

Family

Increasing damage awards to battered women

By **Barb Cotton and Christine Silverberg**



Barb Cotton

(February 11, 2022, 1:32 PM EST) -- Historically, very low damages awards have been granted to battered women, who may have suffered through years of physical and emotional abuse by their husbands or common law partners. Not that long ago, the quantum of awards could be as low as \$1,000 (*Holden v. Gagne*, 2013 ONSC 1423) for domestic assault and battery, increasing gradually to about \$20,000 (see *L.N.S. v. W.M.K.*, 1999 ABQB 478, additional reasons at 1999 ABQB 478; *L.V. v. T.R.*, 2015 BCPC 332).

As recently as 2019, the British Columbia Supreme Court granted only \$20,000 in damages for assault and battery suffered by a woman who was battered by her husband for over 25 years (*Petrie v. Lindsay*, 2019 BCSC 371).



Christine Silverberg

In a recent British Columbia Supreme Court decision, *Schuetze v. Pyper*, 2021 BCSC 2209, a victim of family violence, including physical abuse and coercive control, was granted \$100,000 in general damages which, together with her significant loss of income damages, resulted in an award totalling \$795,000. An important feature of this case is that the claim for damages was advanced in a personal injury law context, and not as part of a general family law claim. Although it is being hailed as a high-water decision, note must be taken of the significant loss of income component to the claim, which may or may not be available to other battered women claimants.

Although the wife alleged a series of physical assaults over her approximate 16-year relationship, as well as coercive control by the husband, Justice Margot L. Fleming focused, in particular, on a "Violent

Incident" observed by the parties' children, in which the wife was violently assaulted. The husband was escorted out of the home by police that evening and charged with assault. The husband characterized the event as one of him protecting himself from the assaults of the wife, and the criminal trial judge apparently accepted this explanation and gave him an absolute discharge as a sentence.

The wife, however, was seriously injured in this incident, suffering a mild traumatic brain injury, PTSD, fear for her and her children's safety, depression, anxiety and emotional trauma, amongst other injuries and traumas. She was unable to work at her high-powered position in the technology industry for a significant period of time. The civil trial judge accepted the evidence of the wife and not the husband, awarding general damages of \$100,000 and significant loss of income damages, for a total damage award of \$795,000.

Although the action was framed as a personal injury lawsuit, the fact that the wife was a battered woman featured in the decision. The defence argued that the parties' six-month attempt to reconcile should militate against causative proof of her damages, but Justice Fleming dismissed this argument, stating:

I firmly reject the suggestion that her willingness to attempt to reconcile and her engagement with Mr. Pyper is inconsistent with the diagnosis of PTSD and significant ongoing fear. I expect I can take judicial notice of the reality that victims of intimate partner violence often leave and

return to the relationship many times. In any event, based on the facts of this case, I infer many factors likely contributed to Ms. Schuetze's willingness to keep trying, among them the psychological and emotional impact of an abusive and controlling relationship, isolation, her view that an intact family was best for the children and the absence of immediate family support.

In a recent Alberta case, *E.S. v. Shillington*, 2021 ABQB 739, in addition to damages awarded for "revenge porn," a battered woman was awarded \$175,000 for assault and battery, with a further \$50,000 awarded in aggravated damages and \$50,000 in punitive damages. The parties were in an 11-year relationship, which was "marred by the Defendant committing multiple acts of physical and sexual assault against the Plaintiff" (para 9). The relationship ended when the defendant, a member of the Armed Forces, violently sexually assaulted the plaintiff in a public Legion in front of bystanders. In awarding her significant damages, Justice Avril B. Inglis stated:

105 The Plaintiff was in a committed relationship with the Defendant; they lived in a trust relationship and shared two young children together. These assaults forced her to flee her home and left her suffering PTSD, depression, anxiety, and difficulty sleeping. Her *viva voce* evidence about the ongoing impact on her personal life, including her confidence and sexuality, and ability to function generally is striking. The effects of the abuse she experienced are long-lasting and severe. Her treatment for these conditions are time-consuming and expensive, and have substantially slowed her progress academically (and, thus, postponed any professional pursuits).

While it may be too early to come to conclusions, it would appear that an award of general damages for assault and battery in a family violence context may be trending to be on par with general damages awarded for an assault and battery by a stranger. In *D.M.N. v. J.S.*, 2013 ONSC 3291, for example, a woman who was horrendously sexually assaulted by a store clerk was awarded general damages of \$225,000 and punitive damages of \$75,000, which, inflation adjusted, totals \$269,926.65 (according to the Bank of Canada Inflation Index), on par with the award in *ES v. Shillington*.

In Canada, in 2019, of the 107,810 people aged 15 and over who experienced intimate partner violence, 79 per cent were women, and the rates of such violence were more than 3.5 times higher amongst women than men. Moreover, the overall rate of police-reported family violence increased for the third consecutive year, rising 14 per cent. (*Juristat, Family Violence in Canada: A Statistical Profile*, 2019 (released March 2, 2021) at section 3). With this backdrop, it is encouraging that there appears to be progress in the case law assessing damages for battered spouses. With time and the increasing societal awareness of the plight of wives or partners victimized by their spouses, we may see a continued progressive attitude of the courts.

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