

CANADA / JUDGMENT

Pellerin v. Dingwall

2017 BCSC 680

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Supreme Court of British Columbia

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2017 BCSC 680 Pellerin v. Dingwall

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pellerin v. Dingwall,

2017 BCSC 680

Date: 20170426

Docket: S30976

Registry: Chilliwack

In the Matter of the Patient's Property Act

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

and the appointment of a Committee

for the person and affairs of

Dorothy Elizabeth Dingwall

Between:

Julli Mary Cecile Pellerin

Petitioner

And

Dorothy Elizabeth Dingwall

Respondent

Before: The Honourable Mr. Justice N. Brown

Reasons for Judgment

Counsel for the Petitioner:

J.A. Miner

Counsel for the Applicant, Clinton Pellerin:

K. Sanderson

Application Respondent,

The Public Guardian and Trustee

of British Columbia:

M.T. Wolf

Place and Date of Hearing:

Chilliwack, B.C.

October 27, 2016

Place and Date of Judgment:

Chilliwack, B.C.

April 26, 2017

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INTRODUCTION

- [1] There are three related matters before the Court on this application. The first is a petition by Julli Mary Cecile Pellerin (the "Petition") for a declaration that Dorothy Elizabeth Dingwall is incapable of managing herself or her affairs by reason of mental infirmity arising from disease, age, or otherwise, and for an order appointing Ms. Pellerin as committee of the person and estate of Ms. Dingwall under the Patients Property Act, R.S.B.C. 1996, c. 349 [PPA].
- [2] The second is an application by Clinton Robert Gordon Pellerin to either stay or dismiss the Petition. His application is brought on jurisdictional grounds under R. 21-8 of the Supreme Court Civil Rules and the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28 [CJPTA].
- [3] The third matter that I must consider, although not a part of these proceedings, is an earlier case that proceeded in the Alberta Court of Queen's Bench (the "Alberta Matter"), wherein Nixon J. appointed Mr. Pellerin as Ms. Dingwall's guardian and trustee pursuant to the Adult Guardianship and Trusteeship Act, S.A. 2008, c. A-4.2 [AGTA].
- [4] Dorothy Dingwall is the mother of Clinton and Julli Pellerin, whom I will refer to as Mr. and Ms. Pellerin, respectively. She is also the mother of Maurice Mitchel Joseph Pellerin, whom I will refer to as Mitch Pellerin to avoid confusion and because that is how he is named in the pleadings and in Nixon J.'s judgment in the Alberta Matter.
- [5] Shirley Broome is Dorothy Dingwall's sister. Her part in these proceedings is relatively secondary. Only Julli Pellerin, Clinton Pellerin, and the Public Guardian and Trustee ("PGT") were represented by counsel at the hearing.
1. Nature of the Application and Orders Sought
- [6] These reasons mostly respond to the jurisdictional objection advanced by Clinton Pellerin to this Court's hearing of the Petition. He submits that the Court lacks jurisdiction to hear the Petition or, in the alternative, that it should decline to exercise jurisdiction. He did not ask this Court to appoint him as committee of the person or estate of Ms. Dingwall under the PPA; as noted, the Alberta Court of Queen's Bench has already appointed him as her guardian and trustee under the applicable legislation in that province. Consequently, he argues only against this Court's assuming jurisdiction to hear the Petition.

- [7] Counsel for the PGT also gave submissions at this hearing, as discussed further below. Mr. Pellerin asks the Court to make the following orders:
1. An order declaring that this Court does not have territorial jurisdiction over the respondent (Dorothy Dingwall) in respect of the claims for relief made by the petitioner in this matter;
 2. In the alternative, if this Court does have territorial jurisdiction over the respondent in relation to the claims for relief made by the petitioner in this matter, an order declaring that this Court declines to exercise such territorial jurisdiction;
 3. An order staying these proceedings or, in the alternative, dismissing the Petition;
 4. An order terminating a joint power of attorney granted by Dorothy Dingwall to the petitioner and to Mitch Pellerin on or about January 14, 2015 (the "Power of Attorney"); and
 5. Costs, to be paid personally by the petitioner.
- [8] Clinton Pellerin submits this Court has good reason to decline jurisdiction, the principle one being Ms. Pellerin's allegedly having attorned to the jurisdiction of the Court of Queen's Bench in Calgary, and in the result, rejection of her application for appointment of Committee of the person and estate of Dorothy Dingwall.
- [9] I should note before I begin that a party who has been served with a petition may file a jurisdictional response and raise a jurisdictional objection without having thereby attorned or submitted to the Court's jurisdiction: see the Supreme Court Civil Rules, R. 21-8(5)(a). That is how matters stood at the end of this hearing.

HISTORY OF THE ALBERTA PROCEEDINGS

- [10] The next few paragraphs outline the procedural history of the Alberta Matter.
- [11] On February 5, 2015, Mr. Pellerin filed the following materials in the Alberta Court of Queen's Bench (Surrogate Matter), Calgary Judicial Centre, court file number 13787:
- a) a Form 39, "Notice of Application and Hearing";
 - b) a Form 14, "Application - Appointment of Guardian, Trustee or both";
 - c) a Form 15, "Affidavit of Applicant - Appointment of Guardian, Trustee or Both";
 - d) the affidavit of Beryl Smith; and
 - e) a further affidavit sworn by Mr. Pellerin.
- [12] In the Alberta Matter, Mr. Pellerin sought an order naming him as the guardian and trustee of Dorothy Dingwall pursuant to the AGTA.
- [13] He subsequently filed more materials as set out below.

