Sole/Cross/Modified Approaches to Loss of Dependency in a Fatal Accidents Claim

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In fatal accident claims the plaintiff(s) will assert a loss of dependency claim, and there remains to some extent a controversy as to whether these claims should be calculated on a "sole, cross or modified" basis.

Dependency rates are used to estimate a plaintiff's financial loss due to the death of their spouse- how much of the deceased's income would the survivor need in order to maintain the same standard of living? The court generally relies on expert evidence to determine the dependency rate, which assesses how much of the deceased's income would be allocated to common expenses such as mortgage payments, and how much would be allocated to personal expenses such as clothing expenses. A common assumption is that the surviving spouse requires 70% of the deceased's income to maintain his or her standard of living. This 70% is the dependency rate, taking the sole dependency approach. In a dual income family, when the survivor's lost share of the deceased's income is offset against the survivor's financial gain because they no longer spend money on items which benefited the deceased exclusively, this is known as a cross-dependency approach.[i] A further "modified" approach can be taken by the courts in order to adjust to achieve a perceived fairness or other required modification.

What is the current state of Alberta law regarding sole/cross/modified dependency approaches to calculating a loss of dependency claim?

Alberta authority seems clear that, with regard to the various approaches:

1. If the deceased was the sole income earner, the sole dependency approach will be taken;
2. If the spouse and the deceased are both income earners, and thus it was a dual income family, and the two wage earners pooled their income into a joint account from which

they paid the bills (e.g., mortgage, car, groceries and utilities), the cross dependency approach will be taken;

3. If the circumstances suggest that a sole or cross dependency approach would be unfair, the court may impose a modified dependency approach, such as where there is evidence that the survivor's income is much greater than the deceased's (which would lead to an absurd result using cross dependency), or where there is evidence that the deceased was extraordinarily frugal or self-sacrificing, and thus used most of his or her income for the family's benefit;

4. In assessing dependency, the courts will attempt to recognize actual net economic loss, and will not assess the value of the emotional loss of services provided out of love and affection, such as whether the marriage was "for love" (which would suggest a sole dependency approach) or "for money" (which would suggest cross dependency); and

5. In general, statistical averages will be used in assessing the dependency rate, rather than actual expenditure rates.

The leading current authority appears to be *Millott Estate* v. *Reinhard* (2002), 306 A.R. 1, a decision of Fraser J. of the Alberta Court of Queen's Bench. In this case the defendant driver of a tractor trailer pulled into the centre lane in order to turn into the driveway on the right side of the road. A motorcyclist attempted to pass in curb lane and struck the tractor trailer when the driver swung back into the curb lane to make the turn. The motorcyclist was killed. The estate and the motorcyclist's wife and children brought an action for damages for negligence against the driver and corporate defendants. This action was allowed, and the driver held negligent and the corporate defendants held vicariously liable.

In assessing the dependency claim Fraser J. first established the dependency rate, that is, the family's rate of dependency on the deceased before his death – the percentage of Millott's income that the family consumed, as opposed to the percentage Millott spent on himself. This was necessary to determine how much the family would need in the future to maintain the same standard of living as they would have had if Millott had not been killed. Fraser J. considered the issue of sole/cross/modified dependency in detail, at paras. 240-261 as follows:

