
By Dr. J. Douglas Salmon, Jr.

As an original member of the OIC's Residual Earning Capacity Designated Assessment Centre (REC DAC) pilot committee, primary examiner for a REC DAC, and Director of Sibley's Employability Assessment Services, the author has had the opportunity to review many residual earning capacity assessment reports. Unfortunately, often due to the lack of appropriately comprehensive methodologies used, many of these evaluations do injustice to both insurers and claimants alike.

This article is one of a two part series meant to highlight the importance of utilizing a sound methodology within an integrated team approach in order to appropriately evaluate the disabled client's residual earning capacity. Through their Comprehensive and Neurological Employability Assessments, Sibley and Associates offers such advanced assessment technologies. This first article shall emphasize the insurers' perspective: How LECB or long term disability overexposure may occur due to inappropriate evaluation. A future article will highlight the claimants' perspective and shall continue to address the specific issues of special populations, namely brain injured/cognitively impaired and psychologically impaired claimants.

Insurer Perspective: Reasons for LECB/LTD Overexposure

It would appear that under Bill 59 the automobile sector shall continue to necessitate the determination of loss of earnings capacity after 102 weeks (claims post November 1, 1996), but under a tort action as opposed to under an administrative based system. Within the LTD marketplace, the corollary to the Bill 164 loss of earnings capacity benefit is a continuing income maintenance benefit post 2 years should the claimant not meet the "any occupation" definition. While traditionally, the criterion for benefit determination beyond 104 weeks was in fact the claimant's ability to engage in "any occupation", increasingly a more liberal definition has been adopted. Now, claimants must generally be demonstrated to be unable to perform work which would provide them with an average two-thirds to three quarters (depending upon the policy) of their pre-disability earnings, rather than demonstrating complete inability to work.

Thus, within either of the two recent automobile loss of earnings capacity frameworks, as well as within the LTD "own occupation" criterion, the claimant's current highest earning occupation must be identified through appropriate assessment. Selection of an appropriate occupation necessitates that: the job accommodates the limitations resulting from the medical condition; and, must reflect work skills for which the person is qualified by training, education and experience.

The following are typical reasons why a claimant may be inappropriately assessed as having a lower post-disability earning capacity, resulting in an unnecessarily high LECB (either Bill 164 or 59) or unnecessarily long period of LTD benefit:

1. Inappropriate/Incomplete Evaluation of Pre-Disability Occupational Viability

Issue: LECB/LTD overexposure may occur because improper criteria or evaluative tools are used to determine the claimant's ability to perform an occupation and/or because there is a failure to consider appropriate accommodations to make the employment type viable.

This was the case of a 52 year old man whose LEC assessment team had ruled out the client's pre-accident occupations involving both teaching and librarian roles within a high school, due to the physical demands required of these occupations (according to the National Occupational Classification (NOC)), which apparently exceeded the client's tested sedentary physical capacity. The assessors had otherwise concluded that from the standpoint of his cognitive abilities and other aspects of his personal and vocational characteristics, the client's profile was deemed to be compatible with that of his teaching and librarian roles. On the basis of their opinion that his physical limitations precluded both teaching and librarian responsibilities, a clerical occupation was selected as the REC base at a salary of $26,292 per annum. Given the pre-disabilit-
4. Non-Comprehensive Assessment Methodology

Issue: There are several domains which may be neglected or inappropriately evaluated in the context of employability/earnings capacity assessment, increasing insurer exposure. Too often "Transferable Skills Analyses" are being used in isolation with little or no proper evaluation of the claimant's work related aptitudes, academic achievement (reading, writing, math) capacities, cognitive/learning abilities and physical capacities/limitations. In the interest of brevity, two brief examples of faulty evaluation methodologies will be illustrated using the same case.

