

CANADA / JUDGMENT

Douglas (Re)

2018 BCSC 1287

COURT

Supreme Court of British Columbia

DECIDED

31 July 2018

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2018 BCSC 1287 Douglas (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Douglas (Re),

2018 BCSC 1287

Date: 20180731

Docket: S200354

Registry: New Westminster

Re: The Patients' Property Act, RSBC 1996, Chapter 349 And

Amendments Thereto

In the Matter of Ruth Eva Douglas

- and -

Docket: S198373

Registry: New Westminster

Re: The Patients' Property Act, RSBC 1996, Chapter 349 And

Amendments Thereto

In the Matter of Ruth Eva Douglas

Before: The Honourable Madam Justice Marzari

Reasons for Judgment

Counsel for the Applicant, Donna Douglas:

S. Payne

Counsel for Kim Pinkerton:

A. Winters

Place and Date of Trial/Hearing:

New Westminster, B.C.

June 14, 2018

Place and Date of Judgment:

New Westminster, B.C.

July 31, 2018

INTRODUCTION

- [1] Ruth Douglas had a stroke on August 17, 2017 at the age of 73. Prior to this, she lived independently. Now her four children agree that she is no longer able to manage her personal and financial affairs, and that she requires the appointment of a committee. What her children are unable to agree upon is who that committee should be.
- [2] This proceeding involves a petition and a cross-petition by two of Ruth's daughters: Kim Pinkerton (Kim), and Donna Douglas (Donna). In both proceedings, the parties seek orders that a committee be appointed for Ruth, and that they be her sole committee of her person and her estate. They strongly oppose the appointment of the other.
- [3] Ruth has four children, all of whom are now in their 50's. In addition to Kim and Donna, she has another daughter, Renay Gallant, and a son, Dennis Moore. They are not parties, but support the appointment of Donna as committee in these proceedings. Donna and Dennis live in Mission, B.C. Renay lives in Prince Edward Island, and Kim lives in Surrey.
- [4] Ruth's children have a history of disputes and estrangements between themselves and with Ruth. At the time of the stroke, Ruth had not seen or spoken with Donna for approximately four years, had not seen Renay for at least eight years and was not on speaking terms with her, and had not seen Dennis in approximately two years. It appears the same was largely true of these siblings' relationships with their sister, Kim. Kim's siblings appear to blame Kim, at least in part, for their estrangement from their mother.
- [5] Throughout this period Ruth and Kim remained very close, speaking every day and seeing each other a few times each week. Ruth had also helped raise Kim's daughter, Nicole Pinkerton, and Ruth and Nicole remain close.
- [6] Each of the parties believe that the other would exclude them from important information and decisions in relation to Ruth due to the history and continued evidence of antipathy between them. Donna suggests that Kim is essentially too close to Ruth, and unable to

distinguish between Ruth's best interests and her own, particularly financially. Kim suggests that Donna is essentially an interloper, coming in with her other siblings after many years of estrangement and a lack of commitment to Ruth, with criticisms and uninformed positions with respect to Ruth's personal and financial requirements.

- [7] These petitions are therefore brought in the context of significant family discord, lack of communication, and mistrust.
- [8] I will be referring to Ruth and her family members by their first names, in order to avoid confusion. In doing so, I mean no disrespect.

BACKGROUND

Ruth's finances

- [9] Ruth's assets as of December 2016 included a condominium in Surrey worth over \$300,000 and a GIC in the amount of \$265,000. In addition, she receives a regular pension of approximately \$25,000 per year.
- [10] Ruth has a bank account where she receives her pension income. This account was opened jointly with Kim in 2015. In February 2018 Kim purchased the GIC from funds inherited by Ruth. Initially Kim purchased the GIC in her name alone, but has since placed Ruth's name as a joint holder of the GIC. There is no issue that the funds are entirely Ruth's and that Kim's name is on the GIC as a bare trustee only.
- [11] The condominium is in Ruth's name alone. The mortgage against it has been fully paid off.
- [12] Ruth's living expenses at the publicly funded care home where she currently resides are approximately \$1,700 each month, and it is estimated that she requires approximately an additional \$500 each month for her discretionary spending.

