

CANADA / JUDGMENT

Pulez (Re)

2025 BCSC 1789

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1789 Pulez (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pulez (Re),

2025 BCSC 1789

Date: 20250915

Docket: S247537

Registry: Victoria

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

-And-

In the Matter of Michael Pulez, Patient

Before: The Honourable Justice Armstrong

Reasons for Judgment

Counsel for Rosemary Pulez:

A.H. Jordan

Counsel for Bathsheba Mitchell:

T.M. Chan

Place and Date of Hearing:

Victoria, B.C.

July 15, 2025

Place and Date of Judgment:

Victoria, B.C.

September 15, 2025

Introduction

- [1] This application is made in the midst of a contentious Patients Property Act proceeding. Rosemary Evelyn Pulez ("Ms. Pulez") is the petitioner and is seeking to become committee of her son, Michael Pulez ("Mr. Pulez"). Mr. Pulez was injured in a catastrophic accident in September 2023 resulting in a traumatic brain injury and profound ongoing cognitive impairments.
- [2] Bathsheba Mia Scarlett Mitchell ("Ms. Mitchell") is Mr. Pulez's spouse, having lived with him in a marriage-like relationship since May 2020. Ms. Mitchell opposes Ms. Pulez's appointment as committee for Mr. Pulez.
- [3] Mr. Pulez has signed two representation agreements pursuant to s. 7 of the Representation Agreement Act, R.S.B.C. 1996, c. 405 (the "Act"), both naming Ms. Pulez as his personal representative. The first agreement was signed in March 2024. In May 2025, the 2024 agreement was revoked and replaced with a second representation agreement.
- [4] Ms. Mitchell contends that Mr. Pulez was so severely impacted by his injuries that he was unable to understand the nature and effect of either representation agreement.
- [5] Since the accident, Ms. Mitchell was visiting Mr. Pulez from time to time and was able to speak with him on the telephone until March 15, 2025 when Ms. Pulez prohibited further contact between her and Mr. Pulez under her authority set out in the representation agreement.
- [6] Ms. Pulez commenced her petition in August 2024. Ms. Mitchell opposes the petition and said she intends to apply to become Mr. Pulez's committee. Ms. Mitchell has not filed a petition seeking to be committee but asserts she is best qualified to manage Mr. Pulez's person and estate.
- [7] In Ms. Mitchell's response to petition she contends that the petitioner is not the person best able to manage Mr. Pulez's care and estate and that she should instead be appointed committee. Ms. Mitchell seeks to have Mr. Pulez returned to her care, or in the alternative to be granted contact with him.
- [8] In the interim, in this application Ms. Mitchell seeks an order that she be entitled to visit her partner on any day and have telephone contact with him any day between the hours of 9 a.m. and 6 p.m., all without interference from Ms. Pulez. These reasons address Ms. Mitchell's application; the petition will be the subject of a separate hearing.

