CANADA / JUDGMENT

Nixon Estate (Re)

2025 BCSC 2366

COURT
Supreme Court of British Columbia

DECIDED
1 December 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 2366 Nixon Estate (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nixon Estate (Re),

2025 BCSC 2366

Date: 20251201

Docket: S250036

Registry: Vancouver

RE: THOMAS DRAKE NIXON

Before: The Honourable Justice Wilson

Reasons for Judgment

Counsel for the Applicant,

Keely Katherine Wagner:

D. Gorelov

E. Valentine, Articled Student

Counsel for Thomas Drake Nixon

E. Selensky

Counsel for the Attendee, Teresa Ludvigson:

S. Cappus

Place and Date of Hearing:

Vancouver, B.C.

May 15 and November 3, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 1, 2025

[1] This is an application for production of third-party records, and for a pretrial examination of an individual who works at a bank.

[2] The application relates to Mr. Thomas Drake Nixon who is currently 75 years of age. He has three daughters, the petitioner Keely Wagner, Neala, and Regan. He was predeceased by his only son, Dean, who died in an accident in 2004. Mr. Nixon also has seven grandchildren.

[3] The evidence is that until very recently, Mr. Nixon was extremely close to his children, all of whom are adults. This is no longer so.

[4] In early 2023, Mr. Nixon started seeing a woman by the name of Teresa Ludvigson, one of the respondents on this application. While there may be some dispute as to when the relationship started and how serious it might have been at various times, it is apparent that they were in a dating relationship by the summer of 2023 when Ms. Ludvigson was introduced to Mr. Nixon's children.

[5] Later that year, in the fall of 2023, Mr. Nixon had surgery related to an aneurysm. There were complications arising out of the surgery and he suffered a stroke. The stroke caused numerous long-lasting symptoms, including aphasia and apraxia. Mr. Nixon was in hospital in Victoria for approximately three months.

[6] When Mr. Nixon was released from hospital in early 2024, it was into the care of Ms. Ludvigson, contrary to the wishes of the petitioner. Around the same time, the Public Guardian and Trustee ("PGT") was looking into the possibility of getting itself appointed as the committee of Mr. Nixon's estate. However, this process halted when Mr. Nixon signed a power of attorney and a representation agreement, both in favour of Ms. Ludvigson. He executed the power of attorney in favour of Ms. Ludvigson on March 12, 2024 (the "POA") and the medical representation agreement on April 23, 2024 (the "MRA"). Both documents were executed before a lawyer, Ms. Karen Stewart. Mr. Nixon's sister, Dilma Huggett is the alternative representative on the MRA.

[7] The petitioner, Keely Wagner, filed this petition in January 2025, seeking orders that would set aside the POA and MRA and to have Mr. Nixon examined by two qualified medical professionals. She also seeks other sundry orders such as visitation and the release of information which is the subject of this application.

[8] This is not the hearing of the petition, but rather an application to compel production of documents and to permit a pretrial examination of a possible witness with a view to obtaining information that might inform the question of capacity.

[9] The documents sought are:

a) the files of the lawyer Karen Stewart, pertaining to both the representation agreement and power of attorney, together with any files and documents relating to her assessment of Mr. Nixon's capacity;

b) the complete file of Vancouver Island Health Authority ("VIHA");

c) the file of the PGT; and

d) the file of Victoria General Hospital.

[10] The other relief sought is for a pretrial examination of a possible witness, Ms. Tammy Nicklin. Ms. Nicklin is a financial advisor or banker who is or was involved with Mr. Nixon's banking or investments. She is employed by the Royal Bank of Canada.

[11] The application was opposed by Mr. Nixon and Ms. Ludvigson, both of whom had counsel. The parties from whom documents are sought and Ms. Nicklin were served with the application but did not take a position.

Positions of the parties

[12] The petitioner argues that until recent events, Mr. Nixon had a strong and loving relationship with his three daughters and seven grandchildren. Since his release from hospital following his surgery and stroke, however, he has had essentially no contact with any of them.

[13] After the execution of the POA, the petitioner says Ms. Ludvigson has not permitted any of Mr. Nixon's children or grandchildren to have unsupervised visitation time with him.

[14] In the petition, the petitioner is seeking, amongst other things, orders that:

a) the POA and MRA documents be declared void;

b) there be visitation between Mr. Nixon and his family members; and

c) there be a medical examination of Mr. Nixon.

