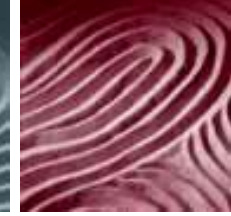


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LOSS OF OPPORTUNITY FOR AN INTERDEPENDENT RELATIONSHIP: IT'S EVOLUTION, ACCEPTANCE AND FUTURE DIRECTION

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(Written while Jennifer White was working at Lerner's, where Shawna Powell currently practices)

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***"Loss of Opportunity for an Interdependent Relationship:
Its Evolution, Acceptance and Future Direction"***

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INTRODUCTION

LOIR is an acronym for Loss of Opportunity for an Interdependent Relationship, an evolving element of personal injury claims. The principle of LOIR is that a relationship between two people (historically a marriage) is an economic union as well as a social and personal one, and there are advantages that flow to a couple that do not flow to an individual member of society. Although it may seem trite, this principle has not been applied to personal injury cases until very recently.

It is now recognised generally that LOIR has two aspects - a pecuniary and a non-pecuniary claim. Non-pecuniary damages for 'loss of marriageability' has always been the less controversial aspect of the claim and reflects upon an injured party's inability to interact in a meaningful way with another individual (ie. spouse). The pecuniary aspect of the claim however has been more problematic and has not been universally accepted by the Courts. This paper will provide an overview of the evolution of the LOIR claim, its qualified acceptance by the judiciary, and emerging issues in its quantification.

THE HISTORY OF LOIR

As Cooper-Stephenson outlines, the seeds for a LOIR claim took root in the "marriage contingency", which allowed for a reduction in an award for loss of earnings to a female plaintiff on the assumption that the female plaintiff would not remain in the workforce, but instead would marry.¹ The "marriage contingency" was largely abandoned in the early 1970s however, in favour of the "modern" approach as articulated in cases such as *Arnold v. Teno*.² The Court began assessing the loss of earnings for women on a full-time basis throughout their working life time. Nevertheless, it was noticeable that the wage scales for men and women differed, with males

¹K. Cooper-Stephenson, *Personal Injury Damages In Canada*, (Toronto: Carswell, 1996) at 339.

²*Andrews v. Grand and Toy*, [1978] 2 SCR 229; *Arnold v. Teno*, [1978] 2 S.C.R. 287; *Thornton v. Prince George School District No. 57* [1978] 2 S.C.R. 267.

earning higher wages than females, even in the same job. Thus developed the male and female wage scales which were, and to a large extent still are, in use for assessing damages for future loss of income.

Blackstock and Patterson heralded the next phase in the evolution of LOIR.³ In this 1982 case, Anderson, J.A. provided judicial recognition of a damages claim for loss of shared family income. He noted that such a claim would include a downward adjustment for absence from the labour force, followed by an upward adjustment for sharing of family capital, increased disposable income, savings from joint household expenses, income support from spouses during periods outside the work force, and the benefit of spousal support in homemaking tasks.⁴ Despite his acceptance of these factors however, Anderson, J.A. determined there was no evidentiary basis in *Blackstock* by which to grant the award. Accordingly, not only did *Blackstock* lay the foundation a claim for LOIR to be made, it also emphasized the importance of the evidentiary underpinnings needed to support the claim.⁵

The break-through case for LOIR occurred four years later in British Columbia. *Reekie v. Messervey* established, through the evidentiary grounds suggested in *Blackstock*, that an award for loss of opportunity for an interdependent relationship could be claimed by an injured plaintiff. In *Reekie*, a 21 year old female was rendered paraplegic in a motor vehicle accident. The trial court heard expert testimony about the medical and functional aspects of the plaintiff's claim, in addition to evidence from an economist and a family sociologist as to the assessment of damages for 'loss of marriageability'. The result was an award of \$250,000 of which \$50,000 was for LOIR. The trial judge noted "...this is a real head of damage".⁶

The *Reekie* decision was upheld by the B.C. Court of Appeal. Lambert, J.A. itemized the following points relevant to the loss of opportunity to marry:

³ *Blackstock v. Patterson*, [1982] B.C.J. No.541 [hereinafter *Blackstock*].

⁴ Cooper-Stephenson, *supra* note 2 at 340.

⁵ *Supra* note 3 at para 42.

⁶ *Reekie v. Messervey*, [1986] BCJ No. 3159 (B.C.S.C.) at para. 112.

"The significance lies in the loss of an opportunity to form a permanent interdependency relationship which may be expected to produce financial benefits in the form of a shared family income....

(a) Three preliminary points

The first point to note is that the plaintiff is entitled to be compensated for her full pecuniary loss caused by the accident. The cases where loss of opportunity to marry is discussed do not suggest otherwise....The difficulty suggested by the cases is the difficulty of proving that any loss at all arose under this heading...

The second point to note is that there is both a pecuniary and a non-pecuniary aspect to loss of opportunity to form a permanent interdependency relationship....Care must be taken to distinguish the two and care must be taken to avoid double compensation.

