

ADVANCING PECUNIARY & NON- PECUNIARY CLAIMS UNDER THE *FAMILY LAW ACT*

Presented by:

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Who Can Advance *FLA* Claims?

S. 61(1):

- Only immediate family members
- *But*, broad definitions for “parent” and “spouse”
- Cannot “marry into” an *FLA* claim

What Types of *FLA* Claims May be Advanced?

- S. 61(2): Damages under (1) *may* include:
 - a) Actual expenses incurred
 - b) Funeral expenses
 - c) Travel/visitation expenses
 - d) *Loss of income or the value of services rendered
 - e) *Loss of guidance, care, and companionship

Is there a Statutory Deductible?

- S. 267.5 of the *Insurance Act*:
 - Only for MVA cases
 - Only for “protected Defendants”
 - Only for non-pecuniary claims
- Key subsections:
 - (7)(3): \$15,000 per claimant
 - (8): Exclusion for claims that would exceed \$50,000
 - (8.1.1): Exclusion for fatality cases post-Aug. 31, 10

Other

- Court approval
- Risk of inconsistent statements
- Retainers and instructions
- Point: Cost-benefit analysis

“Bigger Ticket” Pecuniary Claims: S. 61(2)(D) Loss of Income

- *McCartney v. Warner*
 - Can advance claims for own loss of income
 - Inability to return to work need not be due to a confirmed psychological diagnosis (i.e. bereavement or assisting family may be sufficient)
- *Fiddler v. Chiavetti*
 - Although customary, expert evidence not legally required to prove loss of income claim

“Bigger Ticket” Pecuniary Claims: S. 61(2)(D) Services Rendered

- **Issue #1**: Can family members recover compensation for services rendered to an in-patient family member, over-and-above the care rendered by the facility’s staff?
- Judicial Decisions in Support:
 - *Bannon v. McNeely*
 - *Till v. Walker*
- Arbitral Decisions in Support:
 - *Bellavia and Allianz Insurance Company of Canada*
 - *Haimov and ING Insurance Company of Canada*

Cont. Services Rendered

- **Issue #2:** How is the value of service quantified (hourly rate vs. lump sum)?
- **Seminal Decision in Support of Hourly Rates:**
 - *Matthews Estate v. Hamilton Civic Hospitals*
 - Only use global approach if insufficient evidence
 - Value based on nature & quality of services, not qualifications
 - Amount not to be limited by caregiver's income loss
 - Not to be punished for lack of means to hire professional
 - If future care based on professional rate, no reason why past should not be as well
 - \$30/hour (discount \$42/hour agency rate since overhead & profit not applicable)

“Bigger Ticket” Pecuniary Claims: Other

- List under s. 61(2) is not exhaustive (“may include”)
- Other common pecuniary claims: dependency
 - Loss of income/financial support
 - Loss of household services

Non-Pecuniary Claims: S. 61(2)(E)

- Loss of guidance, care, and companionship
- Seminal OCA Decisions:
 - *To v. Toronto Board of Education*
 - \$100,000 is “upper range”
 - *Fiddler v. Chiavetti*
 - Inflation to be applied to \$100,000 upper range provided in *To*
- Current “Upper Range” (as of November of 2013):
 - \$135,000.00 *but* some awards have been higher!

Case Summaries

re: Higher Non-Pecuniary *FLA* Awards

- See pages 13-14 of paper
- High awards (incorporating inflation a/o November 2013):
 - Spouse: \$108,230.00 (*Hechavarria v. Reale*)
 - Parent: \$163,535 (*MacNeil v. Bryant*)
 - Child: \$138,605 (*Vokes Estate v. Palmer*)
 - Sibling: \$113,680 (*Sandhu v. Wellington Place Apartments*)

Conclusion

- Be mindful that pecuniary claims can be significant
- Involves a cost-benefit analysis

Thank you

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