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Disputes over Parental Care when the Dutiful Child Wants to Be Paid

RUTH M. CORBIN AND BARRY S. CORBIN*

Canada's policy and law regimes seem unprepared for the inevitable increase in disputes about compensation for guardians of aging relatives. With medical advances and universal health care access, people are living longer and are more likely to become mentally incapable of making decisions at some point in life. Governments have a policy preference to keep aging people at home. Those who oversee the welfare of incapable seniors (frequently their dutiful children) may have a variety of individual circumstances for wanting or needing to be paid. From one province to another, rules are woefully inconsistent in specifying when compensation is allowed (if it is allowed at all). A pervasive issue is the fuzzy question of how to calculate compensation in any event, for the acts of constant caring, monitoring, responding to emergencies, supervising, deciding when it comes to the ongoing welfare of an older incapable person. In the absence of an objective answer to this fuzzy question, judges have been obliged to fall back on personal values and principles.

This article assembles a compendium of current laws and regulations across Canada with respect to paying a legally-authorized guardian of personal care. Statutory and case law inconsistencies are documented. In support of objectively determined fairness and consistency across similar fact situations, the article concludes with a specific recommendation, supported by the expert literature, for objective determination of guardian compensation.

I. POLICY IMPORTANCE TO CANADA

Like other topics pushed into the spotlight by baby boomers, the responsibilities of parental care are faced by more and more people. Some people, already classified as "seniors" themselves, enjoy both the good fortune and the complex obligations of having parents who are living well beyond average lifespan. Siblings are sometimes implicated in sharing that responsibility. Others, for different reasons, hold power of attorney for

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personal care of other important people in their lives. What is there to fight about that might require the intervention of the courts? The answer is predictable: money.

Based on sheer demographics, an increased number of disputes respecting powers of attorney for personal care is inevitable. Resolving issues in the law is beneficial not only for courts and estates practitioners, but for any member of the bar in everyday life who may one day be drawn into the role of looking after an elderly family member, imbued with the legal authority for personal care. Those who hold such authority are sometimes referred to as a "guardian" of the person or guardian of personal care.[1]

Compensation remains a legal quandary. How much should such a guardian be paid? There is little consistency in court awards in any given province, and even less consistency between provinces. The importance of the topic rises to the very level of Canada's health-economics policy. With medical advances and universal health care access, people are living longer and are more likely to become mentally incapable of making decisions at some point in life. Care at home for incapacitated seniors (rather than care in hospitals or state-subsidized nursing homes) is a policy preference of the federal government.[2] Fair and consistent economic incentives will surely influence the decision by a guardian of care as to whether to keep the person being cared for at home or in a government-subsidized facility. On the darker side of the issue is the adult child who is providing a parent with personal care services and, having access to the parent's bank account, unilaterally elects to take compensation for providing those personal care services. This sad aspect of elder-abuse is another impetus for action. For all of these reasons, pursuit of a sound legislative framework for compensation of guardians of personal care should be a matter of national interest.

Certain unresolved issues create stumbling blocks along the path to case law consistency and legislative change. They include the following:

- In some provinces, there is no statutory guideline for compensating guardians of personal care. Where statutory references are made, ambiguities sometimes present themselves, even on the right to be paid at all.
- In the absence of any statutory guideline, judges are inevitably left to fall back on personal values. Not surprisingly, these turn out to be unevenly applied and lead to inconsistent outcomes. Where hourly compensation has

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1 Some publications distinguish the term "guardian" as being a court appointee for incompetent persons, e.g. Community Legal Education Ontario, at: < http://www.cleo.on.ca/en/publications/power/what-guardian-person >. We do not make that distinction here.

2 See, for example the Prime Minister's policy statement regarding financial support for home-care at < https://www.liberal.ca/realchange/a-new-health-accord/ >, accessed March 7, 2017.

been awarded, it has ranged dramatically from $6.50 per hour to $175 per hour.

- Attempts to apply a logical formula to calculate compensation are riddled with complexities. Are the responsibilities for personal care not those of a dutiful child, for which compensation is inappropriate?[3] Are all hours spent at a parent's home compensable as relating to personal care? Should the pay-scale of a person's occupation affect the level of compensation, particularly when time off work is required to provide personal services? Every family has its own story and cultural dictates, raising the additional question as to whether it is even feasible to set common guidelines for resolving unpredictable disputes among siblings.

This article puts a spotlight on statutory and judicial inconsistency in Canada when it comes to awarding compensation to a legally-authorized guardian of personal care. It identifies patterns in awards that may or may not be relevant to what we want in our laws. In support of objectively determined fairness and consistency across outcomes for similar fact situations, the article concludes with a specific recommendation for objective determination of guardian compensation.

II. POWER OF ATTORNEY AND "GUARDIAN" OF THE PERSON DEFINED

In planning for the uncertainties of aging, Canadians should be cognizant of the possibility of future incapacity — incapacity that may impede the ability to make sound decisions about personal health or welfare. The power of attorney is an instrument that allows for a measure of control over future health and welfare, when the individual is no longer able to make decisions personally. It entails granting decision-making authority to another person (a "guardian") to act on behalf of the incapable person. Authority is granted by way of a signed document. Some, but not all, provinces in Canada have legislation governing the person acting under that document.[4] The term "power of attorney for personal care," used in Ontario, is adopted in some provinces, but not others. We use the word "guardian of personal care" here to designate the role of one or

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[3] In one case, Ontario's Public Guardian and Trustee reportedly challenged the amount requested by the attorney for personal care, wondering "whatever happened to natural love and affection?" < https://hullandhull.com/2008/10/compensation-personal-care-guardians/ > . See the same strongly worded philosophy of the Court in *Childs v. Childs,* 2015 ONSC 4036.

[4] In Ontario, *Substitute Decisions Act, 1992*, S.O. 1992 C-30, as amended; in British Columbia, the *Representation Agreement Act*, RSBC 1996, chapter 405; in Alberta, the *Personal Directives Act*, RSA 2000, c P-6; in Saskatchewan, *Powers of Attorney Amendment Act, 2014*.

more individuals holding a legally recognized authority to provide personal care services to the person (the "grantor") granting that authority. Section III of this article reviews statutory guidance in each province regarding compensation for acting as a guardian of personal care. It concludes that statutory guidance within provincial jurisdictions is incomplete, inconsistent among provinces or non-existent. Section IV looks for patterns in compensation awarded by the courts which might provide alternative guidance; while the analysis identifies a limited set of common principles, it also finds that compensation awards may reflect personal values of individual judges.

