Future Earning Capacity: Implications for Young Female Plaintiffs

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Suppose that Billy and Stacy, two-year-old fraternal twins, are seriously injured in a motor vehicle accident. Both are rendered unemployable for the remainder of their lives. As the case proceeds to trial, liability is admitted and the only remaining issues relate to the damages to be awarded. As the trial judge has no evidence as to the probable course that the twins' lives would take (i.e. no school or work history), the loss of future earning capacity is determined using statistical evidence. Stacy is awarded $300 000 on the basis of female earning statistics while Billy receives $800 000 using male statistics. Twins they are no longer. [1]

The valuation of a plaintiff's earning capacity award always involves a degree of speculation. An assessment of the individual's pre-accident ability to work is done and compared with his or her post-accident abilities. A present value must be calculated that properly reflects this economic loss. Generally, the plaintiff's pre-accident working history is analyzed in conjunction with market wage rates to determine earning capacity.[2] Therefore, valuing the earning capacity awards of children (or young adults with no work history) is a much more difficult and speculative task for the courts. Further, in the case of female children, additional concerns are raised due to the traditional stereotypes that exist about women and the corresponding negative bias seen in the labour market. Lord Denning articulated the "children problem" generally, as well as the complicating gender factor, in *Taylor* v. *Bristol Omnibus Co.*:[3]

> At this very young age these [the calculation of earning capacity awards] are speculative in the extreme. Who can say what a baby boy will do with his life? He may be in charge of a business and make much money. He may get into a mediocre groove and just pay his way. Or he may be an utter failure. It is even more speculative with a baby girl. She may marry and bring up a large family, but earn nothing herself. Or, she may be a career woman, earning high wages.

This article focuses on the methods that Canadian courts have used to calculate earning capacity awards for female children and, similarly, young females with no work history. The traditional approach involves determining the level of education or career level that the child likely would have achieved (deduced from factors such as the

1 This result may occur where, although the court is satisfied that both children will reach the same level of education, **gendered** earning statistics are used. It assumes that the court does not "correct" the numerical injustice by supplementing the female plaintiff's award in order to represent the closing of the gendered wage gap, the lost economic benefits of marriage, the trend toward greater full time participation in the labour force by women and the value of "unpaid" work that women do in the home.

It is clear that the sole use of gender-specific statistics (without any corrective upward adjustments) results in a disadvantage for young female plaintiffs.

plaintiff's I.Q. and the occupations of the plaintiff's parents[4]) and then applying corresponding gender-specific actuarial numbers. This article analyzes the negative effect that the **sole** use of this gender-specific data has on female awards and the steps that a few courts have taken to correct the problem.

Specifically, two judicial methods will be analyzed. First, the use of **male** earning statistics for young female plaintiffs in three very recent decisions of the British Columbia Supreme Court (BCSC) will be critically examined.[5] It is suggested, perhaps surprisingly, that this judicial method is not a "radical" step for the Court as it is simply a way to fully "correct" the problems inherent in using gender-specific earning statistics **in certain circumstances**. It is emphasized that this judicial method is used only when there is evidence that the plaintiff would likely have pursued a professional career. Examined next is the judicial method whereby female earning statistics are maintained and then supplemented to account for the closing wage gap and outdated negative gender assumptions. This method has not yet been perfected nor applied consistently by the courts. Therefore, it is arguable that young female plaintiffs subjected to this judicial method (including infants and plaintiffs not likely to attain a professional career) receive worse treatment than those who "qualify" for the male statistics method.

