

The Role Of The Occupational Therapist In Valuing “Unpaid Work” And How It Impacts Wrongful Death Claims

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Abstract

This article will discuss the methodology used for measuring and quantifying the household service “unpaid work”. An examination will be made regarding the concept of unpaid work, the role and expertise of the occupational therapist, the measurement of this work, and finally the quantification of this work for loss of service reports.

"No amount of money could ever replace the contribution that a loved one makes to the people around him or her...The awarding of money, however, is the only remedy which a court has available to it in the circumstances such as this" (Hechavarria v. Reale [2000] O.J. No. 4288)

In wrongful death cases, the survivors are entitled to recover their pecuniary losses resulting from the death. One potential area for recovery involves reimbursing for the domestic and caregiving services that were performed by the deceased prior to the death. The term “unpaid work” is frequently used to represent that portion of daily activity that is being completed by an individual on behalf of the household without remuneration, rather than purchasing the services. Compensation in these cases is dependent on placing a monetary value on the time spent performing the “unpaid work”.

Unpaid Work

“Unpaid work” refers to the housework and care of persons that occurs in homes and communities of all societies and which is non-remunerated. The collection and recording of this data has become widespread throughout the world and is generally accomplished through national time use studies.

The concept of unpaid work has strong roots in the feminist movement. According to documents published by the United Nations, the interest in undertaking national data collection on time-use grew rapidly in the developed countries in the 1960-1970s, largely owing to a recognition of the importance of data on time-use for measuring the “invisible” unpaid work of women, and evaluating the contribution of this data to the national economy and human welfare (United Nations Economic and Social Commission for Asia and the Pacific, 2003.).

The 1995 Fourth World Conference on Women, run through the Beijing Platform for Action (BPFA), spoke for

the recognition and visibility of women’s work, particularly in the unremunerated sector. It called for “suitable statistical means to recognize and to make visible the full extent of the work of women and all their contributions to the national economy including their contribution in the unremunerated and domestic sectors” (Mohammed, 2008, p.5).

Historically, the methodology used in Canada to calculate the cost to replace the household services lost due to the death of a family member has been two-fold. First, a detailed analysis of the nature of “unpaid work” performed by the deceased was undertaken to provide tangible evidence of the extraordinary efforts and expenditures that the family will encounter subsequent to the wrongful death, which would otherwise not have been necessary. The second step in the process entailed selecting the method by which a value for the unpaid work detailed in the previous step will be allocated. Simply put, how much would one have to pay on a commercial basis to replace the household services that were previously provided by the deceased person? In Canada, since the 1996 census, data on unpaid work has been collected by Statistics Canada. Most recently, in the General Social Survey on Time Use (2017), unpaid work is divided into four categories: household chores, care of household children under 18 years, care of household adults and shopping for goods and services (see Appendix One).

Quantifying Unpaid Work

Occupational therapists (OT) are in a unique position to evaluate unpaid work in the death of a family member. The OT has strong training and knowledge in understanding impairment and disability, activity/task analysis, the impact of any pre-existing limitations, cognitive or psychosocial factors that affect functioning, cultural and familial expectations, and expected performance issues over the lifespan. Occupational therapists, given their training and skills, will consider all relevant factors when measuring unpaid work. In arriving at their findings, occupational therapists consider the home environment, participation of other family members, and additional supports in place, such as paid services. The evaluation process is outlined below.

Step One - Measuring unpaid work

The first step in the measurement process is to determine the amount of time used in activities. Data collection on time allocation has often been achieved by either relying on client-

specific information or on general statistical information, such as that compiled by Statistics Canada. Each approach has pros and cons.

In the first approach, the occupational therapist collects individual-specific data through interviewing the surviving household members, and, when possible, through an on-site visit of the dwelling and property. The information collected is used to retrospectively determine the specific tasks the deceased was responsible for, and the time taken to complete each task. This may be detailed using a daily diary, whereby a review is made of how the deceased would typically have spent their time on a usual day, with a particular attention placed on household roles. This information is then juxtaposed against other considerations such as the size of the family, size of the home and property, cultural and family values, and long-term household goals (e.g. to complete renovations, etc.). Based on this data, an estimation is made of the household contribution by the deceased.