Events prior to the stroke

- [13] In 1998, Ruth's spouse, John Douglas passed away. A few months after John's death, Ruth moved into a condominium in Surrey, B.C. In the years after John's death, both Donna and Kim say that they were close to Ruth, and provided much-needed support. Donna says that she saw Ruth weekly, and spoke with her over the phone during her commute daily or near daily. Kim says she saw Ruth several times a week, and spoke with her on the phone every day. Ruth was also of significant support to Kim during this period, and helped her to raise Nicole. The evidence supports, and I find, that Kim and Ruth have been very close since 1998, and that they have relied on each other throughout this time.
- [14] Prior to her stroke, Ruth lived independently in her Surrey condominium. However in more recent years as Nicole grew up and Ruth grew older, Kim helped Ruth increasingly with errands and chores, such as taking Ruth to buy groceries or household supplies, and helped with cleaning the condominium. She was familiar with Ruth's medical circumstances,

including her epilepsy diagnosis, and accompanied Ruth to her medical appointments. Kim's partner, Ray Jones, also helped Ruth with heavier tasks, and ran errands when Kim was not available.

Events after the stroke

- [15] On the morning of August 17, 2017 Ruth called Kim. Kim noticed that Ruth's speech was garbled and went immediately to see her. She then called 911 and accompanied Ruth to the hospital, where she learned that her mother had suffered a stroke the previous day.
- [16] Kim states that she asked Ruth whether she wanted her to call any of her other children and Ruth said not to contact them. Kim says that she was worried about agitating her mother by insisting on contacting them. It was not until September 29, 2017 that Donna managed to reach Kim, and Kim advised Donna of Ruth's stroke. Donna then advised Dennis and Renay.
- [17] Ruth was, by all accounts, happy to see Donna and her other children when they arrived to see her.
- [18] Ruth remained in hospital until October 20, 2017 when she was transferred to a transition home. On October 31, 2017 Ruth was transferred by Fraser Health to the Hilton Villa care home in Surrey B.C., where she continues to reside.
- [19] Since the stroke, Donna has visited Ruth multiple times a week and taken her to at least one medical appointment. She has also taken Ruth on outings, some of which were with Dennis or Renay or both.
- [20] Kim continues to see Ruth twice a week and speak with her daily. She continues to take Ruth to most of her care and medical appointments and to assist her with her medical decisions, including her regular eye appointments. She pays bills for the condominium as well as for the Hilton Villa, and ensures that Ruth's comfort account at the Hilton Villa is topped up. She organized Ruth's 2017 income taxes, and manages Ruth's mail, which includes attending at the condo several times a week. She keeps in touch with Ruth's friends and her neighbour, and does Ruth's laundry and purchases groceries for her. She also takes Ruth on outings, including to visit the condominium, her friends, and family events involving Kim's immediate family.

ISSUES

- [21] This court is required to determine two things:
 - a) Whether Ruth is incapable of managing her person and affairs such that a committee should be appointed? and
 - b) If so, who should be appointed as Ruth's committee and on what terms?

- [22] The Public Guardian and Trustee (PGT) filed a response to these proceedings, but did not appear at the hearing. The PGT does not oppose a declaration that a committee should be appointed for Ruth, and says that the medical materials support such a declaration, but takes no position as to which of the siblings should be made committee, if any.

SHOULD A COMMITTEE BE APPOINTED?