The Problem: Replicating the Inequities of the Past

It is clear that the **sole** use of gender-specific statistics (without any corrective upward adjustments) results in a disadvantage for young female plaintiffs.[6] The underlying

2 See J. Cassels, "Damages for Lost Earning Capacity: Women and Children Last!" (1992) 71 Canadian Bar Review 445. At page 447, it is noted that the valuation of earning capacity is based on one of two conceptual notions. The first, valuing the diminished "earning capacity" of the victim is the one relied upon in the **language** of many judgments. For example, the Supreme Court of Canada in *Andrews* v. *Grand and Toy Alberta Ltd.*, [1978] 2 Supreme Court Reports 229, (1978) 83 Dominion Law Reports (3d) 452 at 469 held that "[i]t is not loss of earnings but, rather, loss of earning capacity for which compensation must be made … A capital asset has been lost: what was its value?" As this approach focuses on human capital, the relevant question is what the victim **could have** earned if the accident had not occurred. However, despite the so-called acceptance of the capacity approach in the jurisprudence, it can be seen that the second conceptual notion, valuing the **probable earnings** of the victim, is the one that is actually applied in most judgments. As a result, existing wages are used almost exclusively as the basis for assessing earning capacity.

3 [1975] 1 Weekly Law Reports 1054 (English Court of Appeal) at 1059.

4 According to evidence adduced in *Houle* v. *The City of Calgary* (1983), 26 Alberta Law Reports (2d) 34 (Alberta Queen's Bench), other relevant factors include: the child's birth order, family income and socio-economic status, parents' and siblings' education, I.Q. and motivation, number of siblings and whether the plaintiff is from a broken home. See also J. A. Sutherland, "Predicting a Child's Future Wage Loss" (1984) 42 The Advocate 169.

problem is that the gender-specific data being used in modern courts was collected in a time when women were not as prominent in the paid labour force and stereotypical assumptions existed about a woman's earning potential.[7] The problems can be broken down as follows. First, reliance on female actuarial tables introduces into court the systemic discrimination that women have faced in the paid labour force, including the immense wage gap endured by women.[8] Second, the reliance on female earning statistics reinforces an implied marriage contingency deduction. More specifically, the large amount of part-time work done by women serves to depress the statistics as these women's other "part-time job" (child rearing/family responsibilities) is not formally valued.[9] Third, there may be explicit marriage contingencies deducted such as earnings lost while the woman is absent from the labour force to bear and raise children.[10]

In *Scarff* v. *Wilson*,[11] the female plaintiff suffered devastating injuries when she was five years of age. Factors such as her economically disadvantaged family and unemployed father were considered when the BCSC held that the plaintiff would not likely have surpassed high school or trade school graduation. The corresponding female actuarial numbers were then applied to calculate the earning capacity award.[12] It is noted that no upward adjustments were made to account for the closing wage gap nor to compensate the plaintiff for her lost opportunity to marry (i.e. her loss of shared family income).

In *Cherry* v. *Borsman*,[13] the infant female plaintiff was born with permanent disabilities due to the negligence of the defendant doctor. Given the evidence relating to the plaintiff's family environment, the British Columbia Court of Appeal (BCCA) found that the trial judge had correctly assessed her probable pre-accident level of education. Further, the BCCA confirmed the use of gender-specific statistics **without** any upward adjustments acknowledging that it was solely within the trial judge's discretion whether or not to account for the changing place of women in the labour force. Finally, the BCCA upheld the lower Court's 47 per cent reduction from an award for lost benefits of shared family income for two reasons. First, it was uncertain whether the plaintiff would have married even if she had been born healthy. Second, the enormous expenses incurred in raising children weighed against any possible savings resulting from a shared family income.

Solving the Problem

While there have been a few different suggestions for reform made in the legal literature,[14] there have been only two main judicial approaches to the problem.

1. The Acceptance of "Male" Rather Than "Female" Statistics

The starting point is *Tucker (Guardian ad litem of)* v. *Asleson*[15] wherein the BCSC recognized that gendered earnings statistics may be inappropriate for use when determining a young female plaintiff's earning capacity. In *Tucker*, the plaintiff was a seriously injured eight-year-old girl. The Court was faced with the choice of using male or female actuarial numbers when assessing her future earning capacity.