III. PROVINCIAL STATUTES: INCOMPLETE, INCONSISTENT OR NON-EXISTENT

The laws regarding powers of attorney and appointed guardians fall within the jurisdiction of individual provinces. Laws and regulations between provinces differ notably:

(a) In only three provinces (Ontario, Saskatchewan and Quebec) is there a common statute empowering an individual to give a power of attorney to substitute decision-makers for both personal care and property. Other jurisdictions have statutes with the term "Power of Attorney" in the title, but no reference at all to personal care.[5]
(b) Guardians for personal care are identified by different names ("guardians", "attorneys for personal care", "substitute decision-makers", "representatives", "supporters", "agents", "proxies", "delegates", "mandataries").
(c) The role and decision-making power of guardians appointed through statute or regulation have differing scopes of authority in different provinces.
(d) Even the age to qualify as a guardian for personal care varies across provinces.
(e) Among different provinces, compensation may be contemplated and not specified, contemplated on an exceptions-only basis, prohibited entirely or not mentioned at all.
(f) Provinces are also differently disposed towards the circumstances under which a guardian of personal care may be the same person who simultaneously acts as a paid caregiver.

Approaches to compensation in each province appear rooted in different perceptions of the role that is played by a guardian of personal care. Differences between provinces pose challenges in an age of mobility, where adult children and their parents may live in different provinces, separated by a few kilometres across a provincial border. Differences between provinces in statutory language also interfere with national debate about our future policies of guardianship for an aging population.

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[5] Authority for personal care decisions in those jurisdictions is governed by an eclectic mix of differently named Acts and specific-purpose regulations.

The differences may be better appreciated by having a cross-Canada catalogue of applicable legislation, which follows next.

1. Ontario

According to Ontario's *Substitute Decisions Act, 1992*[6] (*SDA*), a person appointed as attorney for personal care must be at least 16 years of age and, unless the appointee is a spouse, partner or relative, may not be someone receiving compensation for providing the grantor[7] with health care or with residential, social, training or support services. Rights under the *SDA* clearly contemplate a distinction between decision-making/management authority and time spent in actual care services.

As for compensation, case law prior to Ontario's enactment of the *SDA* offered no precedent as to whether guardians of personal care would be entitled to compensation. That has now changed. The *SDA*, enacted in 1995, recognized a need for clarity about eligible compensation and allowed for a regulation to be made that would provide specifics regarding the circumstances under which compensation would be permitted, and either an amount or a method for determining it. Curiously, such a regulation has been left "pending" for the last twenty-two years:

> 90. (1) The Lieutenant Governor in Council may make regulations,
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> . . .
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> (c.1) prescribing circumstances in which a person's guardian of the person or attorney under a power of attorney for personal care may be compensated from the person's property for services performed as guardian or attorney, and prescribing the amount of the compensation or a method for determining the amount of the compensation.

Ontario courts have used this statutory reference as a basis for justifying decisions to award compensation, although they have taken guidance from other sources or from their own discretionary analysis to determine the amount to be awarded.

2. British Columbia

Appointment of guardians for personal care is governed by British Columbia's "*Representation Agreement Act*,"[8] whose purpose is:

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6 *Substitute Decisions Act, 1992*, S.O 1992, c.30, as amended.

7 Here and elsewhere, "grantor" refers to the individual making the power of attorney for personal care.

8 RSBC 1996, chapter 405, available online and confirmed current to March 2017 at < http://www.bclaws.ca/civix/document/id/complete/statreg/96405_01 > , as of March 31, 2017.

(a) to allow adults to arrange in advance how, when and by whom, decisions about their health care or personal care, the routine management of their financial affairs, or other matters will be made if they become incapable of making decisions independently, and
(b) to avoid the need for the court to appoint someone to help adults make decisions, or someone to make decisions for adults, when they are incapable of making decisions independently. [9]

A personal care "representative" must be at least 19 years of age and, unless the appointee is the child, parent or spouse of the grantor, cannot be a person who provides personal care or health care services to the adult for compensation.[10] This distinction between decision-making/management authority and provision of care services is similar to Ontario's approach — although the similarity does not extend to compensation.

The *Representation Agreement Act* is predisposed in its language against payment for guardians of personal care, while still not prohibiting payment entirely. It contemplates the appointment of not only a "representative" but also a "monitor" to oversee representatives. Section 26 then specifies compensation on an exceptional basis as follows:

> 26(1) A person named in a representation agreement as a representative, alternate representative or monitor is not entitled to be remunerated for acting as a representative or monitor except if
> (a) a provision of the representation agreement expressly authorizes and sets the amount or rate of the remuneration,
> (b) the provision authorizing the remuneration is not void under subsection (1.1), and
> (c) the court, on application by the person named in the representation agreement as a representative, alternate representative or monitor, authorized that the remuneration be paid.
> (1.1) A representation agreement may not authorize the remuneration of a representative, alternate representative or monitor for any decision made or action taken by the adult, representative, alternate representative or monitor under Part 2 of the Health Care (Consent) and Care Facility (Admission) Act, and any provision of a representation agreement that purports to authorize such remuneration is void to that extent.

The *Act* does allow reimbursement from the grantor's assets for reasonable expenses properly incurred in performing the duties of the grantor's representative or monitor.

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[9] *Ibid.*, s. 2.
[10] *Representation Agreement Act,* at para. 5.

3. Alberta

Alberta's *Personal Directives Act*, R.S.A. 2000, c P-6, permits authority to be given to an "agent" by means of a "personal directive" to make decisions on "all personal matters" including health care, accommodation, social and educational activities, and legal matters. An agent must be at least 18 years old. No other restriction is applied except that the agent "have the capacity" to make decisions on the grantor's behalf. Compensation is ruled out, unless specified in the personal directive:

> 18. An agent is not entitled to receive any remuneration for exercising any authority under the personal directive unless the personal directive so provides.

Alberta also has the *Adult Guardianship and Trusteeship Act,* S.A. 2008, c A-4.2, that specifies three levels of assistance with personal care decisions that can be given to an adult: a "supporter", a "co-decision-maker" and a "guardian". To perform any of these roles, a person must be at least 18 years of age. None of them is entitled to any "remuneration, compensation, fees or allowances for effort made or for time expended on behalf of the represented adult".[11] An earlier *Dependent Adults Act*, superseded by the *Adult Guardianship and Trusteeship Act* referred to above, contained a similar prohibition against compensation for guardians.[12] The sparse Alberta case law, featuring decisions on compensation for guardians of personal care, originates from the time that the *Dependent Adults Act* was in force.

