# DAMAGES UNDER THE *FAMILY LAW ACT*: UPDATER #3

Deanna S. Gilbert
Partner, Thomson, Rogers

## INTRODUCTION

By way of introduction, I am a partner at the personal injury law firm of Thomson Rogers and am certified by the Law Society of Ontario as a Specialist in Civil Litigation. In 2014, I co-authored a paper with my partner, Sloan H. Mandel, on the topic of damages awarded under the *Family Law Act*[1] ("*FLA*") for the injury or death of an immediate family member. As this paper seemed to garner some interest, I have since prepared two "Updaters". The three papers are hyper-linked below and are also found directly on my webpage[2]:

- The Original Paper: *Advancing Pecuniary and Non-Pecuniary Claims under the Family Law Act*
- 1st Updater: *Damages Under the Family Law Act: An Updater*
- 2nd Updater: *Damages Under the Family Law Act: A Brief Prier & Updater*

This 3rd Updater will generally cover the period of approximately July of 2018 to July of 2021, focusing on some key cases and issues of note, as well as a summary of non-pecuniary *FLA* awards[3].

## EXECUTIVE SUMMARY

Summing up the last three years of *FLA* case law:

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[1] R.S.O. 1990, c. F.3.
[2] https://www.thomsonrogers.com/directory/deanna-gilbert/

- The **higher end of the range for non-pecuniary *FLA*** claims may now be considered **$250.000.00**, though the Ontario Court of Appeal has re-iterated that there is **no "cap".**

- The **assessment of non-pecuniary *FLA* claims remains fact-specific** having regard to a number of factors. For that reason, the range of non-pecuniary damages awarded in the last three years has been "all over the place".

- While the assessment of past attendant care provided by family members may be non-actuarial where there is limited evidence, the **trend is to otherwise apply a market hourly rate for a personal support worker ("PSW") to services rendered by family members** (exclusive of H.S.T.).

- The law remains that since a cause of action under the *FLA* is derivative in nature, it **must be brought within the two-year limitation period (subject to discoverability).**

- There may be a **novel cause of action developing**, whereby an *FLA* claimant may seek personal injury damages for a personal medical condition developed as a direct consequence of the primary Plaintiff's *incapacity*.

## CASES & LEGAL ISSUES OF NOTE

### i. Non-Pecuniary *FLA* Claims

#### *a. A New "High"*

Arguably, the most important decision to emerge since my last Updater is the Ontario Court of Appeal's decision in ***Moore v. 7595611 Canada Corp***., released in June of 2021.[4]

To understand the importance of this decision, it may be helpful to first provide a brief "refresher" on the two most often-cited Ontario Court of Appeal cases preceding *Moore*.[5] These cases have already been reviewed in my earlier papers.

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[3] By "non-pecuniary", I am referring to the loss of guidance, care, and companionship.
[4] 2021 ONCA 459 (CanLII) [*Moore*].
[5] These two cases are discussed in greater depth in my previous papers.

The first case is *To v. Toronto Board of Education*, released in September of 2001. [6] A 14-year-old had died while using some equipment in his school gymnasium. His parents and 11-year-old sister advanced claims pursuant to the *FLA*. At trial, the jury awarded non-pecuniary damages of $100,000.00 and $50,000.00, respectively, to each of the parents and the sister. On appeal, the awards to the parents were maintained, but the sister's award was reduced to $25,000.00. This case is often cited for the Ontario Court of Appeal's statement that $100,000.00 "might be viewed as being at the high end of an accepted range of guidance, care, and companionship damages."