[15] The petitioner argues that there is insufficient evidence for the court to be satisfied of the requirements in s. 12(2) of the Power of Attorney Act, RSBC 1996, c. 370, which provides as follows:

12 (2) An adult is incapable of understanding the nature and consequences of the proposed enduring power of attorney if the adult cannot understand all of the following:

(a) the property the adult has and its approximate value;

(b) the obligations the adult owes to the adult's dependants;

(c) that the adult's attorney will be able to do on the adult's behalf anything in respect of the adult's financial affairs that the adult could do if capable, except make a will, subject to the conditions and restrictions set out in the enduring power of attorney;

(d) that, unless the attorney manages the adult's business and property prudently, their value may decline;

(e) that the attorney might misuse the attorney's authority;

(f) that the adult may, if capable, revoke the enduring power of attorney;

(g) any other prescribed matter.

[16] She says there is no evidence from any of the deponents who provided affidavits including Ms. Ludvigson, Mr. Nixon's sister Ms. Dilma Huggett, his general practitioner Dr. Puts, or his speech pathologist Ms. Lin that indicate that Mr. Nixon had the capacity to understand his finances to the requisite degree for a valid power of attorney.

[17] The petitioner argues that the documents and evidence sought will assist the court with determining the key question in this proceeding, which is whether Mr. Nixon had capacity when he signed the POA and MRA.

[18] Mr. Nixon opposes the application, as does Ms. Ludvigson. Both have sworn affidavits in this regard. Mr. Nixon objects to his daughter obtaining his personal and confidential information. Counsel for Mr. Nixon points out that as a matter of law, adults are presumed to have legal capacity over their personal care and finances unless the contrary is demonstrated. Section 3(1) of the Adult Guardianship Act RSBC 1996, c. 6, provides the following:

3 (1) Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about the adult's personal care, health care and financial affairs.

[19] Because of his apraxia and aphasia resulting from his stroke, Mr. Nixon's ability to communicate orally is compromised. There is evidence from both Dr. Puts and Ms. Lin on the point. However, Mr. Nixon's counsel points to s. 3(2) of the Adult Guardianship Act which provides the manner of communication is not determinative:

(2) An adult's way of communicating with others is not grounds for deciding that he or she is incapable of making decisions about anything referred to in subsection (1).

[20] Mr. Nixon argues that he does not want the petitioner to have information about his private and confidential affairs, and that the application should be dismissed.

Legal basis

[21] The petitioner relies on s. 36(2) and 37 of the Power of Attorney Act; s. 62.1 of the Adult Guardianship Act; and Rule 7-5 of the Supreme Court Civil Rules, BC Reg 168/2009 [Rules].

[22] The Power of Attorney Act gives the court the authority to make an order for the release of information if satisfied that the capacity of an adult to have made a power of attorney is in issue:

Court directions and orders

36 (2) On application by a person, the court may make an order that another person release information to the applicant if the court considers that the information is necessary to determine the incapability of an adult who is making, or who has made, an enduring power of attorney.

. . .

37 Nothing in this Act

(a) limits the inherent jurisdiction of the court to act in a parens patriae capacity, or

(b) deprives a person of the right to ask the court to exercise that jurisdiction.

[23] The Adult Guardianship Act contemplates that the PGT may investigate if there are concerns. A health authority such as VIHA is a designated agency for the purposes of the Adult Guardianship Act. The petitioner refers to the following sections of the Adult Guardianship Act that give the PGT the power to obtain information:

Right to information

62.1 (1) A designated agency may disclose information obtained under this Act for the purposes of exercising the powers or performing the duties or functions of the designated agency under this Act.

(2) The Public Guardian and Trustee may disclose information obtained under this Act for the purposes of exercising the powers or performing the duties or functions of the Public Guardian and Trustee.

(3) A qualified health care provider who performs an assessment of an adult's incapability under this Act may disclose information obtained under this Act for the purposes of providing a report of the assessment to

(a) the Public Guardian and Trustee,

(b) a health authority designate, for the purposes of exercising the powers or performing the duties or functions of the health authority designate under this Act,

(c) a designated agency, for the purposes of exercising the powers or performing the duties or functions of the designated agency under this Act, and

(d) a person who

(i) makes a request, in writing, to the qualified health care provider for the report, and

(ii) confirms in the request that the report is to be used only for the purpose of an application to the court for an order under this Act.

(4) Subsection (3) overrides any restriction in an enactment or the common law about the disclosure or confidentiality of information.

