Housekeeping Claims Since *McIntyre*: Has the Landscape Changed?

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In May of 2009, the Ontario Court of Appeal released *McIntyre v. Docherty*², the decision that notably recognizes pecuniary and non-pecuniary damages attributable to the loss of a sometimes-overlooked asset – the “capacity” to do housekeeping.

The Court in *McIntyre* affirmed influential case law and laid the groundwork for the analysis of housekeeping capacity loss, ultimately establishing that there are three main instances in which a plaintiff might evidence intangible and/or tangible loss of housekeeping capacity: When he or she leaves all or part of the housework undone; when he or she does some or all of the housework but does so with pain or difficulty and therefore inefficiently; and when the plaintiff’s housework is done by third parties.

The Court specified that when the plaintiff leaves housework undone, he or she might suffer two types of intangible (and therefore non-pecuniary) losses.³ There is the loss of identity, self-esteem and sense of contribution previously derived from his or her capacity to clean the home.⁴ There is also the loss of the amenity of an orderly and functioning home.⁵

When the plaintiff can complete housekeeping but is inefficient in doing so because his or her functional impairments and limitations cause him or her to take more time post-injury to accomplish the same tasks he or she did pre-injury, the plaintiff’s non-pecuniary damages should reflect the plaintiff’s increase in pain and suffering during housekeeping.⁶ The Court acknowledged that this award is similar to the non-pecuniary general damages provided to a plaintiff who continues to work, but with pain and difficulty, in the course of paid employment.⁷

In *McIntyre*, the Court confirmed that a plaintiff is entitled to pecuniary damages as recovery of out-of-pocket expenses incurred for housework done by third parties.⁸ A plaintiff who seeks compensation for lost housekeeping capacity when the housekeeping was done by others *gratuitously* should provide evidence quantifying the third parties’ hours.⁹ The Court also confirmed that in order to receive an award for

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¹ With research assistance from student-at-law, Robert Sheldon.
² *McIntyre v Docherty*, 2009 ONCA 448, 2009 CarswellOnt 3032 [*McIntyre*].
³ *Ibid* at para 62.
⁴ *Supra* note 2 at para 63.
⁵ *Supra* note 2 at para 63.
⁶ *Supra* note 2 at para 73.
⁷ *Supra* note 2 at para 74.
⁸ *Supra* note 2 at para 75.
⁹ *Supra* note 2 at para 76.
future loss of housekeeping capacity, the plaintiff is not required to satisfy the court that he or she will hire a third party to assist with housekeeping.\(^\text{10}\)

**Cases since McIntyre**

In the four years following the *McIntyre* judgment, only six reported cases have cited this seminal Court of Appeal decision in the analysis of a plaintiff’s loss of housekeeping capacity. Two other decisions have referred to *McIntyre* by analogy, in the context of the plaintiff’s inefficiency at paid employment\(^\text{11}\) and the plaintiff’s diminished capacity to care for a disabled spouse.\(^\text{12}\)

*McIntyre* remains the leading case on the detailed and far-reaching analysis of loss of housekeeping capacity. No other Appeal Court in the country has even considered it, let alone adapted or modified it.

What follows is a chronological review of the trial level decisions following, referring to, and considering *McIntyre* in Newfoundland and Labrador, Alberta, British Columbia, and Ontario.

**Courtney v. Cleary\(^\text{13}\)**

Newfoundland and Labrador Supreme Court (Trial Division)

Judgment July 6, 2009

In this medical negligence case, the plaintiff, Basil Courtney, claimed that his physical disabilities, caused by the ramifications of a seven month delay in diagnosis and treatment of his oral cancer, diminished his pre-injury capacity to contribute unpaid labour to his “household economy”.\(^\text{14}\) Mr. Courtney and his wife gave evidence of what housekeeping and home maintenance tasks he was previously capable of doing and actually did do prior to his injury.

Justice Hoegg, in considering the plaintiff’s pre-trial loss of housekeeping capacity and applying the *McIntyre* analysis, accepted Mr. Courtney’s evidence that some housekeeping and home maintenance was left undone and some was done with difficulty.\(^\text{15}\) Justice Hoegg decided that the evidence established on a balance of probabilities a reduction in the plaintiff’s non-economic contribution to his household.\(^\text{16}\)

Mr. Courtney’s general non-pecuniary damages award reflected the damages sustained because of housekeeping left undone and done with difficulty.\(^\text{17}\) Justice Hoegg also

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\(^{10}\) *Supra* note 2 at para 58.


\(^{13}\) *Courtney v Cleary*, 2009 NLTD 103, 2009 CarswellNfld 166.

\(^{14}\) *Ibid* at para 188.

\(^{15}\) *Supra* note 13 at paras 240 and 242.

\(^{16}\) *Supra* note 13 at para 242.

