



Jeff Jakel

You & THE LAW

ACCIDENTS AND REDUCED EARNING CAPACITY

What if you can't earn as much because you were hurt in a car crash? You may be forced to find an easier but lower-paying job and not make as much as before the accident. Lawyers call this loss "diminished earning capacity." This work-related loss is one of many losses you could be compensated for if the crash was caused by another's fault.

Now what if your earnings don't go down after the accident? Can you still get compensation for "diminished earning capacity"? You might think that because your income didn't decrease, your ability to earn hasn't been reduced. But this approach is too simple and can be unfair, as a recent case illustrates.

Colleen, 46, was injured in two car accidents, one after the other. She hurt her neck, shoulder and upper back, resulting in chronic widespread pain (diagnosed as fibromyalgia). Before the accidents, she was highly energetic and motivated. She had a fast-paced job as an executive secretary to the president of a large organization, which she loved.

All that changed. Because of her chronic pain – only endured with lots of pain killers and anti-inflammatory medications – she couldn't handle the demands of her job anymore nor the three-hour (both ways) commute it involved.

Colleen sold her house to move to a smaller home with fewer stairs. She also found a new easier job, where the commute was only 20 minutes. Switching jobs was "a huge blow" and "far less rewarding in terms of job satisfaction," said the trial judge who initially decided her case. Yet, by happenstance, her new job paid more, and so she didn't suffer an immediate loss of earnings.

Still, her lawyers were able to prove that she suffered a reduction in her capacity to earn (which the appeal court agreed with).

The circle of secretarial or administrative positions that she could compete for in future had narrowed because of the limitations imposed by her injuries. In short, she became less marketable as an employee and less capable overall of taking advantage of all employment opportunities that might come her way.

As well, the trial judge concluded there was a real and substantial possibility that Colleen would have been promoted to a director position had she been able to stay there – at a higher salary and with improved health and pension benefits. (This particular finding was over-turned on appeal as speculative only, reducing her compensation award somewhat.) And there was a real possibility that because of her injuries (which had plateaued or possibly could even worsen), her working career would likely end earlier than it would if the accident hadn't occurred.

Overall, she proved she had suffered a loss in her capacity to earn future income. The BC Court of Appeal ultimately awarded Colleen \$275,000 for diminished earning capacity.

If you're injured in an accident, consult your lawyer. He or she can help you receive the fair compensation that you may be entitled to receive.

Written by Janice and George Mucalov, LL.B.s with contribution by GILLESPIE & COMPANY LLP. This column provides information only and must not be relied on for legal advice. Please contact JEFF JAKEL of GILLESPIE & COMPANY LLP at 250.374.4463 or jjakel@gillespieco.ca for legal advice concerning your particular case. Lawyer Janice Mucalov is an award-winning legal writer. "You and the Law" is a registered trade-mark. © Janice and George Mucalov



**Gillespie &
Company** LLP
LAWYERS

Suite 200, 121 St. Paul Street
Kamloops, B.C.
1.250.374.4463 | 1.855.374.4463 (toll-free)
www.Gillespieco.ca | jjakel@gillespieco.ca