

# FUTURE CARE COSTS

Presented By:

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Barristers and Solicitors

# TOPICS

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- 1. Life Care Planner**
- 2. Past Needs as Predictor**
- 3. Attendant Care – Assessing Need for Services**
- 4. Attendant Care by Family – Past Claims**
- 5. Standard of Proof – Future Pecuniary Losses**

# TOPICS

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- 6. Attendant Care by Family – Future Claims**
- 7. Attendant Care Services v. Devices – Lifeline**
- 8. Life Expectancy**
- 9. Structure Costing/Actuarial Costing**

# TOPICS

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**10. Attendant Care v. Rehabilitation Support Worker**

**11. Gross Up v. Structure**

**12. Management Fee**

**13. Evidentiary Issues**

**14. Endorsement of Life Care Plan by Treating Team**

# TOPICS

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## 15. Important Decisions

**Andrews v. Grand & Toy (1978) (S.C.C.)**

**Milina v. Bartsch (1985) (B.C.C.A.)**

**Brennan v. Singh (1999) (B.C.S.C.) (Upheld at B.C.C.A.)**

**Bracey v. Jahnke (1997) (B.C.C.A.)**

# TOPICS

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## 15. Important Decisions (continued)

**Roberts v. Morana [1997] [S.C.O.]**

**Matthews v. Hamilton [2008] [S.C.O.]**

**Parsons v. Guymer [1998] [On. C.A.]**

**Resch v. Canadian Tire (2008) (Ontario Jury)**

# TOPICS

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## 15. Important Decisions (continued)

*Sandhu v. Wellington (2008) (Ont. Jury)*

*Marcoccia v. Gill (2007) (Ont. Jury)*

*Morrison v. Greig (2008) (S.C.O.)*

*Aberdeen v. Langley (2007) (B.C.S.C.)*

*Graham v. Rourke (1990) (On. C.A.)*

# LIFE CARE PLAN

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## Definition:

***“A Life Care Plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis and research, which provides an organized concise plan for current and future needs with associated costs, for individuals who have experienced catastrophic injury or have chronic health care needs.”***

***- International Academy of Life Care Planners, 1998***



# CERTIFIED LIFE CARE PLANNER

## 6 Modules of Study

University of Florida Life Care Planning Certificate program has 6 courses to be taken before certification:

- Professional Orientation of Life Care Planning
- Spinal cord injury; adult and paediatric
- Brain injury; adult and paediatric
- Amputations; adult and paediatric
- Multiple physical and psychological disabilities
- Developmental, forensic and vocational aspects of Life Care Planning

# PAST NEEDS AS PREDICTOR

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## **Motor Vehicle – Accident Benefits – Burn Rate**

- **Effect of teenage years**
- **Effect of senior years**
- **Deterioration in function without services**

# ATTENDANT CARE

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**Assessing need for services – O/T**

**A/B level one (Basic physical care)**

**A/B level two (Hygiene and basic supervisory care)**

**A/B level three (Complex attendant care)**

**Tort v. Accident Benefit**

**Commercial Rates v. Legislated**

# ATTENDANT CARE PROVIDED BY FAMILY

Past claims:

**Andrews** –

family “not expected to do on a gratuitous basis”.

**Brennan** –

expense “is what a reasonably minded person of ample means would be prepared to incur as an expense” ...

“the damages should reflect the wage of a substitute care giver”.

**Matthews** –

“it is the nature and quality of the services provided and their value to the person injured rather than the professional qualifications of the provider that should govern the assessment”.

**Parsons** –

“the cost of replacing that care in the market place is an important measure.”

# ATTENDANT CARE PROVIDED BY FAMILY – PAST CLAIMS

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## Section 61 – *Family Law Act*

### Section 61(2):

**“The damages recoverable in a claim under sub-section (1) may include:**

**(d)... a reasonable allowance for the loss of income or the value of the services”**

# TOPICS

## STANDARD OF PROOF – FUTURE PECUNIARY LOSSES

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**Graham v. Rourke “real and substantial risk of pecuniary loss”**

**NOT that a future loss will occur on a balance of probabilities.**

# TOPICS

## ATTENDANT CARE BY FAMILY – FUTURE CLAIMS

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- Cannot assume family will provide care
- Care to be costed based upon commercial rates for services required
- Andrews
- Brennan
- Bracey
- Roberts v. Morana
- Parsons Estate v. Guymer
- Matthews

# ATTENDANT CARE SERVICES v. DEVICES - LIFELINE

- Does not restore person as near as possible to pre-accident status;
- Pre-accident status equals ability to recognize and remove themselves from emergency immediately;
- Cannot appropriately respond to emergency without consistent personal presence of attendant care provider
- “If there was a fire and it was going to take a personal care worker ½ hour to come to his residence the Plaintiff might die in the meantime. The Plaintiff is not one who only needs a nanny to pick up after him. He needs someone who can be there right away and someone who understands the limitations of a spinal cord injured person so that he can be assisted properly”.

**Morrison v. Greig**



# LIFE EXPECTANCY

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- **Impairment Rating – Structure Broker Costing Reports**
- **Use of Actuary**
- **Life Tables**
- **The better the care the longer the life**
- **Arrange an actuarial costing of future care cost report in advance of Mediation**

# ATTENDANT CARE v. REHABILITATION SUPPORT WORKER

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**See Table of current market rates for service providers on page 15 in paper.**

## **Attendant Care:**

- **Provides basic supervision**
- **Assist with mobility**
- **Assist ADL's**
- **Drive clients to appointments**
- **Call 911 for behavioural/personal risk issues**

# ATTENDANT CARE v. REHABILITATION SUPPORT WORKER

## Rehabilitation Support Worker:

- Provides practice, guidance/re-enforcement of therapy tasks;
- Under direction of health care practitioner;
- Engage in social and recreational activities;
- On-going guidance and cueing;
- Support for planning, organizing, initiating and completing tasks;
- Verbally prompts claimant to recall information;
- Arrange appropriate integration of claimants in community and home;
- Participating in therapy;
- Provide immediate crisis management ....

# GROSS UP v. STRUCTURE

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**Mediation – Allows parties to avoid cost gross up by structuring if agreeable amongst the parties**

# MANAGEMENT FEES

**Corporate guardian works with non-corporate guardian to provide expertise on how to properly invest and manage future care award**

- **Require evidence of financial manager at trial;**
- **Legal fees for guardianship application, passing of guardian's accounts, Motions to Court for direction, appointment of new guardians.**

# EVIDENTIARY ISSUES

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**Proof of future care needs by Life Care Planner helpfully buttressed by reports and/or sign backs from members of rehabilitation team and physiatrist**

- **See publication: Life Care Planning and Case Management, Weed, 2004 for description of roles of team members in Life Care Planning**

# EVIDENTIARY ISSUES

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## Questions for Jury

### *Resch* v. *Canadian Tire*

# Future Care Cost Analysis

Needs	Plaintiffs' Position (based on Martha Binstock's evidence)			Defendants' Position (based on Luana Troiani's evidence)			Jury's Findings
	One Time Cost	Annual Cost	Professor Carr's Present Values (as of Jan 31, 2006)	One Time Cost	Annual Cost	Calculated Present Values (as of Jan 31, 2006)	Insert Present Value Totals
<b>Surgical Procedures</b>							
Rhinoplasty	\$6,000.00			\$6,000.00			
Scar Revisions	\$20,300.00	Estimated 7 surgeries		\$29,000.00	Estimated 10 surgeries		
Orthodontic Treatment	\$2,740.00			\$2,740.00			
Prosthodontic Treatment		\$200.00			\$200.00		
Bridge Replacement	\$10,500.00	\$1,050.00		\$10,500.00	\$1,050.00		
Contingency for Failed Implants	\$15,500.00	Believes failure more likely		\$7,750.00	Believes failure less likely		
Tissue Filler Procedure-Surgical	\$11,000.00	\$2,200.00		\$11,000.00	\$2,200.00		
Tissue Filler Procedure-Injections		\$3,919.50			\$3,919.50		
<b>Totals</b>	\$66,040.00	\$7,369.50	<b>\$314,933.87</b>	\$66,990.00	\$7,369.50	<b>\$315,833.15</b>	
<b>Transitional Living Program</b>							
Case Manager	\$7,200.00			\$7,200.00			
One month assessment in residential facility	\$24,000.00			\$24,000.00			
One month treatment at residential facility	\$16,500.00			\$16,500.00			
Months of high supervision	\$105,000.00	Based on 10 months		\$52,500.00	Based on 5 months		
Months of low supervision	\$91,250.00	Based on 12 months		\$45,625.00	Based on 6 months		
Psychology	\$8,580.00	1 hr/wk for 1/2 year then monthly for 1 year		\$5,136.00	1 hr/wk for 1/4 yr then 1/mn for 1/2 yr		
Family Counseling	\$7,410.00	1 every 2 wks for 1 yr then monthly for 1 yr		\$3,852.00	1/2 wks for 1/2 yr then 1/mn for 1/2 yr		
Occupational Therapy	\$9,120.00	Believes cost is additional		\$0.00	Believes cost included in living cost		
Tutor	\$27,445.50	3 times/wk for 90 wks		\$8,132.00	1 time/wk for 80 wks		
Psychoeducational/Vocational Assessment	\$3,000.00	One assessment		\$4,250.00	Two separate assessments		
<b>Totals</b>	\$299,505.50		<b>\$294,474.90</b>	\$167,195.00		<b>\$164,430.42</b>	

Note to calculate the present value of a benefit over Nathan Resch's lifetime, multiply the annual amount by 34.252007



Needs	Plaintiffs' Position (based on Martha Binstock's evidence)			Defendants' Position (based on Luana Troiani's evidence)			Jury's Findings
	One Time Cost	Annual Cost	Professor Carr's Present Values (as of Jan 31, 2006)	One Time Cost	Annual Cost	Calculated Present Values (as of Jan 31, 2006)	Insert Present Value Totals
<b>Medical/Rehabilitation Services--Ongoing</b>	<b>Commencing 2008 (after residential living)</b>			<b>Commencing 2007 (after residential living)</b>			
Case Manager	40 hrs/yr	\$4,800.00		\$8,356.00		For 2 years only	
Occupational Therapy	30 hrs/yr	\$3,600.00		\$2,354.00		One time cost	
Psychologist--Initially	\$14,040.00	24 sessions/yr for 3 years		\$0.00			
Psychologist--Long term	5 session/yr	\$975.00		\$51,360.00			
Employment/Job Coach	\$56,160.00	8 hrs/wk for 6 months, 3 times in lifetime		\$6,750.00		Cost over lifetime	
Speech Language Pathology	\$0.00	Didn't comment		\$3,081.60			
Therapy Support Worker	Addressed through community support worker			\$10,682.88		Instead of community support worker	
Community Support Worker - Best Case	12 hrs wk	\$32,048.64					
Community Support Worker - Worst Case	Up to \$200 day	\$73,000.00		\$0.00			
<b>Totals</b>	\$70,200.00	\$41,423.64	<b>\$1,476,219.00</b>	\$82,584.48		<b>\$79,257.40</b>	
<b>Totals - Worst Case</b>	\$70,200.00	\$82,375.00	<b>\$2,878,885.27</b>				
<b>Attendant Care: Recuperation from Surgery</b>	8 hrs/day for 2 weeks then 2 hrs/day for 1 wk			For 2 wks after each of 10 surgeries			
Reserve for care following surgery	\$24,783.22		<b>\$23,459.87</b>	\$19,773.60		<b>\$18,717.76</b>	
<b>Equipment</b>							
Computer and hand held organizer	\$3,335.00	\$667.00		\$2,100.00	\$420.00		
Computer Software	\$1,436.29			\$500.00			
Computer related furniture	\$5,571.29	\$80.00		\$2,000.00			
<b>Totals</b>	\$10,342.58	\$747.00	<b>\$31,157.54</b>	\$4,600.00	\$420.00	<b>\$18,985.84</b>	
<b>Medication--Acetaminophen &amp; antibiotics</b>		\$100.00	<b>\$3,425.20</b>		\$100.00	<b>\$3,425.20</b>	
<b>Transportation--Driving Assessment</b>	\$2,435.00		<b>\$2,435.00</b>	\$1,405.00		<b>\$1,405.00</b>	
<b>Homemaking--Homemaking service</b>		\$735.68	<b>\$25,198.52</b>		\$735.68	<b>\$25,198.52</b>	
<b>Home Maintenance--Snow Removal</b>		\$750.00	<b>\$25,689.01</b>		\$750.00	<b>\$25,689.01</b>	
<b>GRAND TOTAL (without management fee)</b>			<b>\$2,196,992.91</b>			<b>\$652,942.30</b>	
<b>GRAND TOTAL--WORST CASE</b>			<b>\$3,599,659.18</b>	Does not account for travel time by service providers			
<b>Management Fee (@ 5%)</b>			<b>\$109,849.65</b>			Did not comment	
<b>Management Fee (@ 5%)</b>			<b>\$179,982.96</b>				
<b>GRAND TOTAL (with management fee)</b>			<b>\$2,306,842.56</b>				
<b>Grand Total--Worst Case (with management fee)</b>			<b>\$3,779,642.14</b>				

# POLICY LIMITS AND BAD FAITH

## Section 277 of the *Insurance Act*

### Time limited offers within limits

- Formal offers to settle above limits
- Structure to avoid gross-up
- At Mediation or trial emphasize possible outcome to Plaintiff if future care needs are not identified and compensated based on “real or substantial risk of future need”.