

# DAMAGE AWARDS JEOPARDY

July 12, 2023

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PUNITIVE DAMAGES	LOSS OF INCOME	GENERAL DAMAGES	HOUSEKEEPING
QC	ON	MB	SK
BC	AB	BC	QC
ON	SK	AB	NL
AB	MB	ON	BC
NL	QC	BC	ON

# Presenters



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# Newfoundland & Labrador

*Abbott v Moorland Limited*, 2021 NLSC 66

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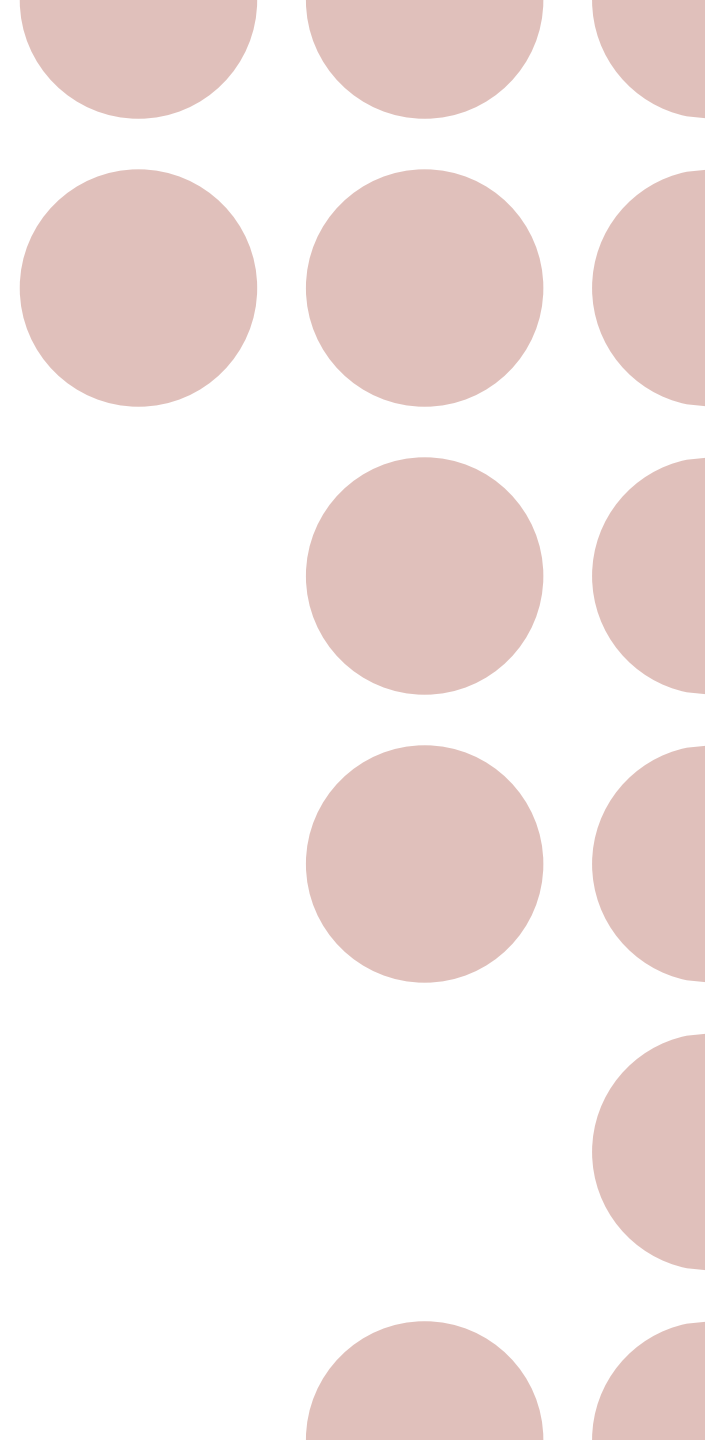
COX & PALMER

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# *Abbott v Moorland Limited*, 2021 NLSC 66

