

Can Past Wage Loss Be Recovered In An ICBC Claim When You're Paid "Under The Table"?

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When a person is injured through the fault of another in British Columbia and suffers a past wage loss from an "under the table" job can that past wage loss be recovered in a personal injury action? The answer is yes, however, it is much more difficult to do so than in cases where past income is accurately reported to Revenue Canada.

In a 1992 case from the BC Court of Appeal ([Iannone v. Hoogenraad](#)) the law was summarized as follows:

This plaintiff, like others in similar circumstances, had the burden of leading evidence of past accident wages losses. That will be a difficult burden to discharge where there is no corroborating evidence such as income tax returns, but it is not an impossible burden to discharge. Here the trial judge was satisfied on the evidence that the injuries sustained by the plaintiff prevented him from earning income which he would otherwise have earned. The burden of proof was therefore discharged. The loss was proven. It is not, in my opinion, open to the defendant to avoid compensating for that loss on the ground that unreported income was taken into account in computing it.

While it is possible to recover past loss of income in these circumstances, it is often difficult to do so and reasons for judgment were released today by the BC Supreme Court demonstrating this difficulty.

In today's case ([King v. Horth](#)) the Plaintiff was injured in a 2006 Car Crash in Saanich, BC (greater Victoria). The Plaintiff claimed damages for various losses including past loss of income. At trial he asserted that "he would have been capable of earning greater income as a gardener had he not been injured in this accident". This claim was largely rejected and paragraphs 25-26 of the decision demonstrate Mr. Justice Johnston's skepticism of this claim for lost income where pre accident income was not reported to Revenue Canada:

[25] A second concern respecting Mr. King's credibility relates to his claim for loss of earning capacity arising out of this accident. This claim centers around his assertion that he would have been capable of earning greater income as a gardener had he not been injured in this accident. Prior to this accident the plaintiff did not record, in any fashion, the income he claims that he earned as a gardener, nor did he declare that income on his income tax returns. There is some evidence from a former employer that he had employed Mr. King as a gardener before the accident, however, that employer kept no record of the plaintiff's work hours or his wages.

[26] In a document he submitted to ICBC in February 2006, the plaintiff stated his occupation as a surveyor. He did not mention any work as a gardener. Mr. King testified that he felt it was advisable not to refer to his gardening income in his dealings with ICBC, at least in the beginning, because that income had been earned "under the table."

In addition to making it more difficult to succeed in a past wage loss claim, a further dilemma that can arise in these types of cases are problems with Revenue Canada after trial. Whether or not a past income award is made at trial, Revenue Canada can come after a Plaintiff for back taxes when these types of cases are advanced.

The reason for this is, to discharge the burden of proof, a Plaintiff usually needs to take the stand and testify under oath as to how much money he/she earned historically but failed to report to Revenue Canada. Trial testimony is generally a public record and Revenue Canada can use this sworn evidence to come after Plaintiffs. So, in summary, pay your taxes!