THE ONTARIO COURT OF APPEAL EXPANDS THE RANGE OF DAMAGES UNDER THE *FAMILY LAW ACT* FOR LOSS OF CARE, GUIDANCE, AND COMPANIONSHIP

Posted on July 27, 2021

Categories: Insights, Publications

The Ontario Court of Appeal has upheld a large jury award to a mother and father for loss of care, guidance, and companionship following the death of their adult child. The parents claimed, *inter alia*, under the *Family Law Act*[1]. In *Moore v. 7595611 Canada Corp*.[2], the Court of Appeal rejected the appellant's argument that a damages award of $500,000 for the *Family Law Act* claimants was unreasonably high. In so doing, the Court of Appeal explained the appropriate circumstances to move beyond the usual accepted high range for guidance, care and companionship damages as they relate to the deaths of loved ones.

The Factual Background

The respondents' daughter died from severe injuries after her rooming house apartment caught fire. The apartment's windows were barred and the victim's only exit was engulfed in flame. The respondents' daughter died of her injuries a few days later in hospital. The respondents sued their daughter's landlord. At trial, a jury found that the appellant landlord fell below its standard of care and was responsible for the death for the respondents' daughter. The evidence showed that the deceased was highly devoted to her parents, including supporting her father through mental health treatment.

The landlord appealed on a number of grounds, including that the damages award the jury set was too high. Of the $1,326,000 jury award total, $500,000 compensated the respondents for loss of care, guidance, and companionship.

The Court's Reasoning

The Court of Appeal considered the case law concerning damages awards under the *Family Law Act* for loss of care, guidance and companionship. It considered its previous decision in *To v. Toronto Board of Education*[3] establishing that $100,000 adjusted for inflation from 2001 "might be viewed as being the high end of an accepted range of guidance, care and companionship damages" after the loss of a child. Adjusted for inflation again, this number would be approximately $150,000 in 2021.

The Court of Appeal departed from *To* in *Moore* for two reasons. First, it considered *Young v. Bella*[4] where the Supreme Court of Canada explained that appellate courts should only interfere with a jury's damages assessment where it "shocks the conscience of the court". The Court of Appeal found the jury award in question did not reach this "extremely high" threshold justifying intervention. Second, the Court of Appeal emphasized that the "high end accepted range of guidance" set out in *To* only "might be viewed" as the upper range. The Court of Appeal emphasized this qualification in *To*'s wording in upholding the award without explicitly overturning its previous jurisprudence. It reasoned that the damage award in question was appropriate given that the Ontario legislature has not capped non-pecuniary damage awards and that there was no mathematical way to assess these damages. Given the evidentiary record showing a strong familial relationship between the deceased and the respondents, as well as a painful loss, the damage award did not reach the high threshold for intervention.

An overview of damages awards across Ontario for loss of guidance, care, and companionship for the death of a child reveals a historical average of approximately $50,000 – although they have been trending upwards in recent years. On the other hand, Ontario courts have historically awarded approximately $17,000 for loss of care, guidance and companionship for non-fatal injuries.

Takeaways

- *Moore* raises the unofficial ceiling for non-pecuniary damage awards under the *Family Law Act* and in so doing, raising questions as to what circumstances and kinds of relationships justify a court's departure from the $150,000 ceiling set in To.
- In *Moore*, the Court of Appeal drew upon the close daughter-parent relationships. It considered both that the respondents had lost their only child and the strong emotional support she had played in their lives.
- *Moore* underscores the "high threshold" in which appellate courts will alter a jury award: they will only do so if it "shocks the conscience of the court". This test shows a high degree of deference to the triers of fact and de-emphasizes the previous guidance set out in *To*. Defendants should note this when considering whether to serve jury notices in cases where *Family Law Act* claimants are named.

[1][ps2id id='1' target='/] RSO 1990, c F.3.
[2][ps2id id='2' target='/] 2021 ONCA 459 [*Moore*].
[3][ps2id id='3' target='/] [2001] 55 OR (3d) 641 [*To*].
[4][ps2id id='4' target='/] 2006 SCC 3.

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A Cautionary Note