## **FACTS**

- The plaintiff, a 67-year-old postmaster, suffered injuries as a result of a slip and fall.
  - She suffered multiple fractures in her left humerus, with pain in her arm and shoulder. Her face was scraped and bruised and her glasses broke.
  - She had pain in her hip and knee that was not present prior to the fall.
  - Her fractures were treated non-surgically. She also underwent physiotherapy.
  - She wore a cast on her arm for five months and had significant impairment and pain for many months after that.
  - Her pain resolved over time, but she was left with permanent disability in her arm and shoulder that continued to affect her day-to-day activities.
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## *Abbott v Moorland Limited*, 2021 NLSC 66

### **POLL**

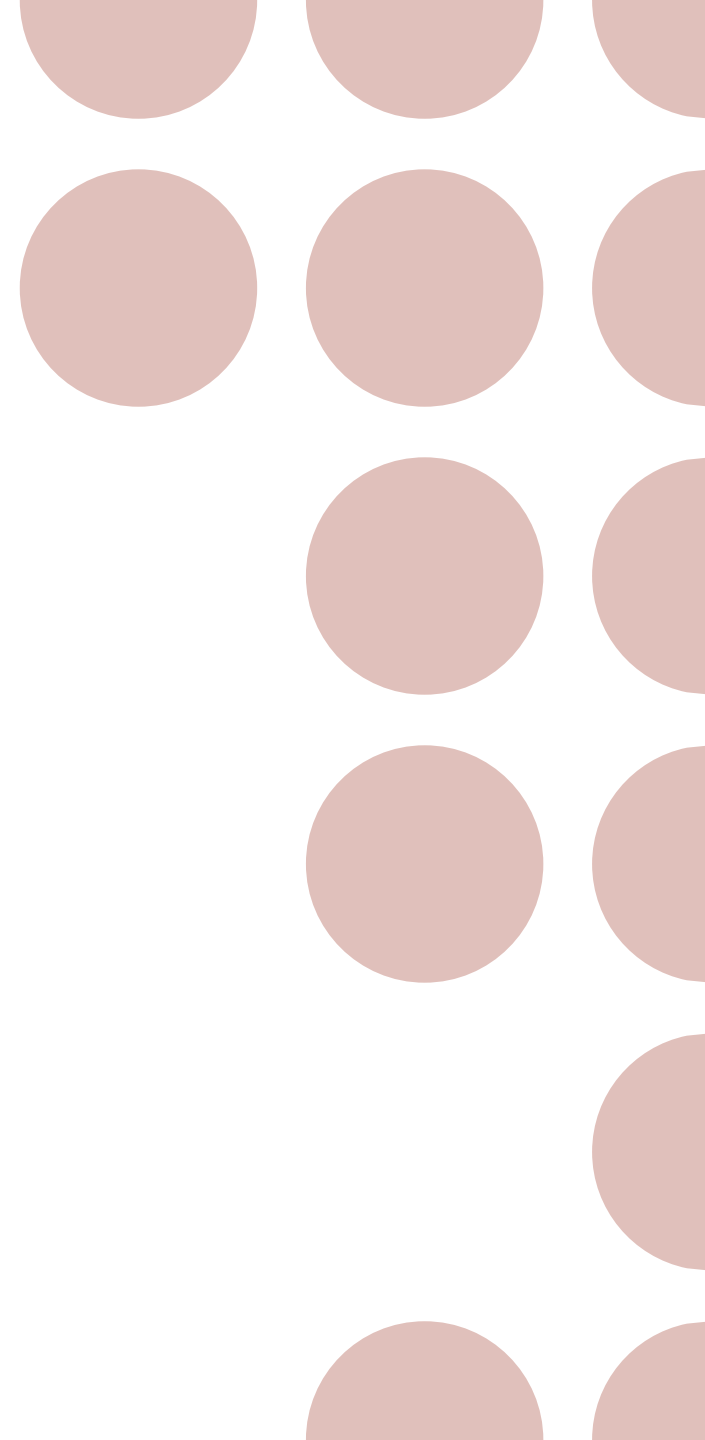
What did the Court in *Abbott v Moorland* award for loss of housekeeping?

