

J P V E N T E R

# QUANTIFY YOUR CLAIM RIGHT

FOR PROFESSIONALS AND  
LEGAL EXPERTS IN THE  
MEDICO-LEGAL FIELD



INDUSTRIAL  
PSYCHOLOGISTS

# INTRODUCTION

**Do you want to do what is best for the injured? Then ensure your claim is quantified right!**

The tricky but often the largest part of quantification is compensation for earnings loss. The correct quantification of earnings loss requires a few things:



## GOOD ATTORNEY INSTRUCTION LETTERS

Attorney instruction that assists experts to perform well in the medico-legal field.



## EXPERTS THAT ARE EXCELLENT COMMUNICATORS

Experts that are chosen not only for their professional credentials but also for their ability to communicate well in the medico-legal chain.



## EXPERTS WHO ARE AWARE OF ULTIMATE QUANTIFICATION NEEDS

Experts who communicate well are aware of the needs of the reader – especially those readers who must interpret their opinion in terms of the effect on work and earnings



## CLEAR AND FOCUSED OPINIONS

Ultimately expert opinion should be clear and focussed so that it can easily be interpreted in terms of quantification of earnings loss.

# THE SYMBOL IS IMPORTANT

## Why?

It indicates that ideally all experts in the chain support the industrial psychologist and the actuary in their job to quantify the earnings loss. In practice that is often not the case. So JPV suggest that experts, actuaries and legal professionals should all belong to the SA Medico-Legal Association (SAMLA).

At this society role players interact and are empowered to better play their roles. There is, for instance, a Quantification Interest Group at SAMLA:



At this group, members are sensitised about the needs of the different role players and training and research is done. Our practice is an active participant and JP Venter, the managing partner of JPV, is the Communications Head of this group.

In the chain of professionals from medical experts to legal experts, there are many points where communication can break down:



At point **1** The breakdown occurs between medical related and psychological experts on the one side, and the industrial psychologist and the actuary on the other side.

## LACK OF CLARITY

The industrial psychologist must interpret the injury in terms of its effect on work capacity and earnings. The experts do all sorts of tests and evaluations and sometimes do not adequately explain what the functional impact of the injury is. Examples:

- **Occupational Therapists** would state that the person can still do “Light Work” and indicate that the type of work that the injured do is light work. But the level of problems and constraints the person are faced with in his job are sometimes vague and unclear. We suggest that the job that the person had at the point of the injury should be used to explain concretely what the effect of the injury is – and try to quantify it. Eg in terms of percentage loss of productivity or number of tasks that the person can no longer do. Or if the person resigned, indicate if the injury is a sufficient reason for having left the job.
- **Clinical Psychologists** would do whole batteries of tests, many of which the industrial psychologist would not know at all or know very little about. It is helpful if the psychologist explains what the effect of discovered deficiencies are in understandable functional terms or even how tasks are affected. For example, psychologists would list many deficits eg “Concentration and Memory” without being clear how that influences functioning. So that needs to be explained: The following very helpful statement has been adapted from an actual clinical psychology report: “Concentration and Memory difficulties are expected to render her more prone to error or negligent mistakes, which may decrease her performance as secretary, particularly for difficult tasks such as taking minutes of Board Meetings.”



Good Medico-Legal experts will have identified the lack of clear communication and developed a quantified approach to overcome this.

**We developed a guideline** for our practice that we use to allocate a level of work capacity reduction based on inter alia our interpretation of the expert opinion. (See *Graphic\* below for the levels*) So the attorney and other users can get a clear idea of our opinion in terms of a percentage of work capacity reduction. The industrial psychologist is a work expert. So even where experts were vague, the attorney can benefit from a clear opinion from a work expert regarding the effects of the injury on the ability to do specific jobs. Follow the link if you want to see the explanation about using the **guide**.

