

Federal Court



Cour fédérale

**Date: 20240410**

**Docket: T-925-19**

**Citation: 2024 FC 567**

**Ottawa, Ontario, April 10, 2024**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**MANDY EASTER**

**Plaintiff**

**and**

**DOMINIC SHALE ALEXANDER AND  
HIS MAJESTY THE KING**

**Defendants**

**ORDER AND REASONS**

I. Overview

[1] The Plaintiff, Mandy Easter, brings this motion for an order:

1. permitting the Plaintiff to tender the expert report of Jamie Jocsak, dated February 22, 2024 at the trial presently scheduled to commence on April 29, 2024;
2. granting the Plaintiff leave to call Jamie Jocsak as a witness at trial;
3. granting the Plaintiff leave to amend the Statement of Claim in accordance with the draft Amended Statement of Claim attached as Schedule “A” to the Plaintiff’s notice of motion dated February 28, 2024; and
4. such further and other relief as this Court may deem just.

[2] The Defendant, His Majesty the King (all further references to the “Defendant” will mean solely His Majesty the King because of Dominic Shale Alexander’s lack of participation in this action to date) does not object to the Plaintiff’s proposed Amended Statement of Claim, which amends the name of the Defendant to read HIS MAJESTY THE KING, instead of HER MAJESTY THE QUEEN, and amends the amount of damages claimed in paragraphs 1(a), 1(b) and 1(c) from \$1,500,000 to \$4,000,000.

[3] The Defendant, however, objects to the Plaintiff’s request to tender the expert actuarial report of Jamie Jocsak [Jocsak Expert Report], and to call Jamie Jocsak as a witness at trial.

[4] By way of a separate motion, the Defendant also seeks to amend his Statement of Defence and Crossclaim, to which the Plaintiff objects. The Defendant’s motion, which was heard at the same time, is the subject of a separate order and reasons that have been issued contemporaneously with the instant order and reasons concerning the Plaintiff’s motion.

[5] I have considered carefully the parties’ records on this motion and their oral submissions. I find that, except for the requested amendment of the Statement of Claim which was granted after the hearing and for which an order issued that day, the Plaintiff’s motion otherwise is dismissed, for the reasons provided below.

[6] For clarity, because the Court already has issued a separate order granting the amendment of the Statement of Claim, these reasons address only the issue of whether to permit the Plaintiff

to tender the Jocsak Expert Report and to call its author as a witness at trial, which I conclude will not be permitted at this time.

[7] See Annex “A” below for relevant legislative provisions mentioned in these reasons.

## II. Asserted Factual Background

[8] The Plaintiff was the common law partner of Dominic Shale Alexander [Mr. Alexander] between 2002 and 2006, when Mr. Alexander was enlisted in the Canadian Armed Forces [CAF]. The Plaintiff alleges that, during this time, Mr. Alexander repeatedly abused her sexually, physically, and psychologically.

[9] The Plaintiff also alleges vicarious liability of the CAF, and hence the Defendant, pursuant to sections 3 and 36 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, as well as negligence, for perpetuating a training environment and, more generally, a culture conducive to intimate partner violence and gender-based discrimination, for failing to keep the Plaintiff safe while she lived with Mr. Alexander on base between 2004-2006 and for failing to investigate the violence against the Plaintiff at the hands of Mr. Alexander when reported to the military police. The Plaintiff further alleges occupier’s liability, breach of fiduciary duty by the CAF and breach of section 7 of the *Canadian Charter of Rights and Freedoms*, contained in *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

[10] According to the Plaintiff, Mr. Alexander eventually was arrested by an Ontario Provincial Police [OPP] officer and charged with criminal offences to which he pleaded guilty.

This occurred after an incident where the OPP officer happened upon Mr. Alexander attempting to put the Plaintiff in the trunk of his car while she was in military handcuffs. The Plaintiff has had no further contact with Mr. Alexander since he was arrested, except to appear as a witness in court proceedings.

### III. Relevant Procedural Background

[11] The trial of this action is scheduled to start on April 29, 2024 for a duration of ten days.