- [23] Guardianship of adults, or committeehip, is governed in British Columbia by the Patients Property Act, R.S.B.C 1996, c. 349 [PPA]. Committeehip may be over the estate (financial, business and legal affairs), the person (personal and health care matters), or both.
- [24] Section 3 of the PPA governs when the court may make a declaration that a person is incapable of managing themselves or their affairs. The court must be satisfied upon reviewing the evidence of two medical practitioners that, because of mental infirmity arising from disease, age or other cause, a person is incapable of managing herself or her affairs.
- [25] The reports of Dr. Noon and Dr. Luk were filed as exhibits in these proceedings. Both conclude that Ruth has reduced mental capacity, that she does not properly understand her affairs or the administration of her estate, that she is incapable of managing her affairs, and that she requires care, supervision and control for the protection of herself and her property. All of this is unlikely to improve or resolve.
- [26] The parties agree that Ruth is incapable of managing herself and her affairs. The opinions of two medical practitioners support that conclusion. I am satisfied on the evidence that Ruth is incapable of managing herself or her affairs; hence, it is necessary to appoint a committee.

WHO SHOULD BE APPOINTED COMMITTEE?

Position of the parties and their evidence

- [27] Both Donna and Kim seek to be appointed as committee. In addition, the Public Guardian and Trustee has indicated that it is prepared to be appointed as committee if the Court is not satisfied that either Kim or Donna would be appropriate. If either Kim or Donna are appointed, the PGT seeks terms be imposed on their appointment that would require the committee to account, consult and obtain the PGT's approval with respect to some financial aspects of the committeehip.
- [28] I must therefore decide who will best serve Ruth's interests as her committee. Furthermore, I must do so on the basis of affidavits that contain conflicting and concerning evidence regarding the fitness of either party to be appointed committee.

[29] I have considered whether viva voce evidence and cross examination should be required to resolve these differences. Ultimately, however, I have concluded that I can find the necessary facts upon review of the weight and admissibility of the evidence before me. In this regard, I have given substantial weight to statements based on observation and firsthand knowledge, and little or no weight to evidence based on speculation, personal opinion and inadmissible hearsay.

Legal principles

[30] An appointed committee must exercise her powers in accordance with section 18 of the PPA, and specifically must exercise her powers for the benefit of Ruth and her family, having regard to the nature and value of the property of the patient and the circumstances and needs of Ruth and her family, and must foster Ruth's independence and encourage Ruth's involvement in any decision-making that affects her.

[31] In determining who should be appointed committee, the paramount consideration for the court is who will serve Ruth's best interests: *Bowman (Re)*, 2009 BCSC 523 at para. 32.

[32] The PPA does not set out specific criteria for the determination of suitability when competing petitioners seek appointment as a proposed patient's committee. Nonetheless, the courts have identified a non-exhaustive list of factors for consideration.

[33] In *Stewart (Re)*, 2014 BCSC 2321 at para. 29, Masuhara J. summarized the following considerations derived from applicable case law on this question:

- a) whether the appointment reflects the patient's wishes, obviously when he or she was capable of forming such a wish;
- b) whether immediate family members are in agreement with the appointment;
- c) whether there is any conflict between family members or between the family and the patient, and whether the proposed committee would be likely to consult with immediate family members about the appropriate care of the patient;
- d) the level of previous involvement of the proposed committee with the patient, usually family members are preferred;
- e) the level of understanding of the proposed committee with the patient's current situation, and will that person be able to cope with future changes of the patient;
- f) whether the proposed committee will provide love and support to the patient;
- g) whether the proposed committee is the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit;

- h) whether a proposed committee has breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to properly handle the patient's affairs;
 - i) who is best to advocate for the patient's medical needs;
 - j) whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry it out; and
 - k) whether a division of responsibilities such as between the patient's estate and the patient's person to different persons would serve the best interests of the patient, or would such a division be less than optimal for the patient.
- [34] The relevance and weight of the above factors will depend on the circumstances of each case, and other factors may also be relevant in any given case. Overall, these considerations provide a helpful framework for considering the evidence in this case.