*GUIDELINE: REDUCTION IN WORK CAPACITY: DEFINITION OF LEVELS	
LEVEL	DESCRIPTION
0	None: No effect at all
1	Very Slightly: Barely noticeable effect. Percentage effect: 1% to 5%.
2	Slightly: Clearly an effect but minimal. Percentage effect: 6% to 10%.
3	Low: Clearly an effect and bothersome. Percentage effect: 11% to 20%.
4	Low moderate: Still functional in job but with difficulty. Percentage effect: 21% to 35%
5	Moderate: Functionality in defined job doubtful. Percentage effect: 36% to 50%
6	High Moderate: Functionality in job unlikely. Percentage effect: 51% to 65%
7	High: Minimal functionality left. Percentage effect: 66% to 80%
8	Very High: Virtually no functionality left: Percentage effect: 81% to 95%
9	Severe: In practice no functionality left: Percentage effect: 96% to 99%
10	Very Severe: No functionality at all: Percentage effect 100%

## PRE-INJURY INFORMATION

One of the most difficult tasks of the Industrial Psychologist is to provide a pre-injury “but for the injury” career and earnings scenario. Other experts tend to neglect this and do not provide a clear profile of the pre-injury capacities and of the injured. Examples:

- **Educational Psychologists** who state what level of matric pass is expected  
Eg Grade 12 with an admission to do a Diploma without an estimation of the ultimate likely educational outcome
- **Medical Experts** who neglect other injuries and for instance missing them or not allocating apportionment % cause level for current symptoms
- **Clinical psychologists** who simply focus on the lack or presence of pre-injury pathology. The industrial psychologist also needs to know what the pre-injury functioning estimate is. for instance a functioning base indicating the expectation for below, average or above average functioning in the absence of the injury.

We are of the opinion that the attorney has the key for improving clarity and usefulness of expert information. Attorneys should not influence experts. However, they must guide them to be clear, and support others further down on the expert chain of opinion - for instance, by supplying them with this e-book. Another way for them to show their support and guidance would be by becoming a member of SAMLA and communicating with other experts about these needs.

## At point **2** The breakdown occurs between the Industrial Psychologist and the actuary.

### TYPES OF BREAKDOWNS AT POINT 2:

Actuaries have been complaining bitterly about the problems they have to interpret industrial psychologists on workshops and via platforms like the SAMLA Quantification Interest group. The following complaints and suggestions come from actuaries.

- **Industrial Psychology reports** tend to be lengthy verbal reports that do not sufficiently specify specific earnings in Rand values for both pre-injured and injured state
- **Even joint minutes** that are supposed to be clear summaries tend to be vague and “wordy”.
- **Industrial Psychologists** sometimes construct “grandiose” career paths apparently without giving attention to career and Rand value implications. Well known actuary Dr Robert Koch complains that he had seen some career progressions that would only be attainable if the person worked till age 85!
- **Dr Koch suggested** that Industrial Psychologists should at the end of the report have a “schedule summary” regarding Rand earnings predictions and adds that “An attorney who receives an industrial psychologists report without such a schedule should send it back for amplification”
- **Munro Actuaries make it easy** for industrial psychologists to complete a schedule or table of earnings via free online software called The Earnings Assistant (TEA\*) [<https://earningsapp.azurewebsites.net/Home/About>]

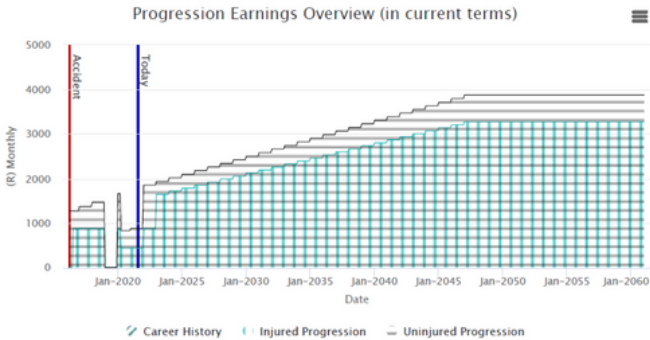
The policy of the JPV practice is to use the \*TEA and the graphics that come with it:

Below are extracts from a recent JPV report where TEA was applied:

**UNINJURED INCOME**

Date	Amount	Frequency	Terms	Increases	Comment
3 Apr 2016	R 11 700	per year	Apr 2016	straight line	accident date
1 Jan 2018	R 13 467	per year	Jul 2016	straight line	Growth App 1
1 Jan 2019	R 0	per month	Jan 2019	earnings inflation	cultural break
1 Jan 2020	R 15 233	per year	Jul 2016	straight line	growth App 1
1 Apr 2020	R 7 616	per year	Jul 2016	straight line	covid 19 effects
1 Jan 2021	R 8 058	per year	Jul 2016	straight line	covid-19 effects
1 Jan 2022	R 17 000	per year	Jul 2016	straight line	covid stops
1 Jan 2047	R 35 550	per year	Jul 2016	earnings inflation	ceiling

\* Retires at 65



**At point 3** The breakdown occurs between the industrial psychologist and the actuary on the one side and the legal team OR legal teams on the other side.

**TYPES OF BREAKDOWNS AT POINT 3:**

- **Quantifiable earnings loss** is usually clear and easy to interpret, and the actuary can calculate a Rand figure.
- **However**, when it comes to non-quantifiable earnings loss there are often great differences in interpretation
- **As mediators** of Medico-Legal matters we see the often great differences of opinion between defense and plaintiff legal teams when it comes to making sense of the opinion of the industrial psychologists
- **The differences** may boil down to the percentage contingency and the resultant Rand figure of future earnings compensation



## SOLVING THE COMMUNICATION BREAKDOWN

- The actuary suggestions to industrial psychologists already discussed above is just as applicable for solving the problems that the legal teams have with making sense of industrial psychology reports.
- Attorney Danie Weideman at a presentation to the SAMLA Quantification Interest Group suggested that industrial psychologists and attorneys can solve some of the problems of earnings levels by getting more corroborative information. Even where informal traders and farmers are involved, affidavits from clients and even invoices and slips from suppliers can serve to clarify earnings issues.
- Judge Sutherland's directives in the Ntombela judgement improves the clarity and usefulness of all joint minutes, including industrial psychology joint minutes. (*follow this [link](#) to view*)

The JPV practice estimates a reduction in work capacity (see above at Communication Breakdown Point 1)

- By getting an estimated work capacity reduction, the legal teams have a concrete and measurable opinion. This should aid legal teams in determining their contingencies
- The chances for agreement and settlement are improved if reduction in work capacity has some quantified basis.



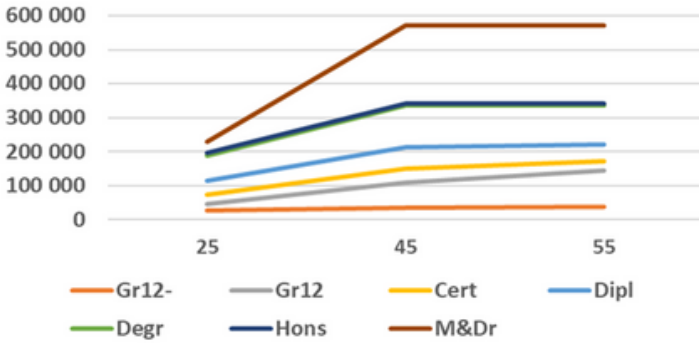


## CORRECT USE OF EARNINGS RESOURCES

It is very important that Industrial Psychologists should use the correct source from which earnings are predicted. If not, it can lead to substantial under or over settlement. One of the controversies in this regard is the use of so called “Corporate” earnings information vs Non-corporate earnings information. Corporate earnings information comes from earnings consultant surveys. The up side of these surveys are that they are done very professionally and contains very specific information regarding complex packages of earnings. The downside of these surveys is that smaller and less wealthy organisations tend not to participate in these surveys and they are not well represented in these surveys.

The “Bible” of earnings information is the Quantum Yearbook series compiled by actuary Dr Robert Koch. This yearbook contains both consultant earning survey information (generalised) as well as Non-corporate earnings information. Industrial Psychologists widely make use of the quantum yearbook and some use that almost exclusively.