The second case is *Fiddler v. Chiavetti*, released in March of 2010. [7] A young girl died in a motor vehicle crash. Her parents and sister advanced claims under the *FLA*. At trial, the jury awarded non-pecuniary damages to the mother, father, and sister in the amounts of $200,000.00, $50,000.00, and $20,000.00, respectively. On appeal, the Ontario Court of Appeal reduced only the mother's award to $125,000.00. The Court's reasoning was that *To* set out what was said to be the higher end of the acceptable range for non-pecuniary *FLA* claims. That said, 13 years had elapsed between the release of the *To* decision and the subject date of loss in 2005. With reference to the consumer price index, the Court noted that $100,000.00 in 1992 was the equivalent of $125,000.00 in 2005.

This leads us to the *Moore* decision. A 24-year-old was entrapped in a house fire, sustained 3rd degree burns, and succumbed to her injuries a few days later in hospital after

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[6] 2001 CanLII 11304 (ONCA) [*To*].
[7] 2010 ONCA 210 (CanLII) [*Fiddler*].

her parents made the difficult decision to remove her from life support. At trial, the jury gave the following awards, all of which were appealed and upheld[8]:

- Loss of care, guidance, and companionship: $250,000 to each parent;
- Mental distress: $250,000 to each parent;
- Future costs of care: $174,800 to the father and $151,200.00 to the mother.

Notably, these non-pecuniary awards each exceeded the *To* "high watermark", even when taking into account inflation as per *Fiddler*. To that end, the Ontario Court of Appeal made the following important comments[9]:

> First, it is important to recognize that, while Osborne A.C.J.O. referred to the $100,000 in *To* as perhaps being viewed at the "high end" of an accepted range for damages of this nature, he just as quickly pointed out that, unlike Alberta with s. 8(2) of its *Fatal Accidents* Act, R.S.A. 2000, c. F-8, for example, the legislature in Ontario did not establish an upper limit on these types of damages: *To*, at para. 29. In the absence of any such legislative cap, "each case must be given separate consideration" by the courts to determine the appropriate quantum of damages…
>
> Second, despite the damages awards given in both *To* and *Fiddler*, both courts were careful to reinforce the idea that, like the absence of a legislative cap for damages of this nature, there is no judge-made cap for this form of non-pecuniary damages… To the contrary, "Each case must be considered in light of the evidence material to the guidance, care and companionship claims in that case": *To*, at para. 31. This includes, as LaForme J.A. set out in *Fiddler*, at para. 77, considering each case "in light of the particular family relationships involved in that case".
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> …Coming back to the standard of review on appeal, it is only where the quantum of damages set by the jury "shocks the conscience of the court" or is "so inordinately high" that it is "wholly erroneous" that appellate intervention will be appropriate…

[8] *Moore*, *supra* note 3 at paras. 4-5.
[9] *Ibid*. at paras. 27-30.

Apart from the awards for non-pecuniary *FLA* claims, *Moore* reminds us that immediate family members may also wish to advance their own personal injury claims, where appropriate. In this case, the personal injury claimed by each parent was psychological in nature and supported by expert evidence stating that the impairment went beyond grief.

***b. A Non-Pecuniary Assessment "Refresher"***

Staying on the topic of non-pecuniary *FLA* claims, another case of note is ***Coffey v. Cyriac***, released in January of 2020.[10] While this case does not "move the needle of the law" in any way, it provides a (relatively rare) summary of the factors that go into the assessment of damages for loss of guidance, care, and companionship.

*Coffey* was a medical malpractice action. The Plaintiff was overweight and had corresponding health problems. In 2001, she underwent a fundoplication procedure to deal with her acid reflux. In 2004, the Defendant (a different surgeon) performed a procedure to undo the fundoplication. The Plaintiff alleged that the Defendant failed to obtain her informed consent to the 2004 surgery and that, as a result of that treatment, her acid reflux worsened to the point that she had to have her stomach removed. Although the ages of the Plaintiff, her husband, and daughter were not identified in the case, I estimate the Plaintiff and her husband were at least into their 60's as they had been married for 40 years.

[10] 2020 ONSC 6411 (CanLII) [*Coffey*].

