IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Morrison v. Moore,*
2009 BCSC 1656

Date: 20091202
Docket: M063841
Registry: Vancouver

Between:

Susan Morrison,
John Morrison, an infant by his Guardian Ad Litem, Mrs. Morrison,
Matthew Morrison, an infant by his Guardian Ad Litem, Mrs. Morrison,
Amie Morrison, an infant by her Guardian Ad Litem, Mrs. Morrison, and Elizabeth Morrison, an infant by her Guardian Ad Litem, Mrs. Morrison

Plaintiffs

And

Sukhvinder Kaur Moore

Defendant

Corrected Judgment: Figures were corrected at paragraphs 104 and 121 on January 12, 2010.

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

Counsel for the Plaintiffs:	T.J. Delaney
Counsel for the Defendant:	L.J. Mackoff and B.L. Adlem
Place and Date of Trial:	Vancouver, B.C. September 8, 9 and 10, 2009
Place and Date of Judgment:	Vancouver, B.C. December 2, 2009

INTRODUCTION

[1] William (Bill) Morrison was killed in a motor vehicle accident on November 14, 2005, leaving behind a wife and four young children. As he was walking across a residential street near his home in Burnaby he was struck by a vehicle driven by the defendant. The accident happened at approximately 9:00 a.m. just after Mr. Morrison had dropped his children off at school.

[2] The defendant has admitted liability for the accident.

[3] This action is a claim for damages under the *Family Compensation Act*, R.S.B.C. 1996, c. 126 (the "*Act*"). Under the *Act*, family members of the deceased may claim damages proportioned to the pecuniary loss they suffered as a result of the loss of their relationship with the loved one. The award is only for quantifiable financial loss to the survivors. There is no award for grief: *Ruiz v. Bouaziz*, 2001 BCCA 207, at paras. 44-59.

[4] The plaintiffs are the deceased's spouse, Mrs. Morrison, and his four children.

[5] The claims made by the plaintiffs fall into the following categories:

1) loss of financial support;
2) loss of household and childcare services;
3) loss of care, guidance, and affection;
4) loss of inheritance;
5) special damages (out-of-pocket expenses incurred resulting from the death).

[6] The defendant takes no issue with the special damages claimed in the amount of $8,420.01. These losses are for ambulance and funeral costs.

[7] The major issue between the parties is with respect to the assessment of loss of financial support. Although Bill Morrison had not worked in paid employment for more than four years prior to his death, the position of the plaintiffs is that at the time of his death he would soon have returned to paid employment and would have earned a good income for the next fourteen and one-half years until his retirement at age 65. The defendant says that his earnings would have been modest at best.

BACKGROUND FACTS

[8] Bill Morrison was born February 18, 1955. He was 50 years of age when he died on November 14, 2005. He grew up in Richmond, British Columbia.

[9] Susan Morrison was born August 26, 1958. She grew up in Vancouver. Following high school she received training in accounting and later worked as an accountant and office manager for a large accounting firm.

[10] Mr. Morrison and Mrs. Morrison met in 1989, and married in 1990. In 1991 they had their first child, John. At that time Mrs. Morrison stopped working in paid employment in order to raise the family.

[11] Three more children followed. Matthew Morrison was born in 1993, Amie Morrison was born in 1997, and Elizabeth Morrison was born in 1998. At the time of their father's death the children were respectively 14, 12, 8, and 6 years of age.

[12] There is little detailed evidence concerning Mr. Morrison's work history prior to 1989, when he met Mrs. Morrison. She thought that he had had a variety of jobs after graduating from high school. In 1982 he

earned a diploma in administrative management from the British Columbia Institute of Technology.

[13] During the years prior to 1989, he served in the Canadian Forces Army Reserves. Mrs. Morrison thought that he had done two tours of duty overseas. These tours appear to have been relatively brief, as in 1999 Mr. Morrison was paid a Reserve Forces retirement gratuity in the sum of $17,629.50 on account of 175 days of service.

[14] From 1988 to 1991, he worked as an accountant or financial analyst for several companies.

[15] In 1992, approximately two years after his marriage in 1990 and not long after the birth of his first child, Mr. Morrison paid $17,000 to purchase a franchise in a venetian blind cleaning business called “Shine-a-Blind”. He was the owner and operator of the business for about 27 months, until August of 1994.

[16] This business involved operating a truck equipped with venetian blind cleaning equipment. The business produced little or no income.

[17] In September 1994 Mr. Morrison returned to paid employment. He worked as an accountant with the Loewen Group for three years until June 1997. For the next three years, until March 2000, he worked as a financial manager with Whitecap Books Ltd. His employment was terminated by that company in March 2000. He was unemployed for about 15 months after the termination.

[18] During the years he worked at Whitecap Books, Mr. Morrison took night-school and part-time courses in order to obtain qualification as a Certified Management Accountant (“CMA”), which he achieved in 2000.

[19] However obtaining the CMA designation was not enough to save his job at Whitecap Books. The owner of the company testified that he terminated Mr. Morrison’s employment in March 2000 because Mr. Morrison did not have sufficient technical financial skills.

