

www.teasley.ca
Cases and positions
[Section from my website]

Contents

Loss of earnings and earning capacity	1
Determinate earnings streams and accident effects	1
A determinate upper limit to the plausible loss	1
Uncertain earnings	2
Indeterminate future effects.....	2
Uncertain earnings and indeterminate future effects	3
Domestic capacity.....	3
Men’s loss of marriage benefits	4
CanLII cases that cite “Teasley”	4

My qualifications show my combination of accounting and economic expertise. So do my cases. The cases also illustrate the expert's dependence on the facts. This section concludes with a listing of all "Teasley" citations that I find in CanLII BC cases.

Loss of earnings and earning capacity

Loss of earnings and earning capacity are my most common opinion on pecuniary damages. I combine economics and statistics with accounting data and analysis, to the extent such an actual track record is possible.

Many of my files have straightforward no-accident and residual earnings streams — like the first three — that yield to an approach that could be called actuarial, economic, or statistical.

Determinate earnings streams and accident effects

The first two, from 1990, used changes in earning capacity, or the contingency-adjusted present value of future earnings.

Mckenzie v Van-Kam Freightways Ltd., 1990 CanLII 561 (BC S.C.) — This case was heard in 1989 by Mr Justice Cohen. Brain damage had knocked Mr Mckenzie from success as a manager in the family business to tolerated, marginal salesman; brain damage rendered the former Mrs Mckenzie unemployable; and they divorced. His Lordship generally accepted my analysis and estimates of Mr Mckenzie's lost earnings and future earning capacity. The section on men's marriage benefits will discuss the results of that head of damage.

Sutherland v Hansen, 1990 CanLII 255 (BC S.C.) — This Nanaimo matter was a typical estimation, although the plaintiff's disability resulted from a deliberate assault with a motor vehicle. Mr Sutherland had been a successful travelling shoe salesman before he and his former wife attempted to run a campground, which was not successful. Assuming that he would have returned to sales, I projected two no-accident earnings streams within which he would likely fall: the average BC travelling salesman and his former, above-average earnings, translated to the current level. I also projected two residual earnings streams, part-time and full-time. The Court placed him between those two.

A determinate upper limit to the plausible loss

Dueck v Mikoula, 1996 CanLII 3199 (BC S.C.), my favourite judgment, contains the comment quoted on the home page. Mr Dueck was also a travelling salesman, and he and his wife were proposing to run workplace daycare centres. He claimed loss of earnings and loss of opportunity to profit from daycare. His original counsel sought a million dollars, perhaps the policy limit. His more responsible counsel at trial had no expert opinion on either loss.

Appearing for the defence, I estimated the highest plausible amount of both. For his lost commissions, I assumed as much as a million dollars in lost sales, which would have netted him at most \$20,000. For the daycare opportunity, I inventoried their paper and computer files and found that they had done nothing active for several months before the accident; thus I assumed their out-of-pocket costs, which they might have recovered, as at most \$10,000. The jury awarded my \$30,000, including nonpecuniary damages.

The judgment concerned only costs, including not only defence counsel's out-of-town laundry but also my fees; thus it was true that I had quantified the plaintiff's claim and that the jury accepted my evidence.

Uncertain earnings

Abbasi v Lang, 1997 CanLII 3490 (BC S.C.) used accounting analysis to estimate the preaccident earnings and thus the expected future earnings of a self-employed contractor. Besides income-splitting with his wife, he had deducted some household expenses from his taxable income as though they were business expenses, and he had left some revenues unreported. I added a portion of these irregularities to his typical, tax-return earnings. I failed to anticipate that the opposing expert would claim the records were in disarray when in fact they were precisely organized — just wrong about taxable income. Given that “disarray” and because the plaintiff exaggerated his “brain damage,” the Court disallowed the restatement. My actuarial analysis and future multipliers were applied.

Schnyder v Doucette, 1991 CanLII 868 (BC C.A.) also suffered from uncertain facts about Ms Schnyder's work and earnings.