As to the process for assessing non-pecuniary *FLA* claims, the Court stated:[11]

> In assessing damages for loss of care, guidance, and companionship under s. 61(2)(e) of the *FLA*, the court applies the following principles:
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> a) For a claim to succeed, there must be an actual loss of care, guidance, and companionship;
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> i. "Guidance" includes such things as education, training, discipline, and moral teaching;
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> ii. "Care" includes such things as feeding, clothing, cleaning, transporting, helping, and protecting another person; and
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> iii. "Companionship" includes the joy of sharing experiences; it is the loss of rewards of association that flow from the family relationship.
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> b) No damages can be awarded for grief, sorrow, or mental anguish by reason of an injury sustained by a relative;
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> c) Each claim must be assessed on its particular facts, although a judge may have regard to:
>
> i. the age, mental, and physical condition of the claimant;
> ii. whether the injured party lived with the claimant and, if not, the frequency of family visits;
> iii. the intimacy and quality of the claimant's relationship with the injured party;
> iv. whether or not the claimant is emotionally self-sufficient; and
> v. the joint life expectancy of the claimant and the injured party (though this is not relevant to the matters in issue).

This case can be a helpful tool when preparing an *FLA* claimant for discoveries and for the questions to ask of such a Plaintiff.

[11] *Ibid*. at para. 159.

### ii. Pecuniary *FLA* Claims: Past Services Rendered

The next issue of note involves a series of cases that touch upon the methodology for assessing the value of services rendered to the primary Plaintiff by a family member, pursuant to section 61(2)(d) of the *FLA*. Briefly, as reviewed in my earlier papers, there are three ways that the Courts have historically quantified these pecuniary awards:

1. Using the fair market hourly rate to purchase/replace the services in the open market (see *Butler v. Royal Victoria Hospital*[12], discussed in the 1st Updater);

2. Using the fair market hourly rate to purchase/replace the services in the open market, but discounted to reflect the fact that agency rates would include profit margins and overhead costs that would not be appliable to family-provided care (see *Matthews Estate v. Hamilton Civic Hospitals*[13], discussed in the original paper);

3. Using a non-actuarial/global/lump sum approach (see *Bannon v. McNeely*[14], discussed in the original paper).

Recently, a few cases have delved into this topic.

The first case of note is ***Rolley v. MacDonell***. The trial took place in December of 2017 with various rulings reported in 2018. The Plaintiff was involved in a motor vehicle crash in which he suffered a concussion. His claim for past and future attendant care was the largest component of his damages. The past care was provided by his wife, but the future care was premised upon the assumption that a private personal support worker ("PSW") would be hired.

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[12] 2017 ONSC 2792 (CanLII) [*Butler*]. The case was appealed on other issues [2018 ONCA 409 (CanLII)].
[13] [2008] CanLII 52312 (Ont.Sup.Ct.). [*Matthews*]
[14] 1995 CanLII 7161 (ONSC). [*Bannon*]

At trial, the Plaintiff called his treating occupational therapist ("OT") in the capacity of both a participant and litigation expert. The OT testified that the Plaintiff required 29 hours/week of attendant care, in keeping with the report she had prepared. She also testified, however, that the attendant care was required intermittently throughout the waking day, rather than in blocks of time; and that, practically speaking, most PSW's typically work in blocks of time with a two-hour minimum per block.

The Defendants brought a motion to exclude the OT's evidence on the basis that it was tantamount to a new opinion (i.e. the Defendants were concerned that the OT would be seen as suggesting that the Plaintiff required 15 hours of care per day instead of 4 hours of care per day) and that it was outside the scope of expertise of the OT to provide an opinion regarding how care is purchased in the "real world". The Court dismissed the motion. The OT's evidence was not interpreted to suddenly be an opinion that the Plaintiff required care throughout the day; and the OT's testimony about the practical realities of hiring a PSW were based in fact rather than opinion.[15]