[20] In July 2001, he took a position with an internet start-up company, Dash Tools Inc., where he served as general manager of operations. He continued in that position until he died in November 2005.

[21] Mr. Morrison derived no formal income from his employment at Dash Tools Inc. He received stock options. He hoped that the business would be successful and that he would earn money from the success of the business through exercise of the options after the company went public. Over the years he worked for the company, he received a number of small advances estimated by the company’s president and majority owner, Mr. Vian Andrews, as being a total of approximately $25,000.

[22] For a number of years prior to his death Mr. Morrison had been engaged in various money-losing multi-level marketing ventures.

[23] Mrs. Morrison was forced to obtain employment following her husband’s departure from Whitecap Books. She commenced employment with a Richmond manufacturing company in 2001. At the time of Mr. Morrison’s death, she remained employed there as an accountant. She continues to work in the same position currently.

[24] Mrs. Morrison testified that shortly before his Mr. Morrison's death, they had decided that he would seek paid employment. She said that their plan was for him to obtain employment, and she would then stop work in order to look after the household and family. She testified that he was looking for work at the time he died.

[25] The plaintiffs argue that in resuming paid employment Mr. Morrison would have had the benefit of his qualification as a Certified Management Accountant that he had obtained in 2000, and that he would earn an income commensurate with other similarly qualified accountants in B.C. Alternatively the plaintiffs argue that he would have earned an income commensurate with his 1999 earnings. 1999 was his last full year of paid employment prior to his death.

[26] The defendant argues that at the time of his death Mr. Morrison had never worked as a CMA, and his employment prospects were not comparable to other similarly accredited persons of his age, who would have more relevant and marketable experience. The defendant further argues that Mr. Morrison was strongly attached to the idea of self-employment, but that his self-employment efforts in the past had been uniformly unsuccessful. He would have continued to waste his time, energy and money on unsuccessful business efforts in future.

LEGAL PRINCIPLES – LOSS OF FINANCIAL SUPPORT

[27] In *Keizer v. Hanna* [1978] 2 S.C.R. 342 [*Keizer*], Dickson J. for the majority of the Supreme Court of Canada stated at pages 351-352:

> It is, of course, true that a trial judge must consider contingencies tending to reduce the ultimate award and give those contingencies more or less weight. It is equally true there are contingencies tending to increase the award to which a judge must give due weight. At the end of the day the only question of importance is whether, in all the circumstances, the final award is fair and adequate. Past experience should make one realize that if there is to be error in the amount of an award it is likely to be one of inadequacy.
>
> … An assessment must be neither punitive nor influenced by sentimentality. It is largely an exercise of business judgment. The question is whether a stated amount of capital will provide, during the period in question, having regard to contingencies tending to increase or decrease the award, a monthly sum at least equal to that which might reasonably have been expected during the continued life of the deceased.
>
> The proper method of calculating the amount of a damage award under *The Fatal Accidents Act* is similar to that used in calculating the amount of an award for loss of future earnings, or for future care, in cases of serious personal injury. In each, the Court is faced with the task of determining the present value of a lump sum which, if invested, would provide payments of the appropriate size over a given number of years in the future, extinguishing the fund in the process.

[28] I note Justice Dickson's caution against inadequacy of the award, and that the court should provide for a sum of money that is "at least equal" to that which might reasonably have been expected.

[29] In this context arguments that the survivors are financially better off as a result of the death should be viewed with considerable suspicion. In *Brown v. Finch* (1997), 42 B.C.L.R. (3d) 116 (C.A) [*Brown*], Esson

J.A., for the court, stated at para. 16 that the following excerpt from the judgment of Willmer, L.J. in *Daniels v. Jones*, [1961] 3 All E.R. 24 (Eng. C.A.), had on a number of occasions been adopted by the Court of Appeal of British Columbia as a sound statement of principles:

> The argument for the defendant, if it be sound, proves conclusively that the plaintiff and her family, so far from having suffered a pecuniary loss, are actually better off as the result of the death of the deceased. Such a result is so repugnant to common sense as to cast a good deal of suspicion on the validity of the argument which leads to it. The fallacy of the argument, I think, lies in the fact that it treats the question to be solved in a case such as this as if it were one of precise arithmetical calculation. But in point of fact the assessment of a claim under the *Fatal Accidents Acts*, 1846 to 1908, is essentially a jury question, as appears clearly enough from the wording of s. 2 of the *Fatal Accidents Act*, 1846, to which Holroyd Pearce, L.J., has already referred. The claim must, of course, be based on the actual known figures, both of the earnings of the deceased and of any pecuniary benefit accruing to the plaintiff as the result of his death. But these figures have to be related to all the other known circumstances of the particular case, and must be considered in the light of a great number of imponderable factors. The result must be largely a matter of estimation, and the jury are directed by the *Act* to award "such damages as they may think proportioned to the injury resulting from" the death.

