IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Beaulieu v. Gyuraszi, 2008 NSSC 187

Date: 2008/06/12
Docket: S. H. No. 265667
Registry: Halifax

Between:

Barbara Beaulieu and Robert Beaulieu

Plaintiffs

and

Kimberly Dawn Gyuraszi

Defendant

Judge:	Justice N. M. Scaravelli
Heard:	February 18, 19, 20, 21, 22, 25, 26 and 27, 2008, in Halifax, Nova Scotia
Final Written Submissions:	March 19, 2008
Counsel:	Jamie MacGillivray, for the Plaintiffs James L. Chipman, Ramona Sladic and Maggie Steward, Articled Clerks for the Defendant

By the Court:

[1] Both the Plaintiffs and the Defendant were visiting Prince Edward Island in the summer of 2005 when their vehicles collided. The Plaintiffs, Mr. & Mrs. Beaulieu are residents of Halifax Metro, Nova Scotia. The Defendant, Ms. Gyuraszi is resident of Ottawa, Ontario.

[2] The Plaintiffs commenced legal proceedings in Nova Scotia. The parties have agreed the substantive law of Prince Edward Island is applicable to this legal action.

[3] The following matters are at issue:

(a) Liability

(b) Damages for non-pecuniary loss;

© Loss of valuable services;

(d) Loss of past and future income;

(e) Cost of future care.

LIABILITY

[4] This accident is commonly referred to as a left hand turn accident. It occurred on a straight stretch of road in front of an Ultramar Gas Station on Highway # 2 Fortune, Kings County, Prince Edward Island.

[5] On Sunday, July 31, 2005 at approximately 12:00 noon, Mrs. Beaulieau was the seat belted driver of the family 2004 Toyota Corolla Sedan eastbound on Highway #2. Her husband, Mr. Beaulieu, was seat belted in the front passenger seat.

[6] The Defendant, Ms. Gyuraszi, was the seat belted driver of her Van westbound. There was no one occupying the front passenger seat. Her mother was seated directly behind the front passenger seat. The Defendant's young children were also in the vehicle. Her son was sitting directly behind the driver's seat. Her two daughters were sitting further behind in the third row of seats.

[7] As the Defendant slowed and turned left to enter the Ultramar Gas Station, her vehicle was struck by the Plaintiffs' approaching vehicle.

[8] The Plaintiffs submit the Defendant was solely liable for the accident in failing to yield the right-of-way to the Plaintiffs' approaching vehicle.

[9] The Defendant argues her vehicle was well into the left hand turn when struck by Mrs. Beaulieu who contributed to the accident through inattention and excessive speed.

[10] The governing statute is the *Highway Traffic Act*, R.S. P.E.I. 1988, c. H-5. Section 184(2) provides:

> No driver shall turn a vehicle to enter a private road or driveway or otherwise turn the vehicle from a direct course or move right or left upon a roadway unless the movement can be made with reasonable safety.

Further, Section 187 reads:

> When a driver is about to enter or cross a highway from a private road alley, building, driveway, lane or roadway, or is about to leave his lane of the highway in order to enter another lane thereof or a highway, private road, alley, building,

> driveway, lane or roadway, he shall yield the right-of-way to traffic approaching so closely as to constitute a hazard.

[11] The P.E.I. legislation places a duty on a driver turning left to ensure the manoeuver can be made safely.

[12] The burden is on the Defendant to show that the Plaintiff with the right-of-way acted in a wrongful manner that contributed to the accident. In *Tripp v. Peck* (2000), 190 N.S.R. (2d) N.S.S.C., MacAdam, J. stated at paragraph 47:

> A review of the various cases suggest a pattern, although not any rigid rule, as to what may be required for the driver without the right-of-way to transfer some responsibility for an accident unto the driver entitled, by the applicable rules of the road, to the right-of-way ... It appears**,** before some level of responsibility can be imposed on the driver with the right-of-way, the other party must show some specific conduct or non-conduct that is out of the ordinary, that is, not what a reasonable person, in the circumstances, would expect of a driver with the right-of-way.

[13] Mrs. Beaulieu testified she and her husband were travelling eastbound towards a beach area in Souri, Prince Edward Island. Mr. Beaulieu held a folded map as they were unsure of the route. The speed limit on this part of the highway is 90 kilometres per hour. Mrs. Beaulieu had earlier slowed her vehicle near a roadway exit on the right side of the highway. Mr. Beaulieu indicated this was not the proper turn and she then accelerated forward around a turn approximately one-

half kilometre from the Ultramar Gas Station. She noticed the Defendant's van approaching from the opposite direction. Both vehicles had their running daylights on. Mrs. Beaulieu stated she "sensed" the approaching vehicle was going to turn left into the Ultramar as the vehicle was slowing. She assumed the vehicle would wait for her to pass. She estimated her speed at approximately 75 kilometers per hour when the Defendant's vehicle turned directly in front of her. The vehicles collided just as Mrs. Beaulieu applied her brakes. Her evidence is that following impact the Defendant approached her vehicle crying, apologetic, stating she was sorry.

[14] Mr. Beaulieu also saw the Defendant's vehicle approaching as they rounded the turn. From his observation of the "body language" of the Defendant's vehicle he felt it was going to turn left into the Gas Station. Just when he mentioned this to Mrs. Beaulieu, the vehicle turned left into their lane. Mrs. Beaulieu applied her brakes as the vehicles collided. According to Mr. Beaulieu the Defendant approached after the collision and apologized stating "she did not see us".

[15] Wendy MacDonald was a witness to the accident. She resides in the Northwest Territories and was vacationing with her family in Prince Edward Island

at the time. She was travelling in a Van with her husband and children. Shortly before the accident they pulled into the parking lot at the Ultramar Station. She waited in the Van with the children while her husband went into the convenience store. She was facing the highway with the Van windows and doors open for air. She stated they were looking at the highway just watching the activity on the road. She saw the Van approach and "get ready for a left hand turn." She believed the Van ultimately stopped and had its signal light on. Ms. MacDonald observed the Plaintiffs' vehicle approaching from the west. It appeared to her the vehicle was continuing straight through on the highway when "the Van turned into the car". In her view, she did not believe the car had any time to avoid hitting the Van. She described the collision as a "T-bone" impact with the front of the car hitting the passenger side of the Van.

[16] The Defendant, Ms. Gyuraszi, stated the family was heading for the Diner located at the Ultramar Station for lunch following church. As she approached the Station she did not see any vehicle coming towards her. She slowed her vehicle, engaged her left signal and turned left. As she was turning her mother yelled "Kim" followed by the impact. According to Ms. Gyuraszi her vehicle was at a 90 degree angle at the time of impact. She stated the front wheels of her Van were over the

white line bordering the parking lot. Ms. Gyuraszi acknowledged she did not see Plaintiffs' vehicle before the impact and that it was possible she did not see it earlier as it was coming out of the turn. She agreed her Van was not stopped prior to her left turn.

[17] Based on the evidence, I find the Defendant was solely responsible for the accident. She was required to yield the right-of-way to the Plaintiffs' approaching vehicle. Her obligation was to not turn from her direct course unless the move could be made safely. Although the Plaintiffs' vehicle may not have been initially visible as the Defendant approached the Ultramar Station, there was ample distance between the turn and her vehicle that would enable her to see the Plaintiffs' approaching vehicle prior to making her left hand turn. As she did not see the Plaintiffs' vehicle prior to impact, I can only conclude that she was not maintaining a proper lookout at the time she made the left hand turn.

