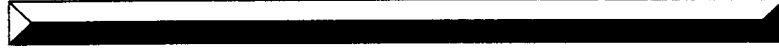


BROWN ECONOMIC ASSESSMENTS INC.



*Valuable Services Trends in Housekeeping
Quantum across Canada, 1990-2001*©

Prepared by:

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(Forthcoming)

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I. HOUSEKEEPING AWARDS IN RECENT CASE LAW²

Cooper-Stephenson has remarked that housekeeping claims are “incontestable in principle and now seem relatively well established.”³ Decisions released since the mid-1990s, however, have vacillated considerably in terms of the actual magnitude of amounts awarded.

There are nine recent Alberta cases in which substantial housekeeping awards have been designated by judges: *Dear v. Styre*⁴ (just over \$26,000); *Dushynski v. Rumsey*⁵ (\$130,000 past and future); *Guthmiller v. Krahn*⁶ (almost \$30,000); *Pettipas v. Kleingbeil*⁷ (\$11,440 but is for past loss only); *Lam v. Sorochan Estate*⁸ (\$15,248 past loss,

² Some of these excerpts have been reproduced from C.L. Brown, *Damages: Estimating Pecuniary Loss* loose-leaf (Aurora, Ontario: Canada Law Book, 2002), chapter 9; and Quicklaw’s *Brown’s Economic Damages Netletter* (code BROW).

³ Cooper-Stephenson, K. *Sliding Doors II’ Valuing Alternative Life Patterns in Personal Injury Damages Assessment*, prepared for the National Judicial Institute and presented in May 2002 [unpublished]. Reprinted with permission of the author.

⁴ [2002] A.J. No. 691 (QL), [2001] 9 W.W.R. 327, 94 Alta L.R. (3d) 26 (Q.B.)

⁵ [2001] A.J. No. 792 (QL), 268 A.R. 369 (Q.B., affd 257 W.A.C. 277, 293 A.R. 277, [2002] I.L.R. 1-4035 (C.A.).

⁶ [2000] A.J. No. 773 (QL), (Alta Q.B.). The author testified on behalf of the plaintiff in this matter.

⁷ [2000] A.J. No. 165, 260 A.R.I. (Q.B.). The author’s report was accepted into evidence in this matter on behalf of the plaintiffs.

⁸ [2000] A.J. No. 170 (QL), 2000 7 W.W.R. 262, 79 Alta L.R. (3d) 102 (Q.B.).

\$17,708 future loss); *Nemetchek v. University Hospitals*⁹ (\$90,393); *Cherwoniak v. Walker*¹⁰ (approximately \$18,500); *Vershoor v. A.G.T. Ltd*¹¹ (\$65,649 from 1994 to 1996¹²); and *Lylock v. Phan*¹³ (\$19,920 for past, \$17,056 for future).

In *Deglow v. Uffelman*,¹⁴ the BC Court of Appeal held the trial judge's charge to the jury did not accurately reflect the principles outlined in *McTavish*¹⁵ and in particular that a plaintiff may recover for loss of homemaking capacity although she has incurred no expense to hire those services. Levine J.A., for the Court,¹⁶ said:

The plaintiff's loss could be valued in economic or monetary terms, based on the evidence she provided about the cost of services she provided in her business and the time her husband spent doing the work she could not longer do.

⁹ [2000] A.J. No. 641 (QL), 82 Alta L.R. (3d) 262 A.R. (Q.B.). The author's report was accepted into evidence in this matter on behalf of the plaintiffs.

¹⁰ [1999] A.J. No. 1040 (QL), 81 Alta L.R. (3d) 214 (Q.B.), affd 257 W.A.C. 198, 293 A.R. 198. The author's report was accepted into evidence in this matter on behalf of the plaintiffs. The judge set out assumptions from which I calculated the \$18,500.

¹¹ [1999] A.J. No. 1397 (QL), 253 A.R. 342 (Q.B.).

¹² The future amount was set at \$1,000 per year but Ms. Vershoor's age was not mentioned in the judgment, making the calculation impossible.

¹³ [1998] A.J. No. 1334. (QL), 235 A.R. 12 (Q.B.)

¹⁴ [2001] B.C.J. No. 2432 (QL), 261 W.A.C. 114, 96 B.C.L.R. (3d) 130 (C.A.)

¹⁵ [2000] B.C.J. No. 507 (QL), (2000) B.C.C.A. 164

¹⁶ *Supra*, at paras. 26-27.

The trial judge did not make it clear to the jury, however, the principle established in *Kroeker* that the disabled plaintiff need not have actually incurred an expense or suffered a monetary loss to recover damages under this head. The trial judge did not explicitly state this principle anywhere in his charge on this head of damage or make it clear that an award, if made, is for loss of capacity and not to compensate for an expense or loss incurred. In describing how to calculate the loss, some of the words he used could have been understood by the jury to mean that an expense had to be incurred, which is not the law.

The Court of Appeal then awarded the plaintiff \$2,610 for her pre-trial loss and \$13,000 for her future loss. The pre-trial loss (and, it appears the future loss) was calculated using the rate of \$10 an hour, the net the plaintiff would receive in the operation of her own business (she charged \$13.50 an hour) and which was the hourly rate she paid replacement workers in her business.¹⁷ This contrasts with a Nova Scotia Court of Appeal decision in 1995, *Woods v. Hubley*,¹⁸ in which \$60,227 was awarded (inclusive of a 47% “tax gross-up”), reduced to \$10,000 on appeal because it was based on the cost of hiring a cleaning company, Molly Maid, yet the plaintiff had not incurred any costs between the date of accident and date of trial, and moreover had not even claimed such expense during this time period. Goodfellow J. notes that this finding

¹⁷ *Ibid*, at paras. 30-33.

¹⁸ *Woods v. Hubley*, [1995] N.S.J. No. 128 (QL), (1995) 140 N.S.R. (2d) 180 (N.S.S.C.), var'd [1995] N.S.J. No. 459 (QL), (1995) 130 D.L.R. (4th) 119, 146 N.S.R. (2d) 97 (N.S.C.A.), leave to appeal refused [1996] S.C.C.A. No. 11 (QL).

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“clash(es) with *Fobel*¹⁹ and *Daley*,²⁰ which held a past history of payments is not a prerequisite to the estimating of future cost”.²¹ The other reason the Court of Appeal reduced the award was the failure of the trial judge to account for the fact that there are diminished requirements for housework as people age and change dwellings²² (see section III.c below).

In *Bertin v. Kristoffersen*,²³ the New Brunswick Court of Appeal re-iterated the principle that "it is now settled law that courts are required to assess separately the compensation recoverable by the injured party under the various heads of damages recognized by the law".²⁴ The trial court had awarded the plaintiff \$15,000 for the plaintiff's cost of future care and reduced capacity to do heavy housework. The Court of Appeal ordered a new trial with explicit instructions:²⁵

On the new trial, the judge should identify the tasks that Ms. Bertin is no longer able to perform and assess her pecuniary damages for loss

¹⁹ *Fobel v. Dean*, [1991] S.J. No. 374 (QL), (1991) 83 D.L.R. (4th) 385, [1991] 6 W.W.R. 408, (1991) 93 Sask. R. 103, (1991) 9 C.C.L.T. (2d) 87 (Sask. C.A.) leave to appeal refused [1992] 1 S.C.R. vii, (1992) 87 D.L.R. (4th) vii, (1992) 138 N.R. 404n, [1992] 2 W.W.R. lxxii, (1992) 97 Sask. R. 240n (S.C.C.).

²⁰ *Daley v. General Steam Navigation Co. Ltd.* [1980] 3 All ER 696.

²¹ The Honourable Justice Walter E. Goodfellow, *A Discussion of Valuable Services*, (Nova Scotia: The Continuing Legal Education Society of Nova Scotia, March 26, 1999), p. 25.

²² *Ibid.* at p. 26.

²³ [2001] N.B.J. No. 481 (QL244 N.B.R. (2d) 315 (C.A.)).

²⁴ *Ibid.*, at para. 30.

²⁵ *Ibid.*, at para. 34.

of homemaking capacity by applying the substitute homemaker/catalogue of services approach adopted in *Boucher v. Doiron* [a previous Court of Appeal decision]. I would add that, in assessing any of Ms. Bertin's damages for pecuniary loss in the future, including her loss of homemaking capacity, the judge should not be allergic to using actuarial calculations simply because some of the underlying assumptions lack certainty. As Lord Hope states in *Wells v. Wells et al.* [cite omitted]; "In making these assumptions the court must do the best it can on the available evidence". This Court has previously asserted that, whenever possible, actuarial calculations should be used to assess damages for future pecuniary losses. That is not to say that a conventional award is never in order; it might be an appropriate remedy in respect of partial loss of capacity to perform certain tasks around the home. I have in mind a situation where the injured party remains capable of completing some tasks, but at a significantly slower pace.

