

CANADA / JUDGMENT

Kierans (Re)

2024 BCSC 2171

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Supreme Court of British Columbia

DECIDED

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2024 BCSC 2171 Kierans (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kierans (Re),

2024 BCSC 2171

Date: 20241129

Docket: S229990

Registry: Vancouver

Re: The Patients Property Act,

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

And

In the matter of the Committeeship of Paul Bernard Kierans

- and -

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

Before: The Honourable Justice Hoffman

Reasons for Judgment

Counsel for the Applicant/Petitioner, Margaret Mary Kierans:

C. Gibson

C. Dheensaw

The Respondent, Kathleen Helen Walker, appearing in person:

K. Walker

Place and Dates of Hearing:

Vancouver, B.C.

November 18-21, 2024

Place and Date of Judgment:

Vancouver, B.C.

November 29, 2024

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Overview

- [1] The applicant seeks an order declaring Ms. Kathleen Walker to be a vexatious litigant pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443. If granted, the order would restrain Ms. Walker from continuing or initiating litigation in the Provincial Court or Supreme Court without leave. The issue on this application is whether Ms. Walker's litigation conduct has risen to the level of vexatious.
- [2] The applicant is Ms. Kierans, Ms. Walker's sister. This application arises in the context of an underlying and ultimately successful petition brought by Ms. Kierans to be appointed committee for her developmentally disabled brother, Paul Kierans. I will refer to Paul by his first name and in doing so, I intend no disrespect.
- [3] Ms. Walker, also a sibling to Paul, brought a competing petition to be named committee of Paul's person. This petition was dismissed at the same hearing before Justice Basran in which Ms. Kierans was appointed as Paul's committee.
- [4] The circumstances that give rise to the litigation within this family unit are quite challenging. There are set out in the reasons of Justice Basran dated October 18, 2023 (Kierans (Re), 2023 BCSC 1841), which resolved the issue of who should be Paul's committee (the "Committee Decision").
- [5] Paul lived with downs syndrome and, for 30 years, resided in a group home facility in Vancouver operated by L'Arche Greater Vancouver ("L'Arche"). By bringing the petitions, Ms. Kierans and Ms. Walker implicitly agreed that Paul was incapable of managing his affairs and that a committee was required. In adjudicating the petitions, the paramount and overriding consideration for Justice Basran was which sister would serve Paul's best interests: Committee Decision at para. 50.
- [6] Paul suffered a stroke in April 2024 and was admitted to hospital. He died on April 23, 2024.
- [7] While Ms. Walker raised many issues in this litigation, principal among them was her contention that she and Paul had rights to have in-person visits. At various points, L'Arche had to restrict Ms. Walker's in-person visits with Paul as a result of measures to reduce the spread of COVID-19 and later, because of Ms. Walker's disruptive conduct.

- [8] Another key issue Ms. Walker has repeatedly raised is her concern that a representation agreement under the Representation Agreement Act, R.S.B.C. 1996, c. 405, was not validly executed. Under the representation agreement, Ms. Kierans was given authority to make decisions about Paul's personal care. Ms. Walker does not believe that Paul would have chosen Ms. Kierans and takes the position that he did not have sufficient capacity to sign the representation agreement.
- [9] In November of 2022, Justice Sharma heard Ms. Walker's interim application seeking "enforcement" of in-person visits with Paul. Madam Justice Sharma dismissed the application in reasons dated November 7, 2022: *Re Kierans (Patients Property Act)*, 2022 BCSC 2285 (the "Visits Decision"). Justice Sharma found that it would not be in Paul's best interests to reinstate visits with Ms. Walker: *Visits Decision* at paras. 39, 41. This finding was upheld on appeal: *Walker v. Kierans*, 2023 BCCA 91.
- [10] There was evidence before both Justice Sharma and Justice Basran that problems arose when Ms. Walker visited Paul. Ms. Walker had significant conflicts with staff and her visits would leave Paul distressed, anxious and unable to settle down. This led L'Arche, in August 2022, to advise Ms. Kierans that it would have no choice but to terminate Paul's residency within 30 days unless action was taken respecting Ms. Walker's visits. Ms. Kierans then instructed her counsel to advise Ms. Walker that she could no longer visit Paul in-person: *Committee Decision* at paras. 37-43; *Visits Decision* at paras. 28-29.
- [11] Justice Basran found that Ms. Kierans was acting in Paul's best interests in terminating Ms. Walker's visits with Paul: *Committee Decision* at para. 66. This finding was upheld on appeal: *Walker v. Kierans*, 2024 BCCA 120.
- [12] Justice Basran found that Ms. Kierans made efforts to mediate the conflict regarding the issue of in-person visits but that Ms. Walker "refused these overtures". He also found that Ms. Walker had, until recently, declined opportunities to engage with Paul by telephone or videoconference calls: *Committee Decision* at para. 79. Justice Sharma similarly found that Ms. Walker was not cut-off from Paul because, among other things, she was offered telephone and Zoom contact which she "decided not to take up": *Visits Decision* at para. 31.
- [13] As is apparent from the history of this litigation, despite these findings, Ms. Walker persistently filed numerous applications seeking to restore visits with Paul on terms acceptable to her.
- [14] During the hearing of this application and in her supporting materials, Ms. Walker expressed animosity towards Ms. Kierans and accused her of various wrongdoing, including those of a fraudulent and criminal nature. On the other hand, Ms. Walker expressed deep love and affection for Paul and explained that her motivation in advancing this litigation was to be able to continue to regularly spend time with him and to look out for his best interests.
- [15] For the reasons that follow, I declare that Ms. Walker is a vexatious litigant within the meaning of s. 18 of the Supreme Court Act.

Relief Sought

[16] In a notice of application dated April 9, 2024, Ms. Kierans seeks the following relief:

- (a) an order that Kathleen Helen Walker, or anyone on her behalf, shall not bring or commence any legal proceedings in any court in British Columbia without leave of the Court; or
- (b) in the alternative, an order that Kathleen Helen Walker, or anyone on her behalf, shall not bring or commence any legal proceedings with respect to Paul Bernard Kierans, Margaret Mary "Mae" Kierans, L'Arche Greater Vancouver, and/or employees and agents of L'Arche Greater Vancouver in any court in British Columbia without leave of the Court; and
- (c) costs of the application, assessed at scale C.