The common wisdom that Industrial Psychologists used up to 2018 was that people “with qualifications”(Grade 12 plus at least a certificate) should be paid according to corporate scales and those with poorer qualifications mostly according to non-corporate scales. However, since 2018 the Quantum Yearbook contains information that challenges this common wisdom. The following is a simplified graphic representation of what appeared in 2018:



Based on information from the Koch (2018) Quantum Yearbook in which Dr Koch states: “StatsSA has for decades been collecting earnings data as regards the entire working population of South Africa. More recently such data has become available for detailed analysis. Such figures are much more relevant for damages claims than the Peromnes/FSA data [this refers to corporate scales] so widely used by industrial psychologists.”

This created a huge controversy as many industrial psychologists and some actuaries were concerned that StatsSA data collection are not up to the same standard as consultants doing Corporate Surveys and that the resultant figures were much lower than actual earnings – especially where earners were paid complex packages.

In some novel research, the JPV practice addressed this controversy. From a sample of 106 cases from our practice files, 84 could be used to determine pre-injury earnings. Based on this research, the JPV practice could show that 60% of the people in the sample who had at least matric do in fact earn closer to consultant corporate surveys than to the StatsSA data. The following is one of the summary tables from the research:

BACKGROUND	FORMAL AND STABLE	STATSSA	CORPORATE SCALES
	INFORMAL AND/OR UNSTABLE	STATSSA	STATSSA
		LESS THAN GR 12	GR 12 OR MORE THAN GR 12
		EDUCATION	

What is also significant from the research is that even with qualifications of matric or more, 40% of the people with qualifications of matric or more earned closer to STATSSA data – and that could usually be associated with background factors. Follow this [link](#) to the research if you want to see more information.

## EDUCATIONAL LEVELS IN THE LABOUR MARKET

One of the difficulties that the JPV practice encountered is with educational level predictions. Industrial psychologists need to deal with and be knowledgeable about the educational levels of the labour market. So they share this knowledge with educational psychologists. One of the frustrations is that in the medico-legal field there is a tendency to be over-optimistic about what the educational level of the injured would have been in the absence of the injury. JP Venter made a presentation at the 2019 Educational Psychology Association of SA (EPASSA).

He found the following SA labour market statistics:

*(Follow this [link](#) to the full 2019 EPASSA paper for more information)*



**"Out of 100 Grade 1's:  
45 will complete matric...  
12 will ultimately complete...  
more than matric."**

- **The chance of passing Matric by 18 years old: 41%**

*Department of Basic Education (2017): Calculated from their 2016 figures*

- **In 2016, young adults aged 20 to 34 who have completed Grade 12: 45.2%**

*Statistics SA (2017)*

- in 2016: "The percentage of **20-24** year olds ... enrolled in higher education": **18%**  
*Council on Higher Education (2018). Higher education apparently defined as Post School Education and Training (PSET). That includes higher level skills training.*

- **Pass rate at universities** after 2 additional years: 2009 to 2011 cohorts: **54%**

*Council on Higher Education (2018)*

- **In 2016, young adults aged 20-34:** with completed **Post School** qualification: **8.2%**

*Statistics SA (2017)*

- Anything **more than Secondary [Post School]: 12%** of age 25 to 64

*Statistics SA (2017)*

- **Degree** (or more) in 2016: **5.4%** of age 25-64 and certificate or diploma **6.6%**

*Statistics SA (2017)*

Luckily, we are moving in the right direction in South Africa in that children tend to do better educationally and vocationally than their parents. However, this trend is completely over-interpreted in the medico-legal field and predictions are often made that the uninjured would have completed FAR better qualifications than the parents. Of course that is possible. But it is not very likely. So such a prediction would require sound reasons why in a specific case a child would have done better than the trend. See extracts from the paper presented below:

### ***Are young South Africans closing the skills gap?***

Well, although the trend is more or less in the right direction, young South Africans are NOT catching up that rapidly. StatsSA (2016) research show that although youngsters do better than parents it is incrementally so: P89: "However, the odds for upward educational mobility... were confirmed mostly to one level up from their parents' educational achievements." ("Levels" defined in Table 4.3 on p87). See the defined levels on the right:

#### **EDUCATION LEVELS**

1. NO SCHOOLING
2. SOME PRIMARY
3. COMPLETED PRIMARY
4. SOME SECONDARY
5. COMPLETED SECONDARY
6. POST SECONDARY

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