[12] The pretrial conference [PTC] was held on February 12, 2024 with Associate Judge Horne, who has been case managing the action. Up to that point, the Plaintiff's expert evidence consisting of the Psychological Report and Vocational Assessment Report had been served on the Defendant in the first quarter of 2023. They were contained in the Plaintiff's PTC material, as well as in the Plaintiff's record for this motion, which also contains the Defendant's Responding Psychological Report. The Defendant has not tendered a separate Responding Vocational Assessment Report. Instead, the Defendant's Responding Psychological Report responds to both of these Plaintiff's expert reports to varying degrees.

[13] Following the PTC, Associate Judge Horne issued an order dated February 13, 2024 scheduling the trial, premised on the advice of the parties that: (a) no pretrial motions were contemplated; (b) all expert reports have been served; and (c) no party has raised or intends to raise an objection under rule 52.5 of the *Federal Courts Rules*, SOR/98-106 [FCR]. Nonetheless, the February 13, 2024 scheduling order also gave the Plaintiff until February 26, 2024 to serve a further expert report if the Plaintiff planned to seek leave to rely on it at trial.

[14] The Plaintiff served the Defendant with the Jocsak Expert Report on February 26, 2024 and brought this motion on February 28, 2024.

[15] On March 14, 2024, the Defendant served the motion to amend the Statement of Defence and Crossclaim. As mentioned, the outcome of the Defendant's motion is the subject of a separate order.

#### IV. Analysis

[16] As explained below, I am not convinced of the necessity of the Jocsak Expert Report. I deal first, however, with the preliminary matter of the Plaintiff's Supplementary Motion Record containing further affidavit evidence that was submitted after the filing of the Defendant's Motion Record.

##### A. *Plaintiff's Supplementary Motion Record*

[17] At the outset of the hearing of this motion, I explained to the parties why I was prepared to accept the Plaintiff's Supplementary Motion Record for filing notwithstanding the concern that I initially expressed to the parties at the trial management conference [TMC] held with them on March 28, 2024. In my view, it replies to Defendant's Motion Record. The *FCR* pertaining to motions do not contemplate reply evidence, although I observe that it may be permitted in unusual circumstances involving a question of procedural fairness and where it is necessary to make a proper determination: *Black & White Merchandising Co Ltd v Deltrans International Shipping Corporation*, 2019 FC 379 [*Black & White*] at para 28.

[18] Here, the supporting affidavit contained in the Supplementary Motion Record responded to the Defendant's evidence that there would not be enough time in the weeks remaining until trial to prepare a responding actuarial report. In this regard, the Defendant pointed to the government procurement process (meaning that funding necessary to retain an expert would not be available until April 2, 2024 at the earliest) and the asserted lack of availability of potential experts to complete a responding report by the start of trial (April 29, 2024). The supporting affidavit in the Plaintiff's Supplementary Motion Record responded to the latter issue by providing evidence of purported availability of several experts, including at least one contemplated by the Defendant, who apparently would be available to prepare a responding actuarial report in 2-3 weeks.

[19] The Supplementary Motion Record also raises, in the Supplementary Written Representations, the possibility of a reference pursuant to rule 153 of the *FCR* to determine damages involving the present value of income loss that may be found at trial, or the possibility of bifurcation of the issue under rule 107. These submissions were made to counter the Defendant's suggestion, as an alternative to dismissing the motion, that the trial be adjourned to permit the Defendant sufficient time to retain an appropriate expert to prepare a responding actuarial report. In both written and oral submissions, however, the Plaintiff strongly advocates against adjourning the trial.

[20] At the TMC, I invited the Defendant to make submissions in writing on the issue of a reference or possible bifurcation of the damages issue and indicated to the parties that I would like to hear from them both further on this issue. On this basis, that is the issue of a possible

reference or bifurcation in response to the Defendant's alternative adjournment request, I was prepared to accept the Supplementary Motion Record.

[21] I add that the Plaintiff's written and oral submissions did not allay my concerns regarding the reply affidavit. Leaving aside the hearsay nature of the reported conversations with potential expert witnesses, I agree with the Defendant that the Defendant would be entitled to choose his own expert further to due diligence considerations that would need to be undertaken, including whether the prospective expert has been a trial witness before and how their evidence was received by the court.

[22] Further, the Plaintiff's Supplementary Motion Record did not address at all the issue of the procurement process, including contractual and funding elements, to which the Defendant is subject in retaining an expert witness. The Plaintiff's oral submissions about the procurement process were limited to an assumption that funding would be available by April 2, 2024.

