

SUPREME COURT OF NOVA SCOTIA

Citation: Trenholm v. H & C Trucking Ltd., 2014 NSSC 90

Date: 20140321

Docket: Hfx No. 253018

Registry: Halifax

Between:

Melissa Mae Louise Trenholm

Plaintiff

v.

H & C Trucking Ltd., a body corporate, and
Robert Daniel Izzard

Defendants

Judge: The Honourable Justice Michael J. Wood

Heard: June 3, 4, 5, 6, 10, 11, 12, 17, 18, 19, 20, 24 and 25,
December 2, 3, 6, 9, 10, 11 and 12, 2013, in Halifax,
Nova Scotia

Written Decision: March 21, 2014

Counsel: David W. Richey, for the plaintiff
Murray J. Ritch, Q.C. and Christine Nault, for the
defendants

By the Court:

[1] By all reports, Melissa Trenholm's early life was relatively typical. She was raised in small town Nova Scotia with her three older brothers. Family dinners with grandparents were the norm on Sundays. As a young person, Ms. Trenholm participated in family activities, including skiing and camping. She was interested in photography and art, and took a few courses in these outside of school.

[2] On the evening of August 22, 2003, Ms. Trenholm and some friends were in Amherst to play pool, following which they went for pizza and coffee. In the early morning of August 23, 2003, Ms. Trenholm, Jeremiah Seidl and Tom Reid were returning to Oxford along the Trans Canada Highway in Mr. Seidl's van. The van broke down at about 2:00 a.m. and the three decided to walk home along the highway. As they approached the exit for Oxford, Ms. Trenholm stumbled at the same time as a transport truck passed them. The truck struck her two friends, killing Mr. Reid instantly and injuring Mr. Seidl.

[3] Ms. Trenholm was not physically injured in the accident, but claims to have sustained a psychiatric injury. The defendants admit responsibility for the accident, but deny that Ms. Trenholm has suffered any compensable loss.

[4] The trial of this action took place over twenty days between June and December, 2013. Both parties agreed that in order for Ms. Trenholm to succeed, she must prove that she suffers from a recognizable psychiatric illness or disorder as a result of the accident. If so, then there is a secondary issue with respect to the impact of that injury and the associated quantification of damages. The applicable legal principles are summarized in Professor Klar's text, *Tort Law*, 5th edition (Carswell, 2012) at pp. 498 and 499:

The courts distinguish between nervous shock, which is recoverable, and sorrow, grief, and emotional distress, which are not. This has led to the requirement that the nervous shock be accompanied by a recognizable physical or psychological illness, presumably because it is thought that these accompanying disorders will verify the reality of the trauma, and make it easier to distinguish trauma from sorrow. One must also concede that to allow recovery for nervous shock as opposed to sorrow is not so much a matter of logic or principle as it is a practical way to limit recoverability for a type of damage which courts justifiably fear can extend too far.

In *Mustapha v. Culligan of Canada Ltd.*, the Supreme Court of Canada affirmed that in order to be recoverable, psychological injury “must be serious and prolonged and rise above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept. The Court went on to distinguish between personal injury and “minor and transient upsets.” This wording and the fact that the Court refrained from defining compensable injury “exhaustively” raised the question as to whether the requirement of a recognizable physical or psychological injury had been relaxed. The Ontario Court of Appeal subsequently held, however, that *Mustapha* did not change the law; in order to be compensable, the plaintiff must have suffered a “recognizable psychiatric illness.”

[5] The trial itself did not proceed smoothly as would be obvious from the fact that the hearing spanned six months. There were a number of factors which contributed to this including witnesses who were subpoenaed by the plaintiff and showed up with file materials that had not been previously seen by either counsel. There were also several disputes with respect to relevance and admissibility which necessitated mid-trial rulings. I will highlight some of these issues when I review the trial evidence.

POSITION OF THE PARTIES

Plaintiff

[6] Ms. Trenholm says that she suffered Post Traumatic Stress Disorder (“PTSD”) and depression as a result of the shock of the accident which killed Mr. Reid and seriously injured Mr. Seidl. She says that this has prevented her from enjoying life and pursuing her career to the extent that she would have been able to if the events had not occurred.

[7] In his pre-trial brief, counsel for Ms. Trenholm says that the quantum of her damages should be in the vicinity of \$750,000.00, plus interest and costs.

Defendants

[8] In their pre-trial brief, the defendants’ position was that Ms. Trenholm did not suffer any psychological injury or resulting damages. They say that the medical evidence does not support a conclusion that Ms. Trenholm suffers from a recognized psychiatric illness. In the alternative, they say that even if she does

suffer from such a condition, there were numerous other sources of stress and anxiety which could have given rise to her psychological symptoms.

[9] If she is entitled to recover damages, the defendants argue that the impact on her life has been relatively minimal and the damages should be quantified in a range of \$10,000.00 to \$20,000.00, plus interest and costs.

[10] I would note that in oral submissions following the conclusion of trial, counsel for the defendants conceded that the medical evidence likely supported the conclusion that Ms. Trenholm was suffering from a psychiatric illness as a result of the accident. They maintained their position that the resulting damages should be modest.

REVIEW OF TRIAL EVIDENCE

Documents

[11] An inordinate amount of time was spent at trial discussing the plaintiff's claim for Section B insurance benefits. These are no fault payments for rehabilitation costs paid by the insurer for the defendants. Mr. Richey, on behalf of Ms. Trenholm, argued in his pre-trial brief, and at the hearing, that the manner in which the claims were processed had an impact on the plaintiff's damages. The Section B insurer was not a party to the litigation and there was no claim for bad faith alleged against them in the statement of claim. I advised Mr. Richey on several occasions during the trial that the handling of the Section B claim was irrelevant. Despite this, the issue continued to surface in various forms.

[12] Aside from the allegations concerning the handling of the Section B claim, Mr. Richey attempted to introduce the entire file from the Section B insurer as evidence. This contained a multitude of correspondence between various health providers, the insurer and Mr. Richey. During the trial, Mr. Richey made a motion to have the contents of this file admitted as business records or by virtue of the deemed admission of authenticity found in the list of document provisions from the 1972 *Civil Procedure Rules* which were applicable at the time documents were exchanged. I dismissed those motions for several reasons, including the lack of a witness to authenticate the records and my view that the handling of the Section B file itself was irrelevant. Even if the materials could come in as a business record,

that would not permit third party correspondence to come in for the truth of its contents unless some other exception to the hearsay rule could be invoked.

[13] The plaintiff called seven health professionals to testify. They each had clinical records relating to their dealings with Ms. Trenholm. Some were relatively sparse and others quite extensive. Some files contained third party correspondence from other health professionals. These documents were all received in evidence either by agreement of the defence or through witness testimony. It was not clear to me what use the parties thought I could make of all of this material. In many cases, the file records refer to discussions with Ms. Trenholm about how she was feeling and what was going on in her life at that point in time. Ms. Trenholm was questioned about some, but not all, of these discussions. To the extent that she was asked about them, she generally agreed that what was recorded in the practitioner's file notes was an accurate reflection of what she had said to them.

[14] The practice of simply filing a book containing all of the medical records of the plaintiff was severely criticized by the British Columbia Court of Appeal in *Samuel v. Chrysler Credit Canada Ltd.*, 2007 BCCA 431. In that case, counsel for the plaintiff had contended that any statements made by his client to her doctors or therapists and recorded in their clinical records were admissible to prove that she was actually suffering from those complaints. The Court disagreed and said that such statements were hearsay and, therefore, not admissible for their truth unless they fell within an exception. The only possible exception which the Court recognized was for "statements of contemporaneous bodily sensation". The Court described the application of this exception and the preferred approach to voluminous medical records as follows:

[38] The party invoking the hearsay exception must focus precisely on those statements in the records that it seeks to have admitted under the exception and the necessity of relying on the particular hearsay. The exception simply cannot apply without first establishing in each instance the requisite contemporaneity. It is unacceptable for a party to make a blanket assertion that statements of pain made to doctors and therapists should be accepted for their truth. In the instant case, there were hundreds of pages of clinical and other records, some of which were legible and some not; replete with the recorder's shorthand and technical terms; and containing ambiguous references to what the plaintiff reported. It is impossible to discern from the records themselves whether any given statement of pain was contemporaneous or in relation to a historical sensation. The trial judge

was left with a morass of documents, no evidence, and little assistance from counsel as to what was presumptively admissible.

[39] The preferable approach is obvious. Clinical records should not be admitted into evidence, by consent or otherwise, unless counsel identify the specific purpose for particular portions of the records. Furthermore, it would be preferable to introduce discrete portions of the records when they become relevant so that their admissibility can be ruled on at that time, when the jury will better appreciate the purpose of those portions in the context of the case and will have the assistance of a contemporaneous limiting instruction. In no event should a “book” of documents simply be handed up to the court and admitted as a whole.

[15] The British Columbia Court of Appeal also cited with approval the approach taken in the earlier decision of *Seaman v. Crook et al.*, 2003 BCSC 464 which dealt with hearsay issues arising out of doctor’s clinical records. After admitting the documents as business records, the Court said the following about the use which could be made of the information found in those documents:

[13] Does the B.C. *Evidence Act* business records exception admit the doctor’s opinion for the truth of the opinion without further proof thereof? (Note that I use “opinion” and “diagnosis” interchangeably.) The plaintiff submits it does. If it does not, he submits the court must apply s. 42 and *Ares v. Venner, supra*, so that the opinions contained in the clinical records are admitted for their truth.

[14] The cases are *Ares v. Venner, supra*; *Sandu and Brink, Olynky v. Yeo, supra*; *Butler v. Latter*, [1994] B.C.J. No. 2358 (B.C.S.C.), *McTavish v. MacGillivray, supra*; *Coulter and Ball et al.*, 2002 BCSC 1740; and s. 42(2) which provides:

In proceedings in which direct oral evidence of a fact would be admissible, a statement of a fact in a document is admissible as evidence of the fact if
...

when taken together, stand for the following:

- (1) That the observations by the doctor are facts and admissible as such without further proof thereof.
- (2) That the treatments prescribed by the doctor are facts and admissible as such without further proof thereof.

