

JOHN R. CARLSON
KAREN D.P. CARLSON

Personal Injury Damages

2001-2006
Cumulative Edition



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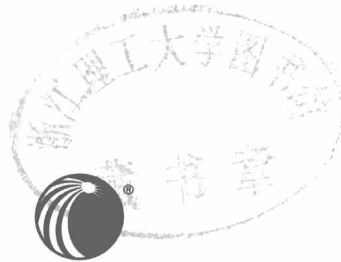


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PREFACE

Welcome to the 2001-2006 Cumulative Edition of this book. This edition includes the new cases reported for 2006 and all previous cases we have reported thus far. Our next edition will be for 2007 cases only.

This project has evolved from our weekly digests of personal injury cases available on our “CARL” Netletter and database on Quicklaw. I review and report, on a weekly basis, all of the common-law decisions on Quicklaw (at least the ones I can find) where non-pecuniary damages are assessed by the court — regardless of liability. We exclude very few decisions — as explained below.

This Edition includes nearly all of the reported non-pecuniary damages decisions that I obtained from Quicklaw for common-law provinces for the period of November 2000 to the end of 2006. Due to publishing deadlines, there will be a few later 2006 decisions, reported in early 2007 on Quicklaw, that will not make it into this Edition.

You will see that the reported range of non-pecuniary damages in this book is quite broad — from \$190 (*MacDonald v. Corey Craig Ltd.*, [2000] N.B.J. No. 534 (Sm. Cl. Ct.)) for a case where the plaintiff drank expired milk that caused vomiting and illness that lasted for a few hours, to \$306,500 (*Chow v. H.J.H.*, [2005] B.C.J. No. 3096 (S.C.)) for a case involving a severe brain injury.

The cases summarized in this book are initially organized by province, and then organized by the nature of injury with a cross reference to the province section. This layout should assist you with simplifying the task of assessing non-pecuniary damages.

The practice of assessing non-pecuniary damages is an exercise of familiarity with precedents and with the numerous factors considered by the court in arriving at that figure for that particular plaintiff.

One of the key factors governing the court’s assessment of non-pecuniary damages is the \$100,000 upper limit set by the Supreme Court of Canada in the well known 1978 trilogy of cases: *Andrews v. Grand & Toy Alta. Ltd.*, [1978] 2 S.C.R. 229, *Thornton v. Board of School Trustees of School District No. 57 (Prince George)*, [1978] 2 S.C.R. 267, and *Arnold v. Teno*, [1978] 2 S.C.R. 287. Taking into account the effect of inflation since these judgments, this upper limit is now over \$300,000.

The delicate balancing act of assessing the relative severity of injuries along this range of damages can be an interesting exercise. For example, is an individual left with severe pain and debilitating psychological problems entitled to 50 per cent of the damages that a person who became a quadriplegic would receive? Are those damages too high or too low? Is a two-year soft tissue injury to a person's neck and back justifiably compensated at nearly 10 per cent of the damages awarded to a young person who became a quadriplegic? Too high or too low? Fortunately, it is not necessary for us to consider those deeper questions when assessing non-pecuniary damages. That issue has been answered by the large body of precedents dealing with the numerous types and combinations of injuries.

Not surprisingly, there is a great deal of predictability to the assessment of non-pecuniary damages. This is particularly true when dealing with a single injury or small groups of injuries. Of course, it is not a precise science, and each case can only be safely assessed within a range of damages that could reasonably be expected to apply to that particular case.

Experienced counsel will more often than not have their assessed range of damages overlap with opposing counsel and then also overlap with the court to some degree, so long as each assesses the various factors going into that assessment with the same perspective and weight. The existing body of recent cases provides us with a good guideline to assist in that assessment of non-pecuniary damages.

Having been involved with reviewing and reporting this data on a weekly basis for more than six years for Quicklaw, the predictability of the courts' assessment has become fairly apparent. However, to accurately assess non-pecuniary damages, one must be aware of the various factors considered by the court when assessing these damages.

We can best summarize the most important factors to be considered when assessing non-pecuniary damages as follows:

1. The upper limit set by the Supreme Court of Canada;
2. The nature of the injuries;
3. The permanence of the injuries;
4. The degree of debilitation from normal day-to-day activities;
5. The plaintiff's credibility.

PREFACE

The above factors help a court get to its initial assessment. Thereafter, there are many other factors that may decrease the assessment of non-pecuniary damages, including: symptomatic pre-existing conditions, crumbling skull and the failure to mitigate.

Obviously, the greater the severity of injuries, the longer the duration of injuries and the greater the degree of debilitation arising from those injuries, the greater the assessment. Credibility, on the other hand, is the wild card that causes concern for the plaintiff's counsel and creates hope for the defence counsel.

It has become apparent to me, from reviewing these cases, that the courts often place very little weight on the credibility issue when faced with evidence of occasional exaggeration or lying. Those decisions reflect no drastic difference with another court's assessment of similar non-pecuniary damages involving no credibility issues. At most, it appears that the courts faced with occasional credibility issues are simply awarding damages towards the lower end of the otherwise normal anticipated range of damages.