Background

- [17] Ms. Walker is a former lawyer. She suffered a significant head injury in 2008 and ceased practicing as a lawyer in 2016. Beyond this committee proceeding, Ms. Walker has a history of protracted litigation in different contexts before the courts in British Columbia as a self-represented litigant: *Walker v. The Law Society of British Columbia*, 2020 BCCA 178 [LSBC]; *Kathleen Helen Walker v. The Law Society of British Columbia*, 2021 CanLII 18047 (S.C.C.); *Walker v. Manufacturers Life Insurance Company*, 2015 BCCA 473 [Manufacturers Life 2015-473]; *Walker v. Manufacturers Life Insurance Company*, 2015 BCCA 143 [Manufacturers Life 2015-143]; *AAA Action Movers (2008) Inc. v. Walker*, 2021 BCCA 400; *Kathleen Walker v. AAA Action Movers (2008) Inc. et al.*, 2022 CanLII 19061 (S.C.C.).
- [18] The proceedings now before the Court began on February 1, 2022, when Ms. Walker filed a petition seeking, inter alia, to set aside any representation agreement signed by Paul, to become committee of Paul's person and to have the Public Guardian & Trustee of British Columbia (the "PGT") appointed as committee of Paul's estate.
- [19] On December 16, 2022, after Ms. Walker had taken a number of steps, Ms. Kierans filed a petition to become Paul's committee. As previously stated, this petition was ultimately granted by Justice Basran: *Committee Decision*.
- [20] The notice of application filed by Ms. Kierans contains a detailed summary of the numerous steps taken by Ms. Walker's in pursuit of her professed desire to maintain contact with and assist Paul. The summary is cross-referenced to the affidavit evidence filed in support of this matter. I have reviewed all of the court documents referenced in the summary and am satisfied that it accurately and objectively reflects the litigation steps taken in this proceeding. Accordingly, rather than summarizing Ms. Walker's steps in these reasons, I have included a version of this summary--edited to remove any argumentative language--as Schedule A.

- [21] The supporting affidavit material confirms that, in this proceeding, Ms. Walker has appeared before at least 14 Supreme Court judges prior to appearing before me in this matter. Ms. Walker has filed at least 12 different interlocutory applications seeking various relief with respect to Paul. However, as will be discussed below, the relief sought in these applications was often duplicative and mirrored the relief sought in her petition.
- [22] Justice Basran found that Ms. Walker had filed 25 affidavits in the proceeding leading up to his decision: Committee Decision at para. 76. Since that time, Ms. Walker has filed six additional affidavits bringing the total to 31. Ms. Walker appealed the decisions of Justices Sharma and Basran to the Court of Appeal, and both leave applications were dismissed. She applied for leave to appeal to the Supreme Court of Canada in respect of both dismissals.
- [23] At the hearing of this application, Ms. Walker handed up an unfiled notice of motion in Supreme Court of Canada (File No. 41254) dated November 15, 2024. In this motion, she sought reconsideration of the Court's dismissal of her leave application in respect of the Court of Appeal decision upholding the Committee Decision.

Hearing of the Vexatious Litigant Application

- [24] Ms. Walker was present for only a portion of the hearing of this application. On the morning of the third day, Ms. Walker advised that she would no longer participate in the hearing. Given that this application seeks to limit Ms. Walker's ability to commence proceedings in any court in British Columbia, it is important to set out the events leading to her withdrawal from the hearing.

Case Management Conference Before Justice Edelman

- [25] At a case management conference before Justice Edelman on September 19, 2024, Ms. Walker advised that she wished to have two outstanding applications heard contemporaneously with the vexatious litigant application. Both applications were filed before Paul's death, on December 18, 2023, and February 6, 2024, respectively. The first application was to re-instate her visits with Paul, and the second was to have Paul examined by medical practitioners.
- [26] Counsel for Ms. Kierans argued that these applications were rendered moot by Paul's death. Justice Edelman directed the parties to exchange submissions with respect to mootness and ordered that the matter would be argued alongside the vexatious litigant application.

Further Case Management Conference

- [27] At a case management conference before me on November 6, 2024, I asked the parties how we would utilize the five days set aside for hearing. Counsel for Ms. Kierans advised that five days had been set aside in anticipation that Ms. Walker would only be able to attend court for limited hours. Counsel advised that they wished to set aside sufficient time to ensure that the application could be completed so as to avoid the legal costs to Ms. Kierans associated with a continuation.
- [28] Ms. Walker explained that she had medical evidence that she was only able to appear in court for two hours at a time but was unable to refer me to where it existed in the record. Since counsel for Ms. Kierans did not oppose sitting half-days, I directed that we would sit only for the morning session to accommodate Ms. Walker.
- [29] During the case management conference, Ms. Walker advised that she wished to bring an application to adjourn all the applications in this proceeding on the basis that the court should await the results of outstanding investigations by the RCMP into her complaints regarding the representation agreement and the College of Physicians and Surgeons into the circumstances of Paul's death. I agreed to hear that application on the first day of the hearing on the condition that materials were filed and served as directed.
- [30] Finally, near the conclusion of the conference, Ms. Walker raised a concern that I was biased. She requested that I recuse myself on the basis of my employment with the Department of Justice ("DOJ") prior to my appointment to the bench. She submitted that she worked at the Department of Justice as counsel from 1991 to 1994, but that she left in unhappy circumstances after making a harassment complaint about her supervisor. She was concerned that I could not impartially adjudicate her application.
- [31] I declined to recuse myself on the grounds that I did not join the DOJ until 2005, 11 years after Ms. Walker left, and that I did not know and had never worked with her supervisor. I advised Ms. Walker that if she wished to bring a formal application for recusal, I would hear it on the first day of the hearing.

The Hearing of this Application

- [32] On the first day of the hearing, Ms. Walker advised that she was not proceeding with her recusal application. Ms. Walker then referred me to a medical certificate from November 2016 and a brief letter from Dr. Saber dated December 3, 2019. The certificate stated that she had suffered a myocardial infarction. The letter stated that she had a cardiac condition which could be life threatening and, thus, she should not appear in court for more than two hours at time.

- [33] I note parenthetically that more recent evidence from Ms. Walker raises some questions about the extent to which Dr. Saber's 2019 letter represents her current state of health. In the February 2022 affidavit Ms. Walker swore in support of her application to become Paul's committee, she deposed that "her heart and lupus symptoms [had] been successfully treated except for a kidney infection in May of 2021".
- [34] Most of the morning of the first day of hearing was devoted to Ms. Walker's adjournment application. In her submissions, Ms. Walker went into great detail about her family history and referred me to much information that was only tangentially relevant. After standing down for a period of time, I dismissed the adjournment application. Counsel for Ms. Kierans then commenced submissions on the mootness issue. Ms. Walker raised no complaint on the first day when we sat until 12:35 p.m.
- [35] On the second day, both parties made submissions on mootness. After standing down, I delivered oral reasons finding that Ms. Walker's outstanding applications were moot and should be dismissed. After receiving these reasons, Ms. Walker advised the Court that she could only sit until 12:00 p.m. At this point, counsel for Ms. Kierans had already started submissions on the vexatious litigant application. I expressed concern that, with the already abbreviated schedule and the time devoted to the adjournment application, Ms. Kierans would not be able to complete the vexatious litigant application in the time set aside. Balancing the interests of Ms. Kierans with those of Ms. Walker, I declined to adjourn and indicated that we would carry on until 12:30 p.m. In response, Ms. Walker advised that she was leaving the courtroom. I encouraged her to stay or, alternatively, sit in the gallery, but she declined.
- [36] After Ms. Walker left the courtroom, I directed counsel for Ms. Kierans, who had spent the balance of the morning reviewing previous cases in which Ms. Walker had been involved, to notify Ms. Walker of the specific passages of those cases referred to in her absence.
- [37] At the commencement of the third day of the hearing, Ms. Walker advised that she wished to settle my order dismissing my application so that she could consider her options. After I signed the order, she advised that not all of the materials that she had listed in her amended application response to the vexatious litigant application were included in the application record assembled by Ms. Kierans' counsel. She then explained that she would not remain in the courtroom because I had endangered her life by declining to adjourn the proceedings at 12:00 p.m. the previous day and that my refusal to adjourn indicated that I was not impartial. I again reminded Ms. Walker that it was important for her to be present for this hearing because it had implications for her right to bring legal proceedings. I also warned that if she chose not to participate, there was authority allowing me to continue in her absence. Indeed, Rule 22-1(2) of the Supreme Court Civil Rules permits the Court to proceed with a chambers application where a party fails to attend.