[30] In *Johnson v. Carter*, 2007 BCSC 622, Slade J. of this Court commented upon the appropriate methodology for calculating the loss of financial support, as follows, at paras. 106-107:

> The conventional approach to determining an award for loss of future earnings is as follows:
>
> 1. A calculation is made of the income which has been lost up to the date of the trial.
> 2. A calculation is made of the loss of future earnings.
> 3. A reduction is then made for personal consumption of the deceased.
> 4. Contingencies are reviewed to determine if a further reduction is required.
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> [*Cogar Estate v. Central Mountain Air Services Ltd.* (1992), 72 B.C.L.R. (2d) 292 (C.A.)]
>
> Loss of support, like loss of future earning capacity, involves an inquiry into the unknowable:
>
> > Because damage awards are made as lump sums, an award for loss of future earning capacity must deal to some extent with the unknowable. The standard of proof to be applied when evaluating hypothetical events that may affect an award is simple probability, not the balance of probabilities: *Athey v. Leonati*, [1996] 3 S.C.R. 458. Possibilities and probabilities, chances, opportunities, and risks must all be considered, so long as they are a real and substantial possibility and not mere speculation. These possibilities are to be given weight according to the percentage chance they would have happened or will happen.
> >
> > [*Rosvold v. Dunlop* (2001), 84 B.C.L.R. (3d) 158, 2001 BCCA 1 at para. 9]

[31] Contingencies may be either positive or negative: *Keizer* at 351; *Brown* at paras. 18-20.

[32] With respect to the question of what would have happened during the period after the death and before the trial, the same principles apply: see *Smith v. Knudsen*, 2004 BCCA 613, where Rowles J.A. stated, at para. 29:

> What would have happened in the past but for the injury is no more "knowable" than what will happen in the future and therefore it is appropriate to assess the likelihood of hypothetical and future events rather than applying the balance of probabilities test that is applied with respect to past actual events.

ISSUES

[33] The issues to be decided are the appropriate amounts of awards for:

1) Past and future loss of financial support
2) Past and future loss of household services
3) Loss of care and guidance for the four children
4) Loss of inheritance
6) Income tax gross-up
7) Public Guardian and Trustee Fees.

ANALYSIS

Past and future loss of financial support

Bill Morrison's projected income

[34] The plaintiffs argue that Mr. Morrison would have commenced employment on or about July 1, 2006, about seven months post-accident, and would have earned an income commensurate other male CMA's of the same age working full time in British Columbia. The plaintiffs instructed an expert witness, Darren Benning, an economist, to prepare a report on this assumption. For his analysis, Mr. Benning utilized 2006 census data from Statistics Canada concerning earnings of British Columbia males working full-time as financial auditors and accountants. On this assumption Mr. Morrison would have earned $110,464 in 2007.

[35] Alternatively, the plaintiffs argue that a more conservative assumption is that Mr. Morrison would have obtained paid employment and earned an income commensurate with the amount of income he earned in 1999, the last full year of paid employment that he had prior to his death. That year he earned $44,693, which would be equivalent to $51,601 in 2006, after taking inflation into account. Mr. Benning prepared alternative calculations on this assumption.

[36] The defendant also instructed an economist, Mr. Douglas Hildebrand. In his report Mr. Hildebrand made no assumptions as to the nature or source of Mr. Morrison's expected earnings. His report sets out calculations for loss of financial support based upon various income assumptions for both of Mr. and Mrs. Morrison.

[37] The calculations of both economists take into account the expected personal consumption amounts of Mr. Morrison.

[38] The reports of the economists do not vary greatly in terms of their methodology and conclusions. The difference is primarily in the assumptions they made and which underlie the calculations they provided to the court in their reports and evidence.

[39] The calculations for loss of financial support also depend upon the assumptions made in respect of

earnings for Mrs. Morrison. The lost financial support is greater if she is not employed, or if she earns less income. The plaintiffs argue that I should conclude that she would have stopped working once Mr. Morrison was employed, or, alternatively, would have worked only part-time, earning 60% of her previous full-time earnings.

[40] The plaintiffs claim a loss of financial support of $465,000, consisting of past financial loss of $125,000 and future loss of $340,000.

[41] The defendant submits that a reasonable assumption for Mr. Morrison's earnings following the date of death and in future would be $55,000 per year, but that he would have continued to spend considerable time and money on unsuccessful business ventures, thus reducing his effective net income to $30,000 per year, and he would not have continued in salaried employment for more than two-thirds of his remaining working years.

[42] The defendant argues that I should assume that Mrs. Morrison would continue to earn $45,000 per year in full-time employment until her retirement at age 61, at which time the couple would retire together.

[43] On this basis, the defendant argues, the loss of financial support that should be awarded is $100,000, consisting of past loss of $15,000, and future loss of $85,000.

[44] The defendant takes no issue with the allocation of the loss among the plaintiffs as suggested by them.

[45] With these positions in mind, I will review the evidence in more detail.