[18] The Plaintiffs' vehicle was travelling within the speed limit. Mrs. Beaulieu assumed the Defendant's vehicle would wait until she had passed, as she had no reason to assume otherwise. There is no evidence of any conduct on Mrs. Beaulieu's behalf that would have contributed to the accident.

GENERAL DAMAGES

[19] The Defendant claims damages for both the Plaintiffs' injuries are limited to $2,500.00 each as they fall within the 'minor injury" provisions of *P.E.I. Insurance Act*.

[20] The Plaintiffs claim their damages exceed the "CAP" limit as their injuries resulted in serious impairment of the nature that substantially interfered with their occupations. The Plaintiffs claimed that the general damages for both Mr. and Mrs. Beaulieu to be in the $45,000.00 - $50,000.00 range.

[21] There has been no judicial consideration of the "CAP" provisions in P.E.I. or Nova Scotia. There are a number of cases currently before this Court that challenge the constitutional validity of the "CAP" provisions in the *Insurance Act* of Nova Scotia. These cases are pending with one of them designated to be heard as a test case. This has not been raised as an issue in the present case.

[22] Effective April 1, 2004, the *Insurance Act*, R.S. P.E.I. 1988 c. I-4 stipulated a $2,500.00 limit for general damages for "minor personal injuries". Section 254.1(2) of the *Act* provides:

> 254.1(2) In an action for damages arising out of an accident, the amount recoverable as damages for the non-pecuniary loss of the plaintiff for minor personal injuries shall not exceed $2,500.00.

[23] The *Act* defines "minor personal injuries" as follows:

> 254.1(1)(b) 'minor personal injury' means an injury that does not result in
>
> (I) permanent serious disfigurement, or
>
> (ii) permanent serious impairment of an important bodily function caused by continuing injury that is physical in nature;

[24] "Serious impairment" is defined in Section 254.1(1)(d) of the *Act* as follows:

> 254.1(1)(d) 'serious impairment' means an impairment that causes substantial interference with a person's ability to perform his or her usual daily activities or his or her regular employment.

[25] The P.E.I. legislation is similar to legislation in Nova Scotia and New Brunswick in that all have $2,500.00 limits on recovery for non-pecuniary losses

that are tied to the definition of minor injury. The definitions for “minor personal injury” and “serious impairment” in the P.E.I. *Act* are almost identical to the definition of those terms found in the Injury Regulations under the *New Brunswick Insurance Act.* The New Brunswick Injury Regulations state at s. 4:

> For the purposes of subsection 265.21(3) of the *Act*, the total amount recoverable as damages for the non-pecuniary loss of the Plaintiff for all minor personal injuries suffered by the Plaintiff as a result of an accident shall not exceed $2500.00.

Further at s. 2(2)

> In this regulation and for the purposes of s. 265.21 of the *Act* ‘minor personal injury’ means an injury that does not result in
>
> (a) permanent serious disfigurement, or
>
> (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature; (‘blessures personnelles mineures’);
>
> ‘Serious impairment’ means an impairment that causes substantial interference with a person’s ability to perform their usual daily activities or their regular employment (‘dèficience grave’)

[26] Similar legislation had been enacted by the Province of Ontario years before Prince Edward Island, Nova Scotia and New Brunswick. As a result, it has been judicially considered by the Courts in that Province. The leading case is *Lento v. Castaldo* (1993), 15 O.R. (3d) 129 (Ont. C.A.) (often referred to as the Meyer case). There has also been judicial consideration of the "CAP" provision in the Province of New Brunswick. *Fraser v. Haines*, 2007 NBQB 285, *Rossignol v. Rubidge*, 2007 NBQB 89 and *LeBlanc v. Bulmer*, 2007 NBCA 35. In *Rossignol* the Court reviewed and applied *Lento* at paragraphs 45 - 53:

> 45 In the important Ontario Court of Appeal judgment in *Lento v. Castaldo* (1993), 110 D,L.R. (4th) 354 (Ont. C.A.) the Court decided three appeals together. The definition of the type of injury that creates an exception to tort actions arising from the use or operation of a motor vehicle was analyzed. It is evident the substantive components of Section 266(1) of the Ontario *Insurance Act* are identical to Section 2(2)(b) of New Brunswick Regulation 2003-20 under the *Insurance Act*, i.e. permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.
>
> 46 The Ontario legislation, however, creates a general immunity protecting , *inter alia*, the negligent driver **unless** ... the injured person ... **has sustained** ... permanent serious impairment etc. The New Brunswick legislation approaches it somewhat differently by saying there is a cap for a 'minor personal injury' and that means an injury **that does not result in** ... permanent serious impairment, etc. (Emphasis added.) In effect, then, in Ontario there is *immunity from suit except ... where there is ... permanent serious impairment, etc.* while in New Brunswick injuries are *minor personal injuries unless there is ... permanent serious impairment, etc.* Additionally, the New Brunswick Regulation then goes on to define "serious impairment".

47 Apart from “permanent serious disfigurement” that is not an issue here, a New Brunswick litigant can only recover $2500 for non-pecuniary general damages for a bodily injury (apart from a ‘soft tissue injury’,) unless it can be established the injury result in:

* Permanent serious impairment

* Of an important bodily function

* Caused by continuing injury

* That is physical in nature

48 These four elements must be present and, of course, ‘serious impairment’ is defined.

49 In *Lento* the Court said the legislation is remedial and the words should be interpreted in their ordinary and natural sense. They could not find any ambiguity in the language of Section 266. It was suggested the proper approach is for a deciding court to answer the following questions sequentially:

1. Has the injured person sustained permanent impairment of a bodily function caused by continuing injury which is physical in nature?

2. If the answer to question No. 1 is yes, is the bodily function, which is permanently impaired, an important one?

3. If the answer to question No, 2 is yes, is the impairment of the important bodily function serious?

50 In analyzing the first question and turning to the objective/subjective complaints conundrum the Ontario Court of Appeal wrote:

> ... Some injuries which are physical in nature can be diagnosed objectively, some can be diagnosed only upon the basis of a patient's subjective complaints and others are diagnosed on the basis of both objective observations and the patient's subjective complaints. The courts have traditionally weighed and assessed such evidence and will continue to do so when deciding whether an injured person has sustained permanent impairment of a bodily function caused by a continuing injury which is physical in nature.

51 Turning to the second question, the Court said the question whether a permanently impaired bodily function is 'important' depends on the particular individual. The Court wrote:

> Because of the infinite variety of the human condition and of human activities, it is impossible for the court to lay down any general guidelines to the application of 'important bodily function' to all injured persons. Each case will essentially be one of fact. What must be considered is the injured person as a whole and the effect which the bodily function involved has upon that person's way of life in the broadest sense of that expression. If the bodily function is important to the particular injured person, then the bodily function in question is an important one within the meaning of that expression contained in s. 266(1)(b).
>
> It would be inappropriate for us to attempt to define the word 'important' because it is a word which is commonly used. The definitions of the word found in dictionaries are largely composed of synonyms. We do not think that it is appropriate for us to select one or more of those synonyms and hold that they express the intent of the legislature when it chose to use the word 'important'. If the legislature had intended to use a synonym for the word 'important' to express its legislative intention it would have done so.
>
> The issue which the courts will have to determine in each case is whether the bodily function which has been impaired is an important one to the

> particular injured person. It is an issue of fact to be determined according to the evidence in each case.

