

CANADA / JUDGMENT

## Schultz (Re)

2020 BCSC 1718

### COURT

Supreme Court of British