While it is standard practice for experts to provide statistical averages of time spent on housework as a benchmark, it is apparent that the courts are wary of relying solely on those figures²⁶ and has recommended that careful consideration be given to the plaintiff's description of his/her activities prior to and since the accident. Even so, the courts are careful to ensure that the ultimate award is reasonable and not based

²⁶ *LeBlanc v. Burcevski* (1995), 176 A.R. 373, 34 Alta. L.R. (3d) 289 (Q.B.), aff'd 200 A.R. 218, 51 Alta. L.R. (3d) 24 (C.A.). The author testified on behalf of the plaintiff in this matter. See also *Baker v. O'Hanley*, [2001] N.S.J. No. 99 (QL), 2001 NSCS 38 at paras 53-60 and *Rogers v. Grypma* [2001] A.J. No. 1425 (QL), 2001 ABQB 958 at para. 218.

on the subjective, meticulous, high standards previously held by the plaintiff.²⁷

In *Bannon v. McNeely*,²⁸ the economic experts giving testimony assessed the plaintiff's loss of housekeeping capacity in different ways. The plaintiff's expert considered the actual time spent by the plaintiff on housework, while the defendant's expert relied wholly on statistical averages. Binks J. endorsed the approach taken by the plaintiff's expert and commented that the defendant's expert²⁹

described housework as unskilled labour and belittled the "quality" and "management" characteristics of housework which were addressed by [the plaintiff's expert]. He took a minimum hourly wage of \$6.40. [His] approach is impeached in characterizing and valuing housework in such a way because the "replacement cost" presently paid by Zurich for the very work in issue by Mrs. Bannon was valued by them at more than \$13.00 per hour.

In *Wade v. Baxter*³⁰ Slatter J. discussed the options facing a court when assessing loss of housekeeping capacity. In that case the Court found that the plaintiff, a single woman in her mid-50's, had suffered a 15% permanent partial disability as a result of the accident. Both parties retained occupational therapists that acknowledged that while the plaintiff

²⁷ See, for example, *Johnston v. Day*, [2002] B.C.J. No. 920 (QL), 113 A.C.W.S. (3d) 636 (S.C.).

²⁸ (1995), 22 O.R. (3d) 396, 28 C.C.L.I. (2d) 266 *sub nom.* *Bannon v. Hagerman Estate* (Gen. Div.), var'd 159 D.L.R. (4th) 223, 38 O.R. (3d) 65 (C.A.).

²⁹ *Supra*, at p. 413 (Ont. Ct. (Gen. Div.)).

³⁰ [2001] A.J. No. 1471 (QL), [2002] 3 W.W.R. 133, 98 Alta L.R. (3d) 230 (Q.B.).

continued to do most of her own light housekeeping she had suffered some loss of capacity. The defendant's expert used a "replacement labour" approach to calculate the size of the loss. This involved an analysis of each task required in the household, an assessment of what was now beyond the plaintiff's capability and the cost of the labour that would be needed to perform those tasks. On the other hand, the plaintiff's expert attempted to determine a percentage loss of capacity to do housekeeping tasks, and then attempted to quantify the loss.³¹ Slatter J. acknowledged that from the perspective of an occupational therapist, the defendant's approach had merit as the therapist would want to ensure that the needs of the patient are met. However, the approach taken by the plaintiff's expert was found, from a legal perspective, to be more accurate. "The task of the court is to assess the loss of housekeeping capacity, and not just the value of the labour required to perform the tasks that the Plaintiff cannot complete."³² The Court then elaborated:³³

When a person is injured and can no longer perform all of her household tasks, she has a number of options including:

- (a) she can simply "do without". In other words she can not clear the snow, or not mow the lawn, or not vacuum, or at least not do so as often.
- (b) she can soldier on and complete the tasks herself. In many

³¹ *Ibid.*, at para. 140.

³² *Ibid.*, at para. 141.

³³ *Ibid.*, at paras. 142-44.

- cases this will involve a cost to her in terms of increased pain, and in a loss of extra time that could otherwise be devoted to leisure activities or resting.
- (c) she can hire replacement labour to actually complete the tasks that she is no longer able to do at her previous level of efficiency.
 - (d) she can rely on family and friends for assistance.

From a legal perspective, it does not make any difference which option the Plaintiff chooses. The loss of housekeeping capacity is the same in each one, and the award of damages should be identical. It is irrelevant that the Plaintiff may receive an award for loss of housekeeping capacity, and never expend any of it on third parties for the purposes of having that housekeeping done. To argue otherwise is to confuse the assessment of the loss of capacity with the quantification of the loss. That the Plaintiff can still do some tasks, but more slowly and with pain, is also relevant.

A court could attempt to estimate a loss of housekeeping capacity in percentages, like a permanent partial disability. This could be done globally, based on the overall loss of housekeeping capacity suffered by the Plaintiff, or on a task-by-task basis, to come up with a global loss of housekeeping capacity. Another approach is to estimate the number of "lost hours" of housekeeping capacity that the Plaintiff has suffered as a result of the injury. Trying to calculate a loss of housekeeping capacity is more an art than a science.

Once some estimate of loss of housekeeping capacity has been made, the second part of the problem must be confronted: how is this loss to be quantified? This problem of converting injuries and

disability into money is common in the calculation of personal injury damages, and is not unique to a loss of housekeeping claim. With a housekeeping claim there is a risk of overlapping with the general damage claim, for example where the Plaintiff can still do something, but with pain. The most common method of quantification is to try and convert the lost capacity into an equivalent number of hours of effort required. The court then looks at the economic value of housekeeping services in the market, and uses that to quantify the loss. In practice, the calculation of the extent of loss of household capacity, and the quantification of that loss, are often rolled into one. But the fact that market rates for household labour are used to quantify the claim does not mean that the damage award is based on the assumption that the Plaintiff will actually go into the market to purchase those services.

The court then said that the plaintiff in that case was unlikely to actually purchase replacement household services because she did not like strangers in her house, she was an industrious, self-sufficient, "stubbornly independent" person who preferred to keep busy, and, consequently, fell into the category of plaintiffs who "soldier on". She would likely only hire labour to perform those tasks (such as snow removal) that were totally beyond her ability.³⁴ Further, the fact she was still able to perform some light housekeeping tasks did not defeat her claim for an award for loss of capacity. The court found those tasks were being done at the cost of increased pain and, the court said, if those tasks take longer than they would have previously, the lost leisure

³⁴ *Ibid.*, at para. 145.

time also represented a loss of capacity which must be compensated.³⁵

Slatter J. then cited case law holding that experts can provide great assistance but that a court should have evidence, as precise as possible, regarding the specific plaintiff's pre-accident duties, responsibilities, standards and the nature of the family unit. This is echoed by Schlosser and Pentelechuk: "The [court's] assessment is made subjectively and based upon evidence of the general standard in the home, and the nature of the family unit; such as marital status, age, whether there are children (etc.). It matters whether the Plaintiff was fastidious or slovenly."³⁶ The Court in *Wade* then stated "In this case there was an over-reliance on statistical and expert evidence. The plaintiff gave very little direct evidence of her pre-accident housekeeping habits and the amount of time she spent on them. Her evidence of her post-accident housekeeping was also very general."³⁷ After reviewing the statistical evidence provided by the experts, Slatter J. concluded "that it is fair and reasonable to calculate the Plaintiff's loss of housekeeping capacity at 30 nominal hours per month, or about 7 hours per week. This includes a factor for tasks the Plaintiff cannot do at all, as well as a factor for tasks she can do, but only with pain or more slowly than before. In that sense they are

³⁵ *Ibid.*, at para. 146.

³⁶ W.S. Schlosser and D. Pentelechuk, *Home Economics: Loss of Housekeeping Capacity*, (paper presented at *Personal Injury: Damages* held by the Legal Education Society of Alberta) 2001 at 3.

³⁷ *Supra*, footnote 30 at para. 147.

‘nominal’ lost hours." The Court then used the "conventional technique" to value the loss using a replacement cost of \$9.48 an hour to award \$15,390 for pre-trial loss of housekeeping capacity. The plaintiff was also awarded \$35,840 for future loss of housekeeping capacity calculated on essentially the same basis to age 75 and after application of a 20% negative contingency to reflect the risk of mortality and earlier ill health.³⁸

Wade supports the proposition that compiling a household diary is a useful way for a plaintiff to estimate the amount of time spent on housework before the accident and in the post-accident period: see Appendix A for an example of a *Diary of Household Activities* that I have designed to assist in the measurement of time use.

An interesting issue arose in *Landry v. McCormick Estate*,³⁹ in which Mr. Landry claimed he was doing about 35% more housework than he used to because of his wife’s impairments. He was awarded \$5,000 for the pre-trial period for a period of three weeks during which the husband had to do most of the housework. The appeal was dismissed and the award was not disturbed. This is similar to *Guthmiller v. Krahn*,⁴⁰ in which a male plaintiff was awarded \$6,900 for past loss and \$21,060 for future loss of housekeeping on the

³⁸ *Ibid.*, at paras. 149-51.

³⁹ *Landry v. McCormick Estate*, [1997] N.S.J. No. 372 (QL), (1997) 161 N.S.R. (2d) 197 (N.S.C.A.) affd [1997] N.S.J. No. 73 (QL), (1997) 158 N.S.R. (2d) 97 (N.S.S.C.).

⁴⁰ [2000] A.J. No. 773 (Alta. Q.B.). The author testified on behalf of the plaintiff in this matter.

basis of “serious” injuries and that the plaintiff’s wife had to do an additional 2.5 hours of housekeeping per week.

In 1998, the Nova Scotia appeal court relied upon *Fobel*⁴¹ in deciding *Carter v. Anderson*⁴², which established that housekeeping awards should not be part of non-pecuniary damages or “loss of amenities”⁴³ and characterized housekeeping losses as follows:

Managing one’s home and keeping it clean and organized is important and necessary for the health and safety of the family. The partial or total loss of that ability has economic value which should be recognized.⁴⁴

In explaining a “judge’s take” on housekeeping claims, Goodfellow J. commented that:⁴⁵

⁴¹ *Supra*, footnote 19.