- [38] After Ms. Walker left the courtroom, I directed Ms. Kierans' counsel to review the list of materials that Ms. Walker submitted were not before the Court in the application record and to provide me with a binder of those materials. I have reviewed and considered those materials in making my decision.
- [39] On the fourth day of the hearing, shortly before the lunch break, Ms. Walker returned to the courtroom to advise that she was going to file an appeal of the dismissal of her adjournment application. She also handed up one page of additional objections to the vexatious litigant application.
- [40] Ms. Walker returned again in the afternoon to hand up two additional pages of objections but indicated that she was unwilling to stay.

Positions of the Parties

- [41] Ms. Kierans submits that Ms. Walker's litigation conduct is vexatious. She argues that Ms. Walker has brought a barrage of unsuccessful and unnecessary applications and appeals that have resulted in at least 21 hearings between this Court and the Court of Appeal from February 1, 2021, up to April 9, 2024, when the vexatious litigant application was filed. Ms. Kierans further submits that Ms. Walker has engaged in similar vexatious behaviour in other proceedings.
- [42] The PGT did not appear on the application but filed an application response indicating that it consented to the relief sought.
- [43] As already noted, Ms. Walker chose not to make oral submissions. Instead, she filed an amended application response on October 1, 2024, and provided me with the objections referred to above. The response does not directly address why an order under s. 18 should not be granted. Rather, it repeats some of the same allegations that have already been adjudicated in this proceeding, presumably to demonstrate that Ms. Walker was justified in taking the steps she did.
- [44] For example, she alleges that there was no medical evidence that Ms. Kierans was a suitable committee of Paul, despite the fact that Justice Basran found that Ms. Kierans was "best placed and suited to be Mr. Kierans' committee": Committee Decision at para. 80, aff'd 2024 BCCA 120.
- [45] Ms. Walker explains that it was not until September 26, 2023, that she was in a financial position to retain two psychiatrists to examine Paul so that she could assess his capacity to enter into the representation agreement. She submits that prior to this time, neither L'Arche nor Ms. Kierans would permit Paul's doctors to communicate with her regarding her committee petition. She alleges, without any supporting evidence, that Ms. Kierans did not want Ms. Walker to have in-person visits with Paul or have him examined by experts.

- [46] Ms. Walker alleges that for "588 days Mae Kierans' lawyers terminated all in-person visits between [herself] and Paul Kierans at the behest of L'Arche's lawyer". This allegation fails to address Justice Basran's findings that: (a) Ms. Kierans acted reasonably in terminating Ms. Walker's visits to ensure that Paul would not lose his home of 30 years due to her disruptive behavior, and (b) Ms. Kierans had taken steps to facilitate ongoing contact between Paul and Ms. Walker that was not harmful to Paul's well-being: Committee Decision at paras. 64-66, 79.
- [47] In her written objections, Ms. Walker raises a number of fairness concerns relating to her absence from the hearing and the contents of the application record. Some of her objections amount to bare allegations without any supporting evidence. For example, she asserts that there are ongoing RCMP and College of Physician and Surgeon investigations into the representation agreement and the circumstances of Paul's death and that the application for a s. 18 order was filed after Ms. Kierans became aware of these investigations. As she did on the adjournment application I dismissed, Ms. Walker submits that it is a violation of her Charter rights to proceed without the results of the investigations.
- [48] Ms. Walker also speculates, again, without any evidentiary foundation that Ms. Kierans is being paid by others to interfere with Ms. Walker's right to defend herself in the future.

Legal Principles

- [49] Section 18 of the Supreme Court Act provides the Court with the discretion to order that a person be restrained from initiating or continuing vexatious legal proceedings where that person has habitually and persistently pursued those proceedings without reasonable grounds. The court's inherent jurisdiction to control its own process is an additional source of authority to make the order sought: *Gichuru v. Pallai*, 2018 BCCA 78 at paras. 74-77.
- [50] The right to access the courts is presumptively unrestricted. As an order under s. 18 imposes a restriction on this right, it is not to be lightly granted. On the other hand, the court has a duty to exercise its jurisdiction to protect a party who seeks relief from proceedings by a litigant who abuses the court's process: *Universe v. Forslund*, 2021 BCSC 812 at paras. 97-98, citing *Household Trust Co. v. Golden Horse Farms Inc.*, [1992] B.C.L.R. (2d) 355, 1992 CanLII 420 (B.C.C.A.).
- [51] In *Holland v. Marshall*, 2010 BCSC 1560, Justice Brown set out the applicable test as follows:
- [7] To succeed on an application pursuant to s. 18, the applicant must demonstrate:
1. that the proceedings are vexatious in the sense of having been taken in the absence of objectively reasonable ground; and
 2. that proceedings have been brought habitually or persistently, such that the litigant has continued obstinately in the course of conduct, despite protests or criticism. (*British Columbia*) *Public Guardian and Trustee v. Brown* 2002 BCSC 1152.

- [52] While the words of s. 18 refer to "habitual" legal proceedings, that requirement does not only refer to the number of actions that a party has commenced, but also to the nature of the conduct of the litigant within a particular action itself: *Semenoff Estate v. Semenoff*, 2017 BCCA 17 at para. 34.
- [53] Whether the second element of the test is met is assessed on an objective standard. The question is whether a reasonable person in the same position as the litigant would have appreciated that the conduct was vexatious: *Universe* at para. 90.
- [54] The characteristics of a vexatious proceeding, originally set out by the Ontario High Court in *Lang Michener v. Fabian*, [1987] O.R. (2d) 353, 1987 CanLII 172 (H.C.J.), were adopted by the Court in *Holland* at para. 8 and are as follows:
- (a) bringing one or more actions to decide an issue which has already been determined by a court of competent jurisdiction;
 - (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;
 - (c) actions brought for an improper purpose, including the harassment or oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
 - (d) grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
 - (e) failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings;
 - (f) persistently taking unsuccessful appeals from judicial decisions; and
 - (g) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action.
- [55] An additional characteristic is the practice of filing of vast amounts of materials to no apparent purpose: *Universe* at para. 93, citing *Hokhold v. Gerbrandt*, 2017 BCSC 1249 at paras. 43-46.
- [56] The court may also consider litigation conduct, including whether the litigant in question has made grave allegations without providing any proof to support them: *Universe* at para. 94.
- [57] While a s. 18 order can only bar proceedings in the Provincial and Superior Court, the court may also consider the litigant's conduct in appellate courts and administrative tribunals: *Universe* at para. 96; *Hokhold* at paras. 38-42; *Rafique v. AWM-Alliance Real Estate Group Ltd.*, 2019 BCSC 247 at para. 48.

