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Damages in Professional Negligence Let Me Explain!?

Where a Plaintiff has received negligent professional advice, they often fail to understand the damages that flow from it.

The Plaintiff says that, if the advice given had been true, they would have made \$millions. Therefore, the Plaintiff asserts that their damages are \$millions.

However, the test for damages in professional negligence cases is based on the financial position the Plaintiff would be in, if the Plaintiff had received competent professional advice.

Let me explain.

Damages are generally defined as:

“the sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.”

Livingstone v. Rawyards Coal Co. (1880) 5 App. Cas. 25 at 39

This can be broken down into:

The Actual Case: The financial position that the Plaintiff is in, having received the negligent professional advice.

The Expected Case: The financial position that the Plaintiff would have been in, but for the negligent professional advice.

The Difference = Damages

continued...

Get My Help in Framing Damages in Your Cases

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The Actual Case - this is something the Plaintiff and the Defendant can generally agree upon.

The Expected Case - in the scenario presented above, the Plaintiff will often assert that if the negligent professional advice had been true, they would have been much better off.

However, the Expected Case is the financial position that the Plaintiff would have been in had the Plaintiff received competent professional advice.

Here are two examples:

Example One

If, as the professional advisor represented, the tax shelter had been accepted by CRA, the Plaintiff would have saved \$millions in taxes.

If the Plaintiff had received competent professional advice, they would have been told that the tax shelter was not acceptable to CRA and would not have proceeded with the tax shelter. Therefore, the actual and expected cases are similar, hence no damages.

Example Two

If the parcel of land the Plaintiff intended to purchase had included the land that the Plaintiff was particularly interested in, then after closing they would own the land that they were particularly interested in.

If the Plaintiff had received competent professional advice, they would have been advised that the parcel of land to be purchased, did not include the land that they were particularly interested in, and they would not have purchased the parcel of land. Assuming that the Plaintiff did not overpay for the parcel of land that they purchased, they are unlikely to have a defensible claim for damages.

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