[24] In the alternative, the petitioner relies on the court's inherent jurisdiction under the parens patriae doctrine. Section 37 of the Power of Attorney Act provides the court with inherent jurisdiction to act in a parens patriae capacity as does s. 62.2 of the Adult Guardianship Act which provides the court with inherent jurisdiction to act in a parens patriae capacity in the best interests of the adult.

[25] Finally, the petitioner relies on Rule 7-5 of the Rules as authority for its requested pre-trial examination of Ms. Nicklin of the Royal Bank. Rule 7-5 authorizes the court to order that a non-party be examined before trial to obtain their evidence:

Order for examination

(1) If a person who is not a party of record to an action may have material evidence relating to a matter in question in the action, the court may

(a) order that the person be examined on oath on the matters in question in the action, and

(b) either before or after the examination, order that the examining party pay reasonable lawyer's costs of the person relating to the application and the examination.

Affidavit in support of application

(3) An application for an order under subrule (1) must be supported by affidavit setting out

(a) the matter in question in the action to which the applicant believes that the evidence of the proposed witness may be material,

(b) if the proposed witness is an expert retained or specially employed by another party in anticipation of litigation or preparation for trial, that the applicant is unable to obtain facts and opinions on the same subject by other means, and

(c) that the proposed witness

(i) has refused or neglected on request by the applicant to give a responsive statement, either orally or in writing, relating to the witness' knowledge of the matters in question, or

(ii) has given conflicting statements.

Application procedure

(4) An applicant for an order under subrule (1) must comply with Rule 8-1, and, without limiting this, the applicant must serve the application materials on the proposed witness and Rule 8-1 applies to the witness as if the witness were a party of record.

Mode of examination

(8) The proposed witness must be cross-examined by the party who obtained the order, then may be cross-examined by any other party of record, and then may be further cross-examined by the party who obtained the order.

Time for examination

(9) Unless the court otherwise orders, examinations conducted of a person under this rule by all parties of record must not, in total, exceed 3 hours in duration.

Application of examination for discovery rules

(10) Rule 7-2 (12), (16), (18), (22) and (25) to (28) applies to an examination under this rule.

[26] A pretrial examination of a witness is therefore akin to an examination for discovery. Ms. Nicklin has indicated that as a matter of bank policy, she is not prepared to give evidence absent a court order.

[27] The petitioner argues that the lawyer, Ms. Stewart's, file should be disclosed pursuant to the wills exception and refers to this court's decision in Palamarek (Re), 2010 BCSC 1894, as authority for the proposition that in exceptional cases the wills exception may be applied even though the client is alive.

Court authority to make the orders sought

[28] This proceeding has been commenced by petition as opposed to by notice of civil claim. Rule 16-1(18) permits the court to apply any other of the Rules to a petition proceeding:

(18) Without limiting the court's right under Rule 22-1 (7) (d) to transfer the proceeding referred to in this rule to the trial list, the court may, whether or not on the application of a party, apply any other of these Supreme Court Civil Rules to a proceeding referred to in this rule.

[29] However, as Justice Goepel noted in Bacon v. British Columbia (Minister of Finance), 2020 BCCA 218 at para. 26, it is not necessary to convert the petition into an action as a precondition to apply the Rule:

[26] Rule 16-1(18) gives the court the power to apply any other of the Supreme Court Civil Rules to a petition. It is not necessary to first convert a petition into an action in order to apply the Rule: Fern Castle Holdings Corp. v. Stonebridge Village Residence Ltd., 2011 BCSC 163 at paras. 7-12.

[30] In Cepuran v. Carlton, 2022 BCCA 76, a five-member panel of the Court of Appeal overturned its previous decision in Caputo, finding at para. 160 that the court does not need to refer the entire matter to the trial list but rather can find that a process short of a full trial may be sufficient in order for the court to decide a case on its merits:

[160] To summarize, I am of the view that a judge hearing a petition proceeding that raises triable issues is not required to refer the matter to trial. The judge has discretion to do so or to use hybrid procedures within the petition proceeding itself to assist in determining the issues, pursuant to R. 16-1(18) and R. 22-1(4). For example, the judge may decide that some limited discovery of documents or cross-examination on affidavits will provide an opportunity to investigate or challenge the triable issue sufficiently to allow it to be fairly determined by the court within the petition proceeding, without the need to convert the proceeding to an action and refer it to trial.