Indeterminate future effects

Ralston v Rose, 2003 BCSC 647 (CanLII) illustrates the problem of uncertain accident effects. Just as I rely on statistics for life expectancy and employment contingencies, in such cases I rely on disability statistics to estimate the effect. It classifies into the reduction in the likelihood of being employed and the reduction in earnings if employed. *Ralston* used Statistics Canada's 2001 Participation and Activity Limitation Survey [PALS] to find a 13½% impairment in potential future earning capacity, which was half the apparent reduction in her hours. The Court noted the 13½% and rounded my estimated \$103,000 down to \$100,000. The section on standard assumptions and appendices discusses this approach.

Jahangiri-Bojani v Brudderer, 2001 BCSC 1371 (CanLII) illustrates a more complicated ignorance of accident effects. Mr Jahangiri-Bojani was a grade 10 student who lost part of two fingers in a woodworking accident. Absent any evidence as to his potential earning capacity or employment effects or loss of earning capacity, and without a defined disability, I used the WCB capacity-loss percentage on future earnings streams for various levels of education. It did not succeed.

Lin v Wong, 1992 CanLII 950 (BC S.C.) concerned a recent Chinese immigrant who was delayed in obtaining work as a camera technician. My past-loss estimate was accepted. With no basis for estimating future loss, the Court awarded \$20,000, or a bit over Mr Lin's annual earnings, for loss of opportunity like *Brown v Golaiy*.

Dhaliwal v Snaith, 2002 BCSC 476 (CanLII) showed determinable past wage loss — the loss was based on my estimate for the periods accepted— but Ms Dhaliwal did not have the assumed permanent partial disability. She did receive \$20,000 for loss of opportunity like *Brown v Golaiy*.

Uncertain earnings and indeterminate future effects

Brown v Lalani, 2005 BCSC 785 (CanLII) added uncertainty as to Mr Brown’s own preaccident earnings to the uncertainty of accident effects on his work and earnings. Mr Brown drove a truck and, in his spare time and with the help of his parents, wife, and father-in-law, built caskets before the accident. His injuries included brain damage, and the eventual effects included concentrating on the casket business, hiring a replacement whom he could assist part-time. His true residual capacity — how much he could work, how much it was worth, and how long the impairment would persist — were all unknown. The Court made plausible choices from among the estimates.

Domestic capacity

Domestic capacity, or household work, can be affected by personal injury and can be compensated as part of pecuniary damages. Unlike past loss, at least until 2000, future loss can be compensated even if no replacement is hired.

I first estimated its value as part of my estimation of the benefits of enhanced electrical-transmission reliability, conducted in 1966 for the US Bonneville Power Administration and published as “The evaluation of power system reliability” *Annals of Regional Science* (December 1968, pp 229 – 238).

In *Coggin v Broman*, 1993 CanLII 2452 (BC S.C.), Ms Coggin received pecuniary damages of \$1,000 for the loss of future domestic capacity for a condition expected to resolve within a year of trial. This differed from the estimate I provided, which presumed her condition was permanent, so I was not cited.

Coggin is the earliest BC case I have found. *Coggin* cited and applied the Saskatchewan case *Fobel v Dean* 1991 CanLII 3965 (SK C.A.), (1991) 6 W.W.R. 408:

“The *Fobel v Dean* case also held that a plaintiff is entitled to be placed in the same position with respect to domestic capacity in the future as if she or he had not been injured, and that it is not necessary for the plaintiff to prove that someone will actually be hired to do household chores in the future.

“As I have found that Ms. Coggin's condition will likely be resolved within one year, it follows that her loss of domestic capacity is limited to the same period. I fix her damages for loss of domestic capacity at the sum of \$1,000.”

I have prepared several subsequent opinions that include future domestic capacity. This website’s Standards sample reports include one of them, with the names changed.

On the matter of past domestic capacity, I learn in *Boucher v Doiron* 2000 NBCA 18 (CanLII), (2000), 230 N.B.R. (2d) 247, the New Brunswick Court of Appeal confirmed that a plaintiff need not establish an actual financial loss in order to succeed on a claim for past loss of valuable services. This decision was cited in *Gommer v McKinnon, McKinnon, Lawrence and Sabean and McKinnon v Lawrence and Sabean*, 2004 NBQB 412 (CanLII).