- [14] On April 27, 2015, he filed a second Form 14, "Application - Appointment of Guardian, Trustee or Both" and a second Form 15, "Affidavit of Applicant - Appointment of Guardian, Trustee or Both".
- [15] On May 7, 2015, he filed a second Form 39, "Notice of Application and Hearing," a third Form 14, "Application - Appointment of Guardian, Trustee or Both," and a third Form 15, "Affidavit of Applicant - Appointment of Guardian, Trustee or Both".
- [16] On May 12, 2015, Dorothy Dingwall was served with the materials that had been filed on May 7.
- [17] Julli Pellerin retained counsel to oppose Mr. Pellerin's application. On July 14, 2015, she swore an affidavit, which was filed in the Alberta Matter the following day.
- [18] On August 4, 2015, Clinton and Julli Pellerin consented to an order in the Alberta Matter for a medical examination by a Dr. John Sloan in British Columbia to assess Dorothy Dingwall's mental capacity.
- [19] On September 10, 2015, Julli Pellerin filed a Form 39, "Notice of Application and Hearing" in the Alberta Matter, seeking the following orders:
1. That the Alberta Matter be moved to the jurisdiction of British Columbia;
 2. If that application was not granted, an order granting an "Interim Court Appointment Power of Attorney"; and
 3. Costs of her application, to be paid out of Ms. Dingwall's estate.
- [20] The September 10, 2015 "Notice of Application and Hearing" indicated that the application was "made under or relie[d] on" ss. 26(1) and 28(1) of the AGTA, as well as the Adult Guardianship and Trusteeship Regulation, Alta. Reg. 219/2009 [AGT Regulation]. The notice did not purport to rely on the provisions of any other act or regulation, and did not indicate a legal basis for the application to move Mr. Pellerin's application for guardianship to the jurisdiction of British Columbia.
- [21] Ms. Pellerin subsequently filed more affidavit materials in the Alberta Matter. The hearing date was set for May 25, 2016. On May 13, 2016, she also filed a "Brief of Law and Argument" opposing Clinton Pellerin's application to be appointed as Ms. Dingwall's guardian and trustee.
- [22] Nixon J. heard the matter and, on June 7, 2016, issued reasons for judgment granting Clinton Pellerin the relief he sought (the "Alberta judgment"). As discussed below, the question of whether the court had jurisdiction to make a trusteeship order was a live issue in the Alberta Matter. The jurisdictional issue was ultimately resolved, at least within the text of the Alberta judgment, according to the provisions of the AGT Regulation, although it appears that Ms. Pellerin also unsuccessfully challenged the court's jurisdiction pursuant to R. 3.68 of the Alberta Rules of Court, Alta. Reg. 124/2010 [Alberta Rules]. Ms. Pellerin never

appealed the Alberta judgment. An order naming Mr. Pellerin as Ms. Dingwall's guardian and trustee (the "Alberta order") was entered on July 26, 2016.

- [23] On May 5, 2016, a few weeks before the hearing of the Alberta Matter, Ms. Pellerin filed the Petition, commencing the herein proceeding, and filed an affidavit of Kindred and Fortune. On June 27, 2016, about two weeks after the Alberta Matter was heard and decided, Ms. Pellerin filed a further affidavit accompanied by two affidavits sworn by a Dr. Skanthan and a Dr. Sloan.

BACKGROUND AND PARTY POSITIONS

1. Applicant's Position

- [24] The heart of Mr. Pellerin's position is that Ms. Pellerin attorned to the jurisdiction of the Alberta Court of Queen's Bench in opposing his application in the Alberta Matter on its merits, in submitting evidence to show he was not fit to be Ms. Dingwall's guardian and trustee, and in arguing that his appointment as such was not in Ms. Dingwall's best interests. Mr. Pellerin submits that, in the result, this Court should recognize the jurisdiction of the Alberta Court of Queen's Bench and hold Ms. Pellerin to the valid order that was made there.

2. The PGT's Basic Position on Jurisdiction

- [25] The PGT took no position on the orders sought by Mr. Pellerin to stay or dismiss the Petition, to terminate the Power of Attorney, or for costs; nor did the PGT take a position on whether Julli Pellerin attorned to the jurisdiction of the Alberta Court of Queen's Bench.
- [26] The PGT did submit, however, that I should not conclude this Court lacks jurisdiction to hear the Petition under the CJPTA, nor should I decline to exercise jurisdiction, because this would leave unaddressed certain limits on the Alberta order's enforceability in British Columbia. The PGT further submitted the Court should not decline to exercise jurisdiction due to the need to protect the interests of incapable persons while they are within the Court's jurisdiction and/or have assets within it.
- [27] I will return to the jurisdictional issue, the parties' positions on it, and the various cases and principles the parties argued, later in these reasons. First, however, I will set out some additional background information.

3. Basic Background Facts

- [28] Dorothy Dingwall is 82 years old and suffers advanced dementia. As noted, she has three children. Clinton lives in Calgary, while Julli and Mitch both live in the Lower Mainland of British Columbia.
- [29] For most of her life Ms. Dingwall lived in Alberta, until she sold her house in 2008.

- [30] From 2010 to 2014, she divided her time between Alberta and British Columbia. In 2010, she bought a house in Abbotsford (the "Abbotsford house"), which Julli Pellerin shortly moved into and began living in without paying any rent or household expenses. Ms. Dingwall and Ms. Pellerin lived together in the Abbotsford house for most of September 2013 to July 2014, after which Ms. Dingwall began living with Mr. Pellerin in his home in Alberta.
- [31] In October 2014, Mr. Pellerin moved Ms. Dingwall into a care facility in Alberta.
- [32] In January 2015, without notice to Mr. Pellerin or to the Alberta care facility in which Ms. Dingwall was living, Ms. Pellerin covertly took Ms. Dingwall from the facility and returned with her to British Columbia, where she presently resides, once again occupying her Abbotsford house together with Ms. Pellerin.
- [33] As seen in the proceedings history, Mr. Pellerin initiated proceedings in the Alberta Court of Queen's Bench, asking the court to appoint him as Ms. Dingwall's guardian and trustee. In June 2016, Nixon J. found that Ms. Dingwall had re-established her residency in Alberta when she moved back there in July 2014. She also found that Ms. Pellerin's January 2015 removal of Ms. Dingwall to British Columbia did not alter her Alberta residency. Nixon J. therefore found she had jurisdiction to rule on Ms. Dingwall's capacity and on who should serve as her guardian and trustee. She found that Ms. Dingwall lacked capacity with respect to her health care, her living situation and conditions, and her financial affairs. Finally, Nixon J. found that Mr. Pellerin should be appointed as Ms. Dingwall's guardian and trustee.
- [34] Nixon J. summarized her reasoning and decision with respect to the jurisdictional issue at page 5 of her oral reasons in the Alberta judgment:

Taking into account all of the evidence, I am not satisfied [Dorothy Dingwall] established ordinary residence in B.C. Even if she did establish residence during the September 2013 to July 2014 period, she re-established ordinary residence in Alberta in July 2014. The evidence is no less reliable and persuasive that she intended to resume ordinary residence in Alberta than it is that she intended to become ordinarily resident in B.C. when she went there in September 2013. In other words, if the evidence were sufficient to establish that she became ordinarily resident in B.C., it is equally sufficient to establish that she resumed ordinary residence in Alberta in July 2014. I am satisfied, therefore, that this Court has jurisdiction to appoint a guardian and trustee for [Ms. Dingwall].

