

COURT OF KING'S BENCH OF MANITOBA

IN THE MATTER OF: Section 71 of *The Mental Health Act*, S.M. 1998 c. 36

AND IN THE MATTER OF: SANDRA IONE FORD

B E T W E E N:

ASHLEY KARMEL FORD and)	
SCOTT IAN FORD,)	<u>Joseph A. Pelletier</u>
)	for the applicants
applicants,)	
)	
- and -)	
)	
SANDRA IONE FORD,)	<u>Jana Taylor</u>
)	for the Public Guardian and
respondent.)	Trustee of Manitoba
)	
)	
)	
)	<u>Judgment Delivered:</u>
)	September 4, 2024

ASSOCIATE JUDGE PATTERSON

INTRODUCTION

[1] This matter involves a long overdue passing of accounts by two siblings who previously served as committees for the property and personal care of their now deceased mother.

[2] Aside from considering whether acknowledged incomplete financial reporting should be deemed satisfactory, requests for committee compensation and responsibility for legal expenses are other issues reviewed.

BACKGROUND

[3] On June 6, 2016, an order was pronounced by the Honourable Justice Menzies (the "Committeeship Order"), whereby siblings Ashley Karmel Ford ("Ashley") and Scott Ian Ford ("Scott") were appointed as committees for the property and personal care of their mother, Sandra Ione Ford ("Mrs. Ford"), in accordance with *The Mental Health Act*, S.M. 1998 c. 36 (the "*MHA*").

[4] Mrs. Ford was married to William Ian Ford ("Mr. Ford"), who passed away on October 11, 2004. Ashley, Scott and Racquel Dawn Weber ("Racquel") are the three surviving children of their marriage.

[5] Pursuant to a subsequent order pronounced by Menzies J. on October 21, 2019 (the "October 2019 Order"), Ashley and Scott were removed as committees, and replaced by the Public Guardian and Trustee of Manitoba (the "PGT"). The October 2019 Order directed that Ashley and Scott pass accounts for the period of approximately three years in which they served as committees for their mother. Costs in an amount of \$2,500.00 were ordered against Ashley and Scott.

[6] Upon Mrs. Ford's passing on January 2, 2021, Letters of Administration were granted on July 7, 2021, authorizing the PGT to administer the estate of Mrs. Ford (the "Estate").

[7] On September 6, 2023, the PGT filed a motion on behalf of the Estate (the "PGT's Motion"), requesting a finding of contempt against Ashley and Scott, as well as costs.

[8] Although duly served, Ashley and Scott failed to attend on October 4, 2023 (the hearing date scheduled for the PGT's Motion). As a result, Menzies J. pronounced a further order (the "October 2023 Order") stipulating that Ashley and Scott were to appear before the Associate Judge on October 18, 2023 for purposes of passing accounts.

[9] In addition to adjourning the PGT's request for a finding of contempt against Ashley and Scott until October 18, 2023, the October 2023 Order awarded costs against Ashley and Scott in an amount of \$3,500.00 all inclusive (this sum to be payable from Ashley and Scott's eventual shares as beneficiaries of the Estate).

[10] Despite receiving notice, Ashley and Scott did not appear before me on October 18, 2023 as scheduled. The matter was adjourned to October 31, 2023, at which time Ashley and Scott failed to attend once again. As a result, the PGT's Motion was adjourned and made returnable before Menzies J. on December 20, 2023.

[11] On December 20, 2023, Ashley and Scott finally attended before this Court, at which time Menzies J. directed that the PGT's Motion was to be adjourned to March 12, 2024 at 10:00 am before me.

[12] Ashley and Scott appeared (unrepresented) on March 12, 2024. I issued a detailed memorandum dated March 13, 2024 ("Memo #1") and adjourned the matter to April 16, 2024 (which was to be a hearing for directions), with encouragement that Ashley and Scott retain counsel.

[13] On April 16, 2024, Ashley and Scott attended with counsel. A further memorandum was issued ("Memo #2"), which established a deadline for filing and service of the required affidavit material and associated exhibits from Ashley and Scott.

PASSING OF ACCOUNTS

[14] The following exhibits were entered into evidence at the hearing which proceeded before me on July 4, 2024:

- a) affidavit of Scott Ian Ford, affirmed June 3, 2024 ("Scott's Affidavit"): Exhibit 1;
- b) affidavit of Ashley Karmel Ford, affirmed June 3, 2024 ("Ashley's Affidavit"): Exhibit 2;
- c) copy of undated letter from Melvin Longclaws, confirming receipt of payment in an amount of \$1,600.00 for shingling at Mrs. Ford's home in Brandon, Manitoba (Mrs. Ford's Home") on October 15, 2018: Exhibit 3;
- d) copy of City of Brandon statement of account dated April 12, 2024 (the "City Statement of Account"), which included a transaction history from 2020 to 2024 concerning Mrs. Ford's Home: Exhibit 4; and
- e) copy of Manitoba Hydro statement of account dated April 11, 2024 (the "Hydro Statement of Account") for the period of "January 2016 to April 2024" in connection with Mrs. Ford's Home: Exhibit 5.

[15] Attached as Exhibits A through E to Scott's Affidavit (and Ashley's Affidavit as well) are the required forms mandated by Rule 72.04(2) of The Court of King's Bench Rules, Man. Reg. 553/88 (the "Rules") for the passing of accounts by committees.

[16] By consensus of counsel, the foregoing affidavit material served as the direct evidence for Ashley and Scott, although their counsel did ask certain further questions for clarification purposes prior to both Ashley and Scott being cross-examined by counsel for the PGT.

SUMMARY OF SCOTT'S EVIDENCE

[17] Within the Opening Inventory (Exhibit A to Scott's Affidavit and Ashley's Affidavit), the only assets listed were Mrs. Ford's Home (valued at \$189,500.00) and her CIBC chequing account (the "CIBC Account") in an amount of \$3,895.87, for total of \$193,395.87 as of June 6, 2016. The Opening Inventory also confirmed that Mrs. Ford was in receipt of monthly pension income from the City of Brandon as well as monthly Canada Pension Plan ("CPP") and Old Age Security ("OAS") benefits.

[18] As to the Statement of Monies Received and Disbursed for the period of June 6, 2016 to October 21, 2019 (Exhibit C to Scott's Affidavit and Ashley's Affidavit), it is set forth commencing at paragraph 13(i) of Scott's Affidavit that "a combined amount of \$9,750.50 was withdrawn by myself throughout that period and marked as disbursed to Scott Ford."

[19] While Scott acknowledged that he was unable to locate receipts or statements concerning the foregoing withdrawals from the CIBC Account, the following explanation was provided:

- a) An amount of \$2,460.00 is described within Scott's Affidavit as being paid for the services of two of his "foster children" to provide periodic lawn care and snow

removal at Mrs. Ford's Home (prior to the property being sold by the PGT with approval of the Court).

b) Within Scott's Affidavit, he stated that "I genuinely believe that the balance of \$7,290.50 was also paid as a reimbursement to myself for incidental expenses of caring for the property for those years." He mentioned during his *viva voce* testimony that he reimbursed himself from the CIBC Account as a result of expenses that he incurred for changing the locks, repair of a window latch, replacement of a "XP pipe" for the furnace and cleaning up water damage at Mrs. Ford's Home.

[20] There is also reference within Scott's Affidavit to his withdrawal of \$500.00 on August 23, 2016 from the CIBC Account concerning "Scott Ford (Tree)". A tree had fallen at Mrs. Ford's Home that had to be removed, with this disbursement representing reimbursement to Scott for the costs he had incurred (no receipt was provided in evidence). He clarified, however, that this sum is not included within the combined amount totaling \$9,750.50 which Scott admits to withdrawing from the CIBC Account.

[21] Within paragraph 14 of Scott's Affidavit, it is further acknowledged by Scott that the Statement of Monies Received and Disbursed (at Exhibit C) contains "a number of purchase[s] disbursed to 'unknown' and I have reviewed my records and cannot recall their destination". Scott states "It is possible I will be unable to explain them, however I

am aware that these were debit transaction purchases that would have been for Sandra's benefit as I never used the debit card for myself". In particular:

a) There were five separate expenditures incurred between April 5, 2017 and January 19, 2018 totaling \$6,528.60 (\$2,000.00 on April 5, 2017, \$600.00 on May 18, 2017, \$1,500.00 on September 13, 2017, \$1,500.00 on November 24, 2017 and \$928.00 on January 19, 2018).

b) As to the significant expense in a amount of \$14,661.50, which was incurred on or about November 16, 2018, Scott believes this sum was paid to Canada Revenue Agency ("CRA") in connection with outstanding income tax payable by Mrs. Ford (he recognized that there were outstanding income returns to be completed, which had to be attended to once the PGT became involved, with Court noting that any sum payable income taxes ought to have been in favour of the "Receiver General").

[22] Otherwise, Scott contends that many of the disbursements from the CIBC Account have been explained, such as but not limited to the following:

a) The acknowledgement in writing from Melvin Longclaws' (Exhibit 3) confirming his receipt of \$1,600.00 for shingling at Mrs. Ford's Home on October 15, 2018 (this total amount correlates with the three withdrawals made from the CIBC Account on October 15, 2015 of \$600.00, \$500.00 and \$500.00 respectively); and

b) The City Statement of Account (Exhibit 4) disclosed payments being made towards annual property taxes, and to avert tax sale proceedings, during the period of time when Scott served as a committee for Mrs. Ford (for instance, there

were payments of \$2,000.00 received by the City of Brandon on September 8, 2016 and September 9, 2016 respectively); and

c) The Hydro Statement of Account (Exhibit 5) supports the various disbursements from the CIBC Account that are noted as being "pre-authorized transactions" for "Manitoba Hydro".

[23] Scott and Ashley request that the Court approve payment from the Estate in relation to the statement of account for legal expenses which they have incurred for this hearing. A copy of the draft statement of account for Scott and Ashley is attached at Exhibit F to Scott's Affidavit (and Ashley's Affidavit), which is an amount of \$7,700.00 plus disbursements as well as GST and RST, for a total of \$8,781.50.

[24] Commencing at paragraph 18 of Scott's Affidavit, it is Scott's evidence that neither himself or Ashley paid themselves any compensation or received reimbursement for any travel and vehicle expenses while acting as committees on behalf of Mrs. Ford. As a result, Scott is seeking the following:

a) an amount of \$8,600.00 as compensation for what Scott describes as "regular duties" on behalf of his mother, including but not limited to paying bills, banking and maintaining Mrs. Ford's Home. Scott estimates that he would have spent one hour each week on average attending to tasks on behalf of Mrs. Ford, and as such, is requesting compensation for his time at a rate of \$50.00 per hour (no evidence was presented as to what firms that provide such services typically charge for comparable purposes); and

b) the sum of \$390.32 as reimbursement for travel expenses associated with driving his two foster children to and from Mrs. Ford's Home concerning lawn care and snow removal (14 kilometres each trip).

[25] Prior to questioning from counsel for the PGT, Scott admitted that he had been "busy" with work and family throughout the period of time in question, which had an impact upon carrying out his fiduciary obligations as a committee for Mrs. Ford in a thorough and timely manner.

[26] During cross-examination, Scott further acknowledged as follows:

a) There were some "gaps" within the information set forth within Scott's Affidavit, including but not limited to an absence of supporting documentation for purposes of explaining and justifying all disbursements and expenditures incurred involving the CIBC Account;

b) Mrs. Ford's Home ought to have been sold much earlier, and once she became a resident at a personal care facility in Winnipeg ("Deer Lodge"). Scott explained simply that he did not believe Mrs. Ford's Home could be sold without approval of the Court, admitting however, that he did not request or obtain any legal advice insofar as asking about what would be involved for sale of the property; and

c) Scott did not speak with Deer Lodge with respect to the arrears which were owing for Mrs. Ford's residency and care (which had accumulated to an amount of over \$40,000.00 and was subsequently paid upon the PGT becoming involved).

SUMMARY OF ASHLEY'S EVIDENCE

[27] Concerning the Statement of Monies Received and Disbursed (Exhibit C to Ashley's Affidavit), paragraph 13 of Ashley's Affidavit reads that "there was information missing with respect to the details of some monies disbursed due to myself and Scott Ian Ford being unable to locate the receipts or statements confirming the monies disbursed, however we have tried to reconstruct those records to the best of our knowledge."

[28] Within paragraph 14 of Ashley's Affidavit, it is Ashley's evidence that a portion of the funds withdrawn by Scott from the CIBC Account would have been provided to her as reimbursement for the following expenses that she had incurred for Mrs. Ford (acknowledging she did not have any receipts):

- a) an amount of \$240.00 for purchase of clothes and additional comfort items such as blankets and stuffed animals (on or about June 27, 2016);
- b) the sum of \$200.00 for purchase of personal hygiene products (on or about October 10, 2017); and
- c) an amount of \$600.00 for purchase of certain personal items as a result of there being an infestation of bed bugs within Mrs. Ford's suite at Deer Lodge, and certain of her personal effects having to be removed and destroyed (on September 13, 2018).

[29] Similar to Scott, Ashley believes that despite there being certain "unknown" disbursements from the CIBC Account as confirmed by the Statement of Monies Received and Disbursed (at Exhibit C to Ashley's Affidavit), these expenditures would have been incurred for their mother's benefit.

[30] Ashley shares Scott's position insofar as requesting that the Court approve payment by the Estate of the statement of account which they have incurred for legal services concerning this hearing.

[31] Exhibit G to Ashley's Affidavit is a copy of the summary that she has prepared as a basis for requesting compensation in a total amount of \$17,313.80, which is comprised of the following:

a) Ashley calculates that she committed a total of 262.5 hours carrying out multiple responsibilities on behalf of Mrs. Ford during the period of time in which she was acting as a committee. Utilizing a rate of \$50.00 hourly, this results in an amount of \$13,125.00;

b) The various efforts confirmed by Ashley include attending a post-admission care conference on July 29, 2016, participating in annual care reviews for 2017, 2018 and 2019, and "regular care" for Mrs. Ford (consisting of purchase of personal effects and hygiene products). She also refers to making periodic "phone calls" in connection with her mother's care (concerning medication issues or changes in prescriptions) that are included within the time attributed to "regular care" as earlier noted; and

c) In addition, Ashley claims that she would have travelled a total distance of 6,160 kilometres to and from Deer Lodge, or while attending to other duties during the course of acting as a committee for Mrs. Ford. Ashley confirmed within her *viva voce* evidence that she lives within Winnipeg (in North Kildonan). A rate of \$0.68 per kilometre was used in her calculations.

[32] At Exhibit H to Ashley's affidavit are copies of two cheques issued by Ashley, totaling \$326.10. Ashley is requesting reimbursement for these expenses as she states they were incurred for her mother's benefit (the notations upon the cheques refer to "Sandra Dental" and "Foot and Hand Care").

[33] Before being questioned by counsel for the PGT, Ashley admitted that Mrs. Ford's Home should have been sold earlier (she had a similar understanding as Scott and did not request or obtain legal advice as to what would be required in order to obtain approval of the Court). She also candidly acknowledged enduring what she described as a "tidal wave of life issues" during the period of time when she was a committee for her mother (which included giving birth to and caring for her premature daughter).

[34] Upon cross-examination, Ashley acknowledged as follows:

- a) She did not keep any notes, ledger or notes with respect to the time that she claims was committed towards duties for Mrs. Ford;
- b) While stating in her evidence that she recalls speaking with a social worker about the issue, Ashley admitted that she did not address the significant outstanding account for Mrs. Ford's residency and care at Deer Lodge;
- c) Ashley also did not dispute that there were outstanding income tax returns to be filed on behalf of Mrs. Ford, which were completed and filed upon the PGT becoming involved (the delay in filing income tax returns acting to prolong a review of the rate payable for Mrs. Ford's residency and care at Deer Lodge); and
- d) She was "overwhelmed" by this fiduciary obligation and had "put things off" due to her then life circumstances.

SUMMARY OF THE PGT'S POSITION

[35] At the outset, counsel for the PGT commented that while there were certainly gaps in information and a lack of supporting documentation, the unexplained disbursements and unknown expenditures from the CIBC account were of a "modest amount", with there being partial or further explanations now being provided by Scott and Ashley.

[36] That being stated, counsel for the PGT contends that the standard of care reasonably expected of a committee was not satisfied by either Scott or Ashley. Counsel for the PGT submits that when compensation is being requested, a higher or more professional standard of care ought to apply, which was not at all demonstrated by Scott or Ashley upon assessing the evidence before the Court.

[37] Counsel for the PGT asserted that the conduct of Scott and Ashley was lacking in relation to issues such as but not limited to the following:

- a) not selling the Mrs. Ford's Home once she could no longer reside there (in order to minimize ongoing expenses and maximize sale proceeds);
- b) neglecting the substantially overdue account at Deer Lodge;
- c) failing to ensure all required income tax returns were filed and any tax payable was remitted on a timely basis; and
- d) not following the Court's directives, with completing administration of the Estate being delayed by virtue of there being no passing of accounts until now.

[38] During submissions, it was mentioned that a Bill of Costs would be forthcoming from the PGT (it was received by the Court on July 10, 2024). The PGT is seeking approval for its statement of account, for the sum of \$5,293.38 all inclusive (prepared on a solicitor

and client basis), and that it be payable from Scott and Ashley's eventual shares as beneficiaries of the Estate.

[39] Ultimately, counsel for the PGT suggested that one potential and practical option for the Court to adopt in these circumstances would be to pass the accounts, without requiring any reimbursement to the Estate, but in turn, there would be no compensation payable to Scott and Ashley as requested. In addition to Scott and Ashley being responsible for legal expenditures incurred with the PGT, they would also have to pay their own legal costs in connection with this hearing.

[40] Counsel for the PGT confirmed that if the Court was inclined to resolve matters upon the above proposed basis, the PGT would abandon and no longer request a finding of contempt against Scott and Ashley.

SUMMARY OF SCOTT AND ASHLEY'S POSITION

[41] The arguments of counsel for Scott and Ashley can be summarized as follows:

- a) Scott and Ashley produced what they could for supporting documentation and provided explanations as best as possible, with the gaps in information being confined to the categories reviewed within the evidence (some unexplained disbursements to Scott and certain unknown expenses);
- b) There was no malice or bad faith on the part of Scott and Ashley, who readily acknowledged that there were legitimate concerns with their conduct as committees (the delayed sale of Mrs. Ford's Home being one primary example);
- c) While there is an absence of complete and organized receipts or statements, it was submitted that any withdrawals or expenditures incurred by Scott and Ashley

with funds from the CIBC Account was either for reimbursement concerning for expenses they had incurred on behalf of Mrs. Ford, or alternatively, for payment to a third party in connection with necessary services (such as the shingling at Mrs. Ford's Home completed by Melvin Longclaws);

d) Regardless of the concerns raised by the PGT, it was emphasized that Scott and Ashley did care for and support Mrs. Ford while they served as committees, for which there should be reasonable compensation approved (if not for the full amounts as requested, then partially);

e) In the event the Court was persuaded to approve the Bill of Costs submitted by the PGT (on a solicitor and client basis), counsel for Scott and Ashley asked the Court to exercise its discretion, and determine that his clients be responsible for only a portion of such legal expenditures from their eventual shares as beneficiaries of the Estate; and

f) Contrary to the PGT's stance, Scott and Ashley are continuing to request that their own legal expenses for this hearing be paid by the Estate (not out of their eventual entitlement as beneficiaries of the Estate).

SUMMARY OF RACQUEL'S POSITION

[42] Prior to the close of evidence and submissions from counsel, the Court inquired of Racquel as to whether she had any questions or if there was anything she wished to

express (she listened to the hearing via teleconference). Her comments can be summarized as follows:

- a) Racquel believed that Ashley and Scott did not take their fiduciary duties as committees seriously and remains frustrated that the PGT had to become involved (as a result of issues such as the substantial arrears outstanding with Deer Lodge or the lack of steps taken to sell Mrs. Ford's Home once it was vacant);
- b) She had previously offered to assist her siblings with preparing Mrs. Ford's Home for sale (they did not take her up on that offer);
- c) While expressing no opposition to the anticipated legal costs involving the PGT, Racquel did not agree to the legal expenses incurred by Scott and Ashley for this hearing being paid by the Estate; and
- d) Racquel disputed the request of Scott and Ashley for compensation due to their failure to meet the reasonable expectations of the Court when appointed as committees.

ANALYSIS AND DECISION

Passing of Accounts and Compensation

[43] After reflecting upon the portion of the evidence presented through *viva voce* testimony (in addition to the affidavit material filed), the Court is left with the impression, first and foremost, that Scott and Ashley loved their mother, and had intended to act in her best interests. When responding to questions, their demeanor could fairly be described as candid (with an element of embarrassment) in acknowledging that they had

not diligently managed Mrs. Ford's affairs while serving as committees (to such an extent that it necessitated involvement of the PGT).

[44] Despite there being certain unexplained disbursements to Scott or unknown expenses associated with funds from the CIBC Account, there was no suggestion raised by the PGT that there was any evidence of lavish purchases or expenditures incurred that were for the sole benefit of Scott or Ashley.

[45] This case, quite frankly, serves as a textbook example of why it is prudent to ask questions, seek out assistance when overwhelmed and maintain organized records.

[46] In the circumstances, however, I have no difficulty finding that Scott and Ashley have not satisfied their onus to establish, on a balance of probabilities, that they met the standard of care reasonably expected while acting as committees for Mrs. Ford.

[47] The failure of Ashley and Scott to fulfill their fiduciary duties as committees is best captured by the following evidence as summarized:

- a) The October 2019 Order of Menzies J. whereby Scott and Ashley were replaced and the PGT was appointed committee for the property and personal care of Mrs. Ford. Issues which the PGT had to address included inattention to the substantial arrears outstanding for Mrs. Ford's residency and care at Deer Lodge, unfiled income tax returns and sale of Mrs. Ford's Home;
- b) Pursuant to the October 2019 Order, Scott and Ashley were required to pass their accounts for the period of June 6, 2016 to October 21, 2019. When they neglected to comply with the directives of this Court, the PGT's Motion was

eventually filed including a request for a finding of contempt (in an effort to complete any outstanding issues so that the Estate could be fully administered);

c) Even though Scott and Ashley were served with the October 2023 Order, inexplicably, they did not attend before the Court as required on October 18, 2023, or on October 31, 2023;

d) It was on December 20, 2023 when Ashley and Scott finally appeared before Menzies J., following which a hearing for directions was held, and ultimately, this hearing (the passing of accounts occurring well over four years following termination of Scott and Ashley's appointment as committees);

e) While the Court was not expecting a "Mona Lisa" from an accounting perspective, Scott and Ashley admitted that they did not maintain a complete record of receipts, statements, notes or other documents which could have aided in their explanation of any unexplained disbursements to Scott, the unknown expenses incurred with the CIBC Account and how much of the time committed by Ashley involved visiting Mrs. Ford at Deer Lodge as opposed to attending to duties or tasks on behalf of her mother; and

f) During her *viva voce* testimony, Ashley volunteered that she remembered being advised by counsel (who assisted with securing the Committeeship Order) to keep records, a practice she did not follow other than producing copies of the two cheques she had issued in connection with particular services provided for Mrs. Ford (presenting copies of these cheques is an example of exactly what Ashley

and Scott ought to have done throughout the period of time in which they were acting as committees).

[48] Despite the foregoing evidence, Scott and Ashley are nonetheless requesting compensation for their time and efforts while serving as committees for their mother.

[49] Rule 72.04(2) provides as follows as it concerns compensation requests by committees:

74.02(2) A committee filing a notice of motion under subrule (1) shall also file in support an affidavit of the committee stating

...

(d) where compensation to the committee is sought, particulars in respect of the amount of the compensation and the services for which compensation is sought;

[50] The test to consider for purposes of assessing a request for compensation by committees was rather recently reviewed by the Honourable Justice McCawley in *Loewen v. Loewen*, 2021 MBQB 142 ("*Loewen*").

[51] In *Loewen*, the parents of the respondent (who lived at a residential care facility) acted as committees. Commencing at paragraph 46 of the decision, McCawley J. observed and commented as follows:

[46] As noted by the Public Guardian and Trustee, although *The Court of Queen's Bench Rules* deal with the process to be followed when committees are requesting compensation, the *Rules* and legislation do not provide any guidelines with respect to compensation to be awarded by the court. The standard by which a private committee should be compensated depends on the facts of each case. In this regard, the decision of Master Sharp in *The Estate of Gertrude Ritchot*, 2011 MBQB 233, 269 Man.R. (2d) 232, is helpful. Relying on *Toronto General Trusts Corp. v. Central Ontario Railway* (1905), 6 O.W.R. 350 at p. 354, 1905 Carswell Ont 449, Master Sharp sets out various factors which constitute what a "fair and reasonable fee" might be (at para. 15). These include:

- the magnitude of the trust;
- the care, the responsibility and risks assumed by the fiduciary;
- the time spent by the fiduciary in carrying out their responsibilities;
- the skill and ability required and displayed; and
- the results obtained and degree associated with their efforts.

[47] In the same decision, Master Sharp underlined the difficulty in relying on other decisions to assess compensation because each case rests upon its own facts (*Re Pearce* (1984), 9 D.L.R. (4th) 468, 1984 CanLII 666 at para. 15). Although that case dealt with an executor, the same factors are equally applicable here.

[52] Upon assessing the evidence in this case (and submissions of counsel) in the context of the guidance provided by McCawley J. in *Loewen* (which includes reference to the seminal decision of "*Toronto General Trusts Corp.*"), it is my determination that granting compensation to Scott and Ashley for the amounts requested is not warranted or appropriate given the issues and deficiencies set forth within this decision (summarized at paragraph 47).

[53] Simply put, Scott and Ashley did not comply, on multiple occasions, with what had been ordered by this Court, which represents conduct that ought not to be condoned. They also failed to produce complete records to substantiate their respective compensation claims.

[54] Overall, I find that the totality of their efforts as committees did not achieve consistent best interests results for their mother commensurate with the extent of compensation being requested.

[55] From the perspective of the PGT, the disbursements to Scott and the expenses involving the CIBC Account have now, in large part, been clarified for what is a modest Estate. I do not disagree, although revisiting the evidence results in the following conclusions:

a) With respect of the withdrawals by Scott from the CIBC Account which were recorded in his name (totalling \$9,750.50), an amount of \$2,460.00 was identified

by Scott as being for lawn care and snow removal, leaving a balance of \$7,290.50 which required clarification;

b) This outstanding balance (\$7,290.50) is not explained by the expense incurred with Melvin Longclaws for shingling Mrs. Ford's Home (\$1,600.00) or by the sum that Scott had provided to Ashley as reimbursement for specific costs that she had incurred for their mother (\$1,040.00). These particular expenditures are separately identified within the Statement of Monies Received and Disbursed at Exhibit C to each affidavit;

c) As a result, the Court is essentially left with a scenario whereby Scott and Ashley are requesting the Court to accept their evidence or infer that these unexplained withdrawals made by Scott were all for Mrs. Ford's benefit (such as for the costs concerning various repairs to Mrs. Ford's Home);

d) With respect to the unknown disbursements from the CIBC Account, the evidence has revealed certain answers as there were significant payments made to City of Brandon for property taxes and to CRA (Receiver General) for outstanding income taxes during the period of time when Scott and Ashley served as committees;

e) There are, however, other expenditures for which the purpose remains "unknown" despite the affidavit and *viva voce* evidence presented, such as but not limited to the expenses incurred which are outlined at paragraph 21(a) herein; and

f) If one was to add the sum of these remaining unknown expenses to the outstanding unexplained disbursements in favour of Scott as reviewed, the

resulting total is less than the amount for which Scott and Ashley are seeking from the Estate as compensation and to pay their legal expenses.

[56] The Court is being encouraged by the PGT to consider an outcome whereby the Court would pass the accounts, although Scott and Ashley would not be required to reimburse the Estate in connection with any of the transactions in question where there were no supporting receipts or documentation. Scott and Ashley would not, however, receive any compensation as requested for their time and services as committees.

[57] In the circumstances, I find favour with what has been proposed by counsel for the PGT (an approach that is both practical and proportionate). A similar methodology was endorsed by McCawley J. in *Loewen* (at paragraph 50):

[50] In light of the unique and complex situation before the court, and considering that the applicants have had the benefit of residing in the home with all related expenses being paid out of Ms. Loewen's funds, I am satisfied that they should receive no further compensation for acting as Co-Committees for their daughter during the Accounting Period. Also taking a very practical approach, I accept the recommendation of the Public Trustee and Guardian that they should not be required to repay the compensation that they have already taken during this period (\$17,925) nor should they be required to reimburse Ms. Loewen for the premiums paid on the Empire Life policy (\$26,117.75).

[58] Accordingly, I am prepared to pass the accounts, but I am declining the requests made by each of Scott and Ashley for compensation in the amounts set forth on their behalf respectively. I am also not willing to award partial compensation to Scott and Ashley, based upon the circumstances I have reviewed herein, and ultimately, because of the delay and disregard which they displayed concerning express directives of this Court.

LEGAL EXPENSES

[59] Within paragraphs 55 through 58 in *Loewen*, McCawley J. reviewed the issue of legal fees associated with proceedings of this nature, finding as follows:

[55] ... There is no question that the Public Guardian and Trustee's participation has been invaluable and I accept that its costs, which I find to be reasonable, shall be paid out of the estate on a lawyer and client basis pursuant to s. 32(1) of *The Public Guardian and Trustee Act*, C.C.S.M. c. P205. (*Gorrie v. Manitoba (Director of Psychiatric Services) et al.*, 2017 MBQB 10)

[56] With respect to the applicants' request for payment of their legal fees ... as noted by the Honourable Justice Dewar in *Gorrie, Queen's Bench Rule 57.01 of The Court of Queen's Bench Rules*, Man. Reg. 553/88, gives a wide discretion to the judge however the starting point is that costs follow the event and, accordingly, the success of a party should be the major consideration. Also, in a case such as this, Ms. Loewen's financial situation and the conduct of the parties are important considerations in determining the issue of costs.

[57] Here, for whatever reason, the conduct of the applicants, as fiduciaries and trustees of their daughter's estate, has fallen short. It appears that they have used their daughter's funds to support themselves and to pay for living expenses they would otherwise have to incur including after she moved into the Residential Care Facility at Lake Bend Home. They failed to comply with a court Order to pass accounts and they have failed to provide full and frank financial disclosure to the court.

[58] Taking into account all of these factors, I am awarding a nominal amount of \$5,000 inclusive of disbursements payable to the applicants towards their legal fees out of the estate.

[60] Upon considering the thorough analysis from McCawley J. in *Loewen*, as well as the evidence and submissions of counsel, I confirm that I have no issue with the sum proposed for legal expenditures which is set forth within the Bill of Costs filed by the PGT (prepared on a solicitor and client basis for an amount of \$5,293.38 inclusive of disbursements and taxes). I find the foregoing amount to be reasonable, with the able assistance of counsel for the PGT being much appreciated by the Court. As a result, these

legal expenses shall be paid not by the Estate, but rather, from the eventual entitlements of Scott and Ashley as beneficiaries of the Estate.

[61] Given the concerns and issues described within this decision in connection with the conduct of Scott and Ashley, however, I am not prepared to approve payment from the Estate of the entire statement of account which they have received for legal services concerning this hearing. In making this determination, I am in no way making any negative or adverse commentary insofar as the time and efforts understandably committed by their counsel to assist Scott and Ashley with finally completing a passing of accounts.

[62] Recognizing that had Scott and Ashley proceeded in compliance with what had been ordered by the Court, and proceeded to pass accounts on a timely basis, reasonable legal fees and disbursements would have been permitted. As a such, I am prepared authorize an amount of \$3,500.00, plus reasonable disbursements as well as GST and RST, to be paid from the Estate towards the statement of account that Scott and Ashley have incurred with their counsel (the balance outstanding shall be their responsibility).

REPORT AND ORDER

[63] A form of Report and Order setting forth what has been approved and ordered may be submitted for my review.

[64] Considering what I have determined herein, I will leave it to the PGT to confirm if it will be abandoning or discontinuing its request for a finding of contempt against Scott and Ashley (to which there could be reference included within the preamble of the Report and Order).

[65] In the meantime, the PGT should now be able to proceed with winding up administration of the Estate. When doing so, Scott and Ashley must also satisfy the two prior outstanding costs awards for which they remain responsible (in accordance with the October 2019 Order and the October 2023 Order).

R. L. Patterson
Associate Judge