



FSAT NEWS

FINANCIAL SERVICES ADVISORY TEAM

SPRING 2019

Welcome to our 22nd issue of FSAT News, a newsletter published by DJB's Financial Services Advisory Team (FSAT) to better inform and help you manage your business's potential.

If you wish to receive further information regarding the services discussed in this issue, please contact a member of our team:

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Lost Pension Benefits in Economic Loss Calculations



The loss of a company funded pension plan can often form a significant component of a person's total loss of employment income, when performing economic loss calculations.

There are two main types of employer pension plans:

1. Defined contribution (DC) plans – Under a DC plan, the amount of the annual contributions to the pension plan are defined under the plan. The contributions are generally based on a percentage of income, such as 5% of earnings. However, they can also be a set amount, such as \$5,000 per year. The contributions are invested on the person's behalf

and at retirement the amount in the fund is used to purchase an annuity for the retiree.

2. Defined benefit (DB) plans – Under a DB plan, the amount of the future pension income the person will receive on retirement is defined under the pension plan. The amount is generally determined by formula based on number of years of service to the company and the employee's average earnings amount at retirement. Contributions to the pension plan are then determined by an actuarial assessment of the amount required to fund the future pension liability.

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Each of the above plans can either be funded by the employee, the employer, or both. The person's loss is based on the lost employer contributions only. The lost pension income funded by the employee is paid out of the employee's wages and salaries, and therefore has already been compensated for when calculating the loss of employment income.

The calculation of a pension loss under a DC plan is generally determined by adding an employer-sponsored benefit to the insured's annual potential employment income based on the amount that the employer would have contributed to the plan on the employee's behalf.

The calculation of a pension loss under a DB plan can be done under either of the following methods:

1. Based on the company's required contribution to the pension plan – The calculation under this approach would be made in essentially the same manner as detailed above for a DC plan (although generally more complicated).
2. By estimating the present value of future lost pension income that the person would have received after retirement – Under this approach, an estimate would first be made of the annual pension that the employee would have received, but for the accident, based on the pension formula. As noted above, the pension formula is generally based on years of service and earnings at the time of retirement. Next an estimate will need to be made of what the person's annual pension will now be, given the accident. We note that this amount may already be calculated and provided on the employee's annual pension statement. The difference between the two calculations would represent the future annual pension loss. As noted above, only the portion of the pension funded by the employer would be included as a loss. Thus, only one-half of the calculated amount would be

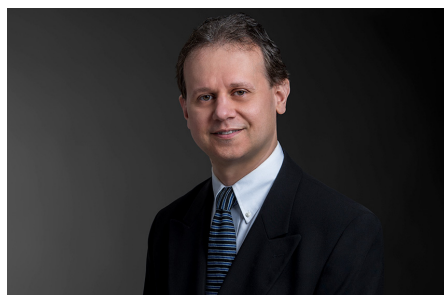
claimed when the pension is to be funded evenly by the employee and the employer. Alternatively, the loss could be calculated and then reduced by the amount of saved contributions that the employee would have made to the plan, had he/she continued working.

For DB plans, the first method is generally preferable for younger and middle-aged persons, where there are a number of years to retirement, and the final earnings amount would be difficult to determine. The second method would often be preferable when the insured was close to retirement at the time of the accident and the relevant amounts required for the calculation can be reasonably estimated.

The calculation of the lost pension benefits under a DB plan can be fairly complicated, and the details of the plan should be reviewed closely. We have seen situations where, as long as the person will continue to qualify for Long-Term Disability benefits, the pension is protected to the point where the person will suffer no (or minimal) loss.

Our Financial Services Advisory Team (FSAT) has significant experience preparing these calculations. In most situations, we are able to estimate the lost pension benefits suffered by the person. However, in complicated situations we will often suggest that the services of a pension expert be obtained to calculate that portion of the person's economic loss. If you have any questions or require assistance with a calculation, please contact a member of our team.

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FSAT SERVICES



- Assistance with Business, Acquisitions & Divestitures, Including Due Diligence & Quality of Earnings Reports
- Collaboratively Trained Professionals
- Child & Spousal Support Income Calculations
- Economic Loss Calculations regarding Motor Vehicle Accidents, Slip and Fall, Medical Malpractice and Dependency Claims
- Experienced Expert Testimony
- Forensic Accounting
- Income Replacement Benefit (IRB) & Other Accident Benefit (AB) Calculations
- Long-Term Disability Calculations
- Matrimonial Disputes
- Mediation Services
- Shareholder Agreements & Dispute Resolution
- Value of Future Care Cost Analysis
- Wrongful Dismissal Claims

Role of an Expert



they acknowledge that, regardless of which party hired them, they have duty to the court to provide an opinion that is fair, objective, non-partisan and related only to matters that are within their area of expertise. The expert also acknowledges they are required to assist the court and that these duties prevail over any duties or obligations to the party that hired them.