4. Responsive Evidence of Julli Pellerin

- [35] Much of what Julli Pellerin deposed in her second affidavit sworn June 24, 2016, is relevant only to her position that she is the most suitable person to act as Ms. Dingwall's committee. Nixon J. substantially addressed this issue, including Ms. Pellerin's criticisms of Mr. Pellerin's qualifications to be Ms. Dingwall's guardian and trustee, and Ms. Pellerin's assertions regarding her own qualifications.

- [36] Beginning at about para. 9 of her affidavit, she related the history of Ms. Dingwall's residency on the family farm until about 2007, after she and her sister had inherited it in about 2006. Differences arose over the occupancy of the family farm house. Ms. Pellerin stated this led to an arrangement that saw Ms. Dingwall finance the construction of a suite in the home of Mr. Pellerin and his wife, which would afford Ms. Dingwall a place to live. Some tensions started to develop between Julli and Clinton Pellerin over Ms. Dingwall paying rent for occupancy of a suite she had paid for.
- [37] Julli Pellerin alleged various examples of Ms. Dingwall being mistreated by Clinton Pellerin's wife.
- [38] Beginning at para. 15 of her second affidavit, Ms. Pellerin described how personal marital difficulties and the fallout from an abusive relationship generated circumstances that compelled her to find rental accommodations. She stated that in light of the allegedly strained relationship between Ms. Dingwall and Mr. Pellerin's spouse, Ms. Dingwall proposed that the best solution for everyone involved would be for Ms. Dingwall to purchase her own house. Ms. Pellerin further deposed that as an alternative to her having to rent accommodations, Ms. Dingwall suggested that she live in the proposed house and manage it for her, enabling Ms. Dingwall to live in her own house and still be able to visit Clinton and her grandchildren in Alberta.
- [39] Julli Pellerin further deposed in para. 16 that Ms. Dingwall instructed her to find a house suitable to meet both of their needs. She stated that Ms. Dingwall spoke of moving to British Columbia to be close to Julli and Mitch Pellerin and their respective children. In para. 17, Ms. Pellerin stated that based on those instructions, she searched for a house to buy and eventually located and drew to Ms. Dingwall's attention the Abbotsford house, which she ended up purchasing.
- [40] Ms. Dingwall completed the purchase of the Abbotsford house on February 17, 2010, and moved in on or about March 1, 2010. To buttress her argument that Ms. Dingwall is currently ordinarily resident in British Columbia, Ms. Pellerin noted that between 2012 and 2016, Ms. Dingwall applied for a homeowner's grant and in so doing, declared she lived in the Abbotsford house. Ms. Pellerin further deposed that between 2010 and 2015, the Abbotsford house's value rose by \$160,000.
- [41] At para. 21 of her second affidavit, Ms. Pellerin commented on what she says has always been a close mother and daughter relationship between herself and Ms. Dingwall.
- [42] At para. 23, Ms. Pellerin confirmed that she has lived in the Abbotsford house since Ms. Dingwall purchased it. She deposed she managed, cleaned, repaired, and maintained that which she was capable of doing. She stated she made "managerial decisions" on how Ms. Dingwall's home should be organized and improved for her safety. Also at para. 23, she related sundry financial contributions she made to utilities and other expenses. Without going into further details here, Ms. Pellerin asserted at para. 26 that with the exception of a brief period between July 2014 and January 2015 she continually provided assistance to Ms.

Dingwall. As noted, July 2014 is when Ms. Dingwall returned to Alberta and began living with Mr. Pellerin in his Calgary home.

- [43] On August 12, 2014, Mr. Pellerin had Ms. Dingwall examined by a medical doctor, Dr. DeFina, who diagnosed her as suffering from dementia. In her August 12, 2014 report, attached as Exhibit "E" to Ms. Pellerin's affidavit, Dr. DeFina noted that while, "Dorothy's cognition has continued to gradually decline, but there [were] no concerning associated symptoms with this, including no personality or behavioural changes," and that a "review of systems was negative for any concerns, including issues with sleep or depression." She also noted there had "been no concerns around [Ms. Dingwall's] safety since [she had] 24/7 supervision."
- [44] Prior to this August 12, 2014 assessment, Dr. DeFina had assessed Ms. Dingwall's cognitive status in February 2013, after which she diagnosed her with dementia, "likely Alzheimer type".
- [45] In para. 4 of her August 12, 2014 report, Dr. DeFina stated that Ms. Dingwall and her family had been discussing a transfer to long-term care, for which transition services had been helping make arrangements.
- [46] Ms. Pellerin denies any such family discussions about a transfer ever took place.

.1 Changes in residences July 2014 and January 2015

- [47] The portion of Ms. Pellerin's affidavit perhaps most relevant to the jurisdictional question before the Court is her explanation of how and why she removed Ms. Dingwall from her Alberta care facility and drove her to British Columbia without notice. Her actions concerned Nixon J., as they do this Court, especially in light of the personal benefits Ms. Pellerin gains from Ms. Dingwall's British Columbia living arrangements.
- [48] As for the facts on the move from Alberta to British Columbia, Ms. Pellerin stated in para. 28 of her second affidavit that Ms. Dingwall had been resident in British Columbia until July 2014, when she travelled with her sister Shirley to Calgary for the "stated purpose" of attending the Calgary Stampede and visiting her son Clinton Pellerin. She deposed that because Ms. Dingwall had declared the Abbotsford house to be her home for four years, she believed she would return after a visit for a reasonable period with Mr. Pellerin and his family. At para. 29, she complained that soon after Ms. Dingwall's departure, she was no longer able to contact her by phone at Mr. Pellerin's home, alleging he refused to allow her to speak to Ms. Dingwall.
- [49] In para. 30, she explained that because of her inability to contact Ms. Dingwall, she and her brother, Mitch Pellerin, travelled to Clinton Pellerin's residence in Calgary to visit with Ms. Dingwall, see her living conditions, and assess the care she was receiving. She stated that on her arrival at Mr. Pellerin's home, he refused to provide any details of Ms. Dingwall's whereabouts and told her he was "now in control".

