

CANADA / JUDGMENT

Cameron (Re)

2024 BCSC 454

COURT

Supreme Court of British Columbia

DECIDED

19 March 2024

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2024 BCSC 454 Cameron (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cameron (Re),

2024 BCSC 454

Date: 20240319

Docket: S189228

Registry: Vancouver

In the Matter of the Patient Lillian Cameron

and the Matter of the

Patients Property Act, R.S.B.C. 1996, c. 349

and Amendments Thereto

Before: Associate Judge Robertson

Sitting as Registrar

Reasons for Judgment

Appearing on her own behalf:

L. Cameron

Committee

Appearing on her own behalf:

A. Primerano,

Interested Party

Counsel for the Public Guardian and Trustee

K. Unrau

Place and Dates of Hearing:

Vancouver, B.C.

September 1, November 15,

and December 14, 2023

Place and Date of Judgment:

Vancouver, B.C.

March 19, 2024

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Issues for Determination

- [1] By order pronounced June 17, 2022 (the "Appointment Order") the applicant, Leigh-Anne Cameron ("Ms. Cameron"), was appointed committee over the person and estate (the "Estate") of Margaret Lillian Cameron (the "Patient"), under the Patients Property Act, R.S.B.C. 1996, c. 349 (the "PPA").
- [2] This application was brought to pass the accounts in respect of the year since that appointment, that being the period July 2022 to June 2023 (the "2023 Accounts").
- [3] Ms. Cameron's sister, Alison Primerano ("Ms. Primerano"), and the Public Guardian & Trustee (the "PG&T") both appeared and have made submissions as to the 2023 Accounts. In particular, in addition to a general concern as to the amounts incurred on behalf of the Patient and the Estate generally, the primary issues that have been raised are:
 - a) Whether specific expenses claimed by Ms. Cameron are proper expenses to be charged as against the Estate;
 - b) Whether the current limit (\$17,000 per month) by which capital from the Estate can be used for the Patient's expenses as set by the Appointment Order (the "Budget") ought to be increased to \$21,600 per month on a go forward basis; and
 - c) Whether there ought to be an establishment of an "emergency" fund (the "Emergency Fund") by which Ms. Cameron can withdraw amounts from the Estate without prior consent.

- [4] While I use the term "Budget" to describe the second issue, I do so only because the parties referred to it in that manner. However, the limit as set by the Appointment Order was not intended to be a specific allowable, or budgeted, amount, as the term "budget" would otherwise imply. Rather, it is an amount that has been set as a ceiling to the expenditures that can be made and drawn against the Estate without consent. One of the concerns raised is that Ms. Cameron does see the Budget as a blank cheque of sorts, or a pre-determined amount that she is entitled to spend for anything related to the Patient, or that it is pre-determined that \$17,000 per month is reasonable.
- [5] I agree with Ms. Primerano and the PG&T that this is not what is intended by that term. Rather, the Budget was put in place as a matter of logistics, including to limit the need for the PG&T's involvement, by enabling the committee to make draws on the Estate's capital up to that ceiling before further consent would be needed, balancing the Patient's care needs and need to maintain the Estate for the Patient's lifetime with the costs of administering the Estate.

Background

- [6] The Patient was born on July 7, 1935, making her currently 88 years old. In the fall of 2015 she was diagnosed with posterior cortical atrophy, which is a form of slow progressing dementia. In addition to her cognitive decline, her condition severely affects her vision and has left her effectively blind.
- [7] In April 2016, the Patient executed an enhanced representation agreement which appointed both Ms. Cameron and Ms. Primerano as her representatives. While initially Ms. Cameron and Ms. Primerano seemed to be aligned, various issues, including financial concerns and a relocation of the Patient to Mexico where Ms. Cameron lives, became the cause of much dispute, distrust and acrimony between the two sisters.
- [8] Accordingly, Ms. Primerano filed a petition on August 23, 2018 seeking an order that the Patient be declared incapable of managing her affairs and that Ms. Primerano be appointed as sole committee under the PPA. That was opposed by Ms. Cameron who took the position that the Patient was not incapable of managing her own affairs and, in the alternative, that if such a declaration was made it ought to be her that should be appointed as committee.
- [9] By order pronounced February 10, 2020, the reasons for which are indexed at 2020 BCSC 157, the Patient was declared incapable of managing her affairs. However, the issue as to the appropriate committee was found to be a triable issue, with that determination being converted to an action. On an interim basis, the PG&T was appointed as committee pending further court order, with the special costs of both parties to that date (April 16, 2020) being borne by the Estate.

- [10] As a result of the PG&T's role as committee from April 2020 until June 2022, the PG&T had first hand knowledge of the care needs and financial cost of same at the time the Appointment Order was made.
- [11] The hearing for the Appointment Order was done as a hybrid trial. The parties appear to have come to some agreement after three days of hearing with the Appointment Order then being presented to the court, although not as a consent order given that the court is obligated to, and did, exercise its independent duty under the PPA to ensure that the appointment and the terms by which it was made were appropriate.
- [12] Although there is some dispute as to the level of agreement, based on the terms of the Appointment Order Ms. Cameron and Ms. Primerano, and presumably the PG&T, took no further position and the hearing was concluded without opposition.
- [13] As is relevant to the passing of the 2023 Accounts and request to increase the Budget, the Appointment Order contains the following terms in respect of Ms. Cameron's appointment over the Estate:
3. Leigh-Anne is hereby appointed Committee of the estate of Margaret Lilian Cameron, from the date of this order, on the following conditions:
 - (h) subject to subparagraph 3(i), the Committee shall have no access to the capital of the Patient's Funds other than for reinvestment purposes without either prior written approval of the PGT or a court order;
 - (i) for the purposes of subparagraph 3(h), and subject to further court order, the Committee shall have the following access to capital of the Patient's Funds:
 - (i) access up to the maximum amount of \$51,000 for every three months, for a total maximum of \$204,000 for each year, which amount Leigh-Anne acknowledges already includes compensation for acting as Committee for the purposes of s. 14 of the Patients Property Act;
 - (j) for greater certainty, the PGT may approve access to capital over and above the quantum set out at subparagraph 3(i)(i);
 - (I) on an annual basis and within 90 days of the anniversary of the date of this Order, and on notice to the PGT and to Alison Primerano, the Committee shall pass accounts before the Registrar of this Court; and
 - (m) at the annual passing of accounts, the Registrar may vary the quantum of annual access to capital of the Patient's Funds set out at subparagraph 3(i)(i)
- [14] I am advised that Ms. Cameron filed an appeal of the Appointment Order, which may have been filed out of time, or at the last possible moment. In any event, rather than pursue that appeal, she opted to bring an application to vary the restrictions and conditions that were included in the Appointment Order, including to specifically seek an increase in the Budget under para.s 3(i)(i), as well as to establish the Emergency Fund.

- [15] By Order pronounced January 10, 2023, that application was dismissed as the court was not satisfied that there had been a material change in circumstances to warrant the variation sought. In the reasons for judgment, index at 2023 BCSC 1849, the court noted as follows:
- [12] One important reason for dismissing the application is that, given the material before me, I am not satisfied that the applicant's argument that there have been changes justifying a variance to the order are, in fact, material changes. She refers to circumstances that were either known or ought to have been known to her at the time.
- [13] Also, I am particularly concerned by the affidavit from the Public Guardian and Trustee that shows a history of the applicant's having difficulties meeting budgets that were preset.
- [14] Of particular concern is a statement in that affidavit that suggested that the applicant had continually and persistently sought increases to the budget. When you are appointed a committee of someone, it is your responsibility to look after that person, put their best interests first, and to do so within the means that are available, whether through their estate or you. If the applicant has expenses and continues to have expenses that exceed the budget that she agreed to last year, then she needs to change her living circumstances, failing which, she has to justify with better evidence why a change to the budget is needed.
- [15] The concern in these kinds of cases is the expenditure of money from an estate for a person needing care and the need for careful oversight. The parties came to a comprehensive agreement reflected in the order. As the Public Guardian and Trustee stated, the order was a compromise of the differing positions. In other words, presumably one daughter was concerned by the expenses and wanted the budget to be less while the other daughter perhaps wanted the budget to be higher. I do not know that for a fact, but it is likely that is what happened. In any event, they came to an agreement of what the budget should be. They were represented by counsel.
- [16] Importantly, the court specifically enquired whether that rate of spending and drawing of the capital would last the lifetime of the patient. Justice Caldwell very specifically raised that concern. Both counsel must have assured the judge the agreement took that concern into account because no changes were made to the budget after that enquiry.
- [17] In those circumstances, I am not satisfied that there is evidence in front of me establishing a material change to justify a variance of the order. To be clear, that is because the issue of whether the committee can meet the monthly budget was an issue raised before.
- [18] However, I also point out that the order itself has mechanisms within it if there are legitimate expenses that go beyond the budget. Those mechanism should be pursued before one would contemplate applying to change the order.