- a) \$5,000 for past loss and no award for future loss of housekeeping.
  - b) No award for loss of housekeeping because the plaintiff could still do all of her chores.
  - c) \$3,000 for past loss and \$4,000 for future loss of housekeeping.
  - d) A global award of \$10,000 for past and future loss of housekeeping.
-

## *Abbott v Moorland Limited*, 2021 NLSC 66

### **Award**

- \$50,000 in general damages
  - \$3,000 for past loss of housekeeping
  - \$4,000 for future loss of housekeeping
- 



# Quebec

Gagné c. Gagné 2020 QCCS 1409

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DONATI   
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## *Gagné c. Gagné 2020 QCCS 1409*

- 50-year-old Pierre Gagné and his wife Rina Tremblay are claiming the amount of \$1,324,632 \$ following a terrible accident when his left hand got stuck in the mechanism of the wood splitter belonging to his sister Anita Gagné, the defendant.
  - Every autumn, Pierre used to go to his sister's house to help her split wood for the winter. On the day of the accident, Pierre and Anita were cutting wood according to their usual method. Whereas it is necessary to clear the wood already cut, Pierre's arm was caught in the gears of the machine which was still running.
  - Plaintiff suffered a major laceration, fractures and amputation of some fingers of his left hand.
-

## *Gagné c. Gagné 2020 QCCS 1409*

- Plaintiff blames his sister as she was operating the wood splitter and activated the log splitter lever at a time when it was dangerous. On the contrary, the Defendant considers that her brother is responsible for his own misfortune since he was well acquainted with the operation of the machine well and chose to move the cut wood while the engine was still running.
  - Pierre had to undergo twelve to fourteen surgeries on his left hand due to the severity of his injuries. Despite the surgeries, Pierre has retained a loss of manual dexterity and great pain requiring strong permanent medication resulting in many side effects. He worked as a day labourer and is no longer able to do so. He also has difficulty performing certain day-to-day activities. Both experts conclude that he retains an anatomico-physiological deficit of 19%.
-

# *Gagné c. Gagné 2020 QCCS 1409*

## POLL #1

**What is the amount of non-pecuniary damages that Pierre suffered established by the Court?**

- a. \$50,000, considering Pierre's suffering, but also the fact that he was fortunately right-handed;
  - b. \$125,000, in light of his functional and aesthetic deficit;
  - c. \$175,000, in consideration of recent decisions rendered in similar situations;
  - d. \$250,000, as Pierre did all the chores and maintenance in the house and would have done so until he was 75 years old.
-

# *Gagné c. Gagné 2020 QCCS 1409*

## POLL #2

### **What did the Court award to Pierre's wife, Rina?**

- a. \$0.00, as she was not able to prove the consequences of her husband's accident on her daily life;
  - b. \$10,000, as a global amount for pain and suffering;
  - c. \$50,000, as she suffered multiple inconveniences from her husband's accident with respect to their shared social and family life as well as the maintenance;
  - d. \$85,000, as her husband did all the chores and maintenance in the house.
-

## *Gagné c. Gagné 2020 QCCS 1409*

### Award to Pierre Gagné

- Claimed a total of \$1,274,632.
  - Court valuation of the damages : \$1,010,710
  - Non-pecuniary: \$125,000
  - Pecuniary: \$809,193.82
  - Various: \$76,516.25
  - Awarded \$505,355 because of the 50% apportionment of liability.
-

## *Gagné c. Gagné 2020 QCCS 1409*

### **Awards to his wife Rina Tremblay**

- Claimed non-pecuniary losses of \$50,000
  - Court valuation of the damages: \$50,000
  - Awarded \$25,000 because of the 50% apportionment of liability.
-