- [58] The rationale for an order under s. 18 is two-fold. Such orders prevent the waste of court resources and protect the parties subject to the vexatious litigation from the "anguish, frustration, and expense of having to mount defences to frivolous or vexatious lawsuits": *Gichuru v. Purewal*, 2023 BCCA 345 at para. 17.
- [59] In *Gichuru*, the Court of Appeal adopted with approval the statement of the Federal Court of Appeal in *Canada v. Olumide*, 2017 FCA 42, regarding the twin goals of s. 40 of the Federal Courts Act, R.S.C., 1985, c. F-7, which is similar to s. 18 of the Supreme Court Act:
- [17] Stratas J.A. in *Canada v. Olumide*, 2017 FCA 42 began by referring to the harm vexatious litigants cause to the justice system as a whole:
- [17] Section 40 reflects the fact that the Federal Courts are community property that exists to serve everyone, not a private resource that can be commandeered in damaging ways to advance the interests of one.
- [18] As community property, courts allow unrestricted access by default: anyone with standing can start a proceeding. But those who misuse unrestricted access in a damaging way must be restrained. In this way, courts are no different from other community properties like public parks, libraries, community halls and museums.
- [19] The Federal Courts have finite resources that cannot be squandered. Every moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant. The unrestricted access to courts by those whose access should be restricted affects the access of others who need and deserve it. Inaction on the former damages the latter.
- [20] This isn't just a zero-sum game where a single vexatious litigant injures a single innocent litigant. A single vexatious litigant gobbles up scarce judicial and registry resources, injuring tens or more innocent litigants. The injury shows itself in many ways: to name a few, a reduced ability on the part of the registry to assist well-intentioned but needy self-represented litigants, a reduced ability of the court to manage proceedings needing management, and delays for all litigants in getting hearings, directions, orders, judgments and reasons.
- [60] The Court of Appeal regarded both the damage to the reputation of the justice system and the hardship faced by individual victims of vexatious litigants as "serious concerns": *Gichuru* at para. 19.

Analysis

- [61] There is little doubt that Ms. Walker deeply loved her brother. It also appears that she genuinely believed that she was the best committee for Paul, a belief that motivated her to file her committee petition. However, as found in previous decisions, Ms. Walker has difficulty separating her needs from Paul's best interests: Committee Decision at para. 74; Visits Decision at para. 26. While Ms. Walker claims to have acted in Paul's best interests, her actions, at times, suggest otherwise: Visits Decision at para. 31.
- [62] Regardless of her motivations, I find that on the applicable objective standard, the manner in which Ms. Walker has pursued this litigation is vexatious within the meaning of s. 18 of the Supreme Court Act. Her litigation conduct demonstrates almost all of the characteristics of vexatious litigation set out in Holland.
- [63] The material filed in this application and in this proceeding, as a whole, supports the conclusion that Ms. Walker's litigation conduct has consumed an extraordinary amount of court resources for what should have been a relatively straightforward issue, namely which committee would be in Paul's best interests. Her actions have caused Ms. Kierans to incur great expense to respond to a plethora of unnecessary and ill-conceived applications and appeals.
- [64] In finding that a s. 18 order is justified, I have considered the entirety of this proceeding. However, I set out below selected examples of how Ms. Walker's actions are consistent with the characteristics of vexatious proceedings.

Characteristics of Vexatious Proceedings

Bringing One or More Actions to Decide an Already Decided Issue

- [65] Ms. Walker repeatedly brought unnecessary or duplicative applications asking for judges to decide issues which had already been adjudicated or were found to be unnecessary. Sometimes, Ms. Walker did so in clear defiance of directions from the Court.
- [66] Ms. Walker filed her petition on February 1, 2022, seeking an order, inter alia, that she be declared committee of Paul's person, that the representation agreement be declared void, and for enforcement of a visitation agreement. Eight days later, on February 9, 2022, she brought an ex parte application in which she sought substantially the same relief with respect to visitation. This application was adjourned by two different presiders, and an order was made that Ms. Kierans needed to respond to the petition by March 11, 2022. On March 21, 2022, the February 9 application came before Justice Fitzpatrick, and she dismissed it.

- [67] Subsequently, Ms. Walker renewed her application to enforce in-person visits. This application was heard by Justice Sharma. In her reasons, which I have referred to as the Visits Decision, Justice Sharma found that there was "no legal basis upon which Ms. Walker [could] assert that there was an 'agreement' upon which she [could] insist on reinstating visits" and that in any event, "it is not relief that is available as an interim application." As already noted, Ms. Walker's appeal of this decision was unsuccessful.
- [68] Following the delivery of the Visits Decision, Justice Sharma issued a direction that all applications in this matter were to be set down before her. Contrary to this order, Ms. Walker twice brought on applications in front of other justices of this Court. On December 1, 2022, Ms. Walker attempted to bring an application before Justice Coval for an injunction that no one could transport Paul out of British Columbia. On May 17, 2023, Ms. Walker filed an application for various relief, including an order the Paul be examined by a psychologist. This latter application came before Justice Matthews in chambers. Both applications were adjourned on the basis that Justice Sharma was seized.
- [69] On February 6, 2024, Ms. Walker again renewed her application to enforce Paul's right to have in-person visits. She did so after Justice Basran dismissed her committee ship petition and in the face of Justice Sharma's clear finding that she had no legal basis to enforce visitation.
- [70] As set out in Schedule A, Ms. Walker also filed repetitive, unnecessary and unsuccessful applications for an order that Paul be examined by medical practitioners both prior to and after the Committee Decision. One of these applications was the May 17, 2023 application before Justice Matthews, referred to above.
- [71] At the hearing before Justice Basran on September 6, 2023, Ms. Walker asked Justice Basran to convince Ms. Kierans to consent to an order facilitating an examination of Paul by two physicians retained by Ms. Walker. As set out in his reasons, which I have referred to as the Committee Decision, Justice Basran explained that it would not be appropriate for him to do so and noted that she had not brought an application for such relief. Ms. Walker stated that she was not seeking a court order appointing the physicians to examine Paul. She then advised that she was only prepared to address that specific issue and would not participate further in the hearing. Instead, she would conduct a watching brief from the gallery: Committee Decision at paras. 56-57.
- [72] Ms. Walker's application before the Court of Appeal for a similar order was dismissed on November 15, 2023. In doing so, the Court of Appeal found that Ms. Walker expressly declined to ask Justice Basran for the order she sought on appeal. Further, the Court of Appeal noted that Justice Basran heard the applications on the basis that parties agreed that Paul was incapable of managing his affairs and that no concerns were raised with the conclusions reached in the medical affidavits filed by Ms. Kierans: *Walker v. Kierans*, 2023 BCCA 433 at paras. 24, 31, 34.

