

CANADA / JUDGMENT

Kierans (Re)

2023 BCSC 1841

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Supreme Court of British Columbia

DECIDED

18 October 2023

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2023 BCSC 1841 Kierans (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kierans (Re),

2023 BCSC 1841

Date: 20231018

Docket: S220769

Registry: Vancouver

In the Matter of the Patients Property Act, R.S.B.C. 1996, c. 349 and

Amendments Thereto

And

Paul Bernard Kierans

- and -

Docket: S229990

Registry: Vancouver

In the Matter of the Patients Property Act, R.S.B.C. 1996, c. 349 and

Amendments Thereto

In the Matter of the Committeeship of

Paul Bernard Kierans

Before: The Honourable Justice Basran

Oral Reasons for Judgment

The Petitioner in Vancouver Registry Action No. S220769, Kathleen H. Walker, appearing in person:

K. Walker

Counsel for the Petitioner, Margaret M. Kierans, in Vancouver Registry Action No. S229990:

C. Gibson

C. Dheensaw

Counsel for the Attendee, the Public Guardian and Trustee of British Columbia:

M. Wolf

Place and Dates of Hearing:

Vancouver, B.C.

August 1-3, September 6, and October 6, 2023

Place and Date of Judgment:

Vancouver, B.C.

October 18, 2023

Introduction

- [1] The primary issue on the related applications is who should be appointed committee of the person and estate of Paul Bernard Kierans ("Mr. Kierans"), a 65-year-old disabled man living with Down syndrome.
- [2] There are two petitions before the Court, seeking committee of Mr. Kierans. One brought by his sister, Kathleen Walker ("Ms. Walker"), and another brought by one of his other sisters, Margaret Mary Kierans ("Ms. Kierans").
- [3] In addition to seeking committee of his person, Ms. Kierans also seeks to be appointed committee of Mr. Kierans' estate. Ms. Walker seeks committee of Mr. Kierans' person and supports the appointment of the Public Guardian and Trustee of British Columbia (the "PGT") to manage his estate.
- [4] The PGT does not seek to be appointed committee of Mr. Kierans' estate.
- [5] By virtue of bringing these applications, Ms. Walker and Ms. Kierans seemingly agree that Mr. Kierans is incapable of managing his personal affairs and estate. However, they disagree on the extent of his disability.

- [6] Both sisters oppose the other being appointed as committee. Ms. Walker asserts that she is best placed to serve as Mr. Kierans' committee based on their longstanding and close relationship and also because she lives in Greater Vancouver. Ms. Walker emphasizes that Ms. Kierans is significantly older than both Ms. Walker and Mr. Kierans. Ms. Kierans lives and works in North Bay, Ontario.
- [7] Ms. Kierans submits that she is best suited to act as Mr. Kierans' committee, and that it would be in his best interests that she take on this role for both him and his estate. She asserts that Ms. Walker is unsuitable to be appointed as Mr. Kierans' committee and that such an appointment would be detrimental to his well-being, including potentially risking his eviction from the home he has resided in for the past 30 years.
- [8] For the reasons that follow, I have concluded that Ms. Kierans is best suited to be Mr. Kierans' committee both for the purposes of his person and estate.

Background

- [9] Mr. Kierans has resided in a community group home operated by L'Arche Greater Vancouver ("L'Arche") for approximately 30 years. L'Arche operates several assisted living group homes.
- [10] The parties' parents are deceased and Mr. Kierans has no spouse or children. His closest, living relatives are his siblings:
- a) Tom Kernan - brother;
 - b) Ms. Kierans - sister;
 - c) Michael Kierans - brother;
 - d) Brenda Wahlen - sister; and
 - e) Ms. Walker - sister.
- [11] Ms. Walker is Mr. Kieran's only sibling that lives in Greater Vancouver, where he resides.
- [12] Mr. Kierans' assets are modest, consisting of approximately \$29,405 in a bank account at VanCity Savings Credit union. This account is used for Mr. Kierans' personal expenses such as clothing, travel, transportation, dental, and medication expenses. He does not own any real estate.
- [13] The PGT notes that if it is appointed as committee of Mr. Kierans' estate, it will charge a fee for its services that may not be appropriate in the circumstances given the modest size of his estate.
- [14] Mr. Kierans receives government benefits of approximately \$729 per month plus room and board payable to L'Arche. This is his only income.
- [15] On February 1, 2021, Mr. Kierans signed a representation agreement appointing Ms. Kierans as his representative (the "representation agreement").