> 240 One of the most contentious issues between the parties was the issue of sole or cross dependency. This refers to the extent, if any, to which a spouse's income should be included in the dependency calculations. The Plaintiffs initially submitted that sole dependency, which would ignore the portion of Lauretta's income that she spent on Millott, was appropriate. This approach has been commonly used in the past, as many families have had only one income earner. The Defendants argued that the cross dependency approach is more appropriate in a two-income family. This would effectively deduct from the damages award the amount that Lauretta used to spend on Millott. The Plaintiffs later suggested that perhaps a "modified" approach could be used instead of the sole dependency approach. The modified approach lowers the sole dependency rate, which would ignore Lauretta's income (as in the sole approach), but lowers the portion of Millott's income which the family is assumed to consume. Under the modified approach, the final figure remains higher than it would be under a full cross dependency approach. A modified rate of 60 per cent was used in *Hechavarria v. Reale* (2000), 51 O.R. (3d) 364 (Ont. S.C.J.); *Nielsen*, *supra* [*Neilsen* v. *Kaufman* (1986), 26D.L.R. (4th) 21]; and *Murray Estate*, *supra* [*Murray Estate* v. *Advocate Contracting Ltd*. (2001), 195 N.S.R. (2d) 313, 2001 NSSC 104].
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> 241 Numbers are helpful in clarifying these theories. I refer to the numerical example given by Bruce in **Assessment of Personal Injury Damages** at 55-56. For discussion purposes, I assume the following: a family income of $50,000, of which $30,000 was earned by the deceased husband and $20,000 is earned by the surviving wife. Using a dependency rate of 70 per cent, the wife in a sole dependency scenario would receive a damages award based on .70 (dependency rate) x $30,000 (husband's income), which equals $21,000. Under a cross dependency approach, the wife would receive an award based on 70 per cent of the family income net of her own earnings ((.70 x $50,000) - $20,000 = $15,000). This is alternatively calculated as (.70 x $30,000) - (.30 x $20,000) = $15,000. This is equivalent to saying that she would receive 70 per cent of her husband's income, but have 30 per cent of her own income deducted, as it is assumed that is the portion of her income which she was spending on him. On the other hand, using ***Hechavarria's*** 60 per cent "modified" dependency rate, the 70 per cent of the husband's income consumed by the family would be reduced to 60 per cent, so the wife in this example would receive .60 x $30,000 = $18,000.
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> 242 The Defendants' expert, Brown, testified that she had two main reasons for preferring cross dependency. First, Millott and Lauretta pooled their incomes, and Millott consumed 20 to 30 per cent of that total family income. In Brown's view, it is, therefore, fair that the rest of the family would

still have access to the 70 to 80 per cent they did while Millott was alive. Second, she understood from *Brooks, supra* [*Brooks* v. *Stefura* (2000), 266 A.R. 239, 2000 ABCA 276], that it is necessary to consider both the financial loss and the financial gain of the survivors (transcript pp.2251-52; also see September 27, 2000 Report, "Wrongful Death" Supplement).

243 Bruce made a strong "economic theory" argument for the sole dependency approach, arguing that Lauretta has "saved" nothing, but has actually been prevented from spending that portion of her income as she wished to spend it. He testified that, under economic theory, this means she is worse off because she cannot use the money for its first and best use. He used coffee as an example, setting a scenario where he went into a coffee shop with money for a cup of coffee, but the coffee pot broke and all the coffee spilled. A new pot would not be ready for some time, and he did not have time to wait. Therefore, he left the shop still in possession of his money, but having been deprived of the opportunity to spend it on what he wanted to spend it on. Similarly, in the present case, Lauretta wants to spend certain money on Millott, but is unable to. While she still has the use of the money for another purpose, she cannot use it for what she considers to be its optimal use.

244 First, I must determine which approach is correct at law. If more than one approach is correct, I must decide which is appropriate to apply in these circumstances.

245 There is little direct discussion in the cases on this point. Rather, there are implied assumptions. Often, a court will neither discuss the rationale in detail nor use the labels. The difference is that some cases apply a dependency rate to family income (cross), while some apply a dependency rate to the deceased's income (sole). Occasionally, a court will find the dependency rate to be a certain number, then apply a lower rate (modified).

246 A most useful discussion of this area is found in K. Cooper-Stephenson and I. Saunders, **Personal Injury Damages in Canada**, 2nd ed. (Scarborough: Carswell, 1996) at 671-72. The authors there suggest that a second source of family income should be taken into account, but that the courts are still grappling with how to do this. The authors conclude (at 672):

> What has to be kept in mind is that cross-dependency is simply a mechanism for resolving a financial claim in light of the financial facts. From an emotional standpoint of course most survivors are substantially worse off.