Once the hours of service had been determined, the Court then had to determine the value of the past attendant care, which had been rendered to the Plaintiff by his *FLA* claimant wife. The Court adopted the fair market value approach[16]:

> …I find that it is reasonable to compensate Jocelyn for the attendant care she provided at the same hourly rate that would have been paid to a PSW, had one been hired and available ($30.45). HST is not included because Jocelyn's compensation does not reach an annual total that requires her to 'charge' HST…

[15] 2018 ONSC 163 (CanLII) at paras. 23-24. [*Rolley*]

The second case of note is ***Hummel v. Jantzi***, released in June of 2019.[17] The Plaintiff suffered a skull fracture as a result of a motor vehicle crash. He required 24-hour care. His care leading up to trial had been provided by a combination of PSW's and family members. The claim for future care was premised upon the cost of purchasing a PSW to provide 24-hour care; however, the Court considered it likely that the family would continue to provide some portion of the attendant care going forward.

When assessing the past services provided by the family members, the Court adopted the non-actuarial approach, stating[18]:

> There are no records of the precise amount of time which Patricia and Detlev have spent caring for Wesley. For that reason I do not think it practical to do an arithmetical calculation to determine an amount to compensate them for the value of their services to the date of trial. This was the approach followed in Dube. I accept that in the 6+ years since the accident they have devoted significant amounts of their time to caring for Wesley. As was stated by Zuber J. in Dube, assessing an appropriate amount for compensation for past services provided by a parent is "more art than science". Using that approach I find that an appropriate amount to compensate each of Patricia and Detlev for the care they have provided for Wesley up to the date of the trial is $100,000.

Although the focus of this paper is the assessment of *FLA* claims, I would be remiss not to point out that when assessing the Plaintiff's future care claim, the judge again adopted somewhat of a non-actuarial approach to factor in that portion of future care that the Court deemed was likely to be provided by family members as opposed to PSW's, stating[19]:

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[16] 2018 ONSC 6517 (CanLII) at para. 369.
[17] 2019 ONSC 3571 (CanLII). [*Hummel*]
[18] *Ibid*. at para. 305.
[19] *Ibid*. at para. 270.

> For these reasons, I propose to determine the cost of future attendant care on the basis of a PSW being provided by an agency at the rate of $28 per hour plus HST for a total of $31.64 per hour which I round to $31.50. There are 8760 hours in a year. I accept the evidence of Mr. Pearce that there should be a reduction of 632 hours per year when Wesley will be supervised by other healthcare and rehabilitation specialists. On this basis I calculate the annual cost of future attendant care to be $256,158. I then reduce this calculated amount by a contingency of 20% to take into consideration that the medically required attendant care is not likely to be exclusively provided by professional healthcare workers…

The last case is ***Boone v. O'Kelly***, released in March of 2021[20]. This was a medical malpractice action. The Plaintiff, who was approximately 57 years old by the time of trial, had lived with his parents his entire life. The reason being that he had a developmental delay and other medical conditions, which necessitated 24-hour supervisory care. In October of 2010, however, the Plaintiff suffered a serious fall. The resulting medical treatment left his lower limbs paralyzed. His parents claimed past attendant care services on the basis that the Plaintiff now required *two-person* 24-hour care for physical transfers and the like.

The Defendants advocated for a global/non-actuarial approach to the assessment of the *FLA* Plaintiffs' past attendant care claim[21]. The Court considered that argument, as well as the alternative methodologies of the modified hourly rate approach adopted in *Matthews* and the hourly rate approach adopted in *Rolley*.[22] The Court preferred the hourly rate approach without modification, stating[23]:

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[20] 2021 ONSC 2308 (CanLII) [*Boone*].
[21] *Ibid*. at para. 302.
[22] *Ibid*. at paras. 307-308.
[23] *Ibid*. at para. 309.

> I adopt that approach here. The Boones seek an hourly rate of $32.00 which is less than the average hourly rate for a PSW identified by Ms. Bierbrier in her testimony.