- [16] Currently, the Patient continues to live in a stand-alone casita on Ms. Cameron's property in Mexico. The property has two structures on it, a main house with bedroom, and two detached bedrooms which Ms. Cameron indicates are now largely used for storage, and the casita. Ms. Cameron testified that the main house was not suitable living accommodations for the Patient given hazards related to the stairs and sliding doors, however, it is used by the Patient when she is accompanied by a caregiver or Ms. Cameron.
- [17] The casita, which had been the original house on the property, has been converted into a two-bedroom, two-bathroom residence with walk in tub and shower, full kitchen, and dining and living room. The caregivers are able to make use of one of the bedrooms to ensure caregiver support on a 24/7 basis.
- [18] Ms. Cameron has incurred costs and retained the services of various care givers with respect to the Patient's care. It is these expenses that make up the majority of the 2023 Accounts.
- [19] For the purpose of conducting the review of the 2023 Accounts, I need not and will not address the numerous disputes between Ms. Cameron and Ms. Primerano, despite that significant time was spent during this hearing on such matters. The majority of those disputes relate to the management or financial dealings including with respect to the family company, Byam Properties Ltd. ("BPL") which are corporate matters or subject to resolution by a "Decider" who was also appointed under the Appointment Order to address those issues, or past grievances relating to the committee'ship itself including the Patient's residency in Mexico, which have been previously dealt with by this court.
- [20] For the purpose of the passing of the 2023 Accounts, only the issues relating to the care of the Patient and the management and use of the Estate are relevant and will be addressed herein.

Financial Circumstances and Overview of Expenses Claimed

Assets and Income

- [21] The Patient earns income both from her pension (the "Pension Income") and interest on investments including that generated from BPL as follows:

Investment Accounts, including GICs, RRIF, RRSPs and Cash

\$479,427

Value of BPL Investments

\$1,130,091

Total

\$1,609,518

- [22] The Pension Income is available for the care of the Patient, over and above the Budget, or amounts that the committee is entitled to draw from the Estate's capital, that being primarily the value in BPL, without consent.
- [23] For the months July 2022 to December 2022, pension income was \$1,132.95 per month. From January 2023 to June 2023, that amount was \$1,206.59, for a total of \$14,709.08 for that year period.
- [24] No statements of account for the investments were included in the materials before the court. Neither Ms. Primerano or the PG&T took any particular issue with the amounts claimed to be within the Patient's or BPL's investment accounts as noted above.

Sufficiency of Estate

- [25] While the exact calculation or basis for the assumptions being made by Ms. Cameron as to the sufficiency of the Estate is not entirely clear she submits that, based on a 5% return on the investments for 3 years and continued increase in pension amounts at 8% per year for 6 years, the Estate will last a further seven and one-half years, even with an increased budget of \$259,200 per year, or \$21,600 per month as is being sought.
- [26] Ms. Cameron's evidence is that, at an average of 5% for three years, the income on the BPL investments is assumed to be \$229,303 per year. Unfortunately, as the court was not taken to any specific statements of account to show the investments' income, that income analysis cannot be tested in any way.
- [27] Based on my calculations, 5% of \$1,130,091 (that being the value of the BPL Investments) is \$56,504.55. 5% of \$1,609,518 (that being the value of the BPL Investments plus the other personal investments) is \$80,475.90. Ms. Cameron acknowledges, however, that the non-BPL Investments have only been earning interest at 2%, and that she hopes to move them into an account that will have a higher yield.
- [28] Based on my calculations, at the current \$17,000 Budget, or with an annual draw of \$204,000, a 5% rate of return does not cover the draw required to maintain the Patient, even if all investments were earning an average of 5% which does not appear to be the case. It is not clear how Ms. Cameron has arrived at the estimate of investment earnings of \$229,303 per year.
- [29] If the annual expenses for the Patient are regularly in the same amount as being presented today, namely \$378,088.81 (even before taking into account the claimed compensation and reimbursement of travel costs) the Estate's capital would be encroached upon by approximately \$300,000 per year, that being approximately 18.5% per year, meaning, the Estate will be depleted in less than 5 and a half years.

- [30] Ms. Cameron has not satisfied me on the evidence that the Patient's investments can reasonably be presumed to earn \$229,303 per year, which is an effective annual rate of return of over 14% on all investments, that being the basis on which she assumes that the capital will last at least 7 years, albeit with an acknowledgment in her written submissions that the assets could last only 5 years.
- [31] The PG&T has expressed concern that the value of the Estate is not sufficient to maintain the Patient for her lifetime, if the expense incurred remain at the level presented by Ms. Cameron, but did not provide any income analysis themselves.
- [32] Similarly, Ms. Primerano provided no calculations on this point, but did express concerns similar to the PG&T's office that the Estate may not be sufficient to last the Patient's lifetime if the increase sought is granted. In this regard, the court was not taken to any specific medical evidence as to the Patient's life expectancy.
- [33] I share the concerns of Ms. Primerano and the PG&T that the Estate will not be sufficient to last the Patient's lifetime. In this respect, I echo the previous comments of this court as noted above, that as committee, Ms. Cameron has a responsibility to look after the Patient within the means available and, if it appears the Estate cannot support the expenses being incurred, then some financial circumstances may have to change.
- [34] The sufficiency of the Estate is a significant factor to the assessment of the 2023 Accounts.

Regularly Occurring Expenses

- [35] As noted, the Budget currently allows for the capital to be drawn upon in the amount of \$17,000 per month without prior approval, meaning that Ms. Cameron currently has access to the total of \$18,206.59 per month, once the Pension Income is added, for the care of the Patient and Ms. Cameron's compensation.
- [36] As noted, she seeks an increased to the Budget of \$21,600 per month, which would amount to, with the current Pension Income, available funds of \$22,806.59.
- [37] Based on the 2023 Accounts as presented, the Patient's monthly expenses, including extraordinary expenses, as claimed by Ms. Cameron have averaged \$22,429.46 (not including claimed items that are in the nature of compensation, which I have removed from her calculations). As such, the current regularly occurring expenses exceed the current Budget and Pension Income by, on average, \$4,222.87 per month.
- [38] The ongoing, or regular, expenses that make up the 2023 Accounts based on the annual amounts claimed and averaged monthly in respect of those items incurred on that basis, are as follows:

Regularly Occurring Monthly Expenses

Monthly (Averaged)

Annual (Total)

Streaming and Entertainment Services (Amazon Prime, Audible US, Netflix, Sirius, Google Music, Brit Box, Amazon Prime US, Express Vu)

\$98.85

\$1,186.20

*

Computer Services (Adobe, Skype, Fax, Drop Box, Shaw Satellite)

\$101.07

\$1,212.84

*

Caregiving (excluding amounts initially claimed as being charged by Ms. Cameron's company, High Impact)

\$10,337.46

\$124,049.55

Out of Pocket Medical Expenses

\$919.68

\$11,036.19

*

Utilities (Electricity, Water, Internet, Property Management Fee, Garden/Maintenance, Fumigation, Propane, Cleaning Services, charged to Estate at 50% of actual cost)

\$595.83

\$7,150.00

Rent Charged to Patient

\$3,780.00

\$45,360.00

Banking and Admin Charges (ATM Fees, monthly Account Fees, Postage, Office Supplies, etc.)