The third point to note is that the existence of marriage or the prospect of marriage, with resultant financial benefits, is taken into account to reduce the amount of an award in fatal accident cases...So the courts have recognized, in calculations of damages, the financial benefits that may flow from a permanent interdependency relationship."⁷

The B.C. Court of Appeal not only established the principle of 'lost opportunity of family income' but it also concluded that an "endeavour should be made to assess the net pecuniary effect of the interconnected financial consequences...[and that] the assessment will usually depend on both statistical evidence and a particular assessment of the individual".⁸

Now that LOIR has gained some recognition in the Courts, Cooper-Stephenson states that we are in a different developmental state, which is increased attention to how the claim is calculated. For example, applying the principles from *Reekie* and his attention to the computation, Skip J. in *Cherry (Guardian) v. Borsman*,⁹ calculated this female infant's damages to reflect not only the loss of forming an interdependent relationship but then reduced it as the cost of raising children was no

⁷ *Reekie v. Messervey* (1989), 59 D.L.R. (4th) 481 at 494-5 [hereinafter *Reekie*].

⁸ *Ibid* at 497.

⁹ *Cherry v. Borsman* (1990), 75 D.L.R. (4th) 668 (B.C.S.C.) [hereinafter *Cherry*].

longer a likely expense. *Toneguzzo-Norvell v. Burnaby Hospital*¹⁰ and *Tucker v. Asleson*¹¹ applied these positive and negative financial elements of marriage resulting in an equal set-off. Justice McEachern commented in his dissent in *Tucker*,¹² that this head of damages could be a duplication of other heads and there was not as yet "a definitive judgment" of the court.

LOIR TODAY

LOIR has been applied in several provinces but the majority of cases have originated out of British Columbia. As Justice McEachern noted in 1993,¹³ LOIR is not yet an established head of damages. There are cases in which it has either not been addressed or it has been denied. In other cases, LOIR has been mentioned but it is unclear whether it forms part of the injured plaintiff's award. Even when LOIR has been awarded, the reasons for the decisions are as varied as the decisions themselves. What follows is an identification of some of the key components of LOIR, as distilled from cases where the claim has been successfully advanced.

I) Type of Injury

There are some distinctive trends in the type of injuries which have resulted in a LOIR award. Predominantly, and perhaps unexpectedly, the cases where LOIR is addressed are those where there has been a brain injury and cognitive, intellectual, social capacity and/or self-esteem is significantly impaired.¹⁴ Physical injury and disfigurement seems to feature less prominently in the LOIR cases, although these can also be characteristics of successful plaintiffs.

¹⁰ *Toneguzzo-Norvell (Guardian ad litem) v. Burnaby Hospital*, [1992] B.C.J. No. 1659 (B.C.C.A.).

¹¹ *B.C. (Public Trustee for Tucker) v. Asleson*, [1993] B.C.J. No. 837 (B.C.C.A.); 102 D.L.R. (4th) 518 [hereinafter *Tucker*].

¹² *Ibid* at para. 193. Also, Justice Vickers in *Bates v. Nichol*, [1995] B.C.J. No. 1352 (B.C.S.C.) [hereinafter *Bates*].

¹³ *Ibid*.

¹⁴ For example see *Anderson v. Miner*, [1999] B.C.J. No. 4 (B.C.C.A.) [hereinafter *Anderson*].

ii) Gender and Age

To date, only female plaintiffs have been awarded damages for LOIR, most likely the result of the historical development outlined above. *Bartosek*,¹⁵ *infra* is an example of such damages being denied a male. There is one case, *McKenzie v. Van-Cam Freightways*¹⁶, where it is unclear if the LOIR award is intended for the male as well as the female plaintiff. In this case both a husband and wife were injured although the wife was more seriously injured. A LOIR award was considered as a part of the total economic loss and in the case of the husband, the future income loss incorporated a "spousal loss" with the applicable contingencies. In the wife's claim, the Court spent more time addressing the "value of marriage" and how it impacted upon her claim for future income loss.

With respect to age, the plaintiffs who have received a LOIR award range from young, prepubescent females up to those in their early 20s. There is a case of a pre-natal injury/award (*Cherry*)¹⁷. The oldest plaintiff has been 36 years of age (*Taylor*)¹⁸.

iii) Type of union

The relationship which merited a LOIR award was initially conceived as one of marriage. As noted in some of the earlier cases, the phrase used was 'loss of marriageability'. However, Justice Lambert in *Reekie* brought new light to the issue by stating:

"Marriage itself is not the significant point....Such an interdependency might have been formed with a close friend of either sex or with a person with whom a plaintiff might have lived as husband and wife, but without any marriage having taken place. Permanent financial interdependency, not marriage, is the gist of the claim....I will now usually call this head of loss 'Lost opportunity of family income'".¹⁹

¹⁵ *Bartosek v. Turrett Realities*, [2001] O.J. No. 4653 [hereinafter *Bartosek*].

¹⁶ *McKenzie v. Van-Cam Freightways Ltd.*, [1990] B.C.J. No.868 (B.C.S.C.).