[31] Neither the hospital nor the VIHA have opposed the application. The PGT does not oppose it either, subject to certain terms and conditions. Similarly, Ms. Stewart has indicated that she will release her file only if ordered to do so, consistent with her ethical obligations as a lawyer in British Columbia.

[32] It follows that I am satisfied that with the possible exception of the pretrial examination of Ms. Nicklin that I will refer to later, the court has the jurisdiction to grant the order sought. The question is whether it should do so.

The evidence

Petitioner's evidence

[33] Mr. Nixon was born on May 28, 1949, making him 75 years-of-age as of the date of this application. He has three adult children, the petitioner Keely Wegner, Neala Nixon and Regan Nixon. He was predeceased by his son, Dean. Mr. Nixon remains legally married to Anne Nixon, but they have been separated for several years. Anne Nixon has since moved to Ontario. Mr. Nixon and Anne Nixon married in 1990, and she is not the mother of any of Mr. Nixon's children.

[34] Anne Nixon describes Mr. Nixon's relationships with his family as follows in her affidavit:

31. Thomas' children were always the most important people in the world to him. At all times throughout our relationship, whenever Thomas' daughters came over to the Property, Thomas was quick to walk over to the door to open it for them. I observed that Thomas was excited whenever his girls came to visit, and always welcomed them with a smile on his face.

32. I observed that Thomas loved his girls, and would never turn them away. Even when Thomas had a disagreement with one of his daughters, he was quick to forget and forgive, and was always available when one of them needed his help.

[35] The petitioner's evidence sets out in detail how close she was to her father:

15. As I became an adult, my Dad continued to be involved in all aspects of my life:

i. My Dad proudly walked me down the aisle on my wedding day, when I was 21 years old.

ii. My Dad attended all of my academic and professional life-milestones, including but not limited to my high school graduation, and college graduation as a Health Care Aide.

iii. My Dad was there supporting me for the birth of my daughter, Ayla, and my identical twin boys, Jesse and Jordan.

iv. My Dad continued to support me by coming to my soccer games, supporting my women's hockey team and cheering on my softball games.

[36] The petitioner has filed a number of other affidavits in support of her application, including from:

a) Neala Nixon, one of her sisters;

b) Deborah Baldacchino, Mr. Nixon's sister;

c) Jennifer Price, a long-time friend from Port Alberni, and;

d) Rhonda Ursel, a friend of the petitioner's, who has known Mr. Nixon for 30 years and saw him shortly after his release from hospital.

[37] Neala deposed to how close she and Mr. Nixon were throughout her life, and how he was involved in all aspects of her life. At the time of his surgery, Neala was living with him at his home. She would ask him if she should move out and he reassured her that he did not want her to and she was welcome to stay as long as she liked.

[38] In October 2023, just prior to his surgery, Mr. Nixon prepared a handwritten will. Ms. Ludvigson was included, as were his grandchildren; however, the bulk of the estate was to go to Keely and Neala.

[39] I accept that the family had generally been close. However, it appears that things changed significantly because of a meeting at Victoria General Hospital on January 31, 2024, regarding Mr. Nixon's care.

[40] The petitioner and her sister Neala took steps to exclude Ms. Ludvigson, his sister Ms. Huggett, and another of Mr. Nixon's sisters from the meeting but hospital staff permitted them to attend. Mr. Nixon was at that point, and indeed to the present day, essentially non-verbal as a result of his aphasia and apraxia. However, it appears that Mr. Nixon took offence to certain comments or questions from his daughters and, following the meeting, Mr. Nixon then removed the petitioner's photographs from his wall in his hospital room.

[41] During that meeting, the petitioner sought to have Mr. Nixon transferred to the Lower Mainland, which would have been more convenient for her but would take Mr. Nixon away from his home in Port Alberni. Mr. Nixon was also unhappy with certain questions and comments made by the petitioner during the meeting at the hospital, including with regard to his life expectancy.

[42] Mr. Nixon executed the POA and MRA shortly after his release from hospital.

Respondent's evidence

[43] In opposing this production application, the court has affidavits from:

a) Ms. Ludvigson;

b) Dilma Huggett, Mr. Nixon's sister;

c) Ina Lin, Mr. Nixon's speech pathologist;

d) Dr. Marc Puts, Mr. Nixon's general practitioner, and

e) Mr. Nixon himself.