- [73] Despite this dismissal, Ms. Walker continued to seek an order that Paul be assessed. On January 9, 2024, prior to the Court of Appeal's ruling on Ms. Walker's appeal of the Committee Decision, she attempted to bring an application to have Paul assessed by physicians before Justice MacNaughton. The application was adjourned, and Ms. Walker was ordered not to reset the application until the appeal of the Committee Decision was decided.
- [74] Despite this order, on February 6, 2024, Ms. Walker attempted to reset this application in front of Justice Walker. The application was adjourned, and Ms. Walker was again directed not to bring the application on again until the Court of Appeal had dealt with her appeal.

Advancing Actions that Cannot Succeed and Persistently Taking Unsuccessful Appeals

- [75] I also find that Ms. Walker has persisted in advancing applications and appeals where it is obvious that they cannot succeed. This is perhaps best demonstrated by Ms. Walker's insistence that I hear her applications filed prior to Paul's death to have him assessed by medical professionals and to allow in-person visits. Ms. Walker submits that the Court should exercise its discretion to decide these applications on the basis that they should have been decided prior to Paul's death.
- [76] This conduct necessitated that Ms. Kierans incur further costs to seek to have these applications dismissed on the grounds that they were rendered moot by Paul's death. Despite being invited by Justice Edelmann to prepare written submissions on the mootness issues, Ms. Walker declined to do so. In her oral submissions, she failed to advance any cogent basis for me to exercise my discretion to hear her applications which were obviously rendered moot by Paul's death.
- [77] There are other examples of this conduct. On April 14, 2022, Ms. Walker filed an application to set aside the representation agreement and to be appointed as Paul's interim committee until the petition could be heard. In dismissing the application, Justice Iyer noted in her oral reasons that the application sought relief that duplicated what was set out in Ms. Walker's petition: *Kierans (Re)* (13 June 2022), Vancouver S220769 (B.C.S.C.) at para. 2.
- [78] Further, Justice Iyer dismissed the application because the Representation Agreement Act required Ms. Walker to make an objection with the PGT which she had failed to do: paras. 19-24. More importantly, Justice Iyer found that it was not possible for her to make any order that Paul required a committee without evidence from two medical practitioners which Ms. Walker had failed to file in support of her application: paras. 28-30. Moreover, Justice Iyer was unable to see any necessity for appointing an interim committee when Paul had the representation agreement in place: para. 32.
- [79] Ms. Walker has also persistently filed appeals and applications for stays in the Court of Appeal which had little hope of success or without having the necessary information to assess the likelihood of success.

- [80] Ms. Walker sought to appeal and stay Justice Sharma's order in the Visits Decision. It is also relevant to note that Ms. Walker filed an appeal of Justice Sharma's order without even being aware of the reasons. Ms. Walker was not present when Justice Sharma read her reasons, and the notice of appeal was filed before a transcript of the reasons were available.
- [81] Justice Groberman of the Court of Appeal dismissed Ms. Walker's applications for leave and a stay on the grounds that there was nothing capable of being stayed as Justice Sharma's order preserved the status quo pending the hearing of the petition: *Walker v. Kierans*, 2023 BCCA 91 at para. 15, citing *Walker v. Kierans* (13 January 2023), Vancouver CA48669 (B.C.C.A.) (Chambers) at para. 11.
- [82] On October 10, 2023, Ms. Walker filed an appeal in respect of the Committee Decision after the conclusion of the hearing but before Justice Basran's reasons were delivered: *Walker v. Kierans*, 2023 BCCA 433 at para. 14.
- [83] When the Court of Appeal dismissed her appeals of the decisions of Justices Sharma and Basran, Ms. Walker filed applications for leave to the Supreme Court of Canada. This once again required Ms. Kierans to respond and incur the associated expense. Given the stringent test for leave in the Supreme Court of Canada--which is satisfied only in cases raising issues of national importance--I find that Ms. Walker proceeded with these appeals in the absence of reasonable grounds to do so. This conduct also demonstrates an unwillingness to accept a final determination against her.

Bringing Actions for an Improper Purpose

- [84] I find that Ms. Walker's conduct in this matter was for purposes other than the pursuit of legitimate rights. The paramount and overriding consideration in the underlying petitions was Paul's best interests. While Ms. Walker may have been initially motivated to commence litigation in order to advance Paul's interests, it is clear from the record that she has expanded this litigation far beyond its proper bounds in an attempt to advance her own interests and to voice her own grievances.
- [85] Ms. Walker's conduct during the hearing of this application also resulted in inordinate time being devoted to matters that were not directly relevant to the application. Despite prompts to remain focused on the issues at play in this application, Ms. Walker made accusations that professionals involved in Paul's care had engaged in serious wrongdoing and that there were investigations ongoing into fraud and malpractice in an attempt to adjourn this application. Ms. Walker also made allegations of wrongdoing and conflict of interest on the part of Ms. Kierans and her counsel. All of these were assertions made in the absence of any evidentiary foundation.

Litigation Conduct in Other Proceedings

- [86] When Ms. Walker's past litigation conduct in other proceedings is examined, some common themes emerge. The characteristics of vexatious litigation are present in Ms. Walker's litigation involving AAA Action Movers, Manulife Financial and the Law Society of British Columbia.
- [87] In her litigation involving Manufacturers Life Insurance Company, Ms. Walker relied upon police investigations into the insurer company that she had initiated to explain her failure to communicate with opposing counsel over several months. She explained that she did not want to undermine those investigations by anything she may say in court: *Manufacturers Life* 2015-473 at para. 16. Ms. Walker advanced a similar argument in her application to adjourn before me.
- [88] In previous litigation, Ms. Walker has also engaged in conduct similar to her attempts in this proceeding to circumvent Justice Sharma's order that she was seized. In the *Manufacturers Life* litigation, Justice Weatherill was assigned as the case management judge. Despite this, Ms. Walker engaged in a series of applications and appearances in an attempt to have other judges hear applications she wished to bring: *Manufacturers Life* 2015-473 at paras. 9, 17-19.
- [89] Ms. Walker has in the past failed to appear for scheduled hearings relying on generalized medical evidence. This occurred in Ms. Walker's litigation with the Law Society of British Columbia, which concerned issues regarding Ms. Walker's cessation of legal practice in 2014.
- [90] The Law Society sought a vexatious litigant order against Ms. Walker. On the morning it was set to be heard, Ms. Walker did not attend court. She advised that she was unable to attend due to a downturn in her health--though she had spent the previous day arguing her contempt application against the Law Society and had not indicated that she was having difficulty proceeding. She forwarded to the court medical information about her health conditions in general, but nothing specific to her condition that morning: *LSBC* at paras. 20-25, 34. Justice Skolrood adjourned the vexatious litigant application but ordered, in the interim, that Ms. Walker was not to file any further material or commence any further legal proceedings against the Law Society without leave of the court until such time as the Law Society's application could be heard: *LSBC* at paras. 25-27.
- [91] Ms. Walker has also proceeded with appeals that were bound to fail. In October 2019, AAA Action Movers obtained a Provincial Court judgment against Ms. Walker for unpaid services. Ms. Walker unsuccessfully appealed the judgment to the Supreme Court and subsequently to the Court of Appeal. In dismissing the appeal, the Court of Appeal found that Ms. Walker "seeks to re-litigate the small claims action" and that, absent an unmeritorious constitutional challenge advanced by Ms. Walker, the court had no jurisdiction to entertain her appeal: *AAA Action Movers (2008) Inc.* at paras. 18, 36, 38, 40. In the face of this clear finding that her appeal was meritless, Ms. Walker applied for leave to appeal to the Supreme Court of Canada. This leave application was dismissed: *Kathleen Walker*.