Men's loss of marriage benefits

A woman is typically held to benefit from marriage through sharing the husband's higher aftertax earnings. In *Mackenzie v. Van-Kam Freightways Ltd.*, I estimated the financial benefit that a man enjoys through the efficiency of sharing a household, irrespective of sharing his and her earnings, and which he lost when the accident led to divorce. So far as I know, this is the first case of a man's loss of financial marriage benefit. Unfortunately, the judgment offset this loss with what the couple saved by avoiding children.

CanLII cases that cite "Teasley"

The CanLII BC cases that cite "Teasley," as noted, show my use of accounting and economic expertise. The cases mostly illustrate the expert's dependence on the assumed facts, which I distinguish from estimates based upon them. I am challenged more on the facts and their basis than on my expertise.

Sutherland v. Hansen, 1990 CanLII 255 (BC S.C.) — 1990-11-02
British Columbia — Supreme Court of British Columbia
earnings — job — knee — travelling salesman — work
— *Like Mckenzie, this case was discussed as one of determinate income loss*

Mckenzie v. Van-Kam Freightways Ltd., 1990 CanLII 561 (BC S.C.) — 1990-03-02
British Columbia — Supreme Court of British Columbia
loss — accident — injury — future — marriage
— *This case of a young man's traumatic brain injury, leading to income loss as well as, via divorce, loss of the benefits of marriage, is discussed above under earning capacity as well as under men's loss of marriage benefits. The Court generally accepted my analysis of Mr Mckenzie's earnings but offset the estimated loss of marriage benefits against the costs the couple would have incurred to have and rear children.*

Schnyder v. Doucette, 1991 CanLII 868 (BC C.A.) — 1991-10-29
British Columbia — Court of Appeal
awards — pain — find — accident — life
— *The appeal was dismissed, and the trial judgment was upheld; the Court arrived at its awards independent of my analysis, citing unproved premises.*

Wray v. MacLeod, 1992 CanLII 156 (BC S.C.) — 1992-06-05
British Columbia — Supreme Court of British Columbia
using the ladder — duty — painting — topple — warn
— *This action lost on liability.*

Szijarto v. Peachey, 1993 CanLII 1252 (BC S.C.) — 1993-12-13
British Columbia — Supreme Court of British Columbia
knee — project — accident — work — pain
— *In this case, a high-end finishing contractor with a knee injury sought \$199,000 in past earnings and \$422,000 in future earning capacity but was awarded \$13,000 and \$30,000. Engaged by the defence, I had estimated a past loss of \$37,000.*

Santos v. Hemrich Bros. Garage Ltd., 1994 CanLII 1641 (BC S.C.) — 1994-07-04
British Columbia — Supreme Court of British Columbia
depression — pain — headaches — business — accident
— *Mrs Santos had a wedding-dress business, the accounts of which required analysis and restatement, and some of the materials and assumptions upon which I relied were not in evidence. On cross-examination, I showed that the apparent decline in profitability was explained by accounting factors. She was awarded \$60,000 for her actual past income loss, which I had estimated, but without my estimate of the additional amount that she should have earned instead, as the basis of that was unproved. She was awarded \$25,000 for future earning capacity, which fell within my range.*

Delbrook Business Centre Ltd. v. Melco Developments Ltd., 1996 CanLII 3530 (BC S.C.) — 1996-05-30
British Columbia — Supreme Court of British Columbia
interim lease agreement — addendum — arrears of rent — entered — company
— *In this unfortunate matter, I estimated losses of the business-centre tenant assuming that the centre had a noncompetition agreement with the landlord and that the landlord breached the agreement. No such agreement was proved.*

Abbasi v. Lang, 1997 CanLII 3490 (BC S.C.) — 1997-03-21
British Columbia — Supreme Court of British Columbia
accident — suffer a traumatic brain injury — exaggeration — report — concussion
— *This was discussed above, as a case of uncertain earnings. Mr Abbasi was a Pakistani-Canadian painting contractor who deducted, among more typical business expenses, hundreds of dollars every month in calls to Pakistan; for the plaintiff, I restated his earnings.*