- [50] Ms. Pellerin stated she contacted the Calgary police to determine Ms. Dingwall's condition and whereabouts. She stated the police attended at Clinton Pellerin's residence and interviewed him but refused to open a file or entertain a complaint.
- [51] Ms. Pellerin deposed that she took other steps to locate Ms. Dingwall. She explained at para. 33 that she persuaded Ms. Dingwall's attending physician to provide Ms. Dingwall's healthcare number. With this information, she was able to learn her whereabouts, which she referred to as a "lockdown care facility" in Didsbury, Alberta, "known as Bethany Care Centre."
- [52] At para. 34, Ms. Pellerin confirmed she removed Ms. Dingwall from the Bethany Care Centre on January 7, 2015, and returned her to the Abbotsford house, where, she asserted, Ms. Dingwall has "continuously resided since the month of January 2015." When she removed Ms. Dingwall from the Bethany Care Centre, she deposed, she was not required to sign any register or other document about Ms. Dingwall leaving the facility, and no personnel made any note of Ms. Dingwall's having left in her company. She found this strange, she stated, "having regard to the -45 degree wind chill factor."
- [53] Ms. Pellerin further stated that she phoned the Bethany Care Centre on January 8, 2015, at 1300 hours MST to report to them that Ms. Dingwall was in her care. She stated "the personnel of Bethany Care Centre to whom I was speaking made no statement to me that [they] had reported to Clinton that [Ms. Dingwall] was missing or that [they] had reported to the police that [Ms. Dingwall] was missing." By my estimate, that would be twenty-one hours after she left the Centre with Ms. Dingwall on January 7, 2015 at 1600 hours local time.
- [54] Nixon J. found the following regarding Ms. Dingwall's residency changes, beginning at page 3 the Alberta judgment:

Determining the intent of the Adult [Ms. Dingwall] in this case is complicated by the fact that the Adult suffers from progressive dementia and the application proceeded on the basis of conflicting affidavit evidence, including conflicting evidence about the Adult's expressions of her intent. There was no cross-examination on the affidavits and no viva voce evidence to assess credibility.

A number of facts, however, are undisputed: (1) the Adult lived in Alberta for approximately 75 years; (2) she made regular visits to B.C. to see her sister and the Respondent [Julli Pellerin]; (3) after her home in Alberta was sold in 2008, she moved in with the Applicant [Clinton Pellerin]; (4) commencing in March 2010, her trips to B.C. became longer, corresponding to the purchase of a house in B.C. for investment purposes; (5) immediately upon the purchase of the house, which was made against the [advice of the] Adult's longtime investment advisor, the Respondent, who found herself in need of accommodation having left her common law relationship, moved in; (6) the Respondent has paid neither rent nor contributed to the expenses for the house; (7) the Adult was living in B.C. with the Respondent from September 2013 to July 1, 2014, except for a brief time in Alberta in February 2014, at which time she looked at a nursing home; (8) she was living with the Applicant in Alberta from July 1, 2014 until she moved to a nursing home in October

2014; and (9) the Respondent removed the Adult from the nursing home in January 2015, returning with her to B.C.

Although the Respondent contends that the Adult became ordinarily resident in B.C. commencing March 2013 with the purchase of the house, the evidence is not sufficient to establish this. In particular, there is no specific evidence about the length of her stays in B.C. versus Alberta and the evidence conflicts: the Applicant stating that she never spent more than "a given number of months a year" in B.C., whereas the Respondent says she made "brief" visits to Alberta. Further, the submission of the Respondent that ordinary residence in B.C. was established in March 2010 is inconsistent with the evidence that the house was purchased as an investment and was intended to be rented.

Starting [in] September 2013, the evidence does establish the time the Adult spent in each jurisdiction. The question, then, is whether the Adult became ordinarily resident in B.C. in or after September 2013 and, if so, whether she resumed ordinary residence in Alberta in or after her return in July 2014.

The contention that the Adult became ordinarily resident in B.C. upon her removal from the care facility in Alberta in January 2015 can also be rejected. The Adult was removed from the facility by the Respondent under the guise that she was taking her for dinner, but instead the Respondent never returned with her. This cannot in any sense be considered to be a voluntary decision or an expression of intent by the Adult to make B.C. her ordinary residence. If she was not ordinarily resident in B.C. prior to this, the surreptitious removal did not establish that residence.

I turn, then, to the period of September 2013 when she went to B.C. and her return to Alberta in July 2014.

There are conflicting affidavits about the Adult's stated intentions about residence generally. There is no specific evidence about her intended length of stay in B.C. or why she went to B.C. in September 2013, but the Adult's longtime friend Beryl Smith deposed that when the Adult returned to B.C. in February 2014 after her return to Alberta where she visited the care home, her plan was to stay in B.C. only two to three weeks. There is no specific evidence about her stated intention with respect to why she returned to Alberta in July 2014 or how long she intended to remain.

[55] Nixon J. also noted the contradictory things Ms. Dingwall was alleged to have said about her intentions to different people, for example:

[S]he likes B.C. versus she doesn't like B.C.; she wanted to come back to Alberta, versus she only wanted to visit Alberta; she trusts Mitch and [Julli], versus she thinks they are stealing from her; expressions to her sister that she seemed to enjoy the care facility, versus statements to her lawyer that she did not like it; she liked living with the Applicant and his wife, versus she didn't like the Applicant's wife.

[56] Nixon J. disposed of these conflicting affidavits as follows:

Aside from the inability of the Court to draw any conclusions about the veracity of the affiants' statements about what they were told by the Adult, the Court is left with contradictory statements by a person with progressive dementia rendering the expressions of intention unreliable.

[57] Turning to what she characterized as the "objective evidence," apart from the length of Ms. Dingwall's stays in British Columbia and Alberta between September 2013 and January 2015, Nixon J. concluded:

[O]ther objective evidence shows connections between both provinces. For example, the Adult had physicians in both locations. She went to church in both locations. She socialized in both locations. She owned assets in both locations - the house in B.C. and her investments and bank accounts in Alberta. Income taxes for the Adult were filed in B.C. and Alberta, but this was a function from which son filed the return, Mitch in B.C. when he held the power of attorney in 2014 or the Applicant in Alberta in respect to other tax returns.