Case Illustration: A 32 year old woman had established her own landscaping firm over the 6 year period predating the accident. She had held a grade 11 education but prior to establishing her company she had only worked in unskilled restaurant and construction related jobs. Her accident was believed to have involved a mild to moderate traumatic brain injury and it was thought that she would be unable to handle the managerial aspects of her prior job from the cognitive perspective, and unable to perform the physical aspects due to her soft tissue related injuries. The prior neuropsychological evaluation suggested that while she would be capable of performing a relatively routine manual job, the prospects of her being able to handle the managerial aspects of her prior position were extremely low based upon testing data. As a result, the initial assessor who had conducted a "Transferable Skills Analysis", recognizing very limited pre-morbid aptitudes on the basis of the NOC classifications of her prior jobs, resulting in the selection of a base occupation of security guard corresponding to an REC of $18,676. This compared to a Pre-Accident earnings of $29,984 net from self-employment income, suggesting a significant loss of earnings benefit and likely continuation of LTD benefits had this injury occurred in that context.

Point 1: Integration of Aptitude, Achievement Interest Assessment Data. Sibley Neurological Employability Assessment was used to formulate a second opinion. This evaluation repeated core neuropsychological testing, but added key essential aspects which were not previously formally assessed, those being aptitude, achievement and interest testing in addition to a 5 day situational assessment component.

This multidisciplinary assessment revealed a much higher aptitude profile than that suggested by the claimant's prior work history, and also identified that the client possesses high school equivalency in reading, spelling and math. On this basis alone, in conjunction with reported and tested clerical interests, several clerical related occupations were identified as being feasible with the highest earning of these being at $28,864. This occupation was felt to be realistic as it was viewed as a relatively distraction/stress free occupation, in which the client could readily establish routine daily activities as suggested in the initial neuropsychological assessment.

Point 2: Validating Neuropsychological Test Results Using Repeat Measurement and Work Task Assessment: In the case scenario above, previous neuropsychological data had suggested significant cognitive limitations which were thought to likely be significantly limiting. In the context of the Sibley Neurological Employability Assessment, the real work task components confirmed that this client continued to possess these clerical skills at a competitive employment level. They also confirmed that despite some evidence of cognitive impairment at a more modest level upon follow-up neuropsychometric testing, the claimant consistently demonstrated the ability to perform all of the essential managerial tasks of her prior self-employment including: bookkeeping, job estimating, materials planning/ordering, and creative landscape design. On the basis of this finding, it was felt that she met the criteria for the NOC defined occupation of "Contractors and Supervisors, Other Construction Trades", which at 36 months experience (related to self-employment duties) equates to a salary level of $43,012 on the basis of the OIC Wage Table. Selection of this occupation therefore eliminated the LECB and like the clerical occupation above, supported LTD benefit termination.

On left depicts significant LECB exposure due to improper occupational selection; on right, lesser LECB exposure when more appropriate selection is made based on OIC Wage Table. Left scenario would result in ongoing LTD, but not right side.

5. Failure to consider impact of cognitive and/or emotional impact on vocational functioning

Issue: While the presence of significant cognitive and/or emotional impairment generally reduces the employability and/or earning capacity of an affected individual, such is not always the case. Rather, there are instances in which the appropriate selection of a base occupation serves to minimize the client's limitations rather than accentuate them. At times equally remunerative occupations will be at odds from the standpoint that one occupation may completely overwhelm the individual, heighten their symptoms, add to the emotional distress and potentially cause total disability for an indeterminate period; the other occupation may be physically and cognitively manageable, allow the individual to be distracted from his/her symptoms, boost self esteem and reduce the need for psychotherapeutic involvement.

Case Illustration: A 38 year old previously self-employed woman had been recognized as having sustained a mild traumatic brain injury in addition to a chronic depressive disorder since her fall from a ladder in the context of her LTD case. She had held a variety of managerial jobs in the past in various fields and possessed a community college diploma in business. Earlier efforts to rehabilitate her to previous occupation were unsuccessful due to her residual cognitive and physical difficulties which precluded her performing multiple tasking required of her busy retail environment, as well as prevented her from lift heavy inventory and standing for prolonged periods. Her score was too small to make any physical accommodations and also precluded the hiring of part time staff. Through the use of a Transferable Skills Analysis, it was determined that her historical aptitudes based upon previously held occupations, coupled with her known educational level, would allow her to meet the criterion to be a telephone operator with an annual salary of
ty earnings in the low-70 thousands, a significant LEC exposure was evident. Were this an LTD case in this scenario, then the client's income would have been assessed to be well below 50% of pre-disability earnings. This would result in ongoing LTD benefits.

