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Estates & Wills & Trusts

Good behaviour rewarded in passing of accounts decision

By AdvocateDaily.com Staff



A pair of caregivers received a just reward in a decision that recognized their selfless good work as executors and attorneys, says Toronto-area estates litigator and mediator [Charles B. Ticker](#).

The Ontario Superior Court [case](#) concerned two people who looked after a wealthy elderly couple over a lengthy period. The judge granted them more than \$750,000 as compensation for their role as attorneys for property and personal care, as well as for administering the estate of the husband after he died.

According to the decision, the young couple were friends and neighbours of the older pair and took on the responsibility without ever seeking anything in return. It was only at the suggestion of the surviving widow that they brought their application for compensation, the judge added, describing the case as a rare "good news story" in the realm of applications to pass accounts.

Ticker, who practises estates litigation and mediation with [Charles B. Ticker Law Office](#), says it's unusual to see an unopposed proceeding conclude so formally.

"I agree with the judge's sentiments about it being a good news story. Most of the time, when someone is passing accounts, it's because one of the beneficiaries is raising issues or objections, and they're in court to get it settled," he tells [AdvocateDaily.com](#). "The key here was that the two attorneys and trustees kept excellent records, and there was no mismanagement at all.

"They were able to show that they did a great deal for the seniors in terms of providing care, socializing, and basically being at their beck and call," Ticker says.

The decision also offers a useful reminder of the legal regime surrounding compensation for attorneys, he says.

According to the ruling, the *Substitute Decisions Act* sets out a compensation formula for attorneys for property, suggesting they can claim roughly three per cent of receipts and three per cent of disbursements, in addition to an annual management fee of 0.6 per cent for assets under their care. The law even allows attorneys to take their compensation in advance, subject to possible future review by the court.

"But nothing is etched in stone, and the judge alludes to the factors that go into assessing the reasonableness of a claim," Ticker says.

Things are less straightforward when attorneys for personal care are involved, Ticker says, noting that while the law does not prohibit compensation for services rendered, there are also no legislated guidelines for setting rates.

"For that reason, you often see the person appointed as attorney for personal care will agree not to seek any compensation," he says. "Obviously, the document in this case must have been silent on the issue."

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According to the judgment, the younger couple provided assistance and care that went “far beyond what anyone would reasonably expect from a friend and neighbour” for more than 20 years.

Without any next of kin, the seniors turned to their neighbours for help with chores and tasks, including banking, taxes, household repairs, and grocery shopping, before formally appointing them as joint attorneys for both property and personal care.

The decision says the younger man handled the banking and finances, including the older man’s considerable investments until his death in 2017. An accounting report confirmed the couple acted “conscientiously and scrupulously in this regard.”

In terms of compensation, the judge awarded them \$130,000 for administering the man’s estate, which was worth more than \$4 million. He also granted their request for about \$435,000 in compensation for their work as power of attorneys for property, based on a calculation set out in the *Substitute Decisions Act*. Finally, the couple was awarded \$135,000 for services carried out during the six years they acted as attorneys for personal care for the seniors. According to the decision, the residue of the estate is to be paid to charity.

“I have no hesitation concluding that the amount sought is reasonable and proportionate in the circumstances,” the judge concluded.

“You have to look at the size of the estate in terms of the decision,” Ticker says. “If it was a more modest estate, you might get a different answer on what is reasonable.”

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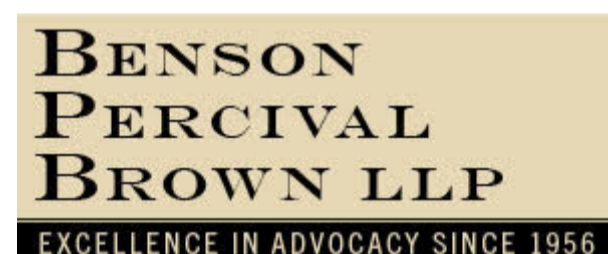
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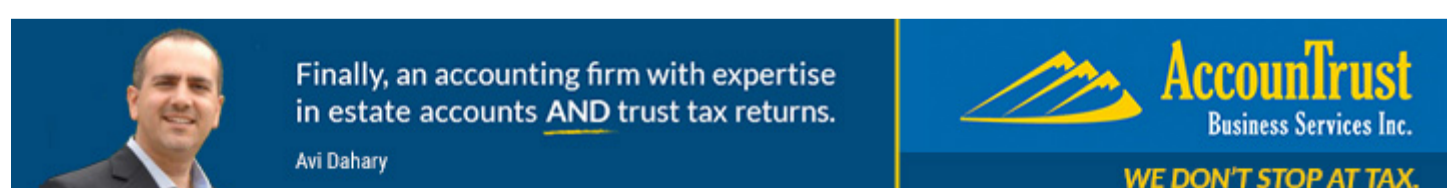
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