⁴² *Carter v. Anderson*, [1998] N.S.J. No. 183 (QL), (1998) 160 D.L.R. (4th) 464, 168 N.S.R. (2d) 297, 42 C.C.L.T. (2d) 100 (N.S.C.A.) varying [1997] N.S.J. No. 332 (QL), 72 A.C.W.S. (3d) 1210 (S.C.)

⁴³ *Supra*, footnote 21 at p. 40.

⁴⁴ W. Augustus Richardson, *Claims for Loss of Housekeeping Capacity/Services in Personal Injury and Fatal Accident Cases* (Nova Scotia: The Continuing Legal Education Society of Nova Scotia, January 2001), p. 2.

⁴⁵ *Supra*, footnote 21 at pp. 42-43. For cases in which the court has noted that additional evidence would have assisted them in making an award, see the following cases cited in *Brown’s Economic Damages Net letter on Quicklaw: Baker v. O’Hanley*, [2001] N.S.J. No. 99 (QL), 2001 NSSC 38, (2001) 191 N.S.R. (2d) 179; *Mann v. Klassen*, [2001] B.C.J. No. 1048 (QL), 2001 BCSC 652; *Teed v. Amero*, [2001] N.S.J. No. 266 (QL), 2001 NSSC 97, (2001) 195 N.S.R. (2d) 359, 15 M.V.R. (4th) 61; *Dushynski v. Rumsey*, [2001] A.J. No. 792 (QL), 2001 ABQB 513, [2001] 9 W.W.R. 327, (2001) 94 Alta. L.R. (3d) 26; *Holtman v. Deer Lodge*
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My sense of reading many decisions in this area is that we Judges tend to take the figures advanced and discount them for contingencies, exaggeration or otherwise and probably, the more accurate approach would be to require the plaintiff to set out more detail and specifics and start from the position, what has the plaintiff established as a reasonable standard, then discount that for a myriad of contingencies...

A constant theme throughout all of the cases is the Court's concern for the lack of evidence presented to the Court relating to this claim.

Goodfellow, J.'s "practical suggestions" highlight how important it is to have the plaintiff to fill out a *Diary of Household Activities* such as the one shown in Appendix A.⁴⁶

In *Baker v. O'Hanley*,⁴⁷ Wright J. rejected the actuary's calculation of \$172,543 for housekeeping to age 75 as it was based on a cost of \$175 per week (plus HST), five days per week, but no evidence appears to have been led as to the number of hours the plaintiff could not undertake housekeeping tasks because of the accident: "there [is no] evidence to support the assumption that Ms. Baker is in need of outside housekeeping services five days per week or is

Centre Inc., [2001] M.J. No. 312 (QL), 2001 MBQB 182, (2001) 157 Man. R. (2d) 267; *McIlveen v. McAdam*, [2001] N.B.J. No. 270 (QL), 2001 NBQB 89, (2001) N.B.R. (2d) 1; *McLaughlin v. Scott*, [2001] B.C.J. No. 1569 (QL), 2001 BCSC 1085.

⁴⁶ Goodfellow, *ibid.* at pp. 43-45.

⁴⁷ *Supra*, footnote 26.

likely to become so".⁴⁸ The judge concluded, "There is an insufficient evidentiary foundation for the adoption of the actuarial quantification of this loss made by [the actuary]".⁴⁹ This is an example of how asking an expert to "make an assumption" which is subsequently not supported (either by way of the plaintiff's evidence or statistical data) harms the plaintiff's case and can harm the expert's credibility.⁵⁰ Similarly, in *McIlveen v. McAdam*,⁵¹ the judge noted, "the evidence is insufficient to make separate allowances for future care expenses, future housekeeping expenses or transportation expenses. Those items will be considered in assessing general damages".⁵² In *McLaughlin v. Scott*,⁵³ the court rejected the plaintiff's claim for loss of housekeeping services because she did not establish a need for the services and the evidence with respect to the services performed was not sufficient. The Court noted that the service provider did not testify, and invoices, which were put into evidence, did not break the services down with any particularity or include a record of hours spent.

Richardson confirms this in his analysis of *Hill v. Ghaly*⁵⁴ in which counsel did not provide an 'actuarial'

⁴⁸ *Ibid.* at para. 58

⁴⁹ *Ibid.* at para. 60

⁵⁰ See C.L. Brown, *Economists & Actuaries in Civil Litigation: What does each discipline offer?* (forthcoming in the *Advocates' Quarterly*).

⁵¹ *McIlveen v. McAdam*, [2001] N.B.J. No. 270 (QL), 2001 NBQB 89, (2001) N.B.R. (2d) 1, at para 39.

⁵² *Ibid.* at para. 39

⁵³ *McLaughlin v. Scott*, [2001] B.C.J. No. 1569 (QL), 2001 BCSC 1085, at para 78.

⁵⁴ [2000] NSJ No. 215 (QL), 185 N.S.R. (2d) 298 (S.C.).

evidence on housekeeping losses but simply intoned *Carter*⁵⁵ as precedent, and the claimant was awarded \$25,000 instead of \$45,000 in *Carter*. Indeed, Goodfellow J., in deciding *Cashen v. Donovan*,⁵⁶ noted in relation to slavish reliance on statistics that⁵⁷

There seems to be a growing practice of assuming that blind reliance can be placed upon Statistics Canada or other statistical information that is not tested by cross-examination. Often, the statistical information is based upon surveys that are advanced and collected in part, to advance political agendas...[hence] some caution should be exercised into readily accepting Statistics Canada and other sources as gospel and in replacement of evidentiary base in each case.

Three other Newfoundland cases bear repeating as well as the case that went to appeal in Prince Edward Island. The Newfoundland cases are *McLean v. Carr Estate*,⁵⁸ *Beam v. Pittman*,⁵⁹ and *Kennedy Estate v. Cluney*.⁶⁰ In *McLean* and *Kennedy*, the judge accepted a claim for housekeeping but in the former reduced the hours by 50% and used an hourly replacement rate of \$4.75; in the latter the judge again

⁵⁵ *Supra*, footnote 42.

⁵⁶ (1999) 173 NSR (2d) 87 (S.C.).

⁵⁷ W. Augustus Richardson, *Claims for Loss of Housekeeping Capacity/Services in Personal Injury and Fatal Accident Cases* (Nova Scotia: The Continuing Legal Education Society of Nova Scotia, January 2001), p. 14.

⁵⁸ [1994] N.J. No. 383 (QL), 125 Nfld. & P.E.I.R. 165 (S.C.), revd 138 D.L.R. (4th) 541 *sub nom.* *McLean v. Badejo (Guardian ad litem of)*, 142 Nfld. & P.E.I.R. 25, 4 C.P.C. (4th) 214 (C.A.)

⁵⁹ [1997] NJ No. 8 (QL), 147 Nfld & P.E.I.R. 166 (NFLD. C.A.).

⁶⁰ [2001] N.J. No. 247 (QL), 204 Nfld. & P.E.I.R. 225 (Nfld. S.C.)

reduced the hours by 25% and used Newfoundland's minimum wage, which he cited as \$5.50 in 2000.

Goodfellow, J., who wrote the decision in *Beam v. Pittman*,⁶¹ responded to the question raised in *Dobbin*⁶². In that case, the plaintiff, a nurse, had been involved in three motor vehicle accidents. All three accidents were dealt with in one trial and, in the end, the Court awarded the plaintiff \$80,000 in non-pecuniary damages. The trial judge denied the plaintiff's claim for special damages for heavy housekeeping, garden care and snow removal which had been done by her boyfriend, her brother and his friends. The trial Court found the services were not essential and therefore, not recoverable on the basis of the decision in *Dobbin*. (Indeed the trial Court stated that were it not for *Dobbin* it would have held there should be no recovery when there is no evidence the services were provided under an expectation that the providers would be eventually paid if damages were recovered).⁶³ The trial Court did, however, state that the plaintiff's difficulties with housekeeping, garden care and snow removal up to the date of trial were a factor in calculating the amount of non-pecuniary general damages, again, referring to *Dobbin*.⁶⁴

At the appeal, the defendants in all three actions argued that the award for non-pecuniary damages was

⁶¹ *Supra*, footnote 55.

⁶² *Dobbin v. Alexander Enterprises Limited* (1987), 63 Nfdl. & P.E.I.R. 1

⁶³ *Ibid.* at para. 47.

⁶⁴ *Ibid.*, at para. 8.

inordinately high. Each took a different approach relying on different precedents. In reviewing those precedents, the Court of Appeal commented that the trial judge in the case before it had added another element to the mix, namely the pre-trial loss of homemaking capacity, which did not appear to have been considered as part of non-pecuniary general damages in the other cases. On that point, Cameron J.A. for the court said:⁶⁵

It is clear that damages may be awarded for loss of housekeeping capacity. The issue raised, indirectly, by this case is in what way should pre-trial loss be dealt with. In *Dobbin*, Goodridge C.J.N. recognized that services provided prior to trial might indeed be claimed, whether or not they were provided gratuitously; that is, there need not have been a contract for compensation of another or an agreement for future payment to ground a claim. He distinguished between those cases which would be compensated by way of pecuniary damages and those which would be subsumed within general damages (non-pecuniary loss) on the basis of whether the services were essential. Essential services would be recovered as pecuniary damages. Inconvenience would be considered under non-pecuniary loss.

In this case, the trial judge held that the services performed were not essential and were, therefore, not recoverable. However, he included Beam's "difficulties" with housekeeping, garden care and snow removal in calculating non-pecuniary general damages. I interpret this as a finding by the trial judge that Beam's problem was more in the nature of difficulty in completing tasks than incapacity. He found that heavy housework would lead to muscle spasms and increased pain and that cooking brings on discomfort.