5 Male earnings statistics were used for young female plaintiffs in *Chu* v. *Jacobs*, [1996] B.C.J. No. 674 (British Columbia Supreme Court) and *B.I.Z.* v. *Sams*, [1997] B.C.J. No. 793 (British Columbia Supreme Court). Further, male earnings statistics (reduced by a 6% discount) were used for a young female plaintiff in *Terracciano (Guardian ad litem of)* v. *Etheridge*, [1997] B.C.J. No. 1051 (British Columbia Supreme Court).

6 See, for example, *Tucker (Guardian ad litem of)* v. *Asleson* (1991), 62 British Columbia Law Reports (2d) 78, (1991) 86 Dominion Law Reports (4th) 73 (British Columbia Supreme Court), varied (1993) 78 British Columbia Law Reports (2d) 173, (1993) 102 Dominion Law Reports (4th) 518 (British Columbia Court of Appeal) [hereinafter *Tucker* and cited to Dominion Law Reports] where actuarial evidence was adduced which estimated the lifetime earnings of a university educated British Columbia male as $947 000 and the similarly situated woman's earnings as $302 000.

7 E. Gibson, "The Gendered Wage Dilemma in Personal Injury Damages" in K. Cooper-Stevenson & E. Gibson, eds., *Tort Theory* (Toronto: Captus Press, 1993) 185 at 197.

8 See note 2 at 446 and E. Gibson, "Loss of Earning Capacity for the Female Tort Victim: Comment on *Toneguzzo-Norvell (Guardian ad litem of)* v. *Burnaby Hospital*" (1994) 17 Canadian Cases on the Law of Tort (2d) 78 at 85. Elaine Gibson states that there are a number of reasons for the wage gap including unionization rates, occupational segregation and direct wage discrimination. Further, due to time taken off of the paid labour force as a result of family responsibilities, women may not receive the same amount of education, training, experience, opportunities and promotions as men.

Justice Finch stated:

> I accept, as a starting point, that **the measure of the plaintiff's earning capacity should not be limited by statistics based upon her sex.** Before the accident the plaintiff was a bright little girl growing up in a stable home environment. In Canada, no educational or vocational opportunities were excluded to her. She could have become a doctor, lawyer, or business person. Or, in line with her childhood wish, a veterinary. Of course she might have done none of those things. She might have dropped out of school, and never held gainful employment of any sort. Those considerations, however, speak to the likelihood of her achieving her capacity, rather than what that capacity was.[16] [emphasis added]

The Court therefore rejected the gender-specific statistics and adopted the lifetime earnings of the average university educated male ($947 000). However, Justice Finch then proceeded to apply a 60-65 per cent deduction in order to account for contingencies such as the possibility that the plaintiff would not have become a university graduate. The BCCA, with brief reasons, upheld this award on the basis that the trial judge had not made a reversible error.

It is noteworthy that while the Court claimed that the plaintiff's earning capacity should not be limited by her sex, the ultimate result (after the enormous contingency deduction) was only slightly higher than what the "female" numbers would have produced. If the Court was concerned that the plaintiff may not reach the university level but truly wanted to use the male actuarial numbers, it could have used male "post-secondary non-university certificate" or "lifetime earnings of all men" statistics. Nonetheless, the case is still remarkable in that male earning statistics were used as a starting point for a young female plaintiff.

However, the *Tucker* method of using male statistics as a starting point for **all** female plaintiffs has not been followed. The problem is linked to the theoretical context within which tort law lies. It is commonly agreed that the function of tort law is to address corrective justice and not distributive justice. In other words, the role of tort law is not to "fix" social inequalities (such as the wage gap between men and women); rather, this is the job of the legislatures.[17]

The first judicial method, using **male** earning statistics for certain young female plaintiffs, can be seen in several recent decisions of the BCSC.[18] However, it is noted that these decisions do not commit the Court to distributive justice. To the contrary, applying male statistics in cases where the courts are satisfied that the female plaintiff would have likely pursued a professional career is simply a convenient method to fully "correct" the gender problem.