[23] In the end, I determine that only the issue of a possible reference is relevant to my consideration of the Jocsak Expert Report, to which I turn next in my analysis.

B. *Jocsak Expert Report*

[24] I am not convinced that the Jocsak Expert Report is necessary or that it is in the interest of justice that the Plaintiff be permitted to tender it and to call Jamie Jocsak as a witness at trial.

[25] The Plaintiff submits that the issue of the trier of fact likely benefiting from an expert opinion on the present value of the Plaintiff's income loss was raised during the PTC. As mentioned above, the February 13, 2024 scheduling order gave the Plaintiff until February 26, 2024 to serve a further expert report if the Plaintiff planned to seek leave to rely on it at trial.

[26] The Plaintiff also argues that she meets the necessary preconditions to the tendering of the Jocsak Expert Report laid down in rule 279 of the *FCR*, in that the issue of loss of future income has been defined in the pleadings (I agree), the Jocsak Expert Report has been prepared in accordance with rule 52.2 and served pursuant to an order made under rule 265, and the expert witness is available for cross-examination at trial. That subsection 265(2) contemplates service of an expert report further to a post-PTC scheduling order is not conclusive, in my view, of whether to permit the Plaintiff to tender additional expert evidence and to call the expert at trial as a witness.

[27] The Plaintiff further argues that the Jocsak Expert Report does not contain new facts, but rather, it utilizes the information contained in the Vocational Assessment Report to calculate the present value of the Plaintiff's income loss using actuarial multipliers and accounting for certain contingencies, including life expectancy, inflation, and likelihood of residual income. In other words, it provides information that, according to the Plaintiff, likely is outside the experience and knowledge of the judge: *R v Mohan*, 1994 CanLII 80 (SCC), [1994] 2 SCR 9.

[28] The Defendant's objection to permitting the Jocsak Expert Report to be tendered is rooted in two issues: (1) whether earlier "strategic choices" in the proceeding now prevent the

Plaintiff from tendering this expert evidence on the eve of trial; and (2) prejudice to the Defendant.

[29] The Defendant argues that prejudice to the Defendant could be mitigated, were the Jocsak Expert Report permitted, by a brief adjournment of the trial to provide sufficient time for the Defendant to consult with a prospective expert and to prepare a responding actuarial report. The Defendant points to the Court's discretion to adjourn under subsection 36(1) of the *FCR*. Contrary to the Defendant's submissions, I am not persuaded that the relevant considerations to take into account regarding possible adjournment, as described in *McFadyen v Canada (Attorney General)*, 2009 FC 78 at para 23, favour the Defendant.

[30] While it is true that there has been no adjournment of the trial to date, it has taken five years from the commencement of the action to get to trial. While the trial could be rescheduled, it is speculative that that the delay would be brief. Taking into account the scarcity of judicial resources, the loss of a two-week trial is significant. Further, the interest of the timely conclusion of the litigation, in my view, favours the Plaintiff.

[31] That said, the Plaintiff conceded at the hearing of this motion that it would have been better had the Plaintiff thought of a present value report sooner. Further, the Plaintiff submits that present value is not a complex calculation that requires an expert to calculate. Rather, according to the Plaintiff, it is a simple computation that any individual with a calculator could figure out, once the Court determines what the Plaintiff's likely income would have been.

[32] In this regard, the Plaintiff points to rule 53.09 of the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194, which provides a formula for calculating the present value of future pecuniary damages, taking into account factors such as inflation. One of the purposes of rule 53.09 is to prevent the need for and expense of bringing expert evidence to demonstrate the present value of future pecuniary damages: *Giannone v Weinberg*, 1989 CanLII 4046 (ONCA).

[33] The *FCR* do not contain an equivalent rule and thus do not provide for such a calculation. Rule 4 and subrule 53(2) of the *FCR*, however, permit the Court to adopt provincial rules, albeit as a last resort: *Khadr v Canada (Minister of Foreign Affairs)*, 2004 FC 1393 at para 12. The main question is whether the quantification of future damages is a procedural matter, and thus covered by rule 4, or substantive, in which case rule 4 would not apply. In other words, rule 4 cannot create substantive relief that is not found in a federal statute.

