

**EXAM 6 – CANADA, FALL 2014**

5. (2.5 points)

The cap on non-pecuniary damages was established as a result of the 1978 Trilogy of Supreme Court of Canada decisions.

a. (1.5 points)

Describe three reasons for the cap.

b. (0.5 point)

Briefly describe two exceptions in which Trilogy decisions were ruled not to apply.

c. (0.5 point)

Describe the Supreme Court's argument for allowing exceptions to the cap.

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## EXAM 6C FALL 2014 SAMPLE ANSWERS AND EXAMINER'S REPORT

### QUESTION: 5

TOTAL POINT VALUE: 2.5

LEARNING OBJECTIVE(S): A3

### SAMPLE/ACCEPTED ANSWERS:

**Part a:** 1.5 point

#### *Sample 1*

- A severely injured young adult may be entitled to have virtually limitless damages
  - Without an objective measure/benchmark awards will be inconsistent and extravagant
- Non-pecuniary damages are not meant to be compensatory damages
  - No amount of money will compensate, the award is meant more as a means to make life more endurable
- Extravagant awards may put severe social pressure
  - That is unaffordable insurance, insurance availability concerns

#### *Sample 2*

- Extravagant awards lead to a social burden
- Non-pecuniary damages are really compensatory as no true restitution is possible
- Damages for bodily injuries (general damages) are virtually limitless

#### *Sample 3*

- Extravagant awards for non-pecuniary damages could lead to an excessive social burden and to affordability problems for insurance
- Economic damages of plaintiffs are fully compensated which is arguably more important
- Non-pecuniary damages cannot be objectively measured which leads to inconsistent and excessive awards

**Part b:** 0.5 point

#### *Sample 1*

- Damages for sexual abuse deemed to be exceptional and unlikely to impact premiums
- Damages for defamation (involving Church of Scientology)
  - For similar reasons as above

#### *Sample 2*

General damages cap was found to not be applicable to cases of defamation and cases of sexual assault

## EXAM 6C FALL 2014 SAMPLE ANSWERS AND EXAMINER'S REPORT

### **Part c:** 0.5 point

#### *Sample 1*

The cases and damages were deemed exceptional and unlikely to impact insurance prices, thus not a social burden

#### *Sample 2*

There is no evidence to show that general damages in these types of cases put an additional social burden on society

### **EXAMINER'S REPORT:**

#### **General Commentary**

In general, candidates responded well on this question.

#### **Part a**

Most candidates received full credit for this part.

In most cases, when a candidate did not receive full credit they were overly brief (they only identified, but did not describe the reason). For example, some candidates identified that the cap serves to "reduce social burden" but did not describe how (they merely identified the reason).

#### **Part b**

The majority of candidates were able to recall the appropriate exceptions. For the remaining candidates who did not receive full credit, only 1 exception was provided, or it was left blank.

#### **Part c**

Most candidates received full credit for this part.

Some candidates provided reasonable arguments for allowing exceptions to the cap, however the question specifically asked for the Supreme Court's argument. Arguments that were inconsistent with the Supreme Court's argument were not given credit.