

Court of King's Bench of Alberta

Citation: Artindale-Eeles v Mercer, 2024 ABKB 233



Date:
Docket: 1203 04197
Registry: Edmonton

Between:

Christine Artindale-Eeles

Plaintiff

- and -

David Bradley Mercer and The Attorney General of Canada

Defendants

Corrected judgment: A corrigendum was issued on May 1, 2024; the corrections have been made to the text and the corrigendum is appended to this judgment.

**Reasons for Decision
of the
Honourable Justice S.D. Hillier**

I. Introduction

[1] The claim of the Plaintiff, Christine Artindale-Eeles, arises from circumstances while she was driving her motor vehicle to work in the early morning of April 9, 2010, at Wainwright, Alberta.

[2] Counsel agreed at the outset of trial to the marking of an Exhibit Binder comprised of 69 tabs. Further tabs, including late production of out-of-pocket expenses, physiotherapy records

and a witness sketch, have also been included, all subject to determination of reliability and weight by the Court.

[3] Before presenting final argument, Plaintiff's counsel also filed a lengthy affidavit of the steps taken in the litigation in response to allegations of inordinate delay. This may be relevant to any calculation of pre-judgment interest, as well as entitlement to legal costs.

[4] Liability is not materially in issue despite some disagreement on the nature and force of two collisions as recounted in the evidence. The major challenge in this case is to assess the Plaintiff's injuries attributable to the second collision and the extent of any damages sustained by the Plaintiff for which compensation is payable in all the circumstances.

II. Scope of Claim

[5] Ms. Artindale-Eeles seeks compensation for soft tissue injuries and the psychological impact on her daily living, as well as the resulting financial consequences, including early retirement from long-term employment.

[6] The breakdown of the claim for damages exclusive of pre-judgment interest and costs, is set out as follows:

General Damages	\$165,000
Past Loss of Income and Benefits	\$120,000
Future Loss of Pension Income Benefits	\$27,000
Cost of Future Care	\$91,490
Past Loss of Housekeeping Capacity	\$14,876
Future Loss of Housekeeping Capacity	\$15,000
In-Trust Claim	\$29,477
Special Damages (Out of Pocket Expenses)	\$21,712
Tax Gross Up (Est. of 4.43% of \$118,490 Future Loss of Pension Benefits and Cost of Future Care)	\$5,249
Total	\$489,804.00

[7] The Defendants acknowledge responsibility for general damage sustained in the second collision in the range of \$30,000, plus a portion of claims as set out below. However, various other claims are disputed, including for inordinate voluntary services, future costs of care, as well as loss of future income and pension entitlement. Using the same chart for comparison of positions, the breakdown of the Defendants' response to the claim is as follows:

General Damages	\$30,000
Past Loss of Income and Benefits	\$9,000
Future Loss of Pension Income Benefits	nil
Cost of Future Care	nil
Past Loss of Housekeeping Capacity	\$3,000
Future Loss of Housekeeping Capacity	nil
In-Trust Claim	\$2,000
Special Damages (Out of Pocket Expenses)	\$3,000
Tax Gross Up	nil
Total	\$46,000

[8] The structure of this Decision will first set out the background, collisions, and hospital attendances that led up to a modified work schedule for Ms. Artindale-Eeles.

[9] Of significant concern is the stark contrast in the testimony of Ms. Artindale-Eeles between her evidence in chief and cross examination, including what she may have recounted to various health professionals. Accordingly, the chronology of medical treatments and expert assessments will need to be reviewed in the context of an assessment of the evidence of the Plaintiff.

[10] That analysis of credibility and the reliability of evidence will inform the proper measure of entitlement to various heads of damages as argued. So too it will be important to analyze pre-existing conditions as may be tied to proof of causation, particularly given the post-collision incidents where Ms. Artindale-Eeles was injured.

[11] The matter of causation will then carry into an assessment of the heads of damages and related issues affecting the *quantum*, including tax gross-up and pre-judgment interest. The total *quantum* for which the Defendants are responsible will be assessed with assistance from prior case decisions.

[12] Since some of the Plaintiff's evidence is uncontroverted, I will set out the background context to the civil claim and then deal with various credibility issues that impact the medical and expert evidence.

III. Background

[13] On April 9, 2010, Ms. Artindale-Eeles was 49 years old, married and residing in Wainwright, Alberta. Early that morning she was travelling to Canadian Forces Base Wainwright where she had worked since 1981. Within three years of her start date, she had been promoted and served as the Cleaning Services Supervisor responsible for 21 full time staff maintaining up to 58 buildings at the Base. Her responsibilities and staffing would increase when the Base hosted major military exercises. She also had summer students regularly under her supervision.

[14] Typically, Ms. Artindale-Eeles spent about 75% of her time dealing with administrative and supervisory tasks, which included training, discipline and record-keeping computer or desk work.

[15] The remaining quarter of her 8-hour shift typically involved driving to check on different buildings, climbing ladders, or demonstrating work to train staff; as well, Ms. Artindale-Eeles would assist with physical unloading of supplies, including heavy cleaning products in pails up to 21 kg.

[16] Ms. Artindale-Eeles said she loved her job, the variety of challenges, diverse staff and daily issues that required attention. I will address other aspects of Ms. Artindale-Eeles' job, including health capacity and related variables, in the context of the medical evidence. However, it is common ground that Ms. Artindale-Eeles was respected as a permanent maintenance supervisor for the Department of National Defence ("DND") at Wainwright, Alberta over a lengthy career.

IV. Collisions

[17] The road conditions on the morning of April 9, 2010 were adverse, with very limited visibility. Ms. Artindale-Eeles picked up her co-worker, Ms. Kyla Hill, a bit after 6 a.m. in her

Chrysler Aspen (“Aspen”). It was still dark with icy roads and blowing snow. As she crested a railway overpass, at what she estimated as a speed between 20 and 30 kilometers per hour, Ms. Artindale-Eeles saw a van stopped ahead of her. Although she braked immediately, her vehicle collided with the van (“First Collision”).

[18] Ms. Artindale-Eeles states that she did not suffer any injury from the First Collision, even though the front end of the Aspen was obviously damaged. It appears that three or four other vehicles were ahead of the van and may have similarly sustained some damage from preceding collisions. No particulars or photographs were provided of those collisions.

[19] Ms. Artindale-Eeles and her passenger, Ms. Hill, were instructed by the fire chief at the scene to wait inside the Aspen for RCMP to arrive, which they did. She also backed up one car length from the van, put on 4-way flashers and listened to the radio for updates on road conditions.

[20] Forty-five minutes after the First Collision, the Defendant’s RCMP SUV unit (“SUV”) struck Ms. Artindale-Eeles’ Aspen from behind, causing it to spin roughly 180 degrees in a clockwise direction to essentially face north (“Second Collision”).

[21] The description of both collisions is varied in some of the accounts provided by Ms. Artindale-Eeles in her numerous statements. Before turning to the medical attention that was provided, I will address the nature of the Second Collision as supported by the totality of the evidence.

[22] In her report for the RCMP later that morning, Ms. Artindale-Eeles stated simply that her vehicle was suddenly hit from behind and “...was completely turned around.” That report said nothing about speed or intensity of the collision. Similarly, she made no description of force in her signed Notice of Loss for the insurer five days later. Photographs show damage to the rear left quarter panel of the Aspen; the damage to the SUV is to the right bumper and wheel well.

[23] Notably, there is no suggestion that the Aspen was pushed forward into the van, still parked just a car length or so, to the south in line with three other vehicles. Ms. Hill was not asked about the line of travel of the Aspen after impact and only remembers facing the other direction when RCMP came to check on them.

[24] The sketch that Ms. Artindale-Eeles prepared for the RCMP shows the Aspen proximate to the SUV but pointing in the opposite direction. From the evidence, I conclude that the RCMP point of impact pushed the Aspen in a half-circle with virtually no forward motion, resting with the driver’s door next to the windrow or snowbank inside the guardrail facing north. The Aspen air bags were not deployed in either collision.

[25] I will do a further assessment of the two collisions as part of a full review of Ms. Artindale-Eeles’ credibility. However, I am able to conclude that neither collision was high speed.

[26] The Defendants have argued that the First Collision may have been a cause of injury to Ms. Artindale-Eeles. Apart from a contusion to the knee and possibly to the right ribs, which are not relevant to the claim, I find no evidence to reasonably support that the injuries to the left side of the neck and shoulder area are attributable to the First Collision. While the impacts were approximately forty-five minutes apart, the absence of relevant injury from the First Collision supports use of the term “Collisions” in this Judgment to refer collectively to the overpass impacts on the morning of April 9, 2010, for simplicity.

V. Hospital Attendances

[27] EMS personnel removed Ms. Artindale-Eeles cautiously from the driver's seat of her Aspen and transported her to Wainwright Hospital ("Hospital") with complaints of pain. She was initially assessed by an emergency triage nurse, whose 8:40 a.m. chart notes refer to complaints of left mid-clavicular pain, right knee and sternal (chest) pain.

[28] About fifteen minutes later, Dr. Letley examined Ms. Artindale-Eeles and recorded her complaints of pain in the C-spine, left spine/clavicle and right knee. He ordered x-rays of those areas and her chest; upon review of those images, he charted a motor vehicle collision "soft tissue injury" for which he prescribed analgesic muscle relaxants but no pain medication. Ms. Artindale-Eeles was authorized to go home at 10:30 a.m.

[29] Upon discharge from Hospital, Ms. Artindale-Eeles attended the RCMP to complete a statement of the Collisions. Having signed her description of the Second Collision with an attached sketch, she denies recording her injuries as "muscular bruising, collar bone, right knee" as included in that statement.

[30] On April 15, 2010, Ms. Artindale-Eeles signed a somewhat longer description of the Collisions for her insurers, although she has no real recollection of this attendance. The statement in her handwriting describes the injuries as: "whiplash, strain left shoulder and upper left shoulder blade and upper back." In describing the circumstances, the statement says:

I change the radio stations at 729 hrs to hear the news. They said the overpass was closed. The next thing I new (sic) there was a loud "Bang" and I seen the guard railing coming at me. I yelled at my passenger to hang on we were going over. Next thing firefighters were hanging on to my head then I was being taken by ambulance to hospital.

[31] Hospital records note that Ms. Artindale-Eeles re-attended on April 12, 2010, after reporting for work for a couple of hours. She expressed concerns with increased coughing and the triage nurse charted tenderness of the ribs on the right side. Dr. Letley saw Ms. Artindale-Eeles again on this re-attendance and ordered x-rays for the chest and right ribs with negative results. No further medication was prescribed and there was no notation of continued complaints of pain to the neck, left shoulder, collarbone, back, left rib or right knee.

[32] Ms. Artindale-Eeles returned to work on April 14, and began attendance at Alta-Sask Sport Physiotherapy the next day, reporting left neck and shoulder pain. I will address the failure to obtain treatment notes for the two years of physiotherapy treatment later in these Reasons.

[33] Having been driven to work by her husband on the first three occasions after the Collisions, Ms. Artindale-Eeles drove herself and worked full-time until May 6, 2010. The DND approved a reduction in her work schedule to half-time in consultation with Dr. Letley, whose evidence will be considered in some detail. For the moment, it suffices to note that the records of Dr. Letley for May 13, 2010 make the sole reference to a comment from her that it "... feels like her left shoulder is out of place". In those same notes, Dr. Letley records good range of motion of left shoulder "... when distracted" (collectively, the "May 2010 Chart Notes").

VI. Plaintiff Credibility

[34] Before turning to the medical evidence, it is important to consider the reliability of the testimony of Ms. Artindale-Eeles. This is especially true with complaints of soft tissue and chronic pain injuries to be proven on a balance of probabilities: *Petz v Duguay*, 2018 ABCA 402, leave to appeal to SCC refused, 2019 CanLII 53417; *Bumstead v Dufresne*, 2017 ABCA 122, leave to appeal to SCC refused, 2017 CanLII 78691.

[35] There are numerous factors that are relevant to the assessment of credibility, only some of which include the firmness of memory, changes between testimony in chief and cross, consistency with other evidence, the impact of self-interest, demeanor and the assessment of likelihood in all the circumstances: see *Bains v Adams*, 2023 ABKB 491 at para 241.

[36] In overview, Ms. Artindale-Eeles presented as a person with a lengthy history of health issues that were too complicated for most people to keep straight in their minds. For that reason, counsel was given some leeway in questioning with reference to the extensive records. Unhelpfully, Ms. Artindale-Eeles was quick to provide or address details without much concern for what was in the records.

[37] In the end, it became clear that points raised in chief, as reviewed in cross examination, did bring into question both the credibility and ultimately, the reliability of the evidence of Ms. Artindale-Eeles. This is a pervasive concern, so I will consider a number of different aspects of her testimony before turning to the evidence of the health professionals who provided treatment services or proffered expert opinions regarding her injuries.

1) Pre-Collision Health

[38] At trial, Ms. Artindale-Eeles touched on some of her medical issues in a fashion that understated and actually distorted her health status, particularly in the period immediately prior to the Collisions.

[39] In chief, Ms. Artindale-Eeles testified that she had a history of tension headaches with high blood pressure and cholesterol, both of which were controlled. Asked to explain muscle pain in 2008, she confirmed from employer records that she took off 184 hours of sick leave, which she attributed to a persistent cough from a trip to Mexico. That travel detail is not charted by Dr. Letley, and he has no recall of it. She thought the cough resolved in about October 2009.

[40] Asked to look at her earlier medical records, Ms. Artindale-Eeles confirmed a diagnosis for PTSD in 2000 arising from a sexual assault for which she received about 4 months of counseling. She acknowledged some bottled up depression, which she described as only for about 8 months in 2008, helping her mom to deal with the loss of her partner.

[41] Ms. Artindale-Eeles agreed she was taking Metformin for diabetes. No other relevant health issues were raised in chief leading up to the Collisions.

[42] A much fuller picture of health issues arose on cross examination. Questioned about left shoulder pain with limited range of motion charted in April and May 2005, Ms. Artindale-Eeles testified it was short term, although she was taking up to six Tylenol 3 (“T-3”) per day for cluster headaches and a knotted muscle. She later agreed that this pain in the neck and left shoulder began in September 2004, along with cluster headaches; it continued to 2010, and she was taking pain medication from at least 2007.

[43] When asked about depression in 2008, she first acknowledged that she took 180 hours of actual sick leave, which was sixty hours more than her annual allotment. After confirming another 184 hours of sick time in 2009, she told the Court she did not think she took any sick leave in 2008. Shown chart records, she recapitulated to acknowledge she was wrong and agreed that she took two months of sick leave during 2008. Of note, she had not produced sickness records prior to 2009 as part of this litigation.

[44] Turning to 2010, Ms. Artindale-Eeles initially said that 5 days of sick leave in January was probably due to a cold but then acknowledged complaints to Dr. Letley about blurred vision and glucose levels. Thereafter, on January 22, 2010, she attended the Hospital and was prescribed a nerve medication to address an earache with neck pain on the left side dating back more than one month.