[34] The Ontario Court of Appeal, drawing a distinction between the availability, in the sense of entitlement, to damages and the quantification of damages, has found that costs are procedural, since they are incidental to the determination of rights and they are a discretionary mechanism used to deter and penalize the abuse of process. Similarly, a judicially-imposed cap on general damages is considered procedural in nature: *Somers v Fournier* (2002), 60 OR (3d) 225 (CA) at paras 17-19, 57-58.

[35] While the Jocsak Expert Report could be relevant and useful in the sense of providing greater precision to the damages calculation, accounting for contingencies such as life expectancy and disability, I find in the circumstances that it is not a necessity, given the

availability of the calculation set out in Ontario law. Further, it would remain open to the Court to order a reference under rule 153 of the *FCR* at a later time after the issues of causation and liability are proven at trial, in particular, whether one hundred percent of the Plaintiff's lost income is attributable to the abuse she suffered at the hands of the individual defendant, Dominic Shale Alexander, and the extent to which the Defendant is vicariously liable, if at all.

[36] The Defendant submits that these issues are better left to the trial judge to determine in the context of the trial (in other words, all issues should be tried together) and that a reference would necessitate the effort and expense of another fact finding exercise by a different judicial officer, and would be contrary to the general principles in rule 3 of the *FCR* to secure the just, most expeditious and least expensive outcome, taking into account proportionality.

[37] I disagree. The Court's decision in *Robertson v Beauvais*, 2014 FC 208 at para 119 contemplates that the trial judge could hold a reference under rule 153 of the *FCR* on the issue of the quantum of damages. In fact, nothing in the *FCR* precludes this possibility.

#### V. Conclusion

[38] For the above reasons, apart from the issue of the Amended Statement of Claim that is the subject of a separate order, the Plaintiff's motion will be dismissed. Because the Defendant did not object to the amendment of the Statement of Claim, and because the Defendant indicated he would not be seeking costs, no costs are awarded in the circumstances.

**ORDER in T-925-19**

**THIS COURT ORDERS that:**

1. With the exception of the Plaintiff's request for an order permitting the amendment of the Statement of Claim, which has been granted and is the subject of a separate order, the Plaintiff's motion to permit her to tender the expert report of Jamie Jocsak and to call Jamie Jocsak as a witness at trial is dismissed.
2. No costs are awarded on this motion.

"Janet M. Fuhrer"

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Judge

**Annex “A”: Relevant Provisions**

*Federal Courts Rules, SOR/98-106.*  
*Règles des Cours fédérales, DORS/98-106.*

<p><b>General principle</b></p> <p><b>3</b> These Rules shall be interpreted and applied</p> <p>(a) so as to secure the just, most expeditious and least expensive outcome of every proceeding; and</p> <p>(b) with consideration being given to the principle of proportionality, including consideration of the proceeding’s complexity, the importance of the issues involved and the amount in dispute.</p>	<p><b>Principe général</b></p> <p><b>3</b> Les présentes règles sont interprétées et appliquées :</p> <p>a) de façon à permettre d’apporter une solution au litige qui soit juste et la plus expéditive et économique possible;</p> <p>b) compte tenu du principe de proportionnalité, notamment de la complexité de l’instance ainsi que de l’importance des questions et de la somme en litige.</p>
<p><b>Matters not provided for</b></p> <p><b>4</b> On motion, the Court may provide for any procedural matter not provided for in these Rules or in an Act of Parliament by analogy to these Rules or by reference to the practice of the superior court of the province to which the subject-matter of the proceeding most closely relates.</p>	<p><b>Cas non prévus</b></p> <p><b>4</b> En cas de silence des présentes règles ou des lois fédérales, la Cour peut, sur requête, déterminer la procédure applicable par analogie avec les présentes règles ou par renvoi à la pratique de la cour supérieure de la province qui est la plus pertinente en l’espèce.</p>
<p><b>Adjournment</b></p> <p><b>36 (1)</b> A hearing may be adjourned by the Court from time to time on such terms as the Court considers just.</p>	<p><b>Ajournement</b></p> <p><b>36 (1)</b> La Cour peut ajourner une audience selon les modalités qu’elle juge équitables.</p>
<p><b>Expert’s affidavit or statement</b></p> <p><b>52.2 (1)</b> An affidavit or statement of an expert witness shall</p> <p>(a) set out in full the proposed evidence of the expert;</p> <p>(b) set out the expert’s qualifications and the areas in respect of which it is proposed that he or she be qualified as an expert;</p> <p>(c) be accompanied by a certificate in Form 52.2 signed by the expert acknowledging that the expert has read the Code of</p>	<p><b>Affidavit ou déclaration d’un expert</b></p> <p><b>52.2 (1)</b> L’affidavit ou la déclaration du témoin expert doit :</p> <p>a) reproduire entièrement sa déposition;</p> <p>b) indiquer ses titres de compétence et les domaines d’expertise sur lesquels il entend être reconnu comme expert;</p> <p>c) être accompagné d’un certificat, selon la formule 52.2, signé par lui, reconnaissant qu’il a lu le Code de déontologie régissant</p>