52 As to the third question the Court said, again, the seriousness of an injury is individual dependent:

> ... It is irrelevant to the determination of whether the particular injured person has sustained a serious impairment that the impairment would not be serious to someone else, to many others, or indeed to all other persons. The question is whether it is serious to the particular injured person who is before the court.

53 Mr. Meyer, *(Lento v. Castaldo, supra)* suffered an open compound fracture of the right patella requiring three operations. He was hospitalized for 12 days. He used crutches for 2 weeks then a cane for 5 ½ months. He took physiotherapy for the same period. Reviewing the effect of these injuries on Mr. Meyer, given his lifestyle, the Ontario Court of Appeal said:

> Browne J. found that all of the elements of s. 266(1)(b) except that of seriousness were satisfied. He found that there was permanent impairment of important bodily functions. He identified the important bodily functions which were impaired to be walking, weight-bearing, squatting and kneeling. He found that their impairment was caused by continuing injury which was physical in nature. Those findings are well founded in the evidence and we accept them.
>
> It is necessary therefore to consider whether the permanent impairment of those important bodily functions is serious to Mr. Meyer. When the legislature qualified 'permanent impairment' by the word 'serious' it obviously intended that injured persons must endure some permanent impairment without being able to sue. It is only if that impairment is serious impairment to that injured person that the right to sue continues to exist.
>
> While he does have continuing pain and discomfort causing impairment of his ability to walk, bear weight, squat and kneel, that impairment does not

> have such a detrimental impact upon Mr. Meyer's way of life that we can consider it a serious impairment for him. It follows that we think the result reached by Browne J. was the correct one. It is our view that the judgment dismissing his claim must be sustained.

[27] The New Brunswick Court of Appeal determined that "minor personal injury" includes a soft tissue injury where the severity does not surpass the specified threshold. *LeBlanc v. Bulmer, (supra).*

Mr. Beaulieu

[28] Mr. Beaulieu is now 55 years of age. Immediately following the accident, he forced open the driver's door and assisted Mrs. Beaulieu out of the vehicle. The front end of the vehicle suffered substantial damage and was a total loss. Some time later when the ambulance arrived, Mr. Beaulieu sat in the passenger's seat and his wife was placed in the rear on a "backboard". At the hospital in Souri, Mr. Beaulieu registered his wife as an outpatient, but did not register himself. Mr. Beaulieu stated that while at the hospital he was upset, worrying about his wife and crying. He felt pain in his neck, right arm and lower back. He was told to lie down. Upon leaving the hospital later that afternoon both Mr. & Mrs. Beaulieu received

prescriptions for pain and ointment. Two days following the accident, the Plaintiffs were able to rent a vehicle and return home via the link.

[29] Mr. Beaulieu sought medical treatment from Dr. Gold, family practitioner. She diagnosed soft tissue injuries and recommended chiropractic treatment which Mr. Beaulieu obtained and continues to receive at the time of trial.

[30] Mr. Beaulieu stated that prior to the accident he had a very active lifestyle. The family owned a jet-ski, they often hiked trails and played tennis. He was an active gardener and enjoyed landscaping the grounds where the family lived from time to time. He conducted his own maintenance and home repairs. Both he and his wife travelled on vacations and enjoyed horseback riding.

[31] Prior to the accident Mr. Beaulieu was employed as an Access Facilitator with the Department of Community Services on a contract basis. He has not returned to this job following the accident. He described his duties in facilitating access visits between children and parents. They involve picking up the child or children at their foster home, transporting them to the access location, observing and making notes during the access visit and returning children to the foster home

following the visit. Most visits occurred within HRM with an occasional trip to another area of the Province. Mr. Beaulieu stated there are times when children will become difficult and parents hostile or angry. Physical requirements may include carrying infants from time to time as well as their belongings and his briefcase.

[32] Mr. Beaulieu indicated he is not able to resume his normal activities for any period of time because of pain. He is unable to sit for long periods of time as it becomes painful in his left hip causing him to limp “at first”. He is unable to sit at his computer for any length of time. He stated that his Crohn’s disease returned after learning of video surveillance and preparing for discovery which caused him to relive the accident.

[33] Mr. Beaulieu acknowledged that his neck and lower back are better but not resolved. The pain in his right arm has cleared up and his headaches are reduced. He acknowledged continuing with the chiropractic treatment despite Dr. Loane’s recommendation to discontinue. His family recently purchased a three level home on a large lot. He conducts daily chores around the home, avoiding any heavy work.

[34] Mr. & Mrs. Beaulieu both drive their current vehicle. They travelled to the east end of P.E.I. via the link to revisit the accident scene the following year. They have taken at least three trips to New Brunswick to visit family. They babysit their two grandchildren on occasion, including sleep-overs.

[35] Mr. Beaulieu has an pre-accident medical history which includes Chron's disease, Tinnitus, eye related headaches, muscular problems including back pain, fatigue, confusion and problems with concentration. He has also suffered from long standing severe anxiety and depression. In September 2004, Mr. Beaulieu attempted suicide. He was found unconscious some one or two days later and hospitalized. As a result he suffered death of tissue in his left buttock area diagnosed as Rhabdomyolysis. Following this incident he reduced his contract work load with the Department of Community Services.

Mrs. Beaulieu

[36] Mrs. Beaulieu is 52 years of age. She also was employed as an access facilitator prior to the accident and has not returned to work. She was aware she injured her neck following the impact although the pain did not fully set in for three

days, followed by pain in her lower back and, within a week, pain all over including headaches. She also was treated by Dr. Gold for soft tissue injury and continued with chiropractic treatment.

[37] Her current complaints mainly involve the left side of her neck and shoulder. This area “goes dead” at night when sleeping on that side. It is painful to maintain her left arm in an upward position as she will experience pain radiating down her left arm. It is painful for her to reach out to the steering wheel and drive for long periods of time. She is right handed, however, prior to the accident she would use her left arm when required to carry a child during access visits. Mrs. Beaulieu stated she loved her job, but was unable to return to work as she would have problems in handling children, if called upon, with her current left shoulder problems. She is on the waiting list for an MRI. She stated her medical providers are at a loss to explain why her left shoulder problems have not resolved.

[38] During the first six months following the accident one of their daughters looked after all household duties, including cleaning and preparing meals. Mrs. Beaulieu is now able to perform light housework and prepare meals. Her daughter

and boyfriend still assist with chores that require heavy lifting such as water jugs or heavy garbage.

[39] The Beaulieus have four children, the youngest of which is 21 years of age attending university in HRM. He is also a reservist with the Canadian Forces and has served six months in Afghanistan. He lives at home when he is not training in Gagetown or participating in field trips. Their son helps around the house with heavy lifting when he is home.

[40] Prior to the accident the Beaulieus hired a housekeeper once every two weeks.