- [92] Ms. Walker appealed the order of Justice Weatherill requiring her to obtain a medical report from her doctor addressing her capacity to conduct the litigation. In this appeal, she applied for an order for indigent status. This required Justice Chiasson, sitting in chambers, to consider the merits of her appeal as part of the test for granting indigent status. Justice Chiasson found that "the appeal of the exercise of discretion [was] bound to fail": *Manufacturers Life* 2015-143 at para 34, 40. Despite this finding, Ms. Walker proceeded with her appeal: *Manufacturers Life* 2015-473.
- [93] Another common theme is that Ms. Walker repeatedly raises bare allegations that the judges she appears before biased without reasonable grounds to do so: *Walker v. Kierans*, 2024 BCCA 118; *Walker v. Kierans*, 2024 BCCA 119; *Manufacturers Life* 2015-473 at paras. 37-39; *LSBC* at paras. 43-45.

Conclusion

- [94] I am satisfied that it is necessary to prevent abuse of the court's process and therefore, in the public interest, to require Ms. Walker to seek leave to commence any proceedings in this Court or the Provincial Court. Ms. Walker has demonstrated an inability to exercise the judgment required to identify reasonable grounds for the claims, applications and appeals she has initiated, not only in this proceeding but in other proceedings as well. She has also demonstrated an unwillingness to comply with judicial directions by filing materials and setting down applications in contravention of orders that she refrain from doing so.
- [95] An order under s. 18 of the Supreme Court Act does not completely eliminate Ms. Walker's ability to access justice. Rather, it puts in place a screening mechanism that will allow Ms. Walker to advance meritorious claims in a way that safeguards the resources of the court and strengthens its ability to provide justice to the many other litigants before it.

Application to Strike Affidavit #5 of Kathleen Walker

- [96] Ms. Kierans applies to strike and have removed from the court file the fifth affidavit sworn by Ms. Walker dated April 22, 2024, and filed on October 4, 2022 (the "Fifth Affidavit").
- [97] Ms. Walker brought an unsuccessful ex parte application before Justice Edelman to have the Fifth Affidavit sealed. Ms. Kierans submits that the affidavit is inadmissible as it does not contain factual evidence. Rather, it consists of:
- Ms. Walker's views as to the thoughts and motivations of others as well as her speculations as to why others took alleged actions;
 - Ms. Walker's opinions regarding Paul's capacity to enter into the representation agreement and his medical state in the days before he died;
 - hearsay evidence;

- Ms. Walker's beliefs as to the view that police entities took regarding her various complaints as well as the steps taken by those entities; and
- Ms. Walker's belief that the police should have investigated court documents she says were filed in the hearing before Justice Basran but which disappeared.

- [98] The affidavit alleges criminal conduct by Ms. Kierans and her counsel solely on the basis Ms. Walker's assertions. No evidentiary foundation is offered for these allegations. The only exhibit attached to the affidavit is correspondence from the RCMP acknowledging receipt of complaints that Ms. Walker made against two RCMP officers in October 2023. In these complaints, Ms. Walker alleges that these officers failed to investigate her allegations that the representation agreement was a forgery because Paul did not have capacity to sign the document and that he was not being properly cared for in his group home.
- [99] Ms. Kierans relies on the decision of *Kennedy v. Kennedy*, 2006 BCSC 190 at paras. 3, 5. In that case, the Court held that portions of affidavits can be expunged where they contain irrelevant evidence, inadmissible opinion, adjectival descriptions, subjective descriptions of reactions, opinions regarding motives or argument.
- [100] I find that the Fifth Affidavit consists almost entirely of inadmissible evidence. What little admissible evidence is left is so intertwined with the inadmissible portions to justify an order that it be struck in its entirety.
- [101] Given the nature of the allegations set out in the Fifth Affidavit, I am persuaded that there is potential prejudice to Ms. Kierans if it were to remain on the court file.

Conclusion and Disposition

- [102] Ms. Kierans' application is allowed.
- [103] Ms. Walker is declared a vexatious litigant.
- [104] Pursuant to s. 18 of the Supreme Court Act, the following orders are made:
- a) Ms. Kathleen Walker shall not, except with leave of the court, initiate any proceedings in any registry of the Supreme Court or the Provincial Court.
 - b) Any document or process filed by Ms. Walker in contravention of this order, or any process or document inadvertently filed or received by the registry, is a nullity and may be disposed of accordingly.
 - c) Ms. Kierans and her counsel are not obliged to respond to any document or process filed in contravention of this order or any process or document inadvertently filed or received by the registry in either the Supreme Court or the Provincial Court.
- [105] The Fifth Affidavit is struck entirely and shall be removed from the court file in this matter.

[106] Ms. Walker's signature on the form of the order is dispensed with, and the draft order should be directed to my attention forthwith for signature.

Costs

[107] As the successful party, Ms. Kierans is entitled to her costs of this application.

[108] The notice of application seeks costs on Scale C, but counsel made no specific submissions on the applicable scale. While the materials on the application were voluminous, I am not satisfied that the factual and legal issues raised by the application were sufficiently complex to warrant an order for costs on Scale C. Accordingly, costs are to be assessed on Scale B: *Ahluwalia v. Richmond Taxi Co. Holdings Ltd.*, 2019 BCSC 2189 at paras. 99-106.

"Hoffman J."

Appendix A

After commencing her petition on February 1, 2022, Ms. Walker has brought on or made necessary the following list of applications, court hearings, and litigation steps, in chronological order:

- (a) On February 1, 2022, prior to having served Ms. Kierans with the petition, Ms. Walker obtained short leave to have a notice of application filed February 1, 2022 (the "First Application") heard on February 9, 2022. The application sought inter alia the "enforcement" of an alleged "in-person visitation agreement" respecting herself and Paul, along with disclosure of medical records, communications, and any other document or record pertaining to Paul.

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "B" and "C"

- (b) On February 9, 2022, prior to having served Ms. Kierans with the petition or the First Application, Ms. Walker proceeded with a hearing of the First Application before Justice Mayer. Justice Mayer adjourned the First Application and made orders that L'Arche provide Ms. Walker with the name of the person with medical decision making authority for Paul and that Ms. Walker serve this person in accordance with the Rules of Court before bringing the First Application for hearing again. However, in the First Application materials, Ms. Walker had already identified Ms. Kierans as Paul's appointed decision maker, yet sought to proceed with a hearing without serving Ms. Kierans with the petition or the First Application.

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "B" and "D"

- (c) After serving Ms. Kierans with the petition and First Application, Ms. Walker sought to have the First Application heard on March 4, 2022, prior to Ms. Kierans having been provided the time under the Rules to file her response to the petition. On March 4, 2022, Justice Majawa adjourned the First Application to provide Ms. Kierans time to file her response to the petition.