¹⁷ *Cherry*, *supra* note 9

¹⁸ *Taylor v. Hogan*, [1998] N.J. No. 14 (N.B.C.A.) [hereinafter *Taylor*].

¹⁹ *Reekie*, *supra* note 7 at 494.

Reekie established that the significance of the relationship was its financial and emotional aspects, and not its conjugal nature or even the legal and social acceptance of the two people as a couple. It opened the way to argue that common law relationships, same sex relationships and non-conjugal relationships should be considered.²⁰ Nevertheless, a definition is still elusive. Cossman and Ryder state that the presence of a sexual component is meaningless now as seen in other contexts such as income security schemes, although common law relationships still require a conjugal element to qualify for social benefits.²¹

Bates v. Nichol reinforced the broader notion of 'marriageability' when Vickers, J. used the phrase "...form and maintain an interdependent financial relationship..."²² which gave entry to today's phrase Loss of Interdependent Relationship.

iv) Evidentiary Base

Successful plaintiffs have used empirical evidence for determining a base for awarding LOIR damages. To be successful, a plaintiff must meet the two part test itemized in *Belyea*.²³

a) Actual loss of capacity

There must be evidence that there is a loss of or impairment of an ability to form an interdependent relationship. This is achieved usually (although not always) through the evidence of the medical and other clinical therapists coupled with that of experts in the fields of social and behavioural psychology, family and other sociology. Occasionally, the Court will make a decision based only on the medical and therapeutic reports and evidence of the plaintiff or other witnesses, although as in *Belyea*, the Court of Appeal will overturn those decisions if it discerns that no evidence was

²⁰ B.Cossman & B. Ryder, "What is Marriage-like Like? The Irrelevance of Conjugal" (2001) 18 Canadian Journal of Family Law 269. Compare with *Takacs v. Gallo*, [1998] B.C.J. No. 600 (B.C.C.A.) where the C.A. held the plaintiff's relationship with his girlfriend was not accepted as a marriage-like relationship.

²¹ *Ibid.*

²² *Bates*, *supra* note 12 at para. 1

²³ *Belyea v. Hammond*, [1999] N.B.J. No 549; affirmed [2000] N.B.J. No.436 (N.B.C.A.) [hereinafter *Belyea*].

proffered.

It is not necessary to prove that there is a total loss to form a future interdependent relationship.²⁴ There have been cases where the loss of conjugal prospects was described as diminished ability rather than total loss, and the claim was accepted²⁵. As Veevers states "[this] means a loss not of kind but of degree". It suggests that many non-catastrophic injuries can potentially lead to a LOIR award.²⁶

b) Evidence that the relationship was/would have been advantageous

This part of the *Belyea* test is usually addressed through expert testimony from actuaries and economists as well as the opinion of expert social scientists. There is considerable data available to apply to this issue. Such data includes statistical evidence such as marriage rates (or more correctly relationship rates), savings made through interdependent financial relationships, and the costs of raising children. Without this evidence, the Court will deny a LOIR claim.

v) **Classification of the Award**

The *Reekie* case definitively states that a LOIR award should not be a separate head of damages but part of the composite of damages. This principle has not been universally applied by the Court and as a result, sometimes leads to confusion. In the relatively recent Ontario case of *Osborne*, the court addressed the LOIR claim as separate from wage losses, awarding \$125,000 specifically

²⁴ J.Veevers, "Diminished Ability to Marry Sometimes Overlooked", *The Lawyers Weekly*, Vol.22, No.10, July 5, 2002.

²⁵ *Supra* note 12.

²⁶ Veevers, *supra* note 24.

for LOIR.²⁷ The same approach was applied in *Anderson v. Miner*,²⁸ *Bystedt*²⁹ and *Cherry*.³⁰ *Spehar*,³¹ *Taylor*,³² *Walker*³³ and *Wassell*³⁴ included the award under the heading of lost income but nevertheless itemized that these damages included a consideration of LOIR. In contrast, there are cases where LOIR is mentioned but is not specifically quantified, for example *Hoodspith*,³⁵ *L.M.N. v. Munday*,³⁶ and *Robulack*.³⁷

WHERE THE CLAIM FOR LOIR HAS BEEN DENIED

Since *Reekie*, there have been at least nine significant cases where LOIR has been denied. The reasons for denial can be grouped as follows:

i) Lack of Evidence

Both *Belyea*³⁸ and *Powell*³⁹ found that there was no evidence to support a LOIR claim. The *Belyea* case is instructive because, as set out above, it speaks to the evidentiary test that must be met in

²⁷ *Osborne (Litigation Guardian of) v. Bruce (County)*, [1999] O.J. No. 50 (Ont. Gen. Div.) at para 83-4 [hereinafter *Osborne*]

²⁸ *Anderson*, *supra* note 14.

²⁹ *Bystedt v. Hay*, [2001] B.C.J. No.2769 (B.C.S.C.).

³⁰ *Cherry*, *supra* note 9.

³¹ *Spehar v. Beazley*, [2002] B.C.J. No. 1718 (B.C.S.C.) [hereinafter *Spehar*].

³² *Taylor*, *supra* note 18.