- (3) That the statements made by the patient are admissible for the fact that they were made but not for their truth.
- (4) That the diagnoses made by the doctor are admissible for the fact that they were made but not for their truth.
- (5) That the diagnoses made by a person to whom the doctor had referred the patient are admissible for the fact that they were made but not for their truth.
- (6) That any statement by the patient or any third party that is not within the observation of the doctor or person who has a duty to record such observations in the ordinary course of business is not admissible for any purpose and will be ignored by the trier of fact. It is not necessary to expunge the statements from the clinical records as this is a judge alone trial.

[15] Therefore any, and I emphasize the word “any”, opinions contained in the clinical records are not admissible for their truth. The opinions are admissible only for the fact that they were made at the time.

[16] I would note that this passage from *Seaman v. Crook* was adopted with approval by MacAdam, J. of this Court in *Tingley v. Wellington Insurance*, 2008 NSSC 317 at para. 25.

[17] On the basis of these authorities, I believe that the medical records and the statements which they contain that are attributable to Ms. Trenholm are admissible to prove what she said to her health providers. These statements are not admissible for their truth unless they were adopted by Ms. Trenholm in her evidence or otherwise fall within an exception to the hearsay rule. One such exception is an admission by an adverse party. In this case, that means that the defendants would be entitled to use any of Ms. Trenholm’s statements in the medical records for their truth. The difficulty in this case is that the defendants have not identified the statements of Ms. Trenholm they wish to rely upon as admissions. Without this assistance it is difficult to know which of Ms. Trenholm’s hearsay statements I can use and for what purpose.

[18] I have concluded that I will only use statements found in the medical records for their truth to the extent that Ms. Trenholm was questioned about them at trial, or where counsel for the defendants used the statement to cross-examine

other witnesses. In the latter case, I have assumed the defendants are using those statements as admissions of an adverse party.

Witness Testimony

[19] The plaintiff called eleven witnesses, the majority of whom were her health care providers. Most of these were qualified as experts and provided both fact and opinion evidence. The only witness called by the defendants was their expert, Dr. Rosenberg.

[20] All of the medical witnesses testified about statements made to them by Ms. Trenholm. As with the statements found in the medical records, this evidence would not be admissible for its truth unless adopted by Ms. Trenholm or used by the defendants as an admission. I have assumed that all statements by Ms. Trenholm to Dr. Rosenberg which he relied upon in forming his opinion are being offered by the defence for their truth. Counsel for the defendants did not identify any other statements attributed to Ms. Trenholm that were to be considered admissions.

[21] The plaintiff's parents, Peter and Myrna Trenholm, both testified. In the course of their evidence, they described Ms. Trenholm's emotional state at various points in time. The defence did not object to any of this evidence and I consider it to be admissible on the basis that it falls within the scope of opinion evidence which can be given by lay witnesses.

[22] This is a case where liability for the accident is admitted and, in closing submissions, counsel for the defendants acknowledged that Ms. Trenholm was likely suffering from a psychiatric illness caused by the accident. That acknowledgment does little to advance the quantification of Ms. Trenholm's damages since the severity of PTSD symptoms and the impact on any particular individual covers a very broad spectrum. For this reason Ms. Trenholm's particular circumstances need to be examined carefully and so I will review the witness testimony in some detail.

Melissa Trenholm

[23] In her closing submissions, counsel for the defendants described Ms. Trenholm as a delightful young woman, with a loving family, and I endorse that description without reservation. There was no suggestion in the evidence or defence counsel's submissions that Ms. Trenholm was not a credible witness.

[24] Ms. Trenholm's trial testimony was consistent with that of other witnesses and, in particular, her family members. She did not attempt to embellish or exaggerate the impact of the accident on her life. If anything, she appeared to understate the severity of the symptoms of PTSD which she had experienced. In cross-examination, she readily acknowledged other stressors in her life which may have contributed to her emotional problems at any particular time.

[25] At the time of trial, the plaintiff was living with Jeremiah Seidl and their two small children who were born in October, 2011 and May, 2013.

[26] Ms. Trenholm was born in April, 1981 and is thirty-two years old. She is the daughter of Peter and Myrna Trenholm and has three older brothers. She grew up in Pugwash.

[27] As a young person she participated in family activities, including skiing and camping. She was interested in photography and art and took a few courses in these outside of school. She graduated from Pugwash District High School in 1999.

[28] When she was in high school, she was interested in art, photography and archaeology. At some point she had an interest in cooking. Following graduation from high school, she enrolled at Dalhousie intending to pursue archaeology or anthropology. She lost interest very quickly and did not continue after the first year.

[29] Ms. Trenholm had been a cook at the Sunrise Café for the summers of 1999 and 2000. Prior to that, she worked as a dishwasher in a restaurant.

[30] In the fall of 2000, Ms. Trenholm enrolled at a college in Halifax for art, photography and design, and decided this was not what she was interested in and she dropped out in early 2001.

[31] In 2001, her brother, Wesley, and some friends were moving to British Columbia. This included her boyfriend, Jesse Arsenault, and she decided to go along. Ms. Trenholm stayed for a month in Swan Hills, Alberta where she worked as a waitress. She and Jesse then went to Whistler, British Columbia.

[32] From October, 2001 to January, 2002, Ms. Trenholm worked at a gift store in Whistler. She and Jesse moved to Jasper in early 2002 where she got a job as a sales clerk at Jasper Wine Merchant and, for three months, worked as a server at a restaurant.

[33] In early 2003, Ms. Trenholm and Jesse moved to Banff where, from February to May, she worked as a server at the Evergreen Restaurant. They returned to Nova Scotia for the summer.

[34] From June to September, 2003, Ms. Trenholm worked at the Canadian Salt Company in Pugwash as a temporary secretary and later, assistant to the safety co-ordinator. She and Jesse returned to Banff in November.

[35] In the fall of 2003, she drove to Cape Breton to live with Jesse and his parents at their motel. She stayed there for a month and helped with food service and cleaning.

[36] Ms. Trenholm worked as a sales clerk at Mountain Magic Sports Wear in Banff from January, 2004 to October, 2004. In February, 2005, she started at Rundlestone Lodge in Banff on the front desk and stayed until October, 2005. At that time she returned to Nova Scotia because her relationship with Jesse was over and she missed home.

[37] Upon her return to Nova Scotia in October, 2005, Ms. Trenholm lived with Wesley and his wife near Antigonish. In March or April, 2006, she moved home for several months and lived with her parents before going to Ontario in August to live with her brother, Dana, and work as a nanny. She was there until May, 2007.

[38] In May, 2007, Ms. Trenholm returned to Pugwash and began living with Jeremiah Seidl. At that time, she began working at Fox Harb'r where she was employed for the next four summers. Her employment would generally run from April/May to October/November and she would draw EI during the off-season. In her first three years at Fox Harb'r, she worked as a food and beverage server and for the fourth year, she was the food and beverage inventory clerk.

[39] In 2010, she rented a house near Tatamagouche for a year, but only lived there for a few months over the winter of 2010. She was separated from Jeremiah at that time.

[40] In 2011, Ms. Trenholm worked part-time for the Federal Census, as well as at the Old Germany Restaurant as a server. In October of that year, her first child was born.

[41] She completed a correspondence course in aromatherapy in February, 2013. The person who offered the course was located in Guelph, Ontario and she had go there for a week for the massage portion of the instruction. The rest was done through home study on her computer.

[42] Ms. Trenholm started the aromatherapy course in the fall of 2007. She did the work when she had time and found it difficult to dedicate the attention that she needed to it. At times she questioned why she was taking the course and had difficulty envisioning what type of future she would be able to make with it.

[43] As an aromatherapist, she could work as an employee (such as at a spa) or independently. Recently she spoke to a dentist in Sackville, New Brunswick about the possibility of renting space from her. She has not made any definite plans because of the need to nurse her baby who was born in May, 2013.

[44] When asked why it took six years to finish the aromatherapy course, Ms. Trenholm said she had a hard time picturing being successful in a career and found it difficult to imagine or plan for her future. She always thought that she would never "get there" because so much can happen that cannot be anticipated. She often worried about things happening that would affect the future.

[45] The accident took place on August 23rd, 2003 early in the morning. The previous evening, Ms. Trenholm, Jeremiah, Corey and Tom Reid went to Dooley's in Amherst, following which they went for pizza and then a coffee at Tim Horton's. Corey went with friends and the remaining three were returning to Oxford along the Trans Canada Highway in Jeremiah's van.

[46] The van broke down near Oxford around 2:00 a.m., and they decided to walk along the side of the road. Just as they approached the Oxford exit, she stumbled into a guardrail as a truck passed them. She saw Jeremiah lying on the ground and did not see Tom anywhere. Tom had been on his phone with his brother at the time of the accident. It started to drizzle.

[47] Ms. Trenholm went towards the truck and asked the driver to call 911. Nobody knew where Tom was and they looked for him, but it was dark. Ambulance, police and the fire department arrived and began searching with flashlights in the ditch. She recalls seeing them find him face down and not moving. Tom's brother arrived on the scene.

[48] Ms. Trenholm was taken by ambulance to the Amherst Hospital and her parents were called to come pick her up. She was not physically injured. She was told Tom was dead at the scene and she cried. She and Tom had been friends and she had known him since high school. She did not know him well until June of 2003. They had both been in Brad and Sonya's wedding party. They hung out a bit that summer and occasionally would go to the beach.

[49] Following the accident, she was in shock for a period of time and things became very emotional. She had a hard time sleeping. She felt guilty because Tom was killed and she was not hurt. She had been the one to ask Tom to join them. She felt anxious and her mind was racing. She felt sad and depressed because of what happened and also angry. She was angry at the truck driver, as well as how the police acted and the assumptions they made about who was at fault.