In *B.I.Z.* v. *Sams*,[19] prior to a motor vehicle accident, the young female plaintiff had completed a two year accounting course and intended to obtain a business degree and become a Certified General Accountant.[20] Justice Hunter based the award for future earning capacity on **male** "financial manager" earning statistics for a number of reasons. First, Hunter rationalized that the plaintiff's career choice was not one where there was a large wage gap between male and female earnings. Second, the BCSC was satisfied that

9 See E. Gibson, above, at 83 and S. A. Griffin, "The Value of Women - Avoiding the Prejudices of the Past" (1993) volume 51 Part 4 Advocate 545 at 549.

10 This deduction was applied in *B.I.Z.* v. *Sams*, see note 5.

11 (1986) 10 British Columbia Law Reports (2d) 273 (British Columbia Supreme Court), affirmed (1988) 33 British Columbia Law Reports (2d) 290, (1988) 55 Dominion Law Reports (4th) 247 (British Columbia Court of Appeal).

12 The award of $140 000 for loss of future earning capacity was upheld by the British Columbia Court of Appeal. It is noted that this includes a discount of 31 per cent due to the plaintiff's residual earning capacity.

13 (1990) 75 Dominion Law Reports (4th) 668 (British Columbia Supreme Court), varied (1992) 70 British Columbia Law Reports (2d) 273, (1992) 94 Dominion Law Reports (4th) 487 (British Columbia Court of Appeal).

14 First, for a detailed analysis of the capacity (opportunity cost) approach, see note 2 at 480. Second, for a canvassing of the gender-neutral statistics option (without automatically rejecting gender-specific data in other areas), see E. Gibson, note 8 at 93. For a rejection of gender-neutral earning statistics as a viable option by Chief Justice McEachern dissenting in *Tucker*, see note 6 at 534. Third, for a discussion of a possible movement toward an approach based on individual needs, see note 2 at 485 and note 7 at 209.

15 See note 6.

16 See above at 83.

17 See E. Gibson, note 7 at 199. This view is also expressed by Chief Justice McEachern in his dissent in *Tucker*, see text accompanying note 31.

18 See note 5.

she would not have taken a great deal of time off work for child-bearing and rearing (thereby not resulting in a large wage difference between her and her male counterpart). It was reasoned that the plaintiff would have arranged for a nanny or full-time daycare services in order to continue with her career. Finally, the trial judge did not think that she would have worked part time, and therefore should not be penalized by using female numbers which are lower in part due to the greater amount of part time work done by females. It is to be noted, however, that there were deductions for lost income while absent from the work force (for child-bearing). Thus, despite the court's previous progressive reasoning, it applied part of the traditional marriage contingency deduction. Further, the court did not consider the existence of maternity benefits which may have reduced or made unnecessary this deduction.

In *Chu* v. *Jacobs*,[21] a fifteen-year-old female was seriously injured in a motor vehicle accident. The court found that prior to the accident, she was an athletic and brilliant girl who had won awards and been on the honour roll at school. At the time of trial, she was enrolled in the Business Administration program at Simon Fraser University. In considering how to value lost future earnings (due to delayed promotions, future surgery etc.) and a one year delay into the workforce as a result of the plaintiff's injury, the court was faced with a choice between female and male management statistics. Justice Boyd considered evidence that differences in wage rates between male and female university graduates today are not due to gender but instead are attributable to behavioral factors. As a result, male earnings statistics were accepted:

> While there may be cases in which it would be dangerous to accept a male earnings profile as some forecast of future earnings for a female, I have little hesitation in doing so in this case. For some time prior to the accident, and even following the accident (despite the serious traumatic injuries and ongoing residual disability), Eva has demonstrated that she is a keen student and a hard worker. I am confident that she has the scholastic ability, and more importantly, the determination and single-mindedness necessary to complete her Bachelors degree. I expect that Eva will indeed enter the workforce, albeit a year late, and that she will thereby suffer a loss of earnings equivalent to that calculated by Mr. Carson, admittedly adopting a male earnings profile.[22]

