

Vincent v. Abu-Bakare
[2003] N.B.J. No. 198 2003 NBCA 42 No. 64/02/CA

Drapeau C.J.N.B., writing for the majority in *Vincent v. Abu-Bakare*,¹ emphasizes the importance of calculating damages when there are quantifiable elements that can be calculated, such as risk of future lost earnings or profits:

If pecuniary general damages for loss of earning capacity were untethered to the risk of future lost earnings or profits, their quantum would be wholly arbitrary. In addition to being irregular and unpredictable, awards would not be subject to meaningful appellate review since there would be no parameters for their determination. Thus, in the case at hand, Mr. Vincent's cross-appeal would be a pointless exercise, even though the compensation he seeks (\$100,000) might make just as much sense as any other sum. In my view, such a result is unacceptable, having particular regard for the fact that the losses in question are pecuniary in nature. See Cara L. Brown, ***Damages Estimating Pecuniary Loss***, looseleaf (Aurora, Ont.: Canada Law Book, 2001), at p. 1-5. (para. 57)

The Chief Justice went on to reassert the importance of properly evaluating expert evidence and the weight that can be given to a particular expert's opinion:

In his April 7, 2000 medico-legal report, Dr. Forsythe expresses no opinion on the issue of early retirement. At the request of counsel, Justice Glennie declared Dr. Forsythe "an expert in the field of orthopaedic surgery" despite the fact that Mr. Vincent did not undergo orthopaedic surgery to any injured part of his body that may prove disabling in the future. Just as significantly, Justice Glennie did not declare Dr. Forsythe an expert in the fields of orthopaedics in general, pain management, psychology, occupational therapy or vocational assessment. See Cara L. Brown, ***Damages Estimating Pecuniary Loss*** and Mary Gerace-Gold, Joan Rinas, and Reuben Green, Future Economic Loss: A Triad of Views Necessary to Quantify Damages, 8 *Advocates' Soc. J. No. 1*, 9-26. (para. 69)

¹ [2003] N.B.J. No. 198 2003 NBCA 42.