<p>Conduct for Expert Witnesses set out in the schedule and agrees to be bound by it; and  <b>(d)</b> in the case of a statement, be in writing, signed by the expert and accompanied by a solicitor's certificate.</p> <p><b>Failure to comply</b></p> <p><b>(2)</b> If an expert fails to comply with the Code of Conduct for Expert Witnesses, the Court may exclude some or all of the expert's affidavit or statement.</p>	<p>les témoins experts établi à l'annexe et qu'il accepte de s'y conformer;  <b>d)</b> s'agissant de la déclaration, être présentée par écrit, signée par l'expert et certifiée par un avocat.</p> <p><b>Inobservation du Code de déontologie</b></p> <p><b>(2)</b> La Cour peut exclure tout ou partie de l'affidavit ou de la déclaration du témoin expert si ce dernier ne se conforme pas au Code de déontologie.</p>
<p><b>Objection to expert</b></p> <p><b>52.5 (1)</b> A party to a proceeding shall, as early as possible in the proceeding, raise any objection to an opposing party's proposed expert witness that could disqualify the witness from testifying.</p> <p><b>Manner of raising objection</b></p> <p><b>(2)</b> An objection may be raised</p> <p><b>(a)</b> by serving and filing a document containing the particulars of and basis for the objection; or  <b>(b)</b> in accordance with subsection 262(2) or subparagraph 263(c)(i) if, in the case of an action, the objection is known prior to the pre-trial conference.</p>	<p><b>Objection au témoin expert</b></p> <p><b>52.5 (1)</b> La partie à une instance soulève, le plus tôt possible en cour d'instance, toute objection quant à l'habilité à témoigner du témoin expert de la partie adverse.</p> <p><b>Façon de soulever une objection</b></p> <p><b>(2)</b> L'objection peut être soulevée, selon le cas :</p> <p><b>a)</b> par la signification et le dépôt d'un document contenant les détails et le fondement de l'objection ;  <b>b)</b> conformément au paragraphe 262(2) ou au sous-alinéa 263c)(i), si, à l'instruction d'une action, elle était connue avant la conférence préparatoire.</p>
<p><b>Other orders</b></p> <p><b>53 (2)</b> Where these Rules provide that the Court may make an order of a specified nature, the Court may make any other order that it considers just.</p>	<p><b>Ordonnances équitables</b></p> <p><b>53 (2)</b> La Cour peut, dans les cas où les présentes règles lui permettent de rendre une ordonnance particulière, rendre toute autre ordonnance qu'elle juge équitable.</p>
<p><b>Separate determination of issues</b></p> <p><b>107 (1)</b> The Court may, at any time, order the trial of an issue or that issues in a proceeding be determined separately.</p>	<p><b>Instruction distincte des questions en litige</b></p> <p><b>107 (1)</b> La Cour peut, à tout moment, ordonner l'instruction d'une question soulevée ou ordonner que les questions en litige dans une instance soient jugées séparément.</p>