Finally, in *Terracciano (Guardian ad litem of)* v. *Etheridge*,[23] a sixteen-year-old girl was rendered a paraplegic in a motor vehicle accident. In regards to future earning capacity, the BCSC was faced with a choice between the use of female and male earning statistics. Justice Saunders acknowledged that female statistics reflect gender bias and that "it may be as inappropriately discriminatory to discount an award solely on statistics framed on gender as it would be to discount an award on considerations of race or ethic origin."[24] Further, he was not convinced of the "propriety, today, of this Court basing an award of damages on a class characteristic such as gender, instead of individual characteristics or considerations related to behavior."[25]

The plaintiff's pre-accident potential was therefore analyzed by looking at her work history, pre-accident personality, school marks and good examples of work motivation

19 *B.I.Z* v. *Sams*, see note 5.

20 It is noted that this case is different from the others discussed in this article as it involves a young female plaintiff who did have a pre-accident work history. However, the court does not use the plaintiff's pre-accident earnings as there was evidence that she would have left this job (as her father was terminally ill and she intended to pursue higher education). As such, the case is analyzed in much the same way as cases where a young female plaintiff does not have any pre-accident work history. Specifically, the court bases the earning capacity award on the probable level of success that the plaintiff would have achieved "but for" the accident.

21 *Chu* v. *Jacobs*, see note 5.

22 See above at paragraph 26.

23 *Terracciano (Guardian ad litem of)* v. *Etheridge*, see note 5.

24 See above at paragraph 81.

25 See above.

26 One of the consequences of adopting the male numbers was that contingencies of only 16 per cent were applied as opposed to the approximately 33 per cent contingencies applied to female statistics.

27 *Chu* v. *Jacobs*, see note 5 at paragraph 25. Contrast with *D.* (*Guardian ad litem of)* v. *F.*, [1995] B.C.J. No. 1478 (British Columbia Supreme Court) where the Court refused to adopt male earning statistics as the female plaintiff was likely to only obtain a "traditional" low-paying job. Justice Humphries at paragraph 124 stated that "most of these jobs have been traditionally filled by females and it would be artificial to apply historical male earning rates to future losses of the plaintiff."

found in her family. As a result, the wage of the plaintiff's older sister was used as a proxy for the plaintiff's earning capacity. The lifetime loss was calculated by using 6 per cent less than the equivalent average male's earnings with one year of post-secondary education as this was comparable to the sister's wage.[26]

Why would a court feel justified in using male numbers in certain situations without any concern that it may be endorsing distributive justice? First, there is evidence that the gendered wage gap does not exist (or is closing relatively quickly) in professional careers.[27] Second, an assumption may be made that women in professional careers are unlikely to take a great deal of time off work in order to have and raise children and instead may purchase the services of a nanny or daycare provider. As a result, the woman's wage in the long run will likely not suffer. Further, the problem of valuing work done in the home does not need to be addressed in this scenario. Third, women in professional positions are less likely to work part time. Therefore, they should not be negatively affected by historical data showing low earning statistics for women (i.e. low in part because they reflect the greater amount of part-time work done by women).