[45] On February 6, 2010, she called Health Link Alberta to discuss high blood glucose levels but could not recall discussions as charted of continuation of neck pain when turning her head to the left, nor the reported pain to her back and scapula. It was diagnosed as a nerve inflammation, of which she did not make Dr. Letley aware. She confirmed taking 2 further weeks of sick leave in February and used vacation time from March 11 to 29th. In total, Ms. Artindale-Eeles agreed that she took 571 hours equating to about 3 ½ months of various leaves for the prior fiscal year leading up to the April 2010 Collisions.

[46] Ms. Artindale-Eeles ultimately acknowledged that health issues in the period 2008 and 2009 included:

- (a) Headaches, for which she was taking 2 Topamax tablets per day;
- (b) Various neck and muscle, chest, shoulder, and back soreness, for which she took Tylenol 3 with codeine (T-3);
- (c) Depression due to family and work/supervision issues;
- (d) Insomnia – sleeping 3-4 hours per night; and
- (e) Diabetes, high blood pressure and cholesterol.

[47] Nonetheless, Ms. Artindale-Eeles still thought her health was good at that time up to the Collisions, with “sporadic issues”. That perspective appeared to be an attempt to mask her vulnerability. Superficially, such a stance by Ms. Artindale-Eeles is understandable. However, in the context of her onus of proof in a lawsuit, it presents two major concerns:

- (a) She was giving evidence under oath and appeared quite comfortable to provide evidence favorable to her claim for damages but at odds with records as presented to her, which she critiqued as inaccurate; and
- (b) She made similar statements to healthcare professionals whose opinions were informed in some measure by her input, as will be reviewed in greater detail.

[48] Collectively, these conditions inform a number of important aspects in assessing causation, including that the Plaintiff was more vulnerable or susceptible to injuries, both physical and psychological, than others. Additionally, she presents with a history of more prolonged recovery periods. Equally, however, they also establish the health level against which a tortfeasor is held accountable.

[49] In addition to her pre-Collision health being a very important topic as a benchmark for assessment of damage, this unreliable distortion affected both the reliability and credibility of the evidence provided by Ms. Artindale-Eeles.

2) Two Collisions

[50] Leading up to the First Collision, Ms. Artindale-Eeles testified in chief that it was dark and a whiteout at the top of the overpass as she started to decline. She could only see a half a car length in front of her. Suddenly, she saw the back end of the van, and she remembers putting on the brakes and feeling the ABS engage. Then, her Aspen started “sliding down that bit of a decline and I tapped into the green van”. She explained that she thought she had stopped before sliding and estimated the speed before tapping to be “maybe 5 to 9 clicks” (km/h).

[51] During cross examination, Ms. Artindale-Eeles continued to assert that she came to a complete stop, because she could feel the ABS brakes catch. By contrast, she did not report a stop in either her RCMP statement or report to the Insurers (respectively on April 9 and 15, 2010). Shown these statements, she still insisted in court that she thinks she stopped “... for at least a second.” She reported that she was driving at an estimated speed of 20 km/h when she saw the van, and it happened fast.

[52] She was also shown two medical reports, which record her description that for the First Collision she braked and then that she slid into the van. She still thought she had stopped first. Only by the sixth report of her account did she finally concede, “I guess I didn’t stop”. However, by the time of her appointment with Dr. Slade-Shantz in April 2021, she is noted as saying she was going 20 km/h and came to a complete stop before sliding into the van.

[53] Ms. Artindale-Eeles’ language of a stop, slide and tap is inconsistent with the image of extensive damage to the front end of the Aspen from the First Collision with the van. Although she did eventually concede that she did not stop before sliding, I found her insistence to be not just contrary to her stated travel speed, the visibility reaction time, and the photographic evidence of front-end damage; it was unnecessarily defensive, distorted the truth while under oath and affected the reliability of her recall. The misdescription is not material to the injuries actually sustained, because I have found no medical evidence to support significant injuries from the First Collision. However, it was a relevant line of questioning, and the prolonged insistence by Ms. Artindale-Eeles that she did stop before the First Collision further undermined her reliability and credibility as a key witness.

[54] Similarly, although I find the Second Collision exerted more than trivial force on the Aspen, causing injury and vehicle damage, I specifically find Ms. Artindale-Eeles exaggerated that impact for health professionals as “high speed”. She repeated that exaggeration in her trial testimony.

[55] Notably, while she denies this recorded description, I find that Ms. Artindale-Eeles told her mental health therapist, Ms. Babcock, that after the Second Collision, half of the vehicle was missing. To similar effect, she denied telling Dr. Flaschner that both the SUV and the Aspen were total losses, which is what he charted. These exaggerations are not supported by the photographs of the vehicles taken after the Collisions or any other evidence, but that is what she was telling others.

[56] In addition to the question of force, Ms. Artindale-Eeles expressed her psychological concern about being pushed over the guard rail. She testified at trial that she still recalls the sense of fear that she would go over the edge of the overpass onto the railway tracks.

[57] Photographs show that the driver's side of the Aspen was very close to a windrow inside the guardrail. While likely affected by the limited visibility, I am satisfied that the fears of Ms. Artindale-Eeles were of short duration before the Aspen stopped in mid-spin without moving forward. Nonetheless, I find those fears endured and required therapy attributable to the Second Collision, as I will review later. This aspect did not undermine her credibility.

3) Collision Injuries

[58] Ms. Artindale-Eeles testified in chief that after the Collisions, she was in a lot of pain from the mid-collarbone that radiated into the left side of her neck. She said the next day, her shoulder and lower back ached. Although she reported many times to health professionals that she went back to the Hospital that next day, her counsel asked her to confirm it was actually April 12 that she came back to the Hospital. That assist did not enhance her credibility, as she was never asked to reconcile or clarify those statements.

[59] In cross examination, Ms. Artindale-Eeles said the separate notes of the triage nurse and Dr. Letley for April 9, 2010, were both inaccurate in recording that her complaints were about sternum or chest pain; however, she agreed that x-rays were performed on her lumbar spine, left collarbone, right knee and chest and that they showed no visible or acute abnormalities, as far as she knew. She also disputed the Hospital charted time of discharge. Having testified that she was in pain at the Hospital, she agreed that she was prescribed two muscle relaxants but no pain medication.

[60] Ms. Artindale-Eeles also disputed the description of her injuries in the RCMP statement because she did not fill in that portion, although she signed it. Of greater concern than the difference in descriptions of her injuries from shortly after the Collisions is the assertion that various persons misreported and that her recall at trial is more accurate than what she was recorded to have said thirteen years ago.

[61] Concerns about mis-charting were expressed against other health professionals in subsequent months and years, as addressed below.

[62] Perhaps most troubling was Ms. Artindale-Eeles' allegation that two co-workers who witnessed her slip and fall on March 10, 2011 colluded in their statements that she fell on her left side. The WCB claim confirms that Ms. Artindale-Eeles did fall on her left side, but she insisted repeatedly at trial that she fell on her bum and right elbow—that is, until she was shown her own statement prepared three days after the fall where she stated she fell on her left side and listed these same co-workers as witnesses.

[63] The reliability of Ms. Artindale-Eeles' recall is further affected by her having no recollection of the rest of April 2010, when she returned to work full time. Her first work recall is coming back part time in August 2010. Curiously, she was able to recall driving a leased truck provided by her insurer a couple of weeks after the Collisions and that she threatened her husband during this time period.

[64] The Court acknowledges that the perception and reporting of pain is subjective. In testimony, Ms. Artindale-Eeles rated the level of pain up to nine out of ten, particularly the left

shoulder and neck area. She testified to significant issues with pain through September 2010. Asked in cross examination to reconcile that description with what she told Dr. Letley at her August 4 appointment that she was getting better slowly, she reasoned that she was referring to her good days. She did not say what, if anything, made the pain worse in September. On various occasions, she overstated her consumption of prescribed pain medication. To assist with the measure of pain and reliability of reports of progress, I will review the medication records.

4) Medications

[65] Ms. Artindale-Eeles confirmed that she took prescribed medication as best she could, would not stockpile prescriptions, and did not take additional over the counter medication since the Collisions. Her pain prescriptions were for T-3 and at times a stronger pain medication, Toradol.

[66] Ms. Artindale-Eeles testified in chief that, when she was working 4 hours per day (August 2010), she tried not to use strong medication at work but was exhausted afterwards and would take medication to control the pain as she lay down to rest at home. Her drug records note she was only prescribed 60 tablets for 70 days from May to August 2010, and she denied any hoarding.

[67] Ms. Artindale-Eeles reported to Dr. Studer on October 25, 2010, that she was consuming two to six T-3s per day; in cross, from her medication records, she admitted that she was consuming approximately one T-3 per day at that time.

[68] Again, in chief, she described that when her hours increased in the summer of 2011, she was taking one T-3 for work, then “stronger medication” at home. In cross, she initially said the stronger medication was Toradol, but later redescribed that it was still T-3s; however, she would take two when she got home, which was what she meant by stronger. When referred to her drug records, Ms. Artindale-Eeles revised again to acknowledge she was only taking one T-3 every four days, so she must have been feeling pretty good most days during the first four months after her daily shifts increased to six hours of work.

[69] The evidence of Ms. Artindale-Eeles as to her use of pain medication was unreliable, especially for this key period in measuring recovery. By contrast, the records of Dr. Studer from September 2011 noted that “Work is going well for Christine. This is the best the writer has seen her”.

[70] I accord Ms. Artindale-Eeles the benefit of some doubt that she may have been confused in stating unequivocally that she would take only prescribed medications and not additional over the counter medications. I do note, however, that her extensive list of claimed expenses incurred after the Collisions does not include any pain medication for 2010 at all. The amounts claimed are for muscle relaxants, arthritic medication and latterly antidepressants. I have no corroboration that Ms. Artindale-Eeles purchased any Tylenol over the counter pain medications. References to this pain medication in 2011 and following all appear to be claiming the residual patient portion of a prescription drug plan.

[71] In all events, misstatements to health professionals about the amount of pain medication consumed, particularly in comparison with use of pre-Collision medications, have a distorting impact on the assessment of severity and duration of injuries.

5) Workplace

[72] The career of Ms. Artindale-Eeles with the DND extended over thirty-four years. Her health issues did not detract from the support and the positive evaluations of her service.

[73] Various types of headaches (migraine, tension and cluster) do not appear to have affected her work performance. Part of her pre-Collision history included lengthy absences on sick leave to address depressive or PTSD conditions (2000 spousal abuse; 2008 assisting mother with loss of her partner). Overall, these health issues did not detract from positive work evaluations.

[74] Remarkably, Ms. Artindale-Eeles said the Collision did affect her evaluations, because she lacked patience and was unsupportive of staff as a supervisor. However, the one negative evaluation on which she relies was a total outlier. More importantly, it arose from a conflict with her then civilian supervisor in 2010, who thought she should still get all her work done even though she was part-time. That supervisor left, and Ms. Artindale-Eeles' performance reviews were uniformly positive right up to retirement. She was described as professional, a person who inspired staff confidence, and an indispensable asset who exceeded expectations as cleaning services supervisor.

[75] Ms. Artindale-Eeles' distortion of the effects of the Collision on her work evaluation due to depression was not exaggeration, it was simply wrong. She may have felt she was impatient or unsupportive, but that is not what shows in her evaluations. I will deal with other distortions of her driving issues, including travel to work, under the claim for psychological damages.

VII. Assessment of Plaintiff Evidence

[76] Ms. Artindale-Eeles impressed the Court as generally sincere, straight forward and hard-working. Her life has certainly not been easy, and she has shown determination in dealing with numerous adversities. A prolonged and complicated medical history has likely contributed to some of the various difficulties derived from her testimony as reviewed. Although she was definitely injured, her assertions of a clear memory of the personal consequences that she has attributed to the Second Collision and the progression of her treatment are unreliable.

[77] Her testimony disclosed points of confusion, troubling exaggerations, minimizations and distortions as have been reviewed. These concerns were simplistically described by her counsel as a difficulty recalling specific details. I disagree. I am also unassisted by generalized opinions of Dr. Flaschner and Dr. Quickfall that patient recall may be incomplete or erroneous.

[78] Obviously, the credibility of Ms. Artindale-Eeles has an important impact on proof of her claim – not so much as to whether she sustained injuries in the Second Collision but as to the nature, extent and effect of such injuries on her work, social and private life.

[79] It is especially difficult to reconcile the instances where Ms. Artindale-Eeles overstated or withheld information in her various interactions with medical professionals as to:

- (a) pre-existing and unresolved medical conditions;
- (b) the circumstances of the Collision and attendances at Hospital;
- (c) the *quantum* of medications consumed;
- (d) the progress of her treatments, physically and psychologically;
- (e) the effects of post-Collision incidents; and

(f) the circumstances in the workplace as affected retirement.

[80] Upon full review, I am concerned that these miscommunications by Ms. Artindale-Eeles impacted the reliability of various assessments by medical professionals. Although some of these witnesses attenuated their reliance on these distortions with reference to documentation, the reliability of the medical opinions has been compromised.

VIII. Evidence of Family and Friends

[81] Non-medical evidence was presented by friends or family who spoke of some differences they could recall from before and after the Collisions in April 2010 that affected Ms. Artindale-Eeles. Obviously, it was difficult to provide specific recall dating back to 2010 and earlier; however, the witnesses did note some changes.

[82] The husband, Vern Eeles, confirmed his medication for the past five years does impair memory; however, he was very clear that his wife was in pain after the Collisions. He could not, by contrast, recall his wife's pre-Collision issues with insomnia and sleep apnea, diabetes control, depression in 2008/2009 tied to the loss of her mother's partner and twenty years of work stress.

[83] Importantly, Mr. Eeles had no recall of the upper body pain that led to extensive sick leave taken by his wife in 2009 into 2010. His recall was that Ms. Artindale-Eeles rarely missed work due to illness before the Collisions, which is inconsistent with the medical records. He made no reference to a persistent cough. His basic lack of recall about his wife's pre-Collision health does not reliably corroborate Ms. Artindale-Eeles' evidence that various health issues were minor or resolved in March 2010.

[84] Similarly, Mr. Eeles was unable to recall much about golf, camping or other social activities in the pre-Collision period. His recall was that Ms. Artindale-Eeles did not start driving until September 2010, which again is unsupported by clinical records; however, he did drive her to various appointments.

[85] Mr. Eeles recounted that he and Ms. Artindale-Eeles talked about early retirement. The general plan was that she would work a full 35 years with the DND then do something else, but no specifics. At some point, she said she felt she could no longer handle the work, and he agreed it was not worth it to continue because of physical soreness as well as aspects of the job she no longer enjoyed. He was unsure if that included concerns with reduced responsibility because of contracting-out.

[86] Mr. Eeles said that he semi-retired in 2020, as work slowed because of Covid, and his health was going down. Although he helped more in the house than before the Collisions, he had always done most of the lawn mowing and all the heavy shoveling.

