

NEWS

LEGAL DISCRIMINATION

Seniors often get a break in personal injury claim lawsuits

One key goal that we strive for in our legal system is consistency.

If two different judges are faced with similar facts, we expect that they will come to similar conclusions.

In the context of a personal injury claim, we expect that people suffering



ACHIEVING JUSTICE

Paul Hergott

that people suffering

similar losses will receive similar financial compensation for those losses; one person suffering a certain degree of chronic pain should be compensated at a similar level as another person suffering a similar degree of chronic pain.

That sounds easy

enough, but often what sounds easy in theory becomes very difficult in practice.

No two people's life circumstances are ever identical, and therefore the impact of pain and other symptoms is never the identical.

Let's say, for example, two people suffer very similar injuries and are left with very similar levels of chronic symptoms, one of the injured victims is 40 and the other is 70.

We'll put them both in the same car, in the same crash

Both are pain free before the crash. Both develop lower back pain that becomes chronic.

Each will suffer that lower back pain for the rest of his or her life.

According to an Inter-

net life expectancy calculator, the senior, if a man, has a life expectancy of another 17 years.

The 40-year-old will have a life expectancy of another 43 years.

Should the senior receive less compensation?

Is fair financial compensation for the senior less than one-half that for the 40-year-old because he will suffer chronic lower back pain for less than one-half as long?

On the face of it, the analysis seems to have some logical merit, but it smells to high heaven.

Our courts have struggled with exactly this scenario, multiple times.

Rather than arbitrarily discounting a senior's entitlement to compensation, our courts have decided that a senior's loss

might even require greater compensation.

There is a passage from a 1967 court judgment that is often quoted by justices of our courts when considering how to compensate those of advancing years.

The judge's view was expressed as follows: "I take the view myself that when one has a person in advancing years, in some respects an impairment of movement may perhaps be more serious than it is with a younger person."

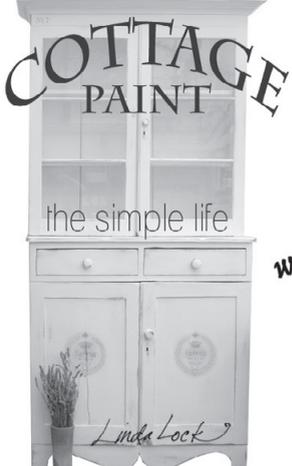
After acknowledging the argument of the defence, that compensation should be lower, the judge continued as follows: "... it is important to bear in mind that as one advances in life, one's pleasures and activities particularly do become more lim-

ited, and any substantial impairment in the limited amounts of activity and movement which a person can undertake, in my view, becomes all the more serious on that account."

Seniors do experience discrimination as a result of their advanced age in our world, but I am pleased to report that such discrimination does not extend to our courts of law.

This column is intended to provide general information about injury claims. It is not a substitute for retaining a lawyer to provide legal advice specifically pertaining to your case. Paul Hergott is a lawyer at Hergott Law in West Kelowna.

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A COMMUNITY recognition award was presented to the City of Kelowna at this week's Union of B.C. Municipalities convention in Vancouver for the city's commitment to use wood for construction of the Glenmore Landfill Building. Accepting the award are Kelowna city councillors Gail Givens, Luke Stack and Maxine DeHart.

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(PERIOD. END OF STORY)

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