- [16] One year later, on February 1, 2022, Ms. Walker filed a petition under Vancouver Registry Action S220769 in which she seeks to be appointed as committee of Mr. Kierans' person, the PGT be appointed as committee of Mr. Kierans' estate, and that the representation agreement be declared void.
- [17] Ms. Kierans filed a response to this petition opposing all of the orders sought by Ms. Walker, including opposing Ms. Walker's appointment as committee of Mr. Kierans' person.
- [18] On December 16, 2022, Ms. Kierans filed a petition under Vancouver Registry Action S229990 in which she seeks to be appointed as committee of Mr. Kierans' person and estate. In support of her petition, she obtained two medical affidavits required under the Patient's Property Act, R.S.B.C. 1996, c. 349 [PPA] for Mr. Kierans to be found incapable of managing his own affairs.
- [19] The two medical affidavits Ms. Kierans obtained were as a result of the assessments of Mr. Kierans by two family physicians, Dr. Marla Gordon and Dr. Stanley F. Karon in December 2022. Both of these doctors swore affidavits attesting that as of the dates of their assessments, Mr. Kierans lacks capacity to manage his personal and financial affairs.
- [20] Specifically, Dr. Gordon opined that Mr. Kierans requires assistance with all his basic daily needs and he cannot live independently. In his professional opinion, Mr. Kierans is incapable of managing his personal and financial affairs due to moderate to severe intellectual disability related to Down syndrome. Dr. Gordon further opined that Mr. Kierans' medical condition will not improve and he requires a decision maker because he does not have the capacity to make informed decisions.
- [21] Similarly, Dr. Karon opined that Mr. Kierans is incapable of managing his financial and personal affairs due to a neurocognitive disorder or dementia.
- [22] Ms. Walker did not obtain two medical affidavits confirming that Mr. Kierans is incapable pursuant to the PPA but, in my view, this is not an impediment to Ms. Walker bringing her petition because the parties do not dispute that Mr. Kierans requires the appointment of a committee because he is incapable of managing his own affairs.
- [23] Ms. Kierans and Ms. Walker disagree on the extent of Mr. Kierans' disability. Ms. Walker characterizes Mr. Kierans' level of functioning as akin to that of a "15-month-old infant". Ms. Kierans counters that Mr. Kierans is capable of performing basic household chores and is able to communicate with her during their weekly Skype calls using simple but understandable language. Ms. Kierans asserts that Mr. Kierans expresses preferences in choosing songs to sing or prayers to say and that this demonstrates that he has some agency. Ms. Kierans dedicates her life to religious service as a full-time congregational archivist/ records manager.

The Sisters' Relationships with Mr. Kierans

- [24] In addition to being his sister, Ms. Kierans is also Mr. Kierans' godmother. On a weekly basis, she does Skype calls and community prayer sessions with him and other L'Arche members by Zoom videoconferencing. As noted, Ms. Kierans lives and works in North Bay, Ontario. She has visited Mr. Kierans in British Columbia on approximately five occasions over the past two years.
- [25] Ms. Walker asserts that she and Mr. Kierans have had a close and affectionate relationship for most of their lives. Ms. Walker is Mr. Kierans' only sibling living in Greater Vancouver.
- [26] Shortly after their father died in September 2013, Ms. Walker severed contact with all of her siblings, including Mr. Kierans. Neither Ms. Kierans nor any of Ms. Walker's other siblings knew of her whereabouts from approximately 2015 to the spring of 2021.
- [27] As a consequence, Ms. Walker was absent from Mr. Kierans' life for at least six years until the Spring of 2021 when she resumed visiting Mr. Kierans at L'Arche. Ms. Walker acknowledges that she did not have any contact with Mr. Kierans from at least 2015 to March 2021. During this period, Ms. Walker suffered several health, financial, and personal challenges. Once her circumstances stabilized, she sought information regarding Mr. Kierans and commenced visiting and spending time with him on a regular basis.
- [28] From the spring of 2021 until September 2022, Ms. Walker visited Mr. Kierans twice a week, once at L'Arche and once at her residence. She also enjoyed taking him out for excursions in the community.
- [29] In September 2022, Ms. Walker lost her ability to visit Mr. Kierans as a result of a decision made by Ms. Kierans in her capacity as Mr. Kierans' personal representative. I turn now to a discussion of those circumstances.