When a dispute or litigation arises the people involved will often need to seek the advice of several professionals. While their lawyers will often act as their advocates, other professionals are frequently retained as independent experts. Depending on the nature of the dispute, this type of expert may include psychologists or social workers, medical doctors, real estate appraisers, actuaries, Chartered Business Valuators (CBVs), forensic accountants and economic loss experts.

These experts are expected to assume an objective, neutral and independent role. In matters that proceed to court, the experts will be expected to serve as a neutral expert in order to assist the court. It is important for experts to maintain their independence not only in fact but also in appearance. If a judge believes that an expert has failed to maintain their independence and has assumed the role of an advocate on behalf of the party who hired them, they may either refuse to accept their report and testimony or, if accepted, give it less weight in their decision.

Several years ago, the courts expressed concern about the role of experts and what they felt was an increasing trend for some experts to assume the role of an advocate. This concern led to a requirement for any expert appearing in an Ontario court to sign a form in which

The issue regarding independence was highlighted in a recent court case (Plese v. Herjavec, 2018 ONSC 7749). This case was a matrimonial dispute in which CBVs were retained as independent experts. The judge was critical of the CBV's retained by each party to value Mr. Herjavec's business, stating:

"Both valuers signed the requisite acknowledgement of their duties as experts, namely to provide opinion evidence that is fair, objective and non-partisan. As was the case with the real estate appraisers, their opinions squarely align with the interests of the party who retained them. Again, I am astonished that there should be this kind of disparity between them. I wonder if their results would have been the same had they been retained by the other party. This case highlights in very stark fashion the continued problems with expert evidence. Notwithstanding the experts' clear duties, they nevertheless end up supporting the position of the party who hired them. The changes to the expert rules, and the requirement for experts to acknowledge their duties of independence and impartiality were supposed to solve the problem of experts simply being 'hired guns'. Sadly, the problem remains. I must therefore approach each expert's opinion with a certain degree of caution and skepticism."

When retaining an expert to assist you, it is important for the expert to maintain their independence and to provide a balanced, objective opinion. While it is natural for the party retaining the expert to want that expert to act as their advocate, doing so may ultimately be of limited use as that opinion may be rejected.

An alternative to the 'traditional' model of each party hiring their own experts, involves both parties jointly retaining a single expert. Where an expert is jointly retained, both parties are involved throughout the process, both provide their input and raise any questions they have with the jointly retained expert. In our experience, this approach often leads to a better exchange of information and is less costly than each party retaining separate experts. This approach is used extensively in matrimonial disputes for which the parties agree to and follow a collaborative model. Under the collaborative model, the parties agree to work with their lawyers outside of the court system and to jointly retain any experts that are required to assist them in the collaborative process.

DJB is frequently retained to act as independent experts both by an individual party and on a joint retainer basis. Please contact us if you wish to discuss our role and how we may be able to assist.

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Commercial Litigation Spotlight

DJB's Financial Services Advisory Team (FSAT) has the training and experience necessary to assist you with your various commercial litigation matters. We operate from five offices throughout the Southern Ontario region in order to serve you and your clients better.

Our Commercial Litigation team is led by **Brent Pyper**. We work with plaintiff and defence lawyers in the preparation of a variety of commercial litigation matters, including the following:

- ✓ Asset impairment
- ✓ Business valuations
- ✓ Contract disputes
- ✓ Forensic accounting
- ✓ Loss of income calculations
- ✓ Shareholder / partner disputes

For further information on our services, or to enquire about a specific matter for which you require assistance, please contact one of FSAT members.



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DJB Joins the RSM Canada Alliance

An independently owned member
RSM Canada Alliance



Durward Jones Barkwell & Company LLP has joined the RSM Canada Alliance, a premier global affiliation of independent accounting and consulting firms, effective December 1, 2018.

DJB remains an independent Chartered Professional Accounting firm under this membership. Our clients and contacts will continue to work with the same local teams that they have come to know and trust.

However, this membership gives us new access to a full range of national and international capabilities through RSM Canada LLP. DJB staff

and clients will now have access to new tools, expertise, and practice management resources, including technical resources, marketing and business development, talent management, and career development.

About RSM Canada Alliance

RSM, a leading global provider of audit, tax, and consulting services focused on the middle market, announced the launch of the RSM Canada Alliance on November 26, 2018 – a first-of-its-kind in the Canadian financial industry.

RSM Canada Alliance member firms are separate and independent

businesses and legal entities that are responsible for their own acts and omissions, and each are separate and independent from RSM Canada. Members of RSM Canada Alliance have access to RSM International resources through RSM Canada, but are not member firms of RSM International.