[46] Mr. Allan Schellenberg was a friend of Mr. Morrison's from childhood. They attended kindergarten together. They were close friends as children. They lost touch for a number of years after high school graduation, but became reacquainted around the time Mr. Morrison met Mrs. Morrison. This would have been in 1989, when Mr. Morrison was about 34 years of age.

[47] In recent years Mr. Schellenberg and Mr. Morrison both were active participants in their church, and associated with each other mostly through church activities. They spoke often. Mr. Schellenberg testified that Mr. Morrison believed strongly in the concept of self-employment. He testified that Mr. Morrison wanted to obtain the CMA qualification so that he could better manage his own business. He had some limited awareness of Mr. Morrison's multi-level marketing business ventures. He testified that in latter years Mr. Morrison's initial enthusiasm for new business ventures would over time turn to frustration. He was aware of Mr. Morrison's intention to look for paid employment prior to his death.

[48] Mrs. Morrison confirmed that Mr. Morrison felt that the way to get ahead was to work for oneself.

[49] Mr. Morrison's actions confirm his strong commitment to self employment.

[50] He persevered in the unsuccessful Shine-a-Blind franchise for 27 months from 1992 through 1994.

[51] During the years prior to his death, Mr. Morrison was spending considerable sums on various multi-level marketing ventures. His income tax returns for 1999 and 2000 show business losses in each year of $15,000 or $16,000. For the years 2001 through 2005, the year in which he died, his credit card records show considerable expenditures for two such ventures.

[52] One venture related to the sale of non-toxic natural beauty, health and cosmetic products. Another venture related to the sale of mangosteen juice. The credit card statements show considerable expenses on the couple's joint credit card for the period January of 2004 through July of 2005 for the mangosteen business, which was through a company called XanGo, LLC. Despite the absence of any income during the relevant time, he spent thousands of dollars on the mangosteen product, and its promotion, and on the natural health product venture. The result was that by July of 2005 the couple's joint credit card balance exceeded its limit of $15,000.

[53] Mrs. Morrison was not involved in the businesses and had little direct information about them, beyond being aware of them.

[54] Unbeknownst to Mrs. Morrison, in December of 2003 Mr. Morrison obtained a credit card in his own name through Citibank Canada. The card was primarily used to fund investments in XanGo, LLC, and for cash advances. At the time of his death, the amount owing on this Citibank card was approximately $12,000.

[55] There is no evidence that Mr. Morrison ever made money from any of his business ventures. It is clear that they always lost money.

[56] In 2001, Mr. Morrison became involved in Dash Tools, an internet start-up company, after being unemployed for many months following the end of his employment with Whitecap Books in March 2000.

[57] Dash Tools was founded by Mr. Vian Andrews, who was its majority owner. The company's plan was to develop a computer desktop graphical interface that would be an alternative to a standard web browser.

[58] It was hoped that the program would attract a community of millions of users which in turn would generate large revenues for the company. The plan was to develop the computer software and commence operations on a test basis in late 2005 and at some point to obtain public financing through an initial public offering.

[59] The company never generated any sales revenue. The only revenue was from investments in the company. A total of over $500,000 was invested. By late 2005 the company was out of money and was not meeting the goals set out in its business plan. It became clear to Mr. Andrews that without further cash injections the enterprise would soon have to be wound up.

[60] Mr. Morrison was active in obtaining investors for the company. In October of 2005, when the company's cash resources were completely depleted, Mr. Morrison offered to invest a further $10,000 into the company. Mr. Andrews understood that Mr. Morrison would obtain the money from his personal credit card borrowings.

[61] It is not clear to me whether Mr. Morrison actually invested the $10,000, or merely offered to do so.

[62] Mr. Andrews testified that at the time of his death Mr. Morrison remained strongly committed to the Dash Tools venture. In fact at the time of his death he was on his way to a meeting with Mr. Andrews. He says that Mr. Morrison was “an entrepreneur through to his bones”.

[63] His desire to work for himself was so strong that, as the defendant argues, he was financially irresponsible.

[64] At the time he met Susan Morrison in 1989, and at the time of their marriage, he had accumulated no assets of any kind. The $17,000 he invested into the Shine-a-Blind business in 1992 must have come from borrowings.

[65] During the course of the marriage, the Morrisons had to be regularly assisted by Mrs. Morrison’s parents, who twice loaned the couple $50,000 in order to help them make ends meet. They provided the Morrisons the money necessary for them to buy a house, and they provided ongoing income to Mrs. Morrison through dividends from the remaining assets from a business that they had operated during their working lives.

[66] Despite the extremely limited financial means of the family, Mr. Morrison spent four years in the unsuccessful Dash Tools business without any appreciable remuneration. During that time he also invested substantial sums that the family could ill-afford in other unsuccessful business ventures.

[67] It appears likely that the Dash Tools venture would have remained unsuccessful even if Mr. Morrison had survived.

[68] Mr. Andrews discontinued the Dash Tools very shortly after death of Mr. Morrison. Although Mr. Morrison’s death was a factor in that decision, I infer that the principal reason Mr. Andrews terminated the venture was that in his opinion it was not viable. He soon went on to other more profitable ventures. There was no indication in the evidence that Mr. Morrison would have become involved in Mr. Andrews’ other ventures.