[87] The son of Ms. Artindale-Eeles, Tim Cawthorpe, who lives in Calgary, similarly expressed no real awareness of his mother's extensive medical history prior to the April 2010 Collisions. However, both he and Mr. Eeles did loosely corroborate that Ms. Artindale-Eeles struggled to return to work full-time, had difficulty driving and eventually did retire.

[88] Mr. Cawthorpe also mentioned that his mother's home was not as well kept as it had been before the Collisions, including her flower garden, and she does not travel to socialize with family as much.

[89] Sherri Warne testified as a longtime friend and co-worker of Ms. Artindale-Eeles. She contrasted attendance at work before and after the Collisions, stating that Ms. Artindale-Eeles, as supervisor, was always there and never missed work before the Collisions.

[90] Ms. Warne may also have overstated changes in the work attendance, the comportment of her friend at social events, as well as the tidiness of Ms. Artindale-Eeles' home and garden after the Collisions. However, she did observe that the injuries affected Ms. Artindale-Eeles' personality for an extended period. Ms. Warne retired in 2014, after which they saw each other infrequently. She also confirmed that Ms. Artindale-Eeles had difficulty driving and was a nervous passenger, just like her daughter, who was involved in the Collisions.

[91] Collectively, despite some faulty comparisons, these witnesses were generally able to corroborate that Ms. Artindale-Eeles had issues that affected her driving and personal life for an extended period of time after the Collisions.

IX. Post-Collision Injuries

[92] As Ms. Artindale-Eeles was recovering from injuries sustained in the Collisions, she experienced a series of incidents which inflicted trauma (collectively, the "Post-Collision Incidents"). Despite her dismissive testimony, the health records support that each event affected her physical condition.

- (a) December 2010 – She fell down the basement stairs at home, grabbing the rail with her left arm and twisting her thumb. This fall primarily injured her back and neck but also caused pressure on her shoulder. Starting January 5, 2011, she reinitiated 5 weekly sessions of physiotherapy after nearly two months of non-treatment since early November. Although she never consulted Dr. Jurgens about it, she did discuss it with her mental health therapist, Ms. Babcock, during two sessions in January 2011.
- (b) March 2011 – She slipped and fell on the road leaving the worksite. Ms. Artindale-Eeles fell on her left side, hitting her elbow and head. This caused additional damage to the left shoulder area that was initially undetected.
- (c) October 2011 – She fell down the stairs at home.
- (d) December 2011 – She injured herself lifting groceries.

[93] Ms. Artindale-Eeles significantly downplayed these incidents, including the effects of injuries on treatment and time off work. For the March 10 slip and fall, she was given a significant Toradol injection at Hospital, plus a prescription which she stated unconvincingly she did not fill. The injection and pain prescription were in total contrast to her Hospital attendances April 9 and 12, 2010, where she was not treated for pain.

[94] None of these Post-Collision Incidents had the same psychological impact on her, but Ms. Artindale-Eeles under-reported and marginalized them individually and collectively with medical professionals and in her testimony.

X. Health Professionals

[95] A number of witnesses, including specialized physicians and therapy providers, prepared notes of their interactions with Ms. Artindale-Eeles, from which some provided expert opinions

and others counseled and serviced as appropriate. While deploying verification techniques where practicable, these professionals are at risk that the information upon which their involvement is based may be faulty, whether by incompleteness, inaccuracy or bias. The question is to what extent these inaccuracies may impact the onus of proof tied to causation, quantum, duration or any combination of those matters: see *R v Lavallee*, 1990 CanLII 95 (SCC).

[96] The analysis of evidence in this context will be representative of the most salient points, as distinct from a comprehensive review of the considerations that bear on the weight attributed to the evidence of these various professionals, including the exhibits filed.

1) Statements to Physicians

[97] Ms. Artindale-Eeles reported to various practitioners, service providers and experts on the severity of her pain, particularly to her left shoulder and neck area. The accounts of symptoms, medications, progress and impacts on work, driving and personal life varied over the years.

[98] In general, these varying accounts heightened the challenge in assessing the nature, extent and duration of injuries both in terms of treatment and attributing causes to the reported symptoms in correlation with reports, imaging and tests performed on Ms. Artindale-Eeles.

a. Dr. Kevyn Letley

[99] Dr. Letley was the family physician for Ms. Artindale-Eeles from August 2008 until November 2010, when he relocated to Camrose. She became his patient again in June 2012.

[100] On review of records, Dr. Letley confirmed a litany of drugs that he prescribed for Ms. Artindale-Eeles, including: anti-seizure medication for chronic migraine and tension headaches, Tylenol and Topamax for pain, drugs for hypertension, acid reflux, and anti-inflammatories. Drugs were also prescribed to deal with her diabetes and for hormone replacements.

[101] In 2008, Dr. Letley began to treat Ms. Artindale-Eeles for musculoskeletal chest pain from a recurrent chronic cough with fluid build up around her left lung, which caused a lot of pain. His notes for September 5, 2008 chart that Ms. Artindale-Eeles saw a Dr. Rams in the Hospital ER about a lot of central chest pain “persistent for the last year, thought something was broken in chest, chest wall aggravated the pain ... saw myself (in Hospital?) 7 days ago- thought it was chest wall pain – given Toradol and Ventolin ... symptoms now - muscle pain and tenderness - mainly neck, back and chest ...” The notes also specifically record no recent travel, which contradicts Ms. Artindale-Eeles’ account.

[102] Dr. Letley thought that Ms. Artindale-Eeles was away from work for a few days because of the cough but mostly working full time from what she said and what he assumed. His assumption is unsupported by her cross examination and employment records with reference to extended absences in 2008 and 2009. Dr. Letley confirmed long-standing sleep issues and that he referred Ms. Artindale-Eeles to a sleep clinic in May 2009 for treatment. He was unaware of health issues in early 2010 but described Ms. Artindale-Eeles as a complex patient. From the nature and substance of this response, I inferred some professional concern when a patient does not provide full and timely information.

[103] Dr. Letley described that when he saw Ms. Artindale-Eeles at the Hospital on April 9, 2010, she complained of neck and low back pain, her left collarbone and right knee. He ordered

x-rays of all four areas, which disclosed no fracture, and he diagnosed soft tissue injuries. At the time of release, he prescribed an anti-inflammatory and muscle relaxant. On April 12, she returned to the Hospital complaining of pain in the right ribcage which was also x-rayed with negative results.

[104] Dr. Letley did not prescribe T-3 or other pain medication arising out of the Collisions, simply the anti-inflammatory and muscle relaxant. Although her medication records note a T-3 prescription on April 30, 2010, he clarified this was a standing order from earlier and that it did not appear to have been filled.

[105] When Ms. Artindale-Eeles returned to see him May 13, 2010, Dr. Letley ordered a full body MRI scan, which was performed January 22, 2011. It disclosed a healing tendinosis but no tears.

[106] In his Report of October 6, 2013, Dr. Letley's diagnosis was a chronic left shoulder pain where the damaged tissues have healed; however, an abnormal nerve response indicates pain that causes the patient to protect and leads to deconditioning. Although the x-rays on April 9, then the full body bone scan on May 31, 2010, did not reveal any recent fracture or acute injuries, he came to attribute Ms. Artindale-Eeles's chronic injuries to the Collision for three reasons: she told him she was leaning towards the radio at the time of impact; she would be relatively relaxed when the vehicle was hit from behind; and she took steps towards recovery to pre-Collision health. In testimony, he stated that although the damaged tissue had healed, there was abnormal nerve responses, and her symptoms waxed and waned over the years.

[107] Defence critiques the attribution of chronic injuries to the Collisions on the basis that Dr. Letley was unaware at any point that Ms. Artindale-Eeles had injuries from the four Post-Collision Incidents. In particular, Dr Letley did not know about the March 10, 2011 slip and fall, which led to a WCB claim, time off work with prescriptions for pain medication and physiotherapy. He did say, however, the amount of time off would not indicate serious consequences. This is a difficult perspective to reconcile with the Collisions, following which Ms. Artindale-Eeles basically returned to work until the modified work shift starting May 6 as formalized by May 17, 2010. I accept that Dr. Letley was not the treating physician at the March 2011 slip and fall, but his opinion in 2014 is undermined to some extent by the unawareness of the Post-Collision Incidents.

[108] Dr. Letley did acknowledge treatment from 2008 for chest issues that led to tenderness in the neck, back and shoulders. He stated he depends on self-reporting and was surprised that Ms. Artindale-Eeles had not advised him of the pain reported in January and February 2010. He confirmed from charting that she attended the Hospital twice and consulted Health Link with serious pain complaints in her scapula and left side of the neck. Reviewing various issues from her file during cross, he modified his description of good health to say that Ms. Artindale-Eeles was not in terrible health prior to the Collisions.

[109] Dr. Letley was not asked about the May 13, 2010 form where Ms. Artindale-Eeles was placed on a Temporary Modified Work Agreement starting May 17 for review in July. In that same appointment, he charted her description that the shoulder feels out of place but had good rotation when distracted, as previously referenced from the May 2010 Chart Notes. Based on appointments during the summer and until his relocation to Camrose in October 2010, Dr. Letley confirmed that Ms. Artindale-Eeles reported less pain and improved mobilization, with improvements both physically and mentally.

[110] Ms. Artindale-Eeles said frequently in chief that she had described “from day one” that the shoulder pain “felt like my shoulder wasn’t sitting in the right spot.” In fact, the medical records refer to this description only once, in the May 2010 Chart Notes. She did not even refer to her left shoulder at the Hospital on either April 9 or 12, 2010, although she did mention pain in her clavicle. Out of all the extensive medical records, the May 2010 Chart Notes were noted only by Dr. Slade-Shantz in 2023, as part of his last opinion letter before trial.

[111] Dr. Letley’s office chart notes reflect slow improvements for Ms. Artindale-Eeles, between July and December 2010, when Dr. Letley relocated. Upon resumption as her general practitioner, he monitored the shoulder pain as it waxed and waned. Her primary complaints to him as her family physician from 2012 onwards related to issues that arose from poor diabetes management. He stated that control of this condition, with family history, became more of a challenge in 2009. By January 2010 she was prescribed Metformin and later relied on insulin for more effective control.

[112] In October 2013, Dr. Letley reported that Ms. Artindale-Eeles had driven the full 90 minutes to her appointment with him in Camrose, although she restricts winter driving to within Wainwright. She denies ever driving the whole way to Camrose. He further noted that she put in her own garden although unable to do some household chores including floors, the lawn, and moving more than 20 pounds. Since 2012, the focus of the seven visits from Ms. Artindale-Eeles was to address her poor control of diabetes. Although she still complained about pain and anxiety, she was “improving slowly”.

[113] On January 9, 2014, Dr. Letley noted (for the first time) that: “The long head of the bicep is torn”, and treatments continued over the next 2½ years, including trigger point injections for pain commencing in April 2014.

[114] Also in 2014, Dr. Letley discussed the updated plan of Ms. Artindale-Eeles from 2013. She was no longer talking about retiring in a few years but had decided to stop in the summer of 2015. His notes reflect no mention of possible part time work, only that she was going to enjoy retirement. Since 2021, he learned of the personal stresses as Ms. Artindale-Eeles dealt with health issues of her husband and most recently her mother.

[115] This review of evidence as reflected in Dr. Letley’s file notes underrepresents the ongoing impact of mental wellness challenges faced by Ms. Artindale-Eeles before and after the Collisions.

[116] Overall, Dr. Letley’s opinion was that the Collisions probably caused shoulder and neck pains for which she received treatment. Ms. Artindale-Eeles never informed him of any of the Post-Collision Incidents (which occurred while under the care of Dr. Jurgens). He could not state whether they were aggravations or not; but he did agree that the bicep and tendon tears revealed in the January 2014 ultrasound were more likely caused by the Post-Collision Incidents, because of the January 2011 MRI, which showed no tear. Dr. Letley said the tendinosis disclosed by that earlier MRI could be from chronic overuse or aging.

[117] I was impressed by the open responsiveness of Dr. Letley to all questions and found his evidence useful. I note in particular that the focus of his appointments with Ms. Artindale-Eeles after 2012 was to address her poor control of diabetes. The evidence does not support that the Collisions materially accelerated full onset of this condition. None of the problems tied to management of diabetes are compensable in these proceedings.

b. Dr. Dewald Jurgens

[118] Dr. Jurgens acted as the family physician for Ms. Artindale-Eeles for about 20 months from December 2010 to July 2012. From his initial assessment and tissue inflammation detected on MRI, he found chronic left shoulder pain affected by bursitis and tendonitis, along with PTSD.

[119] Dr. Jurgens maintained the recommendation of modified duties with the same reduced hours for Ms. Artindale-Eeles until February 2011. At that point, he and Ms. Artindale-Eeles agreed to continue the reduction two more months for an April 1, 2011 return to full duties. However, after the March slip and fall, the expected return to full time was extended to September 2011, then January 2012. Nonetheless, hours of work were increased to 6-hour shifts plus a lunch break.

[120] After the March 10, 2011 slip and fall, Dr. Jurgens saw Ms. Artindale-Eeles at the Hospital and diagnosed soft tissue injuries with prescriptions for Toradol, T-3 and Flexeril with 2 days off work. In fact, Ms. Artindale-Eeles took 5 days sick leave and the rest of the month in vacation time, with renewed physiotherapy. However, she never discussed this incident with Dr. Jurgens again in any of the four appointments between June and September 2011.

[121] In trial evidence, Dr. Jurgens acknowledged from his September 2013 Report that he was unable to provide a causal connection with the Collisions, because he was not the treating physician at that time. He explained his Report was prepared from his clinical notes. Notably, he did not consult Hospital records, including for the March 2011 slip and fall, which he had forgotten until this trial. Of the nine office appointments over an 18-month period, four of them were in the period June to September 2011, following the March 2011 slip and fall. He agreed that the only event worsening the prognosis for Ms. Artindale-Eeles was the March 2011 slip and fall; however, he said that his previous estimate of a return to work may have been inaccurate. By June 2011, he estimated her return to full time would take six months when all other estimates had been 2- 3 months.

[122] As a reported WCB injury where Ms. Artindale-Eeles had fallen on the left side but said in testimony it was her right side, the evidence of Dr. Jurgens added to the impression that the March 2011 slip and fall was being glossed over without a valid explanation.

[123] Dr. Jurgens also said Ms. Artindale-Eeles never informed him of the last two Post-Collision Incidents for which she took two periods of week-long sick leave and increased her use of pain medications. Since he was not informed, Dr. Jurgens was unable to order diagnostic imaging for either incident. Nor could he factor them into his estimated return to work. In the context of an extended agreement for a modified work schedule, this lack of communication is troubling.