\(^{17}\) *Supra* note 13 at para 242.
awarded the plaintiff pecuniary damages for the cost of pre-trial replacement labour and for his future loss of housekeeping capacity to age 75.\(^\text{18}\)

\textit{Meehan et al. v. Holt}\(^\text{19}\)

\textbf{Alberta Court of Queen’s Bench}

\textbf{Judgment May 28, 2010}

The plaintiff Debra Hogan, who had been injured in a motor vehicle collision, lived in a three-storey condominium. Her loss of housekeeping capacity was captured as pain and aggravation of symptoms when performing housekeeping tasks including vacuuming, sweeping, and cooking. Evidence as to Ms. Hogan’s capacity was provided by three functional capacity assessors.

Ms. Hogan’s evidence was that while she was still able to clean her home, the pain that she experienced when doing so required her to pace out her housekeeping activities to the point that she actually completed housekeeping chores less frequently than she did before being injured.\(^\text{20}\) She testified that her condo “always look[ed] dirty”.\(^\text{21}\) Ms. Hogan’s evidence that she stopped having guests over because her condo was dirty would have bolstered her claim for non-pecuniary damages to compensate her for the lost amenity of a clean living space.

The defendants argued that because Ms. Hogan could still perform all required housekeeping tasks, she did not have a claim for lost housekeeping capacity.\(^\text{22}\) Justice Sullivan, at paragraph 362, cited paragraphs 73-74 of \textit{McIntyre}, which read:

\begin{quotation}
Turning to the second scenario, a plaintiff may continue to undertake housekeeping, but may experience pain or difficulty in doing so, as did the plaintiff in this case. She or he 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.

These aspects of the non-pecuniary award will be assessed in a manner similar to the assessment of non-pecuniary losses for a plaintiff who faces increased pain and suffering in performing income-earning tasks. In determining the significance of the components of the loss, the court will consider the evidence about the plaintiff’s pre-accident and pre-trial housekeeping, and the impact of any reduction in the standard of housekeeping on the plaintiff.
\end{quotation}

Ultimately, though Justice Sullivan accepted that Ms. Hogan had to pace herself to complete housekeeping and that her symptoms were aggravated when she performed

\(^{18}\) \textit{Supra} note 13 at para 244.

\(^{19}\) \textit{Meehan v Holt}, 2010 ABQB 287, 2010 CarswellAlta 1023 [\textit{Meehan}].

\(^{20}\) \textit{Ibid} at para 356.

\(^{21}\) \textit{Supra} note 19 at para 356.

\(^{22}\) \textit{Supra} note 19 at para 363.
certain housekeeping activities, he doubted that her difficulties were as great as she
represented. Justice Sullivan determined that the plaintiff’s own evidence concerning
her housekeeping abilities was “largely unreliable.” Meehan reminds us that the
Ontario Court of Appeal has stressed that the plaintiff needs evidence to support his or
her claim for loss of housekeeping capacity. States Justice Sullivan at paragraph 366:

I find it difficult to reconcile the Plaintiff’s testimony that she can only vacuum and dust
once every three to four months with the fact that she is able to maintain a near-daily
workout regimen [sic] and play weekly golf. The Plaintiff’s evidence that she can only
sweep and vacuum approximately four times annually does not accord with the results of
her functional evaluation testing, as discussed above. As an example, the Plaintiff’s
stated inability to vacuum or sweep does not accord with the fact that when performing
the “push/pull” test with [assessor] Ms. Mark, the Plaintiff scored in the medium to heavy
industrial level. On cross-examination Ms. Mark agreed that the Plaintiff’s performance
was at the high end for this test. I accept the evidence of Ms. Mark as to the Plaintiff’s
current abilities. Having observed the Plaintiff in the court for an approximate three week
period (including a demonstration of her golf swing and lunging exercises) I cannot
escape the finding that to the extent that the plaintiff only feels that she can perform
basic housekeeping activities four times annually, this is a self limitation and is unrelated
to the collision.

Justice Sullivan awarded the plaintiff $5,000 in non-pecuniary damages to compensate
her for a “mild loss” of housekeeping capacity; he awarded $1,000 for future loss of
housekeeping capacity.

Ward v. Klaus
British Columbia Supreme Court
Judgment August 27, 2010

Jodie Ward was injured in a motor vehicle collision more than eight years before her
case was heard at trial. She suffered from chronic pain, mainly in the form of severe,
recurring headaches. Her claim for lost capacity to do housework was based on her
inefficiency and reduced capacity in managing housekeeping chores, and her inability to
complete the heavier aspects of home maintenance for which she received weekly paid
assistance. A specialist in occupational medicine provided that Ms. Ward had lost the
capacity to perform housekeeping functions at the level she was used to before being
injured.