[50] A friend gave Ms. Trenholm some Ativan to help her sleep. She went to her family doctor, Dr. Peter Blaikie, and asked him to prescribe this for her. She saw him once or twice in the period shortly after the accident. He suggested that she talk to a psychologist and referred her to Dr. Matwychuk.

[51] Dr. Matwychuk was in Truro and Ms. Trenholm saw her twice. She felt that she did not receive any real benefit from the sessions.

[52] Ms. Trenholm and Jesse moved back to Banff in November, 2003. She wanted to get away from the area because Pugwash was a small community and people were asking about the accident. She did not see anyone for treatment in Alberta. The only medical issues which she had were normal things such as birth control and having her wisdom teeth out. In Banff, she inquired about treatment with a psychologist on one occasion and he said that this was not his area.

[53] Upon her return to Nova Scotia in 2005, Ms. Trenholm went to see Mark Kent who had treated her mother in the past. She is not sure how many sessions she had with him. He was no longer able to see her, but she is not sure why and he referred her to Farley MacLeod in Dartmouth. She is not sure how many times she saw him, but believes it was at least a half dozen. She stopped seeing him when she went to Ontario and also because of the distance required to travel to the sessions. She wanted to find someone closer to home.

[54] Ms. Trenholm started seeing Margaret Grant in Truro in 2007 and also went to a psychiatrist, Dr. Warren, on one occasion.

[55] Dr. Blaikie continues to be her family doctor and she also sees Lynn Miller, a nurse practitioner in his office. She believes that the accident came up once or twice in discussions with Ms. Miller.

[56] The psychologists that she has seen have suggested relaxation techniques and assisted her in recognizing different feelings and understanding why she was experiencing them. They discussed which situations triggered symptoms. With Margaret Grant, she discussed everything that was going on in her life, including work and her personal relationships. These discussions helped her put things in perspective and to see how things were affecting her, and why she was experiencing certain emotions.

[57] Following the accident, Ms. Trenholm took some time off work. During this period she went to Tom's funeral and visited Jeremiah in the Moncton Hospital. She got a tattoo in Tom's memory. A group of friends also built a memorial along

the side of the highway and wrote messages on stones. Her message said “I look forward to seeing you again soon.”

[58] At the time she wrote the message she did not have much hope in her future. She could not count on having a long and fulfilling life because she had no control over what might happen.

[59] Ms. Trenholm has had dreams about the accident, however, now it is quite rare to have vivid dreams about it. Overall, she now sleeps much better than in the past.

[60] Ms. Trenholm said that she worries about something out of her control happening and somebody getting hurt. This was never an issue before the accident.

[61] Ms. Trenholm says that she has had bouts of depression since the accident and does not recall having any previously, other than as a result of fights with her boyfriend.

[62] She did not seek treatment for the symptoms from the accident when she was in Alberta and B.C.. She did not feel like talking to anyone and just wanted to forget about it.

[63] When Ms. Trenholm moved home in October, 2005, she told Jesse she was coming to Nova Scotia for a vacation. She felt he would not take the news well if she said that she was leaving him. She was frightened because he had quite a temper. Jesse had never struck her but had made threats to do so. She was also worried that if she told him she was leaving he would talk her out of it.

[64] The relationship with Jesse had been a cause of stress for her especially toward the end when things had deteriorated. Ms. Trenholm described it as abusive. He was also very controlling and needed to know where she was at all times. She felt angry and, to a lesser extent, humiliated. It lowered her self-esteem. She did not seek any professional assistance in relation to these issues.

[65] In 2004, Ms. Trenholm worked at Mountain Magic Sports as a sales clerk. She rarely missed any time. She was fired because she missed a meeting when

Jesse was sick. Jesse was sent to the hospital in Calgary and she travelled there with his parents to visit him. When he came home to recover, she was the primary person responsible for looking after him. She was trying to pay bills, get EI and look after Jesse. It was a stressful time.

[66] There were occasions when she and Jesse had enjoyable times together doing outdoor activities such as hiking, canoeing, skating, and skiing.

[67] In 2005, she worked at Rundlestone Lodge on the front desk. She was a diligent and conscientious employee and did not miss any time except perhaps if she was sick. She got a good recommendation from them. She enjoyed the job.

[68] When she went to Ontario to act as a nanny for her brother, her parents drove her. She flew home for the funeral of her cousin who had died in a fire and believes Jeremiah drove her back to Ontario. When she moved back from Ontario, she drove back but is not sure with whom. She did not recall any particular problems on these long drives.

[69] When Ms. Trenholm worked at Fox Harb'r there were a number of incidents of harassment by the guests. She found some of them upsetting and it created a degree of anxiety for her and the other staff. She missed very little time from work at Fox Harb'r until she quit on the advice of Ms. Grant in August 2010.

[70] When she worked part-time as a Census enumerator in 2011, Ms. Trenholm was required to travel door-to-door. She could drive up to 120 kilometres and generally drove on her own. She was able to make her own schedule, so she could work when she wanted to.

[71] At the time of trial, Ms. Trenholm was not taking any medication and the last time she did would have been in early 2011.

[72] Ms. Trenholm said that she experienced stress arising out of arguments with Jeremiah over money and while living with his family when she felt she needed her own space. She said that this was different than the anxiety she was experiencing from the accident which she feels is always present to some degree. She has no current stress as a result of her relationship with Jeremiah or his family.

[73] Ms. Trenholm described feelings of hopelessness, depression, anxiety and times when she felt “that there is no point”. She said that these feelings are integrated into every day. Her anxiety is reflected in jumpiness and having concerns that something might happen that she has no control over. She tries to motivate herself because she does not want her children to see someone who cannot accomplish things. Ms. Trenholm says that she has discussed these issues with most of her therapists.

[74] The sound of a large truck sometimes causes her to be jumpy. Driving by the scene of the accident causes her to remember it, as does seeing certain people, such as Tom’s family or friends. She would see these people once or twice a year. She finds it hard to visit her friend, Sonya, who is married to Tom’s best friend, although she tries to do so two or three times per year.

[75] Ms. Trenholm described feeling depressed and said that this feeling was more intense at different times. It felt like being in a “dark hole” and not wanting to look for a way out. When she feels like this Ms. Trenholm does not want to get out of bed or see anyone and does not want to deal with anything. This would last up to two weeks, and happen a couple of times a year. Less severe feelings of depression happen at least once a month.

[76] She has a hard time being social and getting out of the house, including going to the grocery store. Sometimes getting together with family helps.

Dr. Peter Blaikie

[77] Dr. Blaikie was qualified as an expert witness, able to offer opinion evidence relating to the practice of family medicine, including diagnosis, treatment and referral of adults suffering from mental disorders or illnesses such as depression and anxiety disorders. One third of his practice involves psychological and mental health issues.

[78] Over the last ten years, Dr. Blaikie has dealt with less than ten patients suffering from PTSD. Since medical school, he has not taken any specific courses with respect to this. If a patient is showing some symptoms of a potential psychological illness, he would refer them out to a psychologist and relies on them for any diagnosis of PTSD.

[79] Ms. Trenholm has been a patient of his since 1993 when he started in practice. Prior to 2003, the care he provided covered the usual areas of a family practice. There was no mental health component to his treatment of her.

[80] On September 4, 2003, Dr. Blaikie had a forty-five minute appointment with Ms. Trenholm. He made the assessment of potential post traumatic stress and referred her to a psychologist.

[81] On October 30, 2003, he saw Ms. Trenholm again and prescribed Ativan for sleep and anxiety issues. She reported that she was suffering from night terrors.

[82] Ms. Trenholm's next visit was May 31, 2006 and his notes make no reference to the accident. This was the same for visits on July 27, 2006 and June 4, 2007.

[83] On September 6, 2007, Ms. Trenholm attended an appointment which dealt with the ongoing management of her psychological stress. She was still experiencing occasional thoughts about the accident. His chart notes refer to PTSD and say that the plaintiff will continue with Ms. Grant.

[84] A September 3, 2009 chart entry refers to Ms. Trenholm having a depressed mood with the opinion that her depression seemed to be improved. An antidepressant was prescribed and she was referred to a psychiatrist, Dr. Warren.

[85] An October 20, 2009 note indicates Ms. Trenholm is feeling more energetic but that some elements of PTSD continue to be present. Dr. Blaikie says that these are related to ongoing concerns from the accident.

[86] On December 22, 2009, the chart note says that there are anxiety issues for Ms. Trenholm and that she is breaking up with her boyfriend which is aggravating the stress. A trial of Ativan is suggested. She is suffering from acute situational anxiety. Dr. Blaikie says that she had an ongoing mood issue and that this was an exacerbation of it.

[87] The last time he saw Ms. Trenholm was on January 20, 2011 which was a follow-up appointment dealing with depression.

[88] Dr. Blaikie's letter to Mr. Richey of July 11, 2005 indicates that the plaintiff is experiencing symptoms suggestive of PTSD.

[89] In his letter of September 6, 2007 to Mr. Richey, Dr. Blaikie agrees with MacLeod's diagnosis of PTSD and says there has been improvement with counselling without the necessity for medication.

[90] His February 25, 2011 letter points out limits on the plaintiff's employment options because of her inability to pursue further training. This opinion was based on discussions over time with Ms. Trenholm. She was not able to get her thoughts together and move forward.

[91] Following the 2003 accident, he saw the plaintiff twice that year. His discussions with her were such that it was clear she had symptoms of psychological trauma and that is why he referred her for assessment.

[92] At the time of the plaintiff's second visit on October 30, she was still experiencing symptoms although there had been some benefit from the sessions with Dr. Matwychuk.

[93] Dr. Blaikie confirms that he was not aware that the plaintiff had been in an abusive relationship, nor that she had stresses related to drug use, financial problems or others that could "possibly" affect the psyche of the individual.