247 In *Labbee v. Peters*, [1997] A.J. No. 176 (Alta. Q.B.), aff'd (2000), 261 A.R. 141 (Alta. C.A.), McIntyre, J. directly commented on the sole dependency versus cross dependency controversy, but in the context of household services (although he noted at para. 64 that the issue is more often

seen in the income context). The Defendant there argued against any award for loss of household services because the survivor had done more for the deceased than he did for her; therefore, she had suffered no actual loss. Justice McIntyre noted it was unnecessary for him to reconcile the approaches, as the deceased in *Labbee* had made very significant "jack-of-all trades" contributions to the household. He also expressed his discomfort with the idea of the court assessing the value of the emotional loss of services provided out of love and affection (at para. 66).

248 In *Riches v. Miller*, [1984] A.J. No. 815 (Alta. C.A.), the Alberta Court of Appeal upheld the trial judge's finding that a "working widow" was entitled to damages based on 50 per cent of her deceased husband's net income (*i.e.*, modified dependency). The court refused to change the award to 50 per cent of the family income less the survivor's income (explicit cross dependency). However, the court clearly stated (at para. 25) that the trial judge's finding was made in light of all the evidence, including the evidence as to the survivor's income:

> In my view, this definite finding by the trial judge makes it unnecessary to consider whether the amount to be used in computing a working widow's dependency under the *Fatal Accidents Act* should be the figure resulting from deducting the amount that the deceased would normally spend for his personal use and support from his net income without regard to the income of the widow. This amount has been referred to as 'available as disposable income for dependants'; (per Spence, J., in Keizer v. Hanna, [1978] 2 S.C.R. 342, 19 N.R. 209, at page 343) and has been used to compute a widow's dependency in the absence of any evidence that she had in fact used or intended to use all of it for her personal use. Availability and not use, it is argued, is the test. Keizer v. Hanna, supra; Farmers National Bank et al. v. Colles & Whebby Ltd. (1981), 33 N.B.R. (2d) 248, 80 A.P.R. 248.

249 In *Rose v. Belanger* (1985), 17 D.L.R. (4th) 212 (Man. C.A.), the Court of Appeal upheld the trial judge's cross dependency calculation (based on family income, not only on the deceased's income). The court stressed that each case depends on its own facts, but that it is certain "that the income of the surviving spouse must be taken into account" (at 222). I also note that in *Braun Estate v. Vaughan*, [2000] 3 W.W.R. 465 (Man. C.A.), the Court of Appeal declined to disturb the trial judge's use of sole dependency (failing to take into account a portion of the surviving husband's income), as there was a negligible difference between the two methods in the circumstances (at 488).

250 The courts in *Nielsen*, *supra* and *Murray Estate*, *supra* both followed a "modified" dependency approach. As stated by the Ontario Court of Appeal in *Nielsen* at 198-99:

> The fact that there are two 'breadwinners' in the family skews the applicability of the 'conventional' principle and figures somewhat [the 70 per cent rule of thumb]. Those figures are based on a male breadwinner as the sole support of the family. The trial judge does not appear to have considered how the 'conventional' figures might be affected when there is a two-wage-earner family. It must be assumed that in such families some portion of the husband's income goes to the wife or *vice versa*. That portion remains with the survivor. The appellant's expert, Dr. Segal, was of the view that in a two-wage-earner family the deceased would consume 30% of the total family income of husband <u>and</u> wife. The deceased would be partially dependent on the income that the surviving spouse is receiving and, therefore, there is an offset of that amount which the surviving spouse is no longer paying and for which 'credit' should be given. Counsel for the appellant submits that in such families the appropriate dependency percentage should be 50% rather than 70%. [original emphasis]

251 The court went on to conclude that the deceased was thrifty and willing to sacrifice her own interests to those of her husband and children (as was also found in *Hechavarria* some years later). The court recognized the need for offsetting the amount which the surviving spouse would no longer pay to support the deceased against the loss of the deceased's income (using the conventional 70 per cent of the deceased's income). The modified approach reflected both the fact that the deceased used his or her income almost exclusively for the family's benefit, and the reality that there must be some savings of the survivor's income due to losing a member of the family unit.