Over the recent years, there have been a handful of cases where the courts have found consistent exaggeration and lying by a plaintiff to totally destroy the foundation and reliability of the related evidence, and thereby preclude the finding of any damages. However, those are very rare decisions. In other cases where the courts are facing significant credibility issues, they have chosen to deem the plaintiff to be recovered from all injuries within a specified period of time as a measured response to that credibility issue.

Looking at some simple statistics from the cases that I have reviewed for this Edition, one gets a telling snapshot of activity taking place across Canada regarding the differences between the non-pecuniary damages assessments in each province and the average value of those assessments in each province.

The statistics below reflect the number of assessments that I have reported for each province, and not the actual number of cases for that province. This difference arises from my intentional exclusion of certain decisions, as explained below.

The numbers below only come from trial decisions. I have generally reported the damages that are initially assessed before any deduction is applied by the court (*e.g.*, for failure to mitigate). I have excluded any cases where non-pecuniary damages were simply agreed upon between counsel versus having a court decide the issue. With the exception where the injury information remained useful, I have also generally excluded assessments made on a global basis (*e.g.*, for more than one accident). I have also excluded any aggravated damages component if it

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was identified as a separate figure from the non-pecuniary damages. Finally, I have also excluded those very few decisions where the court has provided little valuable information about the injury for comparative purposes.

When reporting on jury decisions, the information obtained comes from the Appeal Court. Due to the fact that jury decisions are unique, in that we are not left with a written decision, the figures below only reflect the jury decisions that have had an appeal and where that Appeal Court's decision gave sufficient background information on the injury evidence considered by the jury.

PROVINCE	NUMBER OF ASSESSMENTS		AVERAGE ASSESSMENT	
British Columbia	2006	122	2006	\$50,705
	2005	108	2005	\$48,690
	2004	92	2004	\$56,894
	2003	127	2003	\$41,110
	2002	126	2002	\$38,727
	2001	144	2001	\$35,560
Alberta	2006	20	2006	\$55,625
	2005	19	2005	\$56,421
	2004	23	2004	\$68,652
	2003	19	2003	\$70,842
	2002	15	2002	\$29,833
	2001	22	2001	\$48,377
Saskatchewan	2006	6	2006	\$53,667
	2005	17	2005	\$17,247
	2004	1	2004	\$30,000
	2003	5	2003	\$29,000
	2002	8	2002	\$38,500
	2001	13	2001	\$52,769
Manitoba	2006	5	2006	\$91,280
	2005	3	2005	\$60,667
	2004	8	2004	\$32,313
	2003	2	2003	\$46,250
	2002	2	2002	\$32,500
	2001	6	2001	\$58,333

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Ontario	2006	33	2006	\$63,673
	2005	42	2005	\$53,974
	2004	50	2004	\$65,815
	2003	75	2003	\$75,093
	2002	43	2002	\$67,128
	2001	56	2001	\$61,915
Prince Edward Island	2006	0	2006	N/A
	2005	0	2005	N/A
	2004	0	2004	N/A
	2003	0	2003	N/A
	2002	0	2002	N/A
	2001	0	2001	N/A
New Brunswick	2006	11	2006	\$14,409
	2005	20	2005	\$40,950
	2004	18	2004	\$25,194
	2003	15	2003	\$49,800
	2002	23	2002	\$26,870
	2001	13	2001	\$55,692
Nova Scotia	2006	12	2006	\$27,917
	2005	3	2005	\$69,667
	2004	3	2004	\$93,333
	2003	6	2003	\$41,667
	2002	7	2002	\$30,000
	2001	5	2001	\$62,000
Newfoundland and Labrador	2006	1	2006	\$175,000
	2005	3	2005	\$58,333
	2004	1	2004	\$40,000
	2003	0	2003	N/A
	2002	1	2002	\$42,000
	2001	5	2001	\$29,200
Northwest Territories	2006	0	2006	N/A
	2005	1	2005	\$50,000

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Yukon	2006	1	2006	\$4,000
	2005	0	2005	N/A
	2004	0	2004	N/A
	2003	1	2003	\$20,000
	2002	1	2002	\$45,000
	2001	0	2001	N/A
Nunavut	2006	0	2006	N/A
	2005	0	2005	N/A
	2004	0	2004	N/A
	2003	0	2003	N/A
	2002	0	2002	N/A
	2001	0	2001	N/A

The provinces with the most notable change in 2006, in the number of non-pecuniary assessments, were Nova Scotia and Saskatchewan, with the former having a notable jump in assessments and the latter having a notable decline.

B.C. continues to be the leader in the number of non-pecuniary damages assessments each year.

I hope that this book will assist you with finding the right case as you attempt to quantify your non-pecuniary damages.

Should you be aware of a case that has not made its way into this book, please let us know as we strive to make this the most comprehensive source of recent non-pecuniary damages assessments available.

This book is the joint effort of mine and my wife, Karen Carlson, who is responsible for the categorization and organization of the information provided in our case summaries — the hallmark of the popularity of our associated Quicklaw Netletter and database, “CARL.”

John R. Carlson
January 2007

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