\$225.09

\$2,701.11

Cell Phone

\$36.60

\$439.16

*

Vehicle Expenses

\$372.95

\$4,475.39

Living Expenses (food, groceries, supplies, some cleaning, personal care needs and purchases, various credit card and amazon purchases including an alarm, and visual aids, etc. And one month where dog expenses are claimed)

\$1,672.34

\$20,068.02

Storage Locker

\$159.93

\$1,919.16

*

House repair and maintenance (includes repairs / replacement of Cistern/sump pump, electrical items, sink repair, water system, painting a bathroom, a specialized chair, installing hurricane shutters, furniture repairs, home depot costs, window screens, piping for propane system, a new generator system)

\$455.27

\$5,463.23

Sub-Total

\$18,755.07

\$225,060.85

Recurring Annual Expenses

December Aguinaldo

\$6,631.77

Accounting and Tax Planning

\$1,965.87

*

Accounting - Tax Return

\$324.38

*

Income Taxes payable for 2022

\$35,170.69

*

Sub-Total

\$3,674.39

\$44,092.71

TOTAL

\$22,429.46

\$269,153.56

* expenses that are not in issue/opposed

Extraordinary Expenses

[39] In addition to the ongoing care and maintenance expenses, Ms. Cameron claims reimbursement from the Estate for extraordinary expenses, those being:

Extraordinary Expenses during the review period

Caregiving Coverage for May

\$780.00

Administrative fees - Computer London Drugs

\$1,624.54

Community Postages

\$71.68

*

Certified court orders copies

\$285.48

*

Storage locker

\$363.21

*

Income Taxes for 2021

\$22,394.06

*

Automatic Generator

\$13,937.40

Hurricane Shutters

\$3,500.00

Balance of Hurricane Shutters payment

\$415.94

Legal costs incurred to vary order after trial

\$59,850.14

\$48,904.26

Portable scanner

\$256.71

Scanner for receipts

\$644.54

Sub-Total

\$153,027.96

* expenses that are not in issue/opposed

Compensation

[40] Ms. Cameron also claims for various items that are in the nature of compensation, which she has characterized as a supervisory fee of, initially, \$1,635 per month and then revised to \$1,575 per month.

[41] In addition, although claimed as an expense (which I have removed from that category for the purpose of summarizing the expense above) Ms. Cameron has also included the amount of \$11,182.50 for caregiving charged through her company "High Impact".

[42] All of these expenses are objected to by Ms. Primerano who describes them as another "example of [Ms. Cameron] profiting from their mother's illness".

[43] Ms. Cameron also claims reimbursement of her costs for travel of \$6,815.10, which she argues have been required in order to attend at court on the various hearing dates, given that remote attendance, although possible, has been difficult given access and connectivity issues. Ms. Primerano argues that the travel is not reasonable or necessary or, alternatively, has been excessive.

Legal Framework

[44] The relevant provisions of the PPA which provide the framework for the passing of accounts are summarized as follows:

- a) Pursuant to s. 13 the court may make an order requiring the committee to pass accounts, and the time frame for doing so, which in this case was done in the Administration Order's requirement for an annual passing of accounts;
- b) Pursuant to s. 14, a committee is entitled to reasonable compensation from the estate of a person, which must be fixed at the time of the passing of the accounts. However, under s. 14(3) if that the estate is so limited in value that the payment would create poverty or hardship, no compensation need be claimed or paid;
- c) Pursuant to s. 16, the committee has the same rights, privileges and powers with respect to the patient as the patient has. However, s. 18 requires that the committee exercise such powers having regard to the nature and value of the property and the circumstances and needs of the patient;
- d) Pursuant to s. 23, the committee must pay out of the estate of the patient the amounts "necessary to defray all just and reasonable charges for the maintenance, care and treatment of the patient";
- e) Pursuant to s. 27 the costs of all proceedings under the PPA are in the discretion of the court; and
- f) Pursuant to s. 28 if there is insufficient provisions in the PPA the court may make any order that the court considers necessary on application by any person for, or in the interests of, the proper, honest, and prudent management of the estate of the patient, provided that is not contrary to the provisions of the PPA.

[45] The parties did not take the court to any particular authority as to the factors that the court is to consider when passing accounts under the PPA. However, general principles for the passing of accounts for parties in a similar role to that as a committee, such as a trustee, monitor, receiver, or attorney under a power of attorney, do provide guidance.

[46] For example, In *Bennett on Receiverships*, 2nd ed. (Scarborough: Carswell, 1999) at 443 et seq, the author comments on the purpose of passing accounts, specifically as to receivers, at pages 459 to 460:

One of the purposes of the passing of accounts is to afford the receiver judicial protection in carrying out its powers and duties, and to satisfy the court that the fees and disbursements were fair and reasonable. Another purpose is to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities and conduct to date. On the passing of accounts, the court has the inherent jurisdiction to review and approve or disapprove of the receiver's present and past activities even though the order appointing the receiver is silent as to the court's authority. The approval given is to the extent that the reports accurately summarize the material activities. However, where the receiver has already obtained court approval to do something, the court will not inquire into that transaction upon a passing of accounts. The court will inquire into complaints about the calculations in the accounts and whether the receiver proceeded without specific authority or exceeded the authority set out in the order. The court may, in addition, consider complaints concerning the alleged negligence of the receiver and challenges to the receiver's compensation. The passing of accounts allows for a detailed analysis of the accounts, the manner and the circumstances in which they were incurred, and the time that the receiver took to perform its duties. If there are any triable issues, the court can direct a trial of the issues with directions.

[Emphasis added.]

[47] The same principles apply to a committees' passing of accounts, but with the obligations and authority for the actions undertaken being set out in the PPA as well as the order under which the committee has been appointed.

[48] Thus, by a committee passing its accounts, both the parties and the court are given an opportunity to review and conduct an analysis of not only the financial transactions, but the activities of the committee in calling upon or otherwise dealing with the patient's assets for the purpose intended. In other words, if an expense is reasonably incurred, the committee's decision to incur that expense, or the activity undertaken in that respect, is implicitly approved as well.

[49] To that end, in performing its obligations the standard a committee must meet is one of an ordinary person exercising ordinary prudence standing in the shoes of the patient (see for example *Genoa Bay Lumber Co. v. Genoa Bay Marina Ltd.*, 2001 BCSC 1325, at paras. 33 to 37, in respect of the standard of care of a receiver). I would add that, in the case of a committee, they must demonstrate both honesty and good faith in performing their duties for the purposes of their appointment, namely the maintenance, care and treatment of the patient.