252 In *Nielsen*, therefore, the court used rates of 60 per cent for the surviving husband, with 4 per cent for each child. This reasoning and the 60 per cent conclusion were followed in *Robb Estate v. Canadian Red Cross Society*, [2000] O.J. No. 2396 (Ont. S.C.J.) at para.215, where the issue of cross dependency instead of modified sole dependency was not explicitly addressed.

253 Returning to the parties' submissions, I conclude that Bruce's argument in favour of sole dependency is illogical in circumstances in which both spouses have incomes. In addition, his underlying assumption is still that the survivor loved the deceased and wanted to spend money on the deceased; therefore, the fact of that spending should be overlooked in assessing damages. However, the court cannot, in my view, fall into the trap of deciding which marriages were "for love", thus qualifying for sole dependency, and which were "for money", thus qualifying for cross dependency. It would be inappropriate to make the court a forum for parties to call evidence as to the type of marriage a given case involved, or for the court to base an award on the

presence or absence of love and affection. As difficult as it may be, the Court must attempt to recognize actual net economic loss.

254 Bruce, in **Assessment of Personal Injury Damages**, *supra*, at 58, also outlines the inherent absurdity in the cross dependency approach when the survivor's income is higher than the deceased's income. For example, if Lauretta had been earning $60,000 per year and Millott $20,000, then a cross dependency approach (assuming just the two of them and a 70 per cent dependency rate), would mean Lauretta had lost a $14,000 contribution from Millott (.70 x $20,000), but "gained" $18,000 she would no longer have to spend on him (.30 x $60,000). She would, therefore, not be entitled to damages for the loss of his income, because in theory there would have been no loss. While this is certainly a consequence of using cross dependency (and would arguably be a reason for rejecting cross dependency in some circumstances), this rationale is irrelevant in the present case as it does not accord with the income patterns here.

255 Therefore, I would reserve sole dependency for cases where the sole income-earner is deceased. In my view, sole dependency is inappropriate for a dual income household. Some adjustment must be made for the survivor's income, because the loss incurred by the survivor must take into account the value of the financial gain to the survivor from no longer spending a portion of the survivor's income on the deceased.

256 The proper method of adjustment (cross or modified) depends on the circumstances. Generally, the modified approach is applicable where there is evidence that the survivor's income is much greater than the deceased's (which would lead to an absurd result using cross dependency), or where there is evidence that the deceased was extraordinarily frugal or self-sacrificing (as in Hechavarria).

257 In the present case, the cross dependency approach is appropriate. The two wage earners in the Millott family pooled their income into a joint account from which they paid the bills (e.g., mortgage, car, groceries and utilities). Whatever was left over was for everybody's use. Accordingly, some of Millott's salary would be used for Lauretta's personal expenses; some of Lauretta's would be used for Millott. There was no evidence indicating that Lauretta was extraordinarily frugal or self-sacrificing (apart from the obvious thriftiness required in the Millott family's recent financial circumstances and apart from a mother's normal sacrifices for her family). The evidence is also clear that Millott was earning (including the WCB supplement) and would have continued to earn significantly more than Lauretta. Therefore, the other rationale for applying the modified approach is also inapplicable (where the survivor's income is higher).

258 The Plaintiffs presented two further arguments to counter the effect of the cross dependency approach. First, they submitted that a precondition to using the cross dependency approach is that the survivor must be working. However, Lauretta testified that she has not worked since Millott's death, despite attempts to return, and is still under a doctor's care. Second, the Plaintiffs argue that there is no evidence as to how much of Lauretta's income, if any, was actually spent on her husband.

259 Regarding the first argument, I recognize the trauma suffered by Lauretta in all the events surrounding Millott's death. In my view, however, the Plaintiffs did not prove on a balance of probabilities that Lauretta will never work again. Nor am I satisfied on a balance of probabilities that her absence from work to this date has been proven to have been medically justified. There was limited evidence as to the exact reasons for not working, the medical support for such reasons, and the estimated time of her return to work. Perhaps this was because Lauretta made no claim against the Defendants for loss of past or future income on her own behalf.