Ms. Kierans' Appointment as Mr. Kierans' Representative

- [30] In early 2021, shortly after the first COVID-19 vaccine became available, L'Arche sought the appointment of a representative for Mr. Kierans to facilitate medical decisions. Mr. Kierans chose Ms. Kierans to be his representative. At that time, Ms. Walker had been absent from Mr. Kierans' life for several years.
- [31] As noted, on February 1, 2021, Mr. Kierans signed a representation agreement appointing Ms. Kierans as his representative. His signature was witnessed by two L'Arche employees, one of whom, Ms. Zenaide Maria Cabral Correia, deposed to the circumstances surrounding his execution and capacity to execute this agreement.

- [32] Ms. Correia has known Mr. Kierans since 2012 and deposed that he knows whom he likes and trusts. Prior to executing the representation agreement, Mr. Kierans was asked by three L'Arche employees, including Ms. Correia, which of his sisters--Ms. Kierans or Ms. Walker--he wanted to take care of him and make decisions for him. He answered affirmatively in favour of Ms. Kierans.
- [33] Ms. Correia deposed that Mr. Kierans was capable of signing his name on his own and she witnessed him sign the representation agreement.

Ms. Walker's Conflict with L'Arche Employees

- [34] In December 2021 and January 2022, L'Arche enacted several temporary measures to slow the spread of COVID-19 at its facilities, including cancelling in-person visits with guests to protect the health of its residents. Ms. Walker was advised that this was a short-term plan to reduce the spread of COVID-19. In response, Ms. Walker challenged L'Arche's motives by suggesting that it had an ulterior motive in removing in-person visits and, instead, substituting them with videoconference calls.
- [35] On February 2, 2022, L'Arche resumed in-person meeting with visitors. After this date, Ms. Walker continued with twice-weekly in-person visits with Mr. Kierans at L'Arche and at her home.
- [36] Unfortunately, Ms. Walker's conduct during her in-person visits with Mr. Kierans became disruptive and detrimental to him, L'Arche's staff, and other residents.
- [37] Tracey Brezovski is the Executive Director of L'Arche. In an affidavit filed in support of Ms. Kierans' application for committee ship of Mr. Kierans' person and estate, Ms. Brezovski deposed that there was a pattern that developed in the wake of Ms. Walker's visits with Mr. Kierans that led him to becoming distressed, anxious, and unable to settle down.
- [38] Ms. Brezovski reviewed the case notes maintained by L'Arche staff regarding Ms. Walker's visits with Mr. Kierans from May 2021 to July 2022. On 14 occasions during this period, Ms. Walker's visits with Mr. Kierans were noted to be upsetting and disruptive to Mr. Kierans, often requiring the use of medication to calm him down.
- [39] Furthermore, Ms. Walker was frequently rude and verbally abusive to staff at L'Arche in a manner that made them feel unsafe. She threatened to "ruin" employees' lives and suggested that she would "ruin" L'Arche.
- [40] In particular, Ms. Walker frequently berated an employee of L'Arche who has worked there for 24 years. Ms. Walker accused her of being a rival for Mr. Kierans' affection. This employee has known and worked with Mr. Kierans since 1998.

- [41] In the wake of the ongoing conflict between Ms. Walker and L'Arche's employees, combined with the negative effects of her visits on Mr. Kierans, on August 31, 2022, L'Arche wrote to Ms. Kierans advising her that it would be giving 30 days' notice to Mr. Kierans to terminate his residency at L'Arche unless action was taken respecting Ms. Walker's visits.
- [42] After receipt of this letter, Ms. Kierans, in her role as Mr. Kierans' representative under the representation agreement, took the position that Ms. Walker could no longer be permitted to visit Mr. Kierans in person. She made this decision in order to prevent L'Arche from terminating Mr. Kierans' residence at L'Arche, where he had lived for over 30 years.
- [43] On September 12, 2022, Ms. Kierans instructed her counsel to write to Ms. Walker to advise her that her in-person visits with Mr. Kierans would be terminated immediately in order to secure his ongoing residency at L'Arche.

