The Effect Of Living Longer And Working Older



Economic loss calculations can be seriously altered by a wave of new retirement data.

In a typical personal injury case, there are a number of approaches to developing the theory of economic loss and a number of assumptions are made as part of that theory. In cases where a person is unlikely to return to work or has returned to work but is likely to have to retire earlier than otherwise would have been the case, a major part of the theory revolves around the person's expected retirement age, but for the accident. While each case turns on its own facts, to some extent both plaintiff counsel and defence counsel will base their theories on a presumed retirement age. Many defence theories are based on an outdated notion that people are embracing the idea of Freedom 55 and retiring earlier than in previous generations. The recent data on this point clearly shows an upward trend in retirement age. There are two very good reasons for this trend; people are living longer and saving less for retirement and people simply cannot afford to retire.

The Statistics Canada Life Tables synthesize the mortality experience of a population and enables comparative measures of expected longevity. The 2009-2011 Life Tables produced by Statistics Canada were released on September 25, 2013. The Life Tables available prior to 2013 were the 2000-2002 Life Tables released on July 31, 2006. In this short time period, the average life expectancy of females at birth in Ontario increased from 82.04 years to 83.92 years and from 77.37 years to 79.77 years for males. This trend is consistent with data going back to 1920 which shows a steady and dramatic decrease in mortality and corresponding increase in life expectancy. The life expectancy for females has increased from 61 years to 84 years from 1920 to 2011 and from 59 years to 80 years for males. Statistics Canada also predicts that by 2036 the average life expectancy could reach 88.4 years for females and 85.4 years for males.

On the retirement readiness front, the ING Direct Canada 2012 annual survey of Canadians reveals that 56% of Canadians were concerned with not having enough income to sustain a good quality of life during retirement. The results also indicate that 48% of Canadians do not have a financial plan for retirement. The *Toronto Star* recently reported that only one third of the current Canadian workforce is covered by an employer-sponsored defined benefit plan, with this percentage steadily decreasing over time. Only one third of Canadians is contributing to a registered retirement savings plan and nearly half of those contributors are in the top 10 per cent of income earners, making $150,000 a year or more. With Canada Pension Plan

benefits capped at just over $12,000.00 per year, the average working Canadian will face the difficult choice between continuing to work into their “golden years” or alternatively, to accept a drastically reduced quality of life post-retirement.

Factors other than longevity and lack of savings are also at play in terms of people’s decision to postpone retirement. A Statistics Canada Report released in October 2011 entitled *Delayed Retirement: A new trend?* details the following:

- Work is becoming less physically demanding due to technological advances.
- Younger workers are starting full-time work later in life.
- The aging workforce has changed the capacity to replace older workers. The ratio of new workers to retired workers is decreasing dramatically. In 1976, there were 2.3 younger workers aged 25 to 34 years for each worker 55 years or over. The ratio in 2010 was 1.3. The labour market is expected to tighten due to the smaller incoming age cohort.

The effect of these various factors is already apparent in the statistics surrounding retirement. Over the past 10 years alone, the average retirement age of workers in the private sector has increased from 61.5 to 63.5 for men and 61 to 63.1 for women. A 2012 Statistics Canada report on retirement ages sets out that in 2009, a 50-year-old worker could expect to continue working for an average of 16 more years (16.3 years for men and 16.1 years for women), which means retiring at the age of 66. In the late 1990s, expected working life at age 50 was an additional 13 years. It is reasonable to assume that this trend will continue and is likely to accelerate in the coming years.

None of us possesses a crystal ball, but a cautious approach needs to be taken when considering retirement age as part of the theory of economic loss, particularly with younger plaintiffs whose “normal” retirement age would be decades down the road. To suggest that a plaintiff that is currently 25 years of age would likely retire at age 60, but for their injuries, ignores the current trends with regard to overall life expectancy and work life expectancy.

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