

### **ALBERTA COURT STRIKES DOWN MOTOR VEHICLE CAP**

**Reported case:** Morrow v. Zhang  
**Citation:** 2008 ABQB 98  
**At Issue:** Is a cap on general damages for minor injuries unconstitutional?  
**The Court:** Court of Queen’s Bench of Alberta  
**Judgment Rendered:** February 8, 2008

**Factual Summary:** The plaintiffs involved in this “cap challenge” were injured in motor vehicle accidents. The Alberta Minor Injury Regulation (MIR) imposed a \$4,000 cap on non-pecuniary general damages for “minor injuries” caused by the use of operation of a motor vehicle. The plaintiff alleged that the MIR was contrary to Section 7 and 15(1) of the Canadian Charter of rights and Freedoms.

**Disposition by Lower Court:** The judge decided that but for the MIR, the plaintiff’s injuries would have yielded general damages of \$20,000 and \$15,000 respectively. The judge decided that the MIR did not contravene s. 7 of the Charter, but it did contravene s. 15(1) as it was discriminatory on the basis of physical disability. The court accepted that the objective of the cap was to reduce insurance premiums, thereby maintaining affordable mandatory auto insurance, and this was a pressing and substantial objective. The court also accepted this goal as being rationally connected to the imposition of the cap. However, the court was not satisfied the MIR was structured so as to minimally impair the plaintiff’s rights while still achieving the objective. The court was also not satisfied that the positive effect of the reduced premiums was sufficient to outweigh the deleterious effects of the MIR on minor injury victims. The MIR was struck down retroactively.

**Appellate Decision:** Pending.