4. Saskatchewan

Saskatchewan updated its *Powers of Attorney Act*[13] in 2015. That statute contemplates the appointment of either a "property attorney" or a "personal attorney", although the latter would not be permitted to make decisions relating to the health of the grantor that are otherwise covered under the province's *Health Care Directives and Substitute Health Care Decision Makers Act, 2015*. The attorney must be at least 18 years old and may not be "in an occupation or business" that involves providing personal care or health care services to the

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[11] From the wording at subs. 37(2) and elsewhere.

[12] One estates practitioner to whom the authors spoke described a case in which she had successfully argued that the court had the jurisdiction to award compensation to a guardian under section 8 of Alberta's *Judicature Act*:

> The Court in the exercise of its jurisdiction in every proceeding pending before it has power to grant and shall grant, either absolutely or on any reasonable terms and conditions that seem just to the Court, all remedies whatsoever to which any of the parties to the proceeding may appear to be entitled in respect of any and every legal or equitable claim properly brought forward by them in the proceeding, so that as far as possible all matters in controversy between the parties can be completely determined and all multiplicity of legal proceedings concerning those matters avoided.

[13] 2002, SS 2002, c P-20.3.

grantor for remuneration.[14] The statutory reference to the attorney's occupation or business is more careful than the language in some other provinces. For example, as noted above, Ontario's *SDA* prohibits a person who provides remunerated health, residential, social, training or support services to the grantor from being appointed as attorney for personal care, whatever the person's occupation.

Fees that may be charged under Saskatchewan's *Powers of Attorney Act, 2002* are described on an "exception" basis:

> 17(1) An attorney acting pursuant to an enduring power of attorney shall not charge a fee unless:
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> (a) the fee is set out in the enduring power of attorney;
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> (b) the court has made an order setting a fee for services rendered by the attorney[15]; or
>
> (c) if the fee is not set out in the enduring power of attorney and the court has not made an order pursuant to clause (b), but there is a prescribed fee schedule, the fee that the attorney charges for a service is not more than the fee set out in the prescribed fee schedule for that service.
>
> (2) A fee charged in accordance with subsection (1) is to be paid out of the estate of the grantor.

Accompanying regulations[16] provide for a fee of $15 per hour for the management of the grantor's personal affairs, if neither the power of attorney nor a court order has mandated a different level of compensation.

Separately, *The Adult Guardianship and Co-decision-making Act*[17] deals with court appointments of a guardian or co-decision-maker. As with the *Powers of Attorney Act*, accompanying regulations[18] prescribe a fee of $15 per hour permitted for "management of the adult's personal affairs":

> 3.1 (3) If the court has not made an order setting a fee for service, a person appointed pursuant to the Act to act as a personal decision-maker for an adult may charge a fee of $15 for each hour that he or she was engaged in management of the adult's personal affairs.

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[14] *Ibid.*, clause 6(1)(b). Strangely, this prohibition appears to refer to any attorney, not just to a personal attorney.

[15] One Saskatchewan estates solicitor with whom the authors spoke was not personally aware of any case where a court ordered compensation to be paid to a personal attorney.

[16] See subs. 3.1(3) of *The Powers of Attorney Regulations*, c. P-20.3 Reg 1.

[17] S.S. 2000, C.A-5.3, as amended.

[18] *The Adult Guardianship and Co-Decision-Making Regulations*, Chapter A-5.3 Reg 1 (effective June 27, 2001) as amended by Saskatchewan Regulations 49/2002, 96/2005 and 66/2011.

With regard to Saskatchewan's $15 per hour prescribed fee in the regulation made under each of these statutes, as long as it remains above the province's minimum wage, it is hard to imagine a basis for challenging it, and indeed no disputes as to quantum have been found in published case law.

5. Manitoba

The legislative context for guardian compensation in Manitoba is among the most complex in Canada. One statute explicitly prohibits it, a different one prohibits it by implication, and a third is entirely silent on the matter of compensation.

Manitoba's *Powers of Attorney Act*, C.C.S.M. c. P97 does not make reference to personal care guardianship, and an interpretive document prepared by the provincial government[19] confirms that "it does not allow a person to make health care or other personal decisions" on behalf of another.

Manitoba's *Mental Health Act*[20] contemplates the appointment of a committee (who may, in some circumstances, be that province's Public Guardian and Trustee) for an incapable individual's property or for his or her property and personal care. One may not be appointed as a committee of an incapable individual's personal care only. While the term "personal care" is not defined directly, subsection 90(1) of the statute gives the committee of both property and personal care the following powers regarding the incapable individual's personal care:

(a) to determine where and with whom the incapable person shall live, either temporarily or permanently;
(b) subject to section 91 [referring to the appointment of a proxy under the *Health Care Directives Act*], to consent or refuse to consent to medical or psychiatric treatment or health care on the incapable person's behalf, if a physician informs the committee that the person is not mentally competent to make treatment decisions using the criteria set out in subsection 27(2);
(c) to make decisions about daily living on the incapable person's behalf; and
(d) to commence, continue, settle or defend any claim or legal proceeding that relates to the incapable person.[21]

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[19] "A Legal Information Guide for Seniors: Wills, Powers of Attorney, Health Care Directives" The Seniors and Healthy Aging Secretariat, Healthy Living and Seniors, The Public Guardian and Trustee and The Community Legal Education Association April 2014, accessed online March 31 at <http://www.gov.mb.ca/publictrustee/pdf/legal_guide_seniors.pdf>.

[20] C.C.S.M. c. M110.

[21] It seems probable that the subject matter of any claim or legal proceeding must relate to the incapable person's "personal care".

Insofar as compensation is concerned, the statute authorizes compensation for a committee of property[22] but says nothing about compensation for a committee of both property and personal care.[23] The explicit reference to compensation for a committee of property might lead a court to declare that if that province's legislative assembly had intended to permit compensation for the committee's personal care decision-making, it would have said so. That is, probable rejection of a request for separate compensation for personal care decisions may be inferred.[24]

Separately, *The Vulnerable Persons Living with a Mental Disability Act*[25] empowers the Vulnerable Persons' Commissioner[26] to appoint a "substitute decision-maker" of no defined age (except being specified as an adult) who is "apparently capable, suitable and able" and will not have interests in conflict with those of the vulnerable person.[27] A substitute decision-maker for personal care is not entitled to receive compensation or remuneration for acting in that capacity.[28]

Finally, the *Health Care Directives Act* permits an individual to appoint a "proxy" to make a "health care decision" when the individual cannot. The definition of "health care decision" is expressed in terms of consenting, refusing to consent or withdrawal of consent to "treatment". "Treatment" is defined as:

> anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment.

