

### Helpful Guide to Understanding the Law Regarding a Right to Sue When a Close Family Member is Injured



When a family member is injured, there are often indirect consequences to other immediate family members living within the household such as the need to 'pick up slack' in chores, among other things, on behalf of the injured family member. Personal injury lawyers as well as paralegals (who are usually forbidden from providing legal services on family law matters except whereas [s. 61](#) of the *Family Law Act*, [R.S.O. 1990, c. F.3](#) relates to a right of action for dependent family members who suffer indirect harms due to the wrongful death or injury of another family member), often bring legal action on behalf of the directly injured party as well as the indirectly affected family member.

Typically, the law works in such a way as to limit the right to sue to those persons who were directly injured by a wrongdoer (whether accidental or otherwise). To some degree, this makes sense - for example, if your neighbour is injured in a car accident, you are unable to sue the person that injured your neighbour! Even if the neighbour's injuries are such that you 'lend a hand', you are unable to sue for the stress and inconvenience caused to you because of an injury to your neighbour.

However, if the injured person is a certain family member as defined within the *Family Law Act*, other family members may have a right of action (right to sue). In many respects this seems obvious, especially when the injured family member was injured in some type of severe accident that has a significant impact and affects upon others within the household or family unit.

Although this right of action seems obvious and logical where the most serious of accidents have impacted family members, [s.61](#) of the *Family Law Act* also applies to smaller cases including matters proceeding within the [Small Claims Court](#). The right of action is provided by s. 61(1) and includes rights for both immediate family members as well as some extended family members whereas such states:



If a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part III (Support Obligations), children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction.

### Damages As May Be Claimed

The damages (reward for losses) that a dependent person may claim are very broad ranging from actual damages (specifically measurable expenses) to general damages (immeasurable losses such as inconvenience, stress, loss of or lesser marital consortium, etc.). The breadth of the claimable damages is prescribed by [s. 61\(2\)](#) of the *Family Law Act* as including:

The damages recoverable in a claim under subsection (1) may include:

(a) actual expenses reasonably incurred for the benefit of the person injured or killed;

(b) actual funeral expenses reasonably incurred;

(c) a reasonable allowance for travel expenses actually incurred in visiting the person during his or her treatment or recovery;

(d) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the person, a reasonable allowance for loss of income or the value of the services; and

(e) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred.

### Defined Injuries (or lack of)

Of interest, the term "injuries" is undefined within the *Family Act Law* and accordingly, the scope and breadth of the types of injuries suffered appear as unlimited well beyond the first thoughts that injuries must involve some bodily harm. Even if the injured person has suffered an acute depression without any actual physical bodily harm, a right of action to the dependent family members may exist where the dependent family members are consequently affected. This could be the case where a wrongdoer engaged in a psychological infliction upon the injured person and the resulting stress cascades through the household.

### **Small Claims Court (monetary jurisdiction)**

In some circumstances, combination of the value of claims brought by the injured person as well as the value of the claims brought by the dependent family members may appear to exceed the [Small Claims Court monetary jurisdiction](#); however, as each Plaintiff is a separate claimant, each has an independent right of action to bring claims for compensation up to the limit of the court.

### **Summary Comment**

When a fellow member of the family is injured, and others within the family unit need to pick up the slack for various chores, among other things, the family members who suffer harm via consequent inconvenience and disruption to regular life, while without any direct injuries, may bring litigation against the person who harmed the injured family member.