Background

- [9] Mr. Pulez is 44 years of age and was building a house on Salt Spring Island in September 2023 when he fell and was injured. These injuries have left him with a major neurocognitive disorder resulting from the brain injury, rendering him incapable of managing his financial affairs or his personal needs.
- [10] After his accident, Mr. Pulez was hospitalized in Victoria until July 3, 2024. Two psychiatrists have since examined Mr. Pulez and offered their opinions on his inability to manage his personal and financial affairs.
- [11] On March 10, 2024 Mr. Pulez signed a representation agreement pursuant to s. 7 of the Act naming Ms. Pulez as his personal representative. This agreement included a direction that Ms. Pulez could make decisions on his behalf about his personal care.
- [12] "Personal care" is defined in s. 1 of the Act to include "contact or association by an adult with other persons". Additionally, under s. 9(1)(v) of the Act, the representative can be authorized to "decide whether the adult should have contact or associate with another person".
- [13] On May 23, 2025 Mr. Pulez revoked the 2024 representation agreement and entered into a new agreement also naming Ms. Pulez as his representative. This second agreement also specifically authorized Ms. Pulez to do anything concerning his "personal care".
- [14] Ms. Mitchell frequently visited Mr. Pulez until March 15, 2025 when Ms. Pulez terminated her access to her spouse. Ms. Mitchell contends that since her last visit in March, Mr. Pulez has constantly expressed his love for her, saying that her absence causes him pain and that he wants to see her every day and live with her.
- [15] Ms. Mitchell contends that at her last meeting with Mr. Pulez he affirmed his wish to see her again. Ms. Terry Ryan, a friend of Ms. Mitchell, visited Mr. Pulez in May 2025. Mr. Pulez is alleged to have said to Ms. Ryan, "Can you do me a big favour? Please tell Charlotte that I love her very much too". He said things are "just kind of weird now," at which point Ms. Pulez interrupted him and told him he was confused. Ms. Ryan told Mr. Pulez that Ms. Mitchell had not forgotten him, nor had her love dwindled. He responded, "I do love her too. Tell her that".
- [16] In June and July 2024 two psychiatrists, Dr. Alice Cojocar and Dr. Brad Williamson, each opined on Mr. Pulez's inability to manage his person and his financial affairs. Dr. Cojocar noted Mr. Pulez was repeatedly asking why Ms. Mitchell was not answering his calls.
- [17] Notwithstanding the medical opinions concerning Mr. Pulez's capacity, Ms. Pulez organized the preparation of both representation agreements, which were signed by Mr. Pulez. Ms. Pulez became his representative first on March 10, 2024 and then again on May 23, 2025 when Mr. Pulez reappointed her to be his representative.

- [18] Mr. Pulez was released from hospital to reside at Ms. Pulez's residence on July 3, 2024 and has lived in her home since.
- [19] Despite Mr. Pulez's having resided with Ms. Pulez since his release from hospital, Ms. Mitchell was initially able to visit and speak with him. These opportunities to visit him became restricted to two hours per week but Ms. Mitchell's visits eventually terminated March 15, 2025 when Ms. Pulez refused her further visits with her spouse.
- [20] On August 7, 2024 Ms. Pulez filed her petition seeking to be appointed committee of Mr. Pulez. In support of the petition, Ms. Pulez contends that hospital records suggest that Ms. Mitchell had acted to Mr. Pulez's detriment when visiting him in hospital and after. She contends that Ms. Mitchell demonstrated a disregard for visiting hours and lacked understanding of Mr. Pulez's deficits and limitations. Ms. Pulez further contends that it is unlikely Ms. Mitchell would act in Mr. Pulez's best interests in making decisions.
- [21] Ms. Mitchell has not made any effort to invoke s. 30 of the Act, which permits making an objection to the Public Guardian and Trustee for a wide range of concerns about a representation agreement. It is the Public Guardian and Trustee's responsibility to review any objection, conduct an investigation into the validity of objections and advise the objector: s. 30(3)(a). It is open to the Public Guardian and Trustee to make an application to court to change the representation agreement, revoke the agreement or cancel all or parts of the representation: s. 30(3)(e). The Public Guardian and Trustee can also recommend another person to apply for orders described in ss. 30(3)(d), (e) or (e.1), and the court may make orders under s. 32 of the Act.
- [22] Ms. Pulez makes decisions on behalf of Mr. Pulez based on the representation agreements he has signed. She opposes the application and the request that Ms. Mitchell have unrestricted contact within certain times.
- [23] To the extent that this application is made within a proceeding whereby Ms. Pulez is seeking orders appointing her committee, I infer this is an application in the nature of an interim application for relief pending the hearing of the petition.
- [24] Ms. Mitchell's application invokes the court's *parens patriae* jurisdiction to make orders for the protection of individuals who cannot care for themselves but does not set out which Rule is relied upon in bringing the application.

Legal Framework

- [25] The purpose of the Act is set out in s. 2: to allow adults to arrange their lives in advance to allow a representative to make decisions about their health care, personal care and financial affairs in the event they become incapable of making decisions independently. Another purpose is to avoid the need for the court to appoint adults to make decisions for adults when they are incapable of decisions independently. Pursuant to s. 3, adults are presumed to be capable of making, changing or revoking representation agreements and making

decisions their lives.