That statute is silent regarding compensation for the proxy. But in the context of this *Act*, the proxy's role is limited to decisions on specific occasions, and does not cover ongoing and sustained accountability for the personal welfare of the incapable person. In the authors' view, it is unlikely that Manitoba's *Health Care Directives Act* intentionally left open the possibility that

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22 *Supra* note 16, s. 82.

23 While section 89 gives the committee of both property and personal care the same "duties and powers" as has a committee of property, one might have expected to see an explicit authority for the former to be awarded compensation for the decisions regarding property. That said, it is hard to imagine a judicial interpretation that would deny compensation for property-related decisions by the committee of both property and personal care merely because the committee had the added responsibility for personal care decisions.

24 According to one estates solicitor in Manitoba, it is common to see committees referencing the time spent on duties that cover both property and personal care activities for the incapable person and, in her experience, the court typically considers the activities and time spent as a whole, without attempting to separate out and disentitle the committee to any compensation for personal care.

25 C.C.S.M. c. V90.

26 *Ibid.*, s. 29.

27 *Ibid.*, s. 54(1).

28 *Ibid.*, s. 80.

a proxy could reasonably request payment for isolated decision-making. Confirming this view, we note that broader responsibilities (beyond decision-making) that a proxy for health care might undertake are alluded to in the *Mental Health Act* which, as noted earlier, implicitly denies compensation.

6. Quebec

The *Civil Code of Quebec*, CQLR c CCQ-1991, ("*CCQ*") contemplates three separate substitute decision-making mechanisms to provide for an individual's personal care:

1. Article 2130 of the *CCQ* describes a contract whereby a "mandator" confers upon a "mandatary" the power to represent him or her in the "performance of a juridical act with a third person." The *CCQ* describes that power as a "mandate" and also refers to it as a "power of attorney". Article 2131 states that the object of the mandate "may also be the performance of acts intended *to ensure the personal protection of the mandator*, the administration, in whole or in part, of his patrimony and, generally, his moral and material well-being, *should he become incapable of taking care of himself* or administering his property" [emphasis added].
2. Article 2166 (*et seq*.) sets out special rules for a "protection mandate". This is a mandate given by a person of full age *in anticipation of his incapacity to take care of himself* or to administer his property; [emphasis added]. It is made by a notarial act *en minute* or in the presence of witnesses. The key feature of the protection mandate is that it cannot take effect until the mandator in fact loses his or her capacity. In this respect, it is akin to the "springing" power of attorney that is a feature in most common law jurisdictions in Canada. However, in the case of a protection mandate, a further judicial step of "homologation" by the court is required in order for the mandatary to commence acting.
3. If no advance planning has been done, provision is made in the *CCQ* for "curatorship" or "tutorship" to be established by court order where the evidence establishes that a person is, due to incapacity, unable "*to care for himself* and to administer his property" [emphasis added]. If the evidence establishes that the incapacity is "total and permanent", the court imposes a curatorship;[29] but if the evidence establishes that the incapacity is "partial or temporary", the court imposes a tutorship.[30]

Where a mandate is in place, article 2134 addresses the matter of compensation to the mandatary: "The remuneration, if any, is determined by the contract, usage or law, or on the basis of the value of the services rendered."

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[29] Article 281.
[30] Article 285.

Evidently, the mandator and mandatary can agree in advance on the manner in which the latter will be compensated. Where the mandate is silent on compensation, it appears that a court may determine compensation on a *quantum meruit*-type basis.[31] It is understood that court orders of separate compensation for personal care services are not normally given.

In the case of curatorships and tutorships, presumably the lawyer acting for the applicant would include in a draft order a provision for compensation to the curator or tutor. A proposal for separate compensation for personal care services would likely receive a chilly reception.

7. Nova Scotia

The *Personal Directives Act,* S.N.S. 2008, c. 8, came into force in Nova Scotia in 2010, specifically to address personal care. Nova Scotians can draw up a personal directive naming a "delegate." On the matter of compensation, section 8 provides:

> A delegate is not entitled to receive any remuneration for exercising any authority under a personal directive unless the personal directive so provides.

The *Personal Directives Act* rules out as delegates compensated providers of personal-care services unless certain conditions are met:

> S.3 (4) A person may not act as a delegate under a personal directive if the person provides personal-care services to the maker for compensation unless
> (a) the person is the maker's spouse or a relative listed in clause 2(j); or
> (b) the personal-care services for compensation provided by the person are specifically authorized by the maker in the personal directive.

Nova Scotia's *Incompetent Persons Act*[32] authorizes the appointment of a guardian for the property and/or person of an incompetent adult. While the statute is silent on guardians' entitlement to compensation, inquiries made by the co-authors have not disclosed instances in which a guardian has sought or been awarded compensation.

8. New Brunswick

The *Infirm Persons Act*[33] contains two separate mechanisms by which an individual may have a substitute decision-maker for personal care: first, by

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[31] Presumably, the "special rules" in the *CCQ* that govern protection mandates are a complement to the other rules governing mandates and would apply unless they conflict with those special rules. Thus, the matter of compensation set out in article 2134 should apply to protection mandates as well.

[32] R.S.N.S. 1989, c. 218, as am. S.N.S. 2007, c. 17, ss. 1-11; 2014, c. 27, ss. 9, 10, certain sections of the original *Act* now repealed.

[33] R.S.N.B. 1973, c I-8 (s. 40-44).

means of a court appointment of a committee of the individual's person (with[34] or without[35] a formal finding of the individual's mental incompetence); and second, by means of a power of attorney for personal care given by the individual, while competent, in favour of another.[36] The statute is silent regarding compensation of a committee of the person.[37] Where an individual appoints another as his or her attorney for personal care, there is nothing in the statute that would preclude the individual from including a compensation provision in the power of attorney for personal care.

