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FEMALE PLAINTIFF AWARDED DAMAGES FOR SURROGACY FEES

WILHELMSON V. DUMMA



Michael Thorne

In April, the Supreme Court of British Columbia became the first Canadian Court to award a plaintiff damages for surrogacy fees in [*Wilhelmson v Dumma*](#)¹.

Mikaela Wilhelmson sustained multiple life-threatening injuries when her vehicle was hit head-on by Jason Dumma who was driving over 150km/h on the wrong side of a divided highway. She spent nearly four weeks in a medically induced coma at the Vancouver General Hospital and 39 days in the traumatic care unit. During that time she underwent more than 19 surgeries to repair injuries to her abdomen, including ruptures of her large and small bowels, a rupture of her diaphragm, an abdominal wall rupture and evisceration, a laceration of her spleen and 13 broken ribs.

At trial, Ms. Wilhelmson's counsel called two experts to testify regarding her ability to conceive and carry a child. Both testified that although she was capable of conceiving a child, pregnancy would represent "a significant risk to her health and welfare."² Her abdominal injuries left her at high risk of developing an ectopic pregnancy and the injuries to her ribs and diaphragm would compound the "normal difficulty many women have breathing when they are pregnant."³ Given the risks, the experts concluded that surrogacy "would be the best option for her to approach pregnancy"⁴.

In light of the medical evidence and experts' testimony, the Court concluded that a surrogate was medically necessary for Ms. Wilhelmson to have a biological child. Further, that the loss of her ability to carry her own child was "clearly compensable"⁵.

Ms. Wilhelmson's counsel argued that damages for cost of future care should include the cost of hiring a surrogate. Mr. Dumma's counsel argued that a specific award for surrogacy fees should not be available as it would contravene the *Assisted Human Reproduction Act*⁶, which makes it illegal to pay for surrogacy. Instead, Ms. Wilhelmson should be compensated for the loss of her ability to carry her own child under her general damages award.

The Court concluded that surrogacy fees were "the only way"⁷ to put Ms. Wilhelmson in the same position she was in before the accident. Further, that awarding her a specific amount for surrogacy fees would not contravene the *Assisted Human Reproduction Act*. Rather, it would enable her to "embark on the lawful activity"⁸ of paying an American surrogate.

¹ 2017 BCSC 616.

² *Ibid* at 119.

³ *Ibid* at 121.

⁴ *Ibid* at 122.

⁵ *Ibid* at 367.

⁶ SC 2004, c 2.

⁷ *Supra* note 5.

⁸ *Ibid* at 374.



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The Court accepted the experts' testimony that surrogacy could be purchased in the United States for \$50,000–\$100,000 per pregnancy and awarded Ms. Wilhelmson \$100,000 in surrogacy fees for two pregnancies.

If you have any questions with respect to this bulletin, please contact the writer, Michael Thorne, by [email](#) or by phone at: 403-260-1461.

CALGARY

7th Floor, 396 – 11th Avenue
S.W.
Calgary, AB T2R 0C5
T: (403) 232-8300
F: (403) 232-8408

EDMONTON

2200 Commerce Place
10155 – 102 Street
Edmonton, AB T5J 4G8
T: (780) 497-4800
F: (780) 424-3254

Toll Free: 1-800-661-9069