[41] Currently Mrs. Beaulieu receives physiotherapy treatments once every two weeks and chiropractic treatment two times a week. She also attends aquasize classes two or three times a month.

[42] Mrs. Beaulieu had a pre-existing condition including degenerative neck and shoulder as well as anxiety and depression. She had a culminating psychological breakdown, which she described as a “meltdown” prior to the motor vehicle

accident. On July 27, 2005, she was in Emergency Admission to the QEII Hospital. She explained that she was having panic attacks and difficulty sleeping. She and her husband were having marital difficulties and she was worried that he may attempt suicide again as his personality had changed. She also indicated she contemplated suicide. The stress was affecting her work. Following her release from hospital, days before the accident, she was prescribed Adivan and was referred to Mental Health Services for counselling.

[43] Mrs. Beaulieu agreed she is not totally disabled at this time, but feels she is unable to resume her job. She acknowledged the biggest part of her job is transporting and supervising. Both she and her husband met with a representative with the Department of Community Services in May 2006 to inquire whether there were light duties available within the Department. They were advised that the Department does not have a duty to accommodate them as they were contract employees.

[44] Mrs. Beaulieau and her husband go shopping, go to the movies and take walks. They are also involved in church activities. Mrs. Beaulieu acknowledged

Dr. Loane recommended discontinuance of passive treatments such as chiropractic and his advice to participate in a physical exercise program.

MEDICAL EVIDENCE

Dr. Gold

[45] Dr. Gold practices family medicine. She received a referral from Mr. Beaulieu's family physician for treatment of depression as Mr. Beaulieu was experiencing side effects from prescription drugs. Dr. Gold was consulted for herbal treatment. She began seeing Mr. Beaulieu in February 2005. She suggested he try St. John's Wart as an herbal medicine. During a visit in April 2005 Mr. Beaulieu complained of headaches, pain in testicles and pain in the right arm and shoulder. Dr. Gold recommended vitamins and acupuncture.

[46] Dr. Gold assumed Mr. Beaulieu would return to his family doctor. However, he came to her for treatment following the accident. She prepared a medical report dated December 17, 2006 containing a post-accident diagnosis of whiplash associated disorder, post traumatic stress disorder, and driving anxiety. An updated

report dated January 24, 2008 contains a diagnosis of moderately severe soft tissue injuries to his neck (cervical), upper back (thoracic), low back (lumbar), and left leg. In Dr. Gold's opinion Mr. Beaulieu is still not able to return to work as an access supervisor.

[47] Dr. Gold saw Mrs. Beaulieu five times. She diagnosed soft tissue injuries to the neck (Grade II Whiplash), back and shoulder. Dr. Gold recommended chiropractic treatment, acupuncture and drugs. In a December 2006 letter to the insurer, she added the diagnosis of "complex" post traumatic stress disorder. She explained "complex" to mean a pre-existing condition. Although not mentioned in the report, Dr. Gold testified she was aware of Mrs. Beaulieu's mental breakdown and Emergency Admission to the QEII Hospital . As with Mr. Beaulieau, her January 2008 report stated that Mrs. Beaulieu was still unable to return to her job as an access supervisor.

[48] Dr. Gold acknowledged she did not have a formal job description for an access facilitator and relied upon the information provided by Mr. & Mrs. Beaulieu.

[49] Dr. Gold was of the view that both Mr. & Mrs. Beaulieu were able to do part-time light work.

Dr. Milroy

[50] Dr. Milroy is the chiropractor providing treatment to Mr. Beaulieu. His initial diagnosis contained in a report dated August 2005 was whiplash Grade II with excellent prognosis. This was repeated in a report in November 2005 describing a moderate injury with expected recovery in one to two years. In an April 2006 report he diagnosed whiplash Grade II; post-concussion syndrome characterized by headaches, difficulty concentrating and memory loss; lumbosacral sprain with recurrent left anterior thigh radiation. This diagnosis is repeated in his final report of February 4, 2008 indicating the entire diagnosis was attributable to the motor vehicle accident.

[51] In preparation of his report, Dr. Milroy had Mr. Beaulieu complete a neck pain and lower back pain questionnaire, when analyzed, indicated “severe disability” in both areas. In Dr. Milroy’s opinion, Mr. Beaulieu could not return to work as an access facilitator as it required prolonged sitting which would cause

"severe neck and lower back pain". In addition, "his post concussion syndrome compromised his ability to concentrate and make memory based decisions". Dr. Milroy saw no potential for other work.

[52] Dr. Milroy acknowledged he did not review any medical records prior to his reports including reports prepared by Dr. Loane or Dr. Gross, specialists. Dr. Milroy obtained a history directly from Mr. & Mrs. Beaulieu. He did not have a job description for review. He acknowledged he was unaware of pre-existing muscle necrosis, myofascial pain or severe psychiatric issues regarding Mr. Beaulieu. In light of this information, he stated his diagnosis of post concussion syndrome is now inclusive.

[53] Dr. Milroy initially diagnosed Mrs. Beaulieu in August 2005 with Whiplash Grade II, TMJ syndrome and strained-sprain to the lumbosacral junction. Prognosis for recovery was excellent. In a November 2005 report he changed the Whiplash diagnosis to Grade III based on Mrs. Beaulieu's complaints about her left arm symptoms.

[54] Dr. Milroy's February 2008 report also analyzed the neck pain and lower back pain questionnaire completed by Mrs. Beaulieu. She scored a 46% rating of severe disability from neck pain and a 38% rating of moderate disability from low back pain. As with Mr. Beaulieu, Dr. Milroy concluded Mrs. Beaulieu could not return to her previous work and he saw no potential for other work.

Dr. Loane

[55] Dr. Loane was qualified as a physiatrist capable of giving opinion evidence on physical medicine and rehabilitation. He has testified before this Court on previous occasions. Medical and functional evaluation reports were prepared on May 2006 and July 2007 at the request of the Plaintiffs' Section B insurers. An updated medical report was prepared for Plaintiffs' counsel in January 2008. Dr. Loane is associated with M.L.H. Services in preparation of these types of reports. He works with Mr. Tom Stanley, Physiotherapist, and Dr. Richard MacGillivrary, Psychologist. Dr. Loane performs the medical evaluation and prepares the conclusions contained in the report following review of tests and reports completed by his other two associates.

[56] He prepared a report in May 2006 regarding Mr. Beaulieu. Diagnosis was cervical thoracic and lumbar sprain injuries with cervical sprain category WAD II; ongoing post traumatic stress symptoms. No medical restrictions were identified at that time. It was determined that Mr. Beaulieu's perception of his pain and disability were higher than normally would be anticipated based on investigations, physical findings and injury recovery time frames. Dr. MacGillivray's psychological review indicated elevated stress anxiety scores, but not to the extent that they should interfere with his recovery.

[57] Functional performance evaluation completed by Mr. Stanley determined work activities within a sedentary to light work load range up to a six hour work day tolerance.

[58] The report concluded that Mr. Beaulieu continued to have symptom levels and market functional restrictions but should be treatable with ongoing exercise programs. In terms of his job as an access facilitator the report stated:

> He described a number of physical aspects to his job that he has difficulty doing. It is unclear, however, from his history, how frequently he has to physically restraint or handle children. There are no medical restrictions for him doing so,

> but he may require further strengthening and reconditioning before he is able to confidently and comfortably do this.