[124] Although somewhat less open than Dr. Letley in his evidence, Dr. Jurgens was a fair and measured witness. Both family physicians were impacted by the choices of Ms. Artindale-Eeles as to what she reported to them. Perhaps Dr. Letley's knowledge of the patient for a longer period of time both before and after the Collisions allowed him to provide a deeper perspective of her condition.

c. Dr. Neil White

[125] Dr. White was well qualified as an orthopaedic surgeon and provided very useful explanations of the mechanics of the human shoulder and the effects of various injuries. Nonetheless, his opinions regarding this case were unhelpful. He was dismissive of inaccurate statements from Ms. Artindale-Eeles as to her injuries. Just two of many examples included errors as to the substance and timing of her injury complaints at the Hospital, as well as his understanding that she reported no prior issues with sleep disturbance. He was simply not informed of any post-Collision injuries.

[126] Dr. White was also provided incomplete records and was superficial in discounting charting records and diagnostic imaging as operator-dependent and often erroneous. He had incomplete information of Ms. Artindale-Eeles' use of medication, including exaggeration from her. Although nothing he said in chief questioned Ms. Artindale-Eeles' veracity (his Report describes her recall was vivid), Dr. White was categorical in cross that patients often have faulty memories; he commonly tells patients that he knows they lie.

[127] In assessing the opinions of Dr. White, what was most revealing was his unequivocal reliance on his own testing of Ms. Artindale-Eeles four and a half years post-Collision. He selected random portions of prior records that supported his assessment and was dismissive of contrary points.

[128] I was unconvinced that Dr. White's testing in November 2014 was reliable. At the appointment, Dr. White described Ms. Artindale-Eeles as globally stiff. Dr. Slade-Shantz noted that stiffness at the time of assessment, leading to a diagnosis of resolving adhesive capsulitis, is a diagnostic limitation. Dr. Slade-Shantz specifically disagreed as to causation of a rotator cuff injury, because the January 2011 MRI disclosed no tear, as I will review further.

[129] My reliance on Dr. White was further affected by his acknowledgement that he has a role as a patient advocate and is solution oriented. Those are commendable qualities in many contexts, outside a courtroom.

[130] Overall, in this case, I found the evidence of Dr. White was of very limited assistance as to causation or duration of injuries to Ms. Artindale-Eeles arising from the Collisions. His opinions as an advocate were tainted by selective reliance and rejection of information provided to him, as well as the timing and conditions of his testing.

d. Dr. Jesse Slade-Shantz

[131] Dr. Slade-Shantz, orthopaedic surgery specialist, saw Ms. Artindale-Eeles in 2021 and again in 2023, to perform another test, which had not occurred to him previously. That latter test result led him to his second opinion that Ms. Artindale-Eeles had a "left shoulder posterior glenohumeral instability". This was additional to his diagnosis of a WAD II (whiplash) disorder, left acromioclavicular joint sprain and contusion, left partial thickness rotator cuff tear, and left long head of biceps strain.

[132] Clearly Dr. Slade-Shantz's reporting of the date of Collision as October 2004 and that Ms. Artindale-Eeles attended Battle River Physiotherapy are wrong; but those and other typographical errors do not render his opinions unreliable. Of greater concern is that his assessments were made more than a decade after the Collisions. Further, Ms. Artindale-Eeles did not provide reliable information to him. Most significant inaccuracies from her included:

- (a) Failure to fully describe her pre-Collision health issues, including the neck and shoulder pain from September 2008 from a debilitating cough, treated for more than one year with significant sick leave absences; also, pain radiating from a nerve near the ear to the left side of the neck and scapula in early 2010, all of which engaged pain medications on a sustained basis for which she took sick leave;
- (b) Inaccurate reporting of the impact of the March 2011 slip and fall (left side), as well as the extent of imaging performed, the time off work, the increased pain medication and physiotherapy;
- (c) Failure to advise of the other three Post-Collision Incidents, with increased pain medications and absences from work;
- (d) Over-representation of pain medications prescribed and consumed regularly by her, as recorded in his first report, including Tridural, Tramadol and T-3 unsupported by prescription records; and
- (e) Representation that her work schedule was half-time without reference to the increase to 6-hour shifts by July of 2011, then 6½ hours (excluding the meal break) where it remained until she retired.

[133] Dr. Slade-Shantz described the March 2011 slip and fall as significant; it was reported as a WCB matter causing injury to her neck, head and left shoulder. Regrettably, the records did not provide much in the way of treatment notes for that injury.

[134] Dr. Slade-Shantz specifically found the January 2011 MRI Report was pretty accurate using reasonable strength equipment. Having actually reviewed the image himself, he agreed with the findings of the radiologist of supraspinatus tendinopathy without tearing. This reflects pain in the tendon on top of the shoulder which can restrict the ability to lift over the head. His opinion was that the tearing revealed in the November 21, 2014 ultrasound was more likely from the March 2011 slip and fall.

[135] Openly, Dr. Slade-Shantz confirmed that he had insufficient information on the Post-Collision Incidents to say whether those injuries were new or were aggravations or exacerbations of injuries from the Collisions. He did state that a slip and fall typically can tear the rotator cuff but not cause a posterior instability. He also agreed that the Post-Collision Incidents could all be reasons why Ms. Artindale-Eeles was unable to increase work from 6 ½ hours to full time.

[136] Dr. Slade-Shantz found a single reference to be significant, where Ms. Artindale-Eeles described her shoulder as out of place in the May 2010 Chart Notes. However, he did not tie in the finding of full range of motion upon distraction in those same notes. Also, Ms. Artindale-Eeles is not recorded to have ever used that descriptor again in any notes, including attendances for physiotherapy, for which the Court was given no treatment records.

[137] Nonetheless, the May 2010 Chart Notes did inspire the recent supplementary testing by Dr. Slade-Shantz. From those results and despite inordinate passage of time, this Court accepts that the Second Report, dated June 7, 2023, would support the diagnosis of a posterior glenohumeral joint instability likely caused by the Collision. With that exception, the limited and vague chart notes, the imaging sequence and the inaccurate information from Ms. Artindale-Eeles do affect the weight to be attached to Dr. Slade-Shantz's assessment of the rest of his diagnosis more than ten years post-Collision.

[138] Dr. Slade-Shantz's characterization of a WAD II whiplash disorder is not what Dr. Letley, as the emergency and treating physician, had diagnosed. However, the physiotherapy treatments did focus on a soft tissue injury to the neck and shoulder. Similarly, the evidence is insufficient as to the cause of any acromioclavicular joint sprain with contusion, as well as a left bicep strain.

[139] Dr. Slade-Shantz reported that Ms. Artindale-Eeles' condition is basically stable. His assessment of the degree of residual disability is compromised by the misinformation from Ms. Artindale-Eeles, particularly as concerns prior health issues and consumption of medications.

e. Dr. David Flaschner

[140] Dr. Flaschner was qualified as an expert in physical medicine and rehabilitation dealing with chronic pain. He examined Ms. Artindale-Eeles in June 2015. She described neck and left shoulder pain with some radiation into the upper arm and axilla. Her range of motion had improved with several injections. She reported frequent muscle knots, which she failed to explain to Dr. Flaschner she had experienced for several years prior to the Collisions.

[141] Ms. Artindale-Eeles specifically denied any pre-accident history of depression or anxiety, which was a blatant falsehood. From a review of her medical history, Dr. Flaschner did note a prior history of PTSD presumably from 2000 but appears unaware of the 8 months of depression and significant time off in 2008. He later reviewed records which disclosed a 12-year period of poor-quality sleep that she did not mention to him.

[142] In cross, Dr. Flaschner confirmed that he did not have records, nor did Ms. Artindale-Eeles advise him of her Hospital attendances and HealthLink consultations for radiating neck pain in early 2010. Acknowledging that the patient may not accurately report their medical history, including levels of activity such as golf, he could not detect symptom amplification from his testing in this case.

[143] Dr. Flaschner's impression was that Ms. Artindale-Eeles' injuries in the Collision included cervical/lumbar spine strains which were exacerbated or aggravated by the slip and fall. His Report mislabels the date as February 2011. As well, he notes knee and chest wall injuries, which resolved. She did not mention anything to him about the last two of the Post-Collision Incidents.

[144] In addressing the left shoulder as the primary site of persistent symptoms following the Collisions and the March 2011 slip and fall, Dr. Flaschner noted no fractures were shown in the April 9 x-ray, the May 31, 2010 whole body scan or the MRI of the cervical spine on July 14, 2010. Similarly, the January 2011 MRI did not identify any acute injury, whereas the 2014 ultrasound identified the articular sided partial tear of the supraspinatus tendon (rotator cuff). He states: "This can be an age-related degenerative finding, particularly in the setting of diabetes but may also be related to the trauma from the fall of 2011."

[145] Five years post-Collisions, Dr. Flaschner characterized the shoulder strain as chronic. From his specialized experience, this pain is unlikely to resolve, particularly given the age, gender, and prior medical history, including PTSD. He could not distinguish whether that pain was the result of the Collisions, the March 2011 slip and fall or a combination.

f. Dr. Jeremy Quickfall

[146] Dr. Quickfall was qualified as a psychiatrist, with expertise that included care of patients with chronic mental illness. He assessed Ms. Artindale-Eeles in September 2015 and rendered a first report. He updated that report based on a further assessment in November 2020 and a telephone consult in June 2023 along with a further document review.

[147] Dr. Quickfall read of Ms. Artindale-Eeles' medical history, including sexual assault and confinement in 1999, with diagnosed treatment for PTSD. He said that Ms. Artindale-Eeles told him of a single visit to the Mental Health Office and two years of anti-depressant medication. It is unclear whether Dr. Quickfall knew from records that Ms. Artindale-Eeles had 5 sessions of psychotherapy between January and April 2000, but he knew about the PTSD diagnosis.

[148] Ms. Artindale-Eeles did not mention her depression and medications in 2008 to Dr. Quickfall, but he did see a record of 4 to 6 months of depression treatment from that year. He was unaware of sick leave taken during this period or in 2009; he testified that he did not believe she required any absence from work, which he later modified. Both the PTSD and the depression were cited by him as risk factors for a subsequent episode or relapse.

[149] Dr. Quickfall's understanding that Ms. Artindale-Eeles started in therapy with Ms. Babcock late 2010 is wrong; the records are clear that sessions began in June 2010. Once again, however, he knew that her description that she was doing well before the Collisions was inaccurate from the records. His impression was that she was not suffering from any active psychiatric disorder in 2010. Following from the Collisions, he concluded that she gradually improved with treatment, to the point where her PTSD and depressive symptoms had significantly diminished when he saw her in 2015. Dr. Quickfall noted that the driving anxiety was more persistent, especially in winter; however, it was mild and seemed to wax and wane. Otherwise, he described her mental status as essentially normal in 2015.

[150] The diagnosis by Dr. Quickfall overall was that Ms. Artindale-Eeles had suffered PTSD from 2010 to 2012, possibly longer – and a secondary active depression because of the effect of PTSD on her life during that period. Dr. Quickfall noted the history and predisposition to both depression and PTSD but said that the Collisions were the primary cause of the current symptoms. It was his further opinion that her diabetes condition worsened as she dealt with these psychological conditions, although he did not elaborate as to causative expertise in this regard. His prognosis of stability in 2015 was high but subject to the risks of further trauma with reduced resilience. In his testimony, he clarified his opinion that Ms. Artindale-Eeles still has a mild driving anxiety which, as reflected in his later reports, he said is essentially permanent.

[151] Other points arose on cross examination, where Dr. Quickfall fairly conceded the following.

- (a) Inaccurate reporting to health professionals by Ms. Artindale-Eeles (inconsistencies, omissions or exaggerations) may be a sign of symptom amplification. Although he thought Ms. Artindale-Eeles' comportment was very consistent in his three assessments between 2015 and 2023, he was unaware that she took about 4 weeks of sick leave in 2008 and again in 2009 for depression.
- (b) He misstated that Ms. Artindale-Eeles was successfully managing her diabetes prior to the Collisions, whereas she just started on Metformin in January 2010 because of increased issues with blood sugar levels. While problems with diabetes

can potentially impact psychological conditions, her driving anxiety in particular continued even after she started using insulin. Other issues with sleep, energy, concentration and mood did improve a lot after she started on insulin.

- (c) Dr. Quickfall knew that Ms. Artindale-Eeles was experiencing insomnia and was diagnosed with sleep apnea prior to the Collisions but had not reviewed treatment notes between May 2009 and the end of April 2010. He said this may have been an oversight, since he was unaware that Ms. Artindale-Eeles reported only sleeping 3 to 4 hours a night before the Collisions and that her records disclosed that the insomnia dated back 12 years prior to the Collisions.
- (d) Ms. Babcock and Dr. Letley did record instances where Ms. Artindale-Eeles expressed improved driving experience on the highway and drove longer distances than Dr. Quickfall attributed; unknown to him, she had told Ms. Babcock in particular that she did not mind driving in the snow by November 2011.

[152] Dr. Quickfall was not well informed of the timing or nature of physical injuries reported by Ms. Artindale-Eeles in her second visit to the Hospital after the Collisions. He did not know she had returned to work full time for one month before her schedule was modified but was not surprised. His description that Ms. Artindale-Eeles stopped driving to work and obtained rides from her husband or co-workers for several months and did not drive at all for several winters was unsupported by the evidence. He modified his description to say that Ms. Artindale-Eeles remains very uncomfortable driving in wintertime, despite contrary statements from the notes of Ms. Babcock in November 2010 and 2011, and January 2013.

[153] These points are cumulatively significant, but they do not substantially undermine the diagnoses and general opinions that Dr. Quickfall shared with the Court. He said that "...the accident [Collisions] caused a temporary exacerbation of her preexisting major depression." The winter driving anxiety was new, although he may not have been fully informed about her progress in dealing with it.

g. Other

[154] Additionally, in June 2009, the records of the Northern Alberta Sleep Clinic note that Ms. Artindale-Eeles had a 12-year history of sleep disturbance. The records refer to ongoing anxiety, hypertension, headaches and 4-5 hours sleep per night. It does not appear that Ms. Artindale-Eeles advised the Clinic of prior PTSD or her depression. No witness from the Clinic testified, but the lack of complete information from Ms. Artindale-Eeles is part of a consistent pattern.

[155] While the assessments of most of the physicians were affected to some extent by the exaggerations and misinformation of Ms. Artindale-Eeles and limited review of her extensive medical history, the testing and imaging was also available as a source of information for some witnesses. In this sense the circumstances are not tainted to the same extent as found in *Bumstead v Dufresne*, 2015 ABQB 787 or *Petz v Duguay*, 2017 ABQB 90.