Ms. Kierans' and Ms. Walker's Capacity to Act as Mr. Kierans' Committee

- [44] Ms. Kierans is an 80-year-old nun who lives and works in North Bay, Ontario. There is no evidence to suggest that she has any physical, mental, or cognitive limitations that would affect her ability to serve as a committee.
- [45] Ms. Walker sustained a disabling brain injury in 2008. However, she continued visiting Mr. Kierans from 2008 to 2014. In 2014, Ms. Walker was diagnosed with lupus. In the ensuing years, she suffered a series of personal, professional, and financial setbacks. By 2021, her life stabilized and she felt capable of resuming her relationship with Mr. Kierans.

Relevant Legal Principles

- [46] The PPA governs the appointment of committees of a patient's person and estate.
- [47] The court may make an order declaring that a person is, by reason of mental infirmity, arising from disease, age, or otherwise, incapable of managing himself and his affairs: s. 2 of the PPA.
- [48] The court may make such a declaration if it is satisfied on hearing the application and reading the affidavits of two medical practitioners, that the person is, because of mental infirmity arising from disease, age, or otherwise, incapable of managing himself and his affairs: s. 3 of the PPA.
- [49] The court may appoint any person to be the committee of an adult who has been declared incapable of managing himself or his affairs: s. 6(1) of the PPA.
- [50] In determining who should be appointed committee, the paramount and overriding consideration is who will serve the patient's best interests: *Bowman (Re)*, 2009 BCSC 523 at paras. 32 and 34.
- [51] In selecting an appropriate committee, the court's fact-specific inquiry should consider and weigh the following non-exhaustive list of considerations:

- a) whether the appointment reflects the patient's wishes, if he/she is 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 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 if that person will 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 placed 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 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.

See: Stewart (Re), 2014 BCSC 2321 at paras. 29 and 30.

Positions of the Parties

[52] Ms. Walker seeks to be appointed as the committee of Mr. Kierans' person and that the PGT be appointed as committee of his estate. In support of her appointment as committee, Ms. Walker relies on her physical proximity to Mr. Kierans, her desire to visit and care for him, and her view of the closeness of their relationship. She also notes that she and Mr. Kierans are close in age whereas Ms. Kierans is more than a decade older than them.

[53] Ms. Kierans submits that the following considerations support her appointment as Mr. Kierans' committee:

- a) her ability to serve as committee of both Mr. Kierans' person and estate;
- b) her consistent and ongoing contact and involvement with Mr. Kierans; and

- c) the demonstrated history of her making appropriate decisions for him since he appointed her as his personal representative under the representation agreement.
- [54] The PGT does not seek to be appointed as the committee of Mr. Kieran's estate and notes that it may not be appropriate for his modest estate of less than \$30,000 to incur the PGT's management fee. The PGT takes the position that its appointment as committee of an estate is a last resort measure and typically a family member is preferred to act in this capacity.

Discussion

- [55] The hearing of these applications commenced on August 1, 2023. After three days of hearings, the parties substantively concluded their submissions. However, at my suggestion, the hearing was adjourned for one-month to September 6, 2023 to provide the parties with an opportunity to potentially resolve the conflict over Ms. Walker's inability to have in-person visits with Mr. Kierans. During this period, counsel for Ms. Kierans wrote to Ms. Walker to try to facilitate some contact between her and Mr. Kierans. Ms. Walker did not respond to this letter. Instead, she filed three requests to appear before me, on three consecutive days in mid-August, seeking various orders, prior to the agreed upon continuation date of September 6, 2023.
- [56] Due to a scheduling error, this matter was not set down for sufficient time on September 6, 2023 so it was further adjourned to October 6, 2023. On that date, Ms. Walker asked the court to "convince" Ms. Kierans to consent to an order facilitating an examination of Mr. Kierans by two physicians retained by Ms. Walker. She did not file an application seeking this relief and stated that she was not seeking an order of the court appointing the physicians to examine Mr. Kierans.
- [57] I explained to Ms. Walker that I would not engage in the process of attempting to convince Ms. Kierans of anything because doing so would be inappropriate. Ms. Walker advised the Court that she was only able to address this specific issue and she would not participate any further in the hearing. Instead, she would conduct a "watching brief" over the remainder of the proceedings. She left the counsel table and observed the remainder of the proceedings from the gallery.
- [58] Also, on October 6, 2023, the PGT brought an application for the return and/or destruction of documents subject to solicitor-client privilege that were mistakenly disclosed to Ms. Walker.
- [59] Before turning to the PGT's application, I asked for submissions on the underlying, competing petitions for the committee of Mr. Kierans. Counsel for Ms. Kierans updated the court on some of the events that had transpired since August 3, 2023. The parties were unable to come to an ongoing agreement regarding Ms. Walker's visits with Mr. Kierans but one such visit had taken place. Ms. Kierans reiterated her position that she ought to be appointed as Mr. Kierans' committee.