[44] For his part, Mr. Nixon does not dispute his previously close relationship with various members of his family but is of the view that he is no longer interested in seeing either of them and wishes to continue to live with Ms. Ludvigson. He deposes that he choses to appoint Ms. Ludvigson pursuant to the POA and MRA, and he wishes for those arrangements to continue.

Discussion

Should any documents be ordered to be produced?

[45] The POA and MRA in issue were prepared by Ms. Stewart and executed in spring 2024. Production of Ms. Stewart's file is one of the categories of documents sought on this application, along with the files of the PGT and VIHA.

[46] The starting point on this application is that Mr. Nixon is presumed to have capacity. This is stated in the governing legislation. The second principle is that his manner of communication is not a stand-alone basis to assume incapacity. The Power of Attorney Act states the following at s. 11:

Adults presumed to be capable

11 (1) Until the contrary is demonstrated, an adult is presumed to be capable of

(a) making decisions about the adult's financial affairs, and

(b) understanding the nature and consequences of making, changing or revoking an enduring power of attorney.

(2) An adult's way of communicating with others is not grounds for deciding that the adult is incapable of making the decisions or having the understanding referred to in subsection (1).

[47] The Adult Guardianship Act contains provisions with similar presumptions at s. 3:

Presumption of capability

3 (1) Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about the adult's personal care, health care and financial affairs.

(2) An adult's way of communicating with others is not grounds for deciding that he or she is incapable of making decisions about anything referred to in subsection (1).The inclusion of the presumption of capacity provides vulnerable adults with a level of presumed autonomy in making decisions about their personal care, health care, and financial affairs and that their method of communication cannot be used as evidence for incapacity and removal of this autonomy.

[48] The Adult Guardianship Act also includes some guiding principles that serve as a lens through which the legislation must be read, at s. 2:

Guiding principles

2 This Act is to be administered and interpreted in accordance with the following principles:

(a) all adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters;

(b) all adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their financial affairs;

(c) the court should not be asked to appoint, and should not appoint, guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered.

[49] The petitioner argues that without the requested documents, the court will not be in a position to determine whether Mr. Nixon had capacity when he executed the POA and MRA. She points to the fact that there is no evidence of his finances or that he understood them when he signed the documents. I accept that evidence regarding Mr. Nixon's finances is not contained within any of the evidence. However, the petitioner's submissions in this regard presuppose that she is in the legal position to challenge the POA and MRA.

[50] If simply filing of this kind of proceeding were sufficient so as to entitle the petitioner to receive a person's confidential information, solicitor and client privilege could never attach to an estate planning or capacity document such as a power of attorney because the only parties to the conversations leading to the preparation and execution of a power of attorney would be the individual and his or her solicitor. The petitioner's position assumes that the validity of the POA is something that the court considers it necessary to determine.

[51] The petitioner's evidence goes no further than pointing out that the family's relationship with Mr. Nixon has undergone a significant shift, from a close one to a very distant one with little or no communication. However, this does not suffice to give rise to concerns about capacity in the face of all of the other evidence. In particular, the petitioner's evidence does not raise sufficient concerns to rebut the statutory presumption of competence. Indeed, the evidence is to the contrary.

[52] Of greatest value is the evidence of Dr. Puts, Mr. Nixon's family physician for over 20 years. Since his surgery and stroke, Mr. Nixon communicates primarily through a combination of nonverbal (hand gestures, pointing, head movement) and some verbal communication mostly comprised of one- or two-word answers.

[53] Mr. Nixon also communicates with the use of aids developed by his speech pathologist, Ms. Lin. Ms. Lin's observations are that Mr. Nixon can communicate and make decisions regarding his preferences including where he would like to go, who he would like to see, and what he would like to do. He also demonstrates some comprehension of more complex tasks and responsibilities.

[54] Dr. Puts deposes that during conversations Mr. Nixon maintains eye contact, and Dr. Puts breaks down his questions into individual options or thoughts. At each stage, Dr. Puts checks for understanding. Based on his observations, Mr. Nixon can follow the conversation. Mr. Nixon has indicated to Dr. Puts that he does not want the petitioner or Neala Nixon to have his medical information and that he does not want to visit them. His answers have been consistent when asked. Mr. Nixon continues to express to Dr. Puts a desire to have Ms. Ludvigson involved in his life and care. Dr. Puts confirms that he has had these discussions with Mr. Nixon in Ms. Ludvigson's absence.