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "E" and "F"

- (d) On March 21, 2022, the First Application was heard by Justice Fitzpatrick, who dismissed the relief sought by Ms. Walker for "enforcement" of in-person visits with Paul and ordered only that LArche produce any documents in its possession related to the execution of the Representation Agreement, rather than the broad order for all possible records pertaining to Paul that Ms. Walker had sought.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "G"

- (e) On April 14, 2022, Ms. Walker filed a notice of application seeking inter alia orders that Paul's representation agreement was "invalid from inception" and that Ms. Walker be appointed "interim committee" of Paul's person. Ms. Walker filed no medical affidavits attesting to Paul's capacity nor had Ms. Walker followed the statutory procedure to object to a representation agreement. Ms. Walker booked and proceeded with a one-day chambers hearing of her application before Justice Iyer on June 3, 2022. Justice Iyer dismissed the application in its entirety based on the lack of medical evidence and the failure of Ms. Walker to follow the statutory process to object to a representation agreement.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "H"

Margaret Mary Kierans' Book of Authorities, Tab 14 (Oral Reasons of Justice Iyer)

- (f) On June 27, 2022, Ms. Walker filed a notice of trial purporting to set her petition for a 4-day trial commencing January 3, 2023. When Ms. Kierans objected on the basis that no order had been made transferring this petition to the trial list, Ms. Walker brought an unsuccessful application (filed August 5, 2022) before Justice Baker on August 19, 2022, seeking inter alia an order that a trial of her petition proceed on January 3, 2023. Justice Baker ordered that the notice of trial filed by Ms. Walker was a nullity and declined to transfer the matter to the trial list.

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "I", "J", "K", and "L"

- (g) On August 25, 2022, Ms. Walker re-set for hearing the application that had just been heard and determined by Justice Baker less than one week prior. The parties attended the re-set application on September 7, 2022 before Justice Stephens, who dismissed the relief sought by Ms. Walker and ordered that a case planning conference take place on October 28, 2022.

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "M", "N", and "O"

- (h) On September 22, 2022, Ms. Walker filed an application seeking inter alia enforcement of an in-person visitation schedule between Ms. Walker and Paul. On November 7, 2022, this application was heard and dismissed by Madam Justice Sharma. In her oral reasons, Madam Justice Sharma described the application as "very ill-conceived" and noted with respect to the parties and the Court that "It cost them money. It cost this court time that could have been used for other matters."

Re Kierans (Patients Property Act), 2022

BCSC 2285 at para 50 (Margaret

Mary Kierans' Book of Authorities, Tab 15)

- (i) At the November 7, 2022 hearing, after unsuccessfully seeking an adjournment in the midst of her reply submissions, Ms. Walker left the courtroom and did not return to hear the reasons for judgment.

Re Kierans (Patients Property Act), 2022

BCSC 2285 at para 50 (Margaret

Mary Kierans' Book of Authorities, Tab 15)

- (j) In spite of not being present in the courtroom to hear Madam Justice Sharma's reasons for judgment and no copy of the oral reasons having yet been produced, Ms. Walker filed an application for leave to appeal Madam Justice Sharma's order on November 10, 2022 and unsuccessfully sought to have an application for a "stay" of the dismissal heard on an urgent basis in the Court of Appeal on November 14, 2022. Madam Justice DeWitt-Van Oosten dismissed the application for an urgent "stay" hearing.

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "R", "S", "T", "U", and "V"

- (k) On November 18, 2022, Ms. Walker filed an application seeking inter alia an order for an "injunction" that Paul not be transported out of British Columbia and sought to have it heard without notice on that date before Justice Taylor. As it was without notice, counsel for Ms. Kierans was not present at this hearing. Justice Taylor apparently ordered that the application be brought with notice and it was served on counsel for Ms. Kierans later that day.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "W", "X", and "Y"

- (l) On November 29, 2022, Supreme Court Scheduling sent the parties an email which stated that Madam Justice Sharma had directed that she was seized of all applications in Ms. Walker's Petition as of November 23, 2022 and that no party was to file any further affidavits in Ms. Walker's Petition without leave of Madam Justice Sharma (the "Justice Sharma Directions").

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "Z" and "AA"

(m) On December 1, 2022, Ms. Walker sought to proceed with a hearing of her injunction application before Justice Coval, in contravention of the Justice Shanna Directions that stated Madam Justice Shanna was seized of all applications in the petition. Justice Coval adjourned the application on the basis that Madam Justice Sharma was seized of applications within the petition. Ms. Walker did not re-set this application for hearing.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "BB"

- (n) On January 13, 2023, Mr. Justice Groberman of the Court of Appeal heard Ms. Walker's application for a stay of and leave to appeal Madam Justice Shanna's order dismissing her September 22, 2022 application. Mr. Justice Groberman dismissed the application for a stay: as described in *Walker v. Kierans*, 2023 BCCA 91.
- (o) Ms. Walker proceeded to bring an application to vary Mr. Justice Groberman's dismissal order before a division of three justices of the Court of Appeal. Ms. Walker's application for variation was heard on February 14, 2023. The Court of Appeal dismissed Ms. Walker's application: *Walker v. Kierans*, 2023 BCCA 91.
- (p) Ms. Walker sought leave to appeal the Court of Appeal's denial of leave to appeal to the Supreme Court of Canada. On July 6, 2023, the Supreme Court of Canada denied Ms. Walker's application for leave to appeal.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "CC"

- (q) On January 19, 2023, the parties attended the courthouse for a scheduled two-day hearing of the committee ship petitions. However, the matter was not heard because no judge was available.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "DD"

- (r) On March 20, 2023, after not hearing back from Ms. Walker regarding her availability for a re-set hearing of the petitions, counsel for Ms. Kierans informed Ms. Walker that they had booked April 11 and 12, 2023 with Supreme Court Scheduling for a hearing of the petitions.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "FF"

- (s) On March 29, 2023, counsel for Ms. Kierans wrote to Ms. Walker and formally requested that she set her petition for April 11 and 12, 2023. Ms. Walker refused to set her petition down and the dates had to be abandoned.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "FF"

- (t) On April 19, 2023, Ms. Kierans filed a requisition under Rule 16-1(17), applying to Madam Justice Sharma for directions regarding setting Ms. Walker's Petition for hearing.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "FF"

- (u) On April 26, 2023, Madam Justice Sharma directed that Ms. Walker's and Ms. Kierans' petitions be heard together for two days on a date that all parties were available within 60 days of the direction or a date as soon as possible thereafter that all parties were available. Ms. Walker attended the April 26, 2023 hearing before Madam Justice Sharma but sat in the court gallery and declined to make submissions as a "protest".

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "GG"

- (v) On May 8, 2023, Ms. Walker filed a notice of application seeking inter alia an order appointing herself as Paul's committee. This application sought parallel relief as to what Ms. Walker was seeking in her petition and was set down unilaterally for a one-day hearing on June 7, 2023, in spite of Madam Justice Sharma's directions regarding the petitions being heard together for two days on a date that all parties were available.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "HH"

- (w) On May 17, 2023, Ms. Walker filed a notice of application seeking inter alia that a psychologist be appointed to assess Paul. Ms. Walker brought the application on short leave, to be heard by a justice of this Court on May 23, 2023. This was in contravention of the Justice Sharma Directions that Madam Justice Sharma was seized of all applications in Ms. Walker's Petition.