⁶⁵ *Ibid.*, at paras. 34 and 37.

The Court then commented that it was unfortunate that the amount for loss of housekeeping capacity was not separated from the conventional award for traditional non-pecuniary loss, making review of the decision more difficult particularly in light of the ceiling on awards for non-pecuniary damages established by the Supreme Court of Canada. The court then found that an award of \$4,000 to \$6,000 for loss of housekeeping capacity would have been appropriate and, therefore, the more accurate comparison to other cases would be based on a non-pecuniary damage award of \$74,000 to \$76,000.⁶⁶ Cameron J.A. then stated that "I would describe the award in this case as generous, more generous than I would have been in the circumstances, but not wholly erroneous"⁶⁷ and affirmed the trial judge's decision.⁶⁸

II. TRENDS IN HOUSEKEEPING AWARDS IN CANADA, 1990 - 2001

⁶⁶ *Ibid.*, para. 38.

⁶⁷ *Ibid.* at para 45.

⁶⁸ The Court of Appeal also affirmed the trial judge's award of future annual payments in the amount of \$2,400 for housekeeping, \$500 for dog care, \$500 for lawn care and \$600 for snow removal until the plaintiff reached 60 years of age, dismissing the plaintiff's appeal that the award should have been for the remainder of her life expectancy which, at trial was 32.95 years. The Court of Appeal said there was no basis upon which to overturn the trial judge's finding that by age 60 the plaintiff would not have been doing her own housekeeping in any event: *ibid.*, at para. 50

My firm⁶⁹ has reviewed more than 1300 cases from *Quicklaw* over the period 1990 to 2001 for all of Canada. From these, 388 were available for statistical analysis; only half were amenable to regression analysis when missing data was filtered out. The following results surfaced:

- Awards were significantly statistically linked to the plaintiff's level of income and severity of injury
- Awards were highest in Ontario and Newfoundland, and lowest in Saskatchewan and Nova Scotia. The former is a surprising result given the no-fault regime, but could simply reflect the pre-1994 cases
- Awards averaged \$25,000 across Canada, with a high of \$45,000 in Ontario and just more than \$30,000 in Newfoundland and Alberta (despite the higher average income in Alberta than in Newfoundland), and less than \$20,000 in Saskatchewan and \$15,000 in Nova Scotia
- Awards equaled \$15,500 for mild⁷⁰ injuries, \$30,000 for moderate⁷¹ injuries, and \$47,500 for severe⁷² injuries⁷³ across Canada

⁶⁹ Brown Economic Assessments, see www.browneconomic.com.

⁷⁰ Defined as soft tissue injuries, cuts, bruises, other injuries with full recovery.

⁷¹ Defined as chronic pain, broken bones.

⁷² Defined as major back injury, bone loss/fracture, spinal cord injury, brain injury, or head injury.

⁷³ Admittedly, results are sensitive as to how the plaintiff's injuries are categorized.

- Housekeeping awards were generally valued at one-third of awards for non-pecuniary damages, and mirrored these closely from 1990 to 2001 (see Figure 6 below)
- Surprisingly, females received lower housekeeping awards than males, but this could be because males represented in these cases had suffered more severe injuries, reflected in the higher non-pecuniary awards; and because males have higher incomes, and we found income level was statistically correlated with amount of the housekeeping award. Also, even though there were fewer cases in which males were awarded housekeeping amounts, there were two cases that were substantial and thus influenced the small set of “male” cases⁷⁴
- Housekeeping awards fluctuated with the level of the plaintiff’s income – the higher the income, the higher the housekeeping award
- Trends in awards have varied since 1990. The amount of housekeeping awards surged in the 1994-96 period and peaked at almost \$30,000; in the past two years (2000-01), awards have declined to \$23,700 across Canada.
- Many of the statistical variables explained only a small part of the housekeeping award

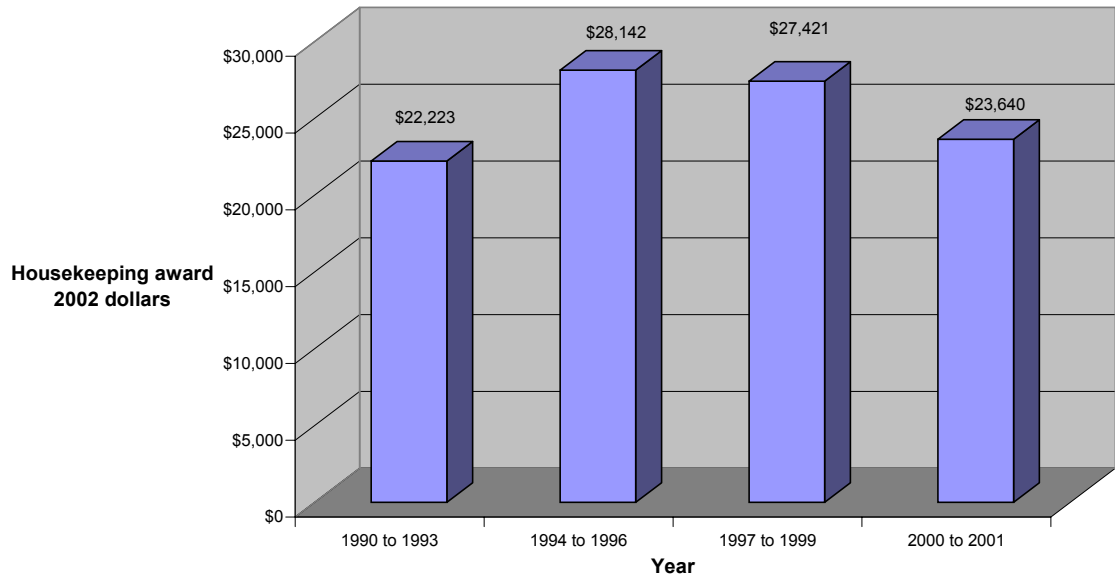
⁷⁴ *Jaillet v. Allain* [1995] N.B.J. No. 314 (QL), (1995) 165 N.B.R. (2d) 161 (\$227,071) and *Peddle (Litigation guardian of) v. Ontario (Minister of Transportation)* [1997] O.J. No. 1874 [1997] O.J. No. 2830 [1998] O.J. No. 5265 (\$392,476).

Other supplemental data on items such as type of dwelling, marital status and number of children were insufficiently documented in the reasons for judgment in order to determine any impact on awards for valuable services. The power to offer further explanation is beyond the realm of statistical analysis due to the lack of tangible data and the subjective influences such as findings on the credibility of the plaintiff and variances due to judges deciding the cases.

See Figures 1 through 6 below for graphical representation of housekeeping award trends by year, province,⁷⁵ gender, severity of injury, plaintiff's level of income, and correlation with non-pecuniary damages, respectively.

⁷⁵ Note the anomalous results for Manitoba; this is because the housekeeping award for *Lyne v. McClarty* [2001] M.J. No. 195 (QL), 2001 M.B.Q.B. 88, a medical malpractice case, was \$228,503. The other four cases had awards ranging from \$3,000 to \$20,000.

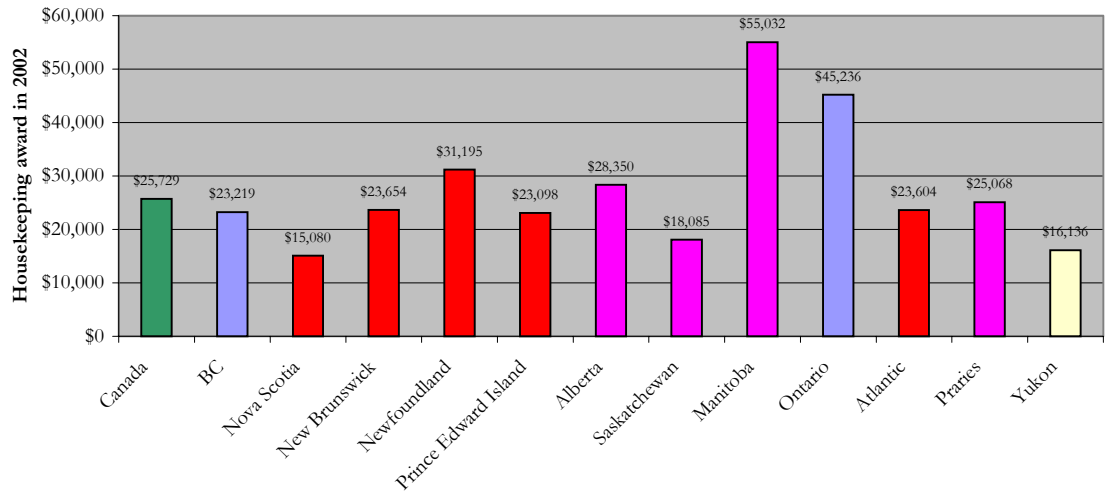
Average Housekeeping Award Over Time (Canada)