[58] As seen earlier in these reasons, having considered all the evidence, Nixon J. concluded that Ms. Dingwall established ordinary residence in Alberta when she returned there in July 2014, and the Alberta Court of Queen's Bench therefore had jurisdiction to make the orders sought by Clinton Pellerin. Nixon J. clearly considered both parties' positions on Ms. Dingwall's best interests in the appointment of Mr. Pellerin as her guardian and trustee.

[59] Ms. Pellerin stated that since the hearing of the Alberta Matter she has personally cared for Ms. Dingwall or arranged care for her through the supervision of other licensed care aides.

[60] She detailed the nature and extent of the care she has been providing Ms. Dingwall, asserting she has the requisite training and knowledge to care for her and will not place her in a facility. She then detailed her care plan for Ms. Dingwall. It is unnecessary to reproduce these details here.

5. Misappropriation Allegations and Nixon J.'s Determination of Ms. Pellerin's Suitability as Guardian and Trustee

[61] Beginning at para. 43 and following, Ms. Pellerin denied Mr. Pellerin's allegations, raised in the Alberta Matter, that she misappropriated Ms. Dingwall's investment funds. Beginning at para. 55, she countered with a series of complaints about an alleged lack of cooperation by Mr. Pellerin, claiming he refused to release funds that she said Ms. Dingwall needed for her care.

[62] She deposed that Ms. Dingwall revoked a power of attorney previously granted to Mr. Pellerin and subsequently granted a new power of attorney to herself and Mitch Pellerin on January 14, 2015. I note that there is no reliable evidence confirming Ms. Dingwall's mental state at that time. Ms. Pellerin complained in her affidavit that the Investors Group refused to act on her and Mitch's Power of Attorney by advancing funds that Ms. Dingwall might require.

[63] At para. 60 of her second affidavit, Ms. Pellerin referred to the affidavit of Ms. Dingwall's long-time investment advisor, Randy Vermeeren, filed in the Alberta Matter. He expressed concern and reservations about the number and size of withdrawals made by Julli and Mitch Pellerin from Dorothy's investments. He deposed he was concerned about possible financial abuse. Ms. Pellerin stated in response that she had been advised by a Kevin Coughlin of the Office of the PGT that "a review of the situation of the Patient [Ms. Dingwall] [had] been completed on [February 29, 2016] and that the Office of the [PGT was] taking no further action."

[64] Nixon J. noted at page 7 of the Alberta judgment that Clinton Pellerin "did not act unreasonably in questioning whether the frequent and large withdrawals from [Ms. Dingwall's] bank account by Mitch were being made for his and [Ms. Pellerin's] personal use, rather than for the Adult's use."

[65] Nixon J. commented:

Both matters drew concern by the Adult's longtime investment advisor, who became alarmed that she was being subjected to financial abuse. These matters have not been resolved by the Court. Suffice it to say that the Applicant [Mr. Pellerin] acted in the interests of the Adult in raising them.

[66] At page 8 of the Alberta judgment, Nixon J. noted significant concerns regarding Ms. Pellerin's motivations and conduct:

[Ms. Pellerin] is in a conflict of interest. She has been living in the B.C. house since it was purchased, rent-free and without paying any of the expenses. Despite pointing the finger at her brother Mitch with respect to the questionable withdrawals from the Adult's account, she seeks to have the January 2015 power of attorney naming both her and Mitch remain in force. This raises serious concerns about her judgment.

The Respondent denied that the Adult requires a guardian, despite the capacity assessment, and furthermore, resisted that capacity assessment. She disregarded the court order to return the Adult to Alberta and made no application in B.C. to become the Adult's personal representative until just shortly before this application proceeded in Alberta. Even then, her application is incomplete, referring to affidavits to be filed at a later date. The application has no return date. It is not evident when the application would be heard in B.C.

The reality is that the Respondent has a personal interest in becoming the Adult's guardian and becoming the trustee or retaining the power of attorney in order to retain her free accommodation and to receive compensation for caring for the adult. Given her self-interest, the objectivity and reliability of her assertions about the suitability of her care plan are also called into question.

While the Respondent states she is a registered care aide, she provided no proof of her qualifications. More concerning is her apparent lack of appreciation, despite the assessment confirming the Adult's lack of mental capacity, that the Adult requires a guardian, which also calls into question her expertise.

The Respondent provides only her own word for the appropriateness of the care plan she proposes and that it is suitable for the Adult given her advanced dementia. She has further isolated the Adult not only from the Respondent [sic], but also from her friends by cutting off phone contact.

With the serious concerns that have been raised with regards to the use of the power of attorney by Mitch and the unsuitability of the Respondent to have control over the Adult's financial affairs, it is not appropriate that the January 14, 2015 Power of Attorney remain in effect.

6. Circumstances around appointment of Julli Pellerin and Mitch Pellerin

[67] The foregoing do not represent findings of this Court, but they do exemplify the range of the matters submissions made, and the nature and weight of the evidence considered by Nixon J., not only on questions of law related to the court's jurisdiction, but also on the merits of the parties' positions on the question of who should be appointed as Ms. Dingwall's guardian and trustee.

[68] In an affidavit sworn May 31, 2016 by Dr. S. Skanthan, a specialist in geriatrics and general internal medicine at the Specialized Seniors Clinic, Abbotsford Regional Hospital, summarized his assessment of Ms. Dingwall's cognitive state based on two examinations, one on December 1, 2015 and another on February 23, 2016.

[69] He found she was suffering moderate to severe dementia; could not comprehend or respond to questions; was unable to focus on any conversation; frequently deviated from the topic at hand; had tangential speech; and remembered she was in British Columbia, but could not recall the name of the town in which she then lived, etc.

[70] I note also the similar affidavit and diagnosis given by Dr. J.P. Sloan, a family physician with extensive experience in the capacity evaluation of elders. He also saw Ms. Dingwall twice, on August 21, 2015 and March 31, 2016. He concluded she suffered from severe dementia. In para. 16 of his affidavit he stated, "[i]ndependent of the cause of Ms. Dingwall's impairment, it has resulted in virtually a void understanding of the information in respect of her finances and personal circumstances."