Consideration of the relevant factors

A. The patient's wishes when she was competent

- [35] As a whole, the evidence strongly supports that Ruth's expressed wishes prior to her stroke were that Kim should care for her as she got older, and in the event of any incapacity. Furthermore, Kim's evidence is that her mother regularly communicated to her that she did not wish her other siblings to be involved in the managing of her financial affairs.
- [36] While this evidence is provided primarily by Kim, and by her immediate family members, in all of the circumstances I find it credible.
- [37] This conclusion is evidenced by the pattern of support that Kim was already providing to Ruth prior to the stroke, including taking to her to her medical appointments, and assisting with her finances.
- [38] In contrast, it is fairly apparent that Ruth did not seek out the care or support of her other children prior to her stroke, and was not prepared to rely upon them. On all the evidence, it would appear that Ruth was angry with both Donna and Renay prior to her stroke, to the point of refusing to speak with them. While she maintained a relationship with Dennis, there is no indication that she was prepared to depend on him, and indeed there is evidence that she specifically felt that she could not.
- [39] The best evidence that Donna can provide in this regard is in Donna's affidavit where she says that her impression is that since the stroke Ruth has been "happy with me assisting her with financial, health and personal decisions." This falls far short of an expressed wish that Donna be her committee, and of course relates to Ruth's expressions when she is no longer competent.

B. Whether immediate family members are in agreement with the appointment

- [40] Donna relies significantly on the fact that her other siblings are in agreement with her appointment, and not with the appointment of Kim as committee. Dennis and Renay both state that they do not trust Kim to keep them informed of their mother's physical and financial well-being. Their concerns are essentially based on the following considerations:
- a) That Kim did not advise any of her siblings about Ruth's stroke until approximately six weeks after the stroke;
 - b) That Kim has made decisions as to Ruth's care without seeking input from other family members, for example having Ruth placed at the Hilton Villa Care Centre in Surrey;
 - c) That Kim treats her siblings with hostility; and
 - d) That Kim is responsible for Ruth's alienation from her other children.
- [41] With respect to Kim not notifying her other siblings of Ruth's stroke, this is undoubtedly the case and raises concerns about Kim's ability to be Ruth's committee. While Kim says that she did not advise her siblings about their mother's stroke because Ruth told her not to, the role of a committee requires a broader sharing of information, and the overcoming of family conflict.
- [42] With respect to Ruth's placement at the Hilton Villa Care Centre, I accept Kim's evidence that her only significant input to Fraser Health's decision to place Ruth at this facility was her indication that Ruth would prefer to remain in Surrey. Ruth was placed in the first available long term care bed. Ultimately, the decision about Ruth's future accommodation will have to be determined by her committee, in consultation with Ruth and other family members.
- [43] With respect to the hostility and conflict between the siblings, I will address that below.
- [44] The allegation that Kim was responsible for the alienation of their mother from them is not borne out by the evidence. Rather, the evidence read as a whole strongly suggests that it was Ruth herself who decided to quit speaking with Donna and Renay as a result of "hurtful things" that Ruth believed were said about or to her. The evidence also suggests that Dennis made little effort to see Ruth in the previous two years prior to her stroke. There is little evidence of the efforts that Donna, Dennis or Renay made in the intervening years to see their mother or mend this rift.
- [45] Kim and Nicole raise a similar concern that the appointment of Donna as committee would lead to their exclusion from decision-making around Ruth's care. While Nicole is not one of Ruth's children, she has been a significant part of Ruth's family since she was young. She, as well as Kim, are concerned that they would both be excluded from Ruth's life and care should Donna be appointed committee. This concern is based, in part, on evidence that since Ruth's stroke and Donna's renewed involvement in Ruth's life, Donna has excluded Kim and Nicole from family events that Donna has arranged with the other siblings.

- [46] While Kim's petition to become committee is not supported by Ruth's other children, it is supported by the members of Ruth's family and friends that have been directly involved in Ruth's life in the last four to five years. These are members of Kim's family, who do not have standing and are not impartial. It is worth noting, however, that Kim's petition was also supported by Ruth's neighbour and friend, Ms. Fagan, who is impartial and who describes how close Ruth is to Kim and how Kim advised her immediately of Ruth's stroke and has kept her apprised of Ruth's condition.
- [47] Overall, the support of Dennis and Renay for Donna's appointment is an important factor, but I find not a determinative one.