- [60] I provided Ms. Walker with an opportunity to make further submissions on the underlying committee applications but she declined to do so and instead reiterated that she was simply maintaining a watching brief from the gallery and would not participate in the proceedings.
- [61] Next, the PGT made its application as described above and after it concluded its submissions, I again asked Ms. Walker if she wished to make any submissions in response. She declined to do so and repeated her position that she was no longer participating in the hearing and was simply conducting a watching brief from the gallery. Although the PGT's application was filed and served in accordance with the Supreme Court Civil Rules, Ms. Walker did not file a written response to it.
- [62] I granted the PGT's application, largely on the terms it sought while providing Ms. Walker with some additional time to comply with the orders to return and/or destroy the privileged material that was mistakenly disclosed to her.
- [63] Turning next to the competing petitions involving the committee of Mr. Kierans, I am satisfied that the evidence of Dr. Gordon and Dr. Karon establishes that Mr. Kierans is incapable of managing himself or his affairs and he therefore requires a committee.
- [64] In assessing Mr. Kierans' best interests, I am satisfied that Ms. Kierans made the decision to terminate Ms. Walker's in person visits with Mr. Kierans on the basis that it is critically important that Mr. Kierans not be evicted from his home of 30 years at L'Arche. This facility has provided the care and support he requires over this extended period. An abrupt change in residency would be devastating to Mr. Kierans.
- [65] I am convinced that Ms. Kierans took the decision to terminate Ms. Walker's in-person visits with Mr. Kierans with a view to preserving his best interests, specifically, to ensure that he would remain in secure and stable care at L'Arche, where he has resided for over 30 years.
- [66] It is important to note that Ms. Walker's visits with Mr. Kierans were periodically putting his health and well-being at risk. Furthermore, Ms. Walker's behaviour towards L'Arche employees was threatening, ongoing, and disruptive. In my view, the termination of her in-person visits was a rational decision by Ms. Kierans based on Mr. Kierans' best interests.
- [67] On November 7, 2022, Ms. Walker brought an interim application in which she sought "enforcement" of in-person visits with Mr. Kierans. Madam Justice Sharma dismissed this application in reasons dated November 7, 2022 (indexed as 2022 BCSC 2285) (the "November 7, 2022 reasons") based on her determination that it would not be in Mr. Kierans' best interests to reinstate visits with Ms. Walker: November 7, 2022 reasons at paras. 39 and 41.
- [68] Madam Justice Sharma noted that since Ms. Walker's in-person visits with Mr. Kierans were terminated, she had been offered telephone and Zoom videoconferencing contact with him but she did not avail herself of these opportunities: November 7, 2022 reasons at para. 31.
- [69] At paras. 24 to 29, Sharma J. found:

- [24] First, there is evidence on the record that Ms. Walker's visits are disruptive for Mr. Kierans. The most important thing in this litigation is that whatever is ordered must be in the best interests of Mr. Kierans. The evidence from the staff members of the facility where he lives is clear and measured. That evidence states that after visits with Ms. Walker, Mr. Kierans became agitated or unsettled, which caused a disruption to his routine. Staff then had to take measures to calm him down, and those measures might also be disruptive to him and others living in that facility. Again, the most important point is to ensure his best interests are being attended to.
- [25] Ms. Walker asserts that Mr. Kierans wants to see her, wants to spend time with her, and that she wants to see him. She relies on some kind of right to do so.
- [26] The only issue for the court in the case of someone who may lack capacity or who is in long-term care is what is in that person's best interest. Ms. Walker's desires and Ms. Walker's belief as to his desires cannot be determinative.
- [27] The caregivers, unless I am given some evidence to believe otherwise, are people who are in the best position to comment on his condition. Their evidence is clear that he becomes unsettled after Ms. Walker's visits. That is why it would be wrong to reinstate visits.
- [28] However, there is another overriding issue. The evidence from the staff and the facility is that Ms. Walker's behaviour has been disruptive to staff in the facility, and to other patients in addition to Mr. Kierans. It got to the point where the facility had to contact Ms. Kierans as a representative for Mr. Kierans to suggest that if something was not done with regard to Ms. Walker's in-person visits, they would have no choice but to have Mr. Kierans leave the facility. He had been living there for 30 years.
- [29] Ms. Kierans got information including staff notes, which substantiates affidavit evidence from the facility about the disruption caused to Mr. Kierans by Ms. Walker's personal visits. Ms. Kierans' counsel confirms that Ms. Kierans decided not to allow in-person visits by Ms. Walker, but she did not make the decision lightly. However, she wanted to maintain Mr. Kierans' residence and ensure his stability.
- [70] The evidence before me on these applications accords with the findings made by Sharma J.
- [71] The most important factor in deciding who is best placed to act as Mr. Kierans' committee is determining who is most likely to preserve, protect, and promote his best interests.
- [72] Ms. Kierans has been a consistent presence in Mr. Kierans' life. Although she lives in Ontario, she has twice weekly video calls with him and has travelled to Vancouver on at least five occasions and visited him. As his representative, she regularly communicates with L'Arche's staff and Mr. Kierans' physicians to ensure his well being.