Even with the use of male earning statistics, women may still be penalized for the time taken off the paid workforce to remain at home and raise children.[28] However, it is noted that as the valuation of unpaid work in the home (and other unwaged work) becomes more accepted in the courts,[29] it follows that no deduction should be made from a woman's earning capacity in regards to the income lost while she is child-rearing. Further, no deduction would occur if the courts used the "capacity" rather than the "probable earnings" conceptual basis of valuing earning capacity.[30]

2. Retaining Female Earning Statistics and Applying Positive Contingencies

Chief Justice McEachern's dissent in *Tucker* focuses on the use of male earning statistics for determining earning capacity awards for female plaintiffs. He would have sent the matter back for a new trial on this issue. McEachern's main objection with the approach can be summarized as follows:

> While we may strive for social justice, as it is perceived from time to time, the courts must deal with the parties who are before them, plaintiffs and defendants, on the basis of realistic predictions about the future, and not just in accordance with understandable wishes that society, in some of its aspects, were different from what it really is. At the present time, as the average statistics clearly show, women earn far less than men. Deplorable as that is, it would be unfair to defendants in this and other cases, some of whom are underinsured women, to ignore that reality. The most the courts can do is ensure, so far as may be possible, that proper weight is given to identifiable societal trends so that the assessment of the Plaintiff's future losses will reflect relevant future circumstances.[31]

McEachern, therefore, would have applied the average earnings of **all** women and then enhanced this number with upward adjustments relating to any factors indicating that the plaintiff would have exceeded this "all woman" performance.[32] He stated that other upward contingencies may then be applied, such as those accounting for the

28 This deduction was explicitly applied in *B.I.Z v. Sams*, see note 5.

29 The leading case in the area of the valuation of homemaker's services is *Fobel v. Dean and MacDonald* (1989), 78 Saskatchewan Reports 127 (Saskatchewan Court of Queen's Bench), varied (1991) 93 Saskatchewan Reports 103, (1991) 83 Dominion Law Reports (4th) 385 (Saskatchewan Court of Appeal).

30 For a brief description of these two conceptual notions, see note 2.

31 See note 6 at 533-4.

32 For example, evidence may support the use of trade school or university graduation statistics.

33 See, for example, *Beaudry v. Hackett*, [1991] B.C.J. No. 3940 (British Columbia Supreme Court), *Newell v. Hawthornthwaite* (1988), 26 British Columbia Law Reports (2d) 105 (British Columbia Supreme Court), *Toneguzzo-Norvell (Guardian ad litem of) v. Burnaby Hospital*, [1991] B.C.J. No. 2206 (British Columbia Supreme Court), varied (1992) 73 British Columbia Law Reports (2d) 116 (British Columbia Court of Appeal), varied (1994) 1 Supreme Court Reports 114, (1994) 110 Dominion Law Reports (4th) 289 and *Mulholland (Guardian ad litem of) v. Riley*, [1993] British Columbia Journal No. 920 (British Columbia Supreme Court), aff'd (1995) 12 British Columbia Law Reports (3d) 248 (British Columbia Court of Appeal). It is noted, however, that the wage gap will likely not be accounted for in cases where the plaintiff would likely be employed in a traditional low-paying job (*D. v. F.*, see note 19). This is due to the concern that tort law should not offer distributive justice by attempting to "correct" society's inequities.

increased participation of women in the workforce, those correcting for the narrowing wage gap and those accounting for the loss of shared family income.

Other courts have followed McEachern's lead and have utilized female earning statistics (based on the level of education that the plaintiff likely would have achieved) plus upward adjustments to "correct" the gendered statistics. First, both prior and subsequent to *Tucker*, positive contingencies have been added into awards to account for the narrowing of the wage gap.[33] Second, the implicit marriage contingency deduction found in the gendered statistics has been countered by awarding damages for the lost benefits of a shared family income[34] as well as an increased award of non-pecuniary damages.[35] Third, an upward contingency may be added based on the trend toward greater participation in the **full-time** workforce by women.[36] Fourth, as the valuation of unpaid work in the home and other unwaged work becomes more accepted by the courts,[37] it follows that no deductions should be made from a woman's earning capacity in regards to the income lost while she is child-rearing.[38]