RSM Canada LLP provides public accounting services and is the Canadian member firm of RSM International, a global network of independent audit, tax, and consulting firms with more than 43,000 people in over 120 countries.

DJB Contacts Interested in Buying & Selling Businesses - February 28, 2019



We have clients and contacts that are interested in buying or selling businesses. If you see a possible fit, please contact us so that we can arrange an introduction for you.

BUYERS

- ▶ Private Equity Group that buys majority positions in Canadian companies with EBITDA > \$2m for long-term hold and growth.
- ▶ Looking for a cleaning/vacuuming (not janitorial) company in Southern Ontario.
- ▶ Private Equity Group providing capital and strategic partnerships to \$0.5 to \$3.0m EBITDA businesses in Cda, primarily Ont and BC.
- ▶ Interested in an owner operator retirement situation with approx \$250k to lever with VTB for acquisition.
- ▶ \$500k to \$4m, in any industry, will consider partnership and investment opportunities, including managing or running a business with a minority stake.
- ▶ Two entrepreneurs backed by 16 investor fund looking for \$1.5m+ EBITDA and => 20% ROC.
- ▶ Wholesaler of welding supplies interested in similar businesses in Canada or USA with an EV up to \$5m.
- ▶ Foreign (US) shareholders' investment company makes acquisitions across North America in the manufacturing and agricultural sectors (large farming corporations) with an EV up to \$5m.
- ▶ Food Producer (Pasta/Pizza sauces, Salsa, etc.) and Distributor with \$4.5m sales looking to buy complementary profitable food production company with about \$1m in sales.
- ▶ Looking to grow by acquiring HVAC or related companies in the \$1-10M sales range in the Hamilton/Halton/Niagara regions.
- ▶ Operates an importing business specializing in household (ie - kitchen) gadgets sold to grocery and box store chains. Interested in complementary businesses as well as Hamilton based real estate investment opportunities.
- ▶ Diversified asset management firm focusing particularly on the technology, media, service, renewable energy, real estate and hospitality sectors.
- ▶ Entrepreneurial investment firm seeking to acquire and grow a small to medium-sized business. Looking for a

- company with annual revenues from \$5 to \$30 million and EBITDA from \$1 to \$5 million, anywhere in Canada.
- ▶ Retired individual looking for business to run part time possibly involving his son.
- ▶ Potential client with \$25m annual revenue in mechanical systems for industrial, commercial and institutional construction looking to acquire complementary businesses in SW Ontario.
- ▶ Investment partnership acquiring Canadian companies with \$1m to \$6m EBITDA.
- ▶ Acquires controlling interests in Canadian companies with \$1m to \$5m EBITDA.
- ▶ Manufacturing business within 100 km of Hamilton, sales \$5m to \$10m, EV \$2m to \$3m, could buy in over time or take a significant ownership % and a senior management role.
- ▶ Up to \$7m to invest in auto dealership, wholesale distribution of electrical or HVAC and/or businesses that serve the construction or manufacturing industries.
- ▶ Broker looking for larger real estate offices for acquisition. Would consider any office over 15 people in the Kitchener, Guelph, Milton, Mississauga or Brampton markets and any office with over 50 agents in the Burlington, Hamilton or Oakville market places.
- ▶ Two partner firm in the GTA looking to acquire \$3m to \$10m EV businesses in the GTA/Hamilton area.
- ▶ Interested in troubled situations, successions or high growth companies in distribution or manufacturing.
- ▶ \$1.5m to lever into a business acquisition.
- ▶ Private Holdco looking for investments in the GTA in the industrial manufacturing or services industry. Revenue > \$8m and pays 3 to 4 times EBITDA.
- ▶ Lives in N-O-T-L with approx \$250k cash to lever into business acquisition.
- ▶ Investment group, enterprise value up to \$12m, within 90 minutes of Kitchener.
- ▶ Investment group, Oakville or West GTA, EV \$1m to \$10m.
- ▶ Investment group with approx \$10m equity to place.
- ▶ Marketing individual looking to become co-owner/manager in small company.

- ▶ Private equity firm, seeking \$10m to \$15m enterprise value, 100% sale, owner-operator looking to transition out, Niagara region.
- ▶ Seeking an enterprise with a strategic fit to their business, serving Industrial Distributors, with sales in the range of \$1m to \$20m.
- ▶ Already made one acquisition in the food service industry and are interested in related industry and/or other good opportunities.
- ▶ Historic earnings with potential, located in the Toronto through St. Catharines area, existing management and price of \$1m - \$3m.
- ▶ Anything profitable. Niagara Falls to Oshawa. Up to \$1m.
- ▶ Investment group looking for companies with \$3M-\$30M in sales, focused on B2B services, Healthcare services and software.