Chan v. GMS Datalink International Corp., 1998 CanLII 2849 (BC S.C.) — 1998-06-25
British Columbia — Supreme Court of British Columbia
misrepresentation — accounts — investment — financial — induce
— *I demonstrated that the defendant, my client, correctly accounted for all matters in question. The defendant was found in breach of an obligation to apprise the plaintiff of any material development.*

Burdeny v. K & D Gourmet Baked Foods And Investments Inc., 1999 CanLII 6578 (BC S.C.) — 1999-04-23
British Columbia — Supreme Court of British Columbia
company — shareholder — oppressive — annual general meetings — financial
cited by 3 cases
— *This case concerned a money-losing family business for which a relative had handled the incorporation, awarding himself an interest. He sued, as an unrepresented plaintiff, for oppression remedies. My opinion of the company's worthlessness held. This reinforced my distaste for unrepresented litigants.*

Banyay v. Christie and Co., 2001 BCSC 1165 (CanLII) — 2001-08-09
British Columbia — Supreme Court of British Columbia
brain injury — evidence — disbursements — property damage insurance — accident
cited by 2 cases
— *I assisted the late Dugald Christie in Mr Banyay's personal-injury and property-damage suits by analyzing Mr Banyay's complex affairs and estimating his income loss. In this action, Mr Banyay, who was brain-damaged, disliked the trial result, sued Mr Christie, and was rejected. The typical trial result — the evidence question — found that "[a]lthough Justice Braidwood did not accept some of Mr. Teasley's opinions about Mr. Banyay's losses, there is no evidence indicating that Mr. Teasley did not do a competent and creditable job of presenting the loss of income claims in the most favourable light possible. [¶54]"*

Wong v. Luong et al, 2004 BCSC 1489 (CanLII) — 2004-11-17

British Columbia — Supreme Court of British Columbia
depression — pain — treatment — symptoms — cognitive
cited by 3 cases

— *Mr Wong was awarded \$50,000 for past wage loss and \$150,000 for reduced future earning capacity, as well as future care and domestic capacity using my multiplier. I had analyzed Mr Wong's complex affairs and arrived at higher losses, while the defence expert found no losses.*

Christie v. AG of B.C. et al, 2005 BCSC 122 (CanLII) — 2005-02-08

British Columbia — Supreme Court of British Columbia
social service tax — access — legal services — low income persons — clients
cited by 3 cases

&

Christie v. British Columbia, 2005 BCCA 631 (CanLII) — 2005-12-20

British Columbia — Court of Appeal
legal services — tax — purchase price — access — rule
cited by 9 cases

— *The late Mr Christie specialized in service to clientele who earned too much to receive legal aid but not enough to afford typical legal fees. He sought to convert a trial-court judgment exempting work for low-income clients to one exempting work for low fees. I assisted this quest by an opinion on market segmentation, namely that low-fee lawyers operated in a distinguishable submarket. We know the result.*

C.L.C. v. T.R.C., 2005 BCSC 979 (CanLII) — 2005-06-30

British Columbia — Supreme Court of British Columbia
nursery — line of credit — impute income — automobile — business

— *Besides a plant nursery, the husband in this family matter had a business that bought cars in Canada and sold them into the US, while the exchange rate encouraged this trade. In a later year in which he claimed nil earnings, he acquired a muscle car and sold it on his personal account for a substantial gain, which the Court did not consider income.*

Hiebert v. Hiebert, 2006 BCSC 231 (CanLII) — 2006-02-09

British Columbia — Supreme Court of British Columbia
assets — court-appointed expert — special costs — fees — valuation

— *In this divorce proceeding, the Master found it premature to order the husband to pay a court-appointed expert — me — to investigate and evaluate the husband's businesses. I eventually filed a rebuttal to the husband's expert's report.*

Charles v. Charles, 2006 BCSC 1065 (CanLII) — 2006-07-07

British Columbia — Supreme Court of British Columbia
retroactive child support — imputed income — non-custodial parent — encroach — militating

— *In this family-relations matter seeking retroactive child support based on undisclosed income in the years 1992 ~ 1998 I was one of two experts on the husband's subsequent earnings.*