### iii. Limitation Period for *FLA* Claims

The next issue of note pertains to the limitation period applicable for *FLA* claims.

In ***Malik v. Nikbakht***, released in March of 2021[24], the Ontario Court of Appeal re-iterated that *FLA* claims must be brought within the two-year limitation period (subject, presumably, to the issue of discoverability and/or an unrepresented primary Plaintiff under a disability – neither of which were issues in this case so they were not discussed).

In October of 2013, an entire family was injured in a motor vehicle crash. The father was the driver of one of the involved vehicles. As such, the father advanced a separate lawsuit than the rest of the family, as the latter claimants also sued him. The father commenced his personal injury action in 2014. In 2018, he brought a motion for leave to amend his Statement of Claim to add his own *FLA* claims relating to the injuries suffered by his family members. The motion was granted, then reversed on appeal.

On further appeal to the Ontario Court of Appeal, the appeal was dismissed on the following rationale[25]:

> In my view, the appeal judge was correct in holding that a s. 61 *FLA* claim is a cause of action that, in Mr. Malik's case, is statute barred.
> …
> Significantly, the new cause of action created by s. 61 of the *FLA* is "derivative": *Camarata*, at para. 9. In other words, Mr. Malik's s.

[24] 2021 ONCA 176 (CanLII). [*Malik*]
[25] *Ibid*. at paras. 9, 13.

> 61 *FLA* claim would be for his damages arising out of injuries caused to his children as the result of allegedly negligent breaches by the defendants of duties of care they *owed to his children*. As the appeal judge pointed out, at paras. 28-29, this is a fundamentally different claim than Mr. Malik's negligence action, which claimed damages arising out of his own injuries caused as the result of allegedly negligent breaches by the defendants of duties of care they *owed to him*. Indeed, as the appeal judge recognized, at para. 17, had Mr. Malik brought his s. 61 FLA claims in a timely way, he could have done so even without instituting a negligence action of his own.

### iv. Novel *FLA* Claim: Personal Injury Claim

The matter of ***Scalabrini v. Khan***, released in September of 2019[26], also involved a limitation period discussion but under quite different circumstances. More importantly, the case also brought to light a potential novel cause of action for *FLA* claimants. Specifically, the case involved the question as to: whether a tort claim for a subsequent medical condition suffered by an *FLA* claimant due to the *incapacity* of the main Plaintiff may be actionable.

The primary Plaintiff was injured in a motor vehicle crash that occurred in June of 2014. Just prior to this crash, the Plaintiff and his wife had purchased materials to re-do the roof of their home, which maintenance the Plaintiff planned to do himself. As a result of the injuries that he sustained in the crash, the Plaintiff was unable to carry out the roof maintenance. In the years that followed, while the MVA litigation was ongoing, the roof leaked and, in 2018, mold was discovered in the home. Both the Plaintiff and his wife were alleged to have suffered personal injuries arising directly from the mold problem.

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[26] 2019 ONSC 5509 (CanLII) [*Scalabrini*].

In 2018, the Plaintiffs brought a motion to add the Plaintiff's wife to the action, solely pursuant to the *FLA*. The wife claimed "traditional" *FLA* damages (e.g. loss of guidance, care, and companionship), but also sought damages for her own personal injuries since the mold developed only due to her husband's inability to fix the roof which, in turn, arose from his MVC injuries.

