

DAMAGES: Loss of Income and Loss of Earning Capacity

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Why Does Sexual Assault Cause Economic Loss?

- Psychological difficulties (PTSD, borderline personality disorder, etc.)
- Low self-esteem
- Trust issues
- Problems with authority
- Education difficulties

Types of Economic Loss

- Income Loss vs. Loss of Earning Capacity
- Income Loss:
 - The amount of income the plaintiff lost as a result of the abuse
 - Income the plaintiff would have earned minus income actually earned

Calculating Income Loss

- Missed Time From Work vs. Failure to Reach Potential
- The role of a vocational rehabilitation expert

Calculating Income Loss (continued)

- Specific Job vs. Average Earnings Based on Education

Loss of Earning Capacity

- Diminished earning capacity
- Capital asset
- Loss of competitive advantage

What are the Courts Doing?

- 286 cases
- Economic loss in 112 (less than 40%)
- Traditional income loss in 42 (15% of all)
- Loss of earning capacity/competitive advantage in 51 (18% of all)

Recent Income Loss Cases

- *K.M. v Marson* (2014): \$1,192,550 was awarded for damages of past loss of income and \$762,450 for future loss of income (teacher).
- *Macleod v Marshall* (2018): jury awarded \$1,588,781 for past and future loss of income (priest).
- *D.S. v Quesnelle* (2019): \$1,533,416.00 was awarded for past and future lost income (step-father).

Modified Earning Capacity Approach

- Dr. Ross MacMillan
- Average annual earning reduction of \$6,000 in 1993
- With inflation, \$9,995 in 2021
- Lifetime \$400,000

1999 Stats Canada

- 1999 Generals Social Survey Cycle 13 – Victimization
- 22.69% loss applied to actual income
- For example, an annual income of \$75,000 x 22.69% = \$17,017.50 per year
- Total lifetime: \$680,700

The Burden of Proof

- MacLeod v. Marshall 2019 ONCA 842
- Past income loss (before trial) determined as a real and substantial possibility (not balance of probability)
- Hypothetical –what would have happened not what did happen

Loss of Interdependent Relationship (LOIR)

- Increased income
- Shared expenses
- Shared housekeeping

- Likelihood of marriage
- Likely age
- Likely earnings of partner
- Likelihood of divorce
- Likelihood of children