[94] He agrees that the various issues and stresses experienced by the plaintiff between November, 2009 and January, 2011 could have an impact on a person's health. These included relationship problems, workplace issues, etc.

[95] In his February 25, 2011 report, Dr. Blaikie says that he believes there is a causal connection between the accident and Ms. Trenholm's ongoing symptoms. He based this upon the reports he had received from other health professionals, as well as on-going discussions with Ms. Trenholm. He also confirms that he observed symptoms which he considered to be indications of PTSD in 2003 and subsequent years.

Dr. Alana Matwychuk

[96] Dr. Matwychuk was qualified as an expert, able to give opinion evidence relating to the practice of psychology, including diagnosis and treatment of adults suffering from mental disorders or illnesses such as depression and anxiety disorders.

[97] She has not seen Ms. Trenholm since 2003 when she had two visits on September 8 and 16.

[98] In her handwritten letter to Dr. Blaikie of September 16, 2003, Dr. Matwychuk expresses the opinion that Ms. Trenholm is suffering from PTSD symptoms. She does not make a diagnosis because those symptoms must exist for a month in order to meet the criteria for PTSD.

[99] The symptoms which Ms. Trenholm was having included re-experiencing the accident, hyper-arousal and avoidance, which are all part of PTSD. She would categorize them as mild to moderate, but not severe.

[100] Ms. Trenholm cancelled her next appointment and indicated she was moving to Cape Breton. Dr. Matwychuk gave her the name of a psychologist there, as well as one in Alberta.

[101] Dr. Matwychuk saw Ms. Trenholm for an extremely short period of time. She was experiencing symptoms that would have lead to a diagnosis of PTSD if they lasted for another week. According to Dr. Matwychuk, the return to work at the salt mine is not particularly significant in determining whether she was experiencing ongoing PTSD.

Mark Kent

[102] Mr. Kent was qualified as an expert, able to offer opinion evidence relating to the practice of psychology, including diagnosis and treatment of adults suffering from mental disorders or illnesses such as depression and anxiety disorders for the period 2005-2006. He resigned from practice in early 2006 as a

result of a discipline complaint and, for that reason, the period for which he could express an opinion was limited by that date.

[103] While he was a licensed psychologist in Nova Scotia, Mr. Kent's speciality was chronic pain and PTSD. He had many clients involved in accidents, trauma and chronic pain. He would do both diagnosis and treatment.

[104] He saw Ms. Trenholm several times over a two to three week time period. The initial visit was October 31, 2005.

[105] His approach was to carry out a clinical assessment and perform a series of tests. With respect to treatment, he takes a holistic approach and deals with all of the dynamics in a person's life.

[106] Avoidance is a significant part of PTSD and in this case, Ms. Trenholm avoided the site of the incident. He helped her deconstruct the event and showed her some relaxation techniques.

[107] Mr. Kent reviewed the battery of psychological tests that he used and which are referred to in his report. A total of nine tests were administered. Different psychologists would use varying combinations of tests. He selected these particular ones because it gave him information which was specific to PTSD.

[108] In his interview with Ms. Trenholm, she described "racing" thoughts which were intrusive. These are similar to flashbacks and are a key criteria for making a PTSD diagnosis. Ms. Trenholm was breaking down and crying during the sessions and so it was not always a sequential discussion. She described problems falling asleep after the accident and thoughts which were hard to get rid of.

[109] Ms. Trenholm said that she was experiencing nightmares twice a week more than two years after the incident which met the criteria for PTSD.

[110] It is typical to see loss of direction and purpose with PTSD. According to Mr. Kent's assessment of her global functioning, Ms. Trenholm had some mild symptoms but was generally functioning pretty well.

[111] He recommended 15-20 treatment sessions to restore self-esteem and confidence. He did not see a complete cure as the outcome. It was a life altering event and it is unreasonable to think that she could get past it completely.

[112] Ms. Trenholm gave him some information about her relationship with Jesse and said he was not supportive. He did not consider it clinically significant that she reported being upset and stressed from discussions with Jesse as well as from financial pressures.

[113] Mr. Kent has dealt with a lot of domestic violence and very few people develop PTSD, although he agreed that such a situation could contribute to PTSD and depression.

[114] Mr. Kent testified that working continuously is not a sign that a person is coping well. It could be a sign of disassociation. Sometimes people use work as a way to get away from things.

[115] When he was closing down his practice, Mr. Kent referred Ms. Trenholm to Farley MacLeod.

[116] Mr. Kent performed a number of tests with Ms. Trenholm and was confident that he had correctly diagnosed PTSD based upon this. When he was referred to other potentially stressful events in her life, he maintained that these would not undermine his diagnosis of PTSD resulting from the accident.

Farley MacLeod

[117] Mr. MacLeod was qualified as an expert witness, able to give opinion evidence relating to the practice of psychology, including diagnosis and treatment of adults suffering from mental disorders or illnesses such as depression and anxiety.

[118] Mr. MacLeod practices in a multi-disciplinary setting with physiotherapists, occupational therapists and a physician. PTSD is one of the anxiety disorders which he deals with as part of the chronic pain and rehabilitation team at his clinic.

[119] Mr. MacLeod had ten sessions with Ms. Trenholm, six of which were one hour in length and four were two hours. He received correspondence from Mr. Richey enclosing medical and psychological records which were helpful to provide background information concerning Ms. Trenholm.

[120] In his report of August 16, 2007, Mr. MacLeod said that it was his “impression” that Ms. Trenholm was suffering from PTSD as a result of the motor vehicle accident. The basis for this opinion was that she was displaying symptoms which matched the main criteria for the diagnosis of PTSD. These were re-experiencing the incident, intrusive thoughts, avoidance behaviour and a traumatic incident (i.e. the accident). She was also distancing herself from friends and having sleep problems. Her hyper-vigilance with respect to dangerous situations (such as when she was driving), was very obvious and this is a key component of PTSD.

[121] Mr. MacLeod reviewed Mr. Kent’s report which outlined a very thorough diagnostic process. As a result, he did not do as full an assessment as he might have for other clients. He said that everything he observed confirmed Mr. Kent’s diagnosis.

[122] There were various “triggers” which made Ms. Trenholm remember the accident and created anxiety for her. These included driving in a vehicle, seeing transport trucks, walking along a road and being in the vicinity of an accident. There were other things such as music and seeing friends of Mr. Reid which also acted as triggers.

[123] During their therapy sessions, Mr. MacLeod worked on techniques including deep breathing and muscle relaxation which he believed were beneficial for Ms. Trenholm.

[124] Ms. Trenholm reported that she felt helpless and that is one of many emotions involved in her re-experiencing symptoms. She also had feelings of guilt and self-blame, which was one of the strongest emotions that they had to deal with in their sessions. Survivor guilt is very common in PTSD.

[125] It was clear to Mr. MacLeod that Ms. Trenholm was avoiding people who reminded her of the accident and as a result she tended to become more isolated. She avoided trips to town.

[126] Mr. MacLeod testified that Ms. Trenholm improved during the period of his therapy. She was experiencing fewer dreams and was able to drive through the area of the accident. He last saw her in 2006.

[127] According to Mr. MacLeod, symptoms of PTSD usually do not disappear completely and there may still be events that trigger a relapse. In his report, he stated that he expected further improvement and, at a minimum, Ms. Trenholm would need ten to fifteen more counselling sessions. In his opinion she would probably have more difficulty than average in terms of long-term recovery.

[128] In cross-examination, Mr. MacLeod agreed that Ms. Trenholm had made significant improvement over the ten sessions in which he provided treatment. Some of her anxiety was reduced and she was no longer having bad dreams.

[129] Ms. Trenholm's last visit was July 19, 2006. He understood that she was going to Ontario and he suggested to her that it would be beneficial to continue with treatment there. He did not provide any specific referral.

[130] By July, 2006, there had been significant improvements with respect to avoidance, particularly as it related to driving. It was still a challenge for Ms. Trenholm to discuss the details of the accident and she became anxious when doing so.

[131] Mr. MacLeod was a very solid witness and careful with his answers. He accepted the PTSD diagnosis of Mr. Kent, but was evaluating Ms. Trenholm's symptoms on an ongoing basis. He continued to treat the PTSD and he was satisfied that this condition existed throughout her time in his care.

[132] Although Mr. MacLeod did not carry out any specific diagnostic testing, it is clear that he satisfied himself through a combination of the Kent report and his own observations that Ms. Trenholm was suffering from PTSD and he treated her accordingly. As a result of this, she demonstrated improvement which supports the inference that the initial diagnosis of PTSD was correct.

Lynn Miller

[133] The plaintiff sought to have Ms. Miller qualified as an expert witness, able to give opinion evidence as a nurse practitioner. No report was filed and I concluded that the chart notes prepared by Ms. Miller were not sufficient to satisfy the requirements of Rule 30.08 of the 1972 Rules. She was not permitted to testify as an expert and so her evidence was that of a fact witness. Her testimony included opinions on treatment and diagnosis which were given in order to explain the actions which she took. This evidence was not admitted for the truth of those diagnoses.

[134] Ms. Miller worked as a nurse practitioner in the collaborative practice with Dr. Blaikie. Her first meeting with Ms. Trenholm was March, 2009 and the last was February, 2013, when she left the practice.

[135] With respect to the role of PTSD and depression in her care of Ms. Trenholm, Ms. Miller indicated that it was something she was aware of at each visit. She knew that Ms. Trenholm was seeing a psychologist for treatment.

Peter Trenholm

[136] Mr. Trenholm is the father of Melissa Trenholm and has been married to Myrna for forty-three years. He has lived in Pugwash all of his life. He retired nine years ago from the Canadian Salt Company in Pugwash. At the time of his retirement, he was assistant to the distribution co-ordinator.