[69] On the other hand the fact that, as Mrs. Morrison testified, the couple had decided that Mr. Morrison would seek paid employment suggests that Mr. Morrison’s faith in Dash Tools was at least weakening. Had he obtained paid employment, Dash Tools and the multi-level marketing ventures would have become sidelines only.

[70] There is some tangible evidence that at the time of his death Mr. Morrison was taking steps to seek paid employment. On October 28, 2005, Mr. Andrews prepared a draft reference letter which he sent via e-mail to Mr. Morrison for his review. No letter was finalized or signed by Mr. Andrews however.

[71] After Mr. Morrison’s death, Mrs. Morrison found a number of internet job search printouts gathered by him. The printouts are all dated early November, 2005. The printouts relate to various jobs as a senior accountant, corporate controller, assistant controller, or financial manager.

[72] Mrs. Morrison thought that he may have had a couple of interviews prior to his death but there is really no evidence to support that.

[73] The positions that Mr. Morrison was investigating typically required formal accounting qualifications such as the Certified Management Accountant designation that Mr. Morrison had achieved.

[74] I accept that Mr. Morrison was in fact looking for work in paid employment, however reluctantly, at the time of his death. Mrs. Morrison says that the couple had made a decision in that regard. This is supported by the evidence of Allan Schellenberg. There is some objective evidence that Mr. Morrison was looking for work. I have concluded that Dash Tools would not have continued. This would have compelled Mr. Morrison to seek other work.

[75] Historically, during the years 1989 through 2001, Mr. Morrison had worked steadily, and during most of those years had earned a modest income as an accountant. In the late 1990s he worked hard to obtain the CMA designation.

[76] As of November 2005, at the age of 50, Mr. Morrison was in dire need of an income.

[77] However, the assumption given by the plaintiffs to Mr. Benning that Mr. Morrison's income would have been commensurate with other similarly qualified male professional accountants of his age in British Columbia is not realistic.

[78] Mr. Morrison had never worked as a professionally qualified accountant. His experience was not comparable to other 50 year old male professional accountants in British Columbia, who would typically have had many years of relevant experience. At Dash Tools, Mr. Morrison performed very little accounting work, due to the nature of the company as a start-up without any business revenue. In fact, Mr. Andrews testified that Mr. Morrison was primarily engaged in technical operations. Mr. Morrison had not actually worked as a hands-on accountant since leaving Whitecap Books in March of 2000.

[79] Mr. Morrison would have had difficulty competing for work with other similarly qualified persons in 2006. He had been terminated from his last real employment with Whitecap Books in March of 2000. His experience with Dash Tools would have been of limited benefit to prospective employers.

[80] The plaintiffs' alternative submission that Mr. Morrison would have returned to work commencing July 1, 2006 and earned an income commensurate with his 1999 earnings at Whitecap Books is more realistic.

[81] On that basis, Mr. Morrison would have earned an income of approximately $52,000 commencing July 1, 2006.

[82] While Mr. Morrison may have sought the CMA qualification largely to be better able to manage his own business, the fact is that almost any upper level job in the accounting or finance field would require such a formal designation. I agree that the CMA qualification would have been of significant value in the employment marketplace.

[83] It is therefore reasonable to expect that Mr. Morrison would have earned a higher income than his 1999 earnings. There is even a possibility, though not a large possibility, that after a period of time Mr. Morrison could have achieved a position that would pay him an income commensurate with other similarly qualified British Columbia males of his age. In that scenario, his income would rise to an amount well in excess of $100,000. It is more likely however that he would have earned less than other qualified accountants of his age, but more than he had before as an unqualified accountant.

[84] The defendant argues for a negative contingency based upon the argument that Mr. Morrison might have left the paid employment market at times in order to pursue other unprofitable business ventures. I agree that there was a significant risk of that occurring.

[85] The defendant argues that Mr. Morrison's business ventures would continue to lose money, which reduces substantially the income that Mr. Morrison could otherwise be expected to earn. The defendant argues that this is a second negative contingency that I should consider.

[86] The plaintiffs argue that these negative contingencies are equally balanced by a positive contingency: that there was a possibility that one of Mr. Morrison's business ventures would have been successful, and even highly profitable.

[87] It is tempting to discount this possibility entirely as being unrealistic given Mr. Morrison's history and lack of any demonstrated business acumen. However I think it remains a real positive contingency, although again, not a large one. Many successful entrepreneurs have a history of failures. People routinely learn from failure. Moreover, people who take risks are sometimes rewarded by shear good luck. Mr. Morrison's family has lost the chance that his business fortunes would change for the better.

[88] In my view, taking all circumstances into account, utilizing the sum of $60,000 per annum as the income for Mr. Morrison commencing July 1, 2006, about seven months post date of death, represents a reasonable assessment of his income-earning capability from the date of death to his expected retirement at the age of 65. It represents a compromise figure between his 1999 earnings level, without the CMA designation, and his potential upside income as a CMA, and takes into account the contingencies, both negative and positive, regarding further business ventures that he might have pursued. It also takes into account the negative contingency that Mr. Morrison would have taken time away from paid employment to pursue business ventures that might not be profitable.