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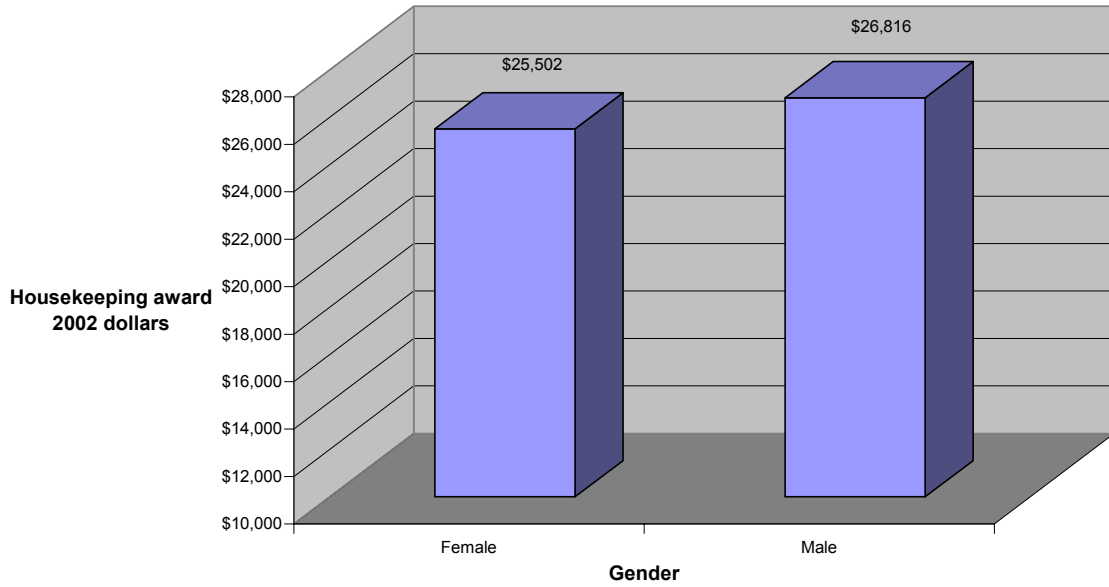
Housekeeping award by province



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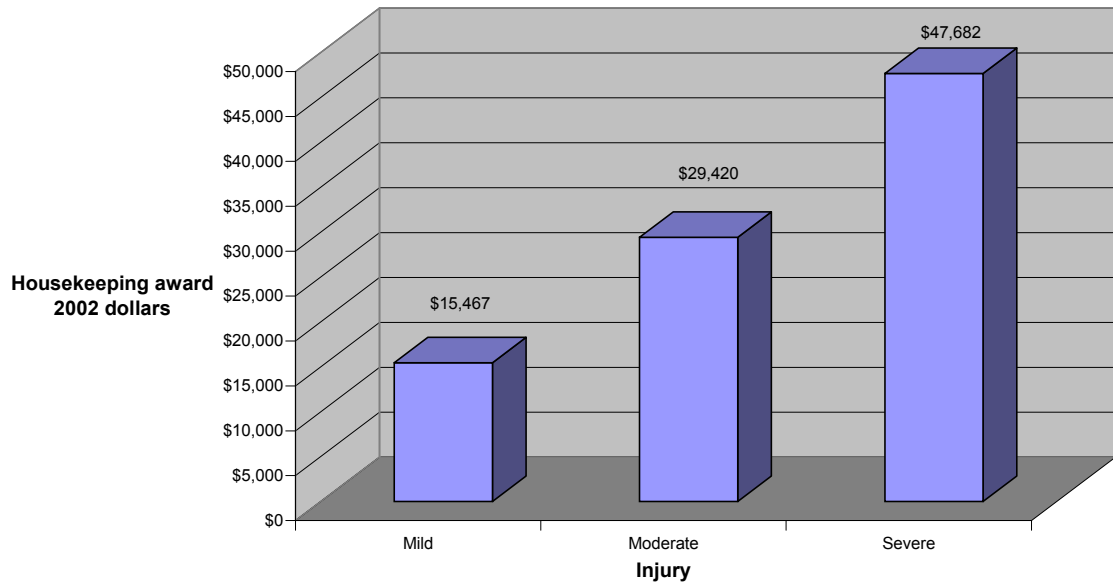
Average Housekeeping Award by Gender (Canada)



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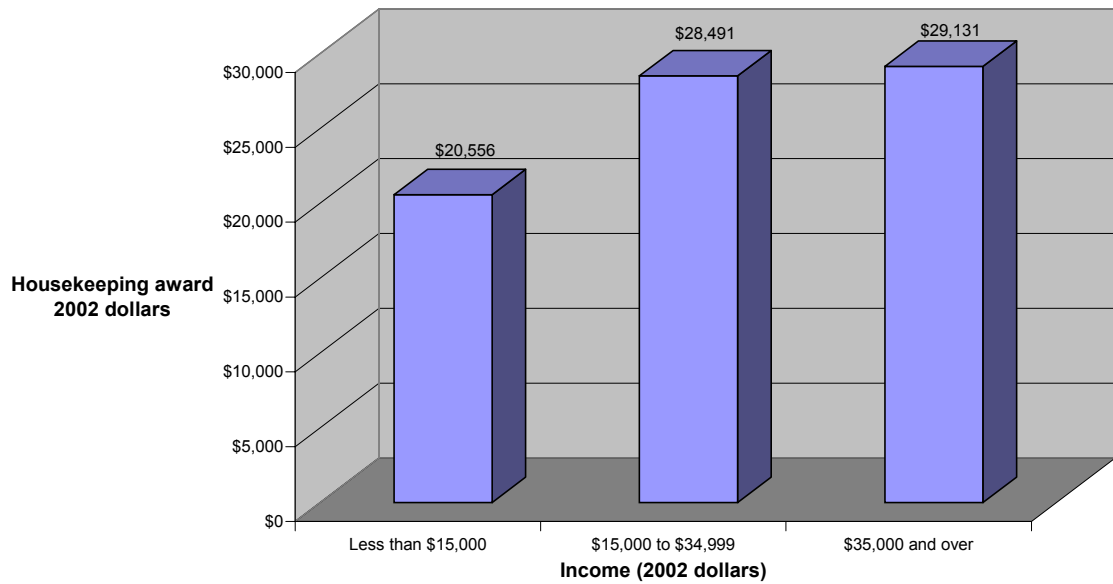
Average Housekeeping Award by Injury (Canada)



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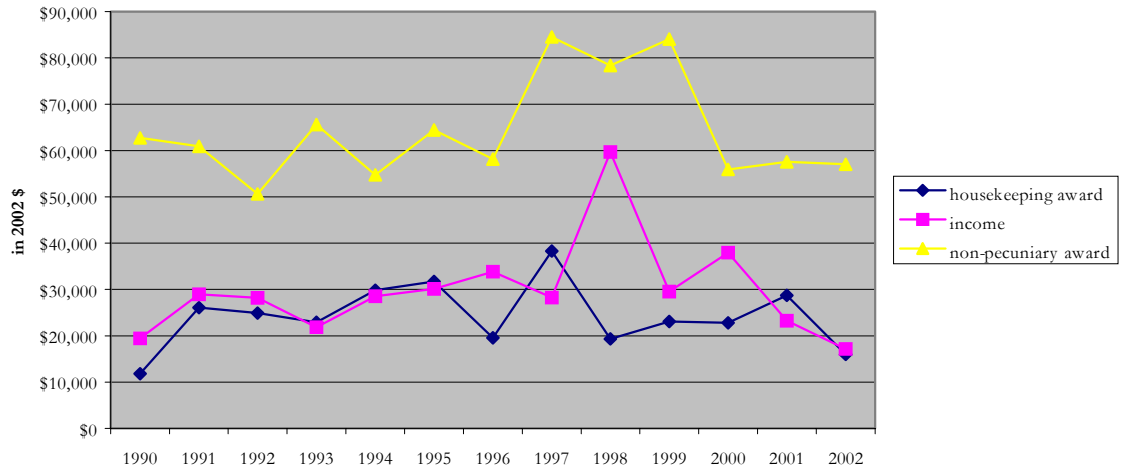
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Average Housekeeping Award by Income (Canada)



Note there is a significant correlation between non-pecuniary and housekeeping awards as shown in the figure below, which is what we would expect.

Housekeeping/non-pecuniary awards and income by year



III. TIME USE DATA & REPLACEMENT RATES

III.a Measurement of Time Spent on Household Activities

Statistics Canada has invested heavily in its time use questions, enlisting the assistance of various interdepartmental committees and focus groups. Thus, even though the “social desirability” effect⁷⁶ can overestimate time spent on housework, Statistics Canada found that the

⁷⁶ The social desirability effect can be explained as: “For instance, respondents may choose answers that correspond to societal norms, or they may respond the way they think the interviewers expect them to, out of a desire to be polite and co-operative.” Nancy Zukewich Graham, “Attitudes Toward Women, Work and Family” (Ottawa: Statistics Canada, Autumn 1997) *Canadian Social Trends*

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appearance of the word “work” in the questions resulted in “serious downward bias in the number of unpaid hours reported”. Thus it may be that respondents do not consider childcare, care-giving or other volunteer activities “work” and thus do not include them. To this extent, they underestimate hours spent in these categories.⁷⁷

The usual source of information for valuing litigants’ claims for household work is a *Diary of Household Activities*, a form which is usually provided to the claimant by the claimant’s lawyer or expert, which the claimant uses to recollect his or her household chores before and since the accident. Appendix A provides a sample of a form I routinely use in cases when I am asked to calculate a potential loss of housekeeping capacity. This form incorporates Statistics Canada’s survey methodology.

⁷⁷ Statistics Canada, Statistics Canada’s *Measurement and Valuation of Unpaid Work* (Ottawa: Statistics Canada, October 28, 1998), catalogue 71F0023XIE, p. 8.

*III.a.i Definition of Household Work*⁷⁸

Debate centers on which activities to include in unpaid work. Unpaid work measured for the Gross Domestic Product (GDP) narrowly defines unpaid activities as “yielding goods and services which in principle could be exchanged.”⁷⁹ Statistics Canada’s standard definition is: “economic services produced in the household and outside the market, but which could be produced by a third person hired on the market without changing their utility to members of the household.”⁸⁰

Appendix A shows the list of activities that Statistics Canada counts when surveying Canadians about time spent on housekeeping work.