The motion was granted. On appeal to a judge of the Ontario Superior Court, the appeal was dismissed. The Court was satisfied that the wife's "traditional" *FLA* claims were brought within time, as the motion was brought within two years of the mold issue being reasonably discovered. As to the "less traditional" claim brought by the wife for her own medical injuries, the Court stated[27]:

> …Both counsel agreed that the test that applies to this Tort Ground, namely whether Cinzia's claims for medical injuries she suffered as a result of the mold problem in the Scalabrini's house are actionable under s. 61 of the FLA (or at all), is the same test as applied on a Rule 21.01(1)(b) motion to strike a statement of claim on the ground that it discloses no reasonable cause of action. The threshold is established to be very low for this: whether the claim has no reasonable prospect of success. Motions to strike are approached generously and err on the side of allowing novel but arguable claims to proceed to trial.
> …
> These arguments of foreseeability and causation raise interesting considerations. However, given that these claims arise under a statutory scheme that does not expressly address the question of foreseeability, I am not prepared to say definitively that it is relevant to a s. 61 FLA claim or that its absence would be determinative of that claim. Furthermore, foreseeability, while objectively determined, is a question of fact. It is not appropriate for me to decide it on a pleadings motion.
>
> At this stage, in the absence of any clear authority on point and in the face of the broad and permissive wording of s. 61 of the FLA, I am not prepared to find that this claim has no reasonable prospect of success. In keeping with the philosophy that motions to strike are approached generously and that we should err on the side of allowing novel but

[27] *Ibid*. at paras. 28, 34-35.

> arguable claims to proceed to trial, I find that this is such a claim and should be allowed to proceed to trial.

While the specific facts of this case are unlikely to arise often, the case must be viewed through a wider lens. Consider whether in the following, perhaps more likely scenarios, a viable *FLA* claim for personal injury could be advanced in keeping with *Scalabrini* and, if so, when that claim would be discovered:

- A husband is injured and requires attendant care, including assistance with mobility and transfers. His wife provides that attendant care to him. Three years post-accident, while the litigation is ongoing, the wife suffers an injury to her back while helping transfer her husband onto the sofa. She requires physiotherapy, pain medication, and there is a risk of surgery.

- A child is injured and requires extensive attendant care. The parent provides that care. As time goes on, the parent begins to suffer what is colloquially known as "caregiver burnout". After four years, while the litigation is ongoing, that burn-out progresses into a formal diagnosis of Major Depressive Disorder, such that the parent requires psychological counselling and anti-depressants.

## UPDATE ON THE RANGE OF NON-PECUNIARY *FLA* CLAIMS

Finally, the following is a summary of reported non-pecuniary *FLA* awards (from oldest to newest) in the last approximately three years. Note that the awards have *not* been adjusted for inflation and should be going forward if relied upon for negotiations.

- *Rodrigues v. Purtill*[28]
  - Facts: Mild-moderate orthopaedic injury to woman in her early 40's and fatality of an infant.
  - *Re: Fatality of child*
    - Parents: $130,000.00 each
    - Siblings: $35,000.00 each
  - *Re: Injuries to wife/mother:*
    - Husband: $25,000.00
    - Children: $30,000.00 each
  - Notes:

[28] 2018 ONSC 3102 (CanLII). Released in June.

        - Couple were married for four years prior to the MVC.
        - Given the age of the infant, the Court did not consider there to be any pre-MVC guidance or care and, therefore, the only loss was of companionship.

- *Henebry v. Her Majesty the Queen*[29]
    - Facts: 19-year-old assaulted while in jail. His physical injuries were not considered to be permanent, but his psychological injuries were.
    - Mother: $25,000.00
    - Sibling: $25,000.00
    - Grandparents: $7,500 each
    - Notes:
        - Between 2009 and 2014, the Plaintiff had been completely withdrawn from his family.

- *Rolley v. MacDonell*[30]
    - Facts: 54-year-old man suffered a concussion, psychological impairment, and exacerbation of pre-existing chronic pain syndrome in MVC.
    - Wife: $65,000.00
    - Son: $40,000.00
    - Notes:
        - According to the judge, the Plaintiff had "one of the most complex medical histories ever seen" prior to the subject MVC.