## Saskatchewan

*RYH v Y. LTD., 2021 SKQB 28*

Kelsey O'Brien  
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## *RYH v Y. LTD.*, 2021 SKQB 28

### Facts:

- Plaintiff was approximately 50 years old and had purchased a ticket for a bus trip from Saskatoon to northern Saskatchewan
- During the last part of her journey, she had to ride in a half-ton truck that had been sub-contracted to make the last leg of the trip to the remote destination
- During this last part of her journey, the Plaintiff was violently sexually assaulted by the driver of the truck
- The Plaintiff tried to resist and called for the driver to stop
- After the assault eventually stopped, the driver told her she was “lucky” because he would reimburse her for the bus fare

## *RYH v Y. LTD.*, 2021 SKQB 28

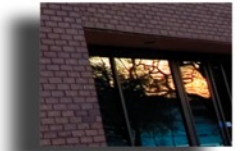
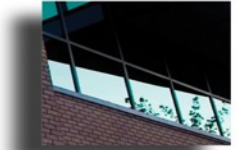
Impact of Assault:

As a result of the sexual assault, the Plaintiff suffered lasting:

- major depressive disorder
- PTSD
- anxiety
- reclusiveness
- insomnia
- suicidal ideation
- alleged income loss (?)

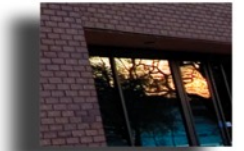
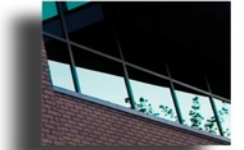
Poll: What did the Court award in punitive damages?

1. \$0
2. \$1000
3. \$25,000
4. \$100,000



## Answer: 3) \$25,000

- This same Court had previously held:
  - “most cases of sexual assault warrant the granting of an amount for punitive damages” and
  - “The objective of punitive damages is to punish a defendant for outrageous and egregious conduct and thereby deter others from acting in a similar manner”
- Breach of trust and the cold and callous remark re: the defendant being “lucky” both went to the need for punitive damages
- However, the Court is cautious not to conflate punitive and aggravated damages (double count)



## *RYH v Y. LTD.*, 2021 SKQB 28

Other factors going to award made:

- Plaintiff was highly vulnerable – ‘almost entirely at his mercy’
- The Defendant had taken advantage of the isolation
- Violation of trust
- Assault included overt physical assault (ie. violence) as well as sexual assault
- Driver 10 years older than Plaintiff and in position of trust
- Assault had “marked and lasting effects on the plaintiff” and “serious consequences for her”

*“Gone are the days when judges somehow considered damages for sexual battery directly proportionate to the severity of the assault itself. The focus is now on the **effects** of the sexual assault on the victim. All sexual assaults involve a violation of the victim’s sexual integrity. It is now recognized that psychological trauma can, in fact, be more debilitating than physical injury. I have taken care to keep sight of this principle.”*

## Summary of total award:

- General and Aggravated damages: \$100,000
- Past and/or Future Loss of Income: \$0
- Punitive Damages: \$25,000
- Special Damages: \$1,483.01
  - Plus Ministry of Health Subrogated Claim - \$408
- Costs: Column 1 costs on the Tariff
- Pre-Judgment Interest
  
- *Note – corporation (employer) and driver (employee) were held jointly and severally liable*

# Kelsey O'Brien

Saskatoon, Saskatchewan



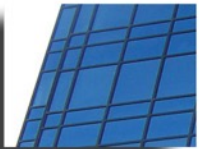
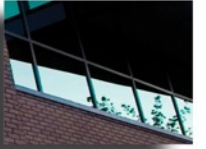
I enjoy practicing in the area of civil litigation with a focus on insurance law, health law, and professional disciplinary matters. I was called to the Bar in 2014 and have since advocated for clients at all levels of Saskatchewan Courts and before several regulatory bodies. I have also assisted clients with matters before the Federal Court, the Federal Court of Appeal, and the Supreme Court.