[26] The Act contains other provisions relevant to this application including the following:

Definitions

1 In this Act:

"spouse" means a person who

- (a) is married to another person, and is not living separate and apart, within the meaning of the Divorce Act (Canada), from the other person, or
- (b) is living with another person in a marriage-like relationship;

Standard provisions

7 (1) In a representation agreement made under this section, an adult may authorize the adult's representative to help the adult make decisions, or to make decisions on behalf of the adult, about any or all of the following:

- (a) the adult's personal care;

Non-standard representation agreements

9 (1) In a representation agreement made under this section, an adult may, subject to subsections (2) and (3), authorize the adult's representative to

- (a) do anything that the representative considers necessary in relation to the personal care or health care of the adult, or
- (b) do one or more things in relation to the personal care or health care of the adult, including any of the following:
 - (i) decide where the adult is to live and with whom, including whether the adult should live in a care facility;
 - (ii) decide whether the adult should work and, if so, the type of work, the employer, and any related matters;
 - (iii) decide whether the adult should participate in any educational, social, vocational or other activity;
 - (iv) decide whether the adult should have contact or associate with another person;

Objecting to agreements, changes or revocations

30 (1) Any person may make an objection to the Public Guardian and Trustee if there is a reason to believe that

- (a) an adult is, or was at the time, incapable of making, changing or revoking a representation agreement,
- (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 a representation agreement,
- (c) the making, use or revocation of a representation agreement or a change to a representation agreement is clearly inconsistent with the current wishes, values, beliefs or best interests of the adult who made, revoked or changed the agreement,
- (d) there is an error in a representation agreement or an error was made in executing, witnessing or registering the agreement,
- (e) anything improper has occurred in the making, use or revocation of a representation agreement,
- (f) [Not in force. Repealed 2006-33-2.]
- (g) a representative is not qualified under section 5 (1),
- (h) a representative is
- (i) abusing or neglecting the adult for whom the representative is acting,
- (ii) failing to follow the instructions in the representation agreement,
- (iii) incapable of acting as representative, or
- (iv) otherwise failing to comply with the representation agreement or the duties of a representative,
 - (i) a representative has given or proposes to give consent to health care that is not authorized by the representation agreement, or
 - (j) any criteria specified in the representation agreement as grounds for objection have been met.
- (2) [Not in force. Repealed 2006-33-2.]
- (3) On receiving notice of an objection, the Public Guardian and Trustee must promptly review the objection and may do one or more of the following:
 - (a) conduct an investigation to determine the validity of the objection and then advise the objector of the outcome;
 - (b) to (d) [Not in force. Repealed 2006-33-2.]
 - (e) apply to the court for an order confirming a change to, or the revocation of, a representation agreement, or for an order cancelling all or part of a representation agreement;

- (e.1) apply to the court for an order that a representation agreement is not invalid solely because of a defect in the execution of the agreement;
- (f) recommend that someone else apply to the court for an order referred to in paragraph (d), (e) or (e.1);
- (g) make a report under section 46 of the Adult Guardianship Act;
- (g.1) appoint a monitor;
- (g.2) authorize that a monitor appointed under paragraph (g.1) be remunerated, out of the adult's assets, for acting as a monitor in relation to authority given to a representative under section 7 (1) (a), (b) or (d) and set the amount or rate of the remuneration;
- (h) take any other action that the Public Guardian and Trustee considers necessary.

Investigations by the Public Guardian and Trustee

31 (1) The Public Guardian and Trustee may conduct an investigation without receiving a notice of objection under section 30 if the Public Guardian and Trustee is of the opinion that there are grounds for objection under section 30 (1).

- (2) In conducting an investigation under subsection (1), the Public Guardian and Trustee may exercise the powers given in section 17 of the Public Guardian and Trustee Act.
- (3) After conducting an investigation, the Public Guardian and Trustee may do anything referred to in section 30 (3) (b) to (h).

Agreement does not deprive adult of power to act

36 An adult who is capable may do anything that the adult has authorized a representative to do.

Supreme Court jurisdiction

37 Nothing in this Act

- (a) limits the inherent jurisdiction of the Supreme Court to act in a *parens patriae* capacity, or
- (b) deprives a person of the right to ask the court to exercise that jurisdiction.

[27] Ms. Mitchell relies heavily on the court's *parens patriae* jurisdiction in seeking an interim order pending a full hearing of the petition.