An inherent weakness of this model is the reliance on information, oftentimes provided years after the event, which may be inaccurate. This approach is vulnerable to overestimation of activities that have high priority for the household or to omit infrequently occurring activities and time devoted to household management tasks. As well, there can be a predisposition to take this information at face value and simply compensate hour-for-hour without factoring in the component(s) of the task for personal use of the deceased, or the simultaneous performance of multiple activities (for example, washing a load of laundry while preparing a meal).

An alternate approach is to rely solely on published time use-studies based on national statistics to derive estimations for household contribution. In Canada, one can refer to the General Social Surveys (GSS), which provide detailed information on the average time spent (averaged over a seven-day week) on various household activities for the population aged 15 and over. Often, this information is compared to the American Time Use Survey (ATUS) which provides more in-depth information according to age categories, but may not break down the household activities in as much depth as the GSS.

The primary disadvantage in this methodology is the lack of specificity for the particular individual and their circumstance. For instance, consideration of factors such as property size and location, cultural issues necessitating increased time involvement for tasks, or providing care to a dependent with a disability are not considered.

Overall, the research supports data collection using a diary approach as it has been shown to have increased validity over simply asking a respondent to characterize typical amounts of time spent on an activity (Brown & Hallsom, 1997). However, it is also important to consider other factors influencing household service contribution before arriving at the final analysis:

- Labour force participation, marital, and socio-economic status all impact time use.

- For people aged 50 and older, the average hours per week spent doing unpaid household work edges upwards as age increases, until leveling off around age 66. This can presumably be attributed to paid work hours declining and more time and effort being devoted to the unpaid work (Brown, 1997).
- People's skill level and motivation are factors in how much time and effort they spend doing unpaid household work. In other words, how much is interest versus necessity? Anticipated lifestyle change, such as a move to a larger or smaller dwelling, fewer individuals living in the home over time, etc. will all have an impact.
- An increase in efficiency by a professional completing the same work needs to be considered.
- The time mothers spend performing unpaid household work increases by an average of almost six hours per week with the presence of one additional child; the difference is greatest between mothers of one child and those with two children, and shrinks slightly with the presence of each additional child (Krantz-Kent, 2009).
- On average, women in Canada spend 3.6 hours per day on unpaid activities, compared to 2.4 hours for men in Canada (Statistics Canada 2015).

Step Two: Quantifying the Unpaid Work

The second step in the process entails selecting the method by which a value for the unpaid work detailed in the previous step will be allocated. Simply put, how much would one pay on a commercial basis to replace the household services that were previously provided by the deceased person? Many different approaches are commonly used: the opportunity cost method, the generalist method and the specialist method. In reality, no one model is the perfect fit and a combination of approaches should be employed to sensibly and reasonably replace all services to the household.

The opportunity cost method assumes that there is a loss of potential income in the labour market as a result of choosing to work in the home doing unpaid work (Brown, 1996). It is this loss of potential salary that is then quantified to arrive at the damages.

The generalist approach is used in instances when it is not realistic or practical to employ the many specialists that would be necessary to complete the full complement of tasks. For instance, in the case of a mother who performs all aspects of housecleaning and childcare, replacement of the services would require a commercial cleaning company, a cook, a seamstress, a tutor, a driver, and a babysitter to be employed for varying amounts of time during the day to replicate the one role. In this instance, it is far more reasonable to make calculations on the basis of hiring a homemaker or a nanny.

The specialist approach identifies the particular service provider in the marketplace who has the expertise to perform a particular component of work previously completed by the deceased. For example, in the instance of property

maintenance and car repairs, it is often more practical to employ a commercial company specializing in each of the areas, as it would be difficult to find one person who is trained in property maintenance as well as vehicle mechanics. Calculations would therefore be made on the basis of hiring seasonal or hourly lawn care and snow removal, and/or a mechanic. It is important that any costs associated with the parts or equipment be separated from the labour component to accurately reflect the extraordinary expenditure necessary.

Once a reasonable approach for the circumstances is selected, an allocation of a rate for compensation must be made. That is, what it would cost to replace the unpaid worker with a paid worker hired privately or through commercial resources? In Canada, published hourly wages for use when contemplating private hire are readily available through government websites such as www.jobbank.gc.ca/explorecareers, which provide job- and location-specific data. This rate is exclusive of tax, overhead, and profit, etc.