260 The Defendants submit that the Plaintiffs' position is inconsistent, as they claim that Lauretta cannot work because of the accident, but are grounding the damages claim in a "but for" scenario - that is, but for the accident, Millott would still be alive, earning an income and contributing household services to his family. To be consistent, the Defendants argue that Lauretta also must be subject to a "but for" scenario - that is, that she would also still be earning an income. I agree, to a degree, which accounts for the one year limit from the accident that I have put on Lauretta's absence from work. Therefore, sole dependency will be used to calculate income dependency from the date of the accident for a period of one year. Cross dependency will be used from that point, on the assumption that Lauretta would, notwithstanding the accident, have worked full-time at her previous salary (subject to productivity and inflationary increases).

261 Regarding the lack of evidence on the amount, if any, that Lauretta spent on Millott, the Plaintiffs claim that without those figures it is impossible to determine what an appropriate cross dependency rate would be. In my view, the Plaintiffs are attempting to have it both ways with this submission. One of their strong arguments against a portion of the Defendants' calculations was that the Defendants used actual expenditures to set out a series of dependency rates. But the Defendants did not attempt to rely on those dependency rates at trial, stating that they were for informational and comparative purposes only. Taking that factor into account, it is unreasonable, in my view, to oppose the use of actual expenditure rates for Millott's expenditures on one hand, but argue on the other hand that the lack of actual expenditure rates should be used as a reason not to apply any cross dependency rates to Lauretta's income. I conclude that it would be reasonable to use the statistical averages for the cross dependency rate, as for the sole dependency rate. Unlike *Hechavarria*,

> there was no convincing evidence to counter the statistical norm (as noted, the deceased in *Hechavarria* spent virtually all of her income on her family). It is, therefore, reasonable to use 22 per cent as the cross dependency rate (raised to 26 per cent after Steven leaves the home and 30 per cent after Samantha also leaves), and I direct that this should be done.

The most recent Alberta case dealing with this issue is *Matthews* v. *Hostess Foods Products Ltd.* (2009), 7 Alta. L.R. (50) 276, 2009 ABQB 14, a decision of C.S. Phillips J. of the Alberta Court of Queen's Bench. In this case Matthews was killed in a motor vehicle accident when the vehicle he was driving struck a delivery truck which was stopped and partially obstructed the far left lane of a major roadway because it ran out of gas. Matthews' blood alcohol limit was twice the legal limit. Matthews' family brought an action for damages, but this action was dismissed as it was found that Matthews had caused his own death by drunk driving. The judge assessed damages provisionally, however, and considered opposing expert evidence as to whether a sole or a cross dependency approach should be taken to the dependency claim. In the result, the cross dependency approach was taken, with C.S. Phillips J. stating at paras. 119-123:

> 119 In my view, the cross-dependency approach is a more appropriate method of assessing the loss to the Matthews family of Mr. Matthews' income. It is important, when approaching the issue of loss of dependency, to remember that this is an award for a pecuniary loss. Experts, such as Dr. Atkins, have noted that the cross-dependency approach fails to account for the intangible benefits the surviving spouse would have enjoyed from spending family income on the deceased, in effect suggesting that no family income is ever spent on one member of the family alone and to that member's sole benefit. In this regard, the cross-dependency approach has been criticized for treating marriage as a "business arrangement". McIntyre J. expressed his concern with this critique in *Labbee v. Peters*, [1997] A.J. No. 176 (Alta. Q.B.), at para. 66, where he points out that ascribing a loss to services and expenditures that would be made to the deceased's sole benefit "ascribes value to love and affection other than non-pecuniary damages relating to pain and suffering. Courts are charged with assessing economic, not emotional loss." Similarly, Fraser J. rejected the sole dependency approach for dual income households in *Millott Estate v. Reinhard*, [2001] A.J. No. 1644 (Alta. Q.B.).
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> 120 It has often been remarked, and is unquestionably true, that no award of monetary damages can fully compensate for the loss of a cherished family member. Through the *Fatal Accidents Act*, the Legislature has established the awards to be made in general damages for the loss of love and affection. A dependency claim, on the other hand, is purely pecuniary. It should account only for the actual loss of income to the surviving family. The most appropriate

