

Ontario Court of Appeal upholds new judgment high for FLA claim

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In *Moore et al. v. 7595611 Canada Corp* (Moore), the Ontario Court of Appeal (the Court) upheld a jury award significantly higher than what was considered to be the "cap," in a personal injury case filed against a landlord after the respondents' daughter died of medical complications suffered in a residential fire.

The "cap" was set previously in *To v. Toronto Board of Education* (To). In *Moore* the claims were for lost care, guidance and companionship, after their daughter suffered third-degree burns resulting from a fire in the residence where she was a tenant. She had multiple cardiac arrests and her parents had to make the "excruciating decision" to take her off life support.

The parents sued the owner of the property where their daughter was a tenant, for negligent conduct that led to their daughter's death. The owner was self-represented at trial. Following trial, the jury found in favour of the parents and awarded \$1,326,000 in damages, including \$250,000 to each parent for loss of care, guidance, and companionship.

On appeal, the owner of the property argued that the jury award of \$250,000 for each parent was too high, based on the 2001 decision in *To v. Toronto Board of Education*. In the *To* decision, the Court of Appeal held that \$100,000 adjusted for inflation represents the "high end of the accepted range of guidance, care and companionship damages". However, in the *Moore* case, the Court reiterated that the threshold for interfering with a jury award of damages is "extremely high" and an appellate court should only interfere with a jury's assessment where it "shocks the conscience of the court". The Court went on to point out there is no legislative cap on non-pecuniary damages, and that each case must be considered in light of the evidence. As a result, fluctuating damages awards should be expected. In light of the factual backdrop of this case, the Court found that although high, the jury award did not shock the conscience of the court.

Key Takeaways

While the *Moore* case marks a departure from the traditional "cap" on non-pecuniary general damage awards for family members, the Court made it clear that cases for loss of care, guidance and companionship will continue to be assessed on a case-by-case

basis. In the *Moore* case, the deceased was the only child of the respondents and the parents had a very close relationship with their daughter despite her growing into an adult and moving out on her own. These circumstances supported the jury award.

However, readers should also consider that had *Moore* been decided by a Judge alone, the damages award may have been closer to the precedent in *To*. Furthermore, the property owner was self-represented, which may have had a bearing on the outcome in the *Moore* case.

In any event, readers should note the outcome in *Moore* and expect that it will influence future discussions and negotiations regarding damages for lost care, guidance and companionship in other personal injury cases.

By

[Robin Squires, Laura M. Day](#)

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BLG Offices

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Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

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F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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