

CANADA / JUDGMENT

Anand (Re)

2018 BCSC 34

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 34 Anand (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Anand (Re),

2018 BCSC 34

Date: 20180111

Docket: 127897

Registry: New Westminster

In the Matter of the Patients Property Act,

R.S.B.C. 1996, c. 349 and Amendments thereto

And

In the Matter of Shane Anand

Before: The Honourable Mr. Justice N. Brown

Corrected Judgment: The text of the judgment was corrected

at paragraph 136 on March 19, 2018

Reasons for Judgment

In Chambers

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Places and Dates of Hearing:

New Westminster, B.C.

October 4, 2016

Chilliwack, B.C.

September 8, 2017

Place and Date of Judgment:

New Westminster, B.C.

January 11, 2018

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[1] The Public Guardian and Trustee ("PGT") has applied for an order rescinding the appointment of David Anand as committee of his son, Shane Anand (the "Patient"). Specifically, the PGT asks that the committee order made by Madam Justice Gray on June 15, 2010 be rescinded and the PGT be appointed as committee in place of David Anand.

[2] In addition to the two forgoing orders, the PGT also seeks the following collateral orders:

3. David Anand not be discharged as committee of the estate of the Patient until his accounts have been passed.
4. Title to all assets both real and personal of the Patient in his own name or in the name of David Anand as his committee vest in the Public Guardian and Trustee as committee of the estate of the Patient.

5. The Public Guardian and Trustee shall not be responsible or accountable for the actions of David Anand as committee of the estate of the [Patient] and shall be responsible and accountable only for those assets coming into the Public Guardian and Trustee's hands after the date of this order.
6. David Anand deliver, within 30 days of the date of this order, to the Public Guardian and Trustee, the following:
 - (a) All documents, books, personal papers and account statements of the Patient in his power or possession, including but not limited to all information regarding income, expenses, income taxes, insurance policies, debts, assets and liabilities of the Patient; and
 - (b) All assets of the Patient now in his power or possession.
7. The Public Guardian and Trustee is entitled to charge fees pursuant to the regulations of the Public Guardian and Trustee Act, R.S.B.C. 1996, c. 383, for acting as committee of an estate, on the gross value of the assets administered by the Public Guardian and Trustee, notwithstanding any amount of compensation that may have been or will be awarded to the former committee, David Anand.
8. The Public Guardian and Trustee be paid [its] reasonable costs and expenses of and incidental to this proceeding from the estate of the Patient.
9. David Anand forthwith reimburse to the Public Guardian and Trustee the said costs and expenses or, alternatively, pay to the Public Guardian and Trustee party/party costs forthwith after assessment thereof.
10. Such further and other relief as this Honourable [C]ourt may deem just.
- [3] David Anand and Shane Anand, who had separate counsel, opposed the PGT's application. They ask that David continue as Shane's committee, subject to certain conditions.

Evidence before the court

- [4] In their submissions, counsel referred to the various parties by their first names. The court usually prefers not to refer to the parties, except for children, by their first name, but given some parties have the same last name, and this was how counsel referenced the parties for consistency and clarity, I will adhere to counsel's approach.
- [5] The court received the following evidence:
 - a. Affidavit and exhibits attached of Shane, the Patient, sworn September 30, 2016;
 - b. Affidavit and exhibits attached of Phil Campeau, committee review officer, sworn November 19, 2015. Mr. Campeau has conduct of Shane's committee file and as such had personal knowledge of it;
 - c. Affidavit and exhibits of David, the Patient's father, sworn September 27, 2016; and

- d. Affidavit and attached exhibits of Sheena Prasad, Shane's sister, sworn September 29, 2016. Her affidavit deals mainly with an August 2011 \$62,000 wedding gift Shane gave her.

facts not contested

- [6] The facts following are not in dispute. A large portion of them deal with the history of the PGT's dissatisfaction with David's neglect of his committee financial management and accounting responsibilities; and his dilatory response to their requests for accounting.
- [7] On June 15, 2010, Justice Gray pronounced Shane "incapable of managing his affairs by reason of mental infirmity arising from a brain injury suffered in a motor vehicle accident which occurred on January 1, 2003." Justice Gray ordered David's appointment as committee of Shane's estate without bond, and that "any settlement of Shane[s] action for damages arising out of the motor vehicle accident [would be] subject to a further Court Order." On July 2, 2010, the PGT sent David a letter advising him of his committee obligations.
- [8] On May 6, 2011, the PGT wrote David inviting him to contact the PGT's office to discuss his role and responsibilities as committee "if necessary".
- [9] On September 16, 2010, Justice Macaulay approved the settlement of David's personal injury claim. One of the terms provided that \$268,000 was to be dispersed to David for the estate and person of Shane to be held in trust for his benefit. A term of the settlement order provided that David and his mother, Angila, receive an in trust award of \$72,000.
- [10] The settlement had provided for a structured settlement agreement in which Shane would receive a life annuity. The annuity's terms included a guaranteed minimum payment for 35 years starting at \$2,486.08 monthly, indexed at 2.5% per annum, compounded annually commencing September 28, 2010.
- [11] On May 19, 2011, the PGT's representative spoke to David, who indicated Shane's claim had been settled, the settlement funds invested, and that Shane received \$5,000 monthly. He also indicated he would have his lawyer assist with an initial accounting. At that time, David also indicated that Shane's funds, at some point, might be used to purchase an interest in the home Shane lived in with David and family, or that he might purchase a home outright once he married.
- [12] On June 17, 2011, David was advised his committee accounts were due July 31, 2011; and that if the accounts were not provided on a timely basis, court proceedings could be commenced that could result in his potential removal as committee.
- [13] In a June 28, 2012 letter, the PGT acknowledged receipt of the committee accounts covering the period of June 15, 2010 to June 30, 2011. The PGT advised David at that time that to continue a review of the accounts, the PGT would require additional documentation, as described in the said letter. It was also pointed out in the letter that Vancity account [611] was registered in the name of David Anand but the funds in the account belonged to Shane. David was advised he must maintain a bank account in Shane's name, for whom he was

committee, and it must be separate from David's own account. Accordingly, he was asked to change the registration of the Vancity account to Shane's name with David as committee.

[14] After the PGT had not received the information requested, reminder letters were sent November 26, 2012, April 8, 2013, December 5, 2013 and June 11, 2014.

[15] On November 7, 2014, Mr. Campeau, a Committee Review Officer employed by the PGT, wrote David advising him the investigation had revealed certain information; in that David had closed Vancity account number [611] and opened a new account, number [511].

[16] In his November 7, 2014 letter, Mr. Campeau wrote:

You reregistered the Vancity account by closing Account [611] and opening a new account [511]. While the new account is registered as the "Estate of Shane Anand" you are listed as the joint account owner. It appears all of the money in this account belongs to Shane and if that is the case, you cannot be registered as the joint account owner.

[Attached as Exhibit "O" to Mr. Campeau's Nov. 19, 2015 Affidavit.]

[17] As for the state of finance in Shane's accounts revealed by his investigation, Mr. Campeau further noted:

When Shane['s] settlement was approved he received \$267,633.29 that was deposited into account [611]. Shortly thereafter, Shane's annuity of \$4,972.04 per month was also being deposited into this account. After you closed this account, the annuity payment was redirected to account [511] and as it's indexed it has continued to grow with Shane currently collecting \$5,488.21 each month.

Since the start of the annuity 4 years ago, Shane has received \$258,734.18 in monthly payments however, as of October 30, 2014 the Vancity account holds just \$27,381.00. Assuming this is the full extent of Shane's estate on that date, almost \$500,000.00 has been spent out of his settlement funds, (\$267,633.29 + \$258,734.18 - \$27,381.00).

I have reviewed the transactions clearing both account [611] and [511] for the last 4 years. There are numerous transfers, cash withdrawals, and payments, none of which can be attributed to Shane. It appears you have been using his funds to pay your family expenses and while it is reasonable that he pay his share, it's not reasonable that Shane's estate should be responsible for all your [family's] expenses.

I'm very concerned about your management of Shane's affairs; to the extent I'm considering legal action to remove you as his Committee. I'm asking that you contact me before November 21, 2014 to discuss my concerns in greater detail as the number of questionable transactions I've identified are far too numerous to list in this letter. Please be aware that I have the authority to temporarily freeze your access to Shane's funds and may undertake to do so should we not be able to resolve my concerns before the end of November.

We still haven't received the information and documentation we've requested Vancity at least 4 times previously. Please forward us copies of Shane's tax returns and CRA Notice of Assessments for 2010, 2011, 2012 and 2013. If Shane did not file Income Tax for any or all those years, please confirm that in your response. Please also confirm any assets Shane owns, other than the Vancity account we've already noted.