⁷⁸ For additional definitions, see *Households’ Unpaid Work: Measurement and Valuation* (Statistics Canada catalogue #13-603E, No. 3-Occasional, December 1995), p. 17.

⁷⁹ *Households’ Unpaid Work: Measurement and Valuation* (Statistics Canada catalogue #13-603E, No. 3-Occasional, December 1995), p. 6.

⁸⁰ William Chandler, “The Value of Household Work in Canada, 1992”, Statistics Canada catalogue #13-001, *National Income and Expenditure Accounts*, 4th quarter 1993.

*III.a.ii Time Use Studies*⁸¹

Statistics Canada has been a “world leader” in the field of published studies on unpaid work. Indeed, Statistics Canada has one of the most comprehensive programs of any statistical agency in the world. The first estimates on the volume and value of household work were published in 1978, the second in 1985, the third in 1992 and the fourth in April 1994. These studies measured the value of household work as a percentage of GDP. Time use studies, different from the value studies, are conducted through Statistics Canada’s *General Social Survey* (GSS) program. The most recent GSS survey of time use was conducted in 1998, with results made available in 1999.⁸² (Note the data in Table 1 compares time use data for 1992 and 1998).

⁸¹ Much of the information about time use studies has been summarized from Bernie Paille, “Estimating the Volume of Unpaid Activities in Canada, 1992: An Evaluation of Data” from the General Social Survey, *General Social Survey Working Paper #10*, January 1994; from *Households’ Unpaid Work: Measurement and Valuation* (Statistics Canada catalogue #13-603E, No. 3-Occasional, December 1995); and based on consultations with Statistics Canada’s Housing, Family and Social Statistics division.

⁸² Statistics Canada, Statistics Canada’s *Measurement and Valuation of Unpaid Work* (Ottawa: Statistics Canada, October 28, 1998), catalogue 71F0023XIE, 1-3. The 1998 survey interviewed almost 11,000 Canadians aged 15 and over living in private households in the 10 provinces.

Table 1
Average Hours Spent in Housework by Employment Status, Gender
and Household Composition, Canada 1992 & 1998 (hours/week)

Household type	1992		1998	
	Men	Women	Men	Women
Employed Person				
-Single 15+, no children	8.6	14.0	10.6	17.5
-Single 15+, children 5+	n/a	25.8	n/a	27.3
-Multiple Adult, no children	11.0	19.1	13.7	21.2
-Multiple Adult, children under 5	20.5	35.6	25.3	38.1
-Multiple Adult, children 5+	15.0	29.4	21.2	30.7
Persons Keeping House				
-Single Adult, children under 5	n/a	53.3	n/a	52.4
-Single Adult, children 5+	n/a	46.6	n/a	50.4
Retired Persons				
-Single Adult, no children	21.8	23.7	21.2	25.4
-Multiple Adult, no children	22.8	32.8	23.9	31.8

Note Table 1 shows that people (both men and women) reported doing more housework, in all categories, in 1998 versus 1992. Researchers note that total “work time” for Canadians increased between 1992 and 1998, such that personal care activities such as sleeping, eating, washing and dressing were sacrificed for leisure time.⁸³ The total workday

⁸³ Janet Fast, Judith Frederick, Nancy Zukewich and Sandra Franke, “The time of our lives...” *Canadian Social Trends* Winter 2001 catalogue no. 11-008 at 20.

of parents grew by almost one hour over the past decade.⁸⁴ This may be related to the aging population.

As expected, “people keeping house” spend far more time doing housework (roughly twice as much) than those employed in the labour market; and the gap between time spent by men and women narrowed in 1998 from what it was in 1992, though still appreciable.⁸⁵ More housework is done in homes with more than one parent (an increase which is more pronounced for women⁸⁶), but not appreciably more when children are older than five. As expected, children increase the housework load, but this decreases as they age. Retired persons are reportedly doing as more housework than parents without children, but this statistic does not reflect three influences: (1) retired people generally have more time for housework given the reduced paid labour; (2) retired people change their composition of activities, *i.e.*, they do far less maintenance and repair (see Table 3 below) and hence a component of the time they spend could be

⁸⁴ Janet Fast, Judith Frederick, Nancy Zukewich and Sandra Franke, “The time of our lives...” *Canadian Social Trends* Winter 2001 catalogue no. 11-008 at 21.

⁸⁵ This is consistent with findings in Statistics Canada, Statistics Canada’s *Measurement and Valuation of Unpaid Work* (Ottawa: Statistics Canada, October 28, 1998), catalogue 71F0023XIE, 9 and Janet Fast, Judith Frederick, Nancy Zukewich and Sandra Franke, “The time of our lives...” *Canadian Social Trends* Winter 2001 catalogue no. 11-008 at 20.

⁸⁶ Janet Fast, Judith Frederick, Nancy Zukewich and Sandra Franke, “The time of our lives...” *Canadian Social Trends* Winter 2001 catalogue no. 11-008 at 21.

leisure if concentrated in gardening or baking;⁸⁷ (3) retired people may do the activity more slowly so that it takes longer.⁸⁸ To account for these influences, I incorporate a “health contingency” (see section III.c below).

High income households spend little more than half the time on housework that low income households spend, but devote similar amounts of time to meal preparation, shopping and child care.⁸⁹ However, 25% of high-income households eat one restaurant meal in a day compared to 13% of low-income households.⁹⁰

Figure 7 summarizes the allocation of time distributed to household chores by type of activity for Canada in 1998. Technological advances have not made as much difference as expected in time devoted to housework due to the fact that although tasks generally take less time, the homes and gardens of the middle and upper classes are larger and many people have more material possessions requiring maintenance and repair. As well, there is a belief that

⁸⁷ For instance, Fast, Frederick, Zukewich and Franke note that “People aged 45 to 69 who are not employed spend nearly an hour more per day on leisure activities than they did in 1986”. (Source: “The time of our lives...” *Canadian Social Trends* Winter 2001 catalogue no. 11-008 at 22).

⁸⁸ This is echoed in W. Augustus Richardson, *Claims for Loss of Housekeeping Capacity/Services in Personal Injury and Fatal Accident Cases* ((Nova Scotia: The Continuing Legal Education Society of Nova Scotia, January 2001), p. 16.

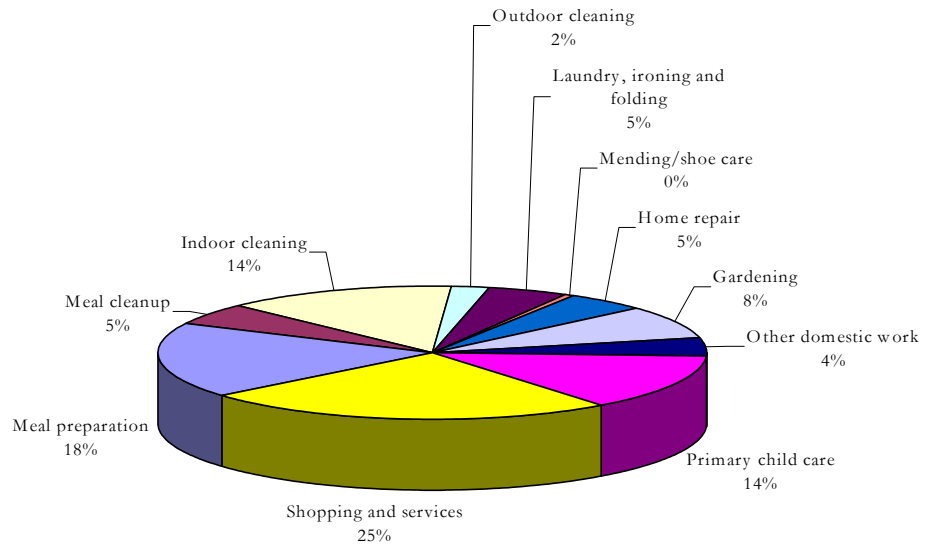
⁸⁹ Cara Williams, “Time or money? How high and low income Canadians spend their time” *Canadian Social Trends* Summer 2002 catalogue no. 11-008 at 8.

⁹⁰ Cara Williams, “Time or money? How high and low income Canadians spend their time” *Canadian Social Trends* Summer 2002 catalogue no. 11-008 at 9.

“standards of personal and household presentability are higher.”⁹¹

⁹¹ Cara Williams, “Time or money? How high and low income Canadians spend their time” *Canadian Social Trends* Summer 2002 catalogue no. 11-008 at 9.

Figure 7: Composition Time Spent on Household Activities, 1998: Population 15+



Source: Statistics Canada's *General Social Survey 1998*, special tabulation.

III.b Replacement Rates in Canada⁹²

As author Richardson notes, “Most appellate courts in Canada, when faced with the issue of valuing the impairment of household services (particularly in cases of future loss), have adopted some form of the replacement cost analysis.”⁹³ Table 2 below summarizes the most recent synthesis of replacement rates by province in Canada, using data from statistical sources as well as Quicklaw cases.

There is recognition that the replacement rates shown in Table 2 below are far below “agency” rates, that is, the rates quoted by maid agencies who advertise in the Yellow Pages. The courts may be attempting to reconcile the income actually earned by the homemakers (shown by the statistical research shown in Table 2 below) with “agency” rates, which include components for profit and overhead expenses, which are not properly part of the “housekeeping capacity” award. Another reason for the discrepancy in these rates is cited by Schlosser and Pentelchuk:⁹⁴

⁹² Reproduced from *The Economics Editor*, Volume 1, No. 82, June 2002, Alberta edition. (See www.browneconomic.com, click “The Economics Editor”).