Projected income of Susan Morrison

[89] Mrs. Morrison stayed at home and looked after the household and family for 10 years from 1991 to 2001, at which time she was compelled to seek paid employment due to Mr. Morrison's lack of income after his departure from Whitecap Books.

[90] Of necessity, the family's lifestyle and expenses had been very modest at all times. If Mr. Morrison had obtained work at a substantial income, commensurate with other similarly qualified CMAs, then it would be

reasonable to suppose that Mrs. Morrison would indeed have quit work entirely. Given my conclusion that Mr. Morrison's income would not in all likelihood have been commensurate with other CMAs, it is reasonable to conclude that Mrs. Morrison would have continued to work at a part-time level.

[91] Mrs. Morrison's employment earnings in 2005 were approximately $41,000. For purposes of the analysis, I will assume that commencing July 1, 2006, Mrs. Morrison would earn $25,000 per annum for part-time work.

[92] It is convenient to use the calculations for loss of financial support set out in the report of the defendant's expert, Mr. Hildebrand, as his report makes no specific assumptions as to the source of Mr. and Mrs. Morrison's income following the date of death but simply provides calculations for various income levels for both of them.

[93] Mr. Hildebrand's calculations based upon an income level for Mr. Morrison of $60,000 and an income level of Mrs. Morrison at $30,000 are as follows:

Past loss:	$ 59,311
Future loss:	$253,189
Total:	$312,500

[94] There are no specific calculations for Mrs. Morrison earning an income of $25,000.

[95] On the assumption that she earns $15,000, the figures provided by Mr. Hildebrand are only slightly different than his figures at $25,000:

Past loss:	$ 55,916
Future loss:	$261,031
Total:	$316,947

[96] Although the analyses of the expert economists are helpful, the amount to be awarded is not a matter for arithmetic calculation. As stated in *Keizer*, the amount to be awarded is largely an exercise of business judgment, and at the end of the day the only question of importance is whether, in all the circumstances, the final award is fair and adequate.

[97] I assess the past loss at $58,000, and the future loss at $260,000, for a total of $318,000.

[98] The above-noted figures are on the assumption that Mr. and Mrs. Morrison would not have divorced, and that Mrs. Morrison would not remarry.

[99] On Mr. Hildebrand's report, the total financial loss of $312,500 in the scenario where William Morrison earns $60,000, and Mrs. Morrison $30,000, is reduced to $293,390 if I conclude that the couple would not have divorced, but that Mrs. Morrison would remarry.

[100] I do not think a divorce contingency needs to be considered. I consider it highly unlikely that the couple

would have divorced. There are a number of reasons for this. Both parties were relatively mature at the date of their marriage. Susan Morrison was 32 and Bill Morrison was 35. Both were married only once. There were no signs that the marriage was in any trouble. They had never required marriage counselling. They continued to be devoted to each other notwithstanding the financial strains that they had undoubtedly undergone. At the time of Mr. Morrison's death they had four relatively young children, a fact which would have provided a strong incentive to stay together as a couple.

[101] As to remarriage, at trial Mrs. Morrison testified that she had no plans to remarry. She has not had any relationships since Mr. Morrison's death. In my view if remarriage occurs, it would only occur well into the future after the children have grown up, and is therefore not a factor that is significant enough to warrant quantifiable consideration.

[102] Utilizing the percentage shares proposed by the plaintiffs based upon Mr. Benning's report, and which the defendant had no issue with, the loss of financial support award shall be divided as follows:

[103] Past loss of financial support:

Mrs. Morrison:	$32,422
John Morrison:	$ 6,960
Matthew:	$ 6,786
Amie:	$ 5,916
Elizabeth:	$ 5,916
Total:	$58,000

[104] Future loss of financial support:

Mrs. Morrison:	$176,800
John Morrison:	$ 7,540
Matthew:	$ 15,080
Amie:	$ 26,780
Elizabeth:	$ 33,800
Total:	$260,000

Past and future loss of household services

[105] In 2001 when Mrs. Morrison returned to work, Mr. Morrison became the primary caregiver and homemaker for the family. His work at Dash Tools was carried on from his home office, and from the nearby home-based office of the company's principal, Mr. Andrews. During these years Mr. Morrison was responsible for cooking the family dinners, helping the children get ready for school, taking them to school, dealing with teachers, and helping them with their homework. Mrs. Morrison testified that Mr. Morrison was the parent that the children learned to turn to for help. Mr. Morrison was active in Elizabeth's parent participation pre-school, and took on the duty days that were required in that respect.

[106] Mr. Morrison did most of the interior housekeeping, and all of the outside house maintenance. The Morrisons paid a neighbour to wash the floors once a week. This took about two hours.

[107] He supported them in their sports and extracurricular activities. He built a wall at home for lacrosse practise and he installed a basketball hoop.

