substantially successful on the matters at trial and is presumptively entitled to their costs. If the parties wish to address any costs-related issues before me, I direct them to make a request to appear before me within 30 days to schedule an appropriate time to address that issue.

“Marzari J.”