C. Conflict between family members or between the family and the patient

- [48] Both Donna and Kim state that they would consult with immediate family members about Ruth's care if they were appointed as Ruth's committee. They also point to significant conflict and hostility between Kim on the one hand and Donna, Dennis and Renay on the other. Indeed, the evidence suggests that prior to her stroke, there was conflict between Ruth and Donna and Renay, and that there have been other times and incidents when various members of this family did not speak with each other.
- [49] Renay in particular alleges significant acts of aggression on Kim's part, some of which she states occurred in front of Ruth. Kim denies most of these, and provides additional context for those incidents that she agrees did occur.
- [50] I find that Kim did not notify Renay, Dennis or Donna in a timely way after their mother's stroke, and that this hurt Renay, Dennis and Donna and reduced their trust in Kim. However, this decision on Kim's part was rooted in a far lengthier conflict that included Ruth as well.
- [51] For example, Kim admits to saying to Renay "I hope your plane crashes". Kim says she did so only after Renay had called Ruth names and made references to Kim's alleged illegitimacy. This happened in front of Ruth. Kim also admits to threatening Donna with a candle and saying "I would like to throw this at you." Kim says this occurred when the siblings were at Ruth's condominium without Ruth, and was part of a heated argument. She regrets both incidents, but both raise significant concerns regarding Kim's ability to manage her temper and to avoid damaging conflicts, particularly in Ruth's presence.
- [52] Kim's lack of encouragement to Renay to come and see Ruth after the stroke was undoubtedly related to this conflict, as was Kim's stated concern (which I find was ultimately unfounded) that seeing her estranged children would be stressful and upsetting for Ruth.
- [53] There are no similar allegations with respect to Donna. There is no suggestion that Donna becomes abusive or threatening when she loses her temper with her siblings.

- [54] However, it does appear that Donna is capable of cutting out members of her family for significant periods of time, including her mother. The evidence as to the basis of Donna and Ruth's estrangement suggests that it was Donna who initially took offence. At some later point Donna did attempt to reconcile with her mother but her evidence is scant on this point.
- [55] Overall, this is a family with a significant history of conflict, from which Ruth was not immune. However, I am satisfied that Ruth has overcome her objections to having her other children in her life, and now all her children must accept this and find ways to overcome their own conflicts for Ruth's benefit.

D. Previous involvement of the proposed committee with the patient

- [56] Donna's evidence of involvement with Ruth prior to the stroke largely relate to time she spent with Ruth 15 to 20 years ago. It is uncontested that Donna had no involvement with Ruth in the four years leading up to her stroke.
- [57] On the other hand, Kim has been very closely involved with all aspects of her mother's life for the last 20 years.
- [58] Ruth also apparently began the process of having Kim appointed as her power of attorney prior to her stroke. Ruth was advised to obtain independent legal advice and had not done so as of the time of her stroke, so it is not possible to know what Ruth's final intention in this regard would have been.

E. Proposed committee's understanding of the patient's situation

- [59] Kim is significantly more familiar with Ruth's circumstances and situation than her other siblings as a result of her close relationship with Ruth both before and since Ruth's stroke.
- [60] In terms of Ruth's medical care, Kim is aware of Ruth's medical history, including her epilepsy diagnosis. She is familiar with Ruth's ophthalmologist, whom Ruth sees every few weeks for ongoing treatment of her eyes. Kim continues to facilitate Ruth's attendance at these appointments.
- [61] Both Donna and Kim appreciate that Ruth requires full-time care. While Donna originally had proposed the option of Ruth returning to her condominium with private full-time care, she has since agreed that that is not a workable solution for Ruth, both as a result of Ruth's finances, and as a result of the extent of Ruth's need for care.
- [62] Kim also has relationships and contacts with Ruth's extended friends and neighbours, and is able to and has facilitated ongoing contact with the people that have been part of Ruth's social life over the last five years.