In 2016, New Brunswick introduced the *Advance Health Care Directives Act,* governing the appointment of a proxy for health care decisions. The *Act* distinguishes such a proxy from an attorney for personal care described in the *Infirm Persons Act*. The *Advance Health Care Directives Act* does make the following reference:

> 11 (2) Unless a health care directive expressly provides otherwise, a proxy shall not
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> . . .
>
> (b) collect or receive a fee or compensation for acting under his or her authority.

9. Prince Edward Island

Prince Edward Island's *Consent to Treatment and Health Care Directives Act*[38] enables an individual to authorize another to make treatment decisions. That other must be at least 16 years of age and must agree in writing to act as a substitute decision-maker. The *Act* is, however, very limited in the scope of the

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[34] *Ibid*., s.3.

[35] *Ibid*., s.39.

[36] *Ibid.,* s.40.

[37] It is reportedly common practice among New Brunswick estates practitioners to include compensation provisions in the draft order that appoints a committee for the estate, or for the estate and the person, of a mentally incompetent person. However, the focus of those compensation provisions is on the estate, typically expressed in terms of the so-called "usual percentages" approach. A *quantum meruit* argument was successful in *McKean Estate (Re),* (1998) 196 N.B.R. (2d) 125, aff'd (2000), N.B.R. (2d) 321 (N.B.C.A.), where a committee of the person had been appointed for an incapable person under the *Infirm Persons Act*. The committee had moved into the incapable person's home and was found by the probate court judge to have expended significant efforts over a nine-year period to comply with the incapable person's previously stated wish to remain in her own home and to avoid at all costs having to go into a nursing home.

[38] S.P.E.I. 1996, c. 10 [R.S.P.E.I. 1988, c. C-17.2] [ss. 12(e), 32 not in force at date of publication.], as am. S.P.E.I. 2000, c. 5 (2nd Sess.); 2005, c. 40, s. 5; 2008, c. 8, s. 5; 2010, c. 31, s. 3 (Sched.).

substitute decision-maker's authority. A "treatment" excludes a "personal assistance service", the latter term being defined as:

> assistance with or supervision of a routine activity of living, including one that relates to a person's health care, nutrition, shelter, clothing, grooming, hygiene or safety but does not include anything prescribed by the regulations as not constituting a personal assistance service.[39]

The act is silent on the matter of compensation.

Prince Edward Island's *Mental Health Act* permits a court to make an order to appoint a guardian for an incapable person's "personal matters" which include "such matters as residence, health care, legal proceedings, education or training, social contacts." It says nothing about compensation for the person appointed as guardian.

10. Newfoundland and Labrador

The *Advance Health Care Directives Act*[40] allows an individual, while competent, to appoint a person or persons as substitute decision-maker(s) to make "health care decisions"[41] on the individual's behalf after he or she has lost the competence to make such decisions. The document is referred to as an "advance health care directive". A substitute decision-maker must be at least 19 years of age and must indicate in writing an acceptance of the assignment. A government-approved form for the appointment of a substitute decision-maker, available through the Coalition of Persons with Disabilities,[42] incorporates no question or box to check as to whether the grantor would approve payment. The *Advance Health Care Directives Act* neither authorizes nor prohibits an individual who makes an advance health care directive from making provision for compensation to be paid to the substitute decision-maker.

The *Advance Health Care Directives Act* does not provide an express provision for a court appointment of a person to make health care decisions for someone who has not done so by means of an advance health care directive. However, in the context of setting out the hierarchy of family relatives who have authority to make health care decisions for such a person, subsection 10(1) imposes the condition that "a guardian has not been appointed for the purpose by a court." As there is no other statute that expressly empowers a court to appoint a guardian for an incapable person, this must necessarily allude to the

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[39] No regulation has as yet been made to restrict the scope of the term "personal assistance service."

[40] At s.10, as per amended *Act*: 1999 c22 s. 2; 2006 cM-9.1 s. 83; 2011 cA-4.01 s. 36.

[41] While the legislation appears to focus on medical treatment decisions, the term "health care decision" is more broadly defined and alludes, inter alia, to a "service" to "provide for an individual's . . . personal care".

[42] <http://codnl.ca/wp-content/uploads/2015/01/AHCD_Booklet.pdf>, as at March 31, 2017.

exercise of the court's *parens patriae* jurisdiction to protect an individual who is unable to do so personally. Presumably, it would likewise fall within that *parens patriae* jurisdiction for a court to provide for compensation to be paid to the guardian.

11. Nunavut and Northwest Territories

Nunavut's *Guardianship and Trusteeship Act* allows for the appointment of a guardian. Any adult resident of Nunavut can qualify to be a guardian, if he or she meets certain criteria of suitability including having had "friendly, personal contact" with the person within the previous 12 months.[43] No provision for compensation is made.

The Northwest Territories' *Personal Directives Act* is pertinent to personal care decisions. The person making the personal directive is referred to as the "director" and the person authorized to make decisions is referred to as an "agent", who must be at least 19 years of age. "An agent has authority to make personal decisions respecting the director's health care and other personal matters, unless this *Act* or the personal directive provide otherwise."[44] Of interest, a personal directive may be combined with a power of attorney into a single document, and the requirements of this *Act* and the *Powers of Attorney Act* apply to the respective parts of the document."[45] According to the *Personal Directives Act,* a director may provide for "the payment of an agent for the performance of his or her functions as an agent or for the provision of personal services to the director."[46] An agent is not entitled to receive any remuneration for exercising authority under a personal directive unless the personal directive provides otherwise.[47]

12. Yukon

Yukon's *Care Consent Act* enables a person, by means of an "advance directive" to appoint a "proxy" for "care" which encompasses "personal assistance services". The latter term is defined by Regulation O.I.C. 2005/80 to include "assistance with hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation, positioning or any other routine activity of daily living." The proxy must be at least 19 years of age when called upon to act and must sign the advance directive acknowledging his or her agreement to take on the proxy role. While the preparation of an advance directive may be the ideal time to consider compensation for one's proxy, a Yukon government advisory

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43 S. 8(1)(a)(i), *Guardianship and Trusteeship Ac*t, S.N.W.T. 1994, c. 29, s. 8.
44 At 11(1).
45 At 7(1).
46 At 5(1)(g).
47 At s.18.

pamphlet, instructing citizens on drawing up an advance directive, does not prompt readers to consider the matter of compensation.[48]

If a person becomes incapable of making such decisions for himself or herself, and has not previously signed an advance directive, a court may appoint a guardian under the *Adult Protection and Decision Making Act*, SY 2003, c 21, Sch. A. The scope of a guardianship order may encompass either the property or person of the individual. The statute empowers the court to order "that a guardian be remunerated, in accordance with the guidelines prescribed by the regulations". At first blush, this appears to offer the necessary scope for a court to award compensation to a guardian on account of personal care services provided. However, the only regulation that has been made to deal with remuneration imposes a cap on the amount that may be ordered to be paid to the guardian which is in the form of the so-called "usual percentages" that apply for executor and trustee compensation. Thus, if the guardian is not handling the financial affairs of the adult, the cap on remuneration is nil.