- *The Estate of Carlo Demarco v. Dr. Martin*[31]
    - Facts: Fatality of 51-year-old male.
    - Spouse: $100,000.00
    - Adult Children: $35,000.00 each, except $100,000.00 for child with disability
    - (Elderly) Parents: $15,000.00 each

- *Yelland v. Sunrise et al*.[32]
    - Facts: Fatality of elderly woman.
    - Estate of Spouse: $15,000.00
    - Children: $12,660.00 each
    - Grandchildren: $10,000.00 each
    - Notes:
        - The spouse was alive at the time of the woman's death, but passed away by the time of trial.

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[29] 2018 ONSC 6584 (CanLII). Released in October.
[30] *Supra*, note 16. Released in December.
[31] 2019 ONSC 2788 (CanLII). Released in May.
[32] 2019 ONSC 2842 (CanLII). Released in May.

- *Hummel v. Jantzi*[33]
  - Facts: Brain injury suffered by child.
  - Parents: $75,000.00 each
  - Siblings: $25,000.00 each

- *Jasperson v. Karas*[34]
  - Facts: Vision problems suffered by 57 year-old male.
  - Spouse: $40,000.00

- *Curwen v. Srivathsan*[35]
  - Facts: Dog bite leaving physical and emotional scars suffered by 15 year-old.
  - Parents: $5,000.00

- *Tahir v. Mitoff*[36]
  - Facts: Fatality of 47-year-old woman.
  - Spouse: $50,000.00
  - Adult Children: $35,000.00 each
  - Notes:
    - The Plaintiff had numerous pre-existing health issues.
    - Couple had been married for 26 years.
    - The children still lived at home.

- *Onley v. Town of Whitby*[37]
  - Facts: PTSD suffered by an 18-year-old.
  - Parents: $15,000.00
  - Notes:
    - Damages assessment despite no finding of liability.

- *Panchyshyn v. Hammond*[38]
  - Facts: Fatality of 21-year-old.
  - Father: $60,000.00
  - Mother: $40,000.00
  - Adult Siblings: $nil
  - Minor Sibling: $7,500.00
  - Notes:
    - The deceased had a long history of drug and alcohol abuse, and had lived with various different family members over the course of his life. Overall, he spent the most time living with his father.

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[33] *Hummel*, *supra* note 17.
[34] 2019 ONSC 5841 (CanLII). Released in October.
[35] 2019 ONSC 6547 (CanLII). Released in November.
[36] 2019 ONSC 7298 (CanLII). Released in December.
[37] 2019 ONSC 20 (CanLII). Released in January.
[38] 2020 ONSC 381 (CanLII). Released in January.

        - There was no evidence adduced at all directly from the adult siblings as to any loss of guidance, care, or companionship they might have suffered.

- *Stepita v. Dibble*[39]
    - Facts: 56-year-old woman allegedly underwent an unnecessary surgery for what turned out to be a non-cancerous mass.
    - Elderly Parents: $2,500.00 each
    - Sibling: $2,500.00
    - Notes:
        - Damages assessed despite case being dismissed on liability.
        - The Plaintiff did not reside in the same city as any of the *FLA* claimants and did not see them often.

- *Coffey v. Cyriac*[40]
    - Facts: Woman likely in her 60's suffered aggravation of acid reflux and had her stomach removed.
    - Spouse: $40,000.00
    - Adult Child: $20,000.00
    - Notes:
        - Couple had been married for 40 years. They completely lost their intimate life.
        - The daughter did not live at home.

- *Boone v. O'Kelly*[41]
    - Facts: Lower limb paralysis suffered by man in his 40's (as of the date of loss).
    - Parents: $90,000.00 each
    - Notes:
        - The primary Plaintiff was already suffering from disabilities and in need of 24-hour care prior to the subject incident.
        - The Plaintiff resided with the *FLA* claimants.

*Deanna S. Gilbert can be reached at 416-868-3205 or dgilbert@thomsonrogers.com.*

[39] 2020 ONSC 3041 (CanLII). Released in May.
[40] *Coffey*, *supra* note 10.
[41] *Boone*, *supra* note 20.