- [73] Ms. Kierans has taken decisions that are manifestly in Mr. Kierans' best interests. She understands his current situation and is focused on his health and well being. Notwithstanding the physical distance between them, Ms. Kierans has demonstrated the willingness and ability to take on the role of committee.
- [74] Ms. Walker, on the other hand, seems to be primarily motivated by her own wishes and desires. She conflates her needs with Mr. Kierans' best interests.
- [75] In my view, Ms. Walker sought to exert control over Mr. Kierans by disrupting his routine, ignoring instructions from L'Arche staff, and repeatedly berating and abusing them. In so doing, she jeopardized Mr. Kierans' longstanding residency at L'Arche. It is beyond obvious that forcing Mr. Kierans to move out of L'Arche would be devastating to him and detrimental to his best interests. Nevertheless, Ms. Walker persisted in behaviour that imperiled his ability to remain there. She was not acting in his best interests but instead focused on her needs.
- [76] Since commencing her petition on February 1, 2022, Ms. Walker has deposed and filed 25 affidavits in this proceeding containing various allegations involving Ms. Kierans and L'Arche. These affidavits also contain detailed accounts of the alleged history of Ms. Walker's acrimonious relationships with her siblings and others. They reveal substantial personal animosity between Ms. Walker and Ms. Kierans, L'Arche, and its employees. They suggest a belief that Ms. Kierans and L'Arche staff are conspiring against her. The evidence before me does not substantiate these allegations. On the contrary, the actions undertaken by Ms. Kierans and the staff at L'Arche suggests that they are motivated by Mr. Kierans' best interests.
- [77] As noted, Mr. Kierans chose Ms. Kierans to be his representative in early 2021 under the representation agreement. At that time, Ms. Walker had been absent from Mr. Kierans' life for at least six years. Since then, Ms. Kierans has served as Mr. Kierans' representative for over two-and-one-half years. During this period, she has taken reasonable decisions on his behalf and interacted effectively with L'Arche's staff and Mr. Kierans' physicians, with a view to promoting his best interests.
- [78] There is evidence that Ms. Kierans is not at all hostile towards Ms. Walker or other family members. In my view, she is likely to consult with other family members regarding Mr. Kierans' care.
- [79] Ms. Kierans tried to mediate with Ms. Walker to facilitate contact between Ms. Walker and Mr. Kierans but Ms. Walker refused these overtures. For an extended period, Ms. Walker also refused to engage with Mr. Kierans by telephone or videoconference calls in lieu of in person visits. Until recently, Ms. Walker declined these opportunities. This inflexibility, stubbornness, and unwillingness to compromise suggests that Ms. Walker is motivated by her own best interests, not those of Mr. Kierans.
- [80] I am satisfied that Ms. Kierans is best placed and suited to be Mr. Kierans' committee.

Conclusion

[81] Ms. Kierans' petition seeking committee ship over Mr. Kierans' person and estate is granted.

[82] Ms. Walker's petition is dismissed.

[SUBMISSIONS ON COSTS]

[83] The parties are to provide their written submissions on costs, of no more than ten pages, by November 17, 2023.

"Basran J."

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Prepared on 25 October 2026 · Esheria