

IT'S THE LAW

Donna Robinson CIP

ONTARIO COURT OF APPEAL DECISION

CLAUDIA McINTYRE

AND

JAMES DOCHERTY, SHAUN DOCHERTY AND ALAN McINTYRE

This recent case from the Ontario Court of Appeal will no doubt impact greatly on claims for housekeeping expenses. No longer will it be a simple case of determining the actual cost of replacing the services previously done by an injured party but will entail determining if a non-pecuniary award is in order.

The Ontario Court of appeal observed that in evaluating housekeeping losses in a personal injury claim Canadian courts “have developed an unnecessarily complex approach” since *Fobel v. Dean* in 1991.

BACKGROUND INFORMATION:

As a result of a motor vehicle accident Mrs. McIntyre suffers from chronic pain, fibromyalgia, depression and anxiety. In addition to her work outside the home she did the bulk of the housework at home and was described by family members as a “clean freak” or a “neat freak”. Her housekeeping duties included all the cooking, vacuuming, dishwashing, cleaning, laundry, bed-making and gardening. Her husband assisted with other tasks, such as taking out the garbage cleaning windows and heavier chores.

After the accident, Mrs. McIntyre experienced pain daily and she had to pace herself carefully and with pain she could undertake most of her housekeeping responsibilities. For the balance of those responsibilities, she relied on assistance provided by her family.

This case was released May 29, 2009. The Ontario Court of Appeal sought to avoid confusion in future cases where different scenerios of housekeeping losses arise and felt that it would be helpful if the jury can be specifically instructed regarding the type of loss at issue and the evidence in support of that loss. To this end the court classified three different types of housekeeping losses and the types of damages that they would attract.

Work left undone:

Where the plaintiff is unable to perform some or all housekeeping tasks, and where a third party [i.e. housekeeper] does not do the work in the injured person's stead, work will be left undone. In that situation, the injured plaintiff will experience two sorts of intangible losses compensable in an award of non-pecuniary damages.

First there is the personal loss to the plaintiff because the pre-accident housekeeping would have contributed to his or her sense of identity in the same way an income-earning plaintiff would perceive her or his earnings to be a valuable contribution to the family's financial health.

Second, where work is left undone, the plaintiff will be forced to live with the loss of the amenity of an orderly and functioning home.

Work done by the Plaintiff with Difficulty

A plaintiff may continue to undertake housekeeping but may experience pain or difficulty in doing so...Justice Lang wrote "He or she may be required to work more hours post accident to accomplish the same amount of pre-accident housekeeping. If a plaintiff thus works "inefficiently" her or his non-pecuniary award would be increased to reflect any increased pain and suffering. To the extent the plaintiff's inefficiency also results in a less clean and organized household, this is the loss of an amenity that the award for non-pecuniary damages would also take into account.

Work done by Third Parties

The law is well-established that where a plaintiff incurs a pre-trial, out-of-pocket loss by hiring a replacement homemaker, the plaintiff may claim the reasonable replacement costs of the homemaker as special damages.

In this case Mrs. McIntyre was awarded \$60,000 for damages for "past housekeeping inefficiency" and for past and future "lost housekeeping capacity."

Citation: McIntyre v. Docherty, 2009 ONCA 448