[28] The Court of Appeal discussed some of the guiding principles involved when a party wishes to rely on *parens patriae* jurisdiction for relief. In *J.E.S.D. v. Y.E.P.*, 2018 BCCA 286 the court stated:

[57] The *parens patriae* jurisdiction is an important and broad jurisdiction of superior courts. In *E. (Mrs.) v. Eve*, [1986] 2 S.C.R. 388, La Forest J., on behalf of a unanimous Court, undertook a thorough analysis of the history and scope of the jurisdiction. He noted that it is a jurisdiction normally used for the protection of children and persons who are mentally incompetent. He was careful, however, to observe, at 427, that the use of the jurisdiction is circumscribed:

Though the scope or sphere of operation of the *parens patriae* jurisdiction may be unlimited, it by no means follows that the discretion to exercise it is unlimited. It must be exercised in accordance with its underlying principle. Simply put, the discretion is to do what is necessary for the protection of the person for whose benefit it is exercised; see the passages from the reasons of Sir John Pennycuik in *Re X* [*In re X (a minor)* (1974), [1975] 1 All E.R. 697 (C.A.)], at pp. 706-07, and Heilbron J. in *Re D* [*In re D (a minor)* (1975), [1976] 1 All E.R. 326 (Fam. D.)] at p. 332, cited earlier. The discretion is to be exercised for the benefit of that person, not for that of others. It is a discretion, too, that must at all times be exercised with great caution, a caution that must be redoubled as the seriousness of the matter increases. This is particularly so in cases where a court might be tempted to act because failure to do so would risk imposing an obviously heavy burden on some other individual.

[58] Two other limitations on the *parens patriae* jurisdiction are important. First, as it is a prerogative power, it must yield to statutory provisions. Thus, in *L.M. v. British Columbia (Director of Child, Family and Community Services)*, 2016 BCCA 367 at para. 33, Saunders J.A., speaking for a unanimous Court, said:

[33] Where there is a legislative scheme, this protective jurisdiction of the court applies only when there is a gap in that legislation: *Beson v. Director of Child Welfare (NFLD)*, [1982] 2 S.C.R. 716, 142 D.L.R. (3d) 20. Use of *parens patriae* jurisdiction is, accordingly, not meant to be an avenue for statutory amendment or broad interference with existing laws, and does not create substantive rights: *Tsaoussis v. Baetz* (1998), 112 O.A.C. 78, 41 O.R. (3d) 257 (C.A.); *P.(E.) v. B.C. (Supt. of Fam. & Child Service)* (1988), 23 B.C.L.R. (2d) 329, 28 D.L.R. (4th) 469 (C.A.).

[Emphasis added.]

Analysis

[29] The threshold question on this application is whether the *parens patriae* jurisdiction can be invoked in the circumstances outlined in Ms. Mitchell's claims. The Act does not limit the court's jurisdiction to act in that capacity, but as highlighted in *J.E.S.D.*, there must be a basis on which the court can find that it is necessary for the protection of Mr. Pulez before taking action. It cannot be claimed for the benefit of other persons including Ms. Mitchell.