[71] In his affidavit sworn September 8, 2015, Patrick J. Selinger, a solicitor in this province, swore an affidavit regarding some of his dealings with Ms. Dingwall. In brief summary, he stated he had first met Ms. Dingwall on February 10, 2012, accompanied by Julli Pellerin and Mitch Pellerin. The next occasion they met was in October 2013 for preparation of an updated power of attorney for Ms. Dingwall that was to name Mitch Pellerin as the attorney. It was his understanding at that time that Ms. Dingwall's existing attorney had suffered a heart attack and was no longer able to act as attorney for her. He noted at para. 8 of his

affidavit that the eventual "October 2013 Power of Attorney named Mitch [Pellerin] as attorney in place of Terry Broom."

[72] Mr. Selinger next met with Ms. Dingwall on April 9, 2014, accompanied by Mitchell Pellerin, the purpose being "to discuss issues that had arisen regarding the Power of Attorney granted to Mitch in October 2013, and secondly, to take instructions for the preparation of a will for Dorothy." (para. 9).

[73] In a memorandum he prepared after his April 9, 2014 meeting with Ms. Dingwall Mr. Selinger recorded the following observation on Ms. Dingwall, among others:

It is my view that Dorothy Dingwall has full testamentary capacity. Although she does not know the exact details of her assets or investments or even bank accounts, she knows that she does have assets and that she did have bank accounts. Unprompted, she noted that "Mitch is helping me with those" when I raised the issue of the bank accounts. She also understood that she has responsibilities to her children and [grandchildren] and wants them to be treated equitably.

[74] He noted as well his opinion that she did not appear to be acting under duress or undue influence.

[75] He noted at para. 12 of his affidavit that Ms. Dingwall executed her Will on May 29, 2014, at which time he had "determined that she had a dispositive mind and sufficient testamentary capacity."

[76] He deposes at para. 13 that he again met with Ms. Dingwall, accompanied by Mitchell and Julli Pellerin, in January 2015. At that meeting, he learned Ms. Pellerin had moved Ms. Dingwall to Abbotsford. She also advised that Mr. Pellerin had taken Ms. Dingwall to a lawyer in Alberta and that she had signed a Power of Attorney naming him as attorney.

[77] In para. 14, Mr. Selinger, having met with Ms. Dingwall for one hour and observing that she seemed to have deteriorated since April and May 2014, nonetheless determined Ms. Dingwall had "understood the need for a new Power of Attorney and wished [him] to draft one naming Mitch [Pellerin] and Julli [Pellerin] as attorneys." He had also "determined that [Ms. Dingwall] had sufficient legal capacity to execute a new Power of Attorney."

[78] There is some correspondence between Mr. Selinger's impressions in January 2015 and the physicians' impressions six months or so further on.

[79] At para. 17 of his affidavit, referencing a conversation he had with Mr. Coughlin of the Office of the PGT for British Columbia, Mr. Selinger stated he had indicated to Mr. Coughlin that, at the time, she had sufficient legal capacity to execute a Power of Attorney. He further explained to Mr. Coughlin that he had met with Ms. Dingwall alone and for an extended discussion, and that "she was clear that she did not want to be the source of friction between her children, that she did not want to return to the care home in Alberta, and that there was a possibility of friction with her daughter-in-law in Alberta."

[80] None of the foregoing medical and solicitor opinion evidence was before the court in Alberta. It is uncertain to me whether it would have affected the outcome, but that is not of much moment here.

THE ALBERTA JUDGMENT AND ORDER

[81] Nixon J. appointed Clinton Pellerin as Julli Dingwall guardian and trustee, with authority under the Alberta order to act and make decisions with respect to Ms. Dingwall's health care; where, with whom, and under what conditions she was to live, either permanently or temporarily; and to carry on any legal proceeding. Clause 1.4 of the Alberta order provided that he "must apply for a review of this guardianship order as circumstances require (no fixed date)."

[82] Clinton Pellerin was also appointed as Ms. Dingwall's trustee in respect of all her personal property and all real property in Alberta.

[83] Clauses 2.3 and 2.6 of the Alberta order are important because they dealt with Ms. Dingwall's real property outside of Alberta, namely the Abbotsford house. The clauses provided:

2.3 To the extent it is recognized by the courts of, and subject to compliance with the laws of British Columbia, this order applies to the following real property of the adult [Ms. Dingwall]:

Municipally known as 5786 Riverside Street, Abbotsford BC, V4X 1T6 and legally described as Lot 1 Except: Parcel "C" (Reference Plan 5370) Section 10 Township 17 New Westminster District Plan 888.

2.6 The trustee has no authority to sell, transfer, or encumber real property of the adult, or to purchase on behalf of the adult, except as follows:

- The trustee may lease real property of the adult for a term not exceeding 3 years;
- The trustee may register this order against the title to the adult's real property, and the Registrar of Land Titles and Survey Authority of British Columbia shall register this order;

The trustee is authorized to:

- Sell the Adult's property municipally known as 5786 Riverside Street, Abbotsford, British Columbia V4X 1T6 and legally described as Lot 1 Except: Parcel "C" (Reference Plan 5370) Section 10 Township 17 New Westminster District Plan 888 excepting thereout all mines and minerals (the "Property"). Proceeds from the sale of the Property, after payment of all encumbrances, legal costs, and outstanding taxes (if any) be deposited [sic] into a Canadian Bank in Calgary, Alberta which is owned solely by the Adult and under the control [of] the Trustee on behalf of the Adult.

[84] The order was approved as to form and content by counsel for Clinton Pellerin and Julli Pellerin.

ANALYSIS

[85] The issues on this application are whether the Court has territorial competence or jurisdiction with respect to the Petition and, if so, whether it should decline to exercise territorial competence. These questions are governed by Part 2 of the CJPTA. Section 3 of the CJPTA provides:

3 A court has territorial competence in a proceeding that is brought against a person only if

- (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,
- (b) during the course of the proceeding that person submits to the court's jurisdiction,
- (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,
- (d) that person is ordinarily resident in British Columbia at the time of the commencement of the proceeding, or
- (e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.

[86] Section 10 of the CJPTA sets out certain circumstances under which a real and substantial connection under s. 3(e) is presumed to exist, and includes proceedings brought for the "determination of the personal status or capacity of a person who is ordinarily resident in British Columbia" under s. 10(j).

[87] Section 11 provides that, if territorial competence is established, a court may still decline to exercise jurisdiction if consideration of the interests of the parties and the ends of justice show that another province or country is a more appropriate forum:

11 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

- (2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
 - (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
 - (b) the law to be applied to issues in the proceeding,
 - (c) the desirability of avoiding multiplicity of legal proceedings,
 - (d) the desirability of avoiding conflicting decisions in different courts,

- (e) the enforcement of an eventual judgment, and
- (f) the fair and efficient working of the Canadian legal system as a whole.