[55] Dr. Puts referred Mr. Nixon to another doctor, Dr. Johannes Smit, for a capacity evaluation in the summer of 2024. Dr. Smit concluded that Mr. Nixon had the capacity to sign an MRA, and Dr. Puts agrees with this conclusion.

[56] Dr. Puts does not have concerns about Mr. Nixon's level of care. His blood work demonstrates that he is keeping up with his medication. He makes all of his appointments and is appropriately attired.

[57] The petitioner reported her concerns about the POA and the MRA to the PGT and VIHA. Both investigated and neither had concerns about Mr. Nixon's capacity. VIHA's lawyer reviewed the POA and MRA in addition to performing home visits and having conversations with Mr. Nixon about his wants and needs and was satisfied that he was able to make decisions about who he wanted to spend time with for himself.

[58] Finally, the court can draw inferences from Mr. Nixon's interactions with his lawyers. Mr. Nixon met with a solicitor, Ms. Stewart, who took his instructions for the POA and MRA. Presumably she was satisfied that he had the capacity to sign both documents. Mr. Nixon has also retained counsel in this matter and has sworn an affidavit. Again, one must infer that his counsel is of the view that he had the capacity to do so.

[59] It is a sad feature of this case that since his discharge from hospital, Mr. Nixon has had little to no contact with the petitioner and his other daughters, with the inevitable consequence that the evidence is dated and is almost entirely from before his hospitalization. In isolation this evidence would be concerning, but it is fully answered by the evidence filed in response to this application.

[60] Mr. Nixon's sister, Ms. Huggett deposes that Mr. Nixon told her prior to his surgery that he did not want either the petitioner or Neala to look after him if he ever needed care. Mr. Nixon's relationship with Ms. Ludvigson commenced well before his surgery and has continued after it. This appears to be a situation where Mr. Nixon's children are extremely unhappy with his new relationship. They have been openly hostile to Ms. Ludvigson, including holding signs up in the street, trying to force their way into his hospital room or his home, and have made multiple calls to the police for "wellness checks". Mr. Nixon's reluctance to see the petitioner might be understandable in this context.

[61] The petitioner further complains that the PGT has failed to comply with their statutory obligations and refers to s. 34 of the Power of Attorney Act. The Power of Attorney Act affords the PGT the power to investigate in instances of abuse or neglect. The petitioner has made such a report, and she argues that the PGT has failed to comply with its obligations to investigate pursuant to its powers as set out in s. 34(3). Section 34 provides as follows:

Reporting to Public Guardian and Trustee

34 (1) In this section, "abuse" and "neglect" have the same meaning as in the Adult Guardianship Act.

(2) Any person may make a report to the Public Guardian and Trustee if the person has reason to believe that

(a) an adult is, or was at the time, incapable of making, changing or revoking an enduring power of attorney,

(b) fraud, undue pressure or some other form of abuse or neglect is being or was used to induce an adult to make, change or revoke an enduring power of attorney, or

(c) an attorney is

(i) abusing or neglecting the person for whom the attorney is acting,

(ii) incapable of acting as an attorney, or

(iii) otherwise failing to comply with an enduring power of attorney or with the duties of an attorney.

(3) If a person makes a report, the Public Guardian and Trustee must promptly review the report and may do one or more of the following:

(a)conduct an investigation to determine the validity of the report, and, if an investigation is conducted, the Public Guardian and Trustee may advise the person who made the report of the outcome;

(b)apply to the court for an order described in section 36;

(c)advise the person who made the report that the person may apply to the court for an order described in section 36;

(d)make a report under section 46 of the Adult Guardianship Act;

(e)take steps under the Patients Property Act to become a committee or take steps under the Adult Guardianship Act to become a statutory property guardian;

(f)take no action, or take any action that the Public Guardian and Trustee considers necessary.

[62] I do not interpret s. 34(3) as requiring an investigation on the part of the PGT as suggested by the petitioner.

[63] Section 34(2) authorizes a person to make a report to the PGT if they have reasons to believe any of the three enumerated grounds in subsection (c) to be true. If the PGT receives such a report, its obligation is set out in the first portion of subsection (3), which is to review the report promptly. However, having reviewed the report, the second part of subsection (3) sets out that the PGT then has the discretion to do one or more of the matters identified in (a) to (f). The second part of the subsection is permissive. Investigating is one of the PGT's options, but it is not obligated to investigate.

[64] It follows that I do not accept the submission that the PGT failed to meet its statutory obligations.

