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Evans v. The Catholic Children's Aid Society of Toronto et al.: A Warning for Institutional Defendants in Historic Sexual Abuse Lawsuits

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The Ontario Superior Court of Justice recently ruled on the Defendants' post-verdict motions in a civil sexual-assault action. The court apportioned 25% of fault to an institutional defendant and found the organization to be jointly and severally liable for 100% of the Plaintiff's compensatory damages. The court upheld a \$1,000,000 punitive damages award against the abuser's estate and set the Pre-Judgment Interest ("PJI") rate that was calculated retroactively from the "date of discoverability" of the cause of action (June 1992), resulting in substantial exposure.

Background

In *Evans v. The Catholic Children's Aid Society of Toronto et al.*¹, the Plaintiff sued the estate of the deceased perpetrator, Peter Kaczmarczyk (the "Estate"), her mother's live-in boyfriend, for weekly sexual abuse that occurred from 1956-1964. The Plaintiff also sued the Catholic Children's Aid Society of Toronto ("CCAST") for failing to remove her or protect her while they were involved with the Plaintiff and her family.

During the civil trial, a psychiatrist called by CCAST testified that if the abuse described by the Plaintiff occurred, it was the worst case of child sexual abuse he had ever encountered. Considering the jury's verdict, it appears they accepted this expert opinion in determining their award.

¹ 2025 ONSC 5652.



Following a 20-day jury trial, both Defendants were found jointly liable. Despite the joint liability, the jury apportioned fault 75% to the Estate and 25% to CCAST and awarded \$1,390,000 in compensatory damages and \$1,000,000 in punitive damages against the Estate.

The Estate and CCAST advanced post-verdict motions. The following was challenged: (1) the quantum of punitive damages awarded against the Estate; (2) the joint and several liability of CCAST; and (3) assessment of the PJI on the general and special damages award.

Punitive Damages Award

Ultimately the court found there was no basis for it to interfere with the jury's \$1,000,000 punitive damages award against the Estate, even though the perpetrator was deceased because:

- There was a clear factual foundation for the award, reflecting the severity and duration of the abuse and the perpetrator's lack of punishment;
- The objective of punitive damages was not only punishment and deterrence of the wrongdoer but also deterrence of others and denunciation for the egregious conduct (irrespective of whether the perpetrator was deceased). Considering the repeated nature of the abuse, and the expert psychiatrist's remarks, the perpetrator's conduct was considered to be highly egregious;
- The court rejected arguments that criminal charges against the perpetrator (which were never tried or resulted in conviction) necessarily constituted "punishment" as per the Supreme Court of Canada decision in *Whiten v. Pilot Insurance Co.*² Notably the court stated that even if the perpetrator had been criminally convicted, this does not preclude an award of punitive damages; and,
- The court rejected arguments that in similar cases, the punitive damages award has never been as high as \$1,000,000,³ on the basis that the trial judge's role was not to appeal the jury's verdict but to "refuse to accept the verdict of a jury only when she or he considers

² 2002 SCC 18 (CanLII), [2002] 1 SCR 595. Indeed, the court found the jury was not asked to consider this.

³ Prior to this decision, \$500,000 was one of the highest awards for punitive damages in *MacLeod v. Marshall*, 2019 ONCA 842.

that there is no evidence to support the findings of the jury”. The court found that there was evidence for the jury’s finding that punitive damages were appropriate in this case.⁴

Joint and Several Liability

CCAST argued that it should be severally, and not jointly, liable for the general and special damages awarded, stating that the egregious conduct of the perpetrator’s actions should reduce CCAST’s liability to 0%.

The court disagreed and found CCAST and the Estate to be concurrent tortfeasors. While their tortious actions were different and may have been separated in time, the evidence was the actions of each “[ran] together to produce the same damage”. The court rejected arguments that intentional torts fall outside the “fault or negligence” required under the *Negligence Act* to be held jointly liable and further, that institutions cannot use the severity of a perpetrator’s conduct to reduce their own exposure. Accordingly, the court declined to limit CCAST’s liability exposure to several liability only while also noting that the apportionment of liability in this case was a matter for the jury to determine.

Pre-Judgment Interest

In this case, the court applied the “date of discoverability” of the cause of action, the most well developed method of calculating PJI in historical sexual abuse claims, for both general and special damages. That date is generally understood to be the date in which the Plaintiff draws a connection between the assaults and the harm caused – typically when the Plaintiff first seeks therapeutic assistance. In this case, the Plaintiff first sought therapeutic assistance in June of 1992 when she was hospitalized.

While the court has the discretion provided by the *Courts of Justice Act* to alter the presumptive standard prescribed interest rate,⁵ the Defendant has the onus to establish market interest rates and the fluctuation of those rates over time in order to succeed in any type of reduction. Importantly, the court stated that an institutional defendant’s financial status (or lack thereof) is not a reason to deviate from the presumptive interest rate.

⁴ The trial judge stated that even if he found the punitive damages award was too high, he would not interfere with the quantum as this is the role of the Court of Appeal, not a trial judge.

⁵ S. 130(2) R.S.O. 1990, c. C.43.

Ultimately, in this case, the court found there were insufficient grounds to deprive the Plaintiff of the stipulated prejudgment interest for both general and special damages. The court calculated PJI at 5% on general damages and 2% on special damages (past income loss)⁶ over a 33 year period.

Takeaways

This case establishes several critical risk points for institutional defendants:

1. Institutional defendants may face joint liability with intentional tortfeasors at 100% liability for compensatory damages regardless of fault allocation;
2. Punitive damages awards are upheld to achieve denunciation and general deterrence of highly egregious conduct even when the perpetrator is deceased;
3. Even if the perpetrator is criminally convicted, this does not necessarily preclude an award of punitive damages;
4. In this case, the court applied the “date of discoverability” of the cause of action, the most well developed method of calculating PJI in historical sexual abuse claims for both general and special damages. This resulted in a significant PJI award for general and special damages compounded over a 33 year period;
5. An institutional defendant’s financial status (or lack thereof) is not a reason to deviate from the presumptive interest rate when calculating PJI on general and special damages; and,
6. If a defendant seeks to vary the presumptive interest rate, it must provide evidence of market interest rates and the fluctuation of those rates over time in order to succeed in any type of PJI reduction on general and special damages.

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⁶ The presumptive 5% interest rate for general damages pursuant to Rule 53.10 of the *Rules of Civil Procedure*. The interest on the Plaintiff’s special damages shall be calculated bi-yearly as required pursuant to s. 128(3) of the *Courts of Justice Act* using the prescribed rate of 2%.

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