[108] One of the children, Matthew, was diagnosed with Asperger's syndrome. Mr. Morrison researched Asperger's syndrome and helped Matthew in coping with this syndrome. Mrs. Morrison testified that Mr. Morrison made a "world of difference" for Matthew in that respect.

[109] Allan Schellenberg testified that Mr. Morrison was very devoted to his children and often spoke of them and their activities, and that he was keen to assist them.

[110] In summary, Mr. Morrison was a very valuable husband and parent, in terms of household services, and in terms of care, guidance and affection.

[111] The two economists provided very similar evidence concerning the value of the lost household services. Their calculations were based on statistical averages for the number of hours of household services provided by males who are employed full-time. The calculations for childcare services are based upon the average Canadian family with two children, not four as in the case at bar.

[112] According to Mr. Benning, past loss of household services (without divorce and remarriage contingencies) range from $30,905 to $35,772, with future loss of services ranging from $105,744 to $117,186. Mr. Hildebrand's estimates, also without divorce and remarriage contingencies, range from $31,026 to $33,161 for past losses, and $134,552 and $144,563 for future losses. The amounts vary depending on whether it is assumed Mrs. Morrison works. On Mr. Hildebrand's analysis, the higher amounts are on the assumption that she works. Divorce and remarriage assumptions reduce the estimates somewhat.

[113] The plaintiffs argue that these estimates are understated, given the evidence of Mr. Morrison's value to the family, in respect of domestic services, and the nature of the statistics used by the experts. The plaintiffs argue that an appropriate amount for past loss of services would be $50,000 and future loss of services would be $150,000, for a combined amount of $200,000.

[114] The defendant argues that the total award for household services ought to be $130,000. The defendant argues that a small contingency for divorce and remarriage ought to be considered. The defendant further argues that the fact that the neighbour was hired to clean the house for two hours per week ought to be considered.

[115] I have accepted the argument of the defendant that Mr. Morrison would not have earned an income equivalent or even close to that earned by other similarly qualified Certified Management Accountants. I have also accepted the argument of the defendant that Mr. Morrison would have continued to pursue entrepreneurial ventures such as the multi-level marketing schemes he had been involved in previously. It follows from this that Mr. Morrison would have spent more time at home or working out of the home than

most males who are employed full-time. He had clearly been a devoted father who performed more than the usual amount of household services. This would have continued in almost any scenario that can be envisaged. It is also reasonable to assume that household and childcare services would be more than usual, with four children, rather than two. For these reasons I accept that the estimates provided by the experts are both somewhat understated.

[116] I decline to reduce the award for divorce and remarriage contingencies for the same reasons as previously stated.

[117] The defendant points to the family's need to pay for services of a neighbour for housecleaning services for two hours a week. In my view this is not a material factor. The time involved is small (i.e. approximately 100 hours per annum) and I infer that to the extent that Mr. Morrison was not washing the floors, he would have been doing some other activity, most likely for the benefit of the family.

[118] The award for household services will be $180,000, divided between past loss of services at $45,000, and future loss of services at $135,000.

[119] There were no significant differences between the experts concerning the percentage allocation of household services as between the plaintiffs.

[120] The past loss of services will be allocated as follows:

Susan Morrison:	$33,300
John Morrison:	$ 2,925
Matthew Morrison:	$ 2,925
Amie Morrison:	$ 2,925
Elizabeth Morrison:	$ 2,925
Total:	$45,000

[121] The future loss of services will be allocated as follows:

Susan Morrison:	$113,130
John Morrison:	$ 675
Matthew Morrison:	$ 2,498
Amie Morrison:	$ 7,222
Elizabeth Morrison:	$ 11,475
Total:	$135,000

[122] Interest is payable on the past amounts pursuant to the *Court Order Interest Act*.

Loss of care, guidance and affection

[123] Recognizing that money cannot properly replace the pecuniary value of lost care, guidance and affection of a parent, the courts make a conventional award for this loss. The rough upper limit is currently

$35,000.

[124] There is no question in this case that Mr. Morrison was a valuable parent to his children. The defendant concedes this. The defendant concedes that the current rough upper limit is $35,000, and suggests that a slightly lower amount, of perhaps $30,000, could be made in respect of John and Matthew, who were 14 and 12 years old when their father died.

[125] Although the quantum of this kind of award is essentially arbitrary, in my view a larger sum should be awarded for younger children and a smaller award for older children. Given the rough upper limit of $35,000, the award will be $35,000 for the younger children, Amie and Elizabeth, and $30,000 for the older children, John and Matthew.

Loss of inheritance

[126] At times in the past Mr. Morrison had attempted to save by placing money into registered retirement savings plans. However by the time he died all such plans were completely depleted. The family had no savings and had some debt, in the form of the credit card balances and a bank line of credit in the amount of $20,000. The family home was mortgage free.