[137] Melissa had a normal upbringing and took part in most activities that young people did. She went camping and spent a lot of time at the beach. She participated in Brownies and Girl Guides and also regular family gatherings.

[138] Prior to 2003, Melissa participated in various vacations. There were annual trips to Ontario to visit family and Melissa did not have problems with these drives. After the accident in August, 2003, Melissa was not comfortable travelling in a car.

[139] When he and his wife went to the hospital in Amherst after receiving a call about the accident, they found Melissa to be very distraught. She was crying and upset. They could not understand what she was saying. Mr. Trenholm described her as being “broken”.

[140] The first week after the accident, Melissa wanted to be left alone. She did not want to deal with anyone. It was a hard week. They went to Tom Reid’s funeral and Melissa read a poem. She was crying all the time.

[141] They went to visit Jeremiah at the hospital in Moncton on two occasions following the accident. On the drive, Melissa covered in the back seat and was huddled over.

[142] After taking a week off, Melissa returned to work and seemed to be able to put herself into her job. She did not go anywhere and just stayed home. He remembers a visit by an RCMP officer, as well as an insurance adjuster. Melissa was crying when she gave the adjuster her statement.

[143] Melissa lived at home until she went back to Alberta. She flew there with Jesse. The next time he saw her was in April, 2005 when he and Myrna went to Alberta on vacation. During 2003 and 2004, they spoke to Melissa every week by phone.

[144] When visiting Melissa in April, 2005, they rented a van. They were accompanied by Myrna’s sister and brother-in-law. Over two days they travelled to various attractions in the vehicle, including ski hills and the Athabaska Ice Fields. He does not recall any particular observations about Melissa during that visit.

[145] He next saw Melissa in late September, 2005, when she came home because she wanted to get away from her situation. At that time she went to live with her brother, Wesley, and his family near Antigonish.

[146] When asked about the impact of the accident on the family, Mr. Trenholm said it affected them greatly. They were concerned for Melissa as parents. He drove her to fifteen psychology sessions in Halifax, which usually took the entire day. Mr. Trenholm said it was rather difficult over the years keeping things

flowing so that Melissa could get the required help. At times, it strained his finances and was very upsetting to the family. The Section B insurer was difficult to deal with.

[147] Mr. Trenholm prepared and submitted travel claims to the Section B insurer. According to his total, Melissa made sixty-six visits to treatment providers. He accompanied her on a dozen or more of the Truro trips and all but one of the Halifax trips. He recalls Melissa looking distressed and gripping a seatbelt on one of the trips to Halifax.

[148] According to Mr. Trenholm, Melissa is now driving and doing better. Ms. Grant has been very good for her, but she still has a lot of problems. Loud noises can cause her to panic. He no longer sees her cowering and holding the seatbelt when travelling in a car. When he drove Melissa to and from Ontario, she sat behind him and he does not recall anything out of the ordinary.

[149] The last couple of years have been happy times in Melissa's life because of her children. Mr. Trenholm cannot say if she is the same as she was before the accident because, as a mother, she is now in a different role.

[150] Mr. Trenholm presented as a devoted and concerned father who would do anything to help his daughter, and did. His evidence concerning Melissa's driving limitations is relatively minimal. With one or two exceptions, he cannot recall any particular examples of difficulties which she had. According to him, her therapy with Ms. Grant has been very helpful and her life is quite good over the last two years.

Dr. Jo Ann Warren

[151] Dr. Warren was qualified as an expert witness able to give opinion evidence relating to the practice of psychiatry, including diagnosis and treatment of adults suffering from mental disorders or illnesses, such as depression and anxiety. She has had a private practice in Truro since 2004.

[152] Dr. Warren examined Ms. Trenholm in January, 2010 in response to a referral from Dr. Blaikie in 2009. The information from Dr. Blaikie indicated that she had been diagnosed with PTSD and also generally described the accident. He

felt that she might be suffering from depression and asked for Dr. Warren's opinion.

[153] In a standard psychiatric assessment, she likes to get the patient's current information, history of symptoms, medical history, relationship history and any information with respect to substance abuse. She also assesses their mental status during the examination.

[154] With respect to her examination of Melissa, the clinically significant observations included Melissa's feelings of helplessness at the time of the accident. She indicated that there were no significant flashbacks at the time of the examination, which suggested that there had been a change over time because it was more than seven years after the event.

[155] With PTSD, there is a general fear that something will happen to the person and that they have a loss of control.

[156] Melissa said that her problems with sleep had improved significantly. She still described strange dreams. Sleep disturbance can relate to PTSD as well as depression. The recent decrease in sleep reported by Melissa likely related to the secondary diagnosis which was depression.

[157] In PTSD, one of the main hallmarks is the avoidance of reminders of the event. People who experience trauma often do not want to go outside.

[158] With Melissa, her reports of not caring and feeling numb is indicative of PTSD. Crying at work during the summer of 2009 was significant to her. Being sad is a symptom of PTSD as well as depression. A lack of interest is one of the key points in depression.

[159] Dr. Warren said that she was not being asked to diagnose PTSD because this had already been done by others. She was simply checking for symptoms. What she observed with Ms. Trenholm was consistent with PTSD as well as depression. These conditions are often present together. She felt that Ms. Trenholm had not been looking after herself in 2009 and was experiencing symptoms of both PTSD and depression.

[160] In her report, she indicated that by early 2010 Ms. Trenholm was taking better care of herself and could laugh and smile. There was some improvement, but she still had decreased energy and concentration problems at work. She was not in remission from depression at this time.

[161] Dr. Warren said that a person's family situation could cause stress and contribute to depression. An abusive relationship can predispose a person to depression. At the time she saw Ms. Trenholm, the relationship with Mr. Seidl did not seem to be a major problem.

[162] Part of Dr. Warren's psychiatric examination is directed to assessing the patient's level of functioning. For Ms. Trenholm, there was nothing of significance except for problems with memory, concentration and sometimes crying at work.

[163] Dr. Warren noted that Ms. Trenholm displayed some psychomotor retardation, which is decreased body movement. It is often associated with mood disorders and supported her diagnosis of depression.

[164] She made recommendations for exercise, psychotherapy, reduction in caffeine and possibly light therapy, which she felt might be beneficial for Ms. Trenholm.

[165] At the time that Dr. Warren assessed Ms. Trenholm, issues with respect to socializing and anxiety did not exist. She still reported having occasional dreams related to the accident.

[166] In cross-examination, Dr. Warren confirmed that stressful work and home environments could have depressive effect on an individual. For Ms. Trenholm, she continued to meet the criteria for diagnosis, so information about other stressors was not relevant to Dr. Warren. She said that she was considering the diagnosis rather than the causal agents for the PTSD and depression.

[167] For Ms. Trenholm, the functionality issues which she described arising from her depression included reduced energy and motivation, difficulties with concentration, problems looking after the household, crying at work and having very few friends which limited her social functionality.

[168] Dr. Warren is an experienced psychiatrist and gave balanced testimony. She was asked to look at Ms. Trenholm as a result of Dr. Blaikie's concerns with depression. She was aware of her prior diagnosis with PTSD and noted that there had been improvement in both that condition and the depression between Dr. Blaikie's referral in August, 2009 and her appointment in January, 2010.

[169] Dr. Warren did not express any opinion on the cause of Ms. Trenholm's PTSD or depression. Overall, her evidence confirms the diagnoses of PTSD and depression but does not connect them to each other or relate them causally to the accident.

Myrna Trenholm

[170] Mrs. Trenholm is married to Peter Trenholm and is Melissa's mother. She says that Melissa grew up in a family that was involved with each other. There was camping, skiing, vacations and extended family celebrations throughout the year.

[171] After high school, Melissa went to university and then took a photography course. She worked as a waitress in a small café in Pugwash and did similar work after she moved out west. She had no difficulties travelling.

[172] When she and her husband went to the hospital to pick up Melissa after the accident, she was curled up in bed shaking like a leaf. Mrs. Trenholm tried to get her to talk but she was not responding. On the way home, Melissa was in the backseat of the car wrapped in blankets and said she did not want to talk about the event.

[173] Once they got home, Mrs. Trenholm sat up with her for hours and Melissa finally fell asleep for a short period around 3:00 p.m. The RCMP came later that day and Melissa gave a statement.

[174] After the day of the accident, Melissa seemed to be going through the motions and did not want to talk about it or deal with it. They visited Mr. Reid's family and attended the funeral where Melissa did a reading. Melissa was crying.

[175] Melissa took a short period of time off work and then went back for four days to finish her contract. At that time she was not sleeping well, waking up and screaming and yelling. She was hyperventilating and shaking and nervous. She was dealing with guilt and anxiety.

[176] Mrs. Trenholm described circumstances where Melissa required several attempts to get into a car. She would hyperventilate when large trucks passed the car. When travelling in a vehicle, she gripped the door handle so tightly her knuckles were white

[177] Mrs. Trenholm described one incident when Melissa was going to get mail from the box at the end of the driveway. It took her five attempts, as she kept backing away when vehicles passed by on the road.

[178] The trucks from the salt mine travel past their house and their noise would cause Melissa to shake.

[179] She took Melissa to appointments with Dr. Blaikie, as well as Dr. Matwychuk. She believes there were three or four appointments with Dr. Blaikie over the first week.

[180] Melissa returned to Banff in late October or early November. Jesse went first and then she went shortly thereafter. At that time she was still not communicating much. She had difficulties getting in vehicles and was anxious. Mrs. Trenholm saw some slight improvement before she left.

[181] The next time Mrs. Trenholm saw Melissa was when they picked her up at the Halifax Airport in 2005. She said the relationship with Jesse was not great and he had threatened her and she was afraid of him. While she was at home, it was evident that many things were still bothering her, including her relationship with Jesse, the sound of wind and noise, and trucks going by the house. Going for a walk along the road was very uncomfortable for Melissa.