F. Ability to provide love and support to the patient

- [63] Both Donna and Kim are clearly able to provide love and support to Ruth. Kim would be more able to provide support to Ruth if Ruth continues to live in Surrey, whereas Donna would be in a better position to provide support to Ruth if Ruth was moved to Maple Ridge, which is closer to where Donna lives.
- [64] Overall, while it is important that Ruth be able to receive the love and support of her children that she had not seen for a number of years prior to her stroke, I find it is also in Ruth's best interests for her to also be able to maintain the support network of her friends and family that she has relied on over the years immediately prior to her stroke. It is also in her best interests that she have the care and support of doctors, hairdressers, and others who have been part of her life and routines for the past five years.
- [65] I find that this factor favours Ruth's continued accommodation in the Surrey area, and Kim's ongoing involvement in providing primary support to Ruth.

G. Best person to ensure the income and estate are used for the patient's benefit

- [66] Donna and the other siblings raise concerns around the appropriateness of Kim's involvement with Ruth's finances. These relate to Ruth and Kim opening a joint account in 2015 receiving and containing Ruth's income and savings, and Kim's placement of Ruth's inheritance into a GIC under her own name. There is also evidence that Kim and Ruth were in the process of making Kim a joint owner of Ruth's condominium prior to Ruth's stroke. Renay also implies that Kim has taken some of Ruth's jewelry.
- [67] Donna argues that these incidents are indicative of Kim having a conflict of interest and treating Ruth's finances and assets as if they were her own.
- [68] For her part, Kim states that she has only ever held or administered Ruth's joint account and inheritance as a bare trustee for Ruth's benefit, such as assisting Ruth with paying her bills. She says she did both at Ruth's behest. Upon being alerted to the PGT's concerns regarding the GIC in her own name, she placed the GIC jointly into her name with Ruth. There is no evidence of mismanagement of these funds or their use by Kim for anyone other than Ruth.
- [69] Kim's placement of Ruth's GIC in her own name is of substantial concern. It indicates a potential failure on Kim's part to differentiate between Ruth's financial interests and her own. While this issue is one that may be addressed through terms in the appointment of a committee, it is understandable that Donna and Kim's other siblings would have some concerns in this regard.
- [70] With respect to the joint account, Donna suggests that Ruth's decision to include Kim as a joint account holder, and to accept her assistance with her finances was made at a time when Ruth was "highly dependent" on Ms. Pinkerton. I note that other than statements of opinion, no admissible evidence was adduced to support this assertion. Indeed, it is apparent that Donna and Renay were not familiar with Ruth's possessions, assets, state of

mind or capabilities in 2015 or in the years leading up to Ruth's stroke. Furthermore, there is no evidence that suggests that Ruth wasn't fully capable of making this decision, or that she had a high level of dependence on Kim at that time. The admissible evidence in this regard suggests Ruth had a significant degree of independence in 2015 and was capable of deciding to include Kim on her accounts and to give Kim access to those accounts in order to assist her with paying her bills. Kim has also had a key to Ruth's condo since Ruth purchased it over 15 years ago.