[127] Mr. and Mrs. Morrison had made ends meet financially only by receiving substantial financial help from Mrs. Morrison's parents. The home that they lived in was paid for from the proceeds of sale of Mrs. Morrison's townhouse that she owned prior to the marriage. Her parents provided the money to purchase the home that the family lived in. Mrs. Morrison's parents provided annual dividends to Mrs. Morrison and on two occasions lent the family $50,000, and then forgave the loans.

[128] Mr. Morrison had somehow accumulated a tax liability to Canada Revenue Agency which stood at $28,714 at the end of the 1999 tax year. This was paid off during the 2001 and 2002 tax years. Mrs. Morrison was not sure as to the source of the funds for the repayment, but suspected it may have come from one of the $50,000 loans from her parents.

[129] Notwithstanding the fact that Mr. Morrison had accumulated no assets of any kind prior to his death, the plaintiffs argue that a nominal award of $10,000 to each child and $10,000 to Mrs. Morrison should be made for loss of inheritance, on the theory that Mr. Morrison would have obtained steady employment in future, that he had a pattern of savings, and that he was a frugal individual who spent little on himself.

[130] The defendant argues that given his unsuccessful financial history and his propensity to squander money on ill-fated ventures, it was highly unlikely that Mr. Morrison would have sufficient savings to care for himself in a satisfactory manner into his old age, let alone make a bequest to his children or spouse. The defendant argues that only a very modest award of $5,000 to be divided equally amongst the four children would be appropriate in the circumstances.

[131] The plaintiffs argue that even in cases where the deceased had no pattern of saving, the courts have awarded modest amounts for loss of inheritance. As an example the plaintiffs point to *Foster v. Perry and*

VSA Highway Maintenance Ltd., 2005 BCSC 1214.

[132] I have concluded that Mr. Morrison would quite likely have returned to remunerative employment. I have concluded that Mrs. Morrison would continue to work in paid employment. I accept that Mr. Morrison would have continued to attempt to save money, in accordance with his previous pattern when employed. However the family's need for funds was high and it is very unlikely that Mr. Morrison would have saved very much.

[133] Mrs. Morrison was three years younger than Mr. Morrison was, and any modest assets accumulated by him would likely have gone to her upon his death, assuming he predeceased her, as was likely. There would have been very little if anything to leave to the children.

[134] On the other hand, the family's home was mortgage-free. The family's debts were not large. Of necessity the family had lived a very frugal lifestyle. Mr. Morrison spent very little on himself. It is not unusual for frugal persons to accumulate savings in retirement even on a low income, if their expenses are low. Therefore modest awards are justified.

[135] I will award Mrs. Morrison the sum of $10,000, and each child the sum of $5,000 for loss of inheritance.

Income tax gross-up and fees of the Public Guardian and Trustee

[136] The parties agree that there should be an increase in the award to counteract the effect of income tax on the future loss award, and for the expected fees of the Public Guardian and Trustee for managing the awards payable to the children. Both of these amounts should be calculated once the Court makes its decision on the matters at issue.

[137] With respect to the income tax gross-up, the only issue of consequence is with respect to whether I should assume that the funds are invested solely in an income-producing portfolio (as the plaintiffs contend) or in a mixed portfolio of debt and equity (as the defendant contends).

[138] Mr. Benning suggests that the time horizon is relatively short, and that the investment amount is relatively modest, and therefore a portfolio consisting solely of debt instruments would be appropriate.

[139] Mr. Hildebrand suggests that a diversified portfolio of bonds and equities would be associated with lower long-term investment risks and higher expected returns. Investment returns from equities (dividends and capital gains) are taxed at a more favourable rate than is interest income, according to Mr. Hildebrand. The defendant argues that a diversified investment portfolio will reduce or eliminate the income tax gross-up requirement.

[140] I am persuaded that Mrs. Morrison would likely choose the more conservative and secure debt-based investment portfolio, given her very difficult financial circumstances. I further conclude that this would be a reasonable choice on her part, notwithstanding the investment theories put forward by Mr. Hildebrand. I will therefore direct that for calculation purposes an investment portfolio consisting solely of debt instruments

(bonds) should be assumed.

SUMMARY OF CONCLUSIONS

[141] The awards for each category of claim shall be as set out above.

[142] Special damages at $8,420.01 were conceded.

[143] Interest is payable under the *Court Order Interest Act* on the special damages and on the past losses.

[144] For income tax gross-up calculation purposes the debt (bond) portfolio rate of return should be used.

[145] There will be an award for the expected fees of the Public Guardian and Trustee. I understand that the amount can be readily calculated once the other aspects of the court's decision are determined.

[146] The parties will be at liberty to apply to the court in the event that they are unable to agree as to amounts remaining to be calculated, or as to any other matter arising from these reasons.

[147] Defence counsel advised the Court that death benefits in the amount of $36,140 have been paid and ought to be credited to the defendant against any award that is made. The plaintiffs took no issue with this submission and therefore the order should reflect a deduction in that amount.

[148] Subject to submissions of the parties within 45 days of the issuance of these reasons, the plaintiffs are entitled to costs on Scale B.

"The Honourable Mr. Justice Verhoeven"