[59] A further report prepared July 2007 indicated that Mr. Beaulieu continued to have restricted cervical range of motion, although improved from the prior year. Functional abilities and work activities remain restricted to a light work load level up to a six hour work day tolerance. Further observations:

> General health issues are impacting on Mr. Beaulieu's overall disability. His Chron's disease may restrict his ability to work on a full time basis at the present time. This diagnosis is independent of his motor vehicle accident, although it is possible that the stresses associated with the accident and subsequent events have impacted on the Chron's activity ...
>
> In general, it would appear that Mr. Beaulieu would be capable of participating in a work re-entry program at the present time although the active Chron's and the stress related components of his previous jobs may be factors in his inability to work in his previous job at the present time. ...
>
> There have been some improvements in Mr. Beaulieu's overall condition but the appearance of his Chron's disease, his symptoms of unexplained tennitus and dizziness and his ongoing stress reports and post traumatic stress symptoms are negative predictive factors for return to employment in the near future. From a physical point of view, and, from functional performance testing, he would be capable of initiating return to work program with light par-time work. However, barriers may include his medical condition (Chron's disease and post traumatic stress symptomatology.

[60] At the time of preparation of this report Mr. Beaulieu reported he had two recent “near accidents” that caused a severe flare up of his post traumatic stress symptoms.

[61] Dr. Loane acknowledged that he did not have complete medical history data regarding Mr. Beaulieu prior to preparing his two reports. Upon receipt of this information from Mr. Beaulieu’s counsel, he prepared a report in January of 2008 and noted the following:

> I have reviewed the documents which are listed in your letter to me of January 14, 2008. The only information that is relevant to my opinions relate to Mr. Beaulieu’s past psychiatric history. When questioned about past mood or psychiatric issues, Mr. Beaulieu provided a rather minimal history of pre-accident depression but did not elaborate on the duration and severity. From review of the records, it appears that he did have a struggle with long standing depression which culminated in a suicide attempt in September 2004. He was gravely ill with this suicide attempt and had to be treated in intensive care. He had a condition known as Rhabdomyolysis, which means that he had muscle damage from either medications or anoxia. He had an area of focal muscle nacrosis in the right gluteal muscle of the hip from prolonged pressure when he was unconscious. As a result of that suicide attempt, he was referred to Dr. Elizabeth Gold for further management early in 2005. He appears to have been doing well with respect to depression but did experience any symptoms that Dr. Gold documented in the spring of 2005. Her office note of April 18, 2005 is hand written and a bit difficult to decipher on the photocopy received but it does appear that Mr. Beaulieu, at that time, was experiencing some generalized muscle pain with Dr. Gold diagnosed as myofascial. The right shoulder and arm and right hip area seemed to be areas of complaint at that time. It is unclear whether those muscular complaints related to Mr. Beaulieu’s earlier muscle damage following his suicide attempt in the fall of 2004.

> When taking Mr. Beaulieu's history, he did not offer information on questioning regarding this rather serious hospitalization. His responses to questioning on prior psychiatric history were rather defensive and it appears that other practitioners may also have had some difficulty interpreting the degree of his mental and emotional upset. An initial assessment from Mr. Farley MacLeod, Psychologist, dated October 23, 2006, describes Mr. Beaulieu's anxieties associated with driving. However, on this brief initial psychological assessment, there is no mention of any past history although this may have been present on Mr. MacLeod's chart notes, which were not available for review.
>
> The screening psychological tests which were done as part of the MLH Assessment, showed only mild to moderate elevations in emotional distress symptoms which seem to be somewhat under reported in comparison to Mr. Beaulieu's history of post accident anxiety symptoms.
>
> In any event, the relationship between Mr. Beaulieu's psychiatric history and his post accident status requires further comment by a psychologist or psychiatrist. It does appear that some of Mr. Beaulieu's depression and anxiety symptoms are pre-accident but may have been exacerbated by the motor vehicle accident in July 2005. As mentioned in the MLH report, individuals who experience depression, anxiety or high levels of emotional distress may be more prone to developing prolonged recovery from accidents and may be at higher risk of developing chronic pain. I believe this is probably the case with Mr. Beaulieu but, again, the relevance of Mr. Beaulieu's psychiatric history to his prevent**[sic]** condition is best discussed by a specialist with expertise in psychology or psychiatry.
>
> The other opinions in the MLH report do not need to be altered. However, it is important to note that there was a pre-accident history of muscle damage following Mr. Beaulieu's suicide attempt and this could pre-dispose to subsequent muscle pain. He also had pre-accident restless leg syndrome and his current symptoms of restless legs impacting on sleep cannot therefore, be attributed to the motor vehicle accident. The cervical and lumbar sprains and subsequent symptoms, however, can be directly attributed to the motor vehicle accident.

[62] In his May 2006 report regarding Mrs. Beaulieu, Dr. Loane diagnosed soft tissue injury WAD II; post traumatic stress symptoms-resolving; mild-moderate

elevation in anxiety; depression symptoms; possible left AC joint sprain; left lumbar sprain-quadratus lumborum, possible left L5-S1 thoracic sprain; and possible hypo-thyroidism. He states:

> Mrs. Beaulieu has minor impairments of cervical and lumbar range of motion which would not be considered functionally restrictive. ...
>
> No definite medial restrictions for work or normal daily activities have been identified. Her current restrictions appear to be based on pain rather than structural impairment or pathology, although further investigation has been recommended. ...
>
> Mrs. Beaulieu's perception of her functional restrictions and disabilities is higher than one would anticipate based on her physical findings and injuries. Her pain levels are higher than one would expect on the basis of her findings. It is possible that issues of post traumatic stress are affecting her perception of pains and disabilities at this point.

[63] A functional performance evaluation was completed and it was determined work activities with an estimate four hour work day tolerance of a light work load level and below. Her functional deficit was described as significant reduction in strength in her left elbow flexors compared to the right side. Limiting factors identified were neck/left shoulder and arm pain; lower back pain. Dr. Loane determined that Mrs. Beaulieu would be unable to return to work at that time based on her self reported work description.

[64] Dr. Loane determined at that time that her disability was anticipated to be temporary and should improve over the following year with excellent prognosis for complete resolution over the next year.

[65] In his July 2007 report, Dr. Loane determined that Mrs. Beaulieu's spinal range impairments had improved and that she had minor range of motion impairments in her left shoulder. He indicated there may continue to be psychological impairments that may require further assessment. He states:

> Mrs. Beaulieu does have clinical findings of a left rotator cuff impingement ... Mrs. Beaulieu's overall pain levels and perceptions of disability have improved, particularly with respect to neck and back pain. She still reports, however, significant ongoing pain levels and restrictions from many activities of daily living, including her previous work duties. Her perceptions of restriction from her left shoulder are likely proportional to the degree of rotator cuff impingement that she experiences ...

[66] Functional abilities were determined as activities within a light work load level up to an estimated five to six hour work day tolerance with limitations for lifting or reaching above shoulder level.