⁹³ W. Augustus Richardson, *Claims for Loss of Housekeeping Capacity/Services in Personal Injury and Fatal Accident Cases* ((Nova Scotia: The Continuing Legal Education Society of Nova Scotia, January 2001), p. 11.

⁹⁴ W.S. Schlosser and D. Pentelchuk, *Home Economics: Loss of Housekeeping Capacity*, paper given at *Personal Injury: Damages* held by the Legal Education Society of Alberta 2001 at 4-5.

...it has been argued that assessing the loss based on commercial rates over-values the claim. Professionals charging commercial rates are certainly able to do any enumerated household tasks more quickly and efficiently than the Plaintiff might ever have done. The potential for over-compensation comes in when the Plaintiff's lost hours are valued at commercial rates.

Note, however, Moreau, J.'s adverse finding on this point in *Phillips v. Rost*⁹⁵ and Sulyma, J.'s disagreement with this principle in *Vershoor v. A.G.T. Ltd.*⁹⁶

III.c “Health” or disability adjustment

I apply a “health” contingency between retirement and 80 for ‘non-participation’, that is, the possibility that the person would no longer have done household work despite the accident in question. This contingency takes into account three factors: (i) that seniors *change* the distribution of their activities (see Table 3 below) such that some tasks become hobbies, thus blurring the distinction between work and leisure (and I only quantify work); (ii) with more time and possible reductions in health, retirees and seniors perform tasks more slowly and with less efficiency; and (iii) ailing health eventually reduces participation in activities altogether. Accordingly, I use probabilities of “healthy life

⁹⁵ (1996), 185 A.R. 241, 40 Alta. L.R. (3d) 246 (Q.B.) The author testified on behalf of the defendant in this matter.

⁹⁶ *Supra*, footnote 12.

function” by gender from *Healthy Life Expectancy*,⁹⁷ which reduces the compensation each year in the same way a mortality contingency does (it should be noted that a mortality contingency is also included to reflect the possibility of death – in which cases household services would not be performed – but this is *not* the same as ceasing the calculation at age 80 or including the healthy life expectancy probabilities, because survival probabilities extend until age 105).

Below, I summarize participation rates from Statistics Canada for 1998 for retired males and females for various domestic chores, primary childcare, and shopping and services.

⁹⁷ *Healthy Life Expectancy: 1997 Tables* (Shawnee Mission, KA: Expectancy Data, 2000).

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Table 3
Participation Rates for Individuals Performing Household Work
By Age, Canada, 1998

	<i>Under Age 65</i>		<i>Age 65+</i>	
	Male	Female	Male	Female
<i>Domestic Work:</i>	85%	95%	90%	95%
Cooking/washing up	63	85	64	89
Housekeeping	22	59	27	66
Maintenance and Repair	9	4	9	2
Other household work	27	33	40	35
<i>Primary Child Care:</i>	16%	24%	--	--
<i>Shopping & Services:</i>	38%	47%	48%	42%

Source: Statistics Canada, *Overview of the Time Use of Canadians in 1998*, (1999) Statistics Canada Catalogue No. 12F0080XIE, Tables 1 and 2.

The probabilities of “healthy function” from *expectancy data* replicate the impact of seniors not participating in various activities and/or performing them more slowly, or as hobbies. This approach is consistent with the findings in “Estimating Lost Household Services: Persons Over 50.”⁹⁸

This approach is consistent with a recent case in New Brunswick. There, the court found that the loss of valuable services award should be cut off at age 60 in consideration for the fact the plaintiff had congenital spondylolysis which could develop into spondylolisthesis and because of the "age associated" development that "even healthy people start hiring others to perform the valuable services referred to in [the plaintiff's occupational health expert] report at some stage usually at or near retirement".⁹⁹

⁹⁸ Michael L. Brookshire and Elizabeth A.W. Gunderson, “Estimating Lost Household Services: Persons Over 50”, *Journal of Forensic Economics* 13(1), 2000, pp. 11-21.

IV. ON-LINE HOUSEHOLD CALCULATOR TOOL

Brown Economic Assessment's *Housekeeping Loss Calculator*™ calculates quantum damages on loss of housekeeping claims for personal injury and wrongful death litigation in a matter of minutes. It provides convenient quick access to a calculator tool for a “sanity” check on the plaintiff's estimates and/or to advise a client of their estimated housekeeping claim. Alternatively, judges could use the tool to do their own calculations given parameters determined during the trial.

The hours the plaintiff/deceased spent on housekeeping activities is determined by way of a brief questionnaire (a condensed version of Appendix A). The impact on the plaintiff or the deceased's dependents, in terms of household work, is calculated. The program also features provincial/territorial real discount rates (to correspond to the province or territory in which the incident occurred and will be litigated) and provincial/territorial replacement rates for housekeeping services (to correspond to the province or territory in which the plaintiff or survivor will reside and require housekeeping services). These rates differ across the country and therefore have significant impact on the calculation of the loss (see Table 2 above).

⁹⁹ *Morris v. Collette* [2001] N.B.J. No. 298 (QL), 2001 N.B.Q.B. 111, para. 234.

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The calculations executed by the program include past (date of incident to current date) and future lifetime losses (current date until housekeeping losses are no longer sustained). Past losses are based upon the allocation of time to household chores prior to the incident. Future lifetime losses include inferences about impairment or plateau in capacity, aging, health status, retirement, as well as loss of a partner, mortality, and children leaving the home.

Features of the program are as follows:

- Pre-incident hours done before the incident are inputted by the user, as is the capacity immediately following the incident and whether it will plateau in the future (see Appendix A);
- Our *Diary* form attempts to generate a more realistic provision of hours devoted to housekeeping by:
 - Constraining the work week to 168 hours
 - Asking the plaintiff to allocate her/his time to all other activities first Avoiding the “open-ended” question: ‘how much time do you spend on X activity’?Hours no longer required due to the decedent’s absence are taken into account;
- Housekeeping duties are assumed for 50 weeks per year, in order to allow for 2 weeks of vacation;

- Annual cost (hours lost x weeks per year x replacement rate) is calculated based on the housekeeping replacement rate for the plaintiff or survivor's province or territory of residence, based on statistical averages obtained from Statistics Canada's 1996 Census and Quicklaw rates from case law (see Table 2);
- Annual losses are assumed to cease at age 80, as statistics indicate this age when household chores tend to cease and/or assistance is required for such activities;¹⁰⁰
- A steady-state real discount rate is used based on the province or territory where the incident occurred (see chapter 8);¹⁰¹
- Annual costs are assumed to increase at the rate of inflation;
- An "empty nest" adjustment captures a reduction if there are one or more children in the household;
- Gender-specific "health" contingencies are included (see section III.c above);

¹⁰⁰ This is *not* the same as calculating the losses to the end of life expectancy – as I also reduce the losses each year for the probability that the plaintiff or deceased would have died before age 80. Effectively, this means that losses are reduced substantially as the plaintiff or decedent approaches age 80, by as much as 35%. See C.L. Brown, *Damages: Estimating Pecuniary Loss* loose-leaf (Aurora, Ontario: Canada Law Book, 2002), section 9.3.c.

¹⁰¹ Real discount rates: BC – 3.5%, AB – 3.5%, SK – 3%, MB- 3%, NWT –2.5%, Nunavut – 2.5%, YK – 3.85%, ON – 3.85%, NB – 2.5%, NS – 2.5%, PEI – 2.5%, NF – 3.50%. See chapter 8.

- Gender-specific “mortality” contingencies are included.

The fee per housekeeping loss calculator estimate is \$150 plus GST and an administration fee, which is authorized online (securely encrypted) with the submission. Additionally, if Brown Economic Assessments is hired to complete a written assessment for the same case, the \$150 is deducted from the overall fee. Toll-free assistance is provided.

Following the calculation, a sensitivity analysis page is provided which allows for adjustment to:

- The hourly housekeeping rate,
- The weekly housekeeping hours lost and
- Percent change in impairment to accommodate recalculations.¹⁰²

The number of sensitivity analysis calculations is unlimited for the original purchased session.

The pages below illustrate the input form, the output form,¹⁰³ and the sensitivity page.

¹⁰² For instance, if it was found that the plaintiff's losses are expected to cease by the date of valuation and thus incur only past losses, the user could input 100% to question 9 at the year in which full recovery is anticipated.

¹⁰³ Note the output form in the on-line version lists the assumptions following the estimate, but I have already listed them above.

Housekeeping Loss Calculator input

Diary of Housekeeping Activities (Personal Injury)

In the Absence of the Incident



Note that this record-keeping form pertains to the hours of work the plaintiff used to do or was capable of doing had the incident *not* occurred.

Name:

Gender: Female Male

Date of Birth (mm/dd/yyyy): / /

Date of Incident (mm/dd/yyyy): / /

Number of Children at Home: None One or more

Province of residence:

Date of Calculation: October 24, 2002

Province in which incident occurred:

			<input type="text" value="40"/>
		<input type="text" value="8"/>	<input type="text" value="56"/>
		<input type="text" value="2"/>	<input type="text" value="14"/>

4.	How much time did you spend each WORKDAY (i.e., whatever days on which you worked, which could have been on a weekend or at night if you worked shift work) on all leisure activities (e.g., television, movies, dining out, sporting events, visiting friends and family, etc.)?	2 hours per day multiplied by 5 days per week	10
5.	How much time did you spend each DAY OFF (i.e., whatever days you had off work) on all leisure activities (e.g., television, movies, dining out, sporting events, visiting friends and family, etc.)?	2 hours per day multiplied by 2 days per week	4
6.	TOTAL #1 to #5		124
7.	Regular housekeeping hours = 168 hours per week less total hours (in #6):		44
8.	Percentage of household work you could do immediately after the incident:		25 %
9.	If you expect your condition to improve, when do you expect to reach a steady level, and what percentage of household work do you expect to be able to do at that time? (Please leave blank if you do not expect your condition to improve.)		Condition will reach a steady level in 3 years (after the incident) to 80 %

Submit

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Housekeeping Loss Sensitivity (Personal Injury)

Use this calculator to adjust the future housekeeping loss based on a change in housekeeping hours, a change in hourly rate or adjust when and if the plaintiff's condition might improve (or plateau).