³³ *Walker v. Ritchie*, [2003] O.J. No.18.

³⁴ *Wassell v. Pile*, [1994] B.C.J. No. 1837 (B.C.S.C.).

³⁵ *Hoodspith v. Cook*, [1999] B.C.J. No.128.

³⁶ *L.M.N. v. Munday*, [1998] B.C.J. No.2591 (B.C.S.C.) [hereinafter *LMN*].

³⁷ *Robulack v. Heidecker*, [1997] B.C.J. No.2405 (B.C.S.C.).

³⁸ *Belyea*, *supra* note 23.

³⁹ *Powell v. Leger*, [2003] N.B.J. No.107 (Q.B.).

order for a LOIR award to be made. In *Powell*, the Court applied the *Belyea* test and found there was evidence of impairment of the plaintiff's ability to form a relationship. However, because no statistical evidence was provided to the Court, the second part of the test was not met and a LOIR award was denied.

ii) No connection, causality or insufficient injury

Ms. Matheson was a 33 year old female who sustained chronic pain and disability from a motor vehicle accident. She had formed a common law relationship a few months prior to the accident.⁴⁰ The court was not convinced that the breakdown of this relationship was caused by the injuries nor that she would be unable to form another relationship in the future. Similarly, in *Nicolls*, Harvey, J. (who had decided the *Souto* case, *infra*), quoting his *obiter dicta* in *Souto*, stated:

In the decisions of our courts to date, where such an award has been made, the plaintiff's injuries have been described as catastrophic, near catastrophic or horrendous. They have commonly involved paraplegia, quadriplegia and brain damage, such as to warrant concluding there was no prospect of marriage or a similar permanent relationship with another person⁴¹

In *Grimard*, the 21 year old paraplegic plaintiff was denied an award for LOIR because Justice Maurice noted that she had been able to form such relationships all her life and that "her injury has not reduced her ability to enter into relationships and... [thus] she has suffered no loss under this heading"⁴²

iii) Not inevitable/Too Remote

There are a couple of B.C. cases where the Court found that although the likelihood of forming an interdependent relationship had been diminished, it was not impossible and therefore the LOIR

⁴⁰ *Matheson v. Brow*, [1999] B.C.J. No.2183 (B.C.S.C.).

⁴¹ *Nicolls v. B.C. Cancer Agency*, [1999] B.C.J. No.1475 (B.C.S.C.) at 67.

⁴² *Grimard v. Berry*, [1992] S.J. No.275 (Q.B.).

award was denied.⁴³

In the case of *Bartosek*,⁴⁴ a 6 year old male plaintiff was severely brain damaged after being hit by an automobile while he was riding his bicycle. The Court stated that damages related to LOIR were too remote and speculative to be assessed.⁴⁵ It is suspected that the plaintiff's gender rather than the LOIR's calculation may have impacted the outcome, as there do not appear to be any reported cases where a LOIR award has been given to a male plaintiff.

THE LOIR LANDSCAPE - WHERE DO WE GO FROM HERE?

The LOIR claim is still relatively new and has not been universally applied by the Courts. There are a number of aspects to the claim which creative plaintiffs' counsel can continue to build and expand upon. There are also aspects of the claim, particularly its evidentiary underpinnings, which are susceptible to attack by defence counsel. From a review of the cases to date, a large majority of the awards were won on an effective use of statistical and research based evidence to support the claim.

Durrani and Krofchick discuss whether the approach to a LOIR award should be "the dependency model", such that the plaintiff would have had a financial dependency on a potential partner, or the "expenditure model" which analyses how much the expenditures would likely change with the loss of a potential relationship. This difference in approach has not yet been fully explored in the Courts and requires more empirical study before it can be fully addressed.

One area that seems ripe for further analysis is the use of gender specific statistics and how its application might impact on the quantification of the LOIR award. The Court has adopted a willingness to use male wage scales for female plaintiffs if the "individual circumstances" of the

⁴³ *LMN supra* note 36 at para 19; also see *Mulholland v. Riley*, [1995] B.C.J.No.1823 (B.C.C.A.) at para 49.

⁴⁴ *Bartosek, supra* at note 15.

⁴⁵ *Ibid.* at para 38.

plaintiff permits.⁴⁶ *Tucker*⁴⁷ used the male scales but adjusted them downwards for 'contingencies'. *Roberts*⁴⁸ adjusted the female scale upward whereas *D.A.A. v. D.K.B.*⁴⁹ averaged the male and female scales.

There is a strong argument to drop the use of old yard sticks that no longer reflect social mores and standards. Corthorn argues that the spirit of s. 15 of the *Charter of Rights and Freedoms*⁵⁰ calls for a gender neutral approach and the removal of these gender based and marriage statistics.⁵¹ Veevers declares that alternatives to national marriage statistics is required.⁵²

One of the obvious issues arising from the LOIR awards is that no male plaintiffs have ever received one. The most obvious case is that of *Bartosek*.⁵³ As society moves towards identical treatment this issue will have to be addressed.