[67] Dr. Loane was unable to comment on Mrs. Beaulieu's demonstrated abilities as they related to her pre-accident work demands as he was not provided with any specific job physical demands information including job site analysis. He states:

> It would be appropriate to start vocational counselling interventions at any time. Although the examiner believes that some improvement will be seen in her left shoulder pain with investigation and treatment, Mrs. Beaulieu's impression is that she will not return to her previous job and this is a negative predictive factor for return to work in that job. ....
>
> There are some concerns about the development of a chronic pain disorder as, in spite of improvement, she still remains disabled, two years post accident and does have factors that can contribute to chronic pain. A more detailed psychological pain evaluation may be required to sort out the etiology of her current pain and psychological complaints.

[68] As with Mr. Beaulieu, Dr. Loane prepared a January 2008 report after having received medical information that he did not have when preparing previous reports. He states:

> It was my impression that her post traumatic stress symptomology related primarily to the motor vehicle accident. However, after reviewing the documents, it seems that some post traumatic stress symptoms may pre-date the accident. ...
>
> The MLH reports, therefore, do not need to be altered as issues of emotional distress where identified in those reports. However, it does not appear that the motor vehicle accident of July 31, 2005 is not the sole contributing factor to Mrs. Beaulieu's emotional distress due to the pre-accident history that is contained in the reviewed records.

[69] Dr. Loane acknowledged under cross-examination that the first time he examined Mrs. Beaulieu he found tenderness in her left shoulder. The second examination show signs of rotator cuff which appeared to be a new problem. X-rays showed degeneration in the AC joint left arm. Dr. Loane testified it was possible that the rotator problems were not related to the accident. He further acknowledged that medical restrictions regarding elevating her left arm to push and pull were temporary restrictions.

Dr. Gross

[70] Dr. Gross is an orthopaedic surgeon and was qualified to give opinion evidence in orthopaedics including assessments, diagnosis and treatment of musculoskeletal injuries. He was retained by the Defendant to perform an independent medical evaluation of the Plaintiffs. His practice is to refrain from reviewing medical documentation and records until he obtains a history from the patient and performs a physical evaluation. In addition to a physical examination Dr. Gross reviewed significant documentation including x-rays, photographs of the accident site and vehicle damage, the medical and functional evaluation reports

prepared by Dr. Loane, psychological reports, a copy of the QEII hospital file, and the video surveillance. The report dated October 2007 contains the following diagnosis regarding Mr. Beaulieu:

1. Exacerbation of pre-existing cervical degenerative disc disease.

2. Soft tissue injuries lumbar spine.

3. Crohn's disease.

4. Post-traumatic stress disorder.

5. Previous injury right buttock with muscle necrosis and fibrosis.

6. Tinnitus and hearing loss

[71] Dr. Gross concludes:

> Mr. Beaulieu was involved in a motor vehicle accident that has been well described. There was a significant amount of damage done to the car.
>
> Mr. Beaulieu appears to have not suffered significant musculosketal injuries in this accident.
>
> His initial complaints resolved quickly with respect to his right arm, right shoulder, and left hip. He does get episodes of low back pain, and back and leg pain that exist together.
>
> Mr. Beaulieu examines very well. There was no significant loss or range of motion of his cervical spine or lumbar spine noted on my examination. He had completely normal muscle strength in his upper limbs and lower limbs. There was no evidence of restriction of range of motion of his hips.
>
> Mr. Beaulieu has a significant past medical history of depression. His suicide attempt resulted in him lying unconscious for approximately 24 hours. It was

> noted that he had necrosis of the right buttock and his blood tests would indicate that he had severe damage to the muscle and this has now healed. It is highly likely there is scarring in the area, and this is responsible for some of his right hip complaints.
>
> There was no evidence, on my physical examination, that Mr. Beaulieu has any significant musculoskeletal impairment that would prevent him from returning to his previous work. There was no evidence in his previous work that he had to do a lot of work that involved overhead work or pronounced head and neck motion.
>
> Mr. Beaulieu has significant driving anxiety and post-traumatic stress disorder. It should be noted that he had episodes of nightmares and problems relating to his past, including what sounds like stress from previous abuse when he was living in New Brunswick. In other words, Mr. Beaulieu predisposed to suffering stress about such a motor vehicle accident. The psychological assessments would suggest that these do not require treatment at the present time.
>
> I therefore can suggest that Mr. Beaulieu can be returning to the work force. I have not been supplied with a formal job description related to his work as an intervenor, but it would suggest to me that he could carry bags as long as they are not particularly heavy and that he could drive the appropriate stops for stretching.
>
> Mr. Beaulieu's perceived pain perceptions are higher than reality, and this is well noted in his assessments by Doctor Loane. This is an area where appropriate education could help and an exercise program would allow him to get back to his ususal enjoyment of walking and hiking. There were no musculoskeletal findings that would suggest that he is physically impaired from performing such duties and an exercise program may prepare him better for such activities.
>
> His surveillance tape suggests that he is able to do some degree of yard work and I see no reason why he could not improve and continue to do more in the way of yard work.

[72] Dr. Gross stated that at the time of his examination in July 2007, Mrs. Beaulieu described her current symptoms as occasional lower back pain and problems with her left shoulder. She provided a description of her duties as an

access facilitator. Following examination and a review of all medical records and information, the report contains the following diagnosis:

1. Pre-existing anxiety disorder
2. Soft tissue injuries to the cervical spine
3. Soft tissue injuries to the left shoulder
4. Soft tissue injuries to the lumbar spine

[73] He states:

> Ms. Beaulieu was somewhat overweight, approximately 30 to 40 pounds.
>
> When she walked she had stiffness in her left hip. She states that this was related to the recent fall. She was able to heel and toe walk. She was able to squat twice. She hopped on her right leg five times, but could not hop on the left leg because of the recent injury.
>
> She exhibited a full range of motion of the cervical spine.
>
> In her upper limbs she had a full range of motion of both shoulders. She had some complaints of stiffness in the left shoulder but had normal resisted abduction, no crepitus, no painful arc, and no pain on standard testing to stress the rotator cuff in all positions.
>
> Her reflexes and muscle strength were normal and equal in the upper limbs. There was no sensory loss determined in the fingers, hands and limbs.

Her cardiovascular exam was normal.

Respiratory examination revealed a slight respiratory wheeze.

Abdominal examination revealed that she was overweight.

Lumbar spine examination revealed that she was able to flex to touch her toes and had a normal extension rhythm.

She had a full range of motion of her hips and knees. She had no pain around her left hip. She had normal pulses distally in her lower limbs. Her neurological examination was entirely normal.

REVIEW OF X-RAYS:

X-RAYS taken on May 31, 2006 - Views of the left and right AC joints are normal and mild osteoarthritic changes.

Views of the left shoulder are normal.

Views of the cervical spine reveal minimal degenerative disc disease at C5/6 and C6/7.

...

Ms. Beaulieu was involved in a significant motor vehicle accident. She received soft tissue injuries, and based on the most recent physical examination conducted by myself, there is no evidence of significant musculoskeletal impairment. Indeed, all tests for rotator cuff symptomatology were negative on my examination. Doctor Loane's examination suggested very slight restriction of range of motion.