- [18] On November 18, 2014, Mr. Campeau met with Shane and David. Mr. Campeau found Shane presented well and took an active part in discussions of his finances. Mr. Campeau reviewed the PGT's concerns about his finances. He deposed that David told him he used Shane's funds to purchase the Surrey family home and used Shane's money to pay down the mortgage. He further advised the house was not in Shane's name, adding he would "inherit it anyway." He further advised Mr. Campeau that Shane had been managing his own money for some time. Shane confirmed he was responsible for many of the withdrawals, including purchases in Bellingham and that he had used funds for vacations.
- [19] Mr. Campeau further stated at para. 12 of his affidavit that he asked David if he felt Shane had recovered enough to be declared capable. David told him he believed Shane had capability.
- [20] Mr. Campeau further deposed, however, that he told David the PGT could not accept most of the transactions that had cleared the bank account and he would be applying to rescind David's appointment but would hold off doing so for a few weeks to give him time to get the legal process for capability underway. He stated he made it clear that David needed to get the process underway before the middle of December 2014 or the PGT would have no option but to initiate rescission and Shane's estate would be responsible for the legal fees.
- [21] On May 12, 2015, Mr. Campeau met for the second time with David and Shane. Mr. Campeau deposed [at para. 13] that at the meeting David stated he did not wish to pursue having the court declare Shane capable. In that case, Mr. Campeau advised David that if Shane were not capable he would need to resolve the issues the PGT had identified as problematic. Mr. Campeau further deposed he advised David that, due to the nature of those concerns, he was not certain David could present the PGT with an acceptable solution, suggesting to him that he discuss options with his lawyer as he had no choice but to initiate the rescission process, i.e. rescind his appointment as committee.
- [22] Ms. Tsonis, who is an in-house counsel with the PGT, and closely engaged Shane's committee-ship-related affairs, was intent on having matters move apace. On June 22, 2015, she advised Mr. Campeau she had received a letter from Mr. Moulton, who was Shane's counsel for his personal injury claim. He said he had spoken to David who, in turn, had stated he wished to continue as committee.

- [23] Mr. Campeau deposed at para. 13 however, that Mr. Moulton did not realize the extent of the PGT's concerns related to David's not managing Shane's funds. Mr. Campeau further deposed Ms. Tsonis had canvassed with Mr. Moulton whether David would be agreeable to transferring the property into Shane's name. She also advised that if David were to remain as committee, he would need to manage the funds and provide the PGT with an accounting. At that point, Mr. Moulton reportedly advised he would speak to David and get back to the PGT.
- [24] Ms. Tsonis advised Mr. Moulton the PGT had given instructions to retain counsel to proceed with rescission of the committee ship and that he would need to hear back soon from Mr. Moulton.
- [25] On June 26, 2015, Ms. Tsonis spoke with Mr. Moulton, who informed her David would agree to transfer the property into Shane's name but that he was worried what would happen if Shane got married. Mr. Moulton further advised Ms. Tsonis he would try by the following week to put a proposal in writing for the PGT to consider.
- [26] On July 9, 2015, Ms. Tsonis asked Mr. Moulton if it would be possible to receive a proposal from David by July 10, 2015.
- [27] Within the email chain between Ms. Tsonis and Mr. Moulton, Mr. Moulton advised he believed David would be prepared to do whatever the PGT directed, within reason.
- [28] Ms. Tsonis then went on vacation. Upon her return on August 5, 2015, she asked for current information with respect to the mortgage on the property and the current assessed value of the property; also for the total amount transferred from Shane's settlement to the mortgage.
- [29] Mr. Moulton provided a copy of the 2015 Property Assessment Notice for the subject property. The assessed value the property was \$635,000. He advised David believed \$40-\$50,000 remained outstanding on the mortgage and that he was obtaining formal confirmation of the amount, as well as the amount of Shane's money that been paid toward the mortgage.
- [30] By email on September 28, 2015, Mr. Moulton provided copies of the mortgage summary from the Royal Bank, Credit Line details, and the City of Surrey property tax certificate, together with a confirmation of payment of City taxes as at July 2, 2014. Mr. Moulton also stated David advised him \$150,000 of Shane's settlement was paid against the mortgage [at para. 22, Exhibit "T"]. The mortgage summary showed a RBC Homeline Plan Mortgage with a balance owing of \$36,974.28. The Homeline Plan Credit Line, on the other hand, indicated a balance owing of \$69,930.39 with a current credit limit of \$523,025.72.
- [31] In an October 8, 2015 email, Ms. Tsonis advised Mr. Moulton of the PGT's position. She noted among other things that the mortgage was supporting a line of credit which the current owners, David and Angila, could use to access a further \$523,025.72. She further noted Shane had contributed \$150,000 in a lump sum payment, as well as the payment of a number of household expenses, including phone, hydro and gas. She further noted the Vancity committee ship account number [511] was jointly held with Shane, thereby allowing

both parties to have unrestricted access to it.

- [32] Ms. Tsonis further pointed out that a review of the settlement materials indicated "Shane should have received \$267,633.29 in an initial lump-sum payout and a further \$339,249.38 from 2 annuities by September 30, 2015 [but] this amount [was] not reflected in Shane's current Vancity account". She also noted unexplained bank draft withdrawals from Shane's earlier Vancity account [611] of very large sums [August 10, 2011 - \$62,000; August 16, 2011 - \$164,000; July 11, 2012 - \$105,000]. Also noted was an unexplained March 9, 2012 deposit of a BMO bank draft in the amount of \$150,000.
- [33] Ms. Tsonis advised Mr. Moulton that given the seriousness of the PGT's concerns, they could "no longer be lenient in our time allowance for information." She "require[d] an immediate accounting by October 31, 2015 for the full period of [David's] committee ship, September 16, 2010 to September 30, 2015." Ms. Tsonis set out details of what was required; asking Mr. Moulton to make sure David understood the seriousness of the matter.
- [34] As of November 3, 2015, new information had not been received, so Ms. Tsonis advised Mr. Moulton the PGT would be taking steps to end David's appointment as committee. On being advised by Mr. Moulton that David had indicated to him Shane had expressed a desire to look after his own affairs because he had his own job, Ms. Tsonis replied to Mr. Moulton that if Shane wished to be found capable of managing his affairs, he would need to apply to the court and provide the court with two medical opinions saying he was capable.
- [35] Attached as exhibits "V" to "Y" to Mr. Campeau's affidavit are copies of various Vancity account records, some in David's name, one in the name of the Estate of Shane Anand and David Anand and one in the name of the Estate of Shane and David Anand.
- [36] At paras. 31 to 33 of his November 19, 2015 affidavit, Mr. Campeau noted those things he had found remarkable in the Vancity records and other provided documents:
31. The Vancity records are remarkable for the large number of cash withdrawals and the payment of utilities without contribution by Shane's parents.
 32. Attached hereto and marked Exhibit "Z" is a copy of a title search of the property in Surrey. The property is registered to David and Angila Anand as joint tenants.
 33. The information available to the PGT indicates that the financial affairs of Shane are not being well handled by the committee and that the actions and interests of the committee conflict with those of Shane, and the committee has not done enough to address the PGT's concerns when these issues have been brought to the committee's attention.

Legal principles

1 Statutory Provisions

[37] Section 6(2) of the Patient's Property Act, R.S.B.C. 1996, c. 349 [PPA] gives the court authority to rescind the appointment of a person appointed as a committee. Section 6(1) allows the court on application to appoint a person to be committee of a patient.

[38] Sections 17 to 18 of the PPA lay down the standard on which David's conduct as Shane's committee should be assessed:

Rights, powers and privileges included

17 The rights, powers and privileges vested in the committee include all the rights, powers and privileges that would be exercisable by the patient as a trustee, as the guardian of a person, as the holder of a power of appointment and as the personal representative of a person, if the person were of full age and of sound and disposing mind.

Exercise of powers

18 (1) A committee must exercise the committee's powers for the benefit of the patient and the patient's family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family.

(2) A committee must, to the extent reasonable, foster the independence of the patient and encourage the patient's involvement in any decision making that affects the patient.

2 Case law

[39] In his dissenting judgment in *Midcon Oil & Gas Ltd. v. New British Dominion Oil Co.*, [1958] S.C.R. 314, Rand J. made this foundational point on the subject of a committee's fiduciary duty:

The loyalty of a fiduciary declared by these authorities means that he must divest himself of all thought of personal interest or advantage that impinges adversely on the interest of the beneficiary or that results from the use, in any manner or degree by the fiduciary, of the property, interest or influence of the beneficiary. Equity, in applying the rule as one of fundamental public policy, does so ruthlessly to prevent its corrosion by particular exceptions; by an absolute interdiction it puts temptation beyond reach of the fiduciary by appropriating its fruits.

[40] In *Bray v. Ford*, [1896] A.C. 44 (H.L.) at pp. 51-52, Lord Herchell said the following regarding the position of a trustee who has made profit directly or indirectly by their management; as cited in *Taylor (Re)*, [1982] B.C.J. No. 1458 (S.C.) at para. 10:

It is an inflexible rule of a Court of Equity that a person in a fiduciary position is not, unless otherwise expressly provided, entitled to make a profit. He is not allowed to put himself in a position where his interest and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principles of morality. I regard it rather as based on a consideration that human nature being what it is, there is danger, in such circumstances of the person holding the fiduciary position being swayed by interest rather than by duty and thus prejudicing those whom

he was bound to protect. It has therefore be deemed expedient to lay down this positive rule.

- [41] The best interests of the patient dictate the choice of the committee. Considerations include who can best deal with their financial affairs, nurture their estate, and see that their income and estate are applied for their greatest benefit, *Pineo (Re)*, [1985] B.C.J. No. 1171 (S.C.).
- [42] In *Bowman (Re)*, 2009 BCSC 523, Justice Dardi further discussed matters which some case law suggest the judge can also consider when determining the appropriate person to act as committee. At paras. 32-33, she noted:
- [32] On an application for either the appointment or removal of a committee, the test for determining who is appropriate to act as a committee invokes the *parens patriae* jurisdiction of this court and is governed by an assessment of who will serve the patient's best interests: *British Columbia (Public Trustee) v. Pollen* (1996), 15 E.T.R. (2d) 154, [1997] B.C.W.L.D. 042; *Re Poon*, 2005 BCSC 254, 14 E.T.R. (3d) 29; and s. 28 of the Act. This inquiry includes a consideration of who can best deal with the patient's financial affairs, nurture her estate, and see that her income and estate are applied for her greatest benefit: *Re Pineo*, [1985] B.C.J. No. 1171, [1985] B.C.W.L.D. 1982.
- [33] In *Re Farquhar* (19 June 2008), Vancouver S081503 (B.C.S.C.), the court provided guidance as to additional considerations as follows at para. 63:

Additional significant factors the court is to consider are the proposed committee's previous involvement with the patient or his family, the proposed committee's knowledge and understanding of the patient's situation and needs, the proposed committee's level of experience and capability in performing the duties of committee, any kind of a plan of the proposed committee for the management of the patient, and any potential conflict of interest between the proposed committee and the patient. [Internal citations omitted]

[Emphasis added.]

- [43] Dardi J. noted at para. 34, the case law generally makes clear the best interests of the patient is the overriding principle a judge should consider when designating an appropriate committee. David's position much relied on the underlined portion of the above excerpts from *Bowman*.
- [44] The wishes of the patient, assuming they are capable of expressing them, is an important consideration because the committee's appointment ends their decision-making autonomy, *Matthews (Re)*, 2013 BCSC 1045 at para. 27.
- [45] Fisher J. (as she then was) cautioned the issue is not without difficulty, noting a patient's wishes may be unreasonable or irrational, at para. 28. Fisher J. also cautioned, citing *Re West* (1978), 20 N.B.R. (2d) 686 (S.C.A.D.), a decision of the New Brunswick Court of Appeal; and *Finlay v. Finlay* (1997), 16 E.T.R. (2d) 216 (B.C.S.C.), a 1997 decision of this Court, that the court must carefully assess what effect an order made contrary to the patient's wishes would have on the patient's health.

.1 Position of relatives of the Patient

- [46] Generally, the relative of a patient seeking appointment as committee will be favoured over the PGT unless there are circumstances making their appointment contrary to the interests of the patient, *Dziuk v. The Public Trustee* (25 February 1998), New Westminster S043892 (B.C.S.C.). Likewise, In *Bua (guardian ad litem of) v. Clegg*, 2006 BCSC 802 at para. 18, Mr. Justice Ehrcke, considering a case in which several interested parties had raised concerns about the suitability of one of the interested parties to serve as a committee, stated he accepted that "the involvement of a family member as committee is generally preferable and that the [PGT] should only be appointed where it is shown to be necessary".
- [47] The PGT submits David's previous conduct is a circumstance making his continuation as committee contrary to Shane's interests. David submits he always acted in Shane's best interest.
- [48] I will return to this theme later in these reasons.

.2 Criteria for removal of a committee

- [49] In *Gronnerud (Litigation Guardians of) v. Gronnerud Estate*, 2002 SCC 38, the Supreme Court considered criteria for the removal of what in that case was a litigation guardian. In my view, the principles considered there also obtain in the case of a committee. Writing for the majority at para. 24, Major J. stated this regarding the obligations of a property guardian (a.k.a. as guardian of the estate of a person):
- [24] The requirement that the property guardian not be in conflict of interest is a proxy for ensuring that the property guardian protect the best interests of the dependent adult. Similar to the requirement that a litigation guardian be "indifferent", at minimum a property guardian must be able to handle the finances of the represented party in a disinterested, unbiased manner. Although the statute is clear in stating that being a family member or a potential beneficiary is insufficient by itself to prove a disqualifying conflict, in some cases of family members or potential beneficiaries, there is evidence of other factors indicating a lack of objectivity. It is the unusual case where a family member or potential beneficiary in a troubled estate can demonstrate an absence of conflict and thus act as property guardian.

[See also: *Poon (Re)*, 2005 BCSC 254, at paras. 33-35.]

Evidence of David Anand

1 Shane's injuries and adjusting to them

- [50] Before the accident, David worked as an aluminum window installer. He earned \$18 an hour; annually, \$30,000 to \$35,000. His wife worked as a care aide, earning approximately \$40,000 annually.

- [51] Shane was 12 years old when the accident occurred. He had suffered a not yet diagnosed brain injury. David deposed that when he first saw Shane in the hospital, he collapsed. He learned later that he (David) had heart problems and required bypass surgery. After Shane was released from hospital, he appeared to be recovering well. Soon after, however, Shane began to show signs of memory loss and displayed some abnormal behaviour. He was therefore referred to Children's Hospital in Vancouver for further assessment, where he remained for one month. The physicians diagnosed a brain injury caused by the accident.
- [52] Numerous times over the next few years, Shane went in and out of Surrey Memorial Hospital. Each visited lasted a few weeks.

.1 Giving up employment in 2010

- [53] Pre-accident, David and his wife, Angila, had been able to arrange their schedule so they could spend time together and with their two children, Shane and Sheena. After the accident, they had to change their work schedule so one of them could always be home with Shane. David worked in the mornings; Angila, in the evenings. These changes led to David seeing very little of his wife and daughter. He deposed this continued until 2010, when he decided to leave his job so he could spend more time at home.
- [54] Counsel for the PGT submitted the court should note that Shane's personal injury claim was approved on September 16, 2010 and that I ought to infer David left his job because it was not just Shane's financial circumstances that had changed but also the family's financial circumstances. In other words, counsel for the PGT contends the award was being seen as an award to the family, not just to Shane; alternatively, if that was not the motivation, it at least explains Shane beginning to pay the mortgage.
- [55] David further deposed that the physical and emotional toll on him and his wife was much heavier. He stated that for the first five or six years after the accident either he or his wife often stayed up all night because of Shane's delusions. They both had to work the next day, even without their having slept. He stated that Shane became suicidal, telling them many times he wanted to hurt himself and had thought about hanging himself. He started to use marihuana and continued using it for a period. David deposed, at para. 9 of his September 27, 2015 affidavit, "I was very worried for my son, and I tried my best to help him live a good life. Because of the stress all of this caused me, I had to be admitted to Royal Columbia[n] Hospital on two occasions."
- [56] In sum, David deposed the first six or seven years post-accident were very difficult for him and his family, financially and emotionally. He deposed they incurred approximately \$70,000 in debt because Shane's care requirements limited their ability to earn income. He did not mention they had received an in-trust award of \$72,000 as per clause 5 of Justice Macaulay's September 16, 2010 settlement order [Exhibit "F", November 19, 2015 Affidavit of Phil Campeau].

.2 Lawsuit Settlement

[57] Regarding the settlement of Shane's lawsuit and his appointment as committee, David deposed he understood Shane's case settled for a total of \$3.245 million; the \$2 million remaining after payment of legal fees and other outstanding expenses placed in a structured settlement annuity. David also received on behalf of Shane, a lump sum payment of \$267,633.29. At para. 13 he deposed, contrary to para. 6 of Mr. Campeau's affidavit, that Shane currently receives approximately \$5,600 monthly pursuant to the terms of the structured settlement. He explained he elected to place more of the settlement funds into an annuity instead of keeping them as a lump sum payment, reasoning this created a greater monthly payment, which he felt was more important for Shane's long-term needs than having immediate access to a lump sum.

.3 Post Accident Travel

- [58] One of the main areas of concern for the PGT was expenditures made for travelling. Shane travelled with the family to Fiji and other locales, and mostly paid the cost of the trips. David deposed that doctors from Surrey Memorial Hospital had encouraged him and Angila to take Shane travelling because of the difficulties he was having, telling him the change of atmosphere could help Shane's recovery.
- [59] David stated he withdrew approximately \$9,000 from his line of credit and took Shane travelling to Fiji where some extended family members lived. He deposed they stayed for two weeks with Shane having "many wonderful life experiences with his cousins". David said the experience was life-changing for Shane, and that "he really came alive and became engaged with life while he was there" (at para. 15). David deposed he noted an instant change in Shane's mood and behaviour deposing that before the trip he lacked self-confidence, kept to himself, was very dependent on him and his wife, depressed and suicidal. He deposed this changed instantly on his return as "he became less depressed, started going to the gym, and started becoming much more independent" (at para. 15).
- [60] David deposed at para. 16 that after their trip to Fiji, he decided he was going to take Shane travelling as much as possible, stating "I saw the dramatic improvement in Shane's quality of life from that one trip, and I wanted that to continue."
- [61] David stated his son's health and emotional well-being was of utmost importance to him that seeing him go through such a life altering experience convinced him the doctors were right when they suggested travelling could help. Since 2010, he deposed he and his wife had travelled with Shane extensively, taking him back to Fiji and New Zealand, made multiple trips to California, one trip to Hawaii. At para. 17, David stated it was difficult for him to put into words how much of a change he had seen in Shane since 2010. He stated, "I can honestly say he has become a new man. He is now confident, independent, and responsible. Instead of being suicidal, he now embraces and enjoys life. The improvement has been remarkable."

[62] At para. 18 of his affidavit, David also noted, "Shane [had] stopped using drugs and now lectures his little cousins on the dangers of using them."

1 Statement of accounts

[63] Section 10(d) & (e) of the PPA provide:

- (d) the committee must pass the committee's accounts before the Public Guardian and Trustee at the times directed by the Public Guardian and Trustee, including, if the Public and Guardian Trustee requires it, a true inventory of the whole estate of the patient, stating the estimated revenue of it and setting out the debts, credits and effects of the patient to the extent they have come to the knowledge of the committee;
- (e) if required by the Public Guardian and Trustee, the committee must pass the accounts before the Supreme Court in the county in which the committee was appointed committee.

[64] Attached as Exhibit "B" to David's affidavit is a copy of the Statement of Accounts ("Statement of Accounts") prepared for him by Richard Kosick, a Chartered Professional Accountant. I will address that further below. First, one needs to keep in mind the figures in Exhibit "A", Summary of Payments to the Credit of Shane Anand following settlement of his case on September 16, 2010:

Exhibit "A"

Summary of Payment to the Credit of

Shane Anand following settlement

Gross settlement amount

\$3,150,000.00

Costs and Disbursements

95,000.00

Total

\$3,245,000.00

(Funding for Structured Settlement)

(2,000,000.00)

(Legal Fees)

(787,500.00)

(HST on Legal Fees)

(94,500.00)

(Disbursements)

(87,600.00)

(Payment to S. Nozick for criminal matter)

(5,600.00)

(Payments to Community Therapists after settlement)

(2,766.71)

Net (lump-sum) payable to David Anand on behalf of Shane Anand

267,633.29

Reconciliation

\$3,245,000.00

[65] Exhibit "B", "Shane Anand's Statement of Accounts" (unaudited as of May 9, 2016), reproduced below, itemizes and summarizes the assets and withdrawals from Shane's accounts as of May 9, 2016:

Exhibit "B"

Statement of Assets

Assets as of May 9, 2016

Vancity [511]

Jumpstart [511]

11,055.78

Shares [511]

75.04

Special Package [511]

864.32

Total Vancity [511]

11,995.14

Vancity [531]

Chequing [531]

1,404.00

Shares [531]

5.00

Total Vancity [531]

1,409.00

Total Chequing/Savings

13,404.14

Total Assets

13,404.14

[66] Counsel for the PGT pointed out that when the PGT had examined Shane's finances a year or two prior, by which time Shane should have received income of \$500,000, a balance of just \$36 was showing. As of May 2016, Shane should have been in receipt of roughly \$580,000. The amount showing now is \$13,404.14. Counsel reasonably observed that is a lot to go through in five years.

[67] Turning now to p. 6 of Exhibit "B", the Statement of Account, I find the following:

Cash Receipts

Interest income

5,302.27

Lump sum Payment

267,633.29

Sun Life Deposits (re annuities)

358,619.56

Total Receipts

631,555.12

Cash Disbursements

Automobile Expenses

11.27

Bank Interest and Charges

216.03

Cash Withdrawals

353,804.05

(roughly \$143,000 on mortgage payments)

Cheque Withdrawals

5,780.00

Credit Card Payments

35,511.38

Credit Card Repayments

(13,513.67)

Entertainment

579.65

Internet & Cable

7,921.38

Medical Expense

50.00

Mortgage Payment (lump-sum)

100,000.00

Property Tax

5,763.24

Shopping or Groceries

15,722.14

Telephone

7,195.41

Utilities

23,110.10

Vacation Expense

14,000.00

Wedding Gift to Sheena Anand

62,000.00

Total Disbursements

618,150.98

2 Family home

[68] As will be obvious by now, the PGT was particularly concerned about Shane's large contributions to the mortgage on the family home, compounded by the fact he is not on title, notwithstanding he has practically paid off the entire mortgage. David gave the following history with respect to the family home:

.1 David and Angila purchased the Surrey home in 2000 for \$170,000. In 2005, they tore it down and built a new one at a cost of approximately \$250,000, which they financed with a mortgage. In 2010, the date of Shane's settlement, the mortgage balance was \$200,000.

.2 David deposed at para. 21:

When Shane started receiving his monthly annuity payments from the settlement, I thought it would be a good idea to use some of this money towards the mortgage payments on the Family Home. I considered home ownership in the Lower Mainland a good investment, and thought this would be a good use of [Shane's] money.

.3 David further deposed at para. 21 that he discussed the matter with Shane, who he said told him:

[H]e wanted to become an owner of the family home. So, in late 2010, we started using Shane's money to pay the monthly mortgage payments, which were approximately \$2,000. These amounts were paid by withdrawing cash from the account in which Shane's money was deposited, and placing the money in my account. These mortgage payments are included in the Statement of Accounts in the "Cash Withdrawals" line item.

.4 As noted earlier, Shane was also paying for utilities and property taxes for the family home.

.5 In July 2012, David deposed (at para. 23) that he "withdrew \$105,000 of Shane's settlement funds and used it to make a lump sum payment on the mortgage." Between September 2010 and May 2016, he deposed (at para. 24), Shane contributed in total roughly \$243,000 towards the family home mortgage.

.6 As for the current value of the family home, David notes the assessed value is \$683,000, as mentioned earlier. He deposed, however, that realtors have come to the family residence and told him, "we could likely get about \$1.2 million for the Family Home if we decided to sell": para. 25.

.7 The outstanding mortgage on the family home currently stands at \$13,702.98 (para. 26). Shane has effectively paid it off.

.8 In addition, there is a line of credit registered against the family home in the amount of \$70,027.81. David deposed, "Shane has not at any time contributed any money towards line of credit payments" for which he and his wife "are solely responsible" (para. 26).

.9 On the subject of Shane's interest in the family home, David deposed (at para. 27) that once Shane started making the mortgage payments:

I considered him a co-owner of the Family Home. [I]t did not occur to [him] to go to the Land Title Office and add him as a registered owner on title in [his] mind, because Shane was contributing to the mortgage and the house expenses, and because he was [their] son, it was only natural he was a co-owner. However, [he added, he] never actually considered the mechanics of officially registering him on title.

.10 Responding to para. 12 of Mr. Campeau's affidavit, wherein Mr. Campeau stated David had told him, "the house was not in Shane's name as he would inherit it anyway"; David deposed he could not recall the specific details of his conversation with Mr. Campeau but explained, "it is traditional in my culture for a father to pass his family home to his son. Again, because he was contributing to the family home and because he was my son, I have always considered him a co-owner."

.11 Responding to paras. 26 and 27 of Mr. Campeau's affidavit regarding his deposit of a \$150,000, bank draft in Shane's account, David explained at para. 29 of his affidavit that in about August 2011, he attempted to invest some of Shane's money into another residential property and for that purpose withdrew \$164,000 of Shane's money to use as a deposit. As the deal never completed, David deposed, he "returned \$150,000 to Shane's account. The remaining \$14,000 was used for one of Shane's trips".

.1 PGT position on "investment in family home"

[69] Counsel for the PGT submitted the use of Shane's money for a purported "investment" in the family home is "egregious", pointing to the following concerns:

- a. An investment through the means of a mortgage payment implicitly includes components for principal and interest. Shane, however, receives no tax benefit from the interest expense component of the investment.
- b. Counsel submitted it is of great concern that Shane is not on title, pointing out that were one of Shane's parents to pass away, Shane's currently undefined putative share would pass to the surviving parent. Should the surviving parent pass away or, alternatively, both parents pass away at the same time, leaving no will bequeathing the home on Shane, it would then have to be divided between two children, producing the likelihood of a will variation and constructive trust lawsuit.
- c. A falling out between family members could occur, leaving Shane without any safeguards and unable to provide evidentiary support for his father's intentions at the time in respect of his use of Shane's money to pay the mortgage and earn an interest for him in the house.
- d. As discussed at the hearing and raised in submissions by the PGT, the extent of Shane's beneficial interest in the property has not been resolved, notwithstanding Shane has contributed \$243,000 toward the mortgage: Affidavit of David Anand at para. 24.

- e. Whether the property is valued at \$683,000 or \$1.2 million, David has not proffered any evidence confirming the extent of Shane's interest in the house, either an amount which he and Angila have accepted or which they have affirmed they are legally beholden to; or an amount using assessment methods commonly used by economists and/or accountants qualified in the valuation of an asset and the calculation of the proper respective enforceable shares of those parties who possess an interest in the asset.
- f. The PGT further pointed out that when it comes to determination of Shane's interest in the family home, David stands in a conflict of interest.
- g. Finally, counsel for the PGT submitted what is "worst of all" is David's having stated (at para. 28) that it was "traditional in [his] culture for a father to pass on his Family Home to his son." Counsel submitted, therefore, that in effect Shane had paid for property he was going to inherit eventually anyway, so all his payments to earn an interest were wasted. If so, and if his payments are not clearly assignable to an equitable interest, they would not only have been wasted, but he would become exposed to a wills variation action.

3 Cash withdrawals

- [70] David deposed at para. 30, that the remainder of the cash withdrawals shown in the Statement of Accounts, relate to Shane's extensive travels since 2010, medical expenses and various personal expenses such as clothing, entertainment, activities, gym memberships, and restaurants.

.1 Travel

- [71] As for travel expenses, he explained most of the cost of travel undertaken by David, Angila and Shane was paid for using Shane's money. He attached some exhibits confirming travel costs. He noted that they stayed half the time at the home of relatives; the other half at hotels, at a cost of \$250 per night. In Fiji, they stayed in hotels the entire trip, rented a car costing approximately \$250 weekly, and gave Shane spending money to purchase various things such as expensive rugby jerseys and T-shirts. David did not retain receipts for the car, hotel, or souvenirs but estimated the total cost of the trip was approximately \$15,000 to \$20,000.
- [72] Further trips to the United States are noted in paras. 35 to 38. Most notable was a trip David and his wife took with Shane to Hawaii for one week in October, 2013 with Sheena and her husband. Sheena booked the flight and hotel. David stated, "I reimbursed her for "our share" of the flight and hotel (Angila, Shane, and I) using cash from Shane's account. Sheena and her husband used their own money for their flight and hotel" (para. 35).
- [73] David estimated "this trip cost approximately \$20,000, including spending money" for him and his wife and Shane. Shane and his parents also drove to California three or four times a year. David estimated "each trip cost approximately US\$800 for the three of us, plus spending money" (para. 36). I will not traverse the rest of the travel undertaken in the United States.

- [74] I should note, however, David's evidence on trips taken to Alberta for visits to Shane's sister, Sheena, about four times annually. He deposed, at para. 39, that "Sheena and Shane have always been very close." He estimated at para. 40 that "each trip to Edmonton would cost approximately \$5,000", which appears to be rather a lot for trips to Edmonton. The court did not hear why David and Angila could not pay their travel expenses, or a significant portion of them, for those trips.
- [75] Counsel for the PGT, responding to David's assertion that doctors from Surrey Memorial Hospital encouraged him to take Shane travelling, noted the lack of corroborative evidence was proffered, important, given the significant expenses being justified based on encouragement to travel.
- [76] That noted, there is some medical evidence confirming the beneficial effects of travel on Shane.
- [77] Assuming Shane's travels improved his condition, the PGT submitted it does not necessarily follow Shane should be paying for his parents' travel. Also assuming David's contention Shane cannot travel alone is true, the PGT submitted that requirement has to be balanced against the cost of his parents travelling with him on every occasion, together and without any reimbursements. Counsel submitted the parents clearly receive some personal benefit of enjoyment from the travel, considering so much of it involves visiting friends and relatives. Counsel submitted in particular, they have had the benefit of visiting their daughter four times annually at no cost to them.

.2 Medical expenses

- [78] At paras. 41 to 43, David summarized medical expenses incurred between 2012 and 2015. Dental expenses totalled roughly \$8,000; \$5,739.91 of that figure was covered by insurance. David spent \$8,660.21 at Costco for insulin Shane was required to take in those years. Of the total, \$2,137 appears as debit purchases on Shane's bank statements, the remaining \$6,522.51 David paid in cash (para. 41).

.3 Other cash withdrawals

- [79] Shane has spent approximately \$3,000 since 2010 on entertainment, including the purchase of electronics. At para. 44, David deposed that the remainder of the cash withdrawals shown on his Statement of Accounts was paid directly to Shane as a monthly cash allowance he used to purchase clothing, for entertainment and activities. David further noted that because he wanted to encourage Shane to be as independent as possible, he eventually gave Shane his own bankcard, allowing him to withdraw money as he needed it during the month. Counsel for the PGT criticized this arrangement, submitting it showed a lack of oversight, a complete abrogation of responsibility. However, David maintained, at para. 45, it was very important for Shane to be as independent as possible. He said that when it came to spending money remaining each month after his bills had been paid, he would often let Shane make many of his own decisions. At para. 46, David deposed that he wanted Shane to

"enjoy his life", explaining Shane had gone through "a very difficult time because of his brain injury and had to overcome some significant obstacles." David deposed he "felt it was important to give him the freedom to enjoy life, and to spend money on things that other kids his age spent money on". Since 2010, it appears Shane has spent approximately \$11,000 on clothes and accessories.

.4 Acknowledgement of shortcomings in financial management

[80] David acknowledged his shortcomings in accounting for Shane's funds, stating at paras. 52 and 53:

52. Now that I have obtained the appropriate accounting and legal advice, I know I should have written cheques, or at the very least receipts, for the cash transactions, so that I could properly account for Shane's funds. My only answer is that I did not appreciate the full extent of my record keeping obligations as committee. I always knew the money was being used for Shane's benefit, and I never anticipated I would be in the situation I am currently in. With that said, I know my record keeping has been problematic, and I have sought the appropriate advice to ensure that it does not happen going forward.
53. At no time did I use Shane's money to benefit myself for profit in any way. Although we did travel with Shane, we obviously could not let him travel alone. Every single dollar that was spent was spent with Shane's best interests in mind. Although the travelling was expensive, it made a considerable difference in his life, and helped him emerge from his depression and from suicidal thoughts.

[Emphasis added.]

- [81] At para. 59, David deposed he intends to speak with a financial planner. The PGT submitted in response that, considering the historical circumstances, he ought to have come before the court with a specific professional investment plan, not merely depose an intention. In summary on this point, the PGT submitted that considering all the circumstances, David has revealed himself to be incapable of prudently managing Shane's affairs; and it does not suffice at this stage to say that that he is sorry.
- [82] The PGT noted in response to David's statement he did not appreciate the full extent of his record keeping responsibilities as committee, that David did not explain how he could not have appreciated his obligations considering the fact he already had submitted one set of accounts.
- [83] With respect to David's assertion that he at no time used Shane's money to benefit himself or to profit in anyway, counsel for the PGT submitted this demonstrated a lack of insight, noting this comment ignored the personal benefit he received from the travel costs, mortgage and utility bills that Shane paid. Considering the mortgage payments, property taxes and utilities Shane paid, the PGT submits that "so far as can be determined" Shane's parents have been living with little if any financial obligation insofar as their accommodations and maintenance of the property are concerned.

.5 Wedding gift to sister of \$62,000

- [84] I turn now to David's explanation for the \$62,000 withdrawal made in August 2011 and given to Shane's sister, Sheena, as a wedding gift. At para. 54, David explained, as mentioned earlier, that "Shane and Sheena were always very close." He stated Shane had asked him "if he could give some money to Sheena as a wedding present. Because they were always so close, and because Shane really wanted to help her out." David therefore "allowed him to make the gift". However, the affidavit of Sheena, sworn September 29, 2016, casts the gift in a different light. She stated at para. 4, due to their close relationship, Shane had gifted her \$62,000 to assist with her wedding expenses. She explained she and her husband had two weddings in 2010; two were needed because she and her husband had different religions. Accordingly, on August 20, 2010 they had a Hindu wedding in Surrey, B.C., with guest lists of up to 600; and on August 27, 2010, a Catholic wedding and banquet in Edmonton, Alberta. At para. 6, she again confirmed the \$62,000 amount Shane gifted to her was used to assist with her wedding expenses.
- [85] David submitted the payment to Shane's sister was a gift. He referred to Walsh (Re), 2015 BCSC 1992, in which Justice Harris addressed of the three main issues in that case: whether the payment of proposed \$100,000 gifts to each of the two adult children from the estate of the patient was justified under the PPA.
- [86] At para. 38, Justice Harris noted the following points:
- [38] In my view, the following principles can be distilled from Bradley and O'Hagan [British Columbia (Public Trustee) v. Bradley Estate, 2000 BCCA 78, and O'Hagan v. O'Hagan, 2000 BCCA 79]:
- a. The language of the PPA requires that a committee exercise his or her power for the benefit of the patient and the patient's family, and not simply for the provision of bare necessities. Bradley at para. 16, O'Hagan at para. 22.
 - b. The test for approval of a gift is whether a reasonable and prudent businessperson would view the gift as beneficial to the patient and his family, given the circumstances that are known at the time and the possibilities that might arise in future. Bradley at para. 17, O'Hagan at para. 24.
 - c. While the statutory language contemplates benefit to the patient's family, paramount importance should be given to the patient's own interest, present and future. Adequate consideration must be given to the needs that could arise in the remaining years of a patient's life. Bradley, para.19, O'Hagan at para. 25.
 - d. A committee should be very reluctant to diminish a patient's estate. There must be a compelling reason to do so. O'Hagan, para. 23.

- e. Professional advice can be of assistance in determining whether a particular proposal is sound. In both O'Hagan and Bradley, professional advice formed the basis of the proposals. Guesswork should not govern whether a gift is approved. Bradley, para. 17, O'Hagan para. 24.
- [87] At paras. 40 to 47, Harris J. then considered whether the proposed gift by Mr. Walsh for the children should be approved:
- [40] Mr. Walsh submits that the gifts are a permissible exercise of his power to act for the benefit of the patient's family. He submits this case is distinguishable from Bradley as the gifts will not jeopardize Ms. Walsh's current and future care. Mr. Walsh contends that Ms. Walsh will not be deprived if she recovers. She had no significant income at the time of the accident and now has substantial assets. Further, testamentary disposition would not be negatively affected.
- [41] The Public Guardian's submission is that the gifts should not receive court approval. The Public Guardian does not take the position that the gifts would endanger the estate, rather it emphasizes there is no objective basis in these circumstances to grant a gift. The Public Guardian argues there is no support for a pattern of gifting and the fact that family members will be the main beneficiary of an estate is not sufficient for the court to approve the payment. The Public Guardian submits the interests of the patient must be paramount over the interests of the family.
- [42] In considering whether a reasonable and prudent business person would consider the expenditures justifiable, I accept that Ms. Walsh has more than sufficient funds to provide for her current level of care. However, the fact that she has more funds than currently required cannot, by itself, support the payment of gifts of the magnitude proposed by the committee. In my view, a prudent business person would also need to be satisfied that the gifts do not jeopardize her future care costs and that the expenditure is itself justified as being of benefit to Ms. Walsh and her family.
- [43] Madam Justice Newbury indicated in O'Hagan that a committee should be very reluctant to agree to a gift in absence of some compelling reason like necessity: para. 23. In O'Hagan, the court was presented with professional advice which indicated the proposed corporate reorganization would provide significant tax relief. The estate freeze had a clear and undeniable benefit, and the estate would not be diminished in any way. In other words, a compelling reason existed to grant the application.
- [44] I find no compelling reason exists in this case for the payment of the \$100,000 gifts to the adult children. I note that there is no evidence that the adult children have a particular need for the gift, other than the money would be of assistance to them as they start their families. According to Mr. Walsh, both children have post-graduate degrees and good jobs. While I accept Mr. Walsh's desire to provide for the children, who are two hardworking young people, a general desire to gift a large sum of money for an unspecified purpose is not a compelling reason to diminish Ms. Walsh's estate.

- [45] The proposed \$100,000 gifts are distinguishable from the wedding gifts previously made to the children. The previous, more modest gifts of \$5,000 and \$10,000, were for a specific purpose, and were in keeping with what a reasonable and prudent business person would approve to benefit the family, having regard to the size of the estate and the established tradition of parents contributing to their children's weddings and buying gifts to celebrate the marriage. In my view, in the absence of specified purpose or an established tradition of giving gifts to adult children of the magnitude proposed, I am not satisfied that a reasonable and prudent business person would approve the payment of these gifts.
- [46] I also find the present circumstances distinguishable from O' Hagan and closer to the facts in Bradley. It is of particular relevance that Ms. Walsh is only 54 years old. She may require many years of care in the future. In Bradley, the patient was in similar circumstances. Doctors had given Ms. Bradley slim, basically non-existent chances of recovery. Yet in declining the gift, it was still persuasive to the court that Ms. Bradley, at 65 years of age, could continue to live for many years, even though such an outcome was unlikely.
- [47] While Mr. Walsh deposed that her life has exceeded doctor's expectations, I find that Ms. Walsh's life span is uncertain. The court observed in Bradley that "[Ms. Bradley's] condition might improve or it might deteriorate, necessitating much more expensive care than she is now receiving." In the instant case, even though the possibility of Ms. Walsh recovering may be remote, in light of my duty to consider the interests of the patient as of paramount importance, the potential change in the costs of her future care, as well as the possibility that she will recover enough to utilize the settlement funds set aside for her, are circumstances which militate against granting the gifts of this magnitude. In that regard, I also observe there is no report from an actuary or accountant as to future care costs or the impact of the gifts on her estate.

[Emphasis added.]

- [88] Counsel for David also submitted the court has to consider the cultural context when assessing the reasonableness of Shane's gift, noting it is part of Hindu culture for brothers to give sisters a wedding gift, a tradition Shane wished to follow. Counsel submitted there is certainly a benefit of following one's cultural traditions which counsel held out as a benefit for both Shane and his family.
- [89] In my opinion, Walsh does not assist David. The wedding gifts referred to in that case were relatively modest; in keeping, as Justice Harris noted (at para. 45), "with what a reasonable and prudent business person would approve to benefit the family, having regard to the size of the estate and the established tradition of parents contributing to their children's weddings and buying gifts to celebrate the marriage." I think it would be fair to say that parents purchasing gifts for children getting married and assisting them financially is a widespread cultural custom.

- [90] As for Shane's settlement being less than one-year-old when the gift was made, as pointed out by counsel, in my view, the amount of the settlement and the fact Shane would have a steady monthly income in future and had invested in the family home does not lend much weight in favour of the amount of the gift being reasonable in the circumstances. A gift, even a generous one, is one thing; contributing almost all the costs of the wedding another. I accept Shane's bestowing a more than modest wedding gift on his sister could be beneficial to his psychological recovery from his injuries. Considering the nature and extent of his injuries, it could instill a sense of self-worth, participation, a glad expression of filial love that would strengthen family bonds, an optimistic signpost of renewal and a happier future. That granted, \$62,000 is not a prudent amount, considering Shane's future needs and his circumstances.
- [91] The submission that because Shane would have a steady income for many years to come and had invested in the family home does not render the amount of the gift reasonable. There is no medical opinion speaking directly to the point, but it would be imprudent not to assume a person who has suffered serious brain injuries and mostly recovered, as they age will not encounter related cognitive problems needing further care or treatment. That is not a finding but a realistic possibility that prudence would consider. Finally on this subject, to put the financial consequences in perspective, I calculated the potential future value of the gift: assuming an annual return of 6% per annum; no further contributions over a 40-year period; and a present value of \$62,000, the gift, prudently invested, has a future value of \$637,714.51.
- [92] At para. 26 of his affidavit, Shane stated how he looked on the \$62,000 remittance:
- I know that the \$62,000 wedding gift to my sister seems very generous but she is my only sister and we have always been very close. I wanted to give my sister a wedding gift and when I heard that she had not paid off all of her wedding expenses, I gave her the \$62,000.00 to help her.
- [93] The PGT criticized David's authorization of the \$62,000 payment to Shane's sister. As will be apparent from my comments, I agree it was not an appropriate expenditure. A gift of \$20,000 would have been a generous one; \$62,000 is an excessive amount to pay, especially when purposed to pay off wedding expenses, well in excess of what is required to express familial love. Shane could make that large a payment only because he had money compensating him for his personal injuries and loss of earning capacity. The fact he had the funds available did not justify gifting such a large amount in the circumstances. David should have dissuaded Shane from gifting that amount.
- [94] David has since stated that he will reimburse or credit Shane most of the \$62,000. I am not aware of concrete steps being taken to that end, but counsel for David advised the court David is willing to attribute \$60,000 to Shane's interest in the family home.
- [95] I note the issue here is not one of honesty, rather, the exercise of judgment at the material time.

- [96] Counsel for David advised he accepted he must provide more timely information to the PGT than he has in the past. Counsel pointed, however, to what he characterized as the many positive ways in which David's management of the estate benefited Shane, submitting that his record-keeping problems could be adequately addressed in a manner not requiring his removal as committee. He further confirmed David is willing to agree to very stringent accounting requirements going forward and accepts his record-keeping must improve, an achievable objective, counsel submitted and a less dramatic remedy than his outright removal as committee.

Evidence of the patient Shane Anand

- [97] In his affidavit sworn September 30, 2016, Shane deposed that he understood the PGT's application before the court was intended to have his father removed as his committee because, according to the PGT, his financial affairs are not well handled by his father and his father's actions and interests conflicted with his. Shane confirmed he read his father's affidavit in response to the PGT's application and the affidavit of his sister. He stated that what his father and sister say in their affidavits is consistent with the facts as he knows them.
- [98] At para. 4, Shane deposed he "would like his father to continue to be [his] committee until [he] gets a declaration from [the court confirming he is] capable of managing [his] own affairs." He further deposed, "I understand that my father's record keeping and accounting to the PGT raises concerns but I believe that he now fully understands what is required and will do everything that is necessary with the help of his lawyer and accountant to properly attend to the management and accounting of my financial affairs."

1 Effects of injuries

- [99] At paras. 5 to 12, Shane describes his accident and some of the effects of his injuries. He recalls spending approximately two weeks in hospital recovering. He deposed, at para. 6, that due to his injuries, he had difficulty remembering things that occurred before the accident.
- [100] As for family relationships, Shane deposed to having a close and loving relationship with his parents and his sister; noting that although he woke from his accident confused, they were a great source of comfort and support to him during his initial recovery. He recalled that soon after the accident, his parents witnessed changes in his behaviour and took him back to see doctors; and as also noted by David in his affidavit, after various hospital visits and examinations, he was diagnosed as having sustained a serious brain injury.
- [101] Shane confirmed that when he was allowed to return home from hospital, his parents arranged to ensure one of them was always home with him to assist with anything he might need. He recalled his parents cooked and cleaned for him, took him to various medical appointments, purchased all his medication, and monitored his intake of it. At para. 10, he stated his "parents' support during those first few years after the [a]ccident was crucial. [H]e

sensed that this time was difficult for [them but deposed] they never spoke to [him] about their worries and they always did their best to ensure that all of [his] needs were met."

2 Ongoing recovery and Vacations

[102] Shane addressed his ongoing recovery and vacations, at paras. 13 to 17. I will summarize those paras.

[103] At para. 13, Shane deposed he had "many difficulties during his recovery from the [a]ccident, and for a period of time experimented with recreational drug use." He noted as well "a phase in [his] life when he was suicidal". Shane was treated for that in hospital and spent five months in the Adolescent Psychiatric Unit. He recalled "[t]hose times were very difficult for [his] family and [he knew] that they worried about [him]." [I note those events occurred prior to settlement of his personal injury claim.]

[104] With respect to the vacation trips, Shane explained how he sees them (at para. 14):

14. To assist me with my recovery, my parents on the advice of my doctors, arranged for our family to take trips together. Our first trip was before the money from my settlement was paid. We went to Fiji where I spent a great deal of time with my family there. I did not do drugs while I was in Fiji but just spent time with our extended family. I really enjoyed that trip and bonded with my family there. I am still very close to them. That trip to Fiji was a turning point for me as I felt so much better than I had for years. When I returned home, I was able to put my life on a better course. That trip meant so much to me that I wanted to go back and we did go back to Fiji often. We stayed in hotels while we were there because I like swimming and our relatives did not have pools at their homes.

[105] As for further travels engaged in, Shane deposed, at para. 15, he loved travelling, confirming "[i]n the past 6 years, we have travelled to many different places including Fiji, New Zealand, California, Washington, Oregon, Florida and Hawaii. We have also visited my sister, Sheena, and her family in Edmonton, Alberta, several times a year. These family trips have had a positive impact on my recovery." He expanded on the effects of his family trips and the necessity of his parents accompanying him as he sees it, at paras. 16 to 18:

16. I enjoy all of our family trips. We love our road trip and driving together to Washington, California and Alberta. On our trips to Edmonton, we visit my sister and I get to spend time with my nieces whom I love very much. I wish I could see them so much more.

17. I am grateful that my parents and I have been able to take these trips, as I believe these trips have lifted my spirits, have contributed to stopping my recreational drug use and turned my life around in a positive way.

18. I also know that I likely would not have been able to travel such long and far distances on my own and I appreciate that my parents have been able to accompany me on these trips.

[106] Speaking to his continued progress at para. 19, Shane confirms he has "continue[s] to work with his health care team and [his] family on becoming more independent and fostering the skills that [he] will need one day to be able to manage his own financial affairs."

3 Financial affairs

[107] At para. 11, Shane deposed that "[o]ver the years, his father as [his] committee has handled [his] money but as time went on, [his father] would give [him] more and more responsibility". He stated, "I would not only get a monthly allowance but my dad started taking me to the bank so that I knew what was happening with the mortgage and learned how to do transactions."

[108] At para. 12 of his affidavit, Shane stated this regarding being responsible for managing his own financial affairs:

I am moving towards being responsible for managing my own financial affairs. My doctors are assisting me to become independent and my parents are also encouraging me to do more for myself. Going with my father to attend to my banking has been a big step towards my financial independence. One of my doctors has indicated that I am capable of managing my own affairs and I am confident that with the constant improvement that I have been making, I will be in a position to ask this Honourable Court to make that declaration not too long from now.

[109] At para. 20, Shane deposed that he has "personally gone to the bank with his father to pay for [his] bills and do other day-to-day transactions". He deposed that he is "involved in this process along with [his] father so that he can have a better understanding of [his] financial affairs." His father has "given [him] access to a debit card which [he] often use[s] to purchase movies, DVDs, clothing and food that [he] enjoy[s] for himself" (para. 21). He states he usually goes to the movies every week with his cousin, and that they both enjoy going to the movies and seeing the newest releases. He has "a large DVD and Blu-ray collection." At para. 22, Shane confirms he has recently "obtained his driver's licence and [he is] working towards taking [his] road test so that [he] will be able to get [his] novice drivers licence and get around on [his] own. Once [he is] able to get around on [his] own, [he plans] to find a job."

4 Committee accounting

[110] Turning now specifically to David's committee accounting, Shane confirmed at para. 23 that "[his] lawyer [had] reviewed with [him] the accounts submitted by [his] father, as committee for the time period [between] September 16, 2010 and May 9, 2016 (the "Accounting")."

[111] Regarding his own awareness of financial matters, Shane deposed at paras. 24 to 25, presumably assisted by his lawyer, as follows:

24. I am aware that out of my monthly annuity payments, which total approximately \$5,600.00 each month, my father withdraws \$2,000.00 for the payment of the mortgage on our family home (the "Home"). I expect that by the spring of 2017 the mortgage will have been paid off so I will no longer be making those payments. I am also aware that some of my monthly income is also used to pay other expenses associated with the Home, including utilities. My father also pays for my medication out of my monthly annuity payments.
25. My parents consulted me before using my money to make the \$105,000.00 lump sum payment on the mortgage and to make the monthly mortgage and bill payments. My father explained to me that the Home they built was for my sister and me but as my sister got married, it was going to be mine. My sister can, of course, come whenever she wants and is always welcome in our Home. I am pleased and it is important to me that, as my parents' only son, I can contribute to our Home. I also realize that these payments have been a good investment for me since the value of our Home has increased so much.

[112] At para. 27, Shane deposed he is aware his parents "may also benefit from the use of the money when [he] makes payments related to our Home and when [he pays] for our family trips." But he also stated at para. 27 that while that is so, "they did so much for me for years before I received the money for the settlement. I know that the monthly payments that I receive are for a specific period of time and that I therefore need to ensure that we manage my money so that I have enough to continue to live comfortably after the date the final payment is made".

[113] At para. 28, he further commented on his father's history of poor financial record keeping: I understand that my father should have kept better records of the payments he has made from my funds and provided prompt and better accounting to the PGT. I believe that he now fully appreciates his responsibilities and having brought the accounting up to May, 2016, will do a better job going forward.

5 Preference for father to be his committee

[114] At para. 29, Shane deposed he is "concerned about the PGT becoming [his] committee, not only because of the fees that they have to charge but because they cannot be there on a day-to-day basis as my father can to include me in becoming more responsible for managing my own finances. It is very important to me that I remain involved in dealing with my money. I have made so much progress with that over the years."

[115] He concludes on the subject of his preferences at paras. 30 to 32:

30. I prefer to have my father continue to act as my committee. While there are aspects of the Accounting that raise concerns, I believe that my father should be granted a second chance with respect to being my committee. I also agree that stricter accounting to myself and to the PGT on a more formal and regular basis will satisfy the concerns raised.

31. I have a very close relationship with both my parents who have been of great assistance during my years of recovery from the Accident. I know that I would not have recovered so well and progressed so much without their love and support.
32. Although I know that I am not yet at the point where I can begin to take over full control of my financial affairs, I will continue to work on becoming more independent and fostering the skills needed so that one day I will be ready to be in charge of my own finances.

parties' arguments and responses

1 David Anand

- [116] Counsel for David, alluding to para. 33 of *Bowman (Re)*, submitted that at all times since his appointment, David had managed Shane's affairs for Shane's benefit and with regard to Shane's specific needs and circumstances, citing his use of some of Shane's money for travelling as perhaps the best example of that, as it turned him away from drug use and suicidal thoughts.
- [117] Counsel submitted it was more financially prudent for his parents to accompany him than to hire a travel companion. The PGT objected to the court considering an affidavit submitted by David setting out the estimated cost of a travel companion because proper notice had not been given and the witness was not available for cross-examination. I accept some cost would attach to Shane having a travel companion but not all the particulars of what would be required have not been set out. I see no evidence showing Shane could not fly to his Fiji destination and be met there and housed by extended family members he visited when he travelled with his parents. I accept he would derive some benefit from the travel company of his parents but so did they as they could visit their family in Fiji at no cost to them.
- [118] David pointed out part of Shane's settlement was for non-pecuniary damages, a portion meant to cover the cost of activities to replace lost amenities and make him feel better. He criticized the lack of any evidence presented by the PGT on how they would consider Shane's specific needs and circumstances in their decision-making and the fostering of Shane's financial independence.
- [119] Counsel submitted the PGT's criticism of David spending money for travelling shows how little understanding they had of Shane's specific needs and circumstances, criticizing the lack of any mention of Shane's recovery in the PGT's materials, pointing out that in past cases, the PGT has stated how they would address the patient's needs and circumstances and the fostering of their independence when they assume the role of committee. David submitted the PGT's failure to do so in this case suggests they have no ideas on how they would do so in this case.
- [120] David further submitted his financial decisions have greatly benefited Shane, citing, for example:

- a. Electing to take as much of Shane's settlement funds as possible in an annuity, thereby creating a greater monthly payment. I note, however this also made available more funding for mortgage and utility payments.
- b. Investing Shane's money in the family home, which David contends was a reasonable and prudent decision that created more wealth for Shane. He argued as he deposed that he considers Shane a member of the family and "will take whatever steps are necessary to recognize Shane's interest in the family home".
- c. He does not take a fee for acting as committee, whereas the PGT will charge a 4% capital commission on total assets, an income commission of 4% and an asset management fee of 4%.
- d. An apartment and a caregiver would cost more than having Shane put his money into the family home.
- e. David also pointed to his efforts to foster Shane's independence by involving him in decision-making as much as possible. [He commented on this at paras. 45 and 46 of his affidavit, which I recounted earlier in these reasons.]
- f. David submitted he has engaged with the PGT, pointing to his having provided an accounting to the PGT on November 18, 2014, having two meetings with Mr. Campeau and between Mr. Moulton and the PGT, plus between his counsel and the PGT's counsel in December 2015.

[121] On these latter points, counsel for the PGT pointed out the 'engagements' with the PGT resulted from the PGT having to 'pursue' David - still leaving long periods when he did not respond to the PGT's written questions.

2 Response of the PGT to other of the respondent's submissions

[122] Responding to David's submission on the lack of affidavit evidence from the PGT and how Shane's best interests would be met, counsel pointed out that the fact PGT's replacement of David would be in Shane's best interests is inferable from their arguments, and that Shane's money has to be expended prudently now and in the future, which is in Shane's best interest.

[123] As for David's criticism that the PGT did not specify deficiencies in the accounting he provided, the PGT submitted problems with the accounting or medical argument is not a matter of evidence; rather, are adequately and properly pointed to in the PGT's submissions.

[124] With respect to lack of evidence of what the PGT proposes to do to foster Shane's independence, counsel submitted it is not PGT policy to determine a plan for a patient's needs, etc., and how to deal with patient's property until it becomes a committee for the patient and is in a position to obtain all the information needed to determine what the plan should be.

3 Submissions of Counsel for the Patient

[125] Briefly, the submissions made by Shane's counsel are as follows:

- a. Shane is still young, his circumstances not comparable to the cases of many other patients who require constant care in residential facilities.
- b. Shane has continued to move closer to assuming more responsibility for his financial affairs. He is working with his doctors to encourage his independence and he hopes to assume complete management of his finances: para. 12.
- c. His travels shifted his life onto a better course. Shane appreciates that he and his family can travel together.
- d. As noted earlier in these reasons, Shane has gone to the bank with his father to pay bills and deal with other to day transactions. He is involved so he can have a better understanding of his financial affairs.
- e. On April 12, 2017, Shane was issued a learner's driver's licence.
- f. Counsel submitted the best housing option for Shane after settlement of his case was living with his parents. He was not capable of being on his own and his parents continue to provide him with what he requires.

[126] Counsel for Shane stressed s. 18(1) of the PPA, which stipulates that a committee must exercise the committee's powers for the benefit of the patient, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family; and, per s. 18(2) foster the independence of the patient and encourage their involvement in any decision-making which affects the patient. With respect to the latter, counsel submitted Shane's father had involved him more and more in the day-to-day conduct of his financial affairs - citing the example of Shane attending to the banking with his father and Shane having his own debit card for his personal spending. The evidence indicates, however that David does not exercise any oversight or guide Shane in controlling his spending. Counsel submits that this fostering of Shane's independence can only be maintained with Shane's father continuing as his committee and may not be maintainable with the PGT as Shane's committee.

- [127] That sweeping statement is not sustained by evidence or argument. Were the PGT to become Shane's committee, Shane's parents would still be involved in his life. Although general assertions about fostering financial independence have been made, particulars on the nature and extent of David's fostering of Shane's financial independence are thin.
- [128] Counsel for Shane submitted Shane's contributions to his family cannot be viewed in isolation from the benefits Shane has received from his parents. She stressed Shane has lived comfortably with his parents, has not paid rent or incurred the significant expenses associated with nursing care or for other caregivers throughout the course of his recovery. The PGT does not take issue with Shane contributing a reasonable amount to household expenses; it is the amounts expended, their purpose and David's handling of and accounting for Shane's money, which have caused concern and led to the PGT's application.
- [129] One difficulty with this analysis is that David and Angila received a large in-trust award to compensate them for their time and disbursed expenses related to their care of Shane. Another difficulty is that Shane is their child, seriously injured, weak and vulnerable. Their sacrifices are noteworthy and commendable but they fall within the province of parental responsibilities.
- [130] Counsel for Shane further submitted that as an owner of their Home, Shane's contributions are an investment in an asset that has appreciated significantly with a resulting high return on his investment. But Shane is still not on title. He has to share the appreciated amount, which has not been determined, with his parents, even though he has paid most of the mortgage on his own.
- [131] It is not a foregone conclusion that Shane is in a privileged position from his having almost entirely paid off the mortgage.
- [132] For illustration purposes, if the following is assumed:
- § an annual return of 10%, less 2% management fee = 8% return;
- § a 30-year investment period;
- § (alternatively) annual contributions of \$25,000 (12 months x \$2,500) noting that \$2,500 is just \$500 more monthly than Shane's monthly payment on the mortgage. With some fiscal prudence and guidance in money management, Shane could have invested \$3,000 a month; \$36,000 annually;
- § a lump sum initial contribution of \$105,000, and assuming compound interest and monthly contributions of \$25,000, Shane's investment account would be worth \$4,115,225.67; \$5,461,030.22, assuming Shane contributed \$3,000 monthly instead. With fiscal prudence and professional guidance, Shane could probably contribute greater amounts and see a greater compounding return.

- [133] The obvious point here is that the best financial course for Shane is best determined by professionals. They can advise Shane and explain the options to him and involve him to the extent he wishes and would increase his understanding. He has recovered a lot, is interested in his finances, and I expect he would enjoy meeting with professional advisors and learning more than just how to pay bills and manage his bank accounts, worthy as that is. His parents could be involved as well, if Shane favours that.
- [134] What troubles most to this point is that David never paused to seek professional financial advice and explore the best investment options with their guidance before embarking on a plan that eventually sees Shane pay off practically the whole mortgage - bearing in mind Shane was still recovering. In my opinion, neglecting to inquire and consult is one of the more troubling examples of the deficits in David's execution of his duties, especially when he did not consult with the PGT, who had encouraged that kind of contact. It is not a question of mala fides but of prudence.
- [135] Of course, unforeseen events can occur; investment markets can weaken, etc., but this applies to real estate investments as well. The point is, one cannot unqualifiedly assume Shane's mortgage payments constitute a sound investment, certainly not without knowing in advance what is being purchased. Nor can one say it was necessarily in Shane's best financial interests - especially when the nature and extent of his interest in the family home is undetermined. Even once this is done, the question remains how and when he could realize his equity, remembering he may choose to marry and/or someday want his own place. All these questions can be determined only when the select minds around the table negotiating these questions are wholly fixed on Shane's best interests; bearing in mind, the parents also have an interest in the family home that will require some representation. For the foregoing reasons, I am not persuaded the payments Shane made are in his best financial interests. They do not constitute an investment until the extent of his interest is determined. Shane's best interest is the court's only concern in this context.
- [136] My considered opinion is that the interests of the family mentioned in s. 18(1) of the PPA must be read contextually. That is the cornerstone of the analysis. The authorities are clear that the best interests of the patient are apparent. One can certainly envision circumstances in which the patient's needs and interests are almost co-extensive with the interests of the family; for example, say, where a seriously disabled mother is the patient, had several children to be cared for, the father injured too, though to a lesser degree, but depressed by the weight of having to care for his wife and children, etc.: then, of course, the committee has to exercise their powers for the benefit of the patient and the patient's family as their interests considerably coincide. Otherwise, the powers exercised would be ineffective because the patient's disability and her needs are interwoven with the families' resulting losses and needs.

- [137] The case at hand is not like that. This court has already endorsed an in trust award to recognize the extra care given, sacrifices made, and losses incurred by Shane's loving parents.
- [138] In my opinion, the strongest point advanced in favour of David continuing as a committee now or in future is Shane's wish that he does so. Prudence cautions to be mindful Shane is part of a family; that they have played a significant positive role in his recovery, have sheltered and cared for him since his accident, love him, and he them. It is in Shane's best interests that family ties remain strong.
- [139] There is no question David did not execute his duties as committee satisfactorily. His counsel acknowledged that. Some of his shortcomings could be characterized as egregious, his failure to respond to the office of the PGT when they reached out and wanted information David was obligated to provide, among them. It should be clear from these reasons that the PGT was not being picky or unreasonable. The concerns raised are legitimate and the court shares them.
- [140] I intend to deal with the central question as deftly as possible; by which I mean ensuring that, going forward, Shane's estate is managed and preserved to his maximum benefit while also determining how, if at all, David can continue to play a role. Were it not for wishes Shane has clearly expressed that his father continue as committee; and for the fact the PGT's concerns can be largely addressed with appropriate orders that would see Shane's best interest assured, David Anand's appointment would be rescinded.

Conclusion

- [141] Therefore, considering all the information the court has, David Anand must complete the following steps before I can confirm him as committee. If he completes these steps and adheres to the other orders set out below, it will not be necessary to rescind his appointment as committee:

.1 The parties shall jointly retain an expert to calculate the nature and extent of Shane's percentage of equitable interest in the family home. The expert retained shall use commonly accepted methods and principles for calculating the value of an interest in real residential property. They shall take into account the following contributions and considerations:

- a. The principle amount Shane has contributed to the mortgage on the property.
- b. Contributions he made to property taxes.
- c. Contributions he made to utilities.
- d. The financial contributions made by Shane's parents shall be taken into account.
- e. \$40,000 is to be imputed to the wedding gift less any amounts David has already advanced.

- f. Shane's contribution shall be reduced by an amount approved by the PGT representative of a reasonable contribution to household expenses during the period he has been living in the family home.
- g. Such other contributions to which the parties agree as endorsed by the expert the parties jointly retained.
- h. The expert retained shall prepare a report which shall be filed with the court. The expert shall set out their qualifications and include a declaration of impartiality. The expert may call on a colleague to review the report and identify portions of the report that should be corrected.
- i. The parties may include additional instructions and conditions in the instruction letter to which they all consent.
- j. The parties shall work collaboratively to the extent reasonable in determining Shane's registrable interest in the property.
- k. If the parties take issue with the conclusion or methodology, they may retain an expert to critique the result.
- l. The parties may speak to the court for further direction or order on the issue if they wish to do so.
- m. If the parties cannot agree on the figures found by the expert, they may speak to the court for further direction.
- n. If the parties accept the amount determined by the assessor, Shane's percentage interest shall be registered on the title in accord with their determination.
- o. As the registration may entail a Property Transfer Tax, the parties shall obtain legal advice with respect to the appropriate amount before transferring a registrable interest.

1 Other orders and directions

.1 David Anand (the "Respondent"), must pass his outstanding accounts as committee of the estate of Shane Anand for the period of May 10, 2016 to September 8, 2017 before the Public Guardian and Trustee ("PGT") by no later than February 15, 2018.

.2 The Respondent must pass all subsequent accounts before the PGT every four (4) months until otherwise directed by the PGT, or further Order of this Honourable Court.

.3 If the Respondent fails to pass his accounts as directed by this Order, the appointment of the Respondent as committee of the estate of Shane Anand will be rescinded without further Order, and the PGT will be appointed as committee in his place, reserving only Shane Anand's right to seek rescission of the appointment of David Anand or of the Public Guardian and Trustee, or any subsequent appointee, as committee of his estate.

.4 David Anand shall retain an accredited bookkeeper to confirm the accounting and prepare reports for the PGT using commonly accepted bookkeeping practices.

.5 David Anand shall obtain a report from Shane's physician confirming whether he can travel unaccompanied to Fiji or Edmonton.

.6 Any contribution Shane makes to his parent's flight expenses must be approved in advance by the PGT.

.7 Shane's money may not be used to cover the travel expenses for other family members to and from Edmonton.

.8 Shane shall contribute a fair and reasonable monthly amount approved by the PGT for household expenses, including utilities, for so long as he lives in the family home with his parents. After Shane's interest in the property is registered against title, a share of property taxes and utilities proportionate to Shane's determined interest in the family home may be included in his monthly contribution, subject to approval by the PGT.

.9 If Shane's interest in the property is not registered by mid February 2018, David Anand and/or other interested party may seek an extension of this date. The parties may also extend the date by written consent. If Shane's interest in the property, as determined by the jointly retained expert, has not been registered against title by the end of February 2018, or such other altered date as the court may order or to which the parties have consented in writing, the appointment of the David Anand as committee of the estate of Shane Anand will be rescinded without further Order and the PGT will be appointed as committee in his place, reserving only Shane Anand's right to seek rescission of the appointment of David Anand or of the Public Guardian and Trustee, or any subsequent appointee, as committee of his estate.

[142] The PGT is entitled to costs at Scale "B". If the parties wish to speak further to costs, they shall contact the Supreme Court Hearing Scheduler in New Westminster or Chilliwack.

"N. Brown J."

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