SELLERS

- ▶ Medical-legal personal injury graphics business. Sales approx \$1.2m with 10 to 15% pre tax income.
- ▶ Custom brokerage. Sales approx \$900k p.a. Asking \$1.5m for 100% of shares.
- ▶ Security systems and equipment. Sales approx \$1.6m and EBITDA approx \$250k.
- ▶ Engaged in the development, training, and sale and support of business applications software. Revenue of approximately \$4m per annum.
- ▶ Manufacturing business in the Kitchener/Waterloo/Guelph area with approx \$3m in sales and EBITDA of \$250 - \$500k.
- ▶ Retail pet food and supplies store.
- ▶ Corporate group includes a poultry wholesale, distribution and refrigerated logistics company and a boutique retail food store company. Total sales \$7m.
- ▶ Exterior building, vehicle, driveway, sidewalk cleaning service with 2 self contained trucks. Annual revenue approx \$165k.
- ▶ Engaged in removal & disposal of liquid waste & the performance of environmental audits.
- ▶ Restaurant including the land and building. Asking \$3m.

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Economic Loss Quantification Resources

- February 2019

Discount Rates - Section 53.09 (1) and (2)

Trials	Indexed Amounts		Non-Indexed Amounts	
	1st 15 yrs	Thereafter	1st 15 yrs	Thereafter
2015	0.30%	2.50%	2.70%	2.70%
2016	0.00%	2.50%	2.10%	2.10%
2017	0.00%	2.50%	1.70%	1.70%
2018	0.10%	2.50%	2.10%	2.10%
2019	0.10%	2.50%	2.30%	2.30%

General Damages Upper Limit

	Upper	Index	Change
	Limit (\$)	Rate	
1978	100,000		
Dec. 2014	354,701	124.5	1.5%
Dec. 2015	360,399	126.5	1.6%
Dec. 2016	365,812	128.4	1.5%
Dec. 2017	372,650	130.8	1.9%
Dec. 2018	380,057	133.4	2.0%

Indexation Rates

Trials	FSCO SABS Rates		CPI	
	Index Rate	Change	Index Rate	Change
1994	100.0		85.7	
2000	109.2	2.6%	95.4	2.7%
2001	112.2	2.7%	97.8	2.5%
2002	115.1	2.6%	100.0	2.2%
2003	117.7	2.3%	102.8	2.8%
2004	120.3	2.2%	104.7	1.8%
2005	122.5	1.8%	107.0	2.2%
2006	126.7	3.4%	109.1	2.0%
2007	127.5	0.7%	111.5	2.2%
2008	130.7	2.5%	114.1	2.3%
2009	135.2	3.4%	114.4	0.3%
2010	133.9	-0.9%	116.5	1.8%
2011	136.5	1.9%	119.9	2.9%
2012	140.9	3.2%	121.7	1.5%
2013	142.6	1.2%	122.8	0.9%
2014	144.2	1.1%	125.2	2.0%
2015	147.1	2.0%	126.6	1.1%
2016	148.5	1.0%	128.4	1.4%
2017	150.5	1.3%	130.4	1.6%
2018	152.9	1.6%	133.4	2.3%

Ontario Average Industrial Aggregate Wage (\$)

	Average		Change
	Per Week	Annualized	
2011	893.43	46,586	
2012	906.03	47,243	1.4%
2013	920.07	47,975	1.5%
2014	938.36	48,929	2.0%
2015	962.68	50,197	2.6%
2016	973.48	50,760	1.1%
2017	992.32	51,742	1.9%

Ontario Minimum Wage (\$)

Effective Date	Annualized	
	Hourly	40 hr/wk
March 31, 2010	10.25	21,379
June 1, 2014	11.00	22,943
October 1, 2015	11.25	23,464
October 1, 2016	11.40	23,777
October 1, 2017	11.60	24,194
January 1, 2018	14.00	29,200

Average annual earnings of women and men employed full-year, full-time by level of education (\$)

Stats Can data = Year 2014 Restated to estimated 2018 dollars	age 25 to 34		age 35 to 44		age 45 to 54		age 55 and over	
	Female	Male	Female	Male	Female	Male	Female	Male
Grade 9-13, non-graduate	not available	44,100	not available	49,900	not available	47,300	35,300	49,400
Grade 11-13, graduate	46,600	46,500	59,600	62,200	49,000	60,500	49,700	71,500
Some post secondary	not available	48,900	not available	65,400	61,700	47,600	54,600	77,000
Certificate or diploma	40,500	56,800	56,700	75,700	57,600	76,400	53,100	64,700
University degree	53,900	64,500	79,600	105,000	85,500	109,900	78,400	122,200

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