If there is acceptance that the use of gender based scales should be discarded, then the use of contingencies is also brought into question. As Dale questions, which contingencies should be included and at what rate?⁵⁴ Many of the social science authorities call for a reconsideration of the rates used.⁵⁵ For example, the economic advantage of a relationship balanced against the cost

⁴⁶ *Terraciano v Etheridge*, [1997] B.C.J. No.1051 (B.C.S.C.).

⁴⁷ *Tucker*, *supra* note 11.

⁴⁸ *Roberts v. Morana* (1997), 24 O.R. (3d) 647 (Ont. Gen. Div.).

⁴⁹ *D.A.A. v. D.K.B.*, [1995] OJ No. 3901 (Ont. Gen. Div.).

⁵⁰ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

⁵¹ S. Corthorn & K. Santini, *Seeking Fairness: Women's Future Income Loss*, (County of Carleton Law Association, Chateau Montebello, Quebec, Nov. 2-3, 2001)[unpublished].

⁵² J. Veevers, "Loss of Marriageability: An Alternative Approach", *The Lawyers Weekly*, Vol.22, No.6, June 7, 2002.

⁵³ *Bartosek*, *supra* note 15.

⁵⁴ R. Dale & M. Dale, "Damages in Tort Auto Insurance Claims Litigation", Lerner LLP, London ON. [unpublished].

⁵⁵ For example, Veevers *supra* note 52.

of raising children (the 'offspring contingency'); or the economic advantages of a relationship balanced against the loss of wage income for both males and females.

The cases to date indicate that a LOIR award is to a great extent, a guess. As noted in *Spehar*⁵⁶, the award is an assessment not a calculation. Also, the court in *Tucker* indicated that it was in the position of a prophet for assessing a LOIR award.⁵⁷ Consequently, there is a great deal of room for variation in the principles applied and the amount of the award.

SUMMARY

As times change, so does the law. The evolution of the position and relationship of men and women has had a significant effect on the types of damages which can be sought in a personal injury action, particularly as they relate to intimate relationships, their loss or potential loss, defined and/or assessed in monetary terms. Plaintiffs' counsel argues that the long standing principle of full compensation for an injured person must give some consideration to a LOIR award in the appropriate cases.

Marriage is not the only recognized relationship and death is not the only separator. As roles for women and men become more flexibly defined in economic terms, and relationships take on varying forms of personal, social and economic union, the courts have had to consider whether to include this in damage awards and if so, to what extent and under what circumstances.

The law has now evolved to allow for an acknowledgment of the economic benefits of societal relationships, in additions to its costs. The Courts have, nevertheless, remained fixed that awards for LOIR are only applicable to female plaintiffs; that success or failure of other relationships indicate something about the amount of loss incurred; and that the award applies only to the most catastrophic injuries.

Although LOIR has not been universally accepted or applied by the Courts, it is clear that in order

⁵⁶ *Spehar*, *supra* note 31.

⁵⁷ *Tucker*, *supra* note 47 at paras.93 & 95.

to be successful in the claim, counsel must provide evidence of the loss, or potential for loss, and illustrate that such a relationship would have been advantageous to the plaintiff. Without that, the award will definitely be denied. To provide this evidence, counsel must bring forward the realm of social and economic science as well as that of the medical and actuarial disciplines.

As this area of the law evolves, so too will the arguments to support or discount a LOIR claim. There are many aspects of this claim which require further consideration by the Courts. Areas ripe for further evaluation include the quantum of damages, its overlap with other heads of damages, and the rate and type of contingencies to be applied to its quantification.

CASE SYNOPSIS

NP - Non-pecuniary damages
 LI - Loss of Income to date
 FLI - Future Lost income
 LOIR - Loss of Interdependent relationship

MVA - motor vehicle accident
 ABI - acquired brain injury
 Pl - plaintiff
 Def - defendant

CASE	FACTS	LOIR EXPERTS USED	FINDINGS	RATIO
<i>Anderson v. Miner</i> , [1999] B.C.J. No.4 (B.C.C.A.)	Burns - face, neck, psychological damage. 9 yr old female	William Kelly - psychologist	LOIR - \$15,000	Physical & intellectual attributes not helpful if self esteem is poor. Plaintiff lacked self esteem.
<i>Audef v. Bates</i> , [1998] B.C.J. No.678 (B.C.S.C.)	Medical Negligence - cerebral palsy at birth; new born female	None identified at trial	N.P. - \$260,000 FLI - \$560,000	NP agreed by parties; accepted by ct. Lost earning capacity reduced 30% for contingencies and possibility of marriage No LOIR addressed
<i>Bartosek v. Turrett Realities</i> , [2001] O.J. No. 4635	MVA - hit by a car ABI; catastrophic injuries 6 yr old male	Pl. Elaine Vegolsky - forensic accountant; Peter Ross - economist for LOIR Def - James Forbes forensic accountant	NP - \$275,598 LI - \$55,000 FLI - \$750,000, LOIR \$0	LOIR too remote, too speculative Loir intended for women
<i>Bates v. Nichol</i> , [1995] B.C.J. No. 1352 (B.C.S.C.) (LOIR only) <i>Bates v. Nichol</i> , [1996] B.C.J. No. 3011(B.C.S.C.)	details not available female adult	Robert Carson Douglas Hildebrand	LOIR denied	Not assessed as a separate item (it is like general damages) Absence of word financial means no financial loss from LOIR - only enjoyment of life.