- [88] In my view, this Court does have territorial competence in this proceeding. Ms. Pellerin seeks to have Ms. Dingwall declared incapable of managing herself or her affairs under the PPA, and thus the Petition is for a determination of her personal status or capacity. Notwithstanding Nixon J.'s conclusion that Ms. Dingwall was ordinarily resident in Alberta at the time the Alberta Matter was heard, and that her surreptitious relocation from Alberta to British Columbia did not establish ordinary residence in this province, I am satisfied that Ms. Dingwall having continuously occupied the Abbotsford house for over two years, including around nine months since the Alberta judgment was made, coupled with the other evidence concerning her residency in this province as outlined above, is sufficient to establish that Ms. Dingwall is currently ordinarily resident in British Columbia. I note that a person may be ordinarily resident in more than one jurisdiction at the same time: see *Broad v. Pavlis*, 2014 BCSC 1496 at para. 51. This brings the Petition within the ambit of s. 10(j) of the CJPTA, and thereby creates a real and substantial connection between British Columbia and the facts on which the Petition is based under s. 3(e).
- [89] The first pillar of Clinton Pellerin's jurisdictional argument is that Julli Pellerin attorned to the jurisdiction of the Alberta Court of Queen's Bench as she not only contested that court's jurisdiction to hear Mr. Pellerin's application, but also opposed his application on its merits by adducing evidence and arguing that she should be appointed as Ms. Dingwall's guardian and trustee.
- [90] Mr. Pellerin stressed that Ms. Pellerin applied in September 2015 to have the Alberta Matter moved to the jurisdiction of British Columbia. Although it appears the application for a change of jurisdiction was never actually heard, at the May 2016 hearing of Mr. Pellerin's application, counsel for Ms. Pellerin presented submissions opposing Mr. Pellerin's application on both jurisdictional and substantive grounds.
- [91] In her second affidavit, sworn June 24, 2016, Ms. Pellerin maintained that neither she nor Mr. Pellerin attorned or intended to attorn to the jurisdiction of the Alberta Court of Queen's Bench. She further contended that Ms. Dingwall did not wish to attorn to the jurisdiction of Alberta.
- [92] Mr. Pellerin pointed out, however, that an actual intention to attorn is not determinative; attornment can occur even by mistake. In this respect, there is an important distinction between merely protesting jurisdiction and protesting jurisdiction while also disputing the matter on the merits. In the latter situation, the party may have attorned to the jurisdiction of the court hearing the matter. As Griffin J. noted at para. 40 of *Litecubes, L.L.C. v. Northern Light Products Inc. (c.o.b. Glowproducts.com)*, 2009 BCSC 181 [*Litecubes*], "attornment can occur even by mistake," depending on the actions a party takes in a proceeding.

- [93] However, the question as to whether Ms. Pellerin attorned to the jurisdiction of the Alberta Court of Queen's Bench is not determinative of whether this court has territorial competence in respect of the Petition. Pursuant to s. 3(b) of the CJPTA, attornment to this Court's jurisdiction is a basis on which to ground its territorial competence in respect of a proceeding; further, attornment to a foreign court's jurisdiction may preclude a party from contesting that court's jurisdiction in a subsequent enforcement proceeding in British Columbia: see *Litecubes; Sagewood Holdings Ltd. (Re)*, 2017 BCSC 112. The issue of attornment with respect to the present application is different. Ms. Pellerin's alleged attornment to the jurisdiction of the Alberta Court of Queen's Bench, while capable of grounding recognition of that court's jurisdiction, is not on its own a sufficient basis on which to conclude that this Court lacks jurisdiction in this proceeding. In this case, both Alberta and British Columbia have jurisdiction. I turn now to the question of whether, in this context, this Court should decline to exercise its jurisdiction in light of the relevant circumstances, including those set out in s. 11 of the CJPTA.
- [94] The subject matter of the Petition is virtually identical to that of the Alberta Matter - that is, whether Ms. Dingwall is capable of making decisions respecting her health care as well as her financial and other affairs; and if not who is best suited, as between Julli and Clinton Pellerin, to make those decisions on her behalf and in her best interests. Because of this, and particularly because these questions have already been determined and are the subject of a final order in Alberta, most of the factors listed in s. 11(2) of the CJPTA weigh heavily in favour of this Court declining to exercise jurisdiction. To hear the Petition would put the parties and any of their witnesses through the cost and inconvenience of re-litigating in this province what has already been litigated in another. It would ensure a multiplicity of legal proceedings and create the potential for conflicting decisions in different courts. This in turn may jeopardize the enforcement of an eventual judgment, in the sense that it may be inconsistent with the terms of the Alberta order. Further, it would undermine the fair and efficient working of the Canadian legal system as a whole. In this regard, the words of La Forest J., writing for the Court at para. 41 of *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, are apt: "the courts in one province should give full faith and credit, to use the language of the United States Constitution, to the judgments given by a court in another province or a territory, so long as that court has properly, or appropriately, exercised jurisdiction in the action."
- [95] That case concerned the enforceability of Alberta court orders in British Columbia where the party disputing the orders had clearly not attorned to the Alberta courts' jurisdiction. However, in my view, the principle of comity underlying this passage has obvious application to the case at bar. There was nothing improper or inappropriate with Nixon J.'s exercise of jurisdiction in the Alberta Matter, and the resulting need to give "full faith and credit" to the Alberta judgment militates strongly in favour of declining to exercise jurisdiction in respect of the Petition.