<p><b>Order for reference</b></p> <p><b>153 (1)</b> The Court may, for the purpose of making an inquiry and report, refer any question of fact in a proceeding to a judge or other person designated by the Chief Justice of the court before which the proceeding is pending.</p>	<p><b>Ordonnance de renvoi</b></p> <p><b>153 (1)</b> La Cour peut renvoyer toute question de fait pour enquête et rapport devant un juge ou toute autre personne désignés par le juge en chef de la cour saisie de l'instance, pour agir à titre d'arbitre.</p>
<p><b>Order</b></p> <p><b>265 (1)</b> At a pre-trial conference,</p> <p>(a) a judge may make any order respecting the conduct of the action; and</p> <p>(b) a prothonotary may make any order respecting the conduct of the action other than an order under a motion referred to in any of paragraphs 50(1)(a) to (i).</p> <p><b>Service of expert's affidavit or statement</b></p> <p>(2) If applicable, the order shall set out the time for service of any additional or rebuttal affidavits or statements of expert witnesses.</p>	<p><b>Ordonnance</b></p> <p><b>265 (1)</b> Lors de la conférence préparatoire :</p> <p>a) le juge peut rendre une ordonnance à l'égard de la conduite de l'action;</p> <p>b) le protonotaire peut rendre une ordonnance à l'égard de la conduite de l'action, autre qu'une ordonnance relative à une requête visée à l'un des alinéas 50(1)a) à i).</p> <p><b>Délai de signification de l'affidavit ou de la déclaration de l'expert</b></p> <p>(2) Le cas échéant, l'ordonnance rendue en vertu du paragraphe (1) prévoit le délai de signification de tout affidavit ou déclaration d'un témoin expert présenté comme preuve additionnelle ou en contre-preuve.</p>
<p><b>Admissibility of expert's evidence</b></p> <p><b>279</b> Unless the Court orders otherwise, no expert witness's evidence is admissible at the trial of an action in respect of any issue unless</p> <p>(a) the issue has been defined by the pleadings or in an order made under rule 265;</p> <p>(b) an affidavit or statement of the expert witness prepared in accordance with rule 52.2 has been served in accordance with subsection 258(1), rule 262 or an order made under rule 265; and</p> <p>(c) the expert witness is available at the trial for cross-examination.</p>	<p><b>Témoignage admissible</b></p> <p><b>279</b> Sauf ordonnance contraire de la Cour, le témoignage d'un témoin expert n'est admissible en preuve, à l'instruction d'une action, à l'égard d'une question en litige que si les conditions suivantes sont réunies :</p> <p>a) cette question a été définie dans les actes de procédure ou dans une ordonnance rendue en vertu de la règle 265;</p> <p>b) un affidavit ou une déclaration du témoin expert a été établi conformément à la règle 52.2 et signifié conformément au paragraphe 258(1) ou à la règle 262 ou à une ordonnance rendue en application de la règle 265;</p> <p>c) le témoin expert est disponible à l'instruction pour être contre-interrogé.</p>