Justice Rice dismissed the defendant’s argument that Ms. Ward should not be
compensated for housekeeping done on her behalf by family members as part of the
regular “give and take” of familial relationships. At paragraph 81, Justice Rice cited

23 Supra note 19 at para 366.
24 Supra note 19 at para 366.
26 Supra note 19 at paras 370 and 375.
28 Ibid at para 44.
29 Supra note 28 at para 78.
McTavish v MacGillivray, 2000 BCCA 164, 74 BCLR. (3d) 281 (BCCA) at paragraph 63 to elucidate the well-settled law:

As we have seen, it is now well established that a plaintiff whose ability to perform housekeeping services is diminished in part or in whole ought to be compensated for that loss. It is equally well established that the loss of housekeeping capacity is the plaintiff’s and not that of her family. When family members have gratuitously done the work the plaintiff can no longer do and the tasks they perform have a market value, that value provides a tangible indication of the loss the plaintiff has suffered and enables the court to assign a specific economic value in monetary terms to the loss. This does not mean the loss is that of the family members or that they are to be compensated. Their provision of services evidences the plaintiff’s loss of capacity and provides a basis for valuing that loss.

Justice Rice awarded Ms. Ward $1,200 for her past loss of housekeeping capacity; for her future capacity loss, Justice Rice awarded Ms. Ward $1,100 per year to age 55 and $2,200 per year from age 56-65.30

Hutton et al. v. General Motors of Canada Ltd.31
Alberta Court of Queen’s Bench
Judgment September 22, 2010

Justice Jeffrey factored into his assessment of non-pecuniary damages the plaintiff’s evidence of pre-trial loss of capacity to do certain aspects of housekeeping, which chores the plaintiff did inefficiently or were assumed gratuitously by others.32

Helgason v. Bosa33
British Columbia Supreme Court
Judgment December 8, 2010

The plaintiff, Donna Helgason, was injured in a motor vehicle collision. This housework perfectionist’s loss of capacity claim was premised on her housekeeping inefficiency due to her limitations and pain when completing housework, and her loss of the amenity of a clean and orderly home. She also claimed damages for her future loss of housekeeping capacity.

Prior to being injured, the plaintiff spent 10-12 hours per week doing household chores. She found the activities both satisfying and relaxing. Her husband failed to meet her high standards of housekeeping, so she did almost everything around the house, including the cooking. The plaintiff presented a succinct evidentiary foundation of the “before and after”, found at paragraph 64 of the judgment.

30 Supra note 27 at para 91.
32 Supra note 31 at para 171.
33 Helgason v Bosa, 2010 BCSC 1756, 2010 CarswellBC 3390.
The defendant argued that Ms. Helgason admitted she is a “neat freak”\textsuperscript{34}; this argument seemingly made to suggest that the plaintiff had unusually high standards for which it would be unfair to the defendant to pay compensation. However, the plaintiff, and certainly McIntyre, would suggest that this points to an even greater loss for the plaintiff when comparing her pre- and post-collision capacity to maintain her home.

The plaintiff was awarded $5,000 for her past loss of housekeeping capacity and $10,000 for her future loss.\textsuperscript{35}

\textbf{Riehl v. Hamilton (City)}\textsuperscript{36}
\textbf{Ontario Superior Court of Justice}
\textbf{Judgment June 5, 2012}

Elizabeth Riehl was hurt in a trip and fall. Justice Cavarzan, considering McIntyre, determined that Ms. Riehl had provided sufficient evidence that during her period of convalescence she received gratuitous assistance from friends and neighbours for cooking, cleaning, and shopping.\textsuperscript{37} Ms. Riehl was awarded $100 per week for 12 weeks of past loss of housekeeping capacity. Justice Cavarzan declined to award the plaintiff damages for future loss of housekeeping capacity, cautioning that the $15,000 to $17,000 range sought by the plaintiff would be based only upon pure speculation without the assistance of a functional capacities evaluation.\textsuperscript{38} Obviously, evidence supporting future loss is as important as evidence of past loss.

\section*{Conclusion}

Each of the six cases citing McIntyre is illustrative of the strength of the Ontario Court of Appeal decision. As more courts acknowledge McIntyre, they verify the real and varied personal losses suffered by a plaintiff when his or her capacity to perform housekeeping tasks has been diminished or completely lost.

Fortifying a plaintiff’s claim for loss of housekeeping capacity – an integral component of a plaintiff’s self-worth, self-confidence, and pride of place in the family unit – is worth tending to well in advance of trial. For a very helpful resource on building your client’s housekeeping claim from retention to trial, see Roger Foisy’s OTLA 2010 Fall Conference paper: “How to Keep Housekeeping and Home Maintenance Damages Alive Post September 1, 2010.”

\textsuperscript{34} Supra note 33 at para 166.
\textsuperscript{35} Supra note 33 at para 177.
\textsuperscript{36} Riehl v Hamilton (City), 2012 ONSC 3333, 2012 CarswellOnt 6964.
\textsuperscript{37} Supra note 36 at para 53.
\textsuperscript{38} Supra note 36 at para 62.