Sensitivity Factors & Results	Estimate	Original
Hourly rate (in 2002 \$)	\$ 8.51	\$8.51
Regular Housekeeping Hours	30 hours	44 hours
Percentage of household work you could do immediately after the incident	25 %	25 %
Weekly housekeeping hours lost (immediately after date of incident)	22.50 hours	33.00 hours
Condition will reach a steady level in	3 years	3 years
... after the incident to	80 %	80%
Weekly housekeeping hours lost (after condition improved to a steady level)	6 hours	8.8 hours
Past loss	\$28,205	\$41,367
Present value of <i>future</i> loss	\$42,111	\$61,762
<i>Total</i> loss	\$70,315	\$103,129
Sensitivity impact (percentage changed from original calculation)	-31.82%	

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"Valuable Services Trends in Housekeeping Quantum

across Canada, 1990-2001"

V.

VI. HOUSEKEEPING LOSS CALCULATOR
(PERSONAL INJURY)

VII. OUTPUT SHEET

Calculated on: October 24, 2002
Reference ID: 0-1345589790

Name:	Jane Doe
Gender of the injured	Female
Date of Birth :	January 1, 1967
Date of Incident	June 26, 1998
Age at time of incident:	31
Age at time of calculation:	35
Province of residence	Newfoundland
Province of incident	Ontario

- Value at age 31 (1998 \$): \$13,595
(33.00 hours/week lost based on
25% capacity)
- Value at age 34 (2001 \$): \$3,744
(Changed to 80% capacity)
- Value at age 35 (2002 \$): \$3,744

Past Loss (from date of incident to the date this calculation is made):	\$41,367
Present Value of Future Loss (from the date this calculation is made to when the plaintiff is 80 years old):	\$61,762
Total Loss of Housekeeping Capacity	\$103,129

Please note that this estimate is a preliminary result only. It has not been verified or attested to by Brown Economic Assessments and as such no representative of Brown Economic Assessments will support this estimate for litigation purposes. It is intended only as an estimated potential loss of housekeeping capacity of the plaintiff, and as such depends entirely on the user's input data, which Brown Economic Assessments has neither supplied nor certified.



The estimate was calculated based on the following economic assumptions:

- This estimate represents lifetime cost as of the date of incident;
- Annual Cost is calculated using a rate of \$8.51 per hour in 2002 dollars (based on replacement rates used in Newfoundland judgments, as well as statistical averages obtained from Statistics Canada's 1996 Census);
- The 2002 rate has been adjusted for prior year dollars for the past lost using Statistics Canada's wage inflation index for "personal & household goods repair & maintenance", NAICS code 8114;
- Annual loss is assumed to cease at age 80 (based on research regarding participation rates of seniors in housekeeping activities);
- The estimate is based on a mandated real discount rate of 3.85%, which pertains to the province in which the incident occurred (Ontario);
- The annual estimate assumes housekeeping duties for 50 weeks per year, to allow for 2 weeks of vacation per year;
- Annual costs are assumed to increase at a rate of inflation of 1.68% (based on the University of Toronto Institute for Policy Analysis' forecast);
- A mortality contingency is included (as per Statistics Canada's Life Tables, Canada and the Provinces, 1990-1992, Table 2);
- A health adjustment is included (based on *Expectancy Data* published in Healthy Life Expectancy: Mortality and Morbidity Analysis 1997 Tables, Shawnee Mission, Kansas, 2000, Table 3).

For further information on the methodology and assumptions, see C.L. Brown, *Damages: Estimating Pecuniary Loss* (Aurora, Ontario: Canada Law Book) 2001, Chapter 9; C.L. Brown, *Exposing and Remediating Vexing Problems in Housekeeping Claims for Personal Injury and Wrongful Death Cases: An Economist's View* published in the Advocates' Quarterly (1997).

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VIII. CONCLUSION

It is clear from a review of recent case law that courts prefer evidence tailored to the plaintiff, and while statistical evidence is helpful as a “sanity check” on the plaintiff’s estimates, it is not a substitute. Also, there are many cases still decided where *no* evidence is provided to the court, and judges have been clear that had such evidence been tendered they would have made a more concise and usually more generous award.¹⁰⁴

It also appears that awards are more likely to be ordered by the courts when the plaintiff is more severely injured (a “common sense” finding), and when the plaintiff’s income level is higher. There is a strong positive correlation between the level of non-pecuniary damages and

¹⁰⁴ For cases in which the court has noted that additional evidence would have assisted them in making an award, see the following cases cited in *Brown’s Economic Damages Net letter on Quicklaw: Baker v. O’Hanley*, [2001] N.S.J. No. 99 (QL), 2001 NSSC 38, (2001) 191 N.S.R. (2d) 179; *Mann v. Klassen*, [2001] B.C.J. No. 1048 (QL), 2001 BCSC 652; *Teed v. Amero*, [2001] N.S.J. No. 266 (QL), 2001 NSSC 97, (2001) 195 N.S.R. (2d) 359, 15 M.V.R. (4th) 61; *Dushynski v. Rumsey*, [2001] A.J. No. 792 (QL), 2001 ABQB 513, [2001] 9 W.W.R. 327, (2001) 94 Alta. L.R. (3d) 26; *Holtman v. Deer Lodge Centre Inc.*, [2001] M.J. No. 312 (QL), 2001 MBQB 182, (2001) 157 Man. R. (2d) 267; *McIlveen v. McAdam*, [2001] N.B.J. No. 270 (QL), 2001 NBQB 89, (2001) N.B.R. (2d) 1; *McLaughlin v. Scott*, [2001] B.C.J. No. 1569 (QL), 2001 BCSC 1085.

housekeeping award, again reflecting the seriousness of the injury. There has been a significant increase in awards to male plaintiffs.

While the average awards across Canada have been fairly modest, the cases and data do suggest that tailored evidence (such as a *Diary* filled out from Appendix A or a cost of care assessment) and a reasonable replacement rate (ranging from \$9 to \$14 per hour, depending on province of residence) will result in an award worth claiming and calculating. This is heightened in fatality cases, where replacement of services involves far more than housekeeping, since parental assistance such as tutoring and childcare have to be replaced.

IX. REFERENCES

- Brown, C.L., *Damages: Estimating Pecuniary Loss* loose-leaf (Aurora, ON: Canada law Book, 2002).
- Brown, C.L., *Brown's Economic Damages Netletter (Quicklaw)*, released weekly, code BROW.
- Brown, C.L., *The Economics Editor*, Volume 1, No. 82, June 2002, Alberta edition
- Brown, C.L., "Exposing and Remedying Vexing Problems in Housekeeping Claims for Personal Injury and Wrongful Death Cases: An Economist's View" (1997) 19(1) *Advocates' Quarterly* 1
- Brookshire, Michael L. and Elizabeth A.W. Gunderson, "Estimating Lost Household Services: Persons Over 50", *Journal of Forensic Economics* 13(1), 2000
- Chandler, "The Value of Household Work in Canada, 1992", Statistics Canada catalogue #13-001, *National Income and Expenditure Accounts*, 4th quarter 1993
- Cooper-Stephenson, K. '*Sliding Doors II' Valuing Alternative Life Patterns in Personal Injury Damages Assessment*, prepared

for the National Judicial Institute and
presented in May 2002 (unpublished paper)

- Fast, Janet, Judith Frederick, Nancy Zukewich and Sandra Franke, “The time of our lives...” *Canadian Social Trends* Winter 2001 catalogue no. 11-008
- Goodfellow, Walter E. *A Discussion of Valuable Services*, (Nova Scotia: The Continuing Legal Education Society of Nova Scotia, March 26, 1999)
- *Healthy Life Expectancy: 1997 Tables* (Shawnee Mission, KA: Expectancy Data, 2000)
- Paille, Bernie, “Estimating the Volume of Unpaid Activities in Canada, 1992: An Evaluation of Data” from the General Social Survey, *General Social Survey Working Paper #10*, January 1994
- Richardson, W. Augustus, *Claims for Loss of Housekeeping Capacity/Services in Personal Injury and Fatal Accident Cases* (Nova Scotia: The Continuing Legal Education Society of Nova Scotia), January 2001
- .Schlosser, S. and D. Pentelechuk, *Home Economics: Loss of Housekeeping Capacity*, paper given at *Personal Injury: Damages* held by the Legal Education Society of Alberta 2001

- ❑ Statistics Canada, Statistics Canada's *Measurement and Valuation of Unpaid Work* (Ottawa: Statistics Canada, October 28, 1998), catalogue 71F0023XIE
- ❑ Statistics Canada, *Households' Unpaid Work: Measurement and Valuation* (Statistics Canada, December 1995) catalogue #13-603E, No. 3-Occasional
- ❑ Williams, Cara, "Time or money? How high and low income Canadians spend their time" *Canadian Social Trends* Summer 2002 catalogue no. 11-008