What this assessment failed to recognize and fully assess was whether the claimant's actual prior occupations in fact demanded the standing and lifting requirements as stated within the NOC which merely reflects average demands of an occupation in general rather than the specifics of any given situation. Had the evaluation been conducted using a Sibley Comprehensive Employability Assessment such would have revealed that these were not this specific employer's strict requirements: The claimant in fact would be permitted to sit down during his classes, use handouts rather than write on the black board and would have volunteer assistants who were available to re-stuffle books, thus eliminating any lifting requirements. The client could therefore have returned to his prior occupations with no LEC exposure in the MVA context, and with no further eligibility for LTD benefits had the disability occurred in that context.

On left depicts significant LECB exposure due to improper selection of residual wage (occupation), on right, lesser LECB exposure when more appropriate selection is made based on OIC Wage Table (all with actual wages). Left scenario would result in ongoing LTD, but not right side.

As illustrated in the graphs above, had it been necessary to do so, even the elimination of the librarian component in considering the REC would have indicated that a teacher with just 10 years experience (less than that of the claimant by 7 years), would command an average salary of $67,351 according to the OIC's Wage Table, and even higher based upon the wages provided by the claimant's actual school board.

2. Inappropriate/Incomplete Evaluation of Modified/Alternate Jobs in Same Occupational Category

**Issue:** LECB/LTD overexposure may occur due to the failure to adequately investigate appropriate accommodations and/or alternative jobs in the same occupational field either with the same or new employer.

**Case Illustration:** Continuing with the above example, even if this claimant's physical condition had indeed precluded him from meeting the requirements of his prior occupation, the original assessors did not explore the viability of the client returning to alternate existing roles in teaching or in a librarian capacity with modifications, outside of the prior school/school board. Comprehensive Employability Assessment, on the other hand, identified specific teaching jobs which allow the use a chair or stool rather than forcing the teacher to stand for prolonged periods in the classroom; other locations involve the use of a teaching assistant, or involve smaller groups of students where small group and/or 1:1 interaction is emphasized, both of which would likely have accommodated the client's standing/walking limitations. The latter are not uncommon in certain private/alternative schools, and/or settings with gifted or special education students (contingent upon the hiring requirements across jurisdictions). Such considerations would clearly have revealed associated wages equivalent or almost equivalent to the claimant's pre-accident earnings capacity.

3. Failure to Identify Highest Earning Appropriate Alternate Occupation

**Issue:** Even when appropriate assessment tools and methods are used, the highest earning occupation may not be selected for a variety of reasons including the inherent difficulty of matching the NOC job classification data with, for example, the OIC Wage Table information. No fully integrated published data base is available thus leaving unprepared assessors potentially vulnerable to this pitfall, and leaving insurers significantly overexposed to both LEC and LTD situations. The explanation as to how even an experienced assessor may overlook the highest possible base occupation is simple. There is a lack of integration between the OIC Wage Table and the NOC based occupational criteria. Not having access to an organized software data base means that thousands of discrete pieces of information must in effect be sorted "by hand" leaving ample room for honest errors to be made.

**Case Illustration:** Again continuing with the above case, based upon the claimant's assessed personal and vocational characteristics, coupled with an assessed Sedentary physical capacity, Comprehensive Employability Assessment revealed that this individual would clearly meet all the NOC (44166) criteria to be an entry level "Education Policy Researcher, Consultant or Program Officer". In fact, this and not the reported clerical occupation would reflect this individual's highest residual earning capacity were the teaching and librarian positions legitimately ruled out. The associated OIC wage table salary for such occupations is $40,184 per annum, rising to $57,738 at 3 years experience and $71,879 at 10 years experience. Within his own school board, given his level of seniority and past administrative responsibilities, this gentleman would in fact have commanded a salary closely approximating that of his pre-accident earnings level, sufficient to make the LEC trivial if not non-existent, and clearly meeting the LTD own occupation criterion. In such situations, actually obtaining such detailed salary information and evaluating criteria become the key to establishing the individual's true earning capacity. Further, in working with, and receiving such information from the prior employer, the credibility of the selected occupation is maximized; and, often actual job opportunities emerge resulting in the best case scenario for all parties concerned.