H. Any conduct that diminishes confidence in proposed committee

- [71] Had there been actual evidence of Kim using her access to Ruth's accounts for her own benefit rather than Ruth's that would have been a significant barrier in the appointment of Kim as Ruth's committee of her person or her estate. However, on the whole of the evidence, I am satisfied that Kim and Ruth enjoyed an extremely close relationship in which Kim has been trusted with Ruth's finances by Ruth for many years. Kim erred in placing her own name on Ruth's GIC without a bare trust agreement, but she does understand the significance and boundaries of her role as trustee with respect to Ruth's joint account and GIC.
- [72] Donna and Renay also state in their affidavits that, in their opinion, Ruth has appeared intimidated and cowed by Kim when they have all been together. This again is a bare assertion of opinion with no specific details to support it. I would nevertheless find it concerning if not for the very significant evidence before this court of the strong and loving relationship between Ruth and Kim which appears to be based on mutual respect and care. Furthermore, I find that Ruth was clearly capable of distancing herself from a child who hurt her in any way. Overall, the evidence does not support this allegation.
- [73] Kim points to Donna's declaration of bankruptcy approximately 15 years ago as a reason to be concerned about Donna's ability to manage Ruth's finances. On all the evidence, Donna resolved this issue fairly quickly. I consider that both Kim and Donna would be capable of assisting Ruth with her finances with appropriate accounting responsibilities and requirements.

I. Best advocate for the patient's medical needs

- [74] While I am sure that both Donna and Kim would be able to advocate for Ruth's medical needs, I find that Kim's history and knowledge of those needs both prior to the stroke and afterward tend to support Kim's appointment as committee in this regard.

J. Appropriate plan of care and management

- [75] Both Donna and Kim have put forward a plan of care and management for Ruth.

- [76] Donna's plan is somewhat of a work in progress, wherein she has identified as a primary concern that Ruth be moved from her current long-term care accommodation to a newer facility with more programming closer to where Donna lives. She has identified an attractive option in Maple Ridge, although she has no knowledge of what the waitlist would be for Ruth to be placed there, nor is she committed to that particular option.
- [77] Kim acknowledges that Ruth has not been very happy in her shared accommodation at Hilton Villa. However Kim states that Donna's objections to the cleanliness and appropriateness of Ruth's current care home is significantly overstated, and I tend to agree.
- [78] Kim has implemented a care plan for Ruth since her stroke that has gotten Ruth into the first available care bed in her existing community of Surrey, and has since arranged for Ruth to have her own private room. In terms of future options, Kim has identified another facility in Surrey where Ruth's friend and neighbor, Ms. Fagan, works and could look out for Ruth on a daily basis. Kim has placed Ruth on the waitlist for that facility, which may be up to two years. Donna has also been consulted and agreed with this decision.
- [79] Kim has also set out a plan for addressing Ruth's other requirements such as medical appointments, self-care appointments, the payment of bills, etc.
- [80] It is clear that Ruth would like to move back to her condominium where she lived independently for many years. It is also clear that this is not a realistic option for Ruth given the extent of her care needs. It is not surprising, in these circumstances, that Ruth would be asking her children to take her home or to take her away from her current care facility, particularly early on. However, I accept Kim's evidence that after a few months Ruth was more settled in her current accommodations, that she now has a private room, and that Kim has a realistic and thought out proposal for moving Ruth to a newer facility where her friend would be able to see her regularly, should that remain in Ruth's best interests at that time.

K. Potential division of responsibilities

- [81] Neither Donna nor Kim support a shared or split committee appointment. They say that a division of responsibilities, for example between Ruth's financial affairs, and her physical and medical requirements, have so many overlapping considerations that close cooperation would be required between committees. Neither party thinks that that sort of close cooperation is likely, and I agree.
- [82] Another possibility is a division of responsibility between one of Ruth's children as committee of her person, and the PGT as committee of her estate. I have considered this option. However, I am satisfied that the PGT's recommendations for review by their office of the accounts of any committee appointed will be sufficient in this case.

DECISION

- [83] Neither Donna nor Kim are ideal committees for Ruth.