IV. CASE LAW — SIMILARITIES, DIFFERENCES AND NO PATTERNS AT ALL

Different provinces fall into one of three categories when it comes to legislated compensation: (i) there is an assertion in legislation regarding eligibility for payment; (ii) there is an assertion regarding ineligibility for payment as a matter of right; or (iii) there is total silence on the issue. Where eligibility for payment is asserted, the guidance established in case law is noted later in this section. Where there is a statutory prohibition of payment, judges have occasionally allowed payment under principles that apply to care-giving duties, rather than decision-making duties. Examples of such cases are also noted later in this section. In provinces where the legislation is silent on compensation, there appears to have been no precedent-setting case on how disputes would be resolved.

In provinces with a statutory reference to the possibility of payment, the discretion to award payment has been confirmed. Ontario's *Re Brown*[49] is the originating case declaring statutory availability of compensation for guardians of the person. Compensation in that case was sought by a trust company. The court affirmed its discretion to make an award, despite the lack of specificity in the statute and the counter-arguments of the opposing party. Subsequent cases refer to *Re Brown* to reiterate the court's authority in that regard.

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[48] "Planning for your Future Healthcare Choices: Advance Directions in the Yukon"; accessed March 31, 2017 online at <http://www.hss.gov.yk.ca/pdf/adv_directive_-booklet.pdf>.

[49] *Brown, Re* (1999), 1999 CarswellOnt 4628, 31 E.T.R. (2d) 164 (Ont. S.C.J.).

The two most prevalent jurisprudential benchmarks for setting the amount of compensation to be awarded are: first, reasonableness; and second, evidence in the form of written records.

Allusion to reasonableness is a persistent theme, from the time that criteria were first enunciated in *Re Brown*. Among the factors that have been taken into account in determining reasonableness are the following: need for the services; the nature of the services provided; the qualifications of the person providing the services; the value of such services and the period over which the services were provided; sacrifice or loss suffered by a child in abandoning other pursuits to look after a parent, and equity — for example, when other siblings abdicate primary responsibility to the child. Reference to the wealth of the grantor has also been made when deciding what is reasonable,[50] both where the grantor has modest assets[51] and where the grantor has abundant assets.[52] The concept of reasonableness met its high point in *Cheney v. Byrne*.[53] In that case, two practising lawyers had been appointed as guardians of the property and person of Margaret Byrne who, with rapidly progressing dementia, became a resident of a nursing home in 2000. The applicants undertook a wide range of work on behalf of Ms. Byrne. In one proceeding,[54] they sought compensation of $47,225 for personal care services provided over a 20-month period — equivalent to an hourly rate of $250. The Court awarded a lesser amount that was equivalent to approximately $175 per hour for each of them. In justifying the reasonableness of such a high award, the judge referred not only to the guardians' detailed record-keeping, but to their diligence and personal engagement in the care of Ms. Byrne, even describing the illnesses and surgeries they had helped her through. The judge declared Ms. Byrne "a lucky person" to have them looking after her needs.

The importance of record-keeping has also been frequently noted as a basis for determining reasonableness. As was observed in *Re Brown*, a compensation award requires "sufficient evidence about the nature and extent of services provided, and evidence from which a reasonable amount can be fixed for compensation." Indeed, section 3 of the *Accounts Regulations* made under Ontario's *SDA* imposes the following record-keeping requirements:

> 3. (1) The records maintained by an attorney under a power of attorney for personal care and a guardian of the person shall include,

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[50] See e.g. *Childs v. Childs*, 2015 ONSC 4036.
[51] *Kiomall v. Kiomall,* 2009 CarswellOnt 2246.
[52] *Cheney v. Byrne (Litigation Guardian of)* (2004), 2004 CarswellOnt 2674, 9 E.T.R. (3d) 236 (Ont. S.C.J.).
[53] *Ibid.*
[54] Court file no. 01-CV-16238, *Attorneys for Personal Care of Margaret Byrne*.

(a) a list of all decisions regarding health care, safety and shelter made on behalf of the incapable person, including the nature of each decision, the reason for it and the date;
(b) a copy of medical reports or other documents, if any, relating to each decision;
(c) the names of any persons consulted, including the incapable person, in respect of each decision and the date;
(d) a description of the incapable person's wishes, if any, relevant to each decision, that he or she expressed when capable and the manner in which they were expressed;
(e) a description of the incapable person's current wishes, if ascertainable and if they are relevant to the decision;
(f) for each decision taken, the attorney's or guardian's opinion on each of the factors listed in clause 66 (4) (c) of the Act.

(2) An attorney under a power of attorney for personal care and a guardian of the person shall also keep a copy of the power of attorney for personal care or court order appointing the attorney or guardian, a copy of the guardianship plan, if any, and a copy of any court orders relating to the attorney's or guardian's authority or the incapable person's care.

Notably poor record-keeping contributed to a court's refusal to award compensation for personal care duties in *Osmulski Estate v. Osmulski Estate*.[55]

Conflicting guidance in case law has arisen in the interpretive discretion of courts in allowing payment for time spent in care-giving activities, even where such activities may have been outside the strict function of a decision-maker or care supervisor. One such example arose in *Kiomall v. Kiomall*.[56] The case concerned the care of Jason Kiomall, who had suffered a serious brain injury as a result of a motor vehicle accident. His brother Raymond acted as his guardian and requested compensation for personal care in the amount of $45,000 for a four-year period. Raymond's records included time spent on direct care-giving, for which the judge awarded him an hourly rate.