<p><i>Belyea v. Hammond</i>, [1999] N.B.J. No. 549</p> <p><i>Belyea v. Hammond</i>, [2000] N.B.J. No. 436 (N.B.C.A.)</p>	<p>MVA - chronic pain 22 yr old female dental assistant</p>	<p>Richard McGillivray - psychologist Joyce Beiliveau - psychologist</p>	<p>LOIR - \$50,000 at trial, Reversed at C.A.</p>	<p>At trial - no discussion or assessment at trial</p> <p>At appeal - No proof of need established; 2 part test: - i) ability to form relationship is diminished ; -ii) relationship had to be shown to be advantageous</p>
<p><i>Blackstock v. Patterson</i>, [1980] BCJ No. 134(B.C.S.C.)</p> <p><i>Blackstock v. Patterson</i>, [1981] B.C.J. No 290 (B.C.S.C.)</p> <p><i>Blackstock v. Patterson</i>, [1982] 4 W.W.R. 519 (B.C.C.A.); [1982] B.C.J. No. 541 (B.C.C.A.)</p>	<p>MVA - Intellectual damage (IQ was 120 - now 88); aphasia; Hemiplegia 24 yr old female</p>	<p>Dr. Klonoff - psychologist No LOIR experts identified</p>	<p>Trial deducted for marriage C.A. reversed it</p>	<p>Appeal - No evidence to reduce that amount so drastically; the mere probability of marriage is not enough to grant pecuniary damages Ct should receive statistical and actuarial evidence</p>
<p><i>Beuckert v. Mattison</i>, [1996] S.J. No. 660 (Q.B.)</p>	<p>Burned in house fire 18 yr old female</p>	<p><u>Personal Injury</u> <u>Damages in Canada</u>, Cooper-Stephenson No LOIR experts identified</p>	<p>Total - \$156,000</p>	<p>No mention of LOIR or marriage</p>
<p><i>Bystedt v. Hay</i>, [2001] B.C.J. No. 2769 (B.C.S.C.)</p>	<p>Medical Negligence At Birth - newborn female contracted herpes causing ABI.</p>	<p>None identified at trial</p>	<p>LOIR - \$100,000</p>	<p>Agreed by parties. Not challenged or addressed by court</p>

<p><i>Grnard v. Berry</i>, [1992] S.J. No. 275 (Q.B.)</p>	<p>MVA - paraplegia; 21 yr old female</p>	<p>Pl. - J.G. McKellar - actuary <u>The Personal Injury Damages in Canada</u>, Coopers-Stephenson</p>	<p>Total - \$495,905 LOIR denied</p>	<p>Reduced by 25% for life contingencies; - injury did not damage the ability to form relationships</p>
<p><i>Hoodspith v. Cook</i>, [1999] BCJ No. 128</p>	<p>MVA - Husband killed</p>	<p>Pl. - Malcolm McGowan - out placement professional for accountants John McKellar - actuary Douglas Hildebrand</p>	<p>Total - \$515,224</p>	<p>Includes future benefit for loss of interdependent relationship</p>
<p><i>L.M.N. v. Munday</i>, [1998] B.C.J. No. 2591 (B.C.S.C.)</p>	<p>Sexual abuse as child - as adult - alcohol and drug abuse; emotional damage female - 29 yr old at trial</p>	<p>Pl. Robert Carson</p>	<p>LFI - \$250,000</p>	<p>LOIR denied in commentary as 'not inevitable; amount includes loss of future income and marriageability</p>
<p><i>Matheson v. Brow</i>, [1999] B.C.J. No. 2183 (B.C.S.C.)</p>	<p>MVA - chronic pain 33 yr old female common-law relationship broke down</p>	<p>none identified</p>	<p>LOIR denied</p>	<p>No evidence of causality nor that there is damage to forming relationships</p>

<p><i>Grimard v. Berry</i>, [1992] S.J. No. 275 (Q.B.)</p>	<p>MVA - paraplegia; 21 yr old female</p>	<p>Pl. - J.G. McKellar - actuary <u>The Personal Injury Damages in Canada</u>, Coopers-Stephenson</p>	<p>Total - \$495, 905 LOIR denied</p>	<p>Reduced by 25% for life contingencies; - injury did not damage the ability to form relationships</p>
<p><i>Hoodspith v. Cook</i>, [1999] BCJ No. 128</p>	<p>MVA - Husband killed</p>	<p>Pl. - Malcolm McGowan - out placement professional for accountants John McKellar - actuary Douglas Hildebrand</p>	<p>Total - \$515,224</p>	<p>Includes future benefit for loss of interdependent relationship</p>
<p><i>L.M.N. v.Munday</i>, [1998] B.C.J. No. 2591 (B.C.S.C.)</p>	<p>Sexual abuse as child - as adult - alcohol and drug abuse; emotional damage female - 29 yr old at trial</p>	<p>Pl. Robert Carson</p>	<p>LFI - \$250,000</p>	<p>LOIR denied in commentary as 'not inevitable; amount includes loss of future income and marriageability</p>
<p><i>Matheson v. Brow</i>, [1999] B.C.J. No. 2183 (B.C.S.C.)</p>	<p>MVA - chronic pain 33 yr old female common-law relationship broke down</p>	<p>none identified</p>	<p>LOIR denied</p>	<p>No evidence of causality nor that there is damage to forming relationships</p>

