

SEMINAR FOR LIFE CARE PLANNERS

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DEVELOPMENT AND PROOF OF FUTURE COSTS OF CARE FOR TORT TRIALS

INTRODUCTION

In the Canadian legal system, future costs of care are to be awarded as “full compensation”. This means that a person is entitled to claim for the actual cost of purchasing their care at market rates. The *need* for care has to be proven in accordance with the laws of evidence in order for the costs to be allowed. Proof of future care is on the basis of “real risk” of need. In civil cases, nothing has to be proven with certainty. Need for care is assessed and determined on the basis of expert opinion based on the principle that the injured person is to be restored to the position he would have been in had the accident not occurred, in so far as this can be done with money. This need should be determined based on re-integration to all aspects of the individual’s life. The award for future care is to be based on what is reasonably necessary on the medical evidence, and according to a community-based model, to promote the mental and physical health of the plaintiff. The test for determining the appropriate award for future care is an objective one based on expert evidence.

WHEN IS A PERSON PERMITTED TO EXPRESS AN OPINION IN COURT?

Any witness can give evidence of facts and observations within their direct knowledge. Opinion evidence, however, can be given in court only if the person is a qualified expert

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upon subject matter which falls outside the likely range of knowledge and experience of the trier of fact. The evidence has to be considered by the court to be necessary to assist the trier of fact, ie the judge or jury in reaching a decision.

A witness cannot give expert or opinion evidence unless the court recognizes and accepts the qualification/expertise of the witness to give opinion evidence on the issues of the proposed testimony. There will be an enquiry into the qualifications of the person to give all of the proposed evidence before the witness testifies. An expert witness should make it clear when a particular question or issue falls outside his or her expertise.

A witness cannot give expert or opinion evidence unless the court accepts the relevance and admissibility of their evidence to matters in issue in the case.

Expert evidence, even if relevant, can be excluded by the court if it is prejudicial, potentially misleading, or its admission consumes an inordinate amount of court time which is disproportionate to its evidential value for the particular case. The court must be confident in relying upon the expert to provide a thorough and technically sound analysis within their qualifications.

Evidence of how much care will cost has to be founded upon evidence of experts who are qualified to give opinions as to the particular item of care needed. The author of the future care report, when testifying, cannot depend on facts received from others unless those facts are in evidence through qualified experts. The fact that you consulted with an expert or a team of experts does not qualify you to give that evidence in court. (That

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would be hearsay). The person with whom you consulted has to give the opinion in court before you testify. The expertise that the life care planner brings to court is the cost of the care which has been recommended by others with expertise in each area of care needed. Depending on the expertise of the future care expert, he/she will not be permitted to give opinions about the care needed if she/he is not a member of a college permitted to give that opinion, or otherwise qualified through education, training and experience to give it. The value of a qualified life care planner is in knowing all the possible types of care a client with the particular constellation of injuries could need and then seeking out appropriate experts to address those needs for this person. But the opinion testimony that a life care planner is permitted to give in court is primarily the **cost** of the care recommended by qualified others.

When a report is being prepared by the life care planner, and, especially, when giving evidence, each item of cost must be underpinned by someone qualified to give the opinion that the person needs that item of care. So, for instance, there must be a physiotherapist who gives the opinion that the physiotherapy is needed and at what rate and for what period of time. It must include the travel time and any time required for team meetings or consultations with other professionals. This will be the same for someone from the appropriate expertise for occupational therapy, social work, psychology, etc. This is not just the fact that it is needed, but how much and for how long. Items like personal trainer, exercise program, membership in a gym, need for a money manager, financial planner, etc, must be given by someone under whose expertise those items fall. (As an aside, when costing for recommended items, don't

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forget to include time for travel, consults with other professionals and team meetings. These items are often missed. There is also inconsistency among report writers, and sometimes within reports, in the way GST is dealt with. I suggest you include it in the costs where applicable.)

The Rules of Civil Procedure provide that any expert opinion must be reduced to a report in writing and signed by the author, so that the defence will have adequate notice of the case they have to meet. The practice of saying in a future care report that a consultation has been made with the person orally is not sufficient to make that person's opinion admissible and it would be hearsay for the future care expert to repeat in court what she has been told. The practice of some future care report writers of getting sign back letters has not yet been challenged. It complies with the spirit if not the letter of the law, but it is not ideal. The best practice is to get the letter from the expert containing the opinion that the person is qualified to give. I realize that there are some practical realities where there are time lines and you can't get the supporting reports by the date your report is required. In that case, you could put the person's opinion received orally in your report, and discuss with the lawyer which of you should continue to follow up to get those signed reports in time for trial.

If you are relying on an expert for the opinion that a certain item of care is needed, then that person must testify at trial or a report from that person must be introduced on consent of the other side without the necessity of calling that witness. Every item of care detailed in your report must be in evidence from someone qualified to recommend it. If

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you are not qualified to recommend it yourself and that opinion is not in evidence from someone else, you will not be allowed to give that evidence in court and the client will be deprived of damages to cover those costs. All expert testimony which underlies your costs analysis must comply with the Rules.

The following cases have considered admissibility of evidence from future cost of care witnesses since 2006. The recent cases which considered the admissibility of evidence from future cost of care witnesses did not change the law. The cases listed below, where future care planners were not allowed to testify, or where their evidence was limited, articulated the law as it has always been. The statements above describing the criteria for admissibility were taken for the most part from the rulings of the court in the cases listed below:

Sandhu v. Wellington, jury case concluded January 2006, so details of defence future care evidence ruled out, not reported. Future care in excess of \$8 million allowed and upheld by the Court of Appeal

Marcoccia v. Ford, jury case concluded March 2007, so details of defence future care evidence ruled out, not reported. Future care in excess of \$13.9 million allowed. Appeal pending in the Court of Appeal

Song v. Hong, jury case. Justice Moore's ruling on the admissibility of evidence heard March 10, 2008, unreported, but transcript of the ruling was ordered and is available. Ruled future care evidence inadmissible

Frazer v. Haukioja, [2008] O.J. No. 3277 (S.C.J.), medical malpractice case, judge alone, ruled future care evidence for the plaintiff inadmissible

Aberdeen vs. Zanetta et al, trial decision 2007 BCSC 993, appeal among other things on the quantum of future care costs, 2008 BCCA 420, October 28, 2008

STATEMENTS/PRINCIPLES OF LAW THAT GOVERN COMPENSATION FOR FUTURE CARE NEEDS

It is not for you to consider whether the person will take the treatment or not. You are to consider the costs of the care *needed* based on the following principles of law:

1. If the plaintiff establishes a real and substantial risk of future pecuniary loss, (s)he is entitled to compensation.

Graham v. Rourke (1990), 75 O.R. (2d) 622 (C.A.) at 634

2. In assessing future pecuniary loss the court must consider all reasonable possibilities and does not need to be satisfied on a balance of probability of the accuracy of the future amount.

Baynton v. Rayner, [1995] O.J. No. 1617 (Gen Div) at para 132

3. Compensation for future loss is not an all or nothing proposition. Entitlement to compensation will depend in part on the degree of risk established. The greater the risk of loss, the greater will be the compensation.

Graham v. Rourke (1990), 75 O.R. (2d) 622 (C.A.) at 634

4. It is well established that compensation should be full for pecuniary loss.

Andrews v Grand and Toy Alberta Limited, [1978] 2 S.C.R. 229, at 241

FUTURE CARE COSTS:

5. The paramount concern for the courts when awarding damages for personal injuries should be to assure that there will be adequate future care.

Andrews v Grand and Toy Alberta Limited, [1978] 2 S.C.R. 229, at 250-251

6. If a Plaintiff establishes a real and substantial risk that (s)he will require future care because of the wrong done to her, she is entitled to compensation.

Graham v. Rourke (1990), 75 O.R. (2d) 622 (C.A.) at 634

Schrump et al, v Koot et all (1977), 18O.R.(2d)337 (CA) at 340

7. A setting that is most advantageous to a Plaintiff is the one that should be awarded. A Plaintiff is not forced to mitigate her loss by accepting a lesser standard of care.

Andrews v Grand and Toy Alberta Limited, [1978] 2 S.C.R. 229, at 242

Banihashan-Bakhtiari v. Axes Investments Inc., [2004] O.J. No. 302 (C.A.) at para 29.

8. A Plaintiff is entitled to live as "normal" a life as possible. He is not required to live in an institution and any estimate of his living expenses that is based on an institutional model is not appropriate. It is not appropriate for the court to reduce the Plaintiff's options by providing him with a level of support that makes it necessary for him to share services with others for the rest of his life. The underlying philosophy to this approach is consistent with the positions taken by the Supreme Court of Canada in *Andrews v. Grand & Toy* and by Mr. Justice Zuber of this court in the *Dube* case and is consistent with the right of all persons to dignity and autonomy, regardless of disability.

Dann (Litigation Guardian of) v. Chiavaro, [1996] O.J. No. 1912 (Gen. Div.) at para 91.

CARE PROVIDED BY PARENTS/FAMILY MEMBERS

9. A wrongdoer cannot claim the benefit of services donated to the injured party. Family members should not be conscripted to the services of the Defendant. Where a Plaintiff needs a great deal of care and assistance, the quantum of damages cannot be diminished by placing the burden on other family members.

Vana v. Tosta, [1968] S.C.R. 71 at 75

Andrews v Grand and Toy Alberta Limited, [1978] 2 S.C.R. 229, at 243

Richards v. B and B Moving & Storage, [1978] O.J. No. 35 (C.A.) at para 10

Yepremian v. Scarborough General Hospital (1980), 28 O.R. (2d) 494 (C.A.) at 532

Feng v. Graham, [1988] B.C.J. No. 514 (C.A.)

10. It is not necessary that a Plaintiff establish that he or she is under any legal or moral liability to pay the amount to the provider of the services.

Feng v. Graham, [1988] B.C.J. No. 514 (C.A.)

11. The question from what source the Plaintiff's needs have been met, the question who has paid the money or given the services, so far as the Defendant and his liability are concerned are irrelevant. So far as the Defendant is concerned, the loss is not someone else's loss. It is the Plaintiff's loss.

Crane v. Worwood, [1992] B.C.J. No. 433 (B.C.S.C.)

12. A Plaintiff is entitled to recover damages in respect of the fair and reasonable cost of the special attention, necessitated by the Defendants' wrongdoing.

Crane v. Worwood, [1992] B.C.J. No. 433 (B.C.S.C.)

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13. Where a Plaintiff's safety is at constant risk and someone must be available to her at all times, it would be unreasonable to impose obligations of this nature on her parents or siblings. Even where a family will continue to participate in a Plaintiff's care and provide companionship, a Plaintiff is entitled to 24 hour care and supervision from others. There is no legal basis to impose this burden on a Plaintiff's parents, even though they have and probably will continue to provide whatever care and comfort they are able to give her.

Crawford v. Penney, [2003] O.J. No. 89 (S.C.J.) at para 304

SUPPORTED LIVING COSTS

The first step to determining the details of required supported living is to take the family (and other volunteers) out of consideration. Imagine the person living alone and determine what number of hours and level of care is needed in every 24 hours. The client is entitled to compensation for the amount it costs to purchase that care at market rates.

Even if the family members have provided and are able and willing to continue to provide these services, the value of the services should be included as a part of the life care plan at market rates. Imagine the person living alone and all their support needs being provided by outside paid caregivers. Most family members dramatically underestimate the time they spend cueing, prompting and responding to situations to prevent escalation of behaviour. Because they are there, these needs are often underestimated. When taking the family out of consideration, it is important to think of how the person would cope if they weren't there at all. Consider what is practical and available. For instance,

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most agencies will only provide help in minimum blocks of time. A habit has developed of assessing care based on how many minutes it would take to support a certain task. However, you can't get a paid caregiver into the home to do a 5 minutes task several times/day. If a worker is going to provide care at different times of the same day, then the cost of travel will be charged coming and going each time and that could result in the client getting less care for more cost. The person may require some of their supported living hours at the rate of a rehabilitation support worker on a permanent basis to address certain deficits which are not likely to improve

When you are determining supported living needs, safety has a broad meaning. I am constantly seeing care assessments which look only at whether a person can respond in the case of emergency such as a fire. But would the client be able to identify a situation of danger, such as a stranger coming to the door, or an internet or phone invitation to a bar or a private party? Some clients with brain injury would know to leave if there was a fire, but would let a total stranger into their house. Would the person who can describe what they should do in a situation of emergency actually be able to carry it out under the stress of the emergency? Many clients with brain injury have issues with problem solving and in situations requiring a decision cannot actually do what they know to do or choose the right option. Foundational to determining hours of support is the issue of initiative. Does the client need cueing and prompting to take action throughout the day?

What level of support is needed to facilitate the client with productivity and quality of life issues? Does the client have behavioural issues which put him or others around him at risk when he is out in public? To facilitate and optimize social integration, maximize

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participation in productive activities, both domestic and social and recreational, what level of training is required? Is personal support worker enough or does the person need some hours of rehabilitation support worker for the core productive hours of the day and/or for times in public?

When I am commissioning a future care report, I ask that the costs of supported living be put in a separate section. Because of the fact that the Accident Benefits insurers pay Rehabilitation Support Workers out of rehabilitation funds, the habit of including them under needed rehabilitation has evolved. However in the case of a person with brain injury who will need RSW hours as part of their supported living on an ongoing basis, it makes sense to put that in the same section as attendant care and call the section Supported Living Costs.

DEVELOPING THE FUTURE CARE PLAN

When you are developing the future care plan as it pertains to supported living costs, the ideal is to try to reach a team consensus between the team that has been working with the client, the neuro psychologist, the neuro psychiatrist, an occupational therapist and any other expert who has expertise to speak into factors that dictate the amount of support needed. The anecdotal information from family, friends and treatment providers, tutors and front-line rehab professionals is a critical foundation to informing the experts as to what is really happening in the client's life experiences. We want to make sure that all the treatment providers are aware of all the facts and factors that would influence their opinion as to how much care is needed. It is also the role of the future care expert

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to make sure that each provider understands the system into which they are speaking and the law set out above.

One of the biggest hurdles to getting all the needed care in the report is confusing the Accident Benefits system and the tort system. There are certain limits and constraints on getting benefits under the accident benefits that do not apply in tort. Further, you should never put the rates provided in the SABS into your future care report unless they are the market rates for the care providers.

CROSS EXAMINATION—HOW CAN YOU PREPARE?

It is the role of the defence to challenge the recommendations as to the amount of rehabilitation and care needed and the level of care, but also the cost of getting the needed care. Usual tactics of the defence are to try to suggest that the needed hours of care can be purchased at a much lower rate.

In the Sandhu case, much of the trial time was taken up with evidence from various sources suggesting that they had programs or services which could be purchased at a fraction of the costs being suggested by the plaintiff's experts and that the services were being supplied by the family and would continue to be performed by the family indefinitely.

I include below **excerpts from my closing arguments to the jury at the conclusion of the trial in the Sandhu case** on some of those issues. I include them because they demonstrate some of the issues raised by the defence in that case of which you should

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be aware, and be prepared to answer to, as well as issues which need to be taken into account in developing the evidence needed to prove the supported living needs. Bear in mind I am addressing the jury in the quotes below. This is by no means a comprehensive list, but just a sampling of issues and arguments in this one case.

- **On the issue of the care and supervision Harvinder needs, the Defendants' lawyers started out with suggesting to some of the witnesses that Harvinder should live at home and his needs would be met by his family and his extended family and only supplemented by paid caregivers.**

Their [the defence] idea was that the landlord could put all the burden of care on the backs of the family so they would not have to pay for his future care needs. The law is very clear on this. The bottom line is: the quantum of damages cannot be diminished by placing the burden of Harvinder's accident-related needs on other family members. If you are satisfied that Harvinder reasonably needs 24-hour supervision, then he is entitled to the cost of purchasing that care from service providers with the level of expertise that you consider reasonable for the different times in the day. There is no legal basis to impose this burden on a Plaintiff's parents even though they have been providing it up to now and even if you speculate that they may continue to provide some of the care in the future. If his need for the care arises from the fall, the cost of it is part of Harvinder's damages and the Defendants cannot suggest to you that you should reduce or eliminate any aspect of the cost of Harvinder's care by assuming that it will be provided by his parents or other family members.

This idea that the wrongdoer can conscript the family to their service for free is wrong.

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The amount you allow for Harvinder's future caregivers should be the cost of purchasing those services at the different levels that you are satisfied he needs based on the evidence that you accept. I urge you to find that those costs should be the agency rates rather than the rates of the substitute care givers proposed by the defence

The pie charts were intended to depict that Harvinder needs 24 hour coverage, but that not all of it is the same level of care, or at the same cost and not all of it starts right away.

Right now at the age of 10, he would not be left completely alone overnight, even if he was uninjured, so we didn't start the overnight claim until after his age 16. Once it is clear that the fact that he cannot be left alone is caused by the injuries from the fall, then these hours are shown as having a cost attached to them.

The costs used by the Plaintiffs' experts, are based on agency rates. If the workers are employed by an agency, then the family is charged an hourly rate plus G.S.T.

The Defendants introduced some ideas about ways to fill those positions for less.

Student Labour

The Defendants produced Kelly Tinker, from the Sheridan College placement center and Scott Fennell from the York University placement center.

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These two witnesses were called to say that students are available to work part-time and after graduation. Neither the College nor the University had relevant programs to Harvinder's need for a Rehab Support Worker level of care

In addition, there are the following problems with such a proposition:

Students are very transient and seasonal in their work habits and availability. After a semester, they go home and there is no coverage over school holidays or during the summer months.

There is a high turnover as their academic workload will prevent them from continuing to work, especially during exams.

It is hugely burdensome on the family to screen, interview, hire, and insure independent workers.

Ms. Tinker from Sheridan said that a graduate would charge in the \$16-\$17/hour range. That hourly wage doesn't get someone trained or experienced in dealing with acquired brain injury.

Either that level of worker wouldn't be appropriate at all or training would be involved which would be extra hours of a more costly individual to train such an individual to look after Harvinder's needs.

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You see that when \$16/hour is grossed up to include all of the costs to the family, it came to \$43,900 per year or a grossed up hourly rate of \$19.50 for such a worker, without any accounting for the time of the family to screen, interview and manage the workers and their schedules.

The difference between the two is only \$4.50/hour or \$11,012/year to compensate the family for all their involvement in keeping payroll, interviewing, screening and selecting and managing various employees.

I ask you to find that taking into consideration the security of having an agency who will always provide someone if the regular one is sick or on holidays or quits, and the reassurance that they are interviewing and screening the workers before they are being sent and they do all the books and look after the payroll, the agency rate of \$24/hour is the appropriate one to use.

Foreign Caregivers

Another solution to providing coverage for Harvinder was proposed by the Defendants was a foreign caregiver. This concept of a Punjabi nanny was not put to any of the witnesses on cross-examination. When a low level of untrained person was suggested, it was soundly rejected by all witnesses as a suitable or safe option. ...

Elizabeth Laughlin was produced by the Defendants. She was from Caregivers.ca, a placement agency for foreign live-in caregivers and Sham Padda a lawyer who says he specializes in immigration law.

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Elizabeth Laughlin has only been in her position for 4 months and it was obvious that there was a lot she didn't know about how this whole things work. Based on her evidence that the foreign caregiver would only make \$9.50/hour, the grossed up cost per year was \$27,043 or \$11.79/hour for a foreign live-in caregiver that would have to be replaced at a minimum of every two years. But once Sham Padda testified, he admitted that there are other costs to the family that were not included in Elizabeth's testimony. He admitted that there is a finder's fee to be paid to the referral source both by him for the connection and by the worker wanting to come to Canada to get "moved to the front of the line". He also admitted that the employer has to pay health insurance and that in reality if he was bringing in a person with a medical background, the pay would be \$1,500/month to the worker, plus the value of the room and board, not inclusive of the room and board as Miss Laughlin said. When you add those extra fees on to the Exhibit 154, they translate into approximately \$13.74/hour.

This foreign caregiver program is fraught with problems. On its face, it is obvious that there are issues about exploitation of these workers. There are long waiting lists of years to get one of these workers and there are all sorts of risks. They are not trained to deal with individuals with brain injury.

They would have to adjust to the Canadian culture and the lifestyle here, they also would have to be trained.

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The family would be sponsoring someone into the country and that is a huge responsibility. There is a large backlog for processing the applications at the foreign country's end and a lengthy time frame that it takes to get someone in place. Then after taking all of those steps, the family will also know they will only stay in the position for 2 years.

The Sandhus were never asked if they were interested in having a stranger move in with them or whether they could even accommodate someone with private quarters required by the program.

Dr. Lemsky testified that she has had clients of hers attempt to use this program. She said that "it takes them quite a while to understand the nature of the disability...they don't come with an understanding of the differences in motivation, there's very often misunderstandings about why after all this practice is this person still not catching on. And that becomes very draining so in the situations where I've been involved with we have had to provide a lot of training and by the time the situation has reached some normalcy, they have spent their time in that position and they want to move on."

The Employment Standards Act states that the foreign caregivers can only be required to work 44 hours/week. Even if they were suitable for over night hours, that only covers 5 nights at 8 hours with 4 hours left over. There are 168 hours in a week. The defence theory leaves 124 hours of every week with no coverage .

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It just makes sense to have an agency develop a schedule of workers which complies with all the employment standards laws about how many hours a person can work and how many hours they have to have between shifts and how many holidays they are required to have and to provide back up for those who are sick or quit. ...

Rehabilitation Support Workers vs. Personal Support Workers

Issues to examine to determine the number of hours required at the rehab support worker rates

The hourly rate for the rehabilitation support worker is high-- you may be tempted to say that is just too expensive, but that is the real cost of that level of support, and all the qualified experts testified he needs it. You have the Defendants' lawyers telling you it is too much, but they weren't able to come up with any witness who works with this population to support their view. Every witness from every discipline, who actually work with people with the type of brain injury Harvinder has, has testified that he needs this level of support. These are some of the reasons they gave:

The level of support of a rehab support worker is needed because Harvinder does not need a babysitter for the rest of his life. It won't be good for him to have someone to do things for him.

He needs someone who has the skills to provide the most subtle and the fewest cues to enable him to get through the steps of his tasks that he can do and to actually do the things that Harvinder just can't do and will never be able to do, such as manage his

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money or plan how much to spend, or come up with plans as to how to schedule his time.

During the time he will be in school to age 21, he will need a Rehab Support Worker or a Child and Youth Worker. After 21, he will need someone to help him fill those same core hours with productive activity such as a work-like placement or a project that will give him the sense and satisfaction of work.

The Defendants' costing completely ignores the fact that Harvinder on their best scenario will be an impaired 12 year old with significant frontal lobe dysfunction. He will never be able to plan his days, think of and schedule meaningful things to do, budget or plan how to spend money or on what or for what value. He will not be able to drive. He will not be able to manage his personal care. He will not be able to plan his meals, buy his groceries, prepare his meals, do his housekeeping, do his laundry, or do his shopping. Think of all the things your days consist of. If a babysitter gets paid \$10/hour, how much would you reasonably pay someone who would not do those things for Harvinder, but have the training and skills to be his prosthetic frontal lobe, so he could proceed to do what he can do with that support.

The experts have also testified that there is a preventative component to having this level of care. His future could be potentially dangerous, he could be at risk himself, he could end up in trouble. He could engage in anti-social behaviour. He is vulnerable. He is at risk for falling in with the wrong crowd. The constructive and productive

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programming is not only for his quality of life but is also preventative of even worse things happening.

Mrs. Sandhu provided evidence that Harvinder is growing and now beginning to push her and is becoming more aggressive. She is concerned that she is not able to control him at age 10 and that as he grows, it will become even more of a problem. She also provided evidence that Harvinder's uncle moved out of their house in part due to Harvinder's rough behaviour with their children. Parminder provided evidence that Harvinder throws things and hits him. Gagandeep provided evidence that Harvinder gets mad easily and in one video clip showed to him during cross-examination he described Harvinder riding away from the cricket game because he got angry.

The experts who met and assessed Harvinder all agreed that he showed no self-regulation, no insight into his behavior, no tension, and social inappropriateness.

The experts say that these issues are all previews for greater problems in Harvinder's upcoming teen years.

Without skilled professional help, it is more likely that he will be increasingly isolated and dysfunctional and therefore be depressed. He is highly likely to deteriorate over time without this level of support.

When you are thinking about the qualifications of the person who is suitable, remember that Harvinder will not think that there is anything wrong with him. He will want more and

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more independence and will have no insight into his deficits. There will be more and more conflict and already his parents are finding themselves at a loss to manage him. He is already starting to resist having his mother around all the time. Parminder is going into high school next year and he won't be around to look out for Harvinder. That gap between Parminder and his friends and Harvinder is going to widen more and more and he will not be able to participate in the same things they will be doing. His parents and his brother and Parminder's friends have been providing Harvinder's access to the community. Pretty soon, that is no longer going to be suitable.

Without this level of support he is at risk to experience recurrent failure, recurrent social isolation, trouble at school, trouble with the law.

The Plaintiffs' experts say he won't develop more executive functioning than he has right now. Dr. Shevell says he will never function at more than an impaired 12 year old and Dr. Finegan says early adolescence. Even on the best characterization of their evidence, what can you expect from an impaired 12 year old? Would you have an impaired 12 year old living alone, buying their own groceries and clothes, planning and preparing their own meals, managing their own household, solving their own problems, getting themselves up and out to work every day and managing that independently, holding jobs for 10 years at a time without support.

Where the Defendants' evidence differs from the other experts I suggest to you that you have ample reason to disregard it.

CONCLUSIONS

The fact that you may not be qualified to give opinion evidence in court on the issues in the care plan does not take away in the least from the value of your expertise as a life care planner. Being aware of what you can say and what you need others to say adds huge value to the client by getting the plan solidly supported by the needed experts and accomplishing the ultimate goal of getting that plan accepted by the court and allowed for in the plaintiff's damages award. It also vastly enhances your credibility and reliability for the judge who sees that you have understood and been careful to stay within your expertise.

One of your main roles is to gather all the information both anecdotal and medical that will provide the foundation for the future care plan, get it out to the whole team of experts and to try to coordinate a consensus among all disciplines whose expertise qualifies them to give an opinion on specific care. The most significant cost in any care plan for a catastrophically injured individual is the supported living arrangements. Drawing on the expertise of each member of the team to get them all on the same page so that you can present a coordinated consensus plan is a mammoth job. It is the expertise of the life care planner working in concert with the personal injury lawyer specialized in catastrophic cases that gets the clients the trial results that will give them safe, dignified quality of life so far as money can provide for it.

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Thank you for all you have done and all you will do to advocate for needed care for the survivors of serious injuries.

By: Nancy Ralph

Nancy has specialized in advocacy for survivors of serious injuries for 28 years. At jury trials in 06 and 07, she has achieved the two highest known future care awards in Canadian history