Less flexibility with respect to compensating direct care-giving activities was demonstrated in *Childs v. Childs*.[57] In that case, the judge agreed to recognize only the "management" role played by the children of the incapacitated parent. He considered time spent in care-giving to be a duty owed to the parent for the lifelong care that the parent had given to her children. Similarly, in *Osmulski*,[58] the Court awarded nothing for personal guardianship, noting that the son had done nothing "extraordinary" for his mother. Still another approach was taken

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[55] *Supra* note 41.
[56] 2009 CarswellOnt 2246.
[57] 2015 ONSC 4036.
[58] *Supra*.

in *Petersen v. Saskatchewan (Public Guardian and Trustee)*.[59] In applying Saskatchewan's *Adult Guardianship and Co-Decision-Making Act*, the Court found duties associated with property and personal care were intertwined, and based the award on a percentage associated with property management. While expressing admiration for the personal care undertaken by the applicants, the Court noted that they had not applied for personal care compensation in any event.

In summary, one particular trackable difference among courts is their approach to awarding compensation for direct care-giving activities, outside the contemplated role granted in a power of attorney for personal care or similar instrument.

With respect to compensation quantum outcomes in case law, there is no discernible pattern — no basis for accounting for similarities or differences. Below is a sample list of compensation outcomes, and their associated cases. The dollar amounts reflect the awards to those holding a power of attorney for personal care, or acting in a comparable role:

- $700 per month retroactively, $500 per month going forward with no offset for room and board where the parent cohabited (*Childs v. Childs*, 2015 ONSC 4036)
- $600 per month, intertwined with payment for direct care (*Sharp v Palmer* [1986] N.S.J. No. 499 (Co.Ct.),[60] the judge basing the award on discounting from a monthly fee of $1500 for nursing home care, and citing the "extraordinary" engagement of the daughter)
- $15.90 per hour (*Kiomall v. Kiomall*, 2009 CarswellOnt 2246, the judge opining that the requested $50 per hour, while "reasonable", was not affordable for the estate)
- $175 approx. per hour (*Cheney v. Byrne* awarded to two lawyers who had requested $250 per hour)
- $6.50 per hour for personal care, to a maximum of $75 per weekend, and $150 per month for weekend care (*D.M.F. (Re)*, 1999 CarswellAlta 478; [1999] A.J. No. 642; 245 A.R. 394; 74 Alta. L.R. (3d) 117; 88 A.C.W.S. (3d) 1098; the judge noting that legislation afforded no right to compensation for acting as a decision-maker, but straining to permit payment for actual care)
- $0 awarded in (a) *Re Brown* for insufficient record-keeping, (b) *Osmulski*, given that nothing "extraordinary" had been done by the son, and the questionable integrity he had displayed; in (c) *Nelson Re* [1998] No. DA06-

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[59] 2015 CarswellSask 480, 2015 SKQB 243, 258 A.C.W.S. (3d) 232, 481 Sask. R. 37.

[60] As reported in Hollaman, L., "Personal care duties and entitlement to compensation," undated, accessed online March 31, 2017 at: <http://hollamanestateslaw.com/wp-publications/wp-content/uploads/Personal_Care_Duties_and_Entitlement_to_Compensation.pdf>.

> 01385 in the Surrogate Court of Alberta; the judge insisting on abiding by the literal wording of the legislative clause, notwithstanding empathy for the guardian; (d) *Petersen v. Saskatchewan (Public Guardian and Trustee)*; the judge awarding full compensation under the law for property management and, while noting that personal care was also involved, pointing out that the applicants had not asked for care payment

Neither gender, nor occupation nor relationship of the applicant to the grantor appears to give rise to a statistical pattern that would predict financial outcomes. However, when the applicant is the adult child of the grantor, judges have sometimes quite bluntly reflected personal values regarding the duty owed to a parent. Ontario's recent case of *Childs v. Childs* demonstrates clearly articulated moral values. The case involved a dispute among four adult children of an elderly mother ("Eileen Childs") stricken with Alzheimer's. The judge awarded considerably less than the daughter Caroline had made a case for, injecting the following comments at different points of his analysis:

> A child should not be paid to care for an ailing mother. Eileen Childs was not paid for raising her four children. (at para. 33)
>
> . . . Caroline, through her lawyer, indicates that she provided the care with no expectation of payment and she would do so into the future, even if not paid. This is commendable. It is the way it should be. Lawyers make reference to the phrase "natural love and affection." That is what children are owed and deserve and are entitled to from their parents and parents are owed and deserve and are entitled to from the children. (at para. 34)
>
> In my view, Caroline is entitled to and has earned recognition and thanks. To the extent that she is able to, I am certain that Eileen has done so, but the self-satisfaction in knowing that she has done the right thing really should be enough for Caroline. (at para. 39)
>
> The care provided by Caroline to this point in time is of priceless value to her mother. One really cannot place a dollar figure on it. Even if it enhanced Eileen Childs' life for one day or one hour, the value is beyond measure. (at para 38)

In summary to these cases instances, we note that even the agreed-upon criteria of "reasonableness" and "benefit to the person" have not prevented the exercise of wide latitude by individual judges in interpreting such criteria through a lens of personal values and empathy.[61]

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[61] It is interesting to note that the English Law Commission, in its report entitled "Mental Capacity" that was laid before Parliament in 1995, had this comment about the likelihood of a court's ordering remuneration to be paid to a court-appointed "manager": "Remuneration is most unlikely to be approved [by a court where a manager is court-appointed] where personal and health care powers are concerned, since professional skills are unlikely to be involved in those cases."

V. ISSUES AND SOLUTIONS

Compensation for guardians of the person is a proverbial dog's breakfast of approaches across Canada. This section highlights three significant issues and avenues for resolving them.

1. Confronting the Lack of Attention

Lack of attention to the dilemma is an umbrella issue, particularly in light of Canada's current policy priorities for an aging population. There are two avenues for progress.

One is available to the estates and trusts bar, to give powers of attorney for personal care (and analogous documents) the heightened significance and customization they deserve. As one estates lawyer observed, "despite the powerful nature of these documents, powers of attorney are generally treated as an "add-on" service to the preparation of a Will [using boilerplate precedents]"[62] The grantor of a power of attorney for personal care should be counselled to specify allowable compensation or to disallow it explicitly. If no such choice is made, litigation expenses may well ensue with significant costs imposed on the grantor's estate, only to have the matter decided by a judge who is a stranger to the family history and dynamics.[63]

The second avenue for progress is open to the Uniform Law Conference of Canada,[64] to establish a common conception among provinces about the role of guardians and the compensation that estates should allow for it. Such a goal is fully in keeping with its mandate to "harmonize the laws of the provinces and territories of Canada, and where appropriate the federal laws as well" where defects, gaps or deficiencies are found.[65] There would be no (currently

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[62] Sweatman, J. "Powers of Attorney: Best Drafting Practices." In *Histrop Estate Planning Precedents,* available on Westlaw

[63] Online government advice documents in most provinces that counsel citizens on how to appoint a decision-maker to address the contingency of future incapacity do not generally prompt citizens to consider what to include about compensation.