<p>Reekie v. Messervey, [1986] B.C.J. No. 3159 (B.C.S.C.)</p> <p>Reekie v. Messervey, [1986] B.C.J. No. 3199 (B.C.S.C.)</p> <p>Reekie v. Messervey (1989), 59 D.L.R. (4th) 481 (B.C.C.A.)</p> <p>Reekie v. Messervey (1990), 66 D.L.R. (4th) 765 (S.C.C.)</p>	<p>MVA - paraplegic 21 yr old female</p>	<p>Pl. - Jean Veever - sociologist - Robert Carson - economist</p>	<p>LOIR- \$50,000 at trial; Total - \$250,00 Upheld by C.A.</p>	<p>Appeal - Support from family income inter-related to LOIR Some positive and negative financial consequences of relationship</p>
<p>Roberts v. Morana (1997), 24 O.R. (3d) 647 (Gen. Div.)</p>	<p>MVA - ABI, partial paralysis She has a relationship but it is strained 16 yr old female</p>	<p>Pl. - Deborah Carter - labour economist Murray Segal - actuary Def-Thomas Shinbein - actuary Dr. Rummey - paediatrician</p>	<p>General Damages - \$225,000 LOIR not mentioned</p>	<p>Dr. Rummey commented on reduced likelihood of ABI person maintaining relationship She has some enjoyment of life, she has a relationship, therefore higher award is not appropriate</p>

<p>Reekie v. Messervey, [1986] B.C.J. No. 3159 (B.C.S.C.)</p> <p>Reekie v. Messervey, [1986] B.C.J. No. 3199 (B.C.S.C.)</p> <p>Reekie v. Messervey (1989), 59 D.L.R. (4th) 481 (B.C.C.A.)</p> <p>Reekie v. Messervey (1990), 66 D.L.R. (4th) 765 (S.C.C.).</p>	<p>MVA - paraplegic 21 yr old female</p>	<p>Pl. - Jean Veever - sociologist - Robert Carson - economist</p>	<p>LOIR- \$50,000 at trial; Total - \$250,00 Upheld by C.A.</p>	<p>Appeal - Support from family Income Inter-related to LOIR Some positive and negative financial consequences of relationship</p>
<p>Roberts v. Morana (1997), 24 O.R. (3d) 647 (Gen. Div.)</p>	<p>MVA - ABI, partial paralysis She has a relationship but it is strained 16 yr old female</p>	<p>Pl. - Deborah Carter - labour economist Murray Segal - actuary Def.-Thomas Shinbein - actuary Dr. Rummy - paediatrician</p>	<p>General Damages - \$225,000 LOIR not mentioned</p>	<p>Dr. Rummy commented on reduced likelihood of ABI person maintaining relationship She has some enjoyment of life, she has a relationship, therefore higher award is not appropriate</p>

<p><i>Robulack v. Heidecker</i>, [1997] B.C.J. No. 2405 (B.C.S.C.)</p>	<p>On the hood of a car while being driven - fell - ABI & personality change 17 year old female</p>	<p>Robert Carson - economic consultant</p>	<p>\$150,000 - loss of enjoyment of life - including LOIR FLI - \$725,000 - including LOIR</p>	<p>Difficult/impossible to form an interdependent relationship Maximum awards reserved for the most severe spinal injuries. This case not as severe but more severe than most. Mr. Carson assesses a LOIR as: \$291,000 for 1+ yrs at Community College and \$317,000 in case of College attendee.</p>
<p><i>Scarff v. Wilson</i>, [1985] B.C.J. No. 1313 (B.C.S.C.) <i>Scarff v. Wilson</i>, [1985] B.C.J. No. 911 (B.C.S.C.) <i>Scarff v. Wilson</i>, [1985] B.C.J. No. 1327 (B.C.S.C.) <i>Scarff v. Wilson</i> (1986), 55 D.L.R. (4th) 247. (B.C.C.A.)</p>	<p>MVA - hit as a pedestrian at 5 yrs old - paraplegic 12 yr old female</p>	<p>Pl.- Mr. Kidd - actuary Def - Mr. Collisbird - actuary</p>	<p>Total - \$188,842 LOIR not mentioned</p>	<p>S.C.C. on trilogy (Andrews, Teno, Thornton) - binding authority for total</p>
<p><i>Scott v. Pettigrew</i>, [1994] N.S.J. No. 415 (B.C.S.C.)</p>	<p>MVA - ABI 34 yr old female</p>	<p>None mentioned</p>	<p>LFI - \$ 413,713 LOIR not mentioned</p>	<p>Based on a submitted actuarial report</p>
<p><i>Shaw v. Arnold</i>, [1998] B.C.J. No. 2834 (B.C.S.C.)</p>	<p>MVA (pedestrian) - ABI, intellect damaged 15 yr old female</p>	<p>Robert Carson - economic consultant</p>	<p>Total - \$1.15m LOIR not mentioned</p>	<p>male/female wage scales averaged. quoted <i>Toneguzzo-Norvell and Terraciano</i>.</p>