***Rules of Civil Procedure, RRO 1990, Reg 194.***  
***Règles de Procédure Civile, RRO 1990, Règl 194.***

<p><b>Calculation of Awards for Future Pecuniary Damages</b>  <b>Discount Rate</b></p> <p><b>53.09 (1)</b> The discount rate to be used in determining the amount of an award in respect of future pecuniary damages, to the extent that it reflects the difference between estimated investment and price inflation rates, is,</p> <p style="padding-left: 2em;"><b>(a)</b> for the 15-year period that follows the start of the trial, the greater of,</p> <p style="padding-left: 4em;"><b>(i)</b> the average of the value for the last Wednesday in each month of the real rate of interest on long-term Government of Canada real return bonds (Series V80691347, formerly Series V121808 and Series B113911), as published on the Bank of Canada's website for the period starting on March 1 and ending on August 31 in the year before the year in which the trial begins, less ½ per cent and rounded to the nearest 1/10 per cent, and</p> <p style="padding-left: 4em;"><b>(ii)</b> zero; and</p> <p style="padding-left: 2em;"><b>(b)</b> for any later period covered by the award, 2.5 per cent per year for each year in that period.</p> <p><b>Gross Up</b></p> <p><b>(2)</b> In calculating the amount to be included in the award to offset any liability for income tax on income from investment of the award, the court shall,</p> <p style="padding-left: 2em;"><b>(a)</b> assume that the entire award will be invested in fixed income securities; and</p>	<p><b>Calcul des indemnités adjudgées pour pertes pécuniaires futures</b>  <b>Taux d'escompte</b></p> <p><b>53.09 (1)</b> Le taux d'escompte applicable au calcul du montant d'une indemnité pour pertes pécuniaires futures, dans la mesure où il reflète la différence entre les taux estimatifs de placement et d'inflation, est le suivant :</p> <p style="padding-left: 2em;"><b>a)</b> pendant la période de 15 ans qui suit le début du procès, la plus élevée des valeurs suivantes :</p> <p style="padding-left: 4em;"><b>(i)</b> la moyenne des taux d'intérêt réels sur les obligations à long terme à rendement réel du Gouvernement du Canada (série V80691347, anciennement série V121808 et série B113911), au dernier mercredi de chaque mois, tels qu'ils sont publiés sur le site Web de la Banque du Canada pour la période commençant le 1er mars et se terminant le 31 août de l'année précédant celle où commence le procès, réduite de ½ % et arrondie au 1/10 de pour cent le plus près,</p> <p style="padding-left: 4em;"><b>(ii)</b> zéro;</p> <p style="padding-left: 2em;"><b>b)</b> pendant toute période ultérieure visée par l'indemnité, 2,5 % par année pour chaque année de la période.</p> <p><b>Majoration</b></p> <p><b>(2)</b> Dans le calcul du montant à inclure dans l'indemnité pour compenser l'impôt à payer sur le revenu provenant du placement de celle-ci, le tribunal :</p> <p style="padding-left: 2em;"><b>a)</b> suppose que le montant total de l'indemnité sera placé dans des valeurs à revenu fixe;</p>
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<p><b>(b)</b> determine the rate to be assumed for future inflation in accordance with the following formula:  <math>g</math> rounded to the nearest 1/10 per cent where,</p> $g = (1 + i) / (1 + d) - 1$ <p>“<math>i</math>” is the average of the value for the last Wednesday in each month of the nominal rate of interest on long-term Government of Canada bonds (Series V80691331, formerly Series V121758 and Series B113867), as published on the Bank of Canada’s website for the period starting on March 1 and ending on August 31 in the year before the year in which the trial begins;</p> <p>“<math>d</math>” is,</p> <p><b>(a)</b> for the 15-year period that follows the start of the trial, the greater of,</p> <p><b>(i)</b> the average of the value for the last Wednesday in each month of the real rate of interest on long-term Government of Canada real return bonds (Series V80691347, formerly Series V121808 and Series B113911), as published on the Bank of Canada’s website for the period starting on March 1 and ending on August 31 in the year before the year in which the trial begins, less ½ per cent, and</p> <p><b>(ii)</b> zero, and</p> <p><b>(b)</b> for any later period covered by the award, 2.5 per cent per year for each year in that period.</p>	<p><b>b)</b> détermine le taux d’inflation futur à retenir conformément à la formule suivante :</p> <p><math>g</math> arrondi au 1/10 de pour cent le plus près où :</p> $g = (1 + i) / (1 + d) - 1$ <p>«<math>i</math>» correspond à la moyenne des taux d’intérêt nominaux sur les obligations à long terme du Gouvernement du Canada (série V80691331, anciennement série V121758 et série B113867), au dernier mercredi de chaque mois, tels qu’ils sont publiés sur le site Web de la Banque du Canada pour la période commençant le 1er mars et se terminant le 31 août de l’année précédant celle où commence le procès;</p> <p>«<math>d</math>» correspond à ce qui suit :</p> <p><b>a)</b> pendant la période de 15 ans qui suit le début du procès, la plus élevée des valeurs suivantes :</p> <p><b>(i)</b> la moyenne des taux d’intérêt réels sur les obligations à long terme à rendement réel du Gouvernement du Canada (série V80691347, anciennement série V121808 et série B113911), au dernier mercredi de chaque mois, tels qu’ils sont publiés sur le site Web de la Banque du Canada pour la période commençant le 1er mars et se terminant le 31 août de l’année précédant celle où commence le procès, réduite de ½ %,</p> <p><b>(ii)</b> zéro,</p> <p><b>b)</b> pendant toute période ultérieure visée par l’indemnité, 2,5 % par année pour chaque année de la période.</p>
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**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-925-19

**STYLE OF CAUSE:** MANDY EASTER v DOMINIC SHALE ALEXANDER  
AND HIS MAJESTY THE KING

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 4, 2024

**ORDER AND REASONS:** FUHRER J.

**DATED:** APRIL 10, 2024

**APPEARANCES:**

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Karen J. Sanchez  
Maija Pluto

FOR THE PLAINTIFF

Sean Gaudet  
Adam Gilani  
Uyen Tran  
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FOR THE DEFENDANT  
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