[182] When they drove Melissa to the appointment with Mr. Kent in Halifax, she was beginning to show signs of being more comfortable in a vehicle and was also starting to discuss her emotions more openly. While she was seeing Mr. Kent

Melissa became less anxious in a vehicle and was more relaxed. She seemed to be coming out of her shell according to Mrs. Trenholm.

[183] Mrs. Trenholm accompanied Melissa to appointments with Mr. MacLeod. She believes it was ten to twelve sessions.

[184] They drove Melissa to Ontario as part of their vacation and occasionally she showed signs of tension when trucks passed them on turns. She asked them not to park in truck stops when there were transport trucks there.

[185] She accompanied Melissa on eighty percent of her trips to see Ms. Grant in Truro. During the therapy with Ms. Grant, she saw various areas of improvement in her. With Ms. Grant, Melissa was able to talk more openly about her feelings and see differences between day-to-day stress and the accident. She is now able to speak about the incident without panic and is not jumping at noises as often.

[186] When asked to describe Melissa's current status she says that she is well grounded and a good mother. She has come a long way from the shell she was in and Mrs. Trenholm attributes this to the work of the therapists. She is able to balance her day-to-day living, but is still troubled with some things that linger from the accident. She is proud of how far she has come. As was the case with her husband, Mrs. Trenholm presents as a loving and caring mother who is very concerned about Melissa. She expressed a number of opinions about how Melissa was feeling which were not objected to. In my view this evidence falls within the scope of permissible lay opinion evidence. A mother should be able to identify when her child is upset or anxious.

Wesley Trenholm

[187] Wesley is the third son of Peter and Myrna and the brother of Melissa. He and his wife, Maryann, have four children and live near Oxford, Nova Scotia.

[188] When Melissa was growing up he recalls that she was quiet but happy and social.

[189] Melissa lived with Wesley and his family from the fall of 2005 until the spring of 2006. She was very quiet and withdrawn and spent time reading and being by herself. She did not want to drive at all, either as a passenger or a driver.

[190] Recently Wesley has observed that Melissa is less stressed and more talkative. She is not as reserved and quiet as she was when she returned from Alberta.

Margaret Grant

[191] Ms. Grant is a practicing psychologist who has been treating Ms. Trenholm since July, 2007 following a referral from Dr. Blaikie. She continues to treat Ms. Trenholm and as of December, 2013 there had been in excess of sixty counselling sessions.

[192] Ms. Grant was qualified as an expert witness and permitted to give opinion evidence on the diagnosis and treatment of psychological disorders, including PTSD. She has had a general practice in Nova Scotia since 1992, which includes a significant number of PTSD clients. For over twenty years, she has provided debriefing and counselling to RCMP members following traumatic incidents.

[193] In Ms. Grant's first session with Ms. Trenholm, she obtained background information about her circumstances. She administered some psychological tests which were intended to determine if she was experiencing symptoms of PTSD. Over the course of treatment, Ms. Grant periodically repeated the tests in order to assess progress. Based upon her observations and testing, she was satisfied that Ms. Trenholm displayed symptoms of PTSD throughout the time that she has been treating her.

[194] Ms. Grant described PTSD as an illness which waxes and wanes. This meant that there were periods when Ms. Trenholm was doing quite well and others when she regressed. Usually, regressions were triggered by an event which reminded her of the accident.

[195] During 2007, Ms. Trenholm displayed feelings of a foreshortened future and frustration at her inability to progress. At that time, Ms. Grant was very optimistic that if Ms. Trenholm could upgrade her education and move forward with her life,

she could be rehabilitated. She estimated that it would take ten to fifteen sessions to accomplish this.

[196] In 2008, Ms. Grant was concerned with Ms. Trenholm's relationship with Mr. Seidl. There were a number of incidents of conflict with Mr. Seidl and his family. There were other stressors in Ms. Trenholm's life, including the death of her cousin and difficulties in the work place at Fox Harb'r.

[197] Although her notes did not indicate a lot of discussions with Ms. Trenholm concerning the motor vehicle accident and her PTSD, Ms. Grant was satisfied that Ms. Trenholm continued to experience symptoms. She explained that treatment for PTSD did not involve speaking about the accident on a regular basis. Although she was happy to see Ms. Trenholm taking more control of what she would accept in her relationship with Mr. Seidl, Ms. Grant was starting to become less optimistic with the prognosis for treating Ms. Trenholm's PTSD.

[198] There were several discussions with Ms. Trenholm during 2008 about the progress of her claim for compensation. Ms. Grant was of the view that resolution of the claim would assist in the treatment of Ms. Trenholm.

[199] In 2009, Ms. Grant worked with Ms. Trenholm in order to assist her to become more assertive in dealing with her relationship issues with Mr. Seidl and others. In March of 2009, Ms. Trenholm's PTSD had worsened and her depressive symptoms continued. Ms. Grant believed that she required psychiatric help and possibly medication. She recommended a psychiatric assessment.

[200] In May, 2009, Ms. Trenholm indicated that the last time she had "felt good" was before she had been with Jesse. Ms. Grant continued to recommend that she be more assertive in her relationships. Ms. Trenholm starting making arrangements to separate from Mr. Seidl. She began taking SSRI medication in the fall and began to improve.

[201] In early 2010, Ms. Trenholm reported that she was no longer living with Mr. Seidl, but continued to see him on a regular basis. Ms. Grant felt that she appeared stuck and was helpless and hopeless. She was looking and sounding depressed.

[202] In the summer of 2010, Ms. Trenholm was working in a new position at Fox Harb'r which was becoming very stressful. In August, Ms. Grant made the unusual recommendation that she leave her employment at Fox Harb'r for health reasons because she had seen a rapid deterioration in Ms. Trenholm's condition. According to Ms. Grant, she was not in good shape at that time.

[203] By November, 2010, Ms. Trenholm had made arrangements to start her aromatherapy course. She was becoming more emotional, which included arguing with Mr. Seidl. In Ms. Grant's view, this was progress as she was becoming more assertive in her relationships.

[204] In January 2011 Ms. Grant wrote to Ms. Trenholm's lawyer and indicated that she continued to meet the diagnostic criteria for PTSD. Based upon her testing, she would describe the symptoms as moderate. Ms. Grant expressed the opinion, at that point, that Ms. Trenholm would require psychological care for several years.

[205] By 2011, Ms. Trenholm was showing progress. She was working towards quitting smoking and planned to write her aromatherapy exam. Ms. Grant described these steps as "good".

[206] In March of 2011, Ms. Trenholm was pregnant and in her sessions with Ms. Grant was discussing her future. Ms. Grant felt that this was positive.

[207] By April and May, 2011, Ms. Trenholm was working and the PTSD symptoms were subsiding somewhat. Ms. Trenholm reported to Ms. Grant that her relationship with Mr. Seidl was better. Ms. Grant was of the view that Ms. Trenholm's ability to cope and manage her life was improving. Her notes of May 18, 2011 report that Ms. Trenholm stated that it was "rare to get sucked into the accident" and Ms. Grant described this as "lovely".

[208] Ms. Trenholm was discovered in this proceeding in the late spring of 2011. According to Ms. Grant she found the process stressful and displayed some symptoms of depression, but by July appeared to be moving on.

[209] In October, 2011, Ms. Trenholm's son was born. They lived with Mr. Seidl's family which was not an ideal situation due to the close quarters.

[210] In the summer of 2012, Ms. Grant felt that Ms. Trenholm appeared to be moving forward and described most days as “pretty good”. In the fall of 2012, Ms. Grant indicates that Ms. Trenholm’s mood was up and down, and there were still relationship issues with Mr. Seidl and his family. Ms. Trenholm reported that she was able to discuss her concerns with Mr. Seidl’s family, which Ms. Grant felt was very good.

[211] Ms. Grant had several sessions with Ms. Trenholm over the first few months of 2013. Ms. Trenholm reported that she was feeling well, was optimistic, was happy with the family situation and was moving forward with her aromatherapy course. Ms. Grant described these sessions as very good, positive and forward looking.

[212] In April, 2013, Ms. Grant prepared a report for Mr. Richey. She continued to diagnose PTSD with associated depression. She applied the criteria found in the *Diagnostic and Statistical Manual of Mental Disorders* (4th ed.) published by the American Psychiatric Association (DSM-IV-TR).

[213] In her report and testimony, Ms. Grant refers to significant life events which are “peripherally related” to the accident. These include difficulties in the relationship with Mr. Seidl, the loss of her Fox Harb’r job and living in substandard housing circumstances. Ms. Grant described how PTSD would make it more difficult for Ms. Trenholm to deal with difficulties in relationships, both in her personal and employment life. She would be less inclined to be assertive and more likely to put up with negative situations.

[214] At trial, Ms. Grant was of the opinion that Ms. Trenholm was getting stronger and moving forward, but would still require some future support. She could not say how frequently counselling would be needed or over what duration, but suggested that a ten year horizon was reasonable. Overall, she believes that Ms. Trenholm has done quite well with her treatment. PTSD is not something that goes away and people such as Ms. Trenholm need to learn how to manage it. There could be reactivation of symptoms in response to particular events or experiences.

[215] In cross-examination, Ms. Grant was asked about the large number of counselling sessions which appeared to focus on relationship issues. She indicated that this was not unusual for PTSD.

[216] At some point, Ms. Grant determined that Ms. Trenholm had already been assessed and diagnosed as suffering from PTSD. She does not know if this was prior to her first session. In those circumstances, she would not have conducted as much detailed testing as she would if there was no prior diagnosis.

[217] Ms. Grant was asked about the Global Assessment of Functioning (GAF) from the DSM-IV-TR. As of April, 2013, she would have assigned Ms. Trenholm a score of sixty-one to seventy. Previously, she would have placed her at fifty-one to sixty on the scale.

[218] When asked about the potential effect of Ms. Trenholm not receiving psychological treatment between 2005 and 2007, she is unable to say whether it would have helped her.