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "II" and "JJ"

- (x) On May 23, 2023, Ms. Walker's application for appointment of a psychologist came on for hearing before Justice Matthews. Justice Matthews adjourned the application without hearing it on the basis that Madam Justice Sharma was seized of all applications within Ms. Walker's petition.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "KK"

- (y) On May 31, 2023, Ms. Walker filed a requisition unilaterally setting her petition for hearing on June 7, 2023, for a half-day, contrary to Madam Justice Sharma's direction.

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "LL" and "MM"

- (z) On June 7, 2023, the parties were forced to attend the courthouse as a result of Ms. Walker setting it as a hearing date for her petition, though ultimately, there was no judge available to hear the matter.

(aa) On June 8, 2023, Supreme Court Scheduling emailed the parties and advised that because Madam Justice Sharma was unexpectedly unavailable for the foreseeable future, she unseized herself of any applications in the petitions.

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "NN" and "OO"

(bb) On June 15, 2023, Ms. Walker's application for appointment of a psychologist came on for hearing before Justice Doyle. Justice Doyle dismissed Ms. Walker's application for appointment of a psychologist and awarded costs of the application to Ms. Kierans and the PGT in any event of the cause.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "QQ"

(cc) On August 1-3, September 6, and October 6, 2023, both Ms. Walker's and Ms. Kierans' respective committeeship petitions were heard together before Justice Basran, with oral reasons for judgment reserved to October 18, 2023.

(dd) On October 10, 2023, prior to Justice Basran delivering his oral reasons for judgment, Ms. Walker filed a notice of appeal in the Court of Appeal (CA File No. 49406), purportedly seeking leave to appeal Justice Basran's decisions during the course of the hearing of the petitions.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "UU"

(ee) On October 12, 2023, still prior to Justice Basran delivering his oral reasons for judgment in the petitions, Ms. Walker filed a notice of urgent application and a notice of application in the Court of Appeal, seeking, among other things, a stay of proceedings in the petitions, an order expediting her "appeal", and an order that Paul be examined by physicians that Ms. Walker had retained. Registrar Outerbridge dismissed Ms. Walker's applications after a hearing on October 16, 2023.

Tab 10, Affidavit #7 of Sophia Lee, Exhibits "VV" and "WW"

(ff) On October 18, 2023, Justice Basran delivered oral reasons for judgment in both Ms. Walker's and Ms. Kierans' petitions, wherein he:

- i. Declared Paul incapable of managing his person and affairs;
- ii. Granted Ms. Kierans' petition, appointing Ms. Kierans as the committee of Paul's person and estate; and
- iii. Dismissed Ms. Walker's petition.

(hh) On October 18, 2023, the date of Justice Basran's reasons, Ms. Walker filed a notice of application, returnable October 31, 2023, seeking that, pursuant to s. 3 of the Patients Property Act, Paul be examined within 14 days by two medical doctors of Ms. Walker's choosing for the purpose of her application to be appointed Paul's committee. This is despite the fact that:

- i. The parties had just completed a hearing that spanned parts of 5 days, with respect to who should be appointed Paul's committee, in which all parties agreed Paul was incapable.
- ii. Justice Basran was due to deliver reasons for judgment that date as to who between Ms. Walker and Ms. Kierans would be appointed Paul's committee.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "XX"

(ii) On October 18, 2023, Ms. Walker also filed notices of appeal in both petitions with respect to Justice Basran's orders dismissing Ms. Walker's Petition and appointing Ms. Kierans as Paul's committee (CA File No. 49418 and CA File No. 49417).

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "YY"

(jj) On October 26, 2023, Ms. Walker filed a notice of application in the Court of Appeal in which she sought an order that Paul be examined by two medical doctors of Ms. Walker's choosing.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "ZZ"

(kk) On November 14, 2023, Ms. Walker's application in the Court of Appeal was heard by Mr. Justice Voith. On November 15, 2023, Mr. Justice Voith delivered oral reasons dismissing Ms. Walker's application.

(11) On December 19, 2023, Ms. Walker filed an application (the "December 19 2023 Application") seeking an order that Paul attend a "reassessment" by Ms. Walker's medical experts.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "AAA"

(mm) Ms. Walker's application was unilaterally set for January 9, 2024, a date that counsel for Ms. Kierans was not available. On January 9, 2024, an agent for Ms. Kierans' counsel sought an adjournment on the basis that counsel was not available to attend the application. Justice MacNaughton ordered the application to be adjourned and not brought on for hearing until after Ms. Walker's appeal of Justice Basran's orders in the committee petitions was decided by the Court of Appeal.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "BBB"

(nn) On February 5, 2024, Ms. Walker's appeal of Justice Basran's orders was heard by the Court of Appeal, with judgment reserved.

(oo) On February 5, 2024, Justice Basran issued reasons for judgment regarding costs for both petitions (the "Costs Judgment"), wherein he ordered that, in respect of both petitions:

- i. Paul's estate is not liable to pay any party's costs;
- ii. Ms. Kierans and the PGT are entitled to their costs, at Scale B, payable by Ms. Walker; and
- iii. Ms. Walker shall bear her own costs of the proceedings.

(qq) On February 6, 2024, Ms. Walker attempted to proceed with a re-set hearing of her December 19 Application before Justice Walker, despite the fact that the Court of Appeal had not yet rendered judgment in her appeals which had just been heard the previous day.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "CCC"

(rr) At the February 6, 2024 hearing, Justice Walker ordered that the application be adjourned and not brought on for hearing until after Ms. Walker's appeal of Justice Basran's orders in the committeeship petitions was decided by the Court of Appeal. This is what Justice MacNaughton had already ordered and Ms. Walker had attempted to ignore.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "DDD"

(ss) On February 6, 2024, the same day as Justice Walker's order, Ms. Walker filed a notice of application (the "February 6 2024 Application") purporting to seek both:

- i. A variation of Justice MacNaughton's order made January 9, 2024; and
- ii. "to enforce the patient Paul Kierans' right to in-person visits with his sister the Applicant Kathleen Walker".

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "EEE"

(tt) Ms. Walker proceeded to set both the February 6 2024 Application and the December 19 2023 Application for hearing on February 22, 2024.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "FFF"

(uu) On February 22, 2024, Justice Edelmann heard Ms. Walker's applications and, on February 23, 2024, adjourned both applications until after the Court of Appeal had rendered its decision in Ms. Walker's appeals. This is what Justice MacNaughton and Justice Walker had already ordered with respect to the December 19 2023 Application.

Tab 10, Affidavit #7 of Sophia Lee, Exhibit "GGG"

(vv) On March 28, 2024, the Court of Appeal issued written reasons for judgment dismissing Ms. Walker's appeals of Justice Basran's orders dated October 18, 2023: *Walker v Kierans*, 2024 BCCA 120.

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