Alternatively, replacement value may be calculated on the basis of how much it would cost to secure commercial services (based on charge-out rates from companies) to complete the work previously completed by the deceased. The latter approach to replacement rates offers the more consistent and convenient approach to the implementation of, and maintenance of, services. Commercial establishments assume responsibility for hiring and supervising the workers, ensuring that there is service continuity and consistent quality, ensuring workers are bonded, and taking on the responsibility for administrative tasks inherent in being an employer such as the coverage for worker's compensation, pension plan contributions, form remittance etc.

It is also necessary to establish the age at which the loss of household services should be presumed to end. Research indicates that many, if not all, household services should continue until age 80. Studies conducted by Statistics Canada indicate the following:

- Of women aged 75 or older, 38.5% stated that pain limited their daily activities, whereas only 28.8% of men in the same age group made the same statement, indicating that despite reported health care issues, the majority of seniors age 75 and older continue to manage their daily activities (Participation and Activity Limitation Survey 2006: Analytical Report Catalogue no. 89-628-XIE — No. 002).
- Of seniors aged between 65 and 74, 9% received help with home maintenance and outdoor work; in contrast, only 5% of them received help with shopping, transportation, banking or paying bills. Among seniors aged 85 and over who received some type of care because of a long-term health problem, one-third got help in all four major categories of activities, that is indoor housework, outdoor work, transportation and personal care. This was the case for only 15% of

seniors aged between 65 and 74 (A Portrait of Seniors 2006 in Canada Catalogue no. 89-519-XIE).

Finally, a brief mention is warranted regarding claims based on contributions a minor child might have reasonably been expected to render to his or her parents in the future. This is undoubtedly more difficult to detail and quantify, and where appropriate, assessment should be undertaken based on cultural influences and family patterns already established.

Replacement of unpaid work (housekeeping and/or home maintenance services) are also considered in life care plans for those with lifelong impairments, and the above approaches may be considered when determining costs. However, recent court decisions in Canada appear to award damages for housekeeping and home maintenance services in a somewhat arbitrary manner with calculations often being based on reducing the amount claimed, and the judge/arbitrator using differing rationales and/or differing methods to determine awards (Brown and Rogers, 2016).

Conclusion

Quantifying unpaid labour in the case of wrongful deaths is a way to ensure that the deceased's family is reimbursed for the additional work they must undertake in order to compensate for the loss of their loved one. Occupational therapists have the knowledge, skills and training to analyze all relevant factors when determining the amount of time spent on various activities. Data may be compiled by using client-specific information and/or through general statistics on how average Canadians spend their time. When quantifying the unpaid labour, occupational therapists can use the opportunity, generalist or specialist approach and should use the approach that will best replace the work done by the deceased. In all, the goal of replacing unpaid labour is to allow the family unit to continue to function without any undue stress following the wrongful death.

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Appendix One: Unpaid Time use as adapted from the General Social Survey 2015

Overview of the Time Use of Canadians by Statistics Canada (July 1, 2017)

HOUSEHOLD CHORES	CARE OF HOUSEHOLD CHILDREN UNDER 18 YEARS	CARE OF HOUSEHOLD ADULT	SHOPPING FOR GOODS AND SERVICES
-Meal, lunch or snack preparation -Preserving foods -Baking -Freezing -Sealing -Packing foods -Indoor house cleaning -Dish washing -Tidying -Taking out garbage -Recycling -Composting -Unpacking goods -Laundry -Ironing -Folding -Sewing -Shoe care -Repair -Painting or renovation -Organizing -Planning -Paying bills -Unpacking groceries -Packing and unpacking luggage for travel and/or boxes for move -Outdoor maintenance such as car repair -Grounds maintenance -Snow removal -Cutting grass -Planting (picking) -Maintaining and cleaning garden -Caring for house plants -Pet care (feeding, walking, grooming, playing)	-Personal care -Getting ready for school -Supervising or helping with homework -Reading -Playing -Reprimanding -Educational -Emotional help -Accompanying to/from school or bus stop -Sports -Activities -Parent school meetings -Appointments	-Washing -Dressing -Care giving -Financial management -Accompanying to/from appointments -Shopping	-Gasoline -Groceries -Clothing -Car -Legal services -Financial services -Vehicle maintenance -Health professional visit -Consultation -Researching for goods and services