- [96] In my view, the question of Ms. Pellerin's attornment to the jurisdiction of the Alberta Court of Queen's Bench has some relevance at this stage of the analysis. While she did apply to have the Alberta Matter transferred to British Columbia, and argued that the Alberta courts lacked jurisdiction, she did not avail herself of the attornment immunity provided for in Rules 3.30 and 11.31 of the Alberta Rules (roughly the equivalent of the same immunity provided for in our R. 21-8(5)). Because of this, it may be concluded that she attorned to the jurisdiction of the Alberta Court of Queen's Bench by also arguing the Alberta Matter on its merits: see 1400467 Alberta Ltd. v. Adderley, 2014 ABQB 85 at para. 42. The fact that Ms. Pellerin voluntarily submitted to the Alberta courts' jurisdiction, and took the opportunity to fully press her position that she and not Mr. Pellerin should be appointed as Ms. Dingwall's guardian and trustee there, emphasizes that it would not be appropriate for the Court to exercise its jurisdiction to hear the Petition.
- [97] The PGT submits that the Court should not decline to exercise jurisdiction in this proceeding because the Alberta order's application to the Abbotsford house is explicitly limited to "the extent it is recognized by the courts of, and subject to compliance with the laws of British Columbia," and thus may not be enforceable in this province. The PGT also invokes the Court's *parens patriae* jurisdiction over the affairs of incapable persons in support of its submission that the Court should always be willing to exercise its jurisdiction to make orders under the PPA that further the best interests of such persons. The PGT cited *Ungerer (Re)*, 2003 BCSC 1971 for this proposition and for the proposition that it may be necessary to appoint a committee for one or more limited purposes in this province. That case involved an application for a declaration of incapacity and appointment of a committee brought on by the daughter of an elderly German woman. In my view, the case is clearly distinguishable in that the petitioner was one of the patient's three permanent legal guardians in Germany, and was supported in her application by the other two. Further, the application in that case appeared to be necessitated by the impending transfer of certain real property located in British Columbia, in which the petitioner's mother had a beneficial interest as the administrator of her late husband's estate. The fact that *parens patriae* jurisdiction is based on the need to protect those who cannot care for themselves, and should be invoked to avoid gaps in legislation such as the PPA, which exists to protect such people, was discussed at paras. 15-16. There is no evidence of such a need or legislative gap in this case.
- [98] The PGT also referred to the case of *Alsager v. Alsager*, 2007 SKCA 134 [Alsager], in which the court held that a British Columbia committee order did not preclude another family member from applying to be the patient's property guardian in Saskatchewan, where the patient held land and financial assets. However, this case is also clearly distinguishable. It involved an appeal from an order registering the British Columbia committee order in Saskatchewan. The appeal was allowed on the basis that the parties against whom the committee order was sought to be registered were not notified of and did not take part in the proceedings resulting in the order; furthermore, the Master who granted the committee order did not believe it covered the patient's Saskatchewan assets. Conversely, in this case Ms. Pellerin was notified of and fully took part in the proceedings in

the Alberta Matter, and the Alberta order is clearly intended to cover Ms. Dingwall's primary asset in British Columbia, the Abbotsford house.

- [99] In my view, the enforceability of the Alberta order in British Columbia must be determined on a subsequent application, if any, to register or otherwise enforce it here. The circumstances do not warrant the exercise of the Court's *parens patriae* jurisdiction in respect of Ms. Dingwall's person or property at this time. Consideration of the rest of the circumstances relevant to the proceeding, as outlined above, overwhelmingly favour a decision to decline to exercise jurisdiction in respect of the Petition.

CONCLUSION

- [100] In the result, the application is granted, the Petition is hereby stayed. The Alberta judgment has already disposed of the status of Julli Pellerin and Mitch Pellerin's Power of Attorney as Nixon J. purported to terminate all prior powers of attorney granted by Ms. Dingwall (at p. 9, l. 14). The enforceability of this aspect of the judgment, as with any other, would, therefore, seem to simply be subject to a subsequent enforcement proceeding.
- [101] Although Mr. Pellerin remains Guardian and Trustee of Ms. Dingwall, which encompasses her accommodations and care, Mr. Pellerin advised the court he does not intend to seek an order for Ms. Dingwall's return to Alberta. Had he sought an order to do so, the implications would call for and involve other considerations.
- [102] There is no reason why Ms. Pellerin should not attend medical meetings with and on behalf of Ms. Dingwall. Given Ms. Pellerin's knowledge and experience, common sense suggests that would be in Ms. Dingwall's best interests. Mr. Pellerin should confer with Ms. Pellerin on such matters.
- [103] If Mr. Pellerin decides to seek an order for sale of Ms. Dingwall's home, this must be based on the best interests of the Ms. Dingwall's estate and whole person and the application will need to encompass those concerns with notice to the PGT of this province.
- [104] As I briefly noted in these reasons, Ms. Pellerin complained Mr. Pellerin was being uncooperative in refusing to provide for Ms. Dingwall's personal needs. Mr. Pellerin must act always in Ms. Dingwall's best interests. Guardians, Trustees, and Committees must not enlist personal differences with other family members in the execution of their solemn responsibilities. The circumstances demand communication and some cooperation irrespective of personal differences that have arisen.
- [105] I am mindful of and appreciate the PGT's position and concerns about Ms. Dingwall's needs and best interests which I have not commented on very much, except to note this is not a case requiring the invocation of inherent jurisdiction.
- [106] It should be kept in mind Ms. Pellerin is not without a remedy if Mr. Pellerin is, for example, being unduly restrictive in approving funding for Ms. Dingwall's care needs. Nixon J.'s order does contemplate a review, albeit a date for one is not stipulated. Her

reasons clearly contemplate Mr. Pellerin would act in Ms. Dingwall's best interests. I expect the Alberta court would accommodate a request by Ms. Pellerin to appear by telephone or video conference to address specific concerns about Ms. Dingwall's financial circumstances if they are continuing, engage Ms. Dingwall's best interests, and are reasonable.

- [107] As for the status of Mitch Pellerin and Julli Pellerin as Attorney's, Nixon J. effectively extinguished it in her judgment. If Clinton Pellerin is clearly not properly executing his responsibilities in those capacities, Ms. Pellerin can address that with the Alberta Public Guardian and Trustee. If Ms. Dingwall's best interests and circumstances clearly call for it, this court may have jurisdiction to assume jurisdiction and reconsider the matter.
- [108] I note Clinton Pellerin has no intention to return Ms. Dingwall to live in Alberta. He should not do so without notice to and the approval of the court. As discussed in these reasons, if he decides it is in the best interests of Ms. Dingwall to sell her home, he must apply for this court's permission to do so, at that same time advising the court of what housing arrangements he proposes for Ms. Dingwall.
- [109] As for costs, the patient's estate shall pay the parties' legal costs of the application on a solicitor client basis, subject to their review for reasonableness by the Public Guardian and Trustee of the Province of Alberta.

DECISION

- [110] For the foregoing reasons, I decline to exercise jurisdiction and disturb Nixon J.'s decision.

"N. Brown J."

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