- [30] It is clear that *parens patriae* jurisdiction cannot be invoked where there is legislation protecting the interests of the individual whose protection is necessary, absent a gap in that legislation. One question in this case is whether the impact of s. 37 of the Act is to vest the court with jurisdiction in the face of a clear statement in the representation agreement that Ms. Pulez is authorized to control access to Mr. Pulez by anyone including his spouse.
- [31] In the affidavit material, there is a lengthy history contained in Island Health Authority records suggesting that Ms. Mitchell has been a disruptive influence and may not be capable of acting in Mr. Pulez's best interests. I will not resolve that factual dispute in these reasons; these questions will likely be resolved in the hearing of the petition.
- [32] Ms. Mitchell contends that the court has authority to make an order (presumably an interim order) that would usurp the authority of the representative or vary her decisions because she believes the order requested will be in the best interests of Mr. Pulez. Ms. Mitchell argues that as a matter of principle, it would always be in the best interests of a patient/spouse to be permitted to continue a relationship with his partner, notwithstanding his cognitive difficulties and shortcomings.
- [33] She argues that if she is precluded from contact with her spouse, there will be opportunity for alienation that could lead to a declaration that the parties have separated, thereby triggering the provisions of the Family Law Act, S.B.C. 2011, c. 25 dealing with spousal support issues and property division issues.
- [34] The applicant additionally raises questions about Mr. Pulez's competence to appoint Ms. Pulez his representative at the time he signed both representation agreements.
- [35] The factual disputes between the parties may be significant and important on the hearing of the petition. However, the outcome of this application is dependent on the application of legal principles set out in cases that have dealt with this court's *parens patriae* jurisdiction in similar circumstances.
- [36] For the reasons that follow, I have determined that this Court should not exercise its *parens patriae* jurisdiction to interfere with the petitioner's responsibilities granted in the representation agreement and I will accordingly dismiss Ms. Mitchell's application.
- [37] In *L.M. v. British Columbia (Director of Child, Family and Community Services)*, 2016 BCCA 367 the court was asked to exercise its jurisdiction to prevent the adoption of a child that had been approved by the Director responsible. From two days after birth, the child had been in the care of foster parents in British Columbia. The foster parents wished to adopt the child, with the birthparents supporting this adoption. The Director, however, sought to place the child with a couple in Ontario who had adopted two of the child's older siblings. The foster parents and the birthparents challenged the Director's refusal to permit the adoption of the child in British Columbia and authorization of the adoption to parents in Ontario, invoking the court's *parens patriae* jurisdiction.

- [38] The Court of Appeal concluded its decision with a finding apposite to the question on this application. It said:
- [39] In my view, the combination of the power given to the Director by the Child, Family and Community Service Act, and by specific reference to her in s. 4(2) of the Adoption Act, demonstrates that the legislature intended the Director to have full control over these matters such that there is no role for the exercise of *parens patriae* jurisdiction to effect the adoption of S.S. by the appellants.
- [39] Ms. Mitchell referred to this Court's decision in *Re Kierans* (Patients Property Act), 2022 BCSC 2285 in which the court discussed the correct procedure to invalidate a representation agreement. The court accepted the decision of Iyer J. (then a judge of this Court) in *Kierans (Re)* (13 June 2022), Vancouver 220769 (B.C.S.C.) referring to the *parens patriae* jurisdiction:
- [22] Ms. Walker argues that in serving the petition, applications, and supporting materials on the PGT, she was effectively making an objection under s. 30 of the RAA. I disagree. Service of notice of a court proceeding on the PGT cannot be read as making an objection to the PGT, which is what the statute requires [Emphasis in original].
- [23] Ms. Walker also referred to the *parens patriae* jurisdiction of the court. That is only to be exercised in exceptional circumstances, where doing so will not contravene a statutory provision: *Cepryan v. Carlston*, 2022 BCCA 76 at para. 45, 123. Here there is a statutory provision. It must be followed.
- [40] Although the Act does not preclude the court's exercise of the *parens patriae* jurisdiction or deprive a person of the right to invoke this jurisdiction, there must be exceptional circumstances and an absence of legislative protections. Reliance on the *parens patriae* jurisdiction must be used cautiously and should yield to the legislation.
- [41] In this case, s. 30 provides the means to challenge a representation agreement and should be relied on to address Ms. Mitchell's claims. As such, a remedy dependent on the *parens patriae* jurisdiction remedy is not available because the legislation provides a statutory basis to object when a representative is neglecting or abusing the person or has acted improperly in the use of the representation agreement.: ss. 37(1)(a) to (j) of the Act.
- [42] Put simply, the applicant invokes the *parens patriae* jurisdiction to address a problem that can be resolved within the legislative framework of the Act.
- [43] Ms. Mitchell has chosen not to object to the representation agreement that would allow the Public Guardian and Trustee to review that objection, conduct an investigation into the objection and seek orders to change or revoke the representation agreement.
- [44] In my view, this is not an application that can succeed on the basis of the authorities cited above that restrain this court's exercise of its *parens patriae* jurisdiction. The circumstances presented by the applicant are not exceptional circumstances under which this court should interfere with the representatives decisions absent a successful objection.

Conclusion

[45] The application is dismissed. Either party may make submissions concerning costs of this application by forwarding written submissions within 30 days. Absent submissions received by the court within 30 days, the respondent/petitioner will have the costs of this application.

"Armstrong J."

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