[219] Ms. Grant was asked about the particulars of Ms. Trenholm's abusive relationship with Jesse. In her view, it was not therapeutically relevant unless there were current issues. Such events do not necessarily give rise to PTSD. As an illustration, she noted that only a relatively small proportion of people who have been sexually assaulted develop PTSD.

[220] When asked about her treatment plan for Ms. Trenholm, she said that it was to assist her to make good decisions based upon rational ideas about what is best in the future. She wanted Ms. Trenholm to avoid filtering her present day decisions through the emotion of her past trauma. Management of emotions is important. She noted that Ms. Trenholm is doing well now and is no longer helpless. She is able to make her own decisions. Although PTSD waxes and wanes, Ms. Trenholm has been able to manage it, in part, because of a very good support system with her family.

[221] One of the symptoms of PTSD is acceptance of the status quo and a feeling that nothing can be done to change it. These symptoms are part of the reason that Ms. Trenholm had difficulty in resolving negative relationship issues in the past.

Dr. Edwin Rosenberg

[222] Dr. Rosenberg was the only defence witness. He was qualified as an expert in psychiatry and permitted to give opinion evidence on the diagnosis of psychiatric illnesses.

[223] Dr. Rosenberg reviewed most of Ms. Trenholm's medical records and met with her in February, 2013. He prepared a report dated March 5, 2013. After reviewing her medical history and the results of his examination, Dr. Rosenberg's report states as follows:

At this assessment, I was unable to confirm diagnoses of post-traumatic stress disorder and/or major depressive disorder in Ms. Trenholm. Psychological reports in the past have commented on the presence of post-traumatic stress disorder, but have not offered descriptive symptomatology of that condition as it may have been present in Ms. Trenholm at the time of assessment. While it is possible that Ms. Trenholm may have suffered with some symptomatology suggestive of post-traumatic stress disorder, it was, in my opinion, insufficient to warrant diagnosis of the condition.

Further, the assessment by psychiatry (Dr. J. Warren) outlined some symptomatology of major depression, which is not present at this assessment.

[224] Dr. Rosenberg has been a physician since 1965 and currently operates a consultative practice in adult psychiatry. He has diagnosed and treated PTSD as part of that practice and has testified as an expert witness in each of the Atlantic Provinces.

[225] According to Dr. Rosenberg, a diagnosis of PTSD can be made using the DSM-IV-TR criteria where a person has been exposed to a traumatic event and the following symptoms are persistently present and exist for more than a month:

- 1) The traumatic event is re-experienced.
- 2) There is avoidance of stimuli associated with the trauma and numbing of general responsiveness.
- 3) Incidents of increased arousal.

[226] Dr. Rosenberg testified that at the time of his examination of Ms. Trenholm, he could not confirm a diagnosis of PTSD because she was not showing any of the required criteria. In reviewing the records of the psychologists who had diagnosed and treated Ms. Trenholm, he was unable to see sufficient evidence to confirm their diagnoses at the time they were dealing with Ms. Trenholm.

[227] When asked about Ms. Trenholm's relationship difficulties, he indicated that they were "of some concern" to Ms. Trenholm. Dr. Rosenberg testified that in some cases, an abusive relationship could lead to symptoms of PTSD.

[228] In assessing Ms. Trenholm's level of functioning in February, 2013, Dr. Rosenberg assigned a GAF score of seventy-five under the DSM-IV-TR.

[229] In cross-examination, Dr. Rosenberg acknowledged that the accident would be an extreme traumatic stressor which would satisfy the first requirement for a diagnosis of PTSD. He was taken through a number of notations in Ms. Trenholm's clinical records which might satisfy the remaining diagnostic criteria. He was not sure if these existed for a sufficient period to be considered "persistent".

[230] Dr. Rosenberg confirmed that PTSD and depression often exist together. People with PTSD are eighty percent more likely to have at least one other mental disorder.

[231] Dr. Rosenberg was asked to review Mr. Kent's report and chart notes. He testified that he had no reason to doubt Mr. Kent's diagnosis at the time the report was prepared. Dr. Rosenberg would have added a major depressive disorder to the diagnosis.

[232] In reviewing the various reports from Ms. Grant, Dr. Rosenberg believes that depression should have been added to the diagnosis. It is his opinion that the depression may very well be due in part to the motor vehicle accident and also to the relationship with Mr. Arsenault.

[233] Dr. Rosenberg agreed that PTSD could be non-symptomatic for an extended period of time and then reactivated. In this situation, it might require future treatment. He disagrees with Ms. Grant when she says that up to six to ten

sessions per year would be needed. In his view, there is no reason for therapy if there are no symptoms being experienced. If symptoms arise, then a decision could be made with respect to treatment.

[234] Dr. Rosenberg said that he agreed with Dr. Warren's diagnosis of PTSD, but would probably have noted that it was in remission at the time.

[235] When Dr. Rosenberg was asked about whether he disagreed with the opinions of Ms. Trenholm's health providers, he said that they were justified in identifying symptoms of PTSD, but he has a difference of opinion as to the resulting diagnosis.

ANALYSIS

Existence of Psychiatric Injury

[236] In her closing submissions, counsel for the defendant acknowledged that the medical evidence likely supported the conclusion that Ms. Trenholm was suffering from PTSD and depression as a result of the accident. Even without this acknowledgement, I believe that the evidence strongly supports this conclusion.

[237] All of Ms. Trenholm's treatment providers expressed the opinion that she was suffering from PTSD. In some cases, this was based upon their own in-depth testing and assessment (such as Mr. Kent) and, in others, it was initially based upon a prior diagnosis (for example Mr. MacLeod). Even in the latter situations, the treatment providers monitored Ms. Trenholm and were satisfied that she continued to display symptoms of PTSD.

[238] I was particularly impressed with the evidence of Ms. Grant. She has dealt with Ms. Trenholm for more than six years and has extensive experience in PTSD. Her thoughtful assessment of the information obtained from Ms. Trenholm during counselling sessions and her ability to assist her in managing her symptoms was apparent from her own evidence, as well as that of Ms. Trenholm and her parents.

[239] The testimony of Ms. Trenholm's family members concerning her withdrawn nature and reaction to reminders of the accident was very consistent with the evidence from Ms. Grant concerning the symptomatology of PTSD.

[240] Not every incident or symptom recorded in Ms. Trenholm's medical records was proven at the trial. In some cases, Ms. Trenholm did not recall the particular events and others she was not asked about it. Failure to prove some of the facts underlying an expert's opinion does not render it inadmissible, it simply goes to the weight which should be given to it. In this case, the lack of evidence on some of these issues does not undermine the overwhelming weight of opinion that Ms. Trenholm was suffering from PTSD and associated depression.

[241] I would note that even Dr. Rosenberg acknowledged that she was likely suffering from a psychiatric illness. Although he did not see symptoms sufficient to make that diagnosis in his assessment in February, we must keep in mind that that was simply a snapshot of how Ms. Trenholm was doing on that day. According to Ms. Grant, Ms. Trenholm was doing remarkably well in early 2013. It is not particularly surprising that she was able to present well when she visited Dr. Rosenberg. That does not mean that she was not suffering from PTSD, but only that it was likely in remission at that time.

[242] A finding that Ms. Trenholm was suffering from a psychiatric illness does not advance the damage quantification very far. As with any injury, the primary inquiry is the impact on the plaintiff and her quality of life.

Assessment of Damages

General Damages

[243] The purpose of a general damage award is to compensate the injured party for what they have lost by way of amenities and enjoyment of life. In cases of physical injury, it is frequently described as compensation for pain and suffering.

[244] The amount awarded to someone suffering from PTSD is to be assessed based upon their individual circumstances. There is no accepted range within which the quantum must fall.

[245] It is apparent from all of the evidence in this case that Ms. Trenholm has experienced grief, trauma, emotional upset, abuse and disappointment at various stages of her life. She has also been fortunate to have many positive experiences

and supportive relationships. Currently, she presents as a typical young mother, devoted to her children in a supportive family environment.

[246] Counsel for Ms. Trenholm argues that many of the negative experiences she has had over the last ten years are as a result of the PTSD, and should be taken into account in assessing what compensation to award. Counsel for the defendants take the opposite view and say that any relationship difficulties that Ms. Trenholm had at home or at work have nothing to do with the accident, and in fact must be excluded from any damage consideration. I do not believe that the matter is quite as simple as either party suggests.

[247] In my opinion there is not a direct causal relationship between Ms. Trenholm's PTSD and her relationship problems with Mr. Arsenault, Mr. Seidl or her employer at Fox Harb'r. The only expert witness who said these issues were interrelated was Ms. Grant. In her opinion, the existence of PTSD made it more difficult for Ms. Trenholm to deal with these problems and, as a result, she may have suffered a greater degree of anxiety and stress. For example, Ms. Trenholm's inability to do anything to assert herself and her fatalistic view of life may well mean that she could not extricate herself from situations where she was being mistreated.

[248] I accept the opinion of Ms. Grant that the existence of PTSD made Ms. Trenholm more vulnerable to other stressors and magnified the emotional upset which would result.

[249] One of the symptoms attributable to PTSD is the inability to move forward with one's life. It can be evident in a diminished interest in participating in activities and a lack of expectation that one will have a meaningful career. Ms. Trenholm spoke about feeling "stalled" at various points in time. Ms. Grant testified about Ms. Trenholm's frustration in pursuing her career. One of the improvements noted by Ms. Grant in 2010 was Ms. Trenholm's renewed desire to pursue further education and, in particular, the aromatherapy course.

[250] Ms. Trenholm also described her lack of desire to participate in activities with friends. This was noted by her parents and brother, particularly upon her return to Nova Scotia in 2005. This, again, is symptomatic of PTSD.

[251] I am mindful of the evidence of Ms. Trenholm that there were still positive experiences in her life after the accident. She described spending time in the outdoors with Mr. Arsenault in Alberta and British Columbia, as well as positive work experiences when she returned to Nova Scotia. Currently, her children and family bring her considerable happiness.

[252] There is no doubt that Ms. Trenholm's experience on the Trans Canada Highway on August 23, 2003 was horrific and traumatic. It had a profound impact on her and the residual effects have continued for years. She has suffered PTSD and associated depression since the accident and it has had a negative impact on her enjoyment of life. It did not completely preclude her from pleasurable experiences, nor did it keep her from being a successful employee in most of the jobs that she has held. With the assistance of Ms. Grant, Ms. Trenholm's life has been generally positive and she has been successful in self-managing her symptoms over the last two years. Her PTSD has not disappeared and symptoms may reoccur unexpectedly in response to a triggering event. No witness was able to predict with any certainty the likelihood or frequency of such occurrences.

[253] Counsel for Ms. Trenholm argued that a significant award of general damages was warranted. In support of this, he relied upon a number of cases where the plaintiff was subject to sexual assault, with no physical injuries. The primary cases relied upon by the plaintiff were those arising out of the actions of Cesar Lalo. Mr. Lalo was a probation officer who sexually abused young people entrusted to his supervision. In *LMM v. Nova Scotia (Attorney General)*, 2011 NSCA 48, an award of \$125,000.00 for general damages was upheld on appeal. The Court was satisfied that the prolonged sexual abuse by Mr. Lalo had a significant impact on the plaintiff. It led to his incapacity to get on with life and become a productive member of society.

[254] Without diminishing the experiences of Ms. Trenholm, I do not think that the comparison with Mr. Lalo's victims is apt, and so the damage awards in those cases are not of much assistance in assessing Ms. Trenholm's claim.

[255] In *Evans v. Sproule*, 2008, CanLII 58428 (ON SC), the Court was considering another damage award arising out of a sexual assault. In that case, the perpetrator was a police officer and the victim a twenty-four year old single woman who was subsequently diagnosed as suffering from PTSD, anxiety and

depression. The trial was almost twenty years after the assault due to a delay in the plaintiff reporting the incident. At that time, her psychiatric health was described as follows:

[122] Both Dr. Cruz and Dr. Bloom found no embellishment or exaggeration in the plaintiff's responses. Indeed, her test scores indicated that she answered questions "in a reasonably forthright manner" and did not attempt to paint an "unrealistic or inaccurate impression" of her circumstances. Clearly, she has suffered and continues to suffer from post-traumatic stress disorder with manifestations such as intrusive thoughts, sleep disorder, nightmares, difficulties with trust, impaired family relationships, a series of unsuccessful intimate relationships, low self-esteem, anxiety and depressive episodes as well as panic attacks related to chance encounters with police cruisers. Her impaired level of functioning compared with the norm fluctuates between 60 and 70 on a scale of 100.

[256] The Court awarded \$100,000.00 in general damages, which is described as being at the low end of the acceptable range.

[257] The defendants relied on several cases which awarded damages between \$10,000.00 and \$30,000.00 for mild psychiatric trauma. For example, in *Varanese v. Campbell*, 1991 CarswellNS 405, the Nova Scotia Court of Appeal upheld a \$20,000.00 general damage award for a plaintiff suffering from PTSD and minor physical injuries in a motor vehicle accident. The plaintiff's prognosis was fairly good and that once legal proceedings were concluded the court felt that she would probably improve. The damages of \$20,000.00 would be worth approximately \$30,000.00 in 2014, when adjusted for inflation.

[258] In my view, Ms. Trenholm's PTSD and the associated symptoms are more serious than the plaintiff in *Varanese v. Campbell*. In addition, Ms. Grant's opinion is that Ms. Trenholm will likely require ongoing counselling to assist in managing her symptoms. Ms. Trenholm's psychiatric injury is significant, persistent and has had a profound impact on her life. It compromised her ability to cope with the many other difficult situations that she encountered. Taking all of these factors into account, I believe that a general damage award of \$75,000.00 is appropriate.

Loss of Income and Diminished Earning Capacity

[259] Counsel for Ms. Trenholm argues that the accident and the resulting PTSD has prevented her from advancing her education and career plans. Counsel for the defendants disagrees and says that following the accident, Ms. Trenholm returned to Alberta and continued exactly the same type of employment she had previously engaged in.

[260] Following high school, Ms. Trenholm had several false starts with respect to her continuing education. After that she moved west and worked in the service industry. After the accident, she continued to do the same. It is hard to see any significant impact on her employment as a result of the accident and the PTSD.

[261] I accept the evidence of Ms. Trenholm, as confirmed by Ms. Grant, that she felt stalled and as a result not inclined to pursue further educational opportunities. I conclude that this is related to her PTSD and the associated symptoms. If the accident had not occurred, I think it is reasonable to believe that she may have pursued the aromatherapy program in a more timely way. Ms. Trenholm has done very little up to now to advance that career option beyond completing the course.

[262] There was no evidence indicating how much income an aromatherapist might expect to earn and so no real basis to quantify the amount of any loss which might result from a delayed career. I am satisfied that the accident and resulting PTSD has caused Ms. Trenholm to have low self-esteem and a lack of confidence. It has made her more withdrawn and, therefore, less likely to seek out employment or seek advancement in positions which she has held. I also accept the evidence of Ms. Grant that there may be a reoccurrence of symptoms in the future. If that were to occur, this would result in lost income, particularly if Ms. Trenholm is self-employed as an aromatherapist.

[263] In these circumstances, I believe that the basis of a global award for diminished earning capacity in the amount of \$20,000.00 has been established. This amount is sufficient to reflect any past income loss which may have been suffered, any stagnation of Ms. Trenholm's career, as well as the risk of a future period of diminished employment due to reoccurrence of PTSD symptoms.

Cost of Future Care

[264] If Ms. Trenholm requires ongoing treatment for her PTSD, she is entitled to compensation for those expenses. Ms. Grant gave the opinion that she believed future counselling would be needed, but she was unable to be specific with respect to frequency, time period or costs. It is clear from the evidence that Ms. Trenholm has shown improvement in her symptoms with the assistance of Ms. Grant.

[265] I note that over the last two years, Ms. Trenholm has averaged seven sessions annually with Ms. Grant. Historically, Ms. Grant has charged \$125.00 per session. In addition, Ms. Trenholm has had the expenses of travelling to the appointments.

[266] If Ms. Grant retires and Ms. Trenholm is required to obtain a new counsellor, there is no assurance that the frequency of visits or the associated costs will be the same. However, I have no evidence on either of those points.

[267] Ms. Trenholm has made significant progress in managing her PTSD and I expect that this will continue, and so the necessity for treatment will diminish over time.

[268] At the conclusion of the evidence, counsel advised that the Section B insurer had recently issued a cheque to Ms. Trenholm in the approximate amount of \$10,000.00, representing a payout of the balance of the Section B benefits. Ms. Trenholm is required to give credit to the defendants for that payment which should be allocated to future treatment expenses. Although I have little information concerning Ms. Trenholm's future treatment requirements or associated costs, I am satisfied that the amount received from the Section B insurer represents a reasonable estimate of what these future expenses might be and, therefore, no further award should be made.

Derivative Claim of Peter and Myrna Trenholm

[269] Individuals who provide services and assistance to injured family members which go beyond what reasonably might be anticipated under normal circumstances may receive compensation on a *quantum meruit* basis. The plaintiff

suggests that such an award should be made in this case to Peter and Myrna Trenholm.

[270] The evidence clearly indicates that Mr. and Mrs. Trenholm have been devoted and loving parents to the plaintiff. They have provided all of the assistance and support that they can, including travelling to all of her medical and legal appointments, most of which were some distance from home. There is no evidence that they provided personal care to Ms. Trenholm or performed household chores, both of which will sometimes attract a *quantum meruit* award. Peter Trenholm has kept meticulous records of medical appointments and expenses incurred on behalf of his daughter. One reason for this is to avoid the additional psychological burden which might be imposed on Ms. Trenholm by performing those functions herself.

[271] In the circumstances, I am satisfied that a modest *quantum meruit* award ought to be made and that Peter and Myrna Trenholm each should receive \$3,000.00.

Special Damages

[272] Peter Trenholm presented a summary of expenses and supporting receipts for the cost of the family's attendance at the trial in Halifax. Mr. Richey argued that these expenses could be awarded as special damages; however, I disagree. If anything, they are matters which should be considered as part of the trial disbursements and I will do so at that stage of the proceeding.

Pre-judgment Interest

[273] Both parties agree that the pre-judgment interest rate should be two point five percent per annum; however, they disagree on the time period to which it should apply. Counsel for the defendants argues that it took too long to get to trial and interest should be capped at four years. Counsel for the plaintiff suggests eight and a half years.

[274] I agree that ten years is too long for a claim such as this to come to trial. Normally, four years should be sufficient. One reason for the delay is that Ms. Trenholm returned to Alberta following the accident for two years. The

defendants should not pay interest for that time period. Another reason why the matter took so long was that the trial was originally scheduled for thirty days because it was to be heard with Mr. Seidl's action. The length of trial affected how quickly dates could be set following filing of the request for a date assignment conference. That time period should not automatically be deducted from the period for which the plaintiff receives interest.

[275] On balance, I believe a period of six years is reasonable for the running of pre-judgment interest.

SUMMARY AND CONCLUSION

[276] I am satisfied that Ms. Trenholm has proven that she suffers from a psychiatric injury as a result of the traumatic motor vehicle accident which occurred in August, 2003. I assess her general damages for the injury at \$70,000.00. She is also entitled to \$20,000.00 for diminished earning capacity and past wage loss. Peter and Myrna Trenholm shall each receive \$3,000.00 for *quantum meruit* based upon assistance given to the plaintiff. All of these amounts will bear pre-judgment interest at a rate of two point five percent for six years.

[277] If the parties are unable to agree on the issue of costs, I will receive written submissions within forty-five days from the date of this decision.

Wood, J.