- [84] Kim's hostility towards her siblings cannot simply be ascribed to Ruth's estrangement of them. Furthermore, Kim has failed in the recent past to clearly demonstrate that she recognizes the boundaries of acting as Ruth's trustee of her finances by putting Ruth's GIC into her own name.
- [85] On the other hand, Donna was estranged from Ruth for years prior to Ruth's stroke, is not familiar with Ruth's medical, social or financial needs and desires, and her actions and proposals give Kim and her family reason to be concerned that Donna does not respect or appreciate their central role in Ruth's life over the last many years.
- [86] I have considered whether the PGT should be appointed as Ruth's committee. The appointment of the PGT would avoid the above difficulties. However, the PGT is not familiar with Ruth in the way her children are, does not know Ruth's personality, friends, predilections or previous intentions. The PGT agrees that generally an immediate family member is preferable as committee when there is an appropriate person available.
- [87] Having considered all of the evidence, and using the above factors as guidance, I have determined that Kim should be appointed as the committee of the person and estate of Ruth. I am satisfied that a division of responsibilities between Kim and Donna would not be workable. I am also satisfied that it is not necessary to appoint the PGT as committee of Ruth's estate provided that clear terms and accountability are imposed.
- [88] I find that terms are required as conditions of that appointment to ensure the long term best interests of Ruth. Those terms shall be those recommended by the PGT, and which both parties have said they would abide by. In addition, I find additional conditions should be imposed to ensure consultation and involvement of Ruth's other children in her life.
- [89] The appointment of Kim as committee is therefore subject to the following conditions:
- a) In lieu of posting a bond, Kim is restricted from disposing of or encumbering Ruth's condominium without the prior written consent of the PGT or further order of this Court on notice to the PGT;
 - b) In the event that Kim sells the condominium, the net sale proceeds shall be transferred directly from the conveyancing lawyers trust account to a financial institution where an investment has been established by Kim in compliance with the Trustee Act under Ruth's name. Furthermore, the committee shall have no access to the capital of this investment, other than for reinvestment purposes, without the prior written consent of the PGT;
 - c) With respect to the GIC that is currently held jointly in Kim and Ruth's name, \$200,000 of those funds shall be transferred from the GIC account to a financial institution where an investment has been established in compliance with the Trustee Act under Ruth's name as soon as practically possible. The committee shall have no access to the capital of this investment, other than for reinvestment purposes, without the prior written consent of the PGT;

- d) All of Ruth's children shall have unlimited and unrestricted right to visits and outings with her, not subject to the consent or approval of any other;
- e) Kim will advise Donna, Dennis, and Renay of any health events and medication changes within 24 hours of Kim becoming aware of such health event or medication change. This may be done by email or text, and the siblings will provide each other with current contact information at all times;
- f) Kim will consult with Donna if she wishes to change Ruth's financial institution or to move Ruth to a new care home or other facility. After consulting, Kim has the right to make a decision with respect to the above, even if one or more of her siblings express disagreement;
- g) Kim shall provide an annual accounting of Ruth's estate to the Public Guardian and Trustee's office. The first accounting is due one year after the date of this order. Kim shall also provide a copy of the accounting to Donna, Dennis and Renay within 15 days of providing the accounting to the PGT;
- h) Kim shall keep receipts for all funds expended from Ruth's accounts or on Ruth's behalf, and shall make the receipts available for review by the PGT and Donna upon request; and
- i) Any financial institution and any successor institutions holding Ruth's funds shall be served with a copy of this Order, and proof of service shall be provided to the PGT.

COSTS

- [90] Section 27 of the PPA provides that costs of committee proceedings are in the discretion of the court. The usual practice is that the patient's estate will bear the costs of committee applications on a special costs basis "given that the applications are generally brought by the proposed committee for the benefit of the patient to assist with the management of the patient's person and his estate": Sangha (Re), 2013 BCSC 1965 at para. 112.
- [91] Special costs may be awarded if a party was acting in good faith for the benefit of the patient, and there was no ulterior motive or obvious benefit from the appointment as committee. Costs can be awarded on a special costs basis even if the applicants for costs were not appointed committee: see Vieira (Re), 2013 BCCA 420.
- [92] I find that the both Donna and Kim acted in good faith in these proceedings and were seeking the best outcome for Ruth from their perspectives. I award special costs to both parties, to be paid by Ruth's estate after assessment by the Registrar.

"Marzari J."

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Prepared on 29 October 2026 · Esheria