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# **Damage Awards in Alberta: A Guessing Game**

**Presented By: Jesse Chisholm  
CBM Lawyers LLP**



# Alberta Case Example

- 31 year old male injured in a motor vehicle accident;
- Presented with pain “all over”, including his neck and back after the collision;
- Plaintiff’s diagnosed injuries included a strain, sprain or WAD injury, as well as chronic myofascial pain;
- The Plaintiff sought chiropractic treatment a total of 8 times, physiotherapy a total of 8-9 times, and massage therapy twice;
- Approximately 7 months after the collision, the plaintiff reported to his physiotherapist that his symptoms had resolved and did not seek any further treatment; and
- The Plaintiff claimed that he was able to continue to work his desk job but could no longer supplement his income by doing physical labour job due to his injuries and sought \$80,000 in future loss of earning capacity.

# Alberta *Minor Injury Regulation*

- In Alberta, the *Minor Injury Regulation* caps the general damages available to a plaintiff at a specified amount (\$5,000 - \$6,000 range) if the injuries can be defined as “minor injuries”.
- Minor injuries:
  - Includes sprains, strains, WAD injuries, and some TMJ injuries including any “clinically associated sequelae” of the injuries, whether physical or psychological in nature.
- For the above-listed soft tissue injuries to NOT be considered minor:
  - The Plaintiff must have substantial inability to perform essential work tasks, essential facets of training, and normal activities of daily living due to injuries; and
  - the injuries must be ongoing since the accident, and they must not be expected to improve substantially.

# Poll: Alberta Case

What did they award in general damages?

- A) \$4,892- the minor injury cap for year of accident
- B) \$25,000
- C) \$55,000
- D) \$75,000

# Poll: Alberta Case

What did they award in loss of future earning capacity?

- A) \$0
- B) \$20,000
- C) \$50,000
- D) \$80,000

# Alberta Case

Answer: *Jackson v Cooper*, 2022 ABKB 609

General Damages: \$55,000

General Damages:

- Although the plaintiff received treatment for his injuries for only 7 months after the motor vehicle accident and was able to continue full-time employment, Court found he sustained a significant and ongoing negative impact on his normal activities of daily living and his enjoyment of life based on his subjective evidence.
- The Court specifically held that “chronic myofascial pain” is not subject to the limit on general damages specified in the Alberta *Minor Injury Regulation*.

# Alberta Case

**Answer: *Jackson v Cooper*, 2022 ABKB 609**

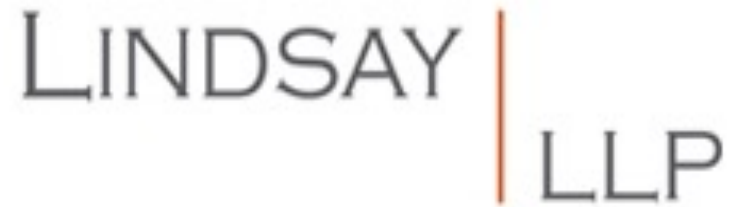
**Future Loss of Earning Capacity: \$0**

**Future Loss of Earning Capacity:**

- **Court held there is no evidence that the plaintiff could not continue to be employed and earn income in the future in his chosen field of employment as a contract specialist or contract manager.**
- **He worked uninterrupted as a contract specialist or contract manager with 6 different employers since the accident.**
- **Court held it would be speculative to envisage scenarios in which plaintiff would be suffering a loss of earning capacity in the future, because there are no restrictions on his ability to earn income in his chosen field of employment.**

# BRITISH COLUMBIA

*Suri v. Thomassen*, 2023 BCSC 334



Silvia Purcarin

## LINDSAY LLP

- Practising insurance defence litigation since 2013
- Winner of Canadian Lawyer Magazine's "Top 10 Insurance Defence Boutique" award since 2017.

## Silvia Purcarin

- Practising in the area of insurance defence litigation and professional liability

## THE QUESTION

What will four motor vehicle accidents, over eight years, net the plaintiff?

# THE PLAINTIFF:

Ms. Alka Suri

- moved to Canada when she was 33 years old and opened a restaurant with her husband a few years later
- She worked six days per week and handled the majority of the cleaning and child-rearing
- No health concerns or limitations pre-accidents
- Involved in 4 motor vehicle accidents at ages 44, 49 and 52
- The plaintiff was 55 years old at trial

# THE ACCIDENTS

**MVA#1** – October, 2010: side-swiped during an improper lane change, resulting in damage to the rear passenger side bumper;

**MVA#2** – November, 2010: rear-ended;

**MVA#3** – August, 2015: struck along the driver's side by a turning vehicle, resulting in a scratch to the paint; and

**MVA#4** – March, 2018: parked when a vehicle parked immediately in front of them reversed.

QUESTION FOR THE  
AUDIENCE

What was the total cost of repairs for all four accidents?

- A. \$40,000;
- B. \$20,000;
- C. \$10,000; or,
- D. Under \$5,000.

ANSWER –  
Total cost of repairs?

\$4,050

# THE INJURIES

## MVA#1 & MVA#2

MVA#1 – Oct, 2010: Stiffness and soreness in the plaintiff's neck, upper shoulders, lower back, and headaches.

MVA#2 – Nov, 2010: Pain in her neck, shoulders, back, hips, and knees, along with headaches and tinnitus.

By late 2015 she denied any impact on her social life, but was unable to complete household chores and had not returned to work since the first accident in 2010.

# THE INJURIES

## MVA#3 & MVA#4

MVA#3 – Aug, 2015: Pain in her right shoulder and knees, panic, and shock;

She felt any recovery was back to square one;

She experienced ongoing pain, fatigue, sleep issues, concentration and memory difficulties, with ringing in her ears; and,

She struggled with depression, mood swings, feelings of guilt and anxiety.

MVA#4 – March, 2018: Aggravation of existing symptoms.

# ANOTHER ACCIDENT!

**MVA#5** - June, 2018 (two months after her last)

A tire blew and the vehicle was propelled into the cement centre divider.

She did not report the accident to her GP.

She denies suffering any injuries.

SUMMARY OF  
COMPLAINTS FOR  
MVAs#1-4

- Chronic physical and psychological injuries;
- Loss of income;
- Loss of housekeeping capacity; and,
- Costs of future care.

## SUBSEQUENT EVENTS

2020 – The plaintiff returns to work as a caterer in an elderly care home, ten years after the first accident.

2021 – Unfortunately she suffers a slip and fall while carrying a heavy bag of rice. Her GP endeavoured to distinguish injuries to her lower back from her MVA related lower back complaints.

# MITIGATION

- referred to a wide array of therapies over a decade, both passive and active
- only attended a handful of therapies
- She did not take the prescribed anti-depressants, and did not attend counseling.

**The court stated:** Without an expert defence opinion that such treatments would have improved the plaintiff's condition, no deductions would be made for a failure to mitigate.

## QUESTION FOR THE AUDIENCE

What was the plaintiff's  
total award at trial:

- A. \$93,000;
- B. \$185,000;
- C. \$370,000; or,
- D. \$740,000.

ANSWER –  
Total award at trial?

\$740,000

## BREAKDOWN OF THE AWARD

Non-pecs - \$150,000;

Past wage loss - \$145,000;

Future wage loss - \$280,000;

Loss of housekeeping -  
\$90,000;

Future care - \$67,270; and,

Specials - \$4,932.75.

# KEY LESSONS

Have an expert opine on the likely impact of following prescribed therapies.

Consider obtaining an engineering report detailing forces on the body incurred in minor accidents.

Consider a jury.

# QUESTIONS

PUNITIVE DAMAGES	LOSS OF INCOME	GENERAL DAMAGES	HOUSEKEEPING
QC	ON	MB	SK
BC	AB	BC	QC
ON	SK	AB	NL
AB	MB	ON	BC
NL	QC	BC	ON