> There is no evidence of any significant loss of range of motion of the cervical spine or the lumbar spine for Ms. Beaulieu.
>
> Ms. Beaulieu has evidence of pre-existing anxiety disorders, and it is highly likely that these are resulting in a higher perceived perception of disability than is found and supported by her physical exam.
>
> I would support Doctor Loane's suggestion that Ms. Beaulieu get involved in an exercise regime. I find no evidence to suggest that she could not return to a higher degree of physical exercise and a higher degree of physical functioning. This regime would be far better than the passive treatments that she is now getting, which are not designed to treat chronic conditions.
>
> I believe that Ms. Beaulieu has not suffered any significant degree of physical impediment and she should be able to return to work as outlined and her musculoskeletal strength improves, she will be able to carry the necessary bags and equipment for her job.

SURVEILLANCE

[74] Two surveillance tapes of the Plaintiffs were introduced as evidence by the Defendant. The first tape was taken in July 2006 approximately one year following the accident. This tape shows Mr. Beaulieu operating his vehicle near his home, backing the vehicle into the driveway, getting in and out of the vehicle without apparent difficulties. At one point he is observed in his back yard cleaning two rather large plastic dog kennels. Mr. Beaulieu is observed lifting and moving the

kennels, carrying a bucket of soapy water, washing, scrubbing and rinsing the kennels with a hose, he is frequently bending and at times is on his knees. Later that afternoon he is observed on his back deck on his knees. He appears to be unloading and re-packing a cooler. He lifts and carries the unit into the house. At trial, Mr. Beaulieu acknowledged he was able to perform this work without pain, but that he suffered pain later on.

[75] Mrs. Beaulieu was observed tidying up the kitchen and shaking a cleaning cloth on the deck. She explained that her grandchildren were visiting for a sleep-over and she would have given them breakfast that morning. Both Mr. & Mrs. Beaulieu reviewed this video prior to discovery examination which took place in November of 2006.

[76] The second video covered a period in October and November of 2007. In October, Mr. & Mrs. Beaulieu travelled to a park in Cole Harbour with family members for a walk in the park. Mr. Beaulieu shouldered a backpack and both he and Mrs. Beaulieu carried walking sticks. They entered the park at approximately 2:00 p.m. and exited around 4:00 p.m. Mr. Beaulieu stated they walked one to two kilometers.

[77] On November 21, Mr. Beaulieu was observed performing yard work at his home. He was operating a leaf blower with a bag attached. He performed general yard work, including bending and cutting up a cardboard box for recycling. The next day they both travelled on a road trip from Halifax to Truro and Masstown. Mr. Beaulieu began the drive and they switched drivers in Truro where Mr. Beaulieu was observed with a noticeable limp after getting out of the vehicle. Later in the day he is observed outside the vehicle with his dogs. At approximately 5:30 p.m. near darkness, the vehicle was observed pulling into a gas station. Mr. Beaulieu gets out of the driver's side, self-serves for gas and gets back into the driver's side of the vehicle without apparent difficulties.

GENERAL DAMAGES

[78] Under the P.E.I. legislation injuries suffered by the Plaintiffs in the motor vehicle accident are considered minor personal injuries unless (in this case) there is "permanent serious impairment of an important bodily function caused by a continuing injury that is physical in nature". Serious impairment requires a finding

of substantial interference with one's ability to perform his or her usual daily activities or regular employment.

[79] The phrase "minor personal injury" and the definition applied to that phrase appear irreconcilable on their face as noted by the Court of Appeal in *LeBlanc*, at paragraph 22:

> In *Rossignol v. Rubidge*, [2007] N.B.J. No. 60, 2007 NBQB 89 (N.B.Q.B.), Russell J. considered the meaning that should be attributed to the phrase "minor personal injury". His analysis led him to the conclusion that the injuries sustained by the plaintiff, while serious and temporarily disabling (see para. 38), were 'minor' within the meaning of s. 2(2) of the Regulation. In my view, it is clear that the phrase 'minor personal injury' has been defined in a manner that encompasses injuries that most people would consider 'serious', and it is just as sensible to conclude that the object of this terminological misuse of the adjective 'minor' is to extend the non-pecuniary damage cap far beyond the scope that accident victims and their representatives would have desired (see Judy Van Rhijn, 'No-fault non fun', in *Canadian Lawyer*, February 2007, at p. 41).

[80] Having considered the evidence I find that neither Plaintiff has suffered a permanent serious physical impairment as a result of injuries attributable to the motor vehicle accident. The injuries should be resolvable. Even if some permanent impairment existed, I am not satisfied on the evidence that there exists a "substantial" interference with either Plaintiffs daily activities or regular employment as of the trial date. In other words, the evidence does not demonstrate

on a balance of probabilities the injuries have incapacitated the Plaintiffs to the extent required to fall outside the definition of minor personal injury as contained in the legislation. The physical injuries suffered by both Plaintiffs have substantially improved since the accident. I accept the evidence of Dr. Loane and Dr. Gross that medical findings do not support the Plaintiff's complaints as to the extent of the physical limitations and degree of recovery.

[81] Having determined the injuries suffered by the Plaintiffs were minor personal injuries as defined by the *Insurance Act* of P.E.I., I am restricted to a maximum damage award of $2,500.00 for each Plaintiff which I will order. In my view these amounts would not fully compensate the Plaintiffs for pain and suffering absent this legislation.

LOSS OF FUTURE INCOME

[82] The evidence does not support a finding of loss of future earning capacity or income as a result of injuries received in the accident. The Plaintiffs suffered moderate soft tissue injuries both to cervical and lumbar regions as a result of the significant impact caused by the accident. These physical injuries, for the most

part, have resolved with some remaining residual pain and discomfort. However, both Plaintiffs are able to generally carry on their normal daily activities. Although unable to return to work following the accident, I am not satisfied on the evidence they are not able to resume their contract employment as access facilitators. Indeed, based on medical evidence, this employment could be resumed with appropriate adjustments. Their complaints at trial were generally restricted to perceived physical limitations. Their pre-existing psychological problems did not prevent them from working prior to the accident. Moreover, it appears there is flexibility in their jobs as contract workers as evidenced by Mr. Beaulieu's ability to select his work load following the 2004 depression episode.

[83] There is no evidence before me that their contract jobs as access facilitators are no longer available to them.

LOSS OF PAST INCOME

[84] The Defendant maintains that neither Plaintiff ought to receive any past loss of income compensation. As indicated I am satisfied the Plaintiffs were unable to return to work following the accident. Although not overly physical, their jobs

would not be classified as sedentary. Both Plaintiffs required time to regain their range of motion as well as strengthening and re-conditioning. Although both Plaintiffs were suffering from mental health issues prior to the accident, there was no evidence before me that they would not have continued with their jobs as access facilitators following their vacation in P.E.I. but for the accident. Certainly, Mr. Beaulieu continued to work following his depression episode in 2004.

[85] Prior to the trial, medical opinion expressed the physical ability of both Plaintiffs to return to sedentary light part-time employment. I find, however, that post traumatic symptomology affected their ability in this regard. Although both Plaintiffs had pre-existing anxiety and depression, I am satisfied the accident caused additional psychological trauma to both Plaintiffs that played a role in their recovery and inability to return to work. Accordingly, their claim for loss of past income is allowed.