[64] Online: < http://www.ulcc.ca/en/home/ > .

[65] The United States National Conference of Commissioners on Uniform State Laws recently produced a draft report entitled "Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act". In it, two principles were enunciated regarding compensation for guardians of a person:

- A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing provided by the guardian to the individual subject to guardianship, subject to court approval.
- In determining what is reasonable compensation for a guardian . . . the court . . . shall consider:
  (1) the necessity and quality of the services provided;
  (2) the experience, training, professional standing, and skills of the guardian . . .
  (3) the difficulty of tasks performed, including the degree of skill and care required;
  (4) the conditions and circumstances under which services were performed, including whether they were provided outside of regular business hours or under dangerous or extraordinary conditions;
  (5) the effect of those services on the individual subject to guardianship . . .
  (6) the extent to which the services provided were or were not consistent with the guardian's plan . . .

anticipated) costs to be borne by governments with this opportunity: it is a matter for payment by a grantor's estate, when a grantor has not specified an amount and is not available to specify it when a dispute arises. Harmonization will require a compromise between provincial drafting agencies on certain fundamental concepts. It appears to the authors that different provincial statutes have markedly different concepts of the role of the guardian of personal care. Only six of the nine common-law provinces have legislation providing for powers of attorney for personal care or analogous documents, while others embed similar authority in other legislative contexts. Where statutes anticipate only a decision-making role, even that role may be interpreted differently by lawyers or courts. To some, it may be a pure and time-limited "decision-making" role for, say, health procedures. To others, the decisions about personal care may include the time-consuming tasks of interviewing, assessing, hiring and supervising service providers. Indeed, the wide array of names given to guardians of personal care in provincial statutes ("guardians", "attorneys for personal care", "substitute decision-makers", "representatives", "supporters", "agents", "proxies", "delegates") gives clues to the marked difference in expectations about the extent, if any, to which such persons should be paid. It is not a matter of mere difference of opinion about compensation; it is a matter of different worlds of thinking about the responsibilities of caring for a mentally incapacitated elderly person.

2. Dealing with Commingled Roles

Compensation for attorneys for personal care has been complicated by the sometimes commingled role of the adult child who provides caregiving services to an incapable parent while simultaneously holding responsibility for making decisions and facilitating the employment of other health care providers. Accounts submitted by the adult child and disputed by siblings may include time spent in both types of roles. The courts have likewise failed on occasion to distinguish rules applying to payment for each of those roles. In *Childs v. Childs* (*supra*), for example, this issue was central to the case. A daughter acted as a general caregiver for her mother in the daughter's own home, and also coordinated other specific services for her mother in her role as her mother's attorney for personal care.

One of the straightforward opportunities for progress is to clarify legislation where ambiguities persist. Ontario's *SDA,* for example, excludes the appointment of a person as attorney for personal care if he or she provides personal care services for a fee. Any payment for the child's time after being appointed as an attorney for personal care would, it seems, paradoxically disqualify the child thereafter from acting as attorney for personal care. The

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(7) the fees customarily paid to persons who perform like services in the community.

legislation for some provinces, notably Saskatchewan and Nova Scotia, incorporates language to avoid this problem.

3. Addressing Ambiguity Through an "Intangible-Valuation" Model

Where the role of attorney for personal care is strictly considered — that is, as a decision-maker and supervisor, and not a care-giver — how should such a person be compensated? The decisions themselves may take a few minutes each, arrangements for care and monitoring care holding more weight and responsibility than time accounts would typically reveal. Compensating attorneys for property is easier to do, as a percentage of funds disbursed and received and assets managed; yet decisions about property are arguably not as profound as those affecting the health and welfare of an incapacitated individual.

Courts have seemed to struggle with the ambiguity of valuing the role of a guardian of the person. The authors submit that the field of "valuing intangibles" offers a readily adaptable solution. Valuation models have already been developed for other applications where human effort and creativity are expended to produce an outcome unique to a given need. One such model is called the "market approach" method, involving the identification of a parallel environment where metrics have already been established. In this case, the parallel environment we seek is one where a responsible person takes on significant responsibilities of decision-making, hiring, quality control, record-keeping and accounting. "Enterprise management" is that type of role. It is common to enterprises of tenant services for apartment buildings, event planning, creative planning for advertising campaigns, interior design or home construction projects, to name but a few. Each involves a top overseer of the enterprise, or "project manager." A typical mode of compensation for these project overseers is a percentage of the personnel costs and purchasing that are being overseen. As with guardians of personal care, the hours of such a professional cannot be anticipated and the value of his or her time on different tasks may vary widely, depending on what each task requires. Furthermore, in selecting and supervising staff to carry out particular tasks, project managers take responsibility for the quality of the outcome. Paying for the project manager's wisdom, risk-taking and accountability is more relevant than paying an hourly rate. By paying a percentage of the personnel salaries and purchases, the payer has the comfort of a predictable fee, without needing to address the uncertainties surrounding time expenditure.

The "enterprise-management" approach to compensation aligns with guardianship duties of the type governed by a power of attorney for personal care. The enterprise manager hires and fires staff, makes significant purchasing decisions within a given mandate, monitors staff, exercises quality control and accounts to a designated authority. It would remain only to set the percentage

and the expenditures from which a percentage will be calculated. Percentages across many types of enterprises with which the authors are familiar range between 12.5 percent and 17.5 percent. A lower percentage might be agreed upon if siblings argued that they shared in certain weighty decisions.

In summary, the legislative guidance on compensation for guardians of personal care has been left in limbo, perhaps because it is difficult to calculate. Which hours claimed by guardians should "count"? Surely not the hours spent as companion and listener to one's own parent, if indeed these could even be separated from the time spent managing and making decisions? Is "time" even the right metric for the wisdom and commitment that the role entails? Do warring siblings properly value the burden of responsibility that weighs heavily on the guardian? All of these questions are avoidable in a valuation method based on enterprise management for which well established techniques may be readily applied by a qualified expert. Of the solutions summarized in this section, it is one immediately available for use and, in suitable cases, ready to provide objective, predictable outcomes. Progress is at hand.