2) Statements to Therapy Providers

[156] The distortions from the complaints and exaggerations of Ms. Artindale-Eeles are somewhat less impactful on those therapists who were in very regular contact and monitoring her progress in a more defined role. Where detailed chart notes were retained and made available,

the Court is better able to modulate the subjective reporting against the actual modalities used to address the complaints of Ms. Artindale-Eeles. Unfortunately, key records were not made available.

a. Physiotherapy

[157] Ms. Deena Kunzelman testified as the physiotherapist who worked with Ms. Artindale-Eeles from April 2010 to July 2012. The Alta-Sask Sports Physiotherapy clinic closed its Wainwright facility at that point and, regrettably, no one made timely arrangements to obtain copies of Ms. Kunzelman's treatment notes. The only documentation retained was Treatment Plans and invoicing dates that were sent to the insurers. This loss of documents undermined the residual effects of injuries alleged by Ms. Artindale-Eeles to some degree.

[158] Physiotherapy appointments with Ms. Artindale-Eeles began April 15, 2010 with complaints of acute pain in the neck and shoulder region that could not be tested.

[159] By the July 2010 appointment, Ms. Kunzelman was able to characterize and downgrade the injury as WAD II, which meant there were no longer any signs of neurological injury. The notations on the treatment plan referred to mainly treating neck pain and thoracic spine. There is some mention of trouble moving her neck, such as for shoulder checks with some reference to intermittent left shoulder issues, but nothing as to prescribed exercises. Ms. Kunzelman was obliged to speak generally to the usual rigor of her treatment of soft tissue injuries. Without chart notes, Ms. Kunzelman assumed that Ms. Artindale-Eeles was compliant with home exercises, but her testimony on this point was speculative.

[160] Ms. Kunzelman has no recall of preparing a Functional Evaluation, which was included in the file and dated December 15, 2010, in someone else's handwriting. She has no recall of any reports of the Post-Collision Incidents. The schedule of attendances supports a pattern of increased physio treatments following the Post-Collision Incidents, particularly in March and October 2011 as recorded in separate psychotherapy notes.

[161] The last date of physiotherapy treatment was May 4, 2012, at which point Ms. Artindale-Eeles' condition appeared to have plateaued. The Clinic closed its Wainwright location, and Ms. Artindale-Eeles did not access services elsewhere for the next nine years.

[162] Dr. Letley noted in 2013 that Ms. Artindale-Eeles has assumed a "protective posture" or guarding which resulted in chronic deconditioning. He recommended active physiotherapy at that time, but nothing happened. Trigger point injections have been administered from time-to-time post-retirement. I am not satisfied that the physiotherapy sessions in 2021, largely a result of personal deconditioning, assist in assessment of the injuries sustained, much less any enduring requirement for physiotherapy.

[163] Ms. Kunzelman noted ninety sessions over a two-year period. She had no records whether Ms. Artindale-Eeles was doing home exercises. Assessing the evidence in the absence of actual treatment notes, I have very limited proof of the level of adherence to recommended therapies. This does not support the contention of Defendants of a failure to mitigate, but it does affect proof of extent and duration of soft tissue injuries.

b. Psychotherapy

[164] Ms. Charlotte Babcock was a mental health therapist working in conjunction with Dr. Studer's office to assist Ms. Artindale-Eeles after the Collisions. The referral was from Dr. Letley who initially prescribed Cymbalta to deal with the mental stress. I will review the counselling but note that Dr. Studer met personally with Ms. Artindale-Eeles on Oct 25, 2010. Her diagnosis was recurrent depression "recently exacerbated by MVA". Dr. Studer changed the prescription drugs and dosages from time to time over the next three years.

[165] Ms. Artindale-Eeles attended over 30 counseling sessions with Ms. Babcock between mid May 2010 and February 2013. Early treatment notes reflected physical complaints from Ms. Artindale-Eeles about headaches, whiplash and sore ribs. The only reference to shoulder pain was May 18, 2010. As of June 21, 2010, Ms. Artindale-Eeles had driven the overpass six times, getting much more comfortable each time, but she was concerned about bad weather; on two later occasions, she reported a black out and nightmares about going over the guardrail.

[166] During the summer 2010, problems with an employee were causing stress at work for Ms. Artindale-Eeles, as well as phone calls at home while on holidays. Switching from Cymbalta to Paxil in November 2010, gave her more energy, although Dr. Studer made the prescription change, as noted, because five months of Cymbalta had shown no benefit. By March 2011, the primary complaint from Ms. Artindale-Eeles, from the notes of Ms. Babcock, was her driving anxiety and leaving the house when it was snowing.

[167] As confirmed from chart notes, Ms. Artindale-Eeles reported all four Post-Collision Incidents to Ms. Babcock. These chart notes reflect that Ms. Artindale-Eeles re-attended physiotherapy in January 2011 after injuries to her neck and her back in December 2010. She reported to Ms. Babcock that she was very stiff and sore after the March 2011 slip and fall; she said she was x-rayed head to toe and took time off work, which set back her recovery.

[168] Following reports of improvements in June, August and September 2011, with increased working hours, Ms. Babcock noted at the end of October that Ms. Artindale-Eeles told her it was not a good month. She had another fall down the stairs on October 15, 2011, "reinjuring herself", and was feeling down about family functions. She missed another week of work. Circumstances improved in November, which included driving in snow. At an appointment December 21, 2011, Ms. Artindale-Eeles reported the fourth of the Post-Collision Incidents, experiencing tremendous pain from lifting heavy grocery bags and that she was off work for four days.

[169] Regular reports of each incident to a mental health therapist cannot be reconciled with Ms. Artindale-Eeles' failure to report any of the Post-Collision Incidents to any clinical physician or physiotherapist treating her physical injuries. Coincidentally, Dr. Jurgens did see her in Emergency for the March 2011 slip and fall; however, the marginalization of these Incidents by Ms. Artindale-Eeles in her court testimony was disingenuous.

[170] By the spring of 2011, Ms. Artindale-Eeles had agreed to specialized treatment for her driving fear. She attended four Eye Movement Desensitization and Reprocessing (EMDR) sessions with Ms. Florence Johansson between May and August 2011. Although these sessions concentrated largely on the overpass where the Collisions occurred, they did further assist Ms. Artindale-Eeles to cope with her fear of winter driving more generally.

[171] On May 7, 2012, Ms. Babcock noted:

Unfortunately, Christine has had some physical health concern over this past year. Her blood sugar has continued to be elevated to the point that she required hospitalization...She also fell down the stairs at home and this set her back physically.

[172] After Ms. Artindale-Eeles missed appointments in September and October 2012, Ms. Babcock closed the counseling file. It was re-opened in November. Ms. Artindale-Eeles reported that she was taking her medication, sleeping better and was driving a little bit; the weather had not bothered her, and she had driven half-way to Camrose (about forty-five minutes) before her husband took over. From the notes it was unclear how many times this had happened, and Ms. Babcock had no independent memory. In all events, it directly contradicts the evidence from Ms. Artindale-Eeles that the longest she has driven was to visit her friend Ms. Warne in Edgerton (between 21 and 27 miles) and never in the winter.

[173] On January 21, 2013, Ms. Artindale-Eeles reported to Ms. Babcock that her sleep, energy, mood, management of stressors and enjoyment were much improved since starting on insulin to provide better sugar control. The PTSD symptoms had lifted, she was engaging well with family and friends with hopes for the future. Noting a very good support system and good insight to manage stressors, Ms. Artindale-Eeles' file was re-closed in February 2013.

[174] Despite issues with the reliability of Ms. Artindale-Eeles's evidence, including exaggerations and omissions, I find sufficient evidence that the Collisions affected the mental health of Ms. Artindale-Eeles for at least a year with a risk of intermittent flare-up as Dr. Quickfall concluded. The indicators in that year or so included a dislike of crowds and loud noises, as well as stresses with socializing and the workplace. In all events, I find these issues abated to pre-Collision levels by the end of treatments at the Wainwright Mental Health Clinic in February 2013.

[175] Although significantly diminished by the fall of 2012, Ms. Artindale-Eeles' fear of driving particularly in winter conditions was more prolonged and unresolved. With limited exceptions, it impeded her willingness to drive alone to appointments out of town as well as to visit her grandson in Calgary.

XI. Analysis

[176] The onus of proof on a plaintiff is measured on a balance of probabilities: *FH v McDougall*, 2008 SCC 53, [2008] 3 SCR 41. In applying this standard, the Court is assisted by the consequential clarification of Justice Rothstein that:

... If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.
(at para 46).

[177] I need to decide if Ms. Artindale-Eeles would have suffered the symptoms – physical vis neck, shoulder, and back; and psychological vis PTSD, depression, sleep and driving phobia – but for the Collision. This engages two aspects: firstly, whether the Collision caused the injuries; secondly, whether the injuries caused by the Collision were the foreseeable consequence of the Defendant's negligence.

1) Causation

[178] Applying the “but for” test, the Plaintiff is obliged to prove on a balance of probabilities that “but for” the Second Collision her injuries would not have occurred: *Athey v Leonati*, 1996 CanLII 183 at para 14, [1996] 3 SCR 458 [*Athey*]; *Clements v Clements*, 2012 SCC 32 at para 8 [*Clements*]. This test should not be applied too rigidly, and it does not need to be determined with scientific precision: *Athey* at para 16; *Clements* at para 9.

[179] To make out causation, the Plaintiff is under no obligation to show that the Second Collision was the only cause of her injuries, so long as the “but for” test is met: *Athey* at para 17.

[180] Under the thin skull rule, the Defendants take the Plaintiff as they find her. Therefore, the Defendants are liable even if the Plaintiff’s loss is more dramatic than an average person would have suffered: *Athey* at para 34.

[181] The Defendants quite accurately note, however, that they:

... 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: Cooper-Stephenson, *supra*, at pp. 779-780 and John Munkman, *Damages for Personal Injuries and Death* (9th ed. 1993), at pp. 39-40. 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: *Graham v. Rourke, supra*; *Malec v. J. C. Hutton Proprietary Ltd., supra*; Cooper-Stephenson, *supra*, at pp. 851-852. 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.

(*Athey* at para 35)

[182] Therefore, the Court must assess the Plaintiff’s position after the tort but also the position the Plaintiff would have been in if the tort had not occurred: *Athey* at para 32. The difference between these two positions represents the loss suffered by the Plaintiff.

[183] Clearly, Ms. Artindale-Eeles was physically injured based on her testimony about the Second Collision and photographs of the damage to the Aspen and the SUV. This evidence was corroborated by her passenger, Ms. Hill, as to road conditions, seat belts, time lapse and relative force of each collision. I reject any inference that the testimony of Ms. Hill was materially affected by the close friendship between the Plaintiff and her mom or the fact the Plaintiff was her work supervisor at the time.

[184] The Hospital charting records provide further corroboration linking some degree of injury to the Collisions. In addition, Dr. Letley’s follow-up treatment was supplemented by physiotherapy and prescription medications although not initially for pain.

[185] The DND acknowledged the injury to the extent of a modified work schedule that was implemented, monitored and modified after the Collisions.

[186] Similar sources of evidence support that Ms. Artindale-Eeles suffered some psychological damage which, but for the location of the Collisions on a raised overpass, would

not have likely arisen. The medical history of Ms. Artindale-Eeles supports that she is more vulnerable than others to the effects of physical and psychological injury.

[187] As discussed, I find nothing in the evidence to support any reasonable inference that the First Collision caused injuries to the shoulder and neck, much less the PTSD and driving phobia.

[188] The greater challenge is to assess the nature and extent of those injuries particularly in the context of:

- (a) Pre-existing health conditions, including:
 - (i) Neck, shoulder and back pain on the left side, although not attributable to soft tissue injury or tearing;
 - (ii) Depression due to family and work/supervision issues with prior PTSD;
 - (iii) Sustained history of various types of headaches and knotted muscles;
 - (iv) Insomnia and sleep apnea still in active treatment; and
 - (v) Diabetes, high blood pressure and cholesterol levels; and
- (b) Post-Collision Incidents, including:
 - (i) December 2010 – fall down stairs at home;
 - (ii) March 2011 – slip and fall at worksite;
 - (iii) October 2011 – fall down stairs at home; and
 - (iv) December 2011 – lifting groceries.

[189] As a result of the Second Collision, Ms. Artindale-Eeles was vulnerable to further or continued health issues while she took time to recover to her pre-existing, sub-optimal health.

[190] From the evidence, particularly from Dr. Slade-Shantz, I am satisfied that Ms. Artindale-Eeles sustained a left shoulder posterior glenohumeral instability, which arose from the Collisions and obliged her to reduce her employment to part time on restricted duties. The existence of this injury was not distorted by the exaggerations or omissions of Ms. Artindale-Eeles.

[191] It is also most probable that Ms. Artindale-Eeles sustained a soft tissue injury to the neck and clavicle area proximate to the left shoulder, since that is the general area that required physiotherapy. It is unnecessary to attach a specific label as a WAD II (whiplash) disorder, except to note that it took time to heal and was not yet fully recovered when Ms. Artindale-Eeles was injured in the March 2011 slip and fall.

[192] I find no support that the Collisions tore any shoulder tissue, relying on the January 2011 MRI as verified by Dr. Slade-Shantz. A prior diagnostic image October 15, 2010 had also reported no abnormalities, just some mild osteoarthritis. The first evidence of tearing appears in the January 9, 2014 ultrasound conducted by Dr. Halls in Camrose, which identified the tear to the long head on the biceps and an oblique full-thickness tear in the middle region of the supraspinatus tendon (rotator cuff).

[193] As such, the March 2011 slip and fall is the most probable cause of the left partial thickness rotator cuff tear and a left long head of biceps strain. That is the incident where Dr. Jurgens noted at the Hospital that Ms. Artindale-Eeles said she hit her left side of head, lower

back and left shoulder area and complained also of pain on the left side of her neck. A significant Toradol injection was administered to address her level of pain. Although Ms. Artindale-Eeles attempted to downplay its seriousness, the injury was processed as a WCB claim and she took time off work.

[194] Despite those findings, I do not think the tearing can be treated as a totally separate injury from the injuries suffered in the Collisions. The question is not what the most significant cause of the injury was but whether the injury would have happened “but for” the Collision. The medical evidence shows that the tearing was new. However, it does not provide any clear indication of whether the tearing was related to the pre-existing injuries from the Collisions.

[195] Although Dr. Slade-Shantz was uncertain as to cause, I cannot conclude that these shoulder injuries can be separated as discreet injuries. At the time of the 2011 slip and fall, the left shoulder was still recovering from the Collision. Most notably, Ms. Artindale-Eeles was still working part-time due to limitations on her ability to perform certain aspects of her job principally related to the shoulder. She had not resumed those physical tasks that were part of her job prior to the Collisions and was restricted from lifting objects above her shoulders. According to the evidence of Dr. Slade-Shantz, the Collisions had resulted in an instability in the left shoulder. While she was making progress, she had not yet returned to pre-Collision health.

[196] On balance, I am reasonably satisfied that the left shoulder was vulnerable at the time of the 2011 slip and fall, so that the injury from the Collisions and the tearing eleven months later cannot be separated. Therefore, the injury resulting from the slip and fall was an exacerbation of the injuries from the Collisions.