[65] The application for production of the files of the PGT and its designate, VIHA, is dismissed.

Ms. Stewart's legal file

[66] Because I have found that the evidence is insufficient to rebut the presumption that Mr. Nixon had capacity when he signed the POA and MRA, the application for production of his lawyer's file must fail. However, I will also address the petitioner's arguments as they relate specifically to Ms. Stewart's file.

[67] The petitioner argues that disclosure of the lawyer's file is appropriate under the wills exception. Solicitor-client privilege is a fundamental right and belongs to the client. There are very narrow exceptions to the general rule and solicitor's files are generally not ordered to be disclosed. The wills exception is one example of an exception. Its justification is obvious - the client is deceased, and therefore there is no one to waive privilege until such time as a will has been proven such that the executor may waive it.

[68] In cases where interpretation of a will is required, the person to whom the solicitor-client privilege belonged, namely the testator, is deceased before the matter comes to court. Even then, the wills exception applies to interpret documents, rather than to undermine them.

[69] An expansion of the wills exception may be found in this Court's decision in Palamarek, where the court applied the exception in a case where the person was not deceased but had lost capacity. The court was trying to determine Ms. Palamarek's intentions as to who she wished to be her committee. The petitioner argues that the court should require that Ms. Stewart's file be disclosed under the wills exception, even though Mr. Nixon is still alive, consistent with what was ordered in Palamarek.

[70] I do not find that Palamarek assists the petitioner in this case. Contrary to this case, there was no issue that Ms. Palamarek was incapable of managing her affairs. Rather, the question was who her committee should be. In this case, it is most certainly not conceded that Mr. Nixon lacks or lacked capacity.

[71] Second, in Palamarek, the issue was determining what the patient's intentions were at a time prior to when she lost capacity. As this Court recently stated in DeCotiis v. DeCotiis Estate, 2024 BCSC 892 at para. 25, disclosure will not be ordered when the purpose of the disclosure is to defeat the testator's intentions rather than to determine them. There is no ambiguity to be resolved in this case because Mr. Nixon has made his wishes clear.

[72] Third, and perhaps most important are Mr. Justice Harris's comments in Palamarek, at para. 28, in which he pointed out that the court was not engaged in adjudicating an adversarial process but rather the case was more of an investigatory matter.

[73] In this case, Mr. Nixon his made his wishes clear and has confirmed in his affidavit in response to this application that he wishes for Ms. Ludvigson to continue as his power of attorney and his representative under the MRA, and similarly, that he does not wish for the petitioner to manage his affairs. The issue in this case is therefore not ambiguity, for there is none. The issue the petitioner seeks to raise is one of capacity, but she has not rebutted the presumption of capacity in either the Power of Attorney Act or the Adult Guardianship Act.

[74] I find that Mr. Nixon has asserted his right to solicitor client privilege and the petitioner has not established there is an exception that applies in these circumstances. The application for production of Ms. Stewart's file is dismissed.

Pre-trial examination of Tammy Nicklin

[75] Ms. Nicklin works at the Royal Bank of Canada in Port Alberni. According to Ms. Wagner's affidavit, Ms. Nicklin advised her that Ms. Ludvigson had attempted to withdraw funds from Mr. Nixon's RBC account. However, when asked further questions, Ms. Nicklin said that she was unable to provide any further information, although she would like to be able to provide some assistance.

[76] There are some difficulties with this aspect of the application in addition to all the general concerns I have expressed above regarding Mr. Nixon's right and his express wish to keep his personal and financial affairs confidential.

[77] The purpose of an examination under Rule 7-5 of the Rules is to discover a witness's evidence to avoid surprise at trial. It is not akin to evidence at trial. This is a petition proceeding, and as such it is not apparent that this matter will ever go to trial. There have been no steps to convert the matter into an action, nor any attempts to invoke some form of hybrid process.

[78] If it were apparent that some form of trial process would be contemplated, it well may be that Ms. Nicklin's evidence would be required. However, a pretrial examination under Rule 7-5 is more in the nature of a discovery and the evidence obtained at that examination would therefore not likely be admissible.

Disposition

[79] The petitioner's application is dismissed.

"Wilson J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://www.bccourts.ca/jdb-txt/sc/25/23/2025BCSC2366.htm

CASE PAGE https://chat.esheria.ai/case-law/canada/nixon-estate-re-2025

Prepared on 28 October 2026 · Esheria