Conclusions

All young female children and young females with no work history face the same "statistical discrimination" problem when courts assess their future earning capacity. However, given the two judicial approaches to the problem, it seems that young female plaintiffs are not being treated consistently. The young female plaintiff who can convince the court that she would likely have pursued a professional career "but for" the accident[39] has the statistical problem **fully** corrected since all of the gender bias is erased from the equation. However, the method used for all other young female plaintiffs is not yet perfected. While some courts have taken steps to correct the statistics by adding on one or more of the positive contingencies outlined above, it is not yet common practice to systematically add **all** of them back into the award. Therefore, young female plaintiffs who do not "qualify" for the first judicial method (such as infants and those who can not convince the court that a professional career was imminent) will not have the statistics "corrected" to the same degree. Recognizing this, counsel should be prepared to advocate the use of all possible positive contingencies when this second judicial method is utilized.

Stacy and Billy Re-Visited

Stacy's earning capacity award has been appealed. Her counsel is prepared with two arguments. First, Stacy should be awarded $800 000 on the basis of male statistics as she would have likely pursued a professional career "but for" the accident. In support of this, evidence will be adduced showing that her family is loving and stable and both of her parents are university educated. Stacy's counsel is prepared, however, for the possibility that the court may reject this first option because of its speculative nature. The second argument is to retain the use of the $300 000 female earning number but then

34 The origins of this award are found in *Reekie v. Messervey* (1986), 4 British Columbia Law Reports (2d) 194, additional reasons at (1986) 10 British Columbia Law Reports (2d) 231 (British Columbia Supreme Court), aff'd (1989) 36 British Columbia Law Reports (2d) 316, (1989) 59 Dominion Law Reports (4th) 481 (British Columbia Court of Appeal) and *Moriarty v. McCarthy*, [1978] 2 All English Reports 213 (Queen's Bench Division). Examples of it being applied in female children cases can be found in *Cherry v. Borsman* (see note 13), *Mulholland v. Riley* (see note 33) and *Tucker v. Asleson* (see note 6). The concerns are that courts may find that the financial costs of having children balance out with the savings of an interdependent relationship such as marriage. Therefore, a diminished sum for loss of shared family income may be awarded (*Cherry v. Borsman*, see note 13) or no award at all (*Scarff v. Wilson*, see note 11). Other problems are that a court may find that it is too speculative to determine whether a very young child would have married or not (*Scarff v. Wilson*, see note 11), that the child may not have married at all (*Cherry v. Borsman*, see note 13) or that the plaintiff has not had her ability to marry impaired (*Sanderson v. Betts*, [1990] B.C.J. No. 2720 (British Columbia Supreme Court). A further problem in using an award of loss of shared family income to "counter" the implicit marriage contingency in female awards lies in the fact that men have also received awards for loss of shared family income. See, for example, *McKenzie v. Van-Kam Freightways Ltd.*, [1990] B.C.J. No. 868 (British Columbia Supreme Court).

add on positive contingencies bringing the result up to approximately $800 000. These contingencies include those accounting for the changing role of women in the labour force and the closing of the gendered wage gap over the next century, the valuation of work done in the home and the economic efficiencies that Stacy will lose because she will not participate in a shared family income.

35 An increased sum of non-pecuniary damages may be given to compensate the plaintiff for the lost opportunity to marry and raise children as in *Newell* v. *Hawthornthwaite*, see note 33. It is noted, however, that the BCSC consequently rejected the awarding of a sum for the lost benefits of marriage (i.e. loss of shared family income).

36 This factor was considered in *Newell* v. *Hawthornthwaite*, see above.

37 See note 29.

38 At the very least, the courts should recognize, as the BCSC did in *Wassell (Guardian ad litem of)* v. *Pile*, [1994] B.C.J. No. 1837 (British Columbia Supreme Court) that this deduction should not be made more than once (as it has already been accounted for implicitly in the female earning statistics).

39 This proof can be undertaken either through evidence of the plaintiff's pre-accident intentions or supporting evidence such as family background as in *Terracciano (Guardian ad litem of)* v. *Etheridge*, see note 5.