[197] I have less difficulty concluding that the two falls down the stairs at home and the incident while lifting groceries were exacerbations of the shoulder injuries from the Collision. For each of these other Post-Collision Incidents, Ms. Artindale-Eeles’ shoulder had not yet healed. There is nothing in the evidence to show that the injuries from the falls down the stairs or the grocery incident were new or different injuries from those that resulted from the Collisions rather than exacerbations of pre-existing problems. Instead, in each case, Ms. Artindale-Eeles further injured her shoulder, making the Collisions and the Post-Collision Incidents shared causes of the resulting injuries.

[198] As to the scope of the injuries attributable to the Collisions, I am satisfied that:

- (a) The posterior glenohumeral joint instability to the left shoulder affected her range of motion and particularly the ability to raise and use her arm above her head;
- (b) The soft tissue damage to her neck, clavicle and surrounding area did reduce her activities, both at work and at home, even though her protective guarding likely affected her deconditioning; and
- (c) Additionally, the Collisions caused Ms. Artindale-Eeles to relapse into a PTSD, accompanied by a driving phobia, particularly as relates to winter conditions.

[199] I have already determined that Ms. Artindale-Eeles’ psychological symptoms had returned to pre-Collision levels by February 2013, with the exception of her driving anxieties, which had diminished but not resolved by the fall of 2012.

2) Remoteness

[200] For a defendant to be held liable for an injury, the injury must have been a reasonably foreseeable consequence of the defendant's negligence: *Mustapha v Culligan of Canada Ltd*, 2008 SCC 27 at para 12 [*Mustapha*]; *Nelson (City of) v Marchi*, 2021 SCC 41 at paras 96-97 [*Marchi*].

[201] This aspect of negligence asks if the harm caused by the negligence is too unrelated to the wrongful conduct of the defendant to fairly hold the defendant liable: *Mustapha* at para 12; *Deloitte & Touche v Livent Inc (Receiver of)*, 2017 SCC 63 at para 77. There must be a "real risk" that the defendant's conduct would cause the harm, meaning "one which would occur to the mind of a reasonable man in the position of the defendant[t] ... and which he would not brush aside as far-fetched": *Mustapha* at para 13.

[202] Notably, the remoteness analysis deals with the actual injury suffered by the plaintiff as opposed to the type of injury suffered: *Deloitte* at para 78; *Marchi* at para 97.

[203] The modern approach to negligence considers subsequent occurrences or intervening events as part of the remoteness issue: *Pepler Estate v Lee*, 2020 ABCA 282 at para 254, leave to SCC refused, 2021 CanLII 4698; *Philip v Bablitz*, 2011 ABCA 383 at para 29, leave to SCC refused, 2012 CanLII 39734; Allen M Linden et al, *Canadian Tort Law*, 12th ed (Toronto: LexisNexis Canada, 2022) at 7.10.

[204] Defence argues that the Post-Collision Incidents were intervening events, such that Defence is not responsible to compensate Ms. Artindale-Eeles for her injuries after those Incidents occurred.

[205] In this case, I find the exacerbations caused by the Post-Collision Incidents were individually foreseeable as reasonable risks in daily living. It was reasonably within the contemplation of the Defendants that the Plaintiff would aggravate her injuries in the course of her day-to-day living. All four of the Post-Collision Incidents occurred in the context of typical injuries that take place in everyday life. The first two, including the most damaging slip and fall, occurred during the first year; all four arose while Ms. Artindale-Eeles was still on restricted work duties. Therefore, the Post-Collision Incidents affecting the left shoulder area were not too remote to hold the Defendants liable.

3) General Damages

[206] I find Ms. Artindale-Eeles has sustained a soft tissue injury to the shoulder and neck region, attributable to the Collisions. The shoulder injury became chronic due to pre-existing vulnerabilities including anxiety, age, diabetes, headaches and other prior issues with chronic pain. It was also exacerbated by the Post-Collision Incidents including a rotator cuff and bicep tear with similar impacts, in particular affecting the use of the left shoulder. The shoulder condition has waxed and waned since May 2012; however, it is likely to remain part of her physical health indefinitely. Factoring aspects of the miscommunications from Ms. Artindale-Eeles, particularly as regards pre-existing health, much but not all of the pain in the left shoulder can be attributed to the Collisions.

[207] In addition, Ms. Artindale-Eeles suffered a relapse of a pre-existing PTSD with depression from which she largely but not totally recovered by 2013. The driving phobia has similarly abated to a large extent but has some residual impact in specific circumstances.

[208] The quantum assessment of the injuries must factor that evidence of Ms. Artindale-Eeles distorted the seriousness and duration of her pain in relation to her pre-existing health, not all of which can be counter-balanced by clinical testing.

[209] In *Meehan v Holt*, 2010 ABQB 287, a 42-year-old chiropractor was injured in a minor accident, causing immediate acute jaw pain, shoulder pain, neck pain and a severe headache. Mid-back and lower back pain followed in the ensuing days. The plaintiff's back pain resolved in approximately seven months, while her shoulder injury resolved in approximately two years. The plaintiff's neck and jaw pain improved significantly but continued to cause mild pain to the date of trial. She also continued to experience occasional numbness in her hand.

[210] The plaintiff's hobbies were limited by her injuries, and she had to curtail many of her prior sporting activities. She also had trouble eating some foods and speaking for long periods. The Court described the injuries as not "at the high end" of the scale and awarded \$90,000 (approximately \$124,000 with inflation). Pre-existing conditions and degenerative disease made her more prone to injuries which lasted longer. There were no credibility issues.

[211] In *Sorochan v Bouchier*, 2014 ABQB 37, rev'd on other grounds 2015 ABCA 212, a 57-year-old teacher was injured when her vehicle was struck from behind by a large truck at a red light. She suffered soft tissue injuries to her neck, shoulder, upper back and lower back, with related headaches. Most injuries resolved, while the lower back pain was still an issue at the time of trial, at which point the plaintiff was awaiting surgery.

[212] The Court noted pre-existing scoliosis; however, the trial judge found the condition was asymptomatic prior to the accident. The trial judge assessed general damages at \$75,000 (approximately \$96,000 with inflation), and this award was upheld on appeal.

[213] In *Stevenson v Thompson*, 2017 ABQB 451, a 45-year-old plaintiff was struck in her parked vehicle in a parking lot. The plaintiff experienced only "shock" at the time of the accident but later noted stiffness in her neck, back, and shoulders. The Court found that the plaintiff continued to suffer from chronic regional myofascial pain, cervicogenic headaches and chronic mechanical low back pain.

[214] The plaintiff had suffered from a hypothyroid condition prior to the accident which led to weight gain, depression, anxiety, stress and sleep deprivation. This amplified the effects of the accident on the plaintiff, and the ongoing physical limitations reduced her feeling of self-worth. The Court assessed general damages at \$75,000 (approximately \$92,000 with inflation).

[215] In *McLean v Parmar*, 2015 ABQB 62, a 29-year-old accountant was injured when her vehicle collided with a bus that had driven through a controlled intersection. The vehicle spun violently, and the airbags were deployed. The plaintiff was temporarily trapped in the vehicle and feared that it would explode due to the smoke. The plaintiff complained of pain in her neck, back, and shoulder. She was diagnosed shortly after with Grade 2 whiplash and significant symptoms of emotional distress. Later, she was also diagnosed with TMJ disorder, a concussion, PTSD, and chronic pain.

[216] The plaintiff experienced chronic fatigue which lasted 18 months and depression which lasted 30 months. Her physical symptoms were substantially improved at the 30-month mark; however, she was involved in another motor vehicle accident at that time. The Court assessed general damages of \$60,000 (approximately \$76,000 with inflation).

[217] In *Thiessen v Selke*, 2007 ABQB 217, a 29-year-old plaintiff struck a vehicle that turned left in front of her while traveling 50 kilometers per hour. The accident caused a whiplash injury to the plaintiff's neck and a lumbosacral strain, with a disc disruption and left-sided disc bulge. The plaintiff worked at a meat processing plant and, prior to the accident, outside of asthma and obesity, had no pre-existing injuries.

[218] The plaintiff's pain and suffering was "significant", with the pain in her back persisting to the date of trial, albeit with considerable improvement. It was also assumed that it would persist for the rest of her life. There was no evidence of post-accident psychological issues. The Court awarded general damages (including the award for loss of housekeeping) in the amount of \$60,000 (approximately \$86,000 with inflation).

[219] The claim of Ms. Artindale-Eeles for general damages for both physical and psychological injuries in all the circumstances is set at \$88,000.

a. Mitigation

[220] I find no merit in the alternative assertions of the Defence that Ms. Artindale-Eeles has failed to mitigate her injuries. The evidence does not satisfy the onus on the Defence to prove failure to take reasonable steps which could have avoided the loss: *Byron v Larson*, 2004 ABCA 398 at para 15; *Silvaniuk v Stevens*, 1999 ABCA 191 at para 12.

[221] Although Ms. Artindale-Eeles was advised to re-engage in physiotherapy by Dr. Letley in 2014, none of the medical evidence supports that her failure at that time affected the seriousness or chronic nature of the physical injury. Both Dr. Flaschner and Dr. Slade-Shantz expressed their opinion that further sessions would not alter long-term outcomes for this injury. Having attended 90 physiotherapy sessions over two years from the time of the Collisions, there was no medical justification to seek further out of town treatments after the July 2012 closure of the Alta-Sask Sports Physiotherapy clinic in Wainwright.

[222] The Defence does fairly note that Ms. Artindale-Eeles at some point failed to continue with the home exercise and stretching program. That was the reason she attended nine further sessions in 2021 on the recommendation of Mary-Alice Brennan, a physiotherapist, for which the Defendants bear no financial responsibility. I have factored the deconditioning of Ms. Artindale-Eeles into the assessment of general damages as relates to the extent and duration of her soft tissue injuries.

b. Other Heads of Damage

[223] I turn then to a valuation of other damage claims. The Plaintiff called Derek Aldridge who prepared an expert report of estimated loss of income and future costs of care for Ms. Artindale-Eeles arising from the Collisions. He in turn relied on an assessment and valuation report prepared by Ms. Brennan, with expertise in functional capacity evaluations and cost of future care analysis.

[224] Some of the major points of misinformation affecting the Aldridge Report included: that Ms. Artindale-Eeles was off work for almost 4 months following the Collisions; that she had plans to work full time post-retirement; and that her pre-Collision health did not inhibit the likelihood of continued employment. Mr. Aldridge also based the Report on the fact that her retirement was due to her Collision injuries, which is contrary to my findings as explained below. However, his evidence did assist with the task of quantification on various points.

4) Loss of Housekeeping Capacity

[225] The Plaintiff claims \$14,876.00 in past loss of housekeeping capacity based on an annual cost of \$1,284.00 for routine and seasonal housecleaning services, as calculated in the Aldridge Report.

[226] The Defendants argues that much of the past loss of housekeeping claim is accounted for in the Plaintiff's in trust claim, such that the residual value of past loss of housekeeping should be assessed at \$3,000 and nothing additional.

[227] The Courts recognize that housekeeping capacity has a quantifiable economic value, even if the labour is unpaid and no replacement services have been used: *Fobel v Dean*, 1991 CanLII 3965 at 22 (SKCA); *Tat v Ellis*, 1999 ABCA 12 at para 28 [*Tat*]. If supported by the evidence, the loss is attributed to and recoverable by the injured party: *Benstead v Murphy*, 1994 ABCA 272 at paras 20-21.

[228] Claims for housekeeping capacity are allowed where another person in the household has performed some of the labour shortfall: *Sutherland v Encana Corporation*, 2014 ABQB 182 at para 602, citing *Thibert v Zaw-Tun*, 2006 ABQB 423 at para 251.

[229] Loss of housekeeping capacity must be supported by evidence regarding the scope and nature of the loss: *Dushynski v Rumsey*, 2003 ABCA 164 at para 14. Statistical and expert evidence will be helpful, but there must be evidence from the claimant of his or her:

... lifestyle, duties and responsibilities, standards, the nature of the family unit and, in some cases, goals and aspirations. This evidence must be as precise as possible while recognizing that a "job description" analysis alone is inappropriate ...

The challenge for the court is to balance the common knowledge of the critical role played by the homemaker with the evidence in the case.

Experts called to deal with this evidence, such as labour economists and home economists, can provide great assistance but their evidence should not become the adjudication. The court must exercise its discretion here as in all damage assessment.

(*Tat* at para 31, quoting *McLaren v Schwalbe*, 1994 CanLII 8908 at paras 125, 127-128 (ABKB)).

[230] Loss of housekeeping capacity can be compensated by pecuniary or non-pecuniary damages. I agree with Renke J in *KY v Bahler*, 2023 ABKB 280 at para 2637, that the distinction is generally determined by the evidential foundation of the claim. If there is enough evidence to assess the cost of replacement services, a pecuniary award will be appropriate. Where the evidence is only sufficient to recognize the overall negative effect of the injuries on the plaintiff's housekeeping activity, a non-pecuniary award will be appropriate.

[231] Ms. Artindale-Eeles completed a number of forms where she checked off restrictions in activities at various stages during her recovery. Having all been prepared more than ten years later without any diary notes, I attribute limited weight to any alleged comparisons with her pre-Collisions capacity, which is overstated against her health records.

[232] As with the many exaggerations and misinformation to health professionals and this Court about her injuries, Ms. Artindale-Eeles provided unreliable information to Ms. Brennan. For example, she described that when she was working full time for the DND, she took paid sick

leave time off “only for surgeries”, which is patently false, including sick time off in the month before the Collisions. She also told Ms. Brennan that she could not drive for approximately six weeks because of driving anxiety, as well as the restrictions of her physical injuries. In fact, she drove herself to work by mid-April 2010. She further reported ongoing anxiety, depression and PTSD with sleep disturbance, without reference to her pre-existing health issues. These descriptors to Ms. Brennan in 2020, without new triggers, are inconsistent with the conclusions reached by specialists that these conditions are now significantly resolved/in remission with a good prognosis subject to future risks.

[233] Nonetheless, Ms. Brennan did her own functional capacity evaluation and reviewed the medical opinions. Her Report notes difficulties related to heavy chores (pushing, pulling and lifting above the head) but does not attribute pecuniary costs to the impact of the Collisions on past housekeeping capacity. There were no replacement expenses incurred, and Mr. Eeles was vague on the type, quantity and frequency of his assistance.

[234] Mr. Aldridge provided his valuation of costs for past housekeeping losses and describes service expenses in two categories: routine and seasonal. However, he based his amounts on Ms. Brennan’s calculations for future cost of housekeeping and provides no further particulars. I do not find this to be a reliable quantification of past housekeeping. Accordingly, a non-pecuniary award is appropriate to address this loss.

[235] Ms. Brennan notes that for routine tasks, Ms. Artindale-Eeles is able to do most things as she is right-handed. However, she has some difficulty with two-handed tasks such as sweeping or vacuuming. During the first five years until retirement, some cleaning tasks took more time for Ms. Artindale-Eeles, and her part-time status would have partially accommodated that reality. For some tasks, Mr. Eeles provided assistance which will be valued under the in trust claim to avoid double-counting. Others, such as shoveling or lawn cutting, had been mostly done by Mr. Eeles previously.