On left depicts significant LECB exposure due to improper occupational selection; on right, minimal (OIC Wage Table) or no (Employee's wage) LECB exposure for selection of highest earning occupation; if LTD case, left scenario would result in ongoing LTD, but not right side.
$27,166. This occupation was felt to meet the "own occupation" criterion as it reflected approximately 80% of her previous earnings as a self-employed business owner. The claimant was then provided with three different work trials in the capacity of telephone operator, and call centre sales representative. Unfortunately she failed at each of these attempts and became more depressed with each occasion.

Re-evaluation through Sibley Neurological Employability Assessment (NEA) revealed that her encountered failures appeared to be related to her established (but not vocationally considered) cognitive difficulties in multitasking which aggravated her cognitive fatigue; and also related to her disinclination to interact with others due to her post-traumatic depression, which in turn brought about irritability towards customers. It was determined that such occupations would be clearly contraindicated both emotionally and cognitively, although physically the fit was sound. Through the NEA, the positions of production clerk and administrative clerk were evaluated to be more suitable since these had by far fewer multi-tasking demands, and minimized the need for customer contact and finely honed customer service skills required of the previously suggested occupations. Furthermore, these occupations had corresponding salaries of $28,864 and $26,600 respectively, thus meeting the LTD earnings criterion. As importantly, her next work trial was successful as she clearly demonstrated competency to do production scheduling over an extended period of time.

**Best Timing of Earning Capacity Assessments**

In order to provide sufficient time for vocational rehabilitation planning and implementation, should a significant loss of earning capacity be anticipated, employability/earning capacity assessments should occur as early as possible. Generally, in the case of obvious significant disablement, once the client is medically (or when the maximal functional recovery is predictable) and psychologically stable, the assessment may occur. For chronic soft tissue clients the best timing is more debatable, but the assessment should occur upon a plateau in functional recovery, and likely no later than 6 to 8 months post-condition onset, assuming that appropriate clinical management has occurred up to that point.

**Conclusions: An Integrated Team Approach**

No doubt that to some degree the reluctance to provide a streamlined employability assessment is borne out of pressure from insurers to minimize the costs of these. However, in seeking to reduce costs, it is important to recognize that to do so may come at a significant longer term financial impact — which often by far outweighs any additional costs incurred by a more comprehensive assessment process. This review has provided examples of how improper LCB awards or unnecessarily extended LTD claims may arise out of non-integrated assessments. It can also reduce the likelihood of future rehabilitation success. A methodologically sound and clinically supportive evaluation process on the other hand, may have tremendous implications for the evaluation of the client’s current earning capacity, as the client is able to demonstrate his/her maximum effort and capabilities. Similarly, such an approach will often enhance the prospects of ongoing rehabilitation efforts as it may serve to instill confidence, renew hope and provide the client with a renewed sense of purpose and direction, as competencies, rather than limitations, are reinforced.

In summary, the unique and interdisciplinary nature of Sibley’s Comprehensive and Neurological Employability Assessment Services are structured to avoid the pitfalls of inappropriate earnings determinations. A subsequent article shall outline similar issues and concerns from the claimant’s point of view.

**About the Author**

J. Douglas Salmon Jr., is a registered psychologist and consultant in the areas of neuropsychological assessment, neurovocational evaluation and neuro-rehabilitation of brain impaired patients and psychological evaluation and treatment of general disability populations. He holds Ph. D., an MA in Vocational Rehabilitation Counselling and an Honours BA in Economics. He designed and currently oversees the Employability Assessment Services for Sibley and Associates. He conducts assessments for Medical/Rehabilitation, Disability, and Residual Earning Capacity DAC purposes, as well as IE/IME in the Metrotown Toronto, Durham and Peel Regions. He has also conducted numerous assessments related to treatment planning and impairment/disability ratings for Ontario Workmen’s Compensation Board purposes. He has overseen several facilities and services including a Medical Rehabilitation/Residual Earning Capacity DAC Centre, and other services involving multidisciplinary brain injury and diverse disability populations. He also oversees the Neuropsychological Service of the Whithy Mental Health Centre. He was a member of the Residual Earnings Capacity DAC Development Committee for the Ontario Insurance Commission (OIC). Currently he chairs the OIC’s Mental and Behavioural Disorders Catastrophic DAC Committee, and chairs the Treatment Guidelines Development Sub-Committee of the Ontario Psychological Association’s MVA Task Force.

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