<p>Souto v. Anderson, [1994] B.C.J. No. 1377 (B.C.S.C.)</p>	<p>MVA - severe physical injuries, drug dependency developed - delayed treatment; 23 yr old female</p>	<p>none mentioned</p>	<p>LOIR denied</p>	<p>loss of opportunity to marry - not persuasive; injuries not catastrophic and did not damage potential to form relationships The LOIR evidence was too speculative</p>
<p>Spehar v. Beazley, [2002] B.C.J. No. 1718 (B.C.S.C.)</p>	<p>MVA - ABI; not competitively employable, Personality changes 16 yr old female</p>	<p><u>Personal Injury Damages in Canada</u> Cooper Stephenson Pl - Robert Carson Def - Douglas Hildebrand</p>	<p>FLI - \$1.1m includes LOIR</p>	<p>LOIR is pecuniary loss; will not marry given personality; costs of children - all speculative; assessment not a calculation</p>
<p>Takacs v. Gallo, [1998] B.C.J. No. 600 (B.C.C.A.)</p>	<p>MVA - kills male 25 years old</p>	<p>None mentioned</p>	<p>Trial found girlfriend was 'spousal' C.A. reversed that</p>	<p>Appeal - not a marriage-like relationship under the Act.</p>
<p>Taylor v. Hogan, [1998] N.J. No. 14 (N.B.C.A.)</p>	<p>Medical Negligence in surgery - stroke 36 yr old female</p>	<p>Charles Handbook on Assessment of Damages - W.H.R. Charles <u>Personal Injury Damages in Canada</u> Cooper Stephenson Pl. - James Hanley - psychiatrist</p>	<p>Trial - Total - \$327,000 LOIR - \$30,000 LOIR upheld at C.A.</p>	<p>Marital history Deference to trial judge although did not totally agree Trial did receive evidence</p>
<p>Terraciano v. Etheridge, [1997] B.C.J. No. 1051 (B.C.S.C.)</p>	<p>MVA - paraplegia; ABI 16 yr old female</p>	<p>Pl. - Drs. Cameron, Schmidt, Stewart, Anderson Def - Megrega - psychologist</p>	<p>Total - \$2.65m Undefined small amount for LOIR</p>	<p>not lost marriageability but reduced opportunity</p>

<p><i>Toneguzzo-Norvell</i> (Guardian ad litem of) v. <i>Burnaby Hospital</i>, [1992] B.C.J. No. 1659 (B.C.C.A.)</p>	<p>Childbirth injury - cerebral palsy, no cognition, deafness, blindness newborn female</p>	<p>Pl - Robert Carson - economist</p>	<p>Total - \$1.9m LOIR and other positive contingencies net - \$292,000</p>	<p>Tables used by Mr. Carson showing this amount. Net of positive and negative contingencies of which LOIR is one.</p>
<p><i>Tucker v. Aselson</i>, (1991), 86 DLR (4th) 73 B.C. (Public Trustee for <i>Tucker</i>) v. <i>Asleson</i>, [1993] B.C.J. No. 837 <i>Tucker v. Aselson</i> (1993), 102 D.L.R. (4th) 518 (B.C.C.A.)</p>	<p>MVA - ABI; psychological damage 8 yr old female</p>	<p>Pl. - Ian Karp - actuary Def.- Douglas. Hildebrand - economist</p>	<p>Total \$2m total LOIR not mentioned</p>	<p>Not adjusted by C.A. C.A. - no better augur than trial judge She will not be poor nor rich; she will be vulnerable to relationship scams Female earnings should not be limited to past inequity stats.</p>
<p><i>Walker v. Ritchie</i>, [2003] O.J. No. 18. (Ont. S.C.J.)</p>	<p>MVA - ABI; other serious physical injuries 17 year old female</p>	<p>Pl. - Ian Wollach - Chartered Accountant - Peter Ross Def - Rich Rotstein</p>	<p>FLI - \$1.4m for FLI LOIR \$125,000 (adjusted for children)</p>	<p>Reekie, Osborne, Evidence that plaintiff could have a relationship so reduced for cost of children</p>
<p><i>Wassell v. Pife</i>, [1994] B.C.J. No. 1837 (B.C.S.C.)</p>	<p>MVA - back injury, closed head injury 16 yr old female</p>	<p>Pl - Dr. Russell - neuro-psychologist; Dr. Desmond Cohen - clinical psychologist Robert Carson - economist</p>	<p>FLI - \$500,000 LOIR included</p>	<p>Not full loss of marriageability but reduced opportunity</p>

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