[236] I set the compensation for past loss of housekeeping capacity at \$3,200.

5) Future Loss of Housekeeping

[237] Similar issues as to quantification affect the Court’s ability to ascribe a value to future loss of housekeeping capacity. Additional variables include the recommendations for adaptive cleaning tools, a self-propelled mower and some assistance with cleaning windows as well as snow removal. Ms. Artindale-Eeles was notably candid in rejecting a number of other items recommended by Ms. Brennan.

[238] To avoid overlap, I will factor future housekeeping into the future costs of care.

6) Past Loss of Income and Accrual of Pension Benefits

[239] As initially summarized, Ms. Artindale-Eeles seeks recovery of \$120,000, comprised of reduced wages for part time hours, a loss of income from early retirement, reduced pension income and loss of minimum wage income post-retirement. This is derived from the Report of Mr. Aldridge, who reviewed tax returns, the DND employment and pension records, as well as extensive records from counsel in his calculations.

[240] Based on those records, Mr. Aldridge drew implications that Ms. Artindale-Eeles was being paid for between 1262 hours and 2028 hours per year in her last 15 years, except in 2009

where he attributed 2148 hours. The average from these calculations from the year 2000 to 2014 was roughly 1700 hours per year as contrasted with a standard credit of 2086 hours for full time (i.e. 40 hours/week for 52+ weeks).

[241] This pattern of variance was similar in records before and after the Collisions. Mr. Aldridge testified that actual hours are less significant than the amounts received. However, given the change in assigned hours after the Collisions and the need to make factual findings, I was not well-assisted by the inability to reconcile the significant variance in hours for Ms. Artindale-Eeles.

[242] Furthermore, I have no evidence to explain why, despite working straight 40 hours per week without overtime or shift differential, the reported employment income of Ms. Artindale-Eeles vacillated in years leading up to 2010:

a. 2003	\$40,302
b. 2004	\$39,174
c. 2005	\$51,396
d. 2006	\$45,963
e. 2007	\$46,641
f. 2008	\$53,046
g. 2009	\$60,036

[243] I find the assumption that Ms. Artindale-Eeles worked 2086 hours per year (or was credited with such hours) to be unreliable from the limited information used to justify those implied numbers. With significant use of time off pre-Collisions, not all covered under sick leave, I have no confidence about the number of work hours that were attributed to her.

[244] I also find unreliable that no contingencies were factored into the calculation of loss based on pre-Collisions health issues beyond sick leave.

a. Reduced Income

[245] Ms. Artindale-Eeles was off work the day of the Collisions, as well as two further days the following week. She worked full time until May 6, 2010, when she started to work 4 hours per day, buffered by sick leave. Mr. Aldridge misinterpreted that Ms. Artindale-Eeles was completely off work until August 2010. However, her income was not reduced until August 2010. Ms. Artindale-Eeles increased her schedule from four hours to six-hour shifts in July 2011 (not May 2011 as Mr. Aldridge reports), and a further increase to 6 ½ hours in July 2013.

[246] I am satisfied that the reduction in Ms. Artindale-Eeles' hours after April 2010 was caused by the Collisions and the subsequent exacerbations from the Post-Collision Incidents. Her injuries reasonably required Ms. Artindale-Eeles to reduce her work hours and responsibilities, particularly as concerned the shoulder instability and the PTSD. None of the evidence supported that a reduction in work hours or scope of duties was inevitable, despite various pre-existing health issues which heightened her vulnerability.

[247] I have already found that the Collisions caused the injuries which required Ms. Artindale-Eeles to work less than full time. In law, so long as the Defendant's negligence was a cause of the Plaintiff's injuries, the Defendant is liable for the full extent of the injuries despite there

being other causes. I am satisfied that Ms. Artindale-Eeles did suffer some pre-trial loss of income representing reduced hours from May 2010 to July 2015, when she chose to retire as is considered in detail below.

[248] However, I agree with Defence that it does not make sense to assume that Ms. Artindale-Eeles would have worked 40 hours a week “but for” the Collision when she had not done so in most of her previous years of work. That said, Defence has not provided any expert evidence to support its alternative calculations, and I am not confident in the assumptions behind the calculations in the Defence brief, especially as regards the income deductions and the amounts of sick leave. I simply have no evidence or explanation whether Ms. Artindale-Eeles took extra unpaid leave as would reconcile the shortfall below the 2086 threshold.

[249] In the absence of clear evidence, I am unable to determine exactly how Ms. Artindale-Eeles’ income was calculated, and instead I will adjust the numbers proposed by Mr. Aldridge to reflect the likelihood that Ms. Artindale-Eeles would not have worked full time: see *Minhas v Hayden*, 2013 ABCA 305 at paras 20-21.

[250] On the evidence before me, the calculations of lost income for Ms. Artindale-Eeles as reflected in the Aldridge Report (for the period May 6, 2010 up to the formal date of retirement, July 29, 2015) must be reduced to account for:

- (a) the undercalculated income earned between April and August 2010 where Mr. Aldridge assumed she was not working;
- (b) exclusion for the six weeks between her intended retirement date (July 6) in her testimony and the full pension date (August 15) as discussed below; and
- (c) a 5% reduction in post-deduction lost wages, to reflect the fact that Ms. Aldridge was unlikely to have worked a full 40-hours per week “but for” the Collisions.

[251] After deductions for taxes, as well as EI, CPP & PSPP deductions, I confirm the net loss of pre-retirement income at \$45,650.

[252] I decline to further reduce this amount to account for any pre-existing conditions, given that any health issues Ms. Artindale-Eeles was dealing with before the Collisions would be reflected in the sick time that she took prior to the Collisions.

b. Early Retirement

[253] Ms. Artindale-Eeles claims damages for retiring early, both in terms of lost income and the increased pension benefit she would have accumulated if she had continued working until her full pension vested.

[254] The evidence of Ms. Artindale-Eeles regarding a fixed plan for a retirement date was unconvincing. She testified that she spoke in generalities with Mr. Eeles about working until she had completed 35 years of service with the DND. Although Mr. Eeles had some sense that his wife would retire on full pension, that date was not clearly spelled out and was uncorroborated in her discussions with Dr. Letley. Ms. Artindale-Eeles referred to July 6, 2016, which was her 56th birthday, not the August 15 service anniversary date referenced by Mr. Aldridge.

[255] Ms. Artindale-Eeles gave evidence that her retirement was not precipitated by her injuries getting worse; she had been working 6 ½ hour days for two years up to her departure and agreed

in cross examination that she was still capable of working that amount of shift, physically. She did not testify that her decision to retire roughly 12 months short of full pension was due to any incident or that work was now intolerable.

[256] It is clear that the DND had refused to provide an ergonomic assessment, which she requested in 2012 before her last increase in hours. However, Ms. Artindale-Eeles did not cite that concern and continued to perform well despite her long history of health issues. I have no evidence that she explored reducing her hours commensurate with a decrease in responsibilities.

[257] In 2013, Ms. Artindale-Eeles talked with Dr. Letley about her plan to retire in the next “few years”. On September 26, 2014, she told Dr. Letley, as charted by him, that she was planning on retiring next July. This is consistent with her evidence at trial in relation to her 56th birthday. Ms. Artindale-Eeles spoke with Dr. Letley again on April 28, 2015, and he reported she had plans in place for her retirement and was feeling excited about it. She also said the pain in her shoulder had been good and that she was hardly using any T-3s. From prescription records, Ms. Artindale-Eeles confirmed that during the period from May 2011 to August 2015, she was only prescribed T-3s for pain. It was only after her retirement that she began other pain medications.

[258] Ms. Artindale-Eeles testified that early retirement was planned from discussions with Vern in late 2014. She did not care about work and did not think that it was fair to everyone around her for her to stay. Concerned with the veracity of her evidence, I have no evidence to support this reasoning, especially from the positive performance reviews. In June of 2013, her supervisor reported that “her effective leadership style has inspired confidence and respect amongst her peers and subordinates” and was an indispensable asset. In that same performance review, she expressed interest in attending a retirement workshop as she would be retiring in “the next couple of years”, which she clarified was regardless of any physical issues. In the next month, she increased her hours of work, which speaks against the work having become intolerable.

[259] The specific retirement date of July 29 appears rather random. It was not her birthday, nor does it appear to be a service anniversary date. The last actual working day for Ms. Artindale-Eeles was May 28, 2015. Although no work leave records were produced from April 2012 to March 2015, the DND records for her final two months show personal leaves and vacation time to June 18, family leave to June 26 and then 22 days of uncertified sick leave, meaning there was no supporting doctor’s authorization.

[260] During her evidence in chief, Ms. Artindale-Eeles did express concern about her shoulder in the context of retirement. I accept that the shoulder would continue to flare-up after 2011, when the first increase in hours began and also in 2013, with the second increase. However, in cross examination, Ms. Artindale-Eeles acknowledged those flare-ups were treated with one T-3 every four days or so. She agreed that she was performing well at work in 2014 and 2015, with good performance reviews and fewer T-3s than she was using before the Collisions. She was not attending any physio or psychological therapy after 2013. She specifically agreed she could have continued working for at least another year.

[261] There were a number of factors that influenced the decision of Ms. Artindale-Eeles to retire about a year before completion of her 35th year of service with the DND. In her own testimony, Ms. Artindale-Eeles confirmed that she loved her job and was very good at it. She had issues with just one boss historically; she had to deal with under-performing subordinates both

before and after the Collisions. By 2014, her job responsibilities had changed with contracting out, and she became less interested supervising fewer maintenance crews, perhaps bored.

[262] If accurate, the evidence of Ms. Artindale-Eeles that she was not happy at work and that she was a wreck at the end of every shift is not attributable to the Collisions five years earlier. The frustration at not being able to multi-task did not affect the assessment of her work productivity or effectiveness as a supervisor. On the evidence before me, she failed to prove that her early retirement was because of the Collisions or, in other words, that “but for” the Collisions she would have worked another 12 months.

[263] I find that a decision to retire over five years after the Collisions may have been reasonable to Ms. Artindale-Eeles and her husband. Predictably, her retirement reduced some sources of stress. However, the date chosen was not a reasonably foreseeable consequence of the Collisions as the law applies to the measure of damage.

c. Re-Employment

[264] Ms. Artindale-Eeles said she was planning to work perhaps half time after she retired to keep busy while Mr. Eeles was working. She gave evidence that she made two inquiries with Walmart and Value (Delton) Drug Mart but felt discouraged as she may not qualify. She did not make any job applications. This was the full extent of her evidence.

[265] I am satisfied that Ms. Artindale-Eeles has provided evidence that she was contemplating part-time work after she retired. However, this is not the same as proving on a balance of probabilities that she would have worked part time after she retired if the Collisions had not happened. As reviewed at some length, Ms. Artindale-Eeles was not a reliable witness. In my view, the two job inquiries and a stated intention to work part-time are not enough to meet the evidentiary burden. Accordingly, there will be no damage award for loss of income for part-time employment post-retirement.

7) Special Damages

[266] Ms. Artindale-Eeles claims compensation for medications, physiotherapy, travel (mileage + parking), postage and miscellaneous expenses, in excess of \$21,000.

[267] In addition to its primary position that compensation should not extend beyond the March 2011 slip and fall, Defence argues that:

- (a) Ms. Artindale-Eeles should not be compensated for pain medication she was taking prior to the Collisions; and
- (b) Without the physiotherapy records and only last-minute disclosure of insurance records, it is impossible to determine which of the physio appointments relate to the Collisions.

[268] The Plaintiff is entitled to damages for the amount that is reasonably required to put the Plaintiff in the position she would have been in but for the injury: *Andrews v Grand & Toy Alberta Ltd*, [1978] 2 SCR 229 [*Andrews*].

[269] The burden of proof on Ms. Artindale-Eeles requires that special damages be established with some particularity: *Mason v Thompson*, 2020 ABQB 76 at para 86. The evidence as to these expenses was very generic and was largely assembled by a paralegal for the Plaintiff. No comparisons were provided as to overlapping expenditures prior to the Collisions.

[270] As relates to physical injuries, principally the shoulder area, the medical evidence supports that treatments included medications, physiotherapy and some additional medical appointments for at least two or three years. Treatments have been passive since before the date of retirement, including needle point injections. I have already determined that Ms. Artindale-Eeles' mental health returned to a pre-Collisions level by February 2013.

a. Medication

[271] In principle, the patient portion of prescriptions to treat physical and mental injuries from the Collisions are recoverable to the point where a claimant has effectively recovered. The claim is for just under \$3,000 from April 2010 to the date of trial. However, as argued by Defence, a portion of those medications were already being expended prior to the Collisions.

[272] I have insufficient particulars to make a mathematical comparison, so I will estimate the loss based on the limited evidence available, including the variable portion payable by the patient for some drugs. Roughly 40% of the medication claim is posted for the period up to the date of retirement at the end of July 2015, mostly incurred in the first three years. I will use that same period of roughly five years for the prescriptions for both physical and psychological injuries attributable to the Collisions.

[273] Adjusting for these variables, I award special damages for the uninsured portion of medications costs to treat injuries from the Collisions in the amount of \$1,100.

b. Physiotherapy

[274] The claim for Ms. Artindale-Eeles' portion of these services extends from April 2010 to September 2021, at a total amount of just under \$3,000. I am satisfied that the majority of physio expenses from 2010-2012 were necessitated by the injuries caused by the Collisions. The failure to provide treatment records obliges some discount from full recovery. Ms. Artindale-Eeles did not follow up with physiotherapy as recommended by Dr. Letley in 2014, and a claim for services seven years later is not recoverable.

[275] I have already found that the Post-Collision Incidents were exacerbations of the original injuries and not separate incidents, so I do not need to separate out the different appointments based on those injuries.

[276] Accordingly, Ms. Artindale-Eeles is entitled to the uninsured portion of physiotherapy costs from April 2010 to May 2012, in the amount of \$2,000.

c. Travel

[277] Ms. Artindale-Eeles is entitled to mileage for the appointments that related to the Collisions. Although parking costs were not addressed in correlation to specific trips, the amount is modest and recoverable. I am satisfied that her claimed mileage relates to these appointments, with some exceptions.

- (a) First, I have already found physiotherapy attendance in 2021 was not caused by the Collisions, so Ms. Artindale-Eeles is not entitled to mileage for those appointments.
- (b) Second, not all of Ms. Artindale-Eeles' appointments with Dr. Letley dealt with the injuries from the Collisions. I accept Dr. Letley's evidence that after 2012, most appointments related to management of the diabetes condition. To be fair, I have extended this to the date

of retirement as some of the later visits did facilitate updates to enable him to provide evidence at trial.