[86] Based on the evidence submitted I find Mrs. Beaulieu's average monthly income to be $2,500.00 or $30,000.00 per year. Her loss of income for the 30 months to date of trial amounts to $75,000.00. From this amount must be deducted

weekly Section B benefits received from her insurer in the amount of $140.00 per week totalling $18,180.00. As a result I find her loss of income to be $56,820.00.

[87] Mr. Beaulieu's income amounted to $1,750.00 per month or $21,000.00 per year. I calculate his loss of income as $52,500.00 less Section B benefits of $18,180.00 for a total of $34,320.00.

COST OF FUTURE CARE AND VALUABLE SERVICES

[88] Both Plaintiffs have exhausted their $25,000.00 Section B cap for medical costs. The Plaintiffs produced reports on cost for future care and valuable services. The Defendant maintains that neither Plaintiff should be entitled to costs under this heading.

[89] Linda Stanley was qualified as a social worker capable of giving opinion evidence in relation to cost of future care and valuable services. She prepared a report regarding Mrs. Beaulieu dated September 17, 2007. Mr. Beaulieu's report was dated September 25, 2007.

[90] In preparation for Mrs. Beaulieu's report, Linda Stanley reviewed Dr. Loane's report dated May 2006; written response to a questionnaires completed by the chiropractor, physiotherapist and psychologist, all dated September of 2007. Pre-accident file material from Dr. Lee, the family physician, was also reviewed.

[91] Similar information was obtained in preparation of Mr. Beaulieu's report with the exception of physiotherapy.

[92] Ms. Stanley also obtained self reported profiles from Mr. & Mrs. Beaulieu regarding their limitations at the time. Dr. Loane's updated reports of July 2007 were not made available to her. Nor did she receive the report of Dr. Gross prior to trial. Ms. Stanley acknowledged that information contained in these reports could affect her conclusions.

[93] The report categorizes costs as follows:

Category 1 Projected Therapeutic Modalities

Category 2 Aids and Services for Independent Function

Category 3 Drug and Supply Needs

Category 4 Household Services

[94] Category 1 Future Costs for Mrs. Beaulieu include weekly chiropractic treatments and massage therapy as well as bi-weekly physiotherapy for the next year and chiropractic treatments and weekly massage therapy thereafter. The report also determined that Mrs. Beaulieu requires further 30 sessions of psychological intervention.

[95] Ms. Stanley determined that Mr. Beaulieu required weekly chiropractic treatment for the next year and treatments once every three weeks thereafter, indefinitely. Also psychological intervention over the next year.

[96] Further costs contained in Category 1 for both Mr. & Mrs. Beaulieu include vocational and counselling assessments as well as provision for a recreation therapist.

[97] I find the evidence does not support an award for future costs relating to passive treatments. At trial, both Mr. & Mrs. Beaulieu testified they wished to

continue the passive treatments including physiotherapy, chiropractic and massage, as it provided them with temporary relief. Dr. Loane, however, stated the Plaintiffs needed to discontinue these passive treatments and carry out active treatment through physical exercise. This was confirmed by Dr. Gross. Although Ms. Stanley included the costs in her report "for the courts to decide", she acknowledged that literature on the treatment of chronic pain does not generally support ongoing use of passive treatment.

[98] Based on the evidence, both Plaintiffs need to focus on active treatments that include physical exercise. Dr. Loane believes the physical exercise can be carried out by the Plaintiffs on their own. I find that an initial period with a personal trainer would benefit the Plaintiffs in establishing their own exercise program. Accordingly, I allow the projected costs of six sessions for each Plaintiff with a personal trainer at $45.00 per session. I also allow the cost of the aquasize program for both Mr. & Mrs. Beaulieu for one year at a cost of $400.00 each.

[99] Although both Plaintiffs experienced a significant degree of pre-accident anxiety and depression, I found that the motor vehicle accident contributed to post traumatic stress syndrome suffered by both Plaintiffs. They both continued to

experience anxiety and have psychological issues relating to their high pain perception requiring further counselling.

[100] Mr. Beaulieu has attended weekly sessions at a cost of $280.00 per session, with Mrs. Beaulieu attending bi-weekly sessions with her counsellor at a cost of $140.00 per session. I have determined that allowance should be made for six months psychological counselling for each Plaintiff. The cost attributed to Mr. Beaulieu's counselling is $6,720.00 and for Mrs. Beaulieu $1,680.00.

[101] As I have determined from the evidence that both Plaintiffs are able to return to their previous employment, there is no requirement for vocational assessment or counselling. There is no evidence to support the need for a recreation therapist.

[102] Category 2 costs deal with replacement aids such as obis forms, cervical pillows, orthopaedic chairs and footware, etc., for an expected lifetime expectancy.

These claims are not supported by the evidence. According to the medical evidence of Dr. Loane and Dr. Gross, the physical injuries suffered by the Plaintiffs are not permanent in nature. Although still symptomatic, their physical condition relating to the accident have improved and they are expected to resolve.

[103] Similarly there is no evidence to support the requirement for drug supply needs including herbal medicines for the life expectancy of both Plaintiffs as claimed in Category 3 costs.

[104] Category 4 costs relate to household services including snow removal, house cleaning, home support worker, vehicle cleaning, and spring/fall cleaning. The expected need is set as until age 75 or life expectancy.

[105] Mrs. Beaulieu testified at trial that she is now able to perform light household work and prepare meals. She also cuts Mr. Beaulieu's hair. The medical evidence suggests her limitations at time of trial relate to lifting or reaching above her shoulder. Her husband now does the vacuuming and assists her in making the bed.

[106] Mr. Beaulieu acknowledged that he conducts daily chores at home including outside yard work. He has taken over vacuum cleaning duties in the home and assists Mrs. Beaulieu with dying her hair. He, like his wife, is unable to handle chores that require heavy lifting such as garbage or water bottles. They are both able to shop for groceries.

[107] I am satisfied at the time of trial that Mr. & Mrs. Beaulieu were unable to deal with household chores that would require heavy lifting and exertion. Also they would require assistance for a period of time for upcoming lawn mowing and snow removal seasons. According to medical evidence of Dr. Loane and Dr. Gross both will improve their strength with their physical exercise regimes. Accordingly, I will allow for costs for lawn care in the amount of $600.00 and snow removal $325.00 for the upcoming seasons. These chores would normally be performed by Mr. Beaulieu. Although Mrs. Beaulieu is able to carry out many of her regular household duties, her ability to do so has been impaired. This should improve with her exercise regime. I will award her $2,000.00 for impairment of her ability to perform housekeeping duties.

[108] In summary, the claim for each Plaintiff is determined as follows:

Mr. Beaulieu		Mrs. Beaulieu	
Damages for Personal Injuries	$2,500.00	Damages for Personal Injuries	$2,500.00
Loss of Income	34,320.00	Loss of Income	56,820.00

Personal Trainer	270.00	Personal Trainer	270.00
Aquasize Program	400.00	Housekeeping	2,000.00
Lawn care/snow removal	925.00	Aquasize Program	400.00
Psychological Counselling	6,720.00	Psychological Counselling	1,680.00
Total:	$45,135.00		$ 63,670.00

Pre-judgment interest is 2.5%.

[109] The Plaintiff shall have their costs of this action. I will accept written submissions on costs in the event the parties are unable to agree.

J.