- [50] In this respect, the court retains jurisdiction to direct the committee, and the committee remains accountable to the court which made the appointment (see for example, also in the case of a court appointed receiver, *Lang Michener v. American Bullion*, 2005 BCSC 684, at paras. 19 and 20)
- [51] To approve the accounts, the court must be satisfied that the expenses incurred, and financial transactions undertaken, are objectively reasonable having regard to nature and value of the patient's property, as the overall objective of the PPA is to ensure that the patient's estate will provide a reasonable level of care to the patient as much of the patient's lifetime as possible.
- [52] A non-exhaustive list of factors that ought to be considered when approving accounts under the PPA, including the draws on capital and any compensation sought to be paid, is as follows:
- a) The nature of the financial transactions, if any, that have been entered into on behalf of the patient, and whether the purpose for such transactions is in keeping with the overall objective of the committee'ship;
 - b) The income earned on the patient's assets, if any, and whether any such income was earned through the direct actions of the committee;
 - c) The work undertaken by the committee in fulfilling its duties;
 - d) Whether the expenses that have been incurred and paid on behalf of the patient were just and reasonable for the maintenance, care and treatment of the patient, which may require evidence as to the medical condition, treatment and needs of the patient;
 - e) The beginning and ending status of the patient's assets and liabilities for the relevant time period including as to the ability of the estate's assets to maintain the patient for their lifetime if possible; and
 - f) Whether there are any known factors that could reasonably affect matters going forward, such as an anticipated deterioration of health leading to increased care costs, or a possible increase or depreciation to the value of the capital of the estate.
- [53] In a passing of accounts, the party seeking to have their accounts passed must put before the court sufficient evidence to address these considerations.
- [54] While there is no required court form, in order to review the accounts of a committee appointed over both a patient and their estate, the evidence before the court should include the following, as is relevant to the subject committee'ship:
- a) A statement of assets with particulars of each of the estate's assets and its value as of the beginning and end of the review period;

- b) A statement of liabilities with particulars of each of the estate's liabilities, if any, and their value as of the beginning and end of the review period;
 - c) Particulars of any transactions that have increased or decreased the estate's capital during the review period, with evidence as to actions taken by the committee, if any, that have caused that increase or decrease;
 - d) Particulars as to any assumptions being made as to future growth or loss to the capital;
 - e) Particulars of any income that has been earned, in addition to that which is particularized in the capital transactions, during the review period with evidence as to the actions taken by the committee, if any, that have caused that income to be earned;
 - f) A detailed statement of the expenses claimed to be recoverable from the estate as being properly or necessarily incurred for the care and maintenance of the patient; and
 - g) The basis for, and calculation of, any compensation being paid with a description of the work that was undertaken both in respect of the capital and income noted above, and in caring for the patient.
- [55] All available source documents to support the values, balances, and amounts claimed as an expense or as compensation that is disputed must also be put into evidence, with all source documents being made available for review by any party with an interest in the patient or the estate.

Analysis

- [56] Ms. Cameron is self represented. Ms. Primerano was self represented for the hearing itself, although has had counsel during these proceedings, including during the pre-hearing conferences.
- [57] Both parties acknowledge that there were likely failings by each of them in their presentation of evidence; however, each expressed significant concern as to the length of time this assessment took, requesting that the court assess these accounts as best as could be done with the evidence before it, and to any extent possible, provide guidance as to how the accounts may be passed in a more efficient manner going forward.
- [58] The evidence before the court was both in affidavit evidence, as well as viva voce evidence by both Ms. Cameron and Ms. Primerano. In addition, further to a request made by myself as the hearing progressed, Ms. Cameron provided a list of the expenses incurred and claimed as Estate expenses in an excel spreadsheet in electronic format, similar to that which is imbedded in these reasons. The spreadsheet identified each expense on both a monthly and cumulative basis, and by categories. Ms. Primerano then annotated that summary to identify the items in dispute and basis for the dispute, with the final electronic version with those annotations being provided to the court. Such an aid is commonly referred to as a "Scott Schedule". In this case, the Scott Schedule was of great assistance in

conducting this review and I thank the parties for providing it.

- [59] I will address the 2023 Accounts in the manner presented, by category, based on the objections noted in the Scott Schedule. However, having regard to the above factors for consideration I make the following comments that apply to the 2023 Accounts generally:
- a) The nature of the financial transactions entered into on behalf of the Patient: Ms. Cameron has not entered into any specific agreements or transactions relating to the Estate's capital assets, which are in the nature of investment accounts for BPL, and the Pension Income.
 - b) The income earned on the Patient's assets: The Patient's income is earned by virtue of the nature of her assets, that being investment accounts, without any specific direct action of Ms. Cameron. Although, I note that Ms. Cameron has indicated that she is unhappy with the return on the personal investments and may move those, which confirms that she is doing some monitoring the accounts and making some decisions in respect of the investments.
 - c) The work undertaken by the Ms. Cameron in fulfilling her duties as committee: Ms. Cameron has sworn evidence that she performs various functions in her roll of committee, including providing caregiving when professional caregivers are unavailable, handling the various financial transactions of the Patient, which are primarily paying of bills, monitoring her medical care, shopping for her, and generally maintaining the Patient's standard of living at a reasonable level. While there has not been a specific time record of the time spent on these activities, the evidence does support that some time and effort has been spent by Ms. Cameron in seeing to the daily living and medical affairs of the Patient, generally on a daily basis.
 - d) Whether the expenses that have been incurred and paid on behalf of the Patient were just and reasonable for the maintenance, care and treatment of the Patient: For the most part this is established on the evidence. While I share some of the concerns raised by Ms. Primerano and the PG&T as to the overall monthly amount being spent on the care and maintenance of the Patient, there is no obvious expense that is, in and of itself, excessive in respect of the reoccurring expenses. The issue as to the "creep" of what may be reasonable and relatively nominal expenses individually becoming unreasonable when added to all the others, is a difficult one to reconcile on an accounting such as this. It is not the role of the court to micromanage the Patient's care and, for example, say that having a Netflix subscription is a reasonable charge, but Britbox is not. Rather, the court is to take a more wholistic approach to determine if, having regard to the other factors including the value of the Estate, the total cost for, using this example, entertainment is excessive.
 - e) The beginning and ending status of the Patient's assets and liabilities for the relevant time period including as to the ability of the estate's assets to maintain the Patient for their lifetime if possible: There is no dispute that the capital value of the Estate is required to be drawn upon to support the Patient as insufficient income is generated to cover the care costs, even if the expenses in dispute were disallowed. However, no specific statements of account have been tendered. There is evidence that the assets were previously valued at

\$1,866,941, such that they are clearly depreciating. This is a significant factor for consideration in this hearing as previously noted.

- f) Whether there are any known factors that could reasonably affect matters going forward, such as an anticipated deterioration of health leading to increased care costs, or a possible increase or depreciation to the value of the capital of the estate: No such factors were raised on this review. No medical records or opinions were tendered as to the Patient's health.
- [60] Having regard to these considerations, I will review the items claimed in the 2023 Accounts accordingly.

Regularly Occurring Expenses

- [61] While Ms. Primerano has an overall concern as to the expenses that have been incurred and charged to the Estate as being reasonable, rather than dispute items one by one which would largely be unworkable, she has raised specific issues that are troubling to her, concerns for which are generally shared by the PG&T, which I will address in turn.

Caregiving

- [62] Any recovery by Ms. Cameron's company, High Impact, is opposed. I have reclassified this as compensation, and will address it accordingly under that heading. Thus, it is not included in the summary of claimed regular and ongoing expenses.
- [63] As to the arm's length caregivers, the Patient has two senior caregivers that have been working for her for four and five years respectively. Both speak English. Given their experience, Ms. Cameron argues that they are sought after and, as such, she must pay competitive salaries to them to ensure that they stay.
- [64] Ms. Cameron's evidence is that as a result of the influx of expats moving to Mexico, there is a demand for caregiver services. While I give nominal weight to what is essentially unqualified opinion evidence in that respect, I accept that having turnover in the caregiver staff is a reasonable concern as the Patient's mental health and stress from her dementia are likely worsened by any lack of consistency.
- [65] Ms. Cameron argues, and has provided information from East Cape Home Health services, a company that provides care services in the same area of Mexico that the Patient resides in, that care costs have increased by as much as 40% over the past two years.
- [66] Ms. Cameron has also tendered into evidence fee sheets of local care facilities to her affidavit, to suggest that similar care in a senior's facility, i.e. costs for care, accommodation and all living costs, in British Columbia would be \$40,819.17 per month. I give little weight to this evidence as it is not possible to adequately compare it to the expenses being incurred in Mexico. I would also require evidence of a number of facilities, with better particulars as to what is included in order to consider whether it is an appropriate comparison.

- [67] In any event, overall, other than the amounts included by Ms. Cameron as being charged by her business, based upon the sworn affidavit and viva voce evidence of Ms. Cameron, I am satisfied as to the caregiver costs as being objectively reasonable, having regard to the contracts entered into, the hourly rates they charge, and services being performed as necessary having regard to the medical condition of the Patient. I allow these costs at \$124,049.55.
- [68] I note, however, the concerns raised by Ms. Primerano as to the contracts that were put into evidence having expiry dates which have passed. The evidence of Ms. Cameron is that the contracts were renewed orally. I would recommend that, in the future, Ms. Cameron ensure that all contract renewals are reduced to writing.