- (c) Third, a number of trips for further imaging were redundant to the evidence already assembled for this litigation. No reasonable justification was provided as to the need to travel to see Ms. Brennan twice in 24 hours; that claim has been reduced by half. I have, however, accepted that the trips for various IMEs are recoverable despite concerns of Defence that these should be limited.

[278] The total amount payable for travel is set at \$8,500.

d. Postage and Other Amounts

[279] I do not have enough evidence to connect the amounts for postage or the other miscellaneous costs to the Collisions.

[280] The recoverable special damages therefore amount to (\$1,100 + \$2,000 + \$8,500) \$11,600.

8) In Trust Claim for Volunteer Services

[281] The evidence in support of this claim was problematic. Records submitted in support initially totaled between \$37,000 and \$47,000, depending on how the Court would calculate the loss of income for the time of Mr. Eeles. In cross examination, Ms. Artindale-Eeles acknowledged that the estimates were liberal, and she upped the numbers a bit because she was not quite sure. For snow removal, she acknowledged her estimates were maybe three times higher than actual; as well, she acknowledged that her husband did most of the snow shoveling before the Collisions.

[282] The claim was revised to exclude time looking after the family dog and holiday driving, and other liberal estimates were cut in half. These records were not reliable evidence. But there is some evidence to support the claim of assistance from Mr. Eeles.

[283] In *Andrews*, the Supreme Court recognized the legitimacy of claims on behalf of family members who provide services to an injured plaintiff: see also *Thornton (Next friend of) v Prince George School District No 57*, [1978] 2 SCR 267; *Arnold v Teno (Next friend of)*, [1978] 2 SCR 287.

[284] In *Labrecque v Heimbeckner*, 2007 ABQB 501 at para 251, this Court set out some key factors to consider when deciding whether to award an in-trust claim, citing *MacCabe v Westlock Roman Catholic Separate School District No 110*, 1998 ABQB 809, rev'd on other grounds 2001 ABCA 257:

- (a) Where services are necessary as a result of the plaintiff's injuries, they are prima facie compensable;
- (b) The claim is that of the plaintiff/victim, not the provider of the services;
- (c) What is compensable is the value of the services to the plaintiff;
- (d) The maximum value of such services is the cost of obtaining the services outside the family;

- (e) Where the opportunity cost to the care-giving family member is lower than the cost of obtaining the services independently, the Court will award the lower amount;
- (f) To be compensable the services have to be outside the normal duties expected of a spouse or family member.

(see also: *Forsberg v Naidoo*, 2011 ABQB 252 at paras 336-37; *KS (Litigation Representative of) v Wilcox*, 2016 ABQB 483 at para 645ff, aff'd 2018 ABCA 271 on other grounds).

[285] I accept the evidence of Mr. Eeles that he drove Ms. Artindale-Eeles to a number of appointments with greater frequency and distance than before the Collisions. Also, he spent more time assisting with household responsibilities, including dishes, vacuuming, lifting laundry and other cleaning. Finally, I include the claim to compensate Mr. Eeles for some additional time where Ms. Artindale-Eeles was unable to do her modest share of shoveling and seasonal yard maintenance.

[286] The claims for assistance from Mr. Eeles are not recoverable at his *per diem* business rate. I have used the Plaintiff's proposed \$22 per hour figure across all aspects of necessary service he provided from the date of the Collisions until the end of February 2013, when Ms. Babcock closed the file for the second time. I recognize that Ms. Artindale-Eeles still had some seasonal driving issues, but most trips thereafter were in the months between April and November. I have evidence that she did some highway driving and nothing tied to hazardous road conditions, as would prove that Mr. Eeles' driving services were necessary rather than preferred.

[287] Factoring some additional driving closer to Wainwright during adverse conditions, I have credited the compensable driving time of Mr. Eeles at 75 hours for which the recoverable amount is \$1,650.

[288] As for the time of Mr. Eeles assisting in the home with duties Post-Collisions, the evidence supports some need in the first few months with a significant taper after Ms. Artindale-Eeles recovered from the acute injuries. I set the total hours at 165, derived from an average of 4 hours per week in the acute period of 21 weeks to the end of August 2010, and the balance spread over the period until July 2011, when she increased her hours at work. This amounts to \$3,630.

[289] For time attributed to Ms. Artindale-Eeles's mother, Ms. Maddex, her son, Mr. Cawthorpe, and friends, I have no measure of necessity. I ascribe a maximum of \$500 for services as may have been rendered to the end of August 2010 only.

[290] The total under this head of damage comes to $(\$1,650 + \$3,630 + \$500)$ \$5,780.

9) Future Cost of Care

[291] As already noted from *Andrews*, Ms. Artindale-Eeles is entitled to damages for the amount that is reasonably expected to put the Plaintiff in the position she would have been in but for the injury. This may include the cost of care into the future provided that those costs are reasonable, moderate and fair to both parties. Pre-existing circumstances of Ms. Artindale-Eeles are clearly relevant in this assessment.

[292] To assess damages for future care, the Court must decide what care is likely to be in the injured person's best interest, determine the present value of that care, and adjust for the contingency that the future may differ from what the Court has predicted: *Krangle (Guardian ad litem of) v Brisco*, 2002 SCC 9 at para 21. The damages must be justified based on the evidence.

[293] Notably, future events do not need to be proven on a balance of probabilities: *Athey* at para 27; *Chernetz v Eagle Copters Maintenance Ltd*, 2008 ABCA 265 at paras 31-32. Instead, future possibilities will be taken into consideration as long as they are real and substantial, not mere speculation, and they can be given weight according to their relative likelihood: *ibid*.

[294] I have concluded that the vulnerability of Ms. Artindale-Eeles has been increased somewhat by the Collisions, primarily as concerns risks associated with winter driving. While those risks increase for most persons with aging, she may have episodes that would require counseling. She may also have issues with her shoulder although she has not reported any significant incidents since her retirement. The condition is now chronic and may need further trigger injections. Although it does not appear that Ms. Artindale-Eeles has exacerbated the shoulder since the four Post-Collision Incidents, I find a low but real and substantial risk she may require physiotherapy to deal with an aggravation. Conversely, I do not see a substantial possibility that medications can be isolated to treat the injuries from 2010 as distinct from her health needs generally and as known prior to the Collisions. I am not prepared to speculate on the scope of coverage under Blue Cross.

[295] The Brennan Report made no allowances for pre-Collision medications and simply calculated the annual costs of prescriptions recommended by Dr. Flaschner. I accept that Ms. Brennan's testing as a physiotherapist charted mobility findings more than eleven years after the Collisions. These findings were not nearly as medically informed as the assessment of Dr. Slade-Shantz who characterized the soft tissue injury as stable, although the posterior glenohumeral joint instability carries some restricted movement. Considering Dr. Slade-Shantz's evidence, the total partial disability for a chronic but stable injury cannot justify most of the items recommended by Ms. Brennan as future costs of care.

[296] Ms. Artindale-Eeles herself acknowledged she would never use or pursue a number of the recommendations in the Brennan Report, including surgery, much of the medication, cortisone treatments and some household and garden items.

[297] The claim for an award to address the contingency that Mr. Eeles may not be able to assist Ms. Artindale-Eeles indefinitely is much more problematic as a recoverable claim. I acknowledge that he has encountered cancer, and there are of course risks which accompany his recovery. I have no evidence to weigh that risk. Upon full consideration, I find this contingency falls into the category of speculation as relates to the scope of recovery by a spouse in these circumstances.

[298] Factoring in costs associated with housekeeping capacity, the future costs of care are set in the amount of \$12,500.

a. Tax Gross Up

[299] In *Wakins v Olafson*, [1989] 2 SCR 750, the Supreme Court recognized a claim for a tax gross-up on an award for future cost of care to recognize the amount of tax that would be paid on the investment return on the money awarded: see also *Townsend v Kroppmanns*, 2004 SCC 10. I accept that it is appropriate to apply a tax gross-up to the award for future cost of care.

[300] Ms. Artindale-Eeles proposed that Mr. Aldridge re-calculate the appropriate tax gross-up for the future costs of care using the numbers arrived at in this decision. Having reviewed the methodology of Mr. Aldridge against which the Defendants took no contrary approach, I approve and direct a tax gross-up to be calculated using his methodology and applied to the numbers in this decision: see *Kitching v Devlin*, 2016 ABQB 212 at para 382; *Dirk v Toews*, 2019 ABQB 176 at para 435, aff'd 2020 ABCA 477 on other grounds.

10) Pre-Judgment Interest

[301] The Plaintiff seeks pre-judgment interest from April 9, 2010 to the date of judgment. The Defendants argue that pre-judgment interest should be limited to the period between April 2010 and April 2017, because the Plaintiff did not move the action forward in a timely manner.

[302] Presumptively, pre-judgment interest is awarded from the date the cause of action arose to the date of judgment: *Judgment Interest Act*, RSA 2000, c J-1, s 2(1); see also *Chevron Canada Resources v Canada (AG)*, 2022 ABCA 108 at para 92.

[303] However, under s 2(3)(c), the Court has jurisdiction to vary that presumptive award:

2(3) If it considers it just to do so having regard to changes in market interest rates, the circumstances of the case or the conduct of the action, the court may
(c) award interest under this Part for a period other than the period provided for in this Part.

[304] In *Rayani v Yule & Co (Hong Kong)*, 1996 ABCA 35, the Court of Appeal identified three considerations that inform the decision to reduce the pre-judgment interest awarded: the fact the defendant benefited from the use of the money up to the date of judgment, the need to encourage promptness in the conduct of an action and to penalize delay, and the practicality of reaching a decision on pre-judgment interest on a limited record (at paras 28-30).

[305] In *321665 Alberta Ltd v ExxonMobil Canada Ltd*, 2012 ABQB 76, this Court provided a list of factors that may be considered when deciding whether to reduce a pre-judgment interest award because of delay (at para 24). They include:

- The Plaintiff's responsibility to prosecute an action with reasonable diligence;
- The *prima facie* entitlement to pre-judgment interest under s 2(1);
- The benefit to the Defendant of possessing the money until the date of judgment;
- The Court's ability to reduce the award of pre-judgment interest for compelling reasons under s 2(3);
- The term "conduct of the action" in s 2(3), which requires an analysis of whether delays were justified and explained; and
- The goal of being fair to all parties, which involves a consideration of all the circumstances and a balancing of interests.

[306] In addition, when assessing the impact of delay on an award of pre-judgment interest, the Court may consider the complexity of the action, the role of institutional delay, whether any delay was deliberate, and whether the delay caused any specific prejudice: *ibid.*

[307] The Defendants rely on *Meehan v Holt*, 2011 ABQB 110 [*Meehan*] for their argument that pre-judgment interest should be limited to seven years. In *Meehan*, the Court exercised its discretion to reduce the period of pre-judgment interest from the 11 years it took to get to trial to only seven years: at para 23. The Court held that it was unreasonable for the action to have taken that long and that there is an onus on the Plaintiff to move the action forward: *ibid*.

[308] This litigation should have been concluded in a timely manner. However, both parties have been responsible for delay at different stages. The outcome of litigation should not represent a savings account, but the *Alberta Rules of Court*, Alta Reg 124/2010 do contemplate remedies to expedite delay by either side. Neither party availed of these remedies to any appreciable degree. As a result, I decline to vary the period of pre-judgment interest, and the Plaintiff is entitled to interest from the date of the cause of action to the date of judgment.

[309] The *Judgment Interest Act* provides for two different ways to calculate pre-judgment interest, depending on whether the damages are pecuniary or non-pecuniary. Under s 4(2), the annual interest rates for pecuniary damages are set out in the *Judgment Interest Regulation*, Alta Reg 215/2011. Under s 4(1), non-pecuniary damages are subject to an annual interest rate of 4%.

[310] On December 9, 2020, the *Insurance (Enhancing Driver Affordability and Care) Amendment Act*, 2020, SA 2020, c 36 came into force. It added s 585.2 to the *Insurance Act*, RSA 2000, c I-3 and thereby modified the calculation of pre-judgment interest on non-pecuniary damages for loss or damage from bodily injury arising from the use or operation of an automobile. Under s 585.2(2), pre-judgment interest in these cases is to be calculated using the annually prescribed rate for pecuniary damages.

[311] In *Jackson v Cooper*, 2022 ABKB 609 [*Jackson*], this Court held that s 585.2(2) did not apply retroactively. This means that pre-judgment interest on non-pecuniary damages prior to December 9, 2020 accrues at a rate of 4%, while any pre-judgment interest on non-pecuniary damages after that date accrues at the prescribed rate for pecuniary damages. The defendants in *Jackson* were granted permission to appeal on this point in *Jackson v Cooper*, 2023 ABCA 299.

[312] In the absence of a decision from our Court of Appeal, I adopt the reasoning in *Jackson*. Pre-judgment interest is a substantive and not procedural right, so it is presumed the legislature did not intend the amendments to the interest rate calculations to apply retroactively: *Jackson* at paras 179-185. This presumption can be rebutted by express statutory language or necessary implication: see *Jackson* at para 198. However, I agree with the Court in *Jackson* that neither of these is present in s 585.2. As a result, pre-judgment interest on non-pecuniary damages should be calculated according to the approach set out in *Jackson*.

XII. Summary

[313] In the result, I confirm that Ms. Artindale-Eeles suffered an injury to her left shoulder and soft tissue on the neck; as well, she sustained psychological damage and set back as a result of the April 2010 Collisions.

[314] The Plaintiff shall have Judgment against the Defendants for the following:

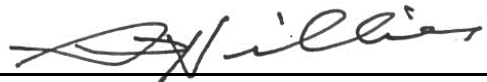
- (a) General damages in the amount of \$88,000;
- (b) Past loss of housekeeping capacity in the amount of \$3,200;
- (c) Damages for past loss of earning income in the amount of \$45,650;

- (d) Special damages in the amount of \$11,600;
- (e) In trust compensation in the amount of \$5,780;
- (f) Cost of future care in the amount of \$ 12,500, plus tax gross-up, to be calculated by Mr. Aldridge as directed;
- (g) Pre-judgment interest; and
- (h) Legal Costs.

Heard on the 14th to the 29th days of November, 2023.

Argued on the 29th day of January, 2024.

Dated at the City of Edmonton, Alberta this 1st day of May, 2024.



S.D. Hillier
J.C.K.B.A.

Appearances:

Walter W. Kubitz, KC and Shiv Ganesh
Kubitz Law
for the Plaintiff

Daniel N. Vassberg and Duncan McManus
Department of Justice Canada
for the Defendants

**Corrigendum of the Reasons for Decision
of
The Honourable Justice S. Hillier**

Amendments have been made in the following paragraphs:

- Paragraph 13: “Cold Lake” was changed to “Wainwright”
- In para 221, wording has been changed.
- In para 237, reference made to “Ms. Shannon” was changed to “Ms. Brennan”.
- Paragraph 250: subpoints (b) and (c) were added
- Paragraph 267: subpoint (b) was added
- Paragraph 277: subpoints (b) and (c) were added