method for arriving at an accurate assessment is one that accounts for family income and the amount of that income the deceased would have consumed solely for his or her own benefit. In *Nielsen v. Kaufmann* (1986), 54 O.R. (2d) 188 (Ont. C.A.), the Ontario Court of Appeal suggested that in a two-income family the "conventional wisdom" of a 70% dependency rate for the surviving spouse could be reconsidered, and instead used a 60% "modified sole dependency" rate. This was also the approach taken more recently by Nordheimer J. in *Hechavarria v. Reale*, [2000] O.J. No. 4288 (Ont. S.C.J.). A modified sole dependency approach is one way to approach the issue, though it appears to be a somewhat arbitrary one. In *Cockerill (Next Friend of) v. Willms Transport (1964) Ltd.*, [2001] A.J. No. 240 (Alta. Q.B.), Verville J. approved of the cross-dependency approach where the incomes of both spouses would have been used to meet family expenditures. Having reviewed these cases and considering the circumstances of this case, I am satisfied that a sole dependency model would result in overcompensation to the Plaintiffs and that cross-dependency is the proper approach in this case.

121 Ms. Matthews testified that she would have continued to work at STARS, but for the accident that took Mr. Matthews' life, and that it was her intention to continue working at least until Mr. Matthews' earned $100,000 per year. Furthermore, it is clear that Ms. Matthews is a goal-oriented individual. I am not satisfied that she would have stopped working altogether if and when Mr. Matthews' income reached the $100,000 point. Ms. Matthews had been, for much of the marriage, the primary breadwinner for the family. In view of her education and employment history, her earning potential matched that of Mr. Matthews and then some. At the time of the accident, this young couple had recently invested in a home in Calgary and had little equity in it, was raising two children and contemplating a third. They did not have a budget for their household nor did Mr. Matthews have a private pension plan, and their car insurance premiums were high. Further, as Dr. Atkins pointed out, the rate of change in the cost of living in Calgary has been very great in the period since the accident. It is more likely that Ms. Matthews would have opted to continue to employ her considerable abilities working in some capacity, though perhaps part-time. Consequently, I find that the appropriate methodology for assessing the loss of dependency claim is one that takes a cross-dependency approach and applies it to a family income projection that includes Ms. Matthews' projected income from part-time employment after January 1, 2006.

122 Mr. Benning made this assessment. It is found at Table 1C of his report (Exhibit 20). I find Mr. Benning's projections of both Mr. Matthews' and Ms. Matthews' income to be reasonable. I am not satisfied that the evidence of Mr. Keelan with regard to the income of Mr. Matthews' eventual replacement warrants a departure from the statistical approach to the assessment of Mr. Matthews' future income taken by both Dr. Atkins and Mr. Benning. In any event, neither the Defendants nor this Court have been provided with Mr. Matthews' employee file, and therefore I have little accurate information as to

> his potential. In that regard, Mr. Keelan's evidence concerning the income of Mr. Matthews' replacement was very general in nature and of little assistance when considering at the time of his death Mr. Matthews was very new to his position of outside salesman and had not had the opportunity to travel the scope of his territory.
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> 123 The approach to the dependency rate taken by Mr. Benning is based upon actual patterns of consumption, not a somewhat arbitrary figure adopted as a rule of thumb. Though Dr. Atkins' approach to the assessment of Mr. Matthews' income, and the dependency issue, and contingency factors was appropriately thoughtful, Mr. Benning's was more thorough (for example, taking account of child support payments pursuant to the Federal Guidelines). I agree with Mr. Benning that Dr. Atkins' assessment of fringe benefits failed to account for the absence of a private pension plan and that Dr. Atkins' assessment of expenses failed to account for child support payable to Mr. Matthews' son from a prior relationship in accordance with the Federal Child Support Guidelines. On the whole, because Mr. Benning took proper account of Ms. Matthews' projected income, and because his approach was more thorough, it is my view that Mr. Benning's assessment of the loss of dependency is more complete and accurate....

The earlier case of *Cockerill (Next Friend of)* v. *Willms Transport (1964) Ltd.* (2001), 284 A.R. 256, a decision of Verville J. of the Alberta Court of Queen’s Bench, adopted a modified approach to the dependency claim. In this case a mother of three children in a common law relationship was killed while a passenger in a motor vehicle accident. The father of the children was injured, and after the mother’s death the three children went to live with the father. The judge concluded that adopting a strict cross dependency approach would be unfair to the young children, and therefore adopted a modified approach at paras. 113-121, as follows:

> 113 The Plaintiffs' expert, Peter Ross ("Ross"), and the Defendants' expert, Gerald Taunton ("Taunton"), both of whom are economists, provided expert testimony on matters pertaining to economic loss including past and future loss of financial support. The parties have requested that I simply make the essential findings in order to allow their experts to calculate the loss.
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> 114 The Accident occurred prior to amendments to the Fatal Accidents Act which permitted a dependency claim by a common-law spouse. Both experts grappled with a model that would, in the circumstances, accurately reflect the dependency claim of the children. The Plaintiffs' expert Ross used sole dependency model which only considered Cockerill's income whereas the Defendants' expert Taunton used a cross-dependency model which included Leschuk's income.

115 Cockerill was only 23 years of age at the time of her death. Her children were granted Treaty status after her death. There are a number of positive and negative contingencies which must be taken into consideration with respect to aboriginals. There was evidence that aboriginals, because of their participation rates, typically earn approximately 40% less than the general population. On the other hand, if Cockerill had continued to live on the reserve and worked for one of the Band companies, she would not have paid income tax. Further she would not have paid for health benefits or GST. It is my view that the positive contingencies discussed above are off-set by the negative ones.

116 The Plaintiffs submit that the dependency should continue past age 18. Stacy Cockerill, the oldest daughter, is currently 18, in grade 12 and living at home with Leschuk in Edmonton. The Defendants argue it should end at age 18 or earlier given the fact that Cockerill began living with Leschuk at age 15. Where the children would have lived but for the death of their mother is speculative and in the circumstances, I am of the view that it is reasonable to find dependency to age 18.

117 I find that Cockerill would have worked as a waitress until the youngest child was in school in September of 1994, after which she would have worked as a labourer like her mother.

118 I accept the statistical information and assumptions and contingencies applied by Taunton with respect to the earnings of a waitress for the above-mentioned time period. Again, I accept Taunton's past and future calculations with respect to the earnings of a labourer with the exception that I find that the hourly rate is $13.00 in today's dollars.

119 The final estimates of past and future loss of support are complicated by the fact that the common-law spouse, Leschuk, does not have a claim. The Plaintiffs submit that the cross-dependency model used by Taunton does not properly compensate the children and leads to a mathematical anomaly. The Defendants argue that the sole dependency model over-compensates.

120 In using the cross-dependency model, Taunton attempted to allocate, for the without-accident household, family expenses into divisible expenditures that were assumed to directly benefit a specific member of the family and indivisible expenditures which were assumed to be consumption items that yield primarily general benefits that serve the entire family such as, for example, shelter, household operation expenses and furniture. As the incomes of both Leschuk and Cockerill would have been used to meet these expenditures, it is my opinion that the cross-dependency model used by Taunton is the most appropriate.

121 It is my view, however, that the model is not perfect as it tends to under-compensate the children and, accordingly, requires modification. While there are a number of modifications which might be considered, it is my view that if only 50% of the deceased's consumption (rather than 100% as used by Taunton) is deducted from her income, the children will be more equitably compensated for their loss. I, therefore, direct that in calculating the loss, the cross-dependency model be used with the above modification.

END

[i] Derek Aldridge, "Fatal Accident Dependency Calculations", Economica << www.economica.ca/ew04_4pl.htm >>; Mark L. Berenblut, "The Assessment of Economic Dependency Rates in Fatality Cases" (1986), 5(4) Advocates' Society J. 39