Utilities

- [69] Charges for property management, gardening, fumigation and cleaning (which is also charged by and a service performed by the caregivers) are opposed entirely as being items that ought to be included in the rent that is charged by Ms. Cameron.
- [70] In addition, the allocation of the other utility costs (electricity, water, internet, propane) has been claimed on a 50/50 basis given, Ms. Cameron argues, they are costs incurred for the entirety of the property. Ms. Primerano opposes this allocation arguing that if any such amounts are to be recovered for these items from the Estate it should only be 30% of the actual costs given the size of the property and that the Patient is primarily occupying the smaller casita. In reply, Ms. Cameron argues that the costs should be evenly split given that the Patient makes use of the main home in addition to the casita.
- [71] I agree with Ms. Primerano, that the charges for property management, gardening, fumigation and cleaning are amounts that are overhead in the maintaining of the home, regardless of the Patient living there, and matters that ought to be included in rent, which I will address further below. As such, I reduce this expense by \$2,503.88 in respect of those items.
- [72] I also agree that a reasonable division of the utilities which are payable over and above the rent, namely the electricity, water, internet and propane, are properly allocated to the Patient at one-third of the costs incurred. In this respect, not only are these costs shared by Ms. Cameron and the Patient, but by Ms. Cameron's business. Absent production of her tax returns to show the precise amount being claimed by her as a business expense for the running of her business out of her home in Mexico, a 33% allocation to the Patient is an objectively reasonable one.
- [73] Accordingly, I allow these utilities at \$3,097.42.

Rent

- [74] When the PG&T was initially acting as committee, rent for the Patient was charged by the committee at \$2,500 per month. It has, for this period, been increased to \$3,780 per month. Ms. Primerano disputes that increase and takes the position that it should remain at \$2,500 per month.
- [75] Ms. Cameron argues that the increased rental amount represents inflation, the increase in cost of living generally, and that it still represents a loss to her compared to income she could earn if she was renting out the casita on Air BNB, or using it in a similar income generating manner. Ms. Cameron's evidence as to rent is that she previously rented out the casita for \$1,999 USD per week.
- [76] In terms of the market rent for the casita, Ms. Cameron's evidence was that the amount of \$3,780 CDN (or \$2,800 USD) as she wishes to charge the Estate is based on what she believes market rent would be on a monthly basis for properties in Mexico, relying on a review provided by LB Property Management and attached as an exhibit to her affidavit. Ms. Cameron also exhibited printouts from Rentals.ca noting that rent for similar properties in Vancouver range from \$4,000 to \$4,600 per month.
- [77] The consideration is not what Ms. Cameron could earn if she was using the property for another purpose unrelated to the committee'ship, such as an income earning Air BNB enterprise. Rather, to be approved, the rent must be objectively reasonable based on the means and needs of the Patient.
- [78] If Ms. Cameron wished to earn income from her property in that manner, whether based on Air BNB rentals or market rent for a long-term tenant, then alternative accommodations could be found for the Patient that are consistent with her needs and means. However, it is notable that one of the matters that Ms. Cameron argued raised a triable issue when the petition was originally filed was where the Patient ought to live, with Ms. Cameron's argument being that it was in the best interests of the Patient, and in accordance with her wishes, to live with her in Mexico, as living in an assisted living facility would result in deterioration of the mental state of the Patient and be more expensive. Having made that argument, it is inconsistent to now argue that the amount that ought to be paid by the Estate for such accommodations should be an amount, when added to all the other costs, is equal to or exceeds assisted living costs.
- [79] One of the other obvious concerns with the amounts being charged to the Estate for the care and maintenance of the Patient is that there is inconsistency as to the status for which such expenses ought to be paid. If rent is paid, then the Patient's expense with respect to housing is what is reasonable for a tenant to pay in the Patient's financial circumstances. If, however, she is a co-owner such that expenses for holding costs and repairs to the home were payable (which is addressed further below) then she would not also be paying rent, and may be dependent on a finding that she has beneficial interest in the property. Charging both is duplicative.

- [80] However, it is appropriate to allow for a reasonable increase in rent to account for inflation. Although not necessarily determinative, or binding on Ms. Cameron as a landlord in Mexico, the 2024 rent increase allowed under the Residential Tenancy Act, S.B.C. 2002 c. 78 is 3.5%. Ms. Cameron led evidence by way of internet printouts that the inflation rate in Mexico in 2023 was 5%, which is aligned with the increase available under local tenancy legislation. I accept that an increase consistent with the 2023 inflation rate in Mexico is an appropriate indicator of rental increase for the purpose of the 2023 Accounts only, and increase the rental cost by 5%, to \$2,625.

Banking and Admin Charges

- [81] Ms. Primerano argues that there is no basis on which a separate mailbox is needed for the Patient. This cost is \$139.29 per year.
- [82] I agree that a separate mailbox is not required.
- [83] Ms. Primerano also argues that the office expenses incurred are not required expenses in caring for the Patient or the Estate and may, although purely speculative, be claimed as a business expense by Ms. Cameron as well.
- [84] As to the other expenses, which include ATM Charges, cheque charges, mail, and interest on a credit card, I am, for the most part, satisfied with Ms. Cameron's evidence as to these costs. For example, a great deal of evidence was led regarding the ATM Charges, with questions as to why so many ATM withdrawals were made incurring a transaction charge each time. I am satisfied with Ms. Cameron's evidence that the Mexican economy involves a number of cash transactions, and that there are limits to the amounts to be withdrawn at ATMs, such that these transactions are reasonable.
- [85] Similarly, monthly banking and interest fees are reasonably incurred. I did have some concern with the need for the Patient to have a credit card and incur interest on purchases in that regard, however I am satisfied with Ms. Cameron's evidence that the use of a credit card for any medical emergencies is prudent and that Ms. Cameron should not be required to use her own credit card for purchases that cannot be done through cash or other means. This was an issue raised with the PG&T shortly after the Appointment Order was made and the PG&T had cancelled the card, but then agreed to it being re-activated due to the concerns raised.
- [86] With respect to items purchased at Staples and London Drugs for general supplies including stationary and office items, as the volume of materials filed for this hearing show, there is a great deal of record keeping, copying of receipts, and delivery of same, including through scanning, and then copying for the purpose of attaching materials to affidavits. Such expenses are not only reasonable, but they are necessary in order to pass the accounts. If Ms. Primerano wishes to dispute accounts, then it is to be expected that such costs will then have to be incurred as each such expense must then be put into evidence.

[87] I allow these costs at \$2,561.82.

Vehicle Expenses

[88] Ms. Primerano disputes all of the expenses being charged against the Estate for vehicle expenses as being unreasonable and unnecessary, arguing that Ms. Cameron used capital from the Estate to purchase a new vehicle, and is continuing to charge for upkeep on the older one that she says is used for the Patient, taking the position that either there should be no costs for upkeep, or a reimbursement to the Estate of the repair costs to the previous vehicle. As to gas, unless the receipts are noted and identified as being related to an appointment or activity of the patient, she argues that they should not be recoverable.

[89] Ms. Cameron's evidence was that the vehicle is necessary to transport the Patient to medical appointments and other scheduled events, specifically those that the caregivers may take her to.

[90] I am satisfied that vehicle expenses are objectively reasonable, in that the caregivers ought to have use of a vehicle for the purposes of caring for the Patient in this respect, and allow the claim as presented.

[91] Any claim against Ms. Cameron regarding use of corporate funds for purchase of a vehicle is not a matter to be determined here.

Living Expenses

[92] The items claimed under living expenses include food, groceries and sundries, including those that may be purchased from time to time by the caregivers and repaid as "petty cash" and various purchases which, generally, are of a nominal nature and include items from Amazon for personal care or are quasi-medical in nature. These amounts, overall, appear to be solely for the Patient and objectively reasonable.

[93] Cleaning is also claimed as an expense under this category (it has also been included in utilities which I have disallowed under that category as previously noted), with a total of \$1,961.20 being claimed under this category. As noted above, Ms. Primerano sees this as either duplicative as being part of the caregiver duties and charged by them under that category, or not related solely to the Patient. I agree, and have disallowed that item.

[94] As such, I allow living expenses at \$18,106.82.

Repair and Maintenance

[95] Ms. Primerano disputes all of the costs relating to repair and maintenance of the property being recoverable from the Estate, as they are overhead that ought to be included in the rent.

- [96] The amounts specifically charged to the Estate include replacement of a cistern and sump pump, various electrical items, a sink repair, painting a bathroom, installing hurricane shutters, re-surfacing counters, adding window screens, piping required for the propane system, and a new generator system, costs for some of which are also included as extraordinary costs.
- [97] If rent is being charged by Ms. Cameron in that regard, then she should not also be put to the cost and expense as if she were a co-owner of the property. I agree that these house repair items are not recoverable and disallow them accordingly. However, I allow the expenses related to furniture items, which total \$335.59.

December Aguinaldo

- [98] Under Mexican Federal Law, regular domestic employees are entitled to an "aguinaldo" (holiday bonus), equivalent of two weeks' salary. Ms. Primerano does not specifically dispute that it is an obligation that must be met, but argues that this amount should be factored into the caregiving budget.
- [99] As this is a required expense, I am satisfied that it is objectively reasonable and necessary, and allow it. Given that it is an annual expense, it need not be included in the monthly Budget.
- [100] Although, I note that regardless of how it, or any expense is classified, Ms. Cameron is obligated to pass and have approved all accounts and expenses incurred on an annual basis. As such, whether it is included in the Budget which is to cover monthly expenses or not, Ms. Cameron is only entitled to repayment from the Estate's capital if there remains room under the Budget, by consent, or on the passing of the accounts for the period in which it was expended.

Expenses which are not in dispute

- [101] With respect to the other expenses for which no specific objection is made, I find as follows:
- a) Streaming and entertainment services which average less than \$100 per month are objectively reasonable and allowed as presented;
 - b) Computer services, including Shaw Satellite, of approximately \$100 per month are objectively reasonable and allowed as presented;
 - c) The out of pocket medical expenses for various medications and sundries are supported by receipts and objectively reasonable and allowed as presented (there was, however a minor adjustment made by Ms. Cameron as there were a few nominal receipts which were determined to be unrelated to the Patient and removed by her accordingly);

- d) Cell phone charges of approximately \$36.60 per month are objectively reasonable and allowed as presented. I also note in this regard that by virtue of having her own cell phone, communication between the Patient and Ms. Primerano is more convenient; and
- e) There is an insufficient explanation for the need to have a storage locker. I note that one of the arguments for a 50/50 split of overhead costs of the property was that the two semi-detached bedrooms are used for storage. As such, it is not evident why a storage locker is required. I disallow this amount.

Extraordinary Expenses

Caregiving Coverage for May

[102] Ms. Primerano argues this is a charge for spending time with the Patient. There was little evidence as to this specific line item under the heading of extraordinary expenses. Regardless, this is accounted for under the heading of compensation. As such, I do not allow it as an expense and address it further under the category of compensation.

London Drugs Computer

[103] Ms. Cameron states that she bought a computer for use specifically related to the commiteeship, and that she uses a separate designated computer for her personal and work needs. Ms. Primerano disputes that the purchase of an apple Macbook was reasonable, or necessary, for the commiteeship and disputes that any such computer is being solely designated for use for commiteeship matters.

[104] I share that skepticism; however I am ultimately satisfied with Ms. Cameron's evidence that it is only being used for that purpose, and that she has a separate computer which she uses for business purposes. Given the evidence, including the spreadsheets which were provided to the court, a computer is required to manage the commiteeship. While a Macbook is one of the more expensive computers to purchase, it appears that is the platform known by Ms. Cameron.

[105] This is a one time purchase and I would not expect it to be repeated without sufficient evidence to establish it is necessary.

Generator and Hurricane Shutters

[106] Ms. Primerano argues that these items are part of the overall holding costs for Ms. Cameron's property and are not properly recoverable from the Patient's Estate arguing that not only do they improve the value of the property, they would be incurred regardless of whether the Patient was resident on the property or not. Ms. Primerano also deposed that some of these costs were paid by BPL, however there was no corroborating evidence to support that assertion.

[107] Ms. Cameron argues that they were necessary for the safety of the Patient.

[108] I agree with Ms. Primerano.

[109] As noted, it is not consistent with the landlord/tenant relationship that Ms. Cameron has chosen to establish so that she may collect rent from the Estate that overhead or holding costs related to the property, its maintenance or improvement ought to also be paid, particularly in respect of items that are an effective betterment of the property and could reasonably be expected to increase the value of the property, such as new hurricane shutters and installed generators. I disallow these items.

Legal Fees to vary order after trial

[110] Ms. Primerano relies upon the order made by Justice Sharma, in which the legal costs were not awarded. Specifically, in her reasons for judgment dated January 10, 2023 indexed at 2023 BCSC 1849, Justice Sharma noted as follows:

[25] THE COURT: The parties addressed costs. Counsel for the Public Guardian and Trustee, as well as Ms. Primerano, seek costs of this matter from the applicant. The applicant submits costs should be paid for in the normal course as it is in committee matters on a solicitor/client basis from the estate.

[26] I have decided to exercise my discretion and award costs to the Public Guardian and Trustee and to Ms. Primerano. They are not to be paid out from the estate.

[27] As I said in my judgment, I am concerned by the history set out in the affidavit. The applicant had other routes to address the matters raised in this application. Specifically, there were other routes available for the applicant to seek increases or payment of expenses. Those routes were ones she specifically agreed to. In my view, this application ought not to have been brought forward, so the other two parties are entitled to their costs which should not come at the detriment of the patient's estate.

[111] As Ms. Cameron was not awarded her costs for that application, to the extent any legal fees relate to that matter, they are not recoverable from the Estate.

[112] Ms. Cameron has included the amounts of \$59,850.14 (Magnus Law) and \$48,904.26 (Bear Creek Law), classified as "legals to vary order after trial". Included in the affidavit materials were the following:

- a) Magnus Law Invoice 132052 dated January 13, 2023, in the amount of \$33,377.04
- b) Magnus Law Invoice 131812 dated December 19, 2022, in the amount of \$14,451.68.

[113] The discrepancy between the \$47,828.72 reflected in these invoices, and the \$59,850.14 claimed, related to a "past due amount" included on the January 13, 2023 invoice so it is, in essence, double counting.

- [114] With respect to the Bear Creek invoices, no accounts or invoices were attached. Instead, a letter with a list of invoices was included with the affidavit, identifying eight accounts during the period August 2, 2022 to Feb 7, 2023, in the total amount of \$48,904.26. Given that the accounts themselves are not included in the materials, I am unable to determine the nature of the work undertaken.
- [115] In her written submissions, Ms. Cameron argues that the work incurred was for both for the variation order before Justice Sharma, and an application to remove the "Decider" in respect of the BPL governance matters.
- [116] Looking at the time entries included in the Magnus Law invoices, there is reference to Decider matters. However, it is not possible to determine, given the nature of the entries, which entry relates to which matter.
- [117] There should be no recovery for the work undertaken in respect of the application before Justice Sharma. As I cannot determine which of the legal invoices are related to that, and which are not and may therefore be recoverable as estate matters, the approval of those items is adjourned, with a direction that the legal accounts are to be passed separately before the registrar, with no items relating to the application before Justice Sharma to be included.
- [118] Ideally, the counsel rendering the accounts ought to separate out the items and provide evidence to confirm the purpose of the time entries at any further passing of those accounts so that it can be determined which entries are recoverable from the Estate.

Scanner

- [119] Ms. Primerano argues that there is insufficient evidence to establish that this was purchased for the committee ship rather than for Ms. Cameron's personal or business use.
- [120] I am satisfied that, given the level of acrimony and dispute between the parties, it is objectively reasonable and necessary that Ms. Cameron have a means to scan so that she may send to Ms. Primerano and the PG&T receipts which form the basis for her accounts, or to answer any disputes in respect of same. That being said, it is not clear that the scanner is being used solely for the committee ship, or that the amount spent on a portable and other scanner, collectively, is reasonable. I also note that most phones now have scanning capabilities, such that this ought to be a one time purchase. I allow \$500 for a scanner.

Undisputed Extraordinary Costs

- [121] With respect to the extraordinary costs that were not disputed:
- The postage is objectively reasonable and allowed as presented;
 - The amounts required for court ordered copying was necessary, and is allowed as presented;
 - The amount claimed for storage is disallowed for the reasons set out above; and

- d) The 2021 Tax returns were required to be paid, and are allowed as presented.

Compensation

[122] The PPA provides as follows in respect of compensation:

Compensation for acting as committee

14 (1) A person may be allowed reasonable compensation from the estate of a patient or from the estate of a person who has ceased to be a patient for services rendered as committee of the patient or of the person who has ceased to be a patient.

- (2) The compensation, if any, to be paid to a person other than the Public Guardian and Trustee must be fixed on the passing of accounts.
- (3) If, in the opinion of a person who is entitled to compensation under this section, the estate of a patient or the estate of a person who has ceased to be a patient is so limited in value that the payment out of it of compensation would create poverty or hardship for the patient or person who has ceased to be a patient or the patient's dependants, no compensation need be claimed or paid or no amount need be retained out of the estate.
- (4) A committee of a patient or a person who has been the committee of a person who has ceased to be a patient has a first lien or charge on the estate of the patient or person who has ceased to be a patient for all costs, expenses and advances made by him or her for or incidental to the administration of the estate of the patient or the person who has ceased to be a patient or for the benefit of the patient or person who has ceased to be a patient, the patient's family or other dependants.

[123] The total compensation being sought in respect of the 2023 Accounts is \$31,102.50 (\$19,140 for "supervision" fees, \$780.00 for caregiving in May, and \$11,182.50 caregiving through her company) plus travel disbursements of \$6,815.10, for a total of \$37,917.60.

[124] As to the billings for caregiving, Ms. Cameron testified that she charges \$300 per day for any relief caregiving provided by her. A "shift" for such caregiving consists of 11 or 13 hours, meaning she is charging \$23 to \$25 per hour. Ms. Cameron suggests that the hourly rate for such relief caregiving, if obtained in Canada, is \$44 per hour and, in fact, this was the amount charged for care of the Patient during her August and September 2023 visits to Vancouver for these proceedings.

[125] Ms. Cameron also testified that her company charges out \$1,000 per day for an eight hour day. Obviously, the determination of reasonable compensation is not dependent upon what Ms. Cameron, or her company, could be making elsewhere.

[126] At \$25 per hour, if Ms. Cameron's calculations and bills to her company are accurate, that would equate to 478.50 hours, or an average of 40 hours per month (or a 10 hour shift per week). That does not reconcile with the charges of two full time care givers being hired as well. While I appreciate that there may be relief work needed that objectively, is reasonably

payable as compensation under the PPA, sufficient records must be maintained to support each time it is needed, and why, and that the alternative was that no caregiver would be providing assistance to the Patient otherwise (for example, by keeping a log of those times that a caregiver phones in sick, what efforts were made to find an arm's length caregiver to fill that gap, and specific confirmation that no other caregiver was in attendance).

- [127] For the purposes of this assessment, and based on the viva voce evidence of Ms. Cameron as to some general instances of relief she was required to provide, an objectively reasonable amount to compensate her for those services is \$3,600, that being the equivalent of one 12-hour shift per month.
- [128] There is no explanation for the calculation of supervision fees. Assuming \$25 per hour as Ms. Cameron indicated to be the amount charged for caregiving fees provided by her, at \$1,575 per month, that equates to 63 hours per month (or the equivalent of close to two eight-hour days per week) to supervise and manage the care needs of the Patient, and to handle her financial affairs. The evidence does not support that that much time is needed for supervision.
- [129] An objectively reasonable amount for the activities directly related to the care and management of the Patient and the Estate is, more reasonably, \$500 per month, that being a total of \$6,000. Significantly more detailed evidence is required to justify any amount higher than that.
- [130] As to reimbursement for her travel costs, Ms. Cameron deposes that travel costs were necessary to attend court, with various technological impediments occurring during previous attempts at remote testimony. Ms. Primerano disputes that any travel is necessary, particularly given that the travel then often includes, as it apparently did during various court attendances for these passing of accounts, the Patient and a full-time caregiver, thus increasing the costs to the Estate.
- [131] The specifics of each travel are not fully explained and particularized before me. Thus, I am unable to fully determine which specific costs relate to the attendance before Justice Sharma, for which Ms. Cameron is not entitled to her costs, or other matters, such as the court matters relating to the "Decider" as part of the corporate governance disputes. In addition, given that Ms. Cameron's business, although conducted from Mexico, includes British Columbia clients, it is not clear if business is conducted during such travel. As travel was likely for mixed uses including in furtherance of her business interests, and included travel for the hearing for which costs were not allowed, I allow compensation for Ms. Cameron's travel costs at 30% of the amount claimed, or \$2,044.53.
- [132] As such, Ms. Cameron is entitled to compensation, which includes reimbursement of travel costs, in the amount of \$11,644.53.

- [133] That leads to a secondary consideration related to the pre-taking of such compensation. As a general principle, there is no right to do so: In the Matter of Carl Wilhelm Ruemke, 2020 BCSC 1874, at para. 11.
- [134] In estate matters, there is authority for the proposition that the pre-taking of compensation is a breach of trust worthy of rebuke by the court, which could result in compensation being disallowed entirely and order for its repayment either in full or partially made: Zadra v. Cortese, 2016 BCSC 390.
- [135] However, the Appointment Order provides at para. 3(i)(i) that the Budget "already includes compensation for acting as committee". I interpret that to mean that, by the terms of this Appointment Order, a pre-taking of some amount for compensation is contemplated.
- [136] Notwithstanding that provision of the Appointment Order, s. 14(3) of the PPA is clear that the amount of the compensation must be fixed at the time of the passing of the Accounts. Thus, if Ms. Cameron pre-takes more than that later approved by the court, she will be required to re-pay the Estate accordingly. Given the concerns in such matters to the pre-taking of such funds, significant care must be had by her to not over-take, as doing so could be seen as a breach of trust.
- [137] S. 28 of the PPA provides as follows:
28. If there is insufficient provision in this Act, the court may at any time, on the application of any person, make an order not in contradiction to this Act or the regulations that it considers necessary for or in the interests of the proper, honest and prudent management and administration of the estate of a patient.
- [138] In unusual circumstances such as this, where the Appointment Order has contemplated that a pre-taking of compensation may occur, in keeping with s. 28 of the PPA and my jurisdiction as Registrar under the Appointment Order to provide further directions as to the use of the Budget, it is appropriate that I clarify the parameters so as to assist the parties with ensuring that no breach of trust occurs.
- [139] I have approved Ms. Cameron's compensation in respect of the 2023 Accounts, including reimbursement of travel costs, in the amount of \$11,644.53. As noted, the Budget currently allows for the capital to be drawn upon in the amount of \$17,000, in addition to making use of the Pension Income, such that the amount available monthly for expenses is \$18,206.59.
- [140] The amount that Ms. Cameron can pre-take under that budget for compensation shall be fixed at \$1,000 per month, with such amount being subject to confirmation and approval at the next passing of accounts.

Conclusion

- [141] I approve the 2023 Accounts of the Estate in the amount of \$266,969.45, in respect of monthly expenses, annual expenses, and extraordinary amounts, particularized as follows:

Monthly (Averaged)

Annual (Total)

Monthly Expenses

Streaming and Entertainment Services (Amazon Prime, Audible US, Netflix, Sirius, Google Music, Brit Box, Amazon Prime US, Express Vu)

\$98.85

\$1,186.20

Computer Services (Adobe, Skype, Fax, Drop Box, Shaw Satellite)

\$101.07

\$1,212.84

Caregiving (excluding amounts initially claimed as being charged by Ms. Cameron's company, High Impact)

\$10,337.46

\$124,049.55

Out of Pocket Medical Expenses

\$919.68

\$11,036.19

Utilities (Electricity, Water, Internet, Propane, charged to Estate at 33% of actual cost)

\$258.12

\$3,097.42

Rent Charged to Patient

\$2,625.00

\$31,500.00

Banking and Admin Charges (ATM Fees, monthly Account Fees, Postage, Office Supplies, etc.)

\$213.49

\$2,561.82

Cell Phone

\$36.60

\$439.16

Vehicle Expenses

\$372.95

\$4,475.39

Living Expenses (food, groceries, supplies, some cleaning, personal care needs and purchases, various credit card and amazon purchases including an alarm, and visual aids, etc. And one month where dog expenses are claimed)

\$1,508.90

\$18,106.82

Furniture repairs/related items

\$27.97

\$335.59

Sub-Total

\$16,500.09

\$198,000.98

Recurring Annual Expenses

December Aguinaldo

\$6,631.77

Accounting and Tax Planning

\$1,965.87

Accounting - Tax Return

\$324.38

Income Taxes payable for 2022

\$35,170.69

Sub-Total

\$44,092.71

TOTAL

\$242,093.69

Extraordinary Expenses during the review period

Purchase of Computer (one-time expenses)

\$1,624.54

Postage/Admin expenses

\$71.68

Certified court orders copies

\$285.48

Income Taxes for 2021

\$22,394.06

Scanner (one-time expense)

\$500.00

Sub-Total

\$24,875.76

2023 Accounts, as Approved

\$266,969.45

[142] Notwithstanding Ms. Cameron's arguments and evidence as to inflationary rates, and loss in value of the peso, given the amounts approved in this respect, and that the monthly costs for regularly occurring expenses remain under the \$17,000 per month Budget, there is no reason to adjust that amount, and I decline to do so for the 2023 to 2024 period. Of course, this can be reviewed again at the next annual passing of accounts.

[143] Similarly, I see no basis to establish the Emergency Fund in the amount of \$40,000 as sought by Ms. Cameron to address emergency expenses, or an increase to the Budget in the amount of \$65,000 for annual expenses.

[144] As to the Emergency Fund, Ms. Cameron deposed that in 2019 and 2020 in order to provide the Patient with emergency medical treatment a large credit card authorization of 50,000 pesos was required at 10:00 p.m. at night, i.e. at a time when it would not be possible to obtain PG&T approval. The deposit amount has, apparently, increased to 150,000 pesos, which is the equivalent of \$13,000 CDN. However, this is the basis on which Ms. Cameron argued that the Patient requires use of a credit card. Given the credit card was then approved by the PG&T, and my finding that its costs are a reasonable expense to the Estate, the Emergency Fund should not be necessary. While Ms. Cameron suggested that the limits on the credit card may be inadequate, insufficient information was provided to support that assertion.

- [145] The recurring annual expenses, other than as to the classification of the aguinaldo, have not been opposed by either Ms. Primerano or the PG&T. Similarly, medical expenses were unopposed. As such, there should be no impediment in obtaining consent to have these reasonable items paid when incurred, particularly given my findings herein as to their reasonableness which I hope will guide the parties in the future as to their positions on such matters.
- [146] Given the wording of paragraph 3(m) of the Appointment Order, the issue as to whether or not the Budget ought to be increased for any emergency or contingency funds can be revisited at the next passing of accounts.
- [147] Based on the approval of the 2023 Accounts as set out above, and that Ms. Cameron has received \$218,037.42 towards the Estate costs, that being the \$17,000 per month Budget and the Pension Income, the amount that she is entitled to be reimbursed for further amounts incurred on behalf of the Estate would, therefore, be \$48,932.03.
- [148] I note, however, that in her final written submissions, Ms. Cameron advised that the \$22,394.06 relating to the 2021 income tax obligation was paid, such that that amount, as well as a \$59.17 calculation error is to be deducted. As such, the amount to which Ms. Cameron is to be reimbursed is, now, \$26,478.88.
- [149] In addition, she is to be paid from the Estate, the approved compensation in the amount of \$11,644.53
- [150] As to the directions that Ms. Cameron requested be made to assist the parties on further passing of accounts, my jurisdiction is limited by R. 23-6(4) of the Supreme Court Civil Rules.
- [151] Specifically, while a registrar can direct the parties to attend a pre-hearing conference, R. 23-6(5) clearly restricts the registrar's authority to make directions regarding such pre-hearing matters to only those exercised at that pre-hearing conference itself.
- [152] As such, I cannot give further directions at this hearing that are binding on future assessments. However, in order to assist the parties, but without in any way intending to bind the presider on any future pre-hearing conferences in that respect, it would likely assist the parties to narrow the issues in dispute prior to taking out the annual appointment. Again, while not a direction or order, I would suggest that a process along the following lines be implemented:
- a) Ms. Cameron will prepare and delivered to Ms. Primerano and the PG&T the information set out the items referenced in para. [53] above. It may be helpful to do so on an interim basis, perhaps monthly or quarterly, during the review period, so that issues can be addressed in real time.
 - b) Within a reasonable period of time of receipt, Ms. Primerano and the PG&T should then provide a list of objections to the accounts.

- c) Upon the exchange of this information, the parties can schedule the hearing, and a pre-hearing conference at least 30 days prior to the hearing. At the pre-hearing conference the court and parties can determine the length and format for the hearing, including the delivery of affidavits, whether they require cross examination, whether they intend to exchange written submissions, and depending upon the complexity and number of the transactions and issues in dispute, whether portions of the accounts should be presented in an easy to follow format, such as the Scott Schedule provided to the court for this hearing, which the court may or may not wish to have in electronic format at the hearing. In this respect, the Scott Schedule in the excel spreadsheet format provided for this passing of the 2023 Accounts was invaluable.

[153] Finally, as to the costs for the passing of the 2023 Accounts, I am satisfied that all of the appearing parties' are entitled to their costs from the Estate, subject to such accounts being taxed or approved by all parties in advance. To the extent legal representation was used such costs shall be on a true indemnity, special costs basis. For those portions where no legal representation was engaged, such that there are no third party costs to indemnify, it shall be on a Tariff Scale B basis.

Summary of Orders:

[154] In summary:

- a) The 2023 Accounts are allowed in the amount of \$266,969.45.
- b) Ms. Cameron's compensation, including reimbursement for travel expenses, for the period covered by the 2023 Accounts is fixed at \$11,644.53.
- c) Ms. Cameron is entitled to draw upon the Estate for payment of any shortfall remaining due to indemnify her for amounts paid out in respect of the 2023 Accounts and compensation as approved herein. If the parties are unable to agree as to that amount, they may seek further directions before me, however I am not seized of this matter.
- d) In drawing upon the Budget, in accordance with the Appointment Order Ms. Cameron is entitled to pre-take up to \$1,000 per month for her compensation, with such amounts to be subject to review and approval upon the passing of accounts for the relevant time period.
- e) There shall be no adjustment to the Budget as set by the Appointment Order at this time, with liberty to review further at the next passing of accounts.
- f) Ms. Cameron, Ms. Primerano and the PG&T are each entitled to their costs, subject to taxation or approval of all parties in writing with such costs to be paid from the Estate on a true indemnity, special costs basis for those portions where legal representation was retained, and on a Tariff Scale B basis where no such legal representation was retained.

"Associate Judge Robertson

Sitting as Registrar"

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