



Greetings!

My Friends at [Hull & Hull LL.P.](#) have recently delved into the troubling area of Compensation due to Executors, including those who have acted as a Power of Attorney for Property prior to the death of the Testator. Should you wish to speak to me about any issues you have identified that may apply to you, please [contact](#) me.

[Refresher on Fair and Reasonable Compensation in Estate Administration](#)

By [Geoffrey Sculthorpe](#)

The recent decision of [Perlini v. Martone, 2024 ONSC 6265](#) offers a good refresher on how courts assess compensation for estate trustees and attorneys under a power of attorney.

Background

Mr. Perlini passed away on March 4, 2021, leaving a substantial estate totaling \$1,733,405.82. His will named two of his children, Anne and Arthur, as estate trustees. Anne also managed his property under his POA during

the last four years his life.

The estate trustees claimed compensation of 5% of the estate's value as executor fees, amounting to \$86,670.30, split equally. Additionally, Anne sought \$52,754.75 for managing her father's affairs over four years under the power of attorney.

Sandra, another sibling and beneficiary, objected, arguing that these amounts were excessive given the simplicity of the estate and the quality of the trustees' administration.

Findings of the Court

The court, referencing [Poitras v. Canadian Cancer Society, 2021 ONSC 406](#), underscored the discretionary nature of compensation awards in Section 61(1) of the Trustee Act where it is stated that a "trustee, guardian or personal representative is entitled to such fair and reasonable allowance for the care, pains and trouble, and the time expended in and about the estate, as may be allowed by a judge of the Superior Court of Justice." The court also relied on the standard compensation framework outlined in Poitras.

First, we will review the standard compensation framework as the starting point. Typically, estate trustee compensation is calculated as the sum of 2.5% of each capital receipts, capital disbursements, revenue receipts, and revenue disbursements and an additional management fee generally calculated as 2/5 of 1% of the gross value of the estate, with, however, this fee being the exception rather than the rule.

Next, when determining "fair and reasonable" compensation, the court considered the five factors as outlined in the *Re Toronto General Trusts and Central Ontario Railway (1905) 6 O.W.R. 350 (H.C.)* as endorsed in *Laing Estate v. Hines, 41 O.R. 571 (Ont. C.A.)*. These factors are as follows:

1. The total value of the estate;
2. The care and responsibility in its administration;
3. The time spent by the trustees in administering the estate;
4. The skill and ability shown by the trustee; and
5. The success of the administration.

When applying the five factors, the court found that:

- The Estate was uncomplicated, only involving two properties and financial assets.
- A large sum of cash was poorly managed by the Estate Trustees, resulting in financial loss.
- Trustees were uncooperative in sharing information, prompting court interventions.

As a result, the court determined the requested 5% compensation was excessive given the straightforward nature of the estate and the trustees' shortcomings. The court reduced this to 3%, awarding \$52,000 total (\$26,000 per trustee).

The Court also adjusted Anne's claim for \$52,754.75 in POA management fees. The amount was deemed excessive seeing as her tasks, including bill payments and property maintenance, were not overly demanding. The

court reduced her compensation to \$10,000 (\$2,500 per year for the four years).

Costs Result

With divided success as a result of the estate trustees being awarded less compensation than they requested but more than suggested by Sandra, costs were split as follows: \$3,000 between the estate trustees and \$12,000 for Sandra, both payable from the estate.

Estate Administration Lessons

1. **Transparency is Key:** Trustees must maintain clear records, share information with beneficiaries promptly, and pass accounts without unnecessary delays. Lack of cooperation invites scrutiny and legal challenges.
2. **Invest Prudently:** Trustees are expected to manage estate assets prudently. Leaving large sums in low-interest accounts may be considered negligent.
3. **Performance Matters:** Compensation should reflect the actual complexity and effort involved. Courts will adjust claims that appear disproportionate to the work performed.

At the [Offices of Howard S Dymont](#), I can guide you through the intricacies of estate planning and ensure that your assets are distributed according to your wishes, in the most financially prudent manner.

I invite you to [set up a Zoom](#) appointment with me to discuss your Estate Planning and drawing your Wills, both Primary and Secondary and Powers of Attorney.

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