

CITATION: Leenderste v. HMK, 2022 ONSC 6395
COURT FILE NO.: 14-2549
DATE: 20221121

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
 JESSIE LEENDERSTE)
) Martha Cook, for the Plaintiff
 Plaintiff)
)
 – and –)
)
 HIS MAJESTY THE KING IN RIGHT OF) Brian Sunohara and Erin Crochetière, for the
 ONTARIO) Defendant
)
 Defendant)
)
) **HEARD:** Feb. 18, 19, 20, 21, 2020, Nov.
) 12, 2021, Dec. 6, 7, 8, 9, 10, 2022, June 27,
) 2022

K.A. GORMAN

OVERVIEW

- [1] On June 14, 2012 at approximately 9:25 p.m. Jessie Leenderste (“Jessie”) was riding his all-terrain bicycle southbound on Rest Acres Road, in the town of Paris, Ontario. Ontario Provincial Police (“O.P.P.”) Police Constable (“P.C.”) Robert Page was operating his marked SUV, travelling in the same direction, behind Jessie. The vehicle’s side mirror collided with Jessie’s arm, sending him off the roadway onto the gravel.
- [2] P.C. Page pulled his vehicle over to the gravel shoulder, and instructed Jessie to meet him at a nearby plaza. Jessie remained at the plaza lot until O.P.P. Staff Sergeant (“S/Sgt.”) Butler arrived to continue the investigation.

ISSUES

- [3] The issues before the court are:
1. Liability;
 2. Charter Claims and Quantum of Damages;
 3. General Damages;

4. Loss of Income/Loss of Competitive Advantage;
5. Past Loss Earnings;
6. Future Care Costs;
7. Punitive Damages;
8. Special Damages; and
9. Threshold

POSITIONS OF THE PARTIES

- [4] The plaintiff seeks damages for negligence, and unlawful detention, and submits that he has lost his enjoyment of life.
- [5] The defendant does not dispute that P.C. Page's motor vehicle struck the plaintiff. It submits that the accident was minor in nature, and that the plaintiff was riding his bicycle without reflectors. Further, the defendant submits that the OPP had a duty to investigate and that the plaintiff was not detained.
- [6] Further, the defendant submits that the plaintiff does not meet the statutory threshold for recovery of non-pecuniary damages and health care expenses, and that he has not sustained a provable loss of income.

REVIEW OF FACT EVIDENCE - PLAINTIFF

Jessie Leenderste

- [7] Jessie is 35 years old, with a grade 12 education. He lives in Paris, Ontario in a house that he owns with his brother, Jake.
- [8] He told the court that in June 2012, he was employed at Stratford Hyundai as the manager of their detailing department. He had worked there since 2006. He made \$19/hr. with performance bonuses. Additionally, he owned and operated his own detailing business, "Leen Clean" out of the back of Stratford Hyundai.
- [9] He told the court that in 2012, he considered himself to be in the best physical condition of his life. He worked 40-60 hours per week. He estimated that his commute was about 40 hours per month. He did power lifting, cardio, and core training. He enjoyed cycling, and motorcycle riding, and was planning a trip to Cuba.
- [10] Jessie testified that on June 14, 2012 he had plans to meet his friend, Heather Miller at 9 p.m. for coffee at the Cobblestone Plaza on Rest Acres Road. He said that he left his home

at about 8:30 p.m. – possibly a bit later. He said that he was wearing black gym pants and a bright green shirt. He was riding his black mountain bike. He testified that he put on his black camel backpack which had a red LED light on it, and that he turned it on before he got on the bike. His bike did not have any reflective devices. He was not wearing a helmet.

- [11] In cross-examination, he agreed that there was no overhead lighting on the road. He said it was starting to get dark but that it was “a bit light out”.
- [12] He testified that he rode on Rest Acres Road, between the white line and the gravel shoulder in the direction of traffic. He said that he could hear a motor behind him and turned to listen. He said that he twisted his body to the left, and his left elbow jutted out at an angle to his body.
- [13] He said a vehicle hit him and he heard (what he now knows to be) a mirror explode. He said that he managed to catch himself before he hit the ground. He said that the vehicle impacted him about two inches above his left elbow. His bike spun around but he managed to put his feet down to the ground, preventing a fall. He realized then that he had been hit by an OPP cruiser. There was no damage to his bike.
- [14] He testified that it took the OPP officer “a bit” to pull over. He said the officer ran out and looked at the side mirror, and then ran back toward him. He said that he was instructed to go to the Cobblestone Plaza, and he rode his bike over.
- [15] Once at the plaza, he met his friend Heather and told her what had happened. He said that he took his camel backpack off and placed it onto the passenger seat of her vehicle. He had a cut on his arm and used a napkin to stop the blood. A couple of minutes later, the driver of the OPP vehicle, P.C. Page entered the parking lot. Jessie said that he walked over to P.C. Page’s motor vehicle.
- [16] Jessie said that P.C. Page’s supervisor, P.C. Potter, arrived about 15-20 minutes later.
- [17] Jessie testified that P.C. Potter asked him what had happened and was told that he needed to write a statement. Jessie asked if Heather could take him to the hospital – that he was not comfortable to write a statement, but he spoke to P.C. Potter.
- [18] Jessie said that he told P.C. Potter that the road had been clear, and light out. He said that P.C. Potter asked him if had been “dark out” a couple of times. He showed the officer his bike, which was on its side by P.C. Page’s vehicle, and told him that there were no reflectors on it.
- [19] The oral statement took about 15 minutes. Jessie testified that he was feeling pain in his arm and neck and wanted to go to the hospital. He said P.C. Page laughed. Another officer arrived to take photographs. Photographs were taken at approximately 11:30 p.m.
- [20] In cross-examination, he disagreed that P.C. Page offered to call an ambulance and that he declined.

- [21] Jessie was shown Exhibit #A, Tab 6, the General Occurrence Report. He identified it as the statement that P.C. Potter had written. He told the court that it accurately reflects what he had told the officer.
- [22] Jessie never told any officer about his camel backpack.
- [23] In cross-examination Jessie agreed that he was never told that there would be consequences if he left the area, and no-one ever physically touched him.
- [24] Jessie went to hospital after the photographs were taken. X-rays were taken and he was given extra-strength Tylenol, after which he went home to rest.
- [25] Some time later, P.C. Potter gave Jessie a ticket for failing to have a light on his bike.
- [26] He testified that 13 days after the accident, he went to the police detachment to file a complaint. He said that he dealt with a Sgt. Skelding, who appeared agitated. A complaint was filed against P.C. Potter and Sgt. Skelding on July 4, 2012.¹
- [27] In cross-examination, Jessie was directed to Exhibit # A, TAB 24 – the police complaint. He agreed that there is no mention of the camel backpack.
- [28] Jessie told the court that he went to see his family doctor about a week or a week and a half after the accident because of bad neck muscle spasms, headache, and shoulder pain. He was sent for x-rays and an MRI, and referred for physiotherapy. He was prescribed pain medication and muscle relaxants.
- [29] Jessie commenced physiotherapy at Black Creek in Stratford, where he was seen by physiotherapist, Melissa Groot. During this time, he was unable to work out at the gym.
- [30] Jessie was shown Ms. Groot's notes², and acknowledged that he reported the symptoms.
- [31] Jessie stopped seeing Ms. Groot in August 2013. He started seeing chiropractor, Dr. Jeffrey Tuling. He continues to see Dr. Tuling, and returned to working out at the gym approximately six months after the accident. He testified that he now attends the gym three-four times per week. Jessie was shown Exhibit #C, TAB 26 and acknowledged filling out the pain questionnaire.
- [32] After the accident Jessie returned to work at Stratford Hyundai, but was unable to detail cars, either for the dealership or his private enterprise. He was accommodated with modified duties, but found that the shorter hours and the cost of the commute did not make the job financially prudent.
- [33] In October 2013 he commenced work at Branford Honda as a detailer at a wage of \$12.50 per hour. He was paid by the job with an expected set time for the job to be completed. He

¹ Exhibit #1, TAB 24

² Volume B, TAB 10

said that there were times when a detailing job would take a lot longer because he was in a lot of pain. He stayed at this job until he received his final pay cheque of February 18, 2015.

- [34] Approximately one month later, Jessie opened an out-post of Leen Clean in Brantford. He rented a garage bay with his former boss, Frank Sandola. Jessie borrowed money from his father for business equipment. He rented further space, and in 2017 hired an employee.
- [35] Jessie's father died in 2016, and he inherited rental property. He found that he was preoccupied with managing the property, and wound down Leen Clean in November 2018.
- [36] Jessie and his brother renovated the property, converting it into a 4-plex. In 2019, it was rented. The property generates income. Jessie did not work in 2019, and told the court that while he would like to get Leen Clean up and running again, he had no plan to look for any other type of employment.
- [37] Jessie told the court that he has always filed an income tax return. The court received Ex.# D TAB 43 which detailed his income from 2008 to 2018 (inclusive).
- [38] At trial, Jessie described his pain as very severe. He said he doesn't attempt heavy lifting. He said that reading causes moderate pain, he has slight difficulty concentrating and has moderate headaches. He told the court that he sleeps only three-four hours per night. He cannot drive as long as he might like, owing to neck pain. He told the court that he no longer rides a bike on the road. He said that he enjoys going to the gym. He plans on continuing to see Dr. Tuling.
- [39] In cross-examination, Jessie was shown several Facebook posts³ that were on his profile page, with accompanying photographs:
- July 29/12 – Jessie at friends with champagne and cigar
 - February 28/13 – Jessie in Jamaica for his birthday (with Frank Sandola)
 - October 3/14 – Jessie lifting up shirt in Dominican Republic (with Heather Miller)
 - January 28/15 – Jessie on beach in Cuba
 - May 25/15 – Jessie with beer bottle on porch
 - January 9/16 – Jessie on beach in Cuba
 - May 15/16 – Jessie wearing suit in Drumbo for friend's wedding
 - December 16/16 – Jessie, posing at gym

³ Exhibit 8

[40] Exhibit 9 is a copy of DVD surveillance of the plaintiff. The following is depicted:

May 17/17, 8:54 p.m.

Fit Effect Gym – Jessie doing bicep curls (25-30 lbs.)

January 19/19 11:08 a.m.

Jessie is observed looking into a Jeep talking to a friend;

Jessie gets into a truck and followed to Home Hardware and away in truck

Jessie is observed picking up lumber out of the truck bed;

2 x 4s – carrying 5 at a time and return for 2 or 3 additional pieces of lumber

5:07 p.m.

Jessie observed shovelling snow off exterior staircase of residence

5:14 p.m.

Jessie observed removing insulation machine from trailer; pulling it upstairs with two friends; pulling it upstairs; turning his neck

January 29/19 9:07 p.m.

Jessie at the side of his house, brushing snow off wind-shield of pick-up

Scraping ice with both hands, then clearing off his girlfriend's car

9:29 – 9:39 a.m.

Jessie shovelling snow

9:56 a.m.

Jessie into Bobcat, and operating same

12:13 p.m.

Jessie getting diesel fuel and lifting the can out of truck bed

3:30 p.m.

Jessie to TD bank

3:55 p.m.

Jessie at Canadian Tire and out with paper towels and windshield wipers in left hand

- [41] Jessie testified that before the accident he had had no injury to his shoulder and/or neck and had no pain.
- [42] In cross-examination the plaintiff was shown a Willett Hospital Admission record, dated August 30, 2009. The record indicates that Jessie presented at the emergency room reporting of having been assaulted and complaining of neck and left shoulder pain. Jessie agreed with Mr. Sunohara that he had had such pain before the accident.
- [43] Jessie testified that he hasn't worked at all since November 2018. He agreed with Mr. Sunohara that he is able to work and that no medical professional has told him to refrain from doing so. Jessie testified that he does all of his own housekeeping.
- [44] Mr. Sunohara referred Jessie to Exhibit #C, TAB 36, p. 11 – the Pre-Collision Functional Ability form. Jessie agreed that he failed to advise that he had previously been struck by a motor vehicle but did indicate that he did not ride a dirt bike.

Heather Miller

- [45] Ms. Miller testified that by June 14, 2012 she had known the plaintiff for about 10 years, having met through mutual friends.
- [46] She testified that on June 14th she agreed to meet Jessie for coffee at the Tim Horton's on Rest Acres Road between 8 – 8:30 p.m. She said that she arrived about 15 minutes early. She said that it was clear, light outside and that she waited inside her motor vehicle.
- [47] She told the court that she saw Jessie riding his bicycle. She said that Jessie had told her that he had been hit by a car and that the police would be coming to the plaza. She told the court that she helped take Jessie's backpack off. She described it as having lights and reflectors on it. When shown Ex. #3, she could not identify it as the backpack.
- [48] She told the court that an officer arrived and said, "that was a close one", making light of the accident. She said that the officer reported that he had not seen Jessie.
- [49] She told the court that Jessie asked about five times to be allowed to leave to attend hospital. She testified that she did not believe she was ever asked about any reflectors.
- [50] In cross examination, Ms. Miller said that the only injury that she observed on the plaintiff was a cut to his elbow. She did not observe any damage to the bike. Further, she agreed that she was not a witness to the impact and therefore could not say whether any lights were on the backpack. Finally, she told the court that she never saw any police officer touch or arrest the plaintiff.

Frank Sandola

- [51] Mr. Sandola is the owner of Stratford Hyundai. He met the plaintiff at Brantford Honda in the early 2000's. He said that he was selling cars, and the plaintiff was cleaning cars.
- [52] In 2009, Mr. Sandola was granted a Hyundai franchise in Stratford. Mr. Sandola offered the plaintiff a bay for his business, "Leen Clean". Jesssie started in 2012.
- [53] He told the court that before the accident Jessie worked 40-50 hours per week. He testified that following the accident, Jessie missed many shifts at work.
- [54] Jessie quit Stratford Hyundai in October 2013 when Mr. Sandola sold the dealership. He told the court that Jessie returned to Brantford Honda in November 2013, which was much more convenient for him.
- [55] Mr. Sandola was shown Ex. #E TAB 58. He agreed that for the period of June 14, 2012 to December 31, 2012 Jessie was paid a net salary of \$13,984.53. For the period of June 12, 2011 to December 31, 2011 he was paid \$13,791.86. In cross examination Mr. Sandola agreed that after the accident the plaintiff's earnings were almost the same and that he worked approximately the same number of hours.
- [56] In January Mr. Sandola leased space in Paris, Ontario: D-Auto. Jessie rented a bay from him. Jessie ultimately moved into leased space next door.
- [57] Mr. Sandola testified that Jessie was still a good reliable car detailer, however he would turn down work because he wasn't able to do it. He said that Jessie stopped detailing there around October 2018. He closed D-Auto June 31, 2019.
- [58] After the accident, Mr. Sandola travelled with Jessie – once to Jamaica and once to Florida. They flew to Ft. Lauderdale, and then drove to the Keys.

Brent LeBlanc

- [59] Brent Leblanc met Jessie when they worked together at Brantford Honda in 2013. He said that they never socialized outside of work, but since Jessie left the dealership the plaintiff has stopped by his home to visit.
- [60] He described detailing as a physically demanding job, and that operating the high-speed polisher was the hardest part of the job.
- [61] He described Jessie as having a good work ethic. He said that Jessie would often take late shifts to accommodate his appointments. This resulted in Jessie missing out on detailing jobs.
- [62] Mr. Leblanc told the court that since the plaintiff left Brantford Honda, he has been to Jessie's home. He has observed him carrying items over 10 pounds and has observed him doing plaster work and dry walling.

Matthew Tate

- [63] Matthew Tate and Jessie are close friends, both having grown up in Paris, Ontario.
- [64] He told the court that between 2010 and 2012 they would ride dirt bikes together most weekends. He described Jessie as being a “skilled rider”.
- [65] Mr. Tate testified that Jessie routinely wore his camel backpack when riding.
- [66] Jessie told him about the accident. After the accident he would see Jessie every week. He hasn’t been riding bikes with Jessie since the accident.
- [67] Mr. Tate told the court that he has helped Jessie do work on his home, including delivering and picking up materials.

Jake Leenderste

- [68] Jake is the older brother of the plaintiff. He stated that before the accident they would dirt bike together. He said that in 2017 the plaintiff would help Jake at his new shop about three-four times per week.
- [69] He said that since the accident Jessie’s energy level has changed. He said that Jessie requires naps and “lots of advil”.
- [70] He told the court that Jessie helped out with renovations to the home the share, but that he didn’t do any heavy lifting.
- [71] He agreed that at December 16, 2016 Jessie appeared as depicted in the photograph found at TAB 9 of Exhibit #8.

Nick Hayward

- [72] Mr. Hayward is the owner of Fit Effect Gym. He said that before the accident the plaintiff would be social with him at the gym. Since the accident, the plaintiff has cleaned his wife’s vehicle. He was happy with Jessie’s work. He could not recall the last time he had spoken with him.

Jessie Wooley

- [73] Jessie Wooley told the court that prior to the accident he would see the plaintiff every day; they would go biking and “hang out”. He told the court that Jessie routinely wore his camel backpack when cycling.
- [74] Since the accident he sees Jessie three-four times per week. They largely “hang out” and talk.

Dr. Jeffrey Tuling

- [75] Dr. Tuling is a chiropractor, employed at the Stratford Health and Wellness Centre.

- [76] Dr. Tuling told the court that he initially assessed Jessie in August 2013. He had him fill out a questionnaire regarding his complaints – a self-report.
- [77] Dr. Tuling testified that his goal was to mobilize the vertebrae in an effort to achieve pain reduction. Dr. Tuling saw Jessie 98 times – the last date being January 9, 2020. He told the court that Jessie reported some pain reduction, but going forward, he does not anticipate that he will have further pain alleviation; he is static.
- [78] Dr. Tuling was shown Facebook photos of Jessie found at TABS 6 & 9 of Exhibit #8. He agreed with Mr. Sunohara that the person in the photo (Jessie) does not look like someone incapable of doing daily activities. Indeed, he told the court that within two years of the accident Jessie was able to perform the essential tasks of his employment.
- [79] Dr. Tuling testified that he never recommended that he stop working or refrain from housekeeping or home maintenance as a result of the index accident. On July 16, 2015 he noted that Jessie had injured his back while at work. He made follow-up notes recommending that because of that injury, Jessie should remain off work until August 10, 2015.

Dr. James Brown

- [80] On May 6, 2016 Dr. James Brown, who practices in the area of anesthesia, received a referral note from Dr. Koh.
- [81] Dr. Brown first saw Jessie on May 27, 2016. He took a history from him, examined his cervical spine and conducted a number of tests. He agreed that the history he took from Jessie was comprised of some self reporting, and that some of the tests were subjective in nature.
- [82] Dr. Brown found that Jessie's range of motion was within normal limits. The strength in his upper extremities was high, i.e., 5/5. His lumbar spine range of motion was within normal limits, and there was no report of pain in the area where the pelvis meets the spine.
- [83] Dr. Brown provided a diagnosis. He indicated that Jessie might be suffering from arthritis, or perhaps simply a normal part of aging. He agreed that his reported symptoms could also be the result of an accident. He did not ask Jessie about weightlifting or bodybuilding.
- [84] On February 27, 2019 Dr. Koh wrote Dr. Brown a second referral note for Jessie. Dr. Brown saw Jessie on March 20, 2019. He provided Jessie with a sacroiliac injection to determine if there was pain in the area of the sacroiliac joint. He told the court that the joint is frozen and then the patient reports what the effect is afterward. The patient is asked to fill out a pain scoring sheet which is interpreted by one of Dr. Koh's colleagues. The diagnosis was inflammation of the sacroiliac joint.
- [85] Dr. Brown next saw Jessie on May 13, 2019. He injected his lower back in a similar manner however there is no data in his records regarding an interpretation.

- [86] Dr. Brown saw Jessie July 31, 2019 and examined his neck. He diagnosed “facet syndrome” and provided an injection to see if it would reduce pain complaints. He told the court that this diagnosis may be caused by degeneration, arthritis, the dysfunction of the joint, ordinary wear and tear or a whiplash style injury.
- [87] Dr. Brown saw Jessie three more times: August 27, 2019, September 23, 2019, and October 22, 2019. On each occasion he injected Jessie with a nerve block to his neck.
- [88] Dr. Brown agreed that he never interpreted the data, nor has he ever provided an opinion on the cause of Jessie’s pain.

Melissa Groot

- [89] Melissa Groot is a registered physiotherapist. She told the court that she first met Jessie on July 5, 2012. He came to her seeking treatment for injuries he reported that he had sustained in an accident.
- [90] She told the court that Jessie reported that he was trying to get back to a higher level of physical activity including weightlifting. She took a patient history and advised the court that Jessie indicated that his past medical history was negative.
- [91] Ms. Groot had Jessie fill out a number of forms including a Neck Disability Index, a questionnaire about the lower back and a questionnaire about upper extremities. She said that he filled the forms out at the first appointment. In terms of reporting pain, where zero is no pain at all and 10 is maximum pain, she indicated that Jessie reported the following:
- 7/10 head pain, aggravated by neck movement
 - 7/10 base of skull to shoulder blades, constant aching
 - 9/10 inside left forearm, aggravated with increased use of left hand and intermittent pain from left shoulder to hand
 - 9/10 constant low back pain, aggravated with quick movement; decreased with lying down and intermittent “pins and needles”
- [92] Ms. Groot conducted an objective assessment and noted that Jessie’s left posterior spine was lower than his right. She performed various tests and Jessie reported pins and needles in his left hand and left inside neck pain. She observed that his shoulder range of motion was limited. She noted that the sacroiliac tests were normal. He had audible crepitus. Ms. Groot told the court that this is not necessarily due to “wear and tear” as it also occurs in teenagers. While Jessie was right hand dominant, both were very good in terms of lifting weights.
- [93] Ms. Groot created a treatment plan based on the subjective reporting and her objective findings with the goal to decrease pain at the six-week mark. The treatment plan was submitted to Jessie’s insurer with the following diagnoses: lumbar pelvic strain/sprain,

whiplash, left shoulder sprain/strain, and headaches. She told the court that these diagnoses fell within the “minor injuries guideline” of the insurer.

- [94] Ms. Groot next saw Jessie on July 25, 2012. He advised that he was going to the gym but not lifting weights. He reported that he was following the treatment program. Ms. Groot continued treating Jessie until discharge on February 5, 2013. In her discharge note she reported that headache, neck, and low back pain had improved; there was intermittent low back pain, and left shoulder pain. Jessie reported that he was working 30 hours per week. He said he had not returned to full hours at work or all of his preinjury activities at the gym. He reported that he was still experiencing a high level of pain although it was decreasing inconsistency.
- [95] Jessie returned to Ms. Groot on August 8, 2013 because his symptoms had either plateaued or worsened and that he had been back to his doctor. She again conducted an assessment. He reported that his left shoulder pain was worsening but his lower back pain was somewhat better. Following the self reporting and her observations she prepared a treatment plan and told the court that she felt his prognosis was “fair to good.”
- [96] Ms. Groot told the court that she treated Jessie this time for about five weeks as the insurer only approved the initial assessment and four sessions, as they determined that the injuries fell within the “minor injuries guideline”. She has neither seen nor treated Jessie since 2013.
- [97] In cross-examination Ms. Groot was shown the photographs of Jessie, contained in Ex #8. She told the court that he appeared more muscular in the photographs than when she had treated him. She said that she did not recall having documented “muscle wasting” and that there was nothing to suggest that Jessie was not physically active while she was treating him.

Dr. Rehan Dost

- [98] Dr. Dost is a neurologist and electromyographer. Jessie was referred to him by his primary physician, Dr. Mohammed.
- [99] Dr. Dost prepared a report, dated November 24, 2013, wherein he reported that Jessie “was riding his bike and he was clipped on the left side by a mirror. He states that since then he has had cervical and left shoulder pain.”
- [100] Dr. Dost investigated and summarized as follows:
1. He has left medial epicondylitis and dynamic irritation of the ulnar nerve. He does not require transposition. There are no objective findings. He may wish to consider local steroid injections.
 2. His cervical and left shoulder pain is likely myofascial. I note that his ultrasound is normal. I would appreciate a copy of the MRI of the cervical spine once complete to ensure it is not a cervical root issue. Clinically, I find no evidence for this. Nonetheless, a small percentage of patients, with cervical root compression have no findings on exam or electrophysiological studies termed “non-verifiable radicular symptomatology”. However, most cases ended up being myofascial. I would be pleased to see him again if the MRI is abnormal.
- [101] Dr. Dost described “medial epicondylitis” as “golfer’s elbow”. He said that it can be caused by overuse, producing inflammation around the inner part of the elbow.
- [102] Dr. Dost testified that Jessie’s myofascial pain was pain that radiated from the neck. He told the court that myofascial pain can occur as a result of repetitive trauma or a single trauma. He agreed that it could be caused by repetitive weight-lifting.
- [103] Dr. Dost never saw Jessie again, and never received an MRI.

REVIEW OF FACT EVIDENCE – DEFENDANT

Sgt. Robert Page

- [104] On June 14, 2012 OPP Sgt. Robert Page was working as a K-9 handler. He attended the Paris, Ontario Fire Hall for demonstration at about 6:00 p.m. It ended at 9:26 p.m. He told the court he was returning to his residence, driving a marked OPP suburban.
- [105] He testified that he was southbound on Rest Acres Road around 9:30 p.m. He described the road as a paved two-way carriageway. He said it was a clear day there was some illumination in the sky but the ground plane was in darkness; he had his headlights on.
- [106] He said that as he continued southbound up an incline there were two or three motor vehicles coming towards him in the opposite direction. He said he looked in their direction

and in his peripheral vision saw an object. At the point of impact, he said he was travelling 50 to 55 km an hour. He said he applied the brakes and activated his emergency lights and pulled over at the intersection of Cobblestone Road. He said he got out of his motor vehicle to the passenger side where he noted damage. He observed Jessie up on the gravel shoulder on his bike. He described him as a male with dark hair, green T-shirt, black pants riding a black mountain bike. He did not observe him to be wearing anything or carrying anything, i.e., a backpack. Sgt. Page testified that he had a short conversation with Jessie and asked if he was okay or if he needed any medical attention. He said he suggested that they relocate into the adjacent parking lot to stand by for a traffic investigation. He told the court that police orders required him to get a supervisor on scene.

- [107] Sgt. Page testified that he reported the incident to the communication centre a few moments after the accident. He was played an audiotape, marked as Exhibit 45. He identified his voice and that of the dispatcher. The time stamp on that audio tape was 21:37:37.
- [108] While in the parking lot Sgt. Page testified that he had a brief conversation with Jessie. He said P.C. Kevin Potter arrived within a few minutes. He told the court that before Sgt. Potter arrived, he had spoken to him on his cell phone. He explained the circumstances of the accident and remained with his motor vehicle.
- [109] Sgt. Page said that other officers arrived; he gave a statement to P.C. Potter. He told the court that he was not involved in obtaining a statement from Jessie and that he never touched or threatened him. He told the court that Jessie was interested in leaving the parking lot but that the accident had to be reported. He said that if he left, he would risk fail to remain charges. However, he told the court that if Jessie chose to leave, he would just watch him do so. He said he was never rude or demeaning or insulting to anyone he saw on that day. He did not recall joking with colleagues at the investigation.
- [110] He told the court that he never advised Jessie of his rights to counsel or that he was free to leave. He did not recall Jessie asking if he could go to hospital.
- [111] Sgt. Page told the court that he had a recollection of speaking with Jessie's friend. He said that he mentioned that it might be a good idea for Jessie to seek medical attention. He said that Jessie declined medical attention.
- [112] In cross-examination Sgt. Page was shown the backpack entered into evidence. He told the court that Jessie was not wearing such a backpack and that he never saw one at the scene.
- [113] Sgt. Page testified that he was ultimately charged with careless driving that was served on him by Sgt. Hampson, and that as a result of the accident a report was placed in his police record. The charge was ultimately withdrawn. He said that it was his belief that Jessie had also been charged but that he was not consulted in any way.

Police Constable Kevin Potter

- [114] By 2012 P. C. Potter had 15 years as a an OPP officer. He was experienced in investigating traffic collisions having done so more than 100 times.
- [115] He told the court that there is a specific procedure to follow if an OPP member is involved in a collision with a member of the public, and if there is damage to an OPP vehicle. He said that the unit commander, communication centre and the on-duty traffic sergeant must be notified, and photographs taken of any damage and/or injuries.
- [116] He testified that on June 14, 2012 he was working a 4:00 p.m. to 4:00 a.m. shift. He testified that he received information from PC page at 21:38 hours and attended to the Tim Hortons on Rest Acres Road. He arrived at 21:42 hours and told the court that it was dusk, just starting to get dark. He observed PC Page with his OPP vehicle and saw Jessie exit a motor vehicle in which he was sitting. He observed Jessie to be wearing dark blue pants and a green T-shirt. He didn't notice that he was carrying anything. Further he appeared to be six feet tall with dark brown hair. He noticed the bike which he described as a Norco Wolverine, black in colour with no reflectors on it.
- [117] P. C. Potter testified that he obtained Jessie's information, his date of birth, address, and phone number from him. He agreed that he did not tell Jessie that he could leave, but he could have done so. He told the court that he asked Jessie to provide a statement. He agreed that he did not mention that it was voluntary or that he might wish to confer with counsel. P. C. Potter denied that he pressured Jessie into providing a statement. When he spoke with Jessie he asked if he needed medical attention or an ambulance and he declined. He told the court that Jessie said if he wanted to go to the hospital, he could get his friend to take him. P. C. Potter did not recall saying that Jessie needed to stay at the location.
- [118] P. C. Potter told the court that he did not read Jessie a caution as he was not under arrest. He told the court that he was never rude, demeaning or insulting to Jessie nor did he see anyone be so.
- [119] Once P. C. Potter obtained a statement from Jessie, he notified the detachment commander. As well as S/Sgt. Carl Butler about the collision. S/Sgt. Butler indicated that he would be attending the scene. While waiting for S/Sgt. Butler to arrive P. C. Potter spoke with the acting communications sergeant, requested that P. C. Drake attend as the Scenes of Crime Officer ("SOCO"). S/Sgt. Butler arrived at 23:10 hours and was briefed. He indicated that staff Sgt. Butler had a conversation with Jessie wherein Jessie was offered medical attention which he declined.
- [120] P. C. Potter told the court that he cleared the scene at 23:55 hours. Later he received direction from Sgt. Hampson to issue a Provincial Offences ("PO") notice to Jessie for improper bicycle light. He learned that Sgt. Paige was ultimately charged with careless driving. On June 24, 2012 P. C. Potter attended Jessie's residents and served the PO a notice for improper bicycle light. He had a conversation with Jessie at that time wherein Jessie advised that he had attended at the Brantford General Hospital the night of the accident and was advised that he required physiotherapy. Jessie also advised him that he had attended at the OPP detachment and had spoken to Sgt. Skelding. Jessie said there had

been a shouting match between the two and that he wanted to apologize because he thought things got out of hand.

Detective Constable Paul Drake

- [121] While working at the OPP Brantford detachment D. C. Drake received a call from P.C. Potter at 22:07 hours to attend the scene. He did so and acting P.C. Potter gave him a briefing and pointed out Jessie and his bicycle.
- [122] As the SOCO he commenced taking photographs at 22:45 hours. His last photograph was taken at 23:40 hours. He told the court that none of the photos taken show the lighting conditions at the time of the accident.
- [123] D. C. Drake told the court that he photographed the police vehicle and surrounding area. He took photos of the side view mirror and noted that there was no other vehicle damage. He took photos of Jessie at 23:02 hours and then assisted P.C. Potter in taking some measurements. He cleared the scene at 23:55 hours. He told the court that at no time did Jessie indicate to him that he wished to leave.

S/Sgt. Carl Butler

- [124] S/Sgt. Butler received a call from P.C. Potter around 21:54 hours that Sgt. Page had been involved in a motor vehicle accident. Staff Sgt. Butler arrived on scene at approximately 10:45 p.m. He testified that he met with P.C. Potter and was briefed and met with Jessie. He said that he noted a drop of blood on Jessie's elbow and that he was "very excited". He agreed that "excited" is not noted in his notebook but went on to say that Jessie was walking back and forth, yelling, and screaming and swearing. He told the court that Jessie was very agitated and he told him to calm down a couple of times. He said it is standard procedure that everyone remain on scene until an investigation is concluded. He was not aware that Jessie requested to leave shortly after the incident. He told the court that he didn't provide Jessie rights to counsel because he was not under arrest.
- [125] He testified that he told Jessie that he thought he should get medical attention and that an ambulance could be called but Jessie said "no". Staff Sgt. Butler noted that Jessie had a slight build and was wearing dark clothing. He never saw him wearing anything else. He told the court that he never touched or threatened Jessie and that if Jessie simply left the scene "that would be fine". He was not under arrest.
- [126] He told the court that he left the scene at 23:45 hours but did not know when Jessie left. He said that there was someone there to pick him up. He denied being rude or to witness anyone else do so. The following day he tasked Sgt. Hampson with following up on charges. He indicated that both Sgt. Page and Jessie were charged. He was not involved in the disposition of those charges.
- [127] He testified that he asked Sgt. Page if he had a cell phone and if he was on it at the time of the accident. He got a copy of Sgt. Page's cell phone records and determined that he was not on the phone at the time of the accident. He told the court that he no longer has the cell phone records as they went to OPP headquarters when he retired.

Sgt. Andrew Hampson

- [128] On June 20, 2012 S/Sgt. Carl Butler approached Sgt. Hampson and indicated that Sgt. Page was to be charged with careless driving.
- [129] Sgt. Hampson spoke with Sgt. Page at 3:00 p.m. on June 20, 2012 and advised him that he was to meet following his shift. The meeting occurred and Sgt. Page was charged accordingly. Sgt. Hampson served a POA notice at Jessie's home. Jessie was not there but Sgt. Hampson spoke with his father.
- [130] Sgt. Hampson told the court that the information he had was that the collision had occurred at 21:36 hours. He said that he checked the Weather Network and determined that sunset on the day in question was at 21:00 hours. He advised the court that the *Highway Traffic Act* requires that one half hour before and after sunset a cyclists must have various lighting and reflectors on his bike. The reflectors have to be attached to the bicycle to meet the necessary requirements; a backpack reflector is insufficient.
- [131] Sgt. Hampson authored an information note to Sgt. Page's personnel file at the request of the collision review committee. He noted that this was Sgt. Page's first collision.

REVIEW OF OPINION EVIDENCE – PLAINTIFF

Dr. Stuart Kinsinger

- [132] Dr. Kinsinger is a qualified chiropractor licensed to practice in the province of Ontario. He was certified with the Canadian Chiropractic Association in 1996 with a specialty in chiropractic rehabilitation sciences, which deals with physical medicine and rehabilitation. He was qualified to provide opinion evidence in the area of physical injury and impairment.
- [133] Dr. Kinsinger conducted an assessment on Jessie, together with Dr. Ko and Mr. Scott Blad. They jointly prepared a report based on their findings, dated May 13, 2016. Dr. Ko conducted the pain assessment, Mr. Blad performed functional testing. Dr. Kinsinger was responsible for the "mechanical side". The purpose of the assessment was:
- To determine Jessie's collision related impairments;
 - To determine if Jessie suffers a substantial inability to perform the essential tasks of the job and, if such is the case, when he will be able to return to the activities associated with the job;
 - If there are ongoing disabilities, to comment on whether or not they are solely as a result of injuries sustained in the above noted collision;
 - To determine whether Jessie is able to perform the activities associated with daily living and whether housekeeping or caregiving assistance is required; and

- To provide recommendations on the type of investigations and rehabilitation program best suited to Jessie's needs.

[134] Jessie's medical brief was provided to the assessors and was reviewed in preparation of the report.

[135] Dr. Kinsinger met with Jessie on April 7, 2016. He told the court that he spent between 15 and 30 minutes with him reviewing the comprehensive/confidential motor vehicle collision assessment questionnaire. Jessie completed the questionnaire after which Dr. Kinsinger began a physical examination of him. He testified that the physical examination lasted between 30 to 40 minutes. He found Jessie's lower extremities all within normal range. He said that the problem appeared to be in his neck and left shoulder. He told the court that the mechanism of injury had been a "hard land on the pavement".

[136] Section 11 of the report summarizes what Jessie reported in the questionnaire. Dr. Kinsinger indicates that Jessie rated himself at 52% lower back disability, "which is interpreted as severe". It indicates that Jessie rated himself as 50% net disability, which Dr. Kinsinger indicated was interpreted as moderate. Jessie scored himself 20/35 on the Freynhagen Pain Questionnaire which Dr. Kinsinger indicated put him into the category of neuropathic low back pain (with over 90% sensitivity). Further, Jessie scored himself 6/10 on the DN4 questionnaire. In the report, Dr. Kinsinger indicates that a score of four or more has 83% sensitivity and 90% specificity the city for diagnosing neuropathic pain.

[137] Jessie answered the DASH questionnaire — a 30 item, self-report document designed to measure physical function and symptoms in people with any of several musculoskeletal disorders of the upper limb. Jessie scored 43. Which Dr. Kinsinger indicated is interpreted as marked dysfunction.

[138] Following a review of the questionnaires Dr. Kinsinger commenced his physical assessment. Dr. Kinsinger performed various mechanical tests, and made the following clinical diagnoses and medical opinion related to the collision:

- Cervicogenic headache;
- Neck pain and associated disorders Grade II
- Probable cervical facet syndrome and neuropathic pain;
- Weak longus colli;
- Thoracic sprain/strain;
- Musculoskeletal chest wall pain;
- Possible vascular genic thoracic outlet syndrome;
- Lumbar sprain/strain;

- Hypermobility of the bilateral sacroiliac joints;
- Left shoulder capsular strain with supraspinatus and infraspinatus tendinosis;
- Possible left shoulder labral tear;
- Upper Cross Syndrome (tight pectorals and trapezius muscles with weak scapular stabilizers and deep neck flexors); and
- Altered sleep patterns requiring further investigation.

[139] Dr. Kinsinger testified that prior to the accident Jessie was capable of all required work and social tasks. He told the court that Jessie worked out routinely but as a result of the accident suffered significant injury and impairment to his left shoulder, lower neck and the sacroiliac joint. He told the court that the impairment was permanent in nature and that he had great concern about Jessie's prognosis, although it was "better than poor". He testified that Jessie will not have full recovery, however he hoped that his impairments would reduce slightly.

[140] In cross-examination, Dr. Kinsinger was directed to Part V of the report: Collision Details..Dr. Kinsinger told the court that the collision details are as reported by Jessie. The report reads in part:

Mr. Leendertse stated that the collision occurred in the late evening of June 14, 2012 at approximately 9:15 PM. He was riding a bicycle on West Acres Road in the south end of the municipal highway running north and south through Paris, Ontario. He was on his way to a café where he was to meet up with a friend. (Mr. Leendertse stated that he did have a driver's license and normally drove, but he was intending to increase his cardiovascular fitness level, and hence he was riding a bicycle in the evenings for "fitness purposes"). He stated that as he came within 50 yards of his destination, he was suddenly and without warning "clipped" by the right passenger side mirror of an SUV. The SUV was a marked Ontario Provincial Police vehicle.

At the time of impact, Mr. Leendertse stated that he was riding on the paved surface of West Acres Road on the small strip at the right-hand edge between the gravel shoulder and the travelled surface of the road. He further stated that there was a painted white line approximately 4-6 inches from the pavement edge where he was riding.

Mr. Leendertse stated that the impact knocked him from his bicycle, and he landed primarily on his left arm and elbow. While shaken up, he was able to get to his feet and engage in conversation with the police officer who was the driver of the OPP vehicle. He stated that he waited for a period of time before a police sergeant attended to the collision seen in order to take statements from the involved parties.

(Emphasis mine)

- [141] Dr. Kinsinger testified that he understood that Jessie had been knocked from his bicycle. He understood that there had been the initial impact by the SUV and then a subsequent impact as a result of having been knocked from his bicycle. He told the court that he accepted this to be the mechanism of accident.
- [142] Dr. Kinsinger told the court that he reviewed the supporting documentation that had he had received after his interview with Jessie and his physical examination. In cross-examination he was shown a record from Brant Hospital as well as Black Creek Physiotherapy wherein it is indicated that Jessie was hit by the car mirror but did not fall over. Dr. Kinsinger testified that he did not question Jessie on inconsistencies between these reports and his self report. He told the court that if Jessie did not fall and land on the pavement he was not in possession of the correct information.
- [143] Dr. Kinsinger testified that Jessie's sacroiliac joints were injured due to the way he fell off his bicycle. He said this was the cause of his lower back pain.
- [144] Again, in cross-examination Dr. Kinsinger was directed to Part VIII of the report. The first paragraph reads:

At the time of the collision, Mr. Leendertse stated that he was in good health. The systems review was non-contributory. He is a non-smoker and non-drinker. He stated that he had no previous motor vehicle collisions or involvement in any way. He had a previous fracture to his nose when in grade 9. He stated that he had no previous falls or significant musculoskeletal injuries.

- [145] Dr. Kinsinger was shown Exhibit 10 the ambulatory care record dated August 30, 2009. The record indicates that Jessie was assaulted at a party, and that he complained of neck and left shoulder pain. Dr. Kinsinger said that he did not recall being told of this assault, and that he would have asked him about it had he known.
- [146] Dr. Kinsinger was asked about Dr. Tuling's assessment that Jessie had serious low back injury in July 2015. Dr. Kinsinger said he did not recall this and would have noted it in the report had he been told about it.
- [147] Dr. Kinsinger was shown Exhibit 8- a series of photos wherein Jessie appears fit. Dr. Kinsinger said that it is impossible to determine if a person lifts heavyweights based on a photograph. Dr. Kinsinger was directed to the questionnaire wherein Jessie indicates that he could not lift heavy objects. The witness stated that he was not concerned that the patient was providing incorrect information. Further, he stated "just because someone can do something, doesn't mean that it is pain free". He agreed that the reliability of the questionnaire relies on the accuracy of the reporting.

Dr. Gordon Ko

- [148] Dr. Ko is board certified by the Royal College of Physicians and Surgeons of Canada in Psychiatry, which deals with physical medicine and rehabilitation. He is an Interventional

Physiatrist, practicing with The Interventional Pain Specialists, in Vaughn, Ontario. He has been a consultant with FASTEC since 2007. Dr. Ko was qualified to give opinion evidence in physical medicine, rehabilitation, pain management and the assessment of injury and impairment.

[149] Dr. Ko co-authored the May 13, 2016 report with Dr. Kinsinger. He said that the report was prepared to determine Jessie's collision-related impairments, any ongoing disabilities and to provide a recommendation for treatment.

[150] Dr. Ko conducted the pain assessment after he observed Jessie and had read through Dr. Kinsinger's findings. Dr. Ko's provisional clinical diagnoses and medical opinion related to the collision are found at Part XV of the report:

Headache

- Cervicogenic headache

Neck

- Neck pain and associated disorders Grade II⁴ (as defined by the Neck Pain Task Force and described in the scientific report of the Minor Injury Treatment Protocol Project).
- Probable cervical facet syndrome and neuropathic pain.
- Week longus colli.

Thoracic

- Thoracic sprain/strain.
- Musculoskeletal chest wall pain.
- Possible vascular genic thoracic outlet syndrome⁵ (due to tight scalenes/pectorals).

Lumbar

- Lumbar sprain/strain.

Sacroiliac

- Hypermobility of the bilateral sacroiliac joints (1/3 on the left, 2/3 on the right).

⁴ Dr. Ko testified that a Grade II diagnosis means there is muscular-skeletal pain. Grade III: nerve damage; Grade IV: severe trauma, e.g., a neck fracture.

⁵ Dr. Ko testified that an ultrasound is the only determinative way to diagnose thoracic outlet syndrome.

Upper Extremity

- Left shoulder capsule or strain with supraspinatus and infraspinatus tendinosis.
- Possible left shoulder labral tear.

Mechanical Dysfunction

- Upper Cross Syndrome (tight pectorals and trapezius muscles with weak scapular stabilizers and deep neck flexors).

Other

- Altered sleep patterns requiring further investigations.

[151] Dr. Ko opined that the index accident contributed to Jessie's symptoms. At Part XVIII the report states:

The mechanism of injury regarding Mr. Leendertse is suffering a traumatic fall from a bicycle on to a roadway surface. While much of the impact was born by the left arm and upper extremity, he also experienced traumatic forces through the hip and pelvis area. This is the mechanism of which the tearing of the strong sacroiliac ligaments can occur. This can result in abnormal function and hypermobility, which was seen in the case of Mr. Leendertse.

[152] He told the court that he initially understood that Jessie had fallen from his bicycle, but having reviewed Ms. Groot's notes, in preparation for trial, he now understands that Jessie was clipped by the motor vehicle but remained on his bicycle. (Emphasis mine.) He received the "mechanism of injury" from Dr. Kinsinger, and not Jessie.

[153] In cross-examination he told the court that when he prepared his portion of the FASTEC report, he relied on the reported mechanism of injury. Further, he testified that while he asked Jessie about his past medical history, he was never told about the prior assault and attendance at hospital. He said he was under the assumption that Jessie had had no neck or shoulder pain prior to the accident. He agreed that "he would have wanted to hear about it".

[154] Part XIX of the report is entitled Recommendations to Assist the Overcoming of Any Disabilities. Dr. Ko made several recommendations including (but not limited to): a sleep study, an MRI of the left shoulder, prolotherapy of his cervical, lumbar, and sacroiliac joints, soft tissue therapy, Botox injections into the restricted muscles and vitamin therapy.

[155] Dr. Ko told the court that he would expect Jessie's family doctor to arrange the recommended treatments. He said that he was unaware that at the time of writing the report that Jessie did not have a family doctor.

[156] Dr. Ko testified that given the fact that by the time of the assessment it had been 47 months since the accident, he felt that Jessie had reached maximum medical improvement, and that

his symptoms were chronic. He told the court that Jessie had reached maximum medial recovery. However, he said that the use of active therapies is “always encouraged” to control pain and strengthen muscles.

- [157] Dr. Ko opined that Jessie will never get back to the level of weight lifting/training he did before the accident.
- [158] In cross-examination, Dr. Ko was shown Ex. #8 – photos of Jessie, taken in 2016. He agreed that these photos are consistent with someone lifting heavy weights. He told the court that he had no personal knowledge as to what Jessie looked like in 2012 – at the time of the accident.
- [159] Dr. Ko agreed that strains and sprains are common injuries seen in weight training, and that low back pain and neck pain are two of the most common conditions in the world.
- [160] Dr. Ko testified that he had not been provided copies of the surveillance videos. He told the court that it would have been helpful to have had access to them to “confirm or refute” his opinion.
- [161] He agreed with Defence counsel that Dr. Mathoo’s opinion cannot be discounted given that Dr. Mathoo had the correct information regarding the mechanism of injury whereas he did not.

Scott Blad

- [162] Mr. Blad was retained by Ms. Cook to objectively quantify Jessie’s functional limitations/abilities to perform housekeeping, home maintenance and avocational activities as well as his pre-accident occupation.
- [163] Mr. Blad has a Bachelor of Science in Honours Kinesiology from the University of Waterloo. He has a number of certificates as a functional evaluator and is a member of the College of Kinesiologists. He was qualified to give opinion evidence in kinesiology and the assessment of functional ability.
- [164] Mr. Blad performed a functional ability assessment on Jessie on May 2, 2016. He told the court that he had been provided with the FASTEC questionnaire, as filled out by Jessie and the medical brief. He testified that his goal was to determine Jessie’s current functional level, and what it had been before the accident. Mr. Blad told the court that he understood that Jessie had been cycling and was struck by a police cruiser. He said that he had no concerns about the reliability of Jessie’s reporting in the FASTEC questionnaire.
- [165] Mr. Blad referred to the FASTEC questionnaire diagram to determine Jessie’s areas of complaint and determine his symptoms. He then had Jessie wear a heart monitor. He told the court that this is used to determine the level of exertion the patient is applying to the requested tasks. Mr. Blad then commenced with range of motion testing, followed by grip strength testing. He testified that Jessie demonstrated a high level of engagement during the testing.

[166] Mr. Blad divided his summary of Jessie's functional abilities into categories: mobility, trunk and lower extremity function, neck and upper extremity function, hand function, and strength. His conclusions are as follows:

Mobility

- Jessie was able to sit for 40 minutes continuously and 50 minutes in total. There were no overt pain behaviours. He was able to transition from sitting to standing with no apparent difficulties. His sitting tolerance was at a "competitive level".
- Jessie's standing tolerance was demonstrated at 75 minutes continuously. He tolerated 115 minutes of cumulative standing. Based on his performance, there were no significant biomechanical accommodations in standing; his standing tolerance was at a "competitive level".
- Jessie reported and demonstrated no issues with walking. His aerobic fitness compared to men his age was below average. Based on his performance, he is able to walk short distances on a frequent basis.
- He was able to walk with a tandem step a straight line. Jessie demonstrated he was able to hold the line without wavering or stepping off the line. His performance indicated that he is able to perform tasks that require a balance on an occasional basis.
- Jessie is able to navigate stairs with the reciprocal gait. He did not require the use of the handrail. His performance indicated that he was able to manage stairs on a frequent basis.

Trunk & Lower Extremity Function

- Jessie demonstrated full lumbar and thoracic spine flexion. He demonstrated sufficient thorough co-lumbar spine movement to stoop/bend fully. He reported pain in his neck with trunk flexion. He demonstrated during the stoop test the ability to stoop fully. He reported some aggravation in his neck and lower back. His performance indicated that he is biomechanically capable of stooping on a frequent basis but with symptom aggravation.
- Jessie demonstrated the ability to assume a full crouch. He transitioned in and out of the crouch position with no biomechanical challenges. His performance indicated that he is able to crouch on a frequent basis.
- Jessie demonstrated the ability to assume a knelt posture on the left right and both knees. He demonstrated no issues with kneeling on either knee. He is able to kneel on a frequent basis.
- Jessie demonstrated functional to full lateral flexion, bilaterally. He had full trunk rotation.

Neck & Upper Extremity Function

- Reaching immediate-Jessie demonstrated reduced but functional movement in his left shoulder. His right shoulder was functional to full in all movements, with better movement than the left. With all left-sided movements there was discomfort. He completed the reaching tests with no apparent difficulties on the right. With left-sided reaches his pace was limited by pain. He reported increased left shoulder and neck pain. His performance indicated that he is challenged to hold the left arm at shoulder level. Based on his performance, he is able to reach in the immediate plane on an occasional basis on the left and on a frequent basis on the right.
- Reaching overhead - Jessie demonstrated sufficient range of motion to reach overhead with both arms. His reach was full on the right and functional on the left. He reported greater challenges with left overhead reaching as it produce pain in his neck and shoulder. He is able to reach overhead on an occasional basis.
- Jessie demonstrated functional movement in all neck ranges of motion apart from extension which had moderate limitations. He reported increased pain with neck range of motion testing with an increase in headache. Based on his performance Jessie has the ability to complete tasks that require neck function on an occasional basis.

Hand Function

- Jessie demonstrated normal grip strength on left and above normal on his right hand in comparison to men of a similar age. Research indicates that right-hand dominant individuals such as Jessie should be 8-10% stronger on the dominant side compared to their nondominant side. Jessie demonstrated his right hand to be significantly stronger, indicating greater functional loss on the left.
- Jessie demonstrated normal pinch strength for the key and to pinches but with below normal for the palmar pinch, in comparison to men of similar age. His left hand was stronger than the right into of three tests.
- Jessie demonstrated the ability to use his left hand during gross and fine motor tasks. He was able to use his left hand to complete the hand function task but at a slower pace than with his right. He reported increased left-hand paraesthesia from the reaching and hand use on the left side. His performance indicates he is able to use his hands on an occasional to frequent basis.

Strength

- Jessie was able to lift floor to knuckle 60 pounds.
- Lift knuckle to shoulder 30 pounds
- Live floor to shoulder 40 pounds

- By manual carry 40 pounds a distance of 30 feet
- Isometric push out 57 pounds and pull in 56 pounds
- Unilateral pull in: left 43 pounds and right 71 pounds
- Based on Jessie's demonstrated ability, and observed my biomechanical challenges and his reported symptom limitations, his strength ability was noted to be at medium strength level. His left upper extremity was noted to be weaker than the right, whereas the right was at the heavy strength level overall Jessie's left upper extremity level was measured at medium.

[167] In cross-examination, Mr. Blad was shown the photographs contained in Exhibit 8. He agreed with the suggestion that Jessie looks very fit in the photographs. Mr. Blad indicated that based on the photograph there was no way of knowing if Jessie was doing cardio. He told the court that he did not recall Jessie's trapezius muscle being so well defined.

[168] In cross-examination Mr. Blad was referred to the results of Dr. Kinsinger's grip's strength test. He queried why the results were so much less compared to what he had observed Jessie perform. He told the court that it appeared to him that the results of Dr. Kinsinger's grip strength test suggests a lack of effort.

[169] Mr. Blad concluded that from a strictly functional perspective:

- Jessie is partially limited in performing his pre-accident occupation as a car detailer. He is unable to work without accommodation in duration/hours.
- Jessie is able to perform housekeeping tasks.
- Jessie is partially limited in performing home maintenance chores.
- Jessie is partially limited in performing his recreational and avocational activities.
- Jessie is able to perform personal care chores.

REVIEW OF EXPERT OPINION EVIDENCE – DEFENDANTS

Dr. Julian Mathoo

[170] Dr. Mathoo is a Fellow of the Royal College of Physicians of Canada. He possesses a specialist certificate in physical medicine and rehabilitation. He was qualified to give opinion evidence in the areas of physical medicine, rehabilitation, pain management, and the assessment of injury and impairment. He told the court that as a Physiatrist approximately 20-25% of his practice is devoted to conducting medical-legal assessments, apportioned as approximately 50% for each of plaintiff's and defendants.

- [171] Dr. Mathoo was retained to conduct a medical-legal assessment of Jessie, and did so on July 4, 2017. In preparation for the assessment Dr. Mathoo reviewed Jessie's medical records, including the emergency room notes recorded on the day of his accident. He noted that the discharge diagnosis indicated elbow laceration. He also reviewed the discharge report of Melissa Groot, the report of Dr. Dost and the MRI. He noted that the MRI was "essentially normal".
- [172] Dr. Mathoo testified that he conducted an interview of Jessie who reported no physical problems or injuries prior to the accident. He said that Jessie advised that he was not wearing any protective gear while cycling, he did not fall off his bike, and had no immediate pain symptoms. He said that Jessie started physical therapy about one to two weeks after the accident and later engaged in a course of massage and acupuncture.
- [173] Dr. Mathoo testified that Jessie reported constant neck pain on a scale of 6/10. Jessie advised that he had tingling in his left 4-5 digits with interim mitten numbness that resolves spontaneously. He complained of left elbow intermittent pain on a scale of 6/10 which was aggravated with arm curls or bench presses. He reported left intermittent shoulder pain, aggravated by overhead activity on a scale of 7/10. Dr. Mathoo testified that Jessie did not report other physical symptoms.
- [174] Dr. Mathoo testified that he conducted a physical exam, following the approximately 40-minute interview and made the following observations:

Neck

- Full range of motion was demonstrated
- Only pain when rotated to the left

Left Shoulder

- Full range of motion
- Full power
- Normal stability

Elbow

- Normal range of motion
- Stable

Wrist

- Normal

Hand

- Normal

Back

- Full range of motion
- No report of pain

Sacroiliac Joints

- Not tender

- [175] Dr. Mathoo testified that at the time of the accident Jessie had a contusion of the left elbow, sprain/strain of the left shoulder, neck and back. He testified that Jessie likely suffered Whiplash Disorder II. He told the court that many of the body's structures can be injured in whiplash.
- [176] Following his assessment, Dr. Mathoo diagnosed Jessie with Whiplash Disorder Type I, pain without impairment. He testified that Jessie had cervicogenic headaches as a result of neck pain. He concluded that Jessie's back issues had resolved completely. Dr. Mathoo opined that Jessie had no ongoing impairment in his left shoulder despite his report of pain. He told the court that the imaging showed no signs of trauma or permanent impairment. He testified that Jessie's left elbow was the most significant injury noted following the accident-a contusion. There was no sign of fracture on imaging or clinical exam, and no residual impairment. He opined that in terms of Jessie's fingers there were signs of ulnar symptoms, but nothing that would require intervention or restriction.
- [177] Dr. Mathoo opined that after five years following the accident any healing that was going to happen had happened. He told the court that he did not feel any special treatment was required and that he did not find any sign of impairment or disability that would prevent him from social activities or work. He testified that if Jessie stopped working in 2018 it was not accident related.
- [178] Dr. Mathoo testified that he disagreed with the conclusions offered by the plaintiff experts. Following his assessment, Dr. Mathoo prepared updated opinions, including after having reviewed the surveillance footage and having received new clinical notes and records. He told the court that his original opinions have remained unchanged.
- [179] Dr. Mathoo testified that he disagreed with Dr. Ko's recommendation for passive therapy, including Botox injections. He testified that the Neck Pain Task Force published a report in 2010-2011 that concluded that passive intervention beyond healing times is contraindicated. Further, he stated, Botox is inappropriate for muscle pain as it weakens muscles.
- [180] Dr. Mathoo testified that he disagreed with Dr. Ko's assertion that Jessie's prognosis was poor. He told the court that he felt Dr. Ko was over emphasizing the subjective complaints, and that his opinion had not been based on objective measures. He testified that there is no indication that Jessie would need physical restrictions, indeed he said he would encourage him to increase his activities.

[181] Dr. Mathoo testified that at least half whiplash patients settle into chronic pain, however it is more common in higher grade whiplash cases. He told the court that while Jessie complains of chronic pain that he is not convinced that there is an underlying physical issue. He testified that there is no physical evidence supporting the report of pain, and that he agrees with Dr. Ko that Jessie should undergo a psychological assessment.

LAW and ANALYSIS

The Assessment of Credibility

[182] I turn now to the issue of credibility. As Cory, J stated in *R. v. R.D.S.*, [1997] 3 S.C.R. 484 at paras. 128, 129:

"It is, of course, true that the assessment of the credibility of a witness is more of an 'art than a science'. The task of assessing credibility can be particularly daunting where a judge must assess the credibility of two witnesses whose testimony is diametrically opposed. It has been held that '[t]he issue of credibility is one of fact and cannot be determined by following a set of rules . . .': *White v. The King*, [1947] S.C.R. 268, at p. 272. It is the highly individualistic nature of a determination of credibility, and its dependence on intangibles such as demeanour and the manner of testifying, that leads to the well-established principle that appellate courts will generally defer to the trial judge's factual findings, particularly those pertaining to credibility. See, for example, *W. (R.)*, *supra*.

However, it is also the individualistic nature of a determination of credibility that requires the judge, as trier of fact, to be particularly careful to be and to appear to be neutral. This obligation requires the judge to walk a delicate line. On one hand, the judge is obviously permitted to use common sense and wisdom gained from personal experience in observing and judging the trustworthiness of a particular witness on the basis of factors such as testimony and demeanour. On the other hand, the judge must avoid judging the credibility of the witness on the basis of generalizations or upon matters that were not in evidence."

[183] While the issue of the existence of the illuminated backpack was a red herring for the purposes of assessing liability, it is very much a live issue for the court on the Charter and the remaining issues before the court.

[184] Jessie maintained throughout his testimony that he was wearing the illuminated camel backpack. None of the attending police officers saw such a backpack, including P.C. Page who observed Jessie mere seconds after the collision. Jessie never mentioned the backpack in the statement he provided, nor did he do so in his OIPRD complaint filed three weeks later. While Heather Miller testified that she assisted Jessie removing it, she could not identify a purported similar style. While Jessie Wooley and Matthew Tate both testified that Jessie routinely wore a camel backpack, they were not present at the accident.

- [185] At trial Jessie testified that after being struck by P. C. Page's vehicle he spun but managed to catch himself without falling down. He provided a different version of events to Dr. Kinsinger, namely that he was knocked off his bicycle and landed on his left arm. Dr. Kinsinger used this report as the mechanism of injury upon which he based his opinion.
- [186] The plaintiff's treating chiropractor, Dr. Tuling testified that Jessie reported that his bicycle was bent in the accident. On his cross-examination, Jessie admitted that there was no damage to his bicycle. Indeed, the police photographs show no damage.
- [187] In examination in chief Jessie testified that he never had had any previous neck or shoulder injuries. In cross-examination he was confronted with medical records which described a 2009 incident in which Jessie had his head slammed, he sustained a loss of consciousness, and reported complaints of neck and left shoulder pain.
- [188] Neither Dr. Kinsinger nor Dr. Ko received the self report of the 2009 incident.
- [189] The defence expert, Dr. Mathoo testified that he asked the plaintiff about his past medical history and Jessie denied having any significant issues other than an appendectomy. On cross-examination he admitted to being involved in a prior accident where he was hit by a woman while riding his bicycle. He agreed that he did not tell either Dr. Kinsinger or Dr. Ko about this incident.
- [190] Dr. Tuling, Jessie's treating chiropractor, testified in cross-examination that Jessie had sustained a significant back injury while at work in July 2015 which was unrelated to the index motor vehicle accident. Jessie denied to Dr. Kinsinger that he had any post-accident complications. He similarly did not mention the work place back injury to Dr. Ko.
- [191] Surveillance was conducted on Jessie in May 2017 and January 2019. The video surveillance was marked as Exhibit 9. The May 2017 surveillance was taken at a gym and depicts Jessie performing weight lifting exercises. The surveillance from January 2019 depicts Jessie at a hardware store picking up lumber. It shows him carrying five pieces of lumber which he testified weighed a total of 45 pounds. The surveillance also showed Jessie caring other objects including large bags of insulation. He was seen brushing snow off vehicles. He was also seen to use a bobcat machine to clear snow for more than one hour, requiring him to frequently turn his head.
- [192] The surveillance videos contradict his self reports. On a January 9, 2020 questionnaire provided to Dr. Tuling Jessie reported having "severe difficulty" with carrying a shopping bag or briefcase, carrying a heavy object [over 10 pounds], changing light bulbs overhead and engaging in recreational activities which require little effort. In questionnaires completed for Dr. Kinsinger and Dr. Ko in 2016, Jessie indicated that he has "great difficulty" with sitting for a longer time, heavy work, lifting heavy objects, and participating in sports.⁶

⁶ Exhibit # 38, p. 17

- [193] The photographs shown in Exhibit 8 depict Jessie as a muscular, fit man much more so than on the date of the accident.
- [194] In examination in chief Jessie testified that he could “barely move” for five to six months after the accident. When confronted with a photograph taken July 29, 2012 depicting him with Dom Perignon champagne and a cigar, he admitted that his evidence that he could “barely move” was incorrect.
- [195] In contrast, I found the evidence of the police officers very forthright and unembellished. Where possible, their evidence was confirmed by time-stamped audio tape and photographs taken by the SOCO officer.
- [196] The plaintiff has serious credibility issues. Where there is a conflict between the evidence of the plaintiff and the police officers, I prefer the evidence of the police officers.

Liability

- [197] Jessie was struck by Sgt. Robert Page, a K-9 Handler with the OPP, as he drove his marked SUV southbound on Rest Acres Road at approximately 9:26 p.m. on June 14, 2012. The vehicle collided with Jessie’s arm, sending him off the roadway onto the gravel portion of the road.
- [198] Sgt. Page testified that as vehicles were approaching him in the opposite direction, he glanced toward them. At the point of impact, he said he was travelling 50 to 55 km an hour. He said he applied the brakes and his emergency lights and pulled over at the intersection of Cobblestone Road. He said he got out of his motor vehicle to the passenger side where he noted damage. He observed Jessie up on the gravel shoulder on his bike. He described him as a male with dark hair, green T-shirt, black pants riding a black mountain bike.
- [199] There is a dispute as to the exact time of the collision, and exactly how much light was in the sky.
- [200] Sgt. Page testified that he reported the incident to the communication centre. He was played an audiotape, marked as Exhibit 45. He identified his voice and that of the dispatcher. The time stamp on that audio tape was 21:37:37. He said that he called in the accident a few moments after it had happened.
- [201] Sgt. Page testified that the ground was in darkness, but there was some illumination in the sky.
- [202] Jessie testified that he left his home about 8:30 p.m. that evening, and that generally it takes him 15 minutes to cycle to the plaza. In cross-examination, he agreed that the accident had happened closer to 9:25 p.m. He said that while it was not dark out, it was not light. In the statement he provided to the police he reported that it was “still a bit light out, just starting to get dark.”.
- [203] Heather Miller, Jessie’s friend, testified that it was “completely light out”.

- [204] Sgt. Andrew Hampson testified that he checked the Weather Network and determined that sunset on the day in question was at 21:00 hours.
- [205] Sgt. Page was shown the backpack entered into evidence. He told the court that Jessie was not wearing such a backpack and that he never saw one at the scene.
- [206] Jessie testified that he was wearing black gym pants and a bright green shirt and was riding his black mountain bike. He testified that he put on his black camel backpack which had a red LED light on it, and that he turned it on before he got on the bike. His bike did not have any reflective devices. He was not wearing a helmet.
- [207] Jessie was shown Exhibit #A, Tab 6, the General Occurrence Report. He identified it as the statement that P.C. Potter had written. He told the court that it accurately reflects what he had told the officer. However, there is no mention of the illuminated backpack in the statement. Further, Jessie made a complaint to the OIPRD approximately three weeks after the accident. Again, there is no mention of the illuminated backpack.
- [208] Heather Miller testified that she helped take Jessie's backpack off. She described it as having lights and reflectors on it. When shown Ex. #3, she could not identify it as the backpack. She did not see the accident and accordingly could not testify as to whether Jessie was wearing such a backpack.
- [209] Sgt. Hampson testified that the *HTA* requires that one half hour before and after sunset — 21:00 hrs. on the day in question — a cyclist must have various lighting and reflectors on their bicycle. The reflectors have to be attached to the bicycle to meet the necessary requirements; a backpack reflector is insufficient:

62(17) Lights and reflectors on bicycles, etc.

When on a highway at any time from one-half hour before sunset to one-half hour after sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 150 metres or less, every motor-assisted bicycle and bicycle (other than a unicycle) shall carry a lighted lamp displaying a white or amber light on its front and a lighted lamp displaying a red light or a reflector on its rear, and in addition white reflective material shall be placed on its front forks, and red reflective material covering a surface of not less than 250 millimetres in length and 25 millimetres in width shall be placed on its rear.⁷

- [210] Because Jessie was riding his bicycle, the Defendant bears the onus of disproving negligence:

193(1) Onus of disproving negligence

When loss or damage is sustained by any person by reason of a motor vehicle on a highway, the onus of proof that the loss or damage did not arise through

⁷ *Highway Traffic Act*, R.S.O. 1990, c. H.8, s. 62(17)

the negligence or improper conduct of the owner, driver, lessee or operator of the motor vehicle is upon the owner, driver, lessee or operator of the motor vehicle.

- [211] Indeed, the Defendant acknowledges its liability for the accident, but submits that Jessie is contributorily negligent because he was riding a black bicycle on the edge of the roadway, which did not have the requisite reflectors as mandated by the HTA. Further, the Defendant submits that the foregoing was exacerbated by the fact that Jessie was wearing black pants and a green t-shirt. The Defendant further submits that Jessie's evidence that he was wearing a back-pack with reflective lighting should not be believed.
- [212] It is curious that Jessie never reported wearing the camel backpack at the time he gave his police statement. It certainly is possible that he was in shock and forgot to mention this fact, however when he filed his OIPRD complaint, some three weeks later, there was no reference to the backpack. Presumably any shock associated to the accident would have subsided by then. Further, Sgt. Page saw him at the side of the road, immediately after impact, and testified that Jessie was not wearing a backpack. Of course, all of this must be balanced with the testimony of Heather Miller, who told the court that she assisted Jessie in removing the backpack.
- [213] All of this being said, the camel backpack is somewhat of a red herring for the purpose of liability. It is however a factor I have dealt with in assessing credibility. Assuming Jessie was wearing the backpack, he still did not have the required lighting on his bicycle. Accordingly, he bears some liability for the accident.
- [214] In *Pelletier v. Ontario*, 2013 ONSC 6898, the plaintiff was riding a bicycle which did not have proper lights or reflectors contrary to s. 62.17 of the HTA. He crossed an intersection and was struck by an OPP cruiser, which was in the process of making a wide turn. The court found the plaintiff to be 40% contributorily negligent for travelling too fast, on a pedestrian crosswalk and not having the appropriate lighting on his bicycle.
- [215] In *White v. Aransiba*, [2003] O.J. No. 250 (Ont. S.C.) in holding the plaintiff and defendant each 50% liable for the accident, the court held:

On the other hand, I am satisfied from the severity of the impact resulting in the broken window, that the plaintiff was traveling at an excessive rate of speed into the pedestrian crosswalk on his bicycle when he collided with the defendant's motor vehicle. I take into account as well the fact that he was not wearing any reflective material. He did not have a light nor reflectors on his bicycle. In addition, he ought not to have continued into the crosswalk without stopping and getting off of his bicycle. It should have been readily apparent that Ms. Aransibia was in the process of making a left turn across his path. He, himself, was traveling at an excessive rate of speed and was not keeping a proper lookout. He failed to see the vehicle of Ms. Aransibia which was there to be seen.

- [216] In *Repic v. Hamilton (City)*, [2009] O.J. No. 4659 (Ont. S.C.) the court found a 14-year-old plaintiff contributorily negligent for failing to have lights on his bicycle, despite having

front, rear and wheel reflectors. The court found the plaintiff to be 45% contributorily negligent for failing to stop before entering the roadway, for failing to keep a proper lookout, for failing to have lights on his bicycle and for riding a black bicycle while wearing dark clothing.

[217] Given that Jessie was riding a black bicycle, wearing dark clothes, without proper fixed reflectors I find him to be 40% contributorily liable for the accident.

Charter Claims and Quantum of Damages

[218] Jessie claims that the Defendant breached his rights under sections 9, 10(a) and 10(b) of the Charter. He submits that following the accident he was unlawfully detained by the police officers, who failed to provide him his rights to counsel. Further, he submits that he was “coerced” into giving a statement and that evidence was seized from him in the form of photographs as part of an internal OPP investigation.

[219] As the court stated in *Vancouver (City of) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 23 at para. 4:

[...] damages may be awarded for *Charter* breach under s. 24(1) where appropriate and just. The first step in the inquiry is to establish that a *Charter* right has been breached. The second step is to show why damages are a just and appropriate remedy, having regard to whether they would fulfill one or more of the related functions of compensation, vindication of the right, and/or deterrence of future breaches. At the third step, the state has the opportunity to demonstrate, if it can, that countervailing factors defeat the functional considerations that support a damage award and render damages inappropriate or unjust. The final step is to assess the quantum of the damages.

Was there a Charter Breach?

[220] The relevant provisions of the Charter are:

s. 9 Detention or Imprisonment

Everyone has the right not to be arbitrarily detained or imprisoned.

s. 10(a) and (b) Arrest or Detention

Everyone has the right on arrest or detention

(a) To be informed promptly of the reasons therefore;

(b) To retain and instruct counsel without delay and to be informed of that right.

[221] Pursuant to section 199(1) of the *HTA* Sgt. Page had a duty to report the accident. Pursuant to section 199(3) of the Act, once the report was received, P. C. Potter was required to make

inquiries from both Sgt. Page and Jessie regarding the particulars of the accident the extent of personal injury as well as property damage.

- [222] S/Sgt. Butler testified that the procedures for investigation into a collision involving an OPP vehicle are more stringent because police officers are held to higher standards than civilians, that there are internal investigations that are required, including the possibility of the involvement of the Professional Standards Bureau.
- [223] Sgt. Page, Sgt. Hampson and P.C. Potter also testified that a failure to follow the mandated procedure could result in corrective action against any involved officers. Sergeant Potter testified that the unit commander, communication centre and the on-duty Traffic Sergeant must be notified and photographs taken of any injuries and/or damages.
- [224] Sgt. Page testified that he reported the accident to the communication centre a few moments after the accident occurred. The time stamp of that audio call was 21:37:37 hours. He called Sgt. Potter on his cell phone, and he arrived a few minutes later. While in the Tim Horton's parking lot, Sgt. Page had a brief conversation with Jessie. He then spoke to Sgt. Potter about the circumstances surrounding the accident and remained by his vehicle.
- [225] Sgt. Page testified that he was not involved in obtaining a statement from Jessie.
- [226] Sgt. Page testified that Jessie appeared to be interested in leaving the parking lot. He said that if Jessie had left, he may have risked "fail to remain" charges. If, however, he chose to leave Sergeant Page would just watch him do so. He testified that he never touched or threatened Jessie and was never rude nor demeaning to him. He told the court that he has no recollection of Jessie asking to go to the hospital. He did say that he had a specific recollection of speaking to his friend, i.e., Heather Miller, and mentioned to her that it might be a good idea for him to seek medical attention.
- [227] Once on scene P.C. Potter obtained Jessie's information including his date of birth, address, and phone number. He testified that he asked Jessie to provide a statement, although he did not mention that such statement was voluntary or that he might wish to speak with counsel. He agreed that he never told Jessie that he was free to leave, but that he could have done so. P. C. Potter had no recollection of saying to Jessie that he needed to stay at the location. He denied pressuring Jessie into providing a statement.
- [228] Jessie testified that P.C. Potter asked him what had happened and he was told that he needed to write a statement. Jessie testified that he was not comfortable writing a statement but that he did speak with P.C. Potter. He told the court that the oral statement took about 15 minutes. He said that he was feeling pain in his arm and neck and wanted to go to the hospital. He testified that P.C. Page laughed.
- [229] P.C. Potter testified that he asked Jessie if he required medical attention or an ambulance and he declined. He testified that Jessie told him that if he wanted to go to the hospital, he could get his friend to take him.

- [230] Jessie testified that he asked P.C. Potter if his friend, Heather Miller could take him to the hospital. Heather Miller told the court that Jessie asked about five times to be allowed to go to hospital.
- [231] Once he had obtained a statement from Jessie, P. C. Potter notified the detachment commander as well as S/Sgt. Carl Butler about the collision. S/Sgt. Butler advised that he would be attending the scene. P.C. Potter spoke with the acting communication sergeant and requested that P.C. Drake attend as the SOCO officer.
- [232] S/Sgt. Butler arrived at 23:10 hours and was briefed. He testified that he had a conversation with Jessie wherein Jessie was offered medical attention which he declined. He testified that it was standard procedure that everyone remain on the scene until an investigation is concluded. He said that he was not aware that Jessie requested to leave shortly after the incident but that if he had done so “that would be fine” as he was not under arrest.
- [233] Jessie testified that he was never told that there would be consequences if he left the area, and that no one ever physically touched him.
- [234] P.C. Potter and S/Sgt. Butler both denied being rude to Jessie or witness to anyone else so doing. Both P.C. Potter and S/Sgt. Butler testified that neither read Jessie a caution or rights to counsel because he was not under arrest.
- [235] D.C. Paul Drake, the SOCO officer, told the court that at no time did Jessies indicate to him a desire to leave the scene.
- [236] In *R. v. Grant*, 2009 SCC 32, the Supreme Court of Canada summarized the considerations in determining whether one’s section 9 charter rights have been violated. At paragraph 44 the court concluded:
1. Detention under ss. 9 and 10 of the *Charter* refers to a suspension of the individual's liberty interest by a significant physical or psychological restraint. Psychological detention is established either where the individual has a legal obligation to comply with the restrictive request or demand, or a reasonable person would conclude by reason of the state conduct that he or she had no choice but to comply.
 2. In cases where there is no physical restraint or legal obligation, it may not be clear whether a person has been detained. To determine whether the reasonable person in the individual's circumstances would conclude that he or she had been deprived by the state of the liberty of choice, the court may consider, *inter alia*, the following factors:
 - a) The circumstances giving rise to the encounter as would reasonably be perceived by the individual: whether the police were providing general assistance; maintaining general order; making general inquiries regarding a particular occurrence; or, singling out the individual for focussed investigation.

- b) The nature of the police conduct, including the language used; the use of physical contact; the place where the interaction occurred; the presence of others; and the duration of the encounter.
- c) The particular characteristics or circumstances of the individual where relevant, including age; physical stature; minority status; level of sophistication.

[237] In *R. v. MacDonald*, 2014 SCC 3, [2014] 1 S.C.R. 37 (S.C.C.) at para 34 the court adopted a two-prong test to determine whether a police officer has acted within his power:

[At the first stage], the court must ask whether the action falls within the general scope of a police duty imposed by statute or recognized at common law. For safety searches, the requirement at this first stage of the analysis is easily satisfied. In the case at bar, the police action falls within the general scope of the common law police duty to protect life and safety that I mentioned above. This duty is well established (*Mann*, at para. 38; *R. v. Clayton*, 2007 SCC 32, [2007] 2 S.C.R. 725 (S.C.C.), at paras. 20-21; *Dedman*).

At the second stage, if the answer at the first is affirmative, as it is in this case, the court must inquire into whether the action constitutes a justifiable exercise of powers associated with the duty. As this Court held in *Dedman*, [t]he interference with liberty must be necessary for the carrying out of the particular police duty and it must be reasonable, having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference.

[238] As the court stated in *R. v. Kovacevic* 2017 ONSC 193 at para. 55:

While motorists who are pulled over by the police are detained within the meaning of s. 9 of the *Charter*,² motorists who are approached by the police because of a motor vehicle accident may stand on a different constitutional footing. For instance, in *R. v. Guenter*, 2016 ONCA 572 (Ont. C.A.), Brown J.A. found that following a motor vehicle accident, statements made to an officer making initial inquiries about what happened, were not made in the context of a detention.

[239] Further, as noted at paragraphs 37-38 in *Grant* (*supra*):

Another often-discussed situation is when police officers approach by standards in the wake of an accident or crime, to determine if they witness the event and obtain information that may assist in their investigation. While many people may be happy to assist the police, the law is clear that, subject to specific provisions that may exceptionally govern, the citizen is free to walk away: *R. v. Grafe* (1987), 36 C.C.C. (3d) 267 (Ont. C.A.). Given the existence of such a generally understood right in such circumstances, a reasonable person would not conclude that his or her right to choose whether to cooperate with them had been taken away. This conclusion holds true even if the person may feel compelled to cooperate with the police out of a sense of moral or civic duty.

[240] I cannot conclude that Jessie was detained within the meaning of the charter. The police officers were following procedure in the investigation of a motor vehicle collision involving a police officer, and physical injury to another person. The OPP requirements necessitated lengthier steps and additional command personnel. There was no significant physical or psychological restraint, nor were there any restrictive requests or demands of Jessie. Jessie was free to walk away at any point.

[241] In conclusion, I find that Jessie was not detained. He was not read his rights or cautioned, because he was not under arrest. As such, there are no *Charter* damages.

Threshold

[242] Section 267.5(5)(a) and (b) of the *Insurance Act* R.S.O. 1990 c. 1.8 (“IA”) provides that the owner of an automobile, the occupants of an automobile, and any person present at the incident, are not liable in an action for non-pecuniary loss unless the person injured has sustained “permits serious disfigurement” or “permanent, serious impairment of an important physical, mental, or psychological function”:

Despite any other act and subject to subsections (6) and (6.1), the owner of an automobile, the occupants of an automobile and any person present at the incident are not liable in an action in Ontario for damages for non-pecuniary loss, including damages for non-pecuniary loss under clause 61(2)(e) of the *Family Law Act*, from bodily injury or death arising directly or indirectly from the use or operation of the automobile, unless as a result of the use or operation of the automobile the injured person has died or has sustained,

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important physical, mental or psychological function.

[243] The same threshold wording applies to claims for health care expenses under s. 267.5(3) of the *Act*, the statutory deductible under s. 267.5(7) of the act applies only to claims for non-pecuniary loss. There is no deductible to be applied to health care expenses.

[244] Effective October 1, 2003, O. Reg. 381/03 sought to clarify the meaning of the threshold wording in s. 267.5(5) of the *Act*. The relevant sections indicate the evidence which must be adduced to prove permanent serious impairment of an important physical, mental or psychological function. Sections 4.1, 4.2 and 4.3 of O.Reg. 461/96 provides:

For the purposes of section 267.5 of the *Act*,

4.1 "permanent serious impairment of an important physical, mental or psychological function" means impairment of a person that meets the criteria set out in section 4.2.

4.2

4.2(1) A person suffers from permanent serious impairment of an important physical, mental or psychological function if all of the following criteria are met:

1. The impairment must,
 - i. substantially interfere with the person's ability to continue his or her regular or usual employment, despite reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue employment,
 - ii. substantially interfere with the person's ability to continue training for a career in a field in which the person was being trained before the incident, despite reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue his or her career training, or
 - iii. substantially interfere with most of the usual activities of daily living, considering the person's age.
2. For the function that is impaired to be an important function of the impaired person, the function must,
 - i. be necessary to perform the activities that are essential tasks of the person's regular or usual employment, taking into account reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue employment,
 - ii. be necessary to perform the activities that are essential tasks of the person's training for a career in a field in which the person was being trained before the incident, taking into account reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue his or her career training,
 - iii. be necessary for the person to provide for his or her own care or well-being, or
 - iv. be important to the usual activities of daily living, considering the person's age.
3. For the impairment to be permanent, the impairment must,

- i. have been continuous since the incident and must, based on medical evidence and subject to the person reasonably participating in the recommended treatment of the impairment, be expected not to substantially improve,
- ii. continue to meet the criteria in paragraph 1, and
- iii. be of a nature that is expected to continue without substantial improvement when sustained by persons in similar circumstances.

4.2(2) This section applies with respect to any incident that occurs on or after October 1, 2003.

4.3

4.3(1) A person shall, in addition to any other evidence, adduce the evidence set out in this section to support the person's claim that he or she has sustained permanent serious impairment of an important physical, mental or psychological function for the purposes of section 267.5 of the *Act*.

4.3(2) The person shall adduce evidence of one or more physicians, in accordance with this section, that explains,

- (a) the nature of the impairment;
- (b) the permanence of the impairment;
- (c) the specific function that is impaired; and
- (d) the importance of the specific function to the person.

4.3(3) The evidence of the physician,

- (a) shall be adduced by a physician who is trained for and experienced in the assessment or treatment of the type of impairment that is alleged; and
- (b) shall be based on medical evidence, in accordance with generally accepted guidelines or standards of the practice of medicine.

4.3(4) The evidence of the physician shall include a conclusion that the impairment is directly or indirectly sustained as the result of the use or operation of an automobile.

4.3(5) In addition to the evidence of the physician, the person shall adduce evidence that corroborates the change in the function that is alleged to be a permanent serious impairment of an important physical, mental or psychological function.

4.3(6) This section applies with respect to any incident that occurs on or after October 1, 2003.

[245] As the defendant did not bring a pretrial threshold motion in this case, s. 267.5 (15) of the *IA* mandates that the court make the determination at trial:

267.5(15) Determination at trial; non-pecuniary loss

If no motion is made under subsection (12), the trial judge shall determine for the purpose of subsections (3) and (5) whether, as a result of the use or operation of the automobile, the injured person has died or has sustained,

(a) permanent serious disfigurement; or

(b) permanent serious impairment of an important physical, mental or psychological function.

[246] As plaintiff, the onus is on Jessie to establish that his impairments meet the statutory exceptions or “threshold”: *Meyer v. Bright* (1993), 15 O.R. (3d) 12 (C.A.) at para. 50. In *Meyer v. Bright* the court outlined the three-part inquiry to be taken in the threshold analysis:

1. Has the injured person sustained permanent impairment of a physical, mental or psychological function?
2. If yes, is the function which is permanently impaired important?
3. If yes, is the impairment of the important function serious?

[247] In *Antinozzi v. Andrews*, 2011 ONSC 3296 at para. 6 the court outlined the test for threshold:

[...] the Plaintiff must demonstrate:

(i) *A serious impairment* — one that substantially interferes with her ability to continue her regular or usual employment, despite reasonable efforts to accommodate her and despite her reasonable efforts to use the accommodation to allow her to continue employment or, one that substantially interferes with most of the usual activities of daily living, considering the Plaintiff's age;

(ii) *Of an important function* — one that is necessary to perform the activities that are essential tasks of her regular or usual employment, taking into account reasonable efforts to accommodate her and her reasonable

efforts to use the accommodation; or, one that is important to the usual activities of daily living, considering her age; and,

(iii) *That is permanent* — one that has been continuous since the accident and must, based on medical evidence and subject to the Plaintiff reasonably participating in the recommended treatment of the impairment, be expected not to substantially improve, must continue to meet the criteria of a serious impairment and must be expected to continue without substantial improvement when sustained by persons in similar circumstances.

[248] Ms. Cook submits that Jessie’s injuries have barred his participation from hobbies and other interests. She submits that due to his injuries Jessie has suffered and continues to do so from a “substantially diminished capacity to participate in employment, housekeeping and recreational activities.” This is not borne out by the evidence.

[249] After Jessie’s father died in 2016, he inherited rental property. He found that he was preoccupied with managing the property, and wound down his car detailing business in 2018. He and his brother renovated the property and rented it in 2019. The property generates income. Jessie did not work in 2019, nor since, and told the court that while he would like to get Leen Clean up and running again, he had no plan to look for any other type of employment.

[250] In terms of housekeeping, Dr. Tuling completed a Disability Certificate on August 26, 2014 indicating that the plaintiff does not have a substantial inability to perform the housekeeping and home maintenance services that he did before the accident.

[251] There has been no substantial interference with Jessie’s usual activities of daily living.

[252] The surveillance showed Jessie engaging in normal daily activities without noticeable difficulty. Surveillance depicted him working out at the gym carrying large pieces of lumber, caring objects out of a trailer, brushing snow off vehicles, shoveling snow by hand, clearing snow with a machine, driving, filling up and carrying a gas can.

[253] Jessie has continued to be active and social since the accident. He has been to Jamaica, and Dominican Republic, Mexico, and Cuba. Additionally, he took a post accident vacation to British Columbia as well as Florida.

[254] On cross-examination, Jessie admitted that he could engage in the following activities:

Work out 3 to 4 times per week

Bench press using a barbell with 110 pounds of weight for 5 to 8 repetitions

Bench press using 40-pound dumbbells

Bicep curls using 25-to-30-pound dumbbells

Shoulder exercises using machines

Squats using 30 to 35 pounds dumbbells

Ride a bike in the gym

Socialize with friends

Party with friends

Shovel snow

Perform all housekeeping and home maintenance since 2013

Drive a vehicle

Ride a motorcycle although he said his neck hurt

Ride a dirt bike which he purchased in the summer of 2016

Vacation

- [255] The evidence of Dr. Mathoo is that there is no evidence of ongoing impairment of significance that requires treatment or restrictions. There is no reason for Jessie's daily activities to be restricted.
- [256] Brent LeBlanc testified that he observed Jessie conducting home renovations including plasterwork, matting and dry walling. He noticed Jessie carrying objects over 10 pounds in particular a toolbox and hand tools. He told the court that he did not see Jessie have any difficulties with these tasks.
- [257] Jessie Wooley testified that he assisted Jessie with home renovations after the accident.
- [258] Jessie's brother Jake confirmed that the plaintiff helped him with home renovations after the accident. He testified that he and Jessie went on a post-accident vacation to British Columbia to visit their cousin.
- [259] The evidence of the plaintiff's treating physiotherapist Melissa Groot does not assist in proving that the plaintiff's injuries are serious and permanent. She last saw Jessie in September 2013 and has no knowledge of his condition since then.
- [260] Regrettably, the evidence of Dr. Kinsinger and Dr. Ko is of little assistance to the court in the determination of whether the injured person "has sustained permanent impairment" as a result of the index accident, because the entirety of their report is predicated upon Jessie's mis-report of the mechanism of the accident, and his failure to report pre- and post-accident injury.
- [261] All the medical witnesses agree that Jessie has reached his maximum medical improvement. Dr. Tuling provided chiropractic treatment to Jessie from 2013 to present. His view is that Jessie symptoms were persistent and stable, but chronic. Dr. Mathoo testified that there was no evidence of ongoing impairment of any significance that required

treatment or restriction. He told the court that there was no reason for the plaintiff's daily activities to be restricted.

[262] At paragraph 71 of her written submissions Ms. Cook states:

From a psychological perspective, Jessie has been diagnosed with altered sleep patterns and suspected posttraumatic stress disorder. Jessie consistently suffers from sleeping difficulties and jurors a constant state of fatigue. Moreover, due to substantial reductions in his functionality since the collision, Jessie has experienced significant challenges concerning anxiety, concentration, depression and stress.

However, the plaintiff did not lead any evidence of a psychologist or psychiatrist. None of the plaintiff's experts were qualified to provide evidence in the area of psychology or psychiatry.

[263] Dr. Mathoo told the court that while Jessie complains of chronic pain, that there is no physical evidence supporting the report of pain, and that he agrees with Dr. Ko that Jessie should undergo a psychological assessment.

[264] In *Grieves v. Parsons*, 2018 ONSC 26 at paras. 15-16 the court held:

Because it is only serious impairment which will qualify as an exception under s. 266(1)(b) it is apparent that the legislature intended that injured persons are required to bear some interference with their enjoyment of life without being able to sue for it.

[265] Persons injured in motor vehicle accidents must do more than simply experience ongoing pain or discomfort in order to bring themselves within the statutory exceptions of the legislation. The fact that Jessie claims to have some pain or discomfort on occasion does not translate to him meeting the threshold.

[266] The plaintiff has not proven that his alleged injuries are serious and permanent. Accordingly, I find that he has not met the threshold.

[267] If I am wrong on the threshold issue, I turn to the issues of Damages.

General Damages

[268] Ms. Cook on behalf of the plaintiff claims general damages for pain and suffering in the amount of \$150,000. She submits that such an award is justified considering that Jessie has suffered and continues to suffer from a substantially diminished capacity to participate in employment, housekeeping and recreational activities. The defendant submits that an appropriate range of damages is \$20-\$30,000.

[269] The plaintiff relies upon *Pomeroy v. Misljencevic*, 2016 ONSC 5867 (SCJ). In that case The plaintiff suffered from chronic myofascial pain in the neck and right trapezius muscles

and related cervicogenic headaches, and a right frozen shoulder. The plaintiff was awarded \$140,000 in 2016. Ms. Cook submits that the *Pomeroy* case is virtually on all fours with the circumstances and nature of the injuries experienced by Jessie.

[270] However, at paragraph 56 the court noted:

[all medical practitioners]agreed that "whatever the relative contribution the motor vehicle accident and the subsequent soccer ball incident, she clearly has a significant impairment of functional capacity to work" and "her neck pain, headaches and shoulder pain in my opinion constitute a permanent serious impairment of her capacity to be employed in any position" and finally, "her neck pain, headaches and right shoulder condition in my opinion prevent her from being employed in the future with or without treatment".

[271] The evidence before this court is that Jessie has not sought employment. His source of income is the rental property he inherited following his father's death. Further, the testimony of witnesses and surveillance evidence does not show a diminished capacity of Jessie to participate in recreational activities or home maintenance.

[272] In the circumstances, I assess general damages at \$50,000. This figure is reduced according to Jessie's contributory liability, assessed at 40%.

[273] Effective January 1, 2022, the monetary threshold for general damages increased to \$138,343.86, with the deductible as \$41,503.50. These are the appropriate calculations: *Cobb v. Long Estate*, 2017 ONCA 717.

Loss of Income/Loss of Earning Capacity & Loss of Competitive Advantage

[274] The plaintiff seeks an award for past loss of income in the amount of \$66,297.73. This figure is calculated from the time of the collision on June 14, 2012 to the termination of Jessie's income replacement benefits by State Farm Insurance on November 6, 2014. During that period, 80% of Jessie's earnings, at a conservative 45 hour per week estimate would have amounted to \$85,500. The paid income benefits he received during that period were \$9702.27. He seeks \$85,500 less the paid income benefits.

[275] Jessie testified that prior to the accident he worked 40 to 50 hours per week at Stratford Hyundai.

[276] Jessie also operated Leen Clean. His highest gross income was \$4794.20 in 2010. His highest net income was \$1981.57 in 2011.

[277] Melissa Groot prepared a document wherein on September 20, 2012 Jessie reported that he was working approximately 55 hours per week on modified duties.⁸ Frank Sandola testified that Jessie did a good job on his modified duties.

⁸ Ex #34, p. 2

- [278] Jessie testified that he quit Stratford Hyundai in October 2013. Mr. Sandola confirmed that Jessie quit; he was not let go. The court was told that Jessie wanted a shorter commute and took a job as a car detailer at Brantford Honda, where he knew he would need to perform the normal duties of a car detailer.
- [279] The fact that Jessie earned less at Brantford Honda than at Stratford Hyundai cannot be attributed to the accident. He was not forced to leave Stratford Hyundai. He chose to work for an employer that paid less.
- [280] Jessie quit Brantford Honda in February 2015. He resumed his own business Leen Clean one month later. However, his 2015 tax return has no business income listed.⁹
- [281] In examination in chief Jessie testified that he did not do any work for Leen Clean from the time of the accident in June 2012 to 2015. However, in cross-examination he was shown his 2013 tax return wherein he claimed gross business income of \$1455.88 and net business income of \$143.98.¹⁰ He also declared expenses related to the business in 2013. Further, he advertised the business on Facebook in October 2012.
- [282] The disability certificate completed by Dr. Tuling on August 26, 2014 indicated that the plaintiff was not substantially unable to perform the essential tasks of his employment at the time of the accident as a result of and within 104 weeks of it.¹¹
- [283] Jessie continued to run Leen Clean until 2018. In cross-examination he admitted that he would have earned more money if he had stayed at Stratford Hyundai or Brantford Honda. He stopped working in order to renovate the home he inherited from his father. He told the court that he is able to work but has chosen not to.
- [284] Dr. Mathoo testified that there is no accident-related reason for the plaintiff not to work as a car detailer. Mr. Blad testified that Jessie can work as a car detailer with accommodations.
- [285] Dr. Ko testified that Jessie would have limitations as a car detailer, but testified in cross-examination that he has never recommended that he not work.
- [286] There is no evidence before the court that Jessie's alleged condition makes him unsuitable for employment.
- [287] Jessie's reduction in income after he left Stratford Hyundai was entirely of his own making. He was not asked to leave; indeed he was being accommodated by his employer and friend, Frank Sandola.
- [288] He chose to take a position at Brantford Honda, and he chose to reopen his car detailing business. The decision to shut down that business was not, in any way, accident-related.

⁹ Ex. 51(39)

¹⁰ Ex 51(35), p. 2

¹¹ Ex. 51(7)

[289] The plaintiff also seeks a damages award for loss of earning capacity and/or loss of competitive advantage.

[290] The evidence is clear: Jessie is capable of working. Further, there is no evidence before this court to indicate the range of jobs that were available to the plaintiff or that such a range of jobs has diminished as a result of the accident. Further, there is no evidence before the court that Jessie would earn less than he might have prior to the accident.

[291] The court declines to make an award for loss of income, loss of earning capacity or loss of competitive advantage for the foregoing reasons.

Future Care Costs

[292] The plaintiff submits that he will continue to require acupuncture and chiropractic treatment, in addition to pain medication for the foreseeable future. Ms. Cook submits that at the Stratford Health and Wellness Centre, a single adjustment, chiropractic modality and acupuncture treatment costs \$170.00 per month. She submits that an award of \$115,200 is warranted. This calculation is based on \$2400 per year until Jessie attains the age of 80.

[293] The latest statement of Dr. Tuling indicates that Jessie is spending \$50-\$100 per month, not \$170 per month. Further, there is no evidence that the plaintiff requires treatment until the age of 80. Rather, Dr. Tuling testified that he recommends treatment once or twice a month for three to four years, and an annual cost of \$600-\$1200 per year.

[294] The plaintiff's medical-legal experts did not provide the court with any evidence as to the duration of the requested treatment. Accordingly, the court is persuaded by the evidence of Dr. Tuling regarding the proposed treatment and makes a future care award of \$4800.

Special Damages

[295] Jessie claims special damages in the amount of \$17,664.40 inclusive of GST/HST in relation to transportation expenses incurred pursuing medical and rehabilitation, uninsured medical and rehabilitation expenses incurred and not paid by his SABS provider and for legal fees and disbursements incurred as a result of his prosecution under the *HTA*.

[296] Ms. Cook filed a further amended notice of plaintiff's special damages. The document sets out in detail the treatment, dates, and travel expenses incurred by the plaintiff. It further sets out the legal fees and disbursements incurred by the plaintiff as a result of the charge under the *HTA*.

[297] I am prepared to award special damages in the amount of \$12,806.90. I am not prepared to award special damages in relation to the legal fees and disbursements incurred as a result of Jessie's charge under the *HTA*. He was in contravention of the *Act*, and in my view appropriately charged. Any expenses he may have incurred as a result are not compensable.

Punitive Damages

[298] As the court stated in *Whiten v. Pilot Insurance Co.* 2002 SCC 18 at para. 36:

Punitive damages are awarded against a defendant in exceptional cases for "malicious, oppressive and high-handed" misconduct that "offends the court's sense of decency": *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 (S.C.C.), at para. 196. The test thus limits the award to misconduct that represents a marked departure from ordinary standards of decent behaviour. Because their objective is to punish the defendant rather than compensate a plaintiff (whose just compensation will already have been assessed), punitive damages straddle the frontier between civil law (compensation) and criminal law (punishment).

[299] The court went on at paras. 112-126 to describe the factors for the court to consider when determining the appropriateness of an award of punitive damages, namely: blameworthiness of the defendant's conduct, degree of vulnerability of the plaintiff, whether the harm was directed specifically at the plaintiff, the need for deterrence, proportionality, and any advantage wrongfully gained by the defendant.

[300] On behalf of the plaintiff, Ms. Cook submits that the "conduct of the police officers in this case can be described as outrageous, mean-spirited, and vindictive." I disagree. Having concluded that there was no *Charter* breach and having made a finding that the police acted professionally, and in the usual and ordinary course of their employment, there shall be no award of punitive damages.

CONCLUSION

[301] The Defendant is entitled to its costs. If the parties are unable to come to an agreement, I will receive brief written submissions by January 30, 2023.

K.A. GORMAN

Released: November 21, 2022

CITATION: Leenderste v. HMK, 2022 ONSC 6395

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

JESSIE LEENDERSTE

Plaintiff

– and –

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

DEFENDANT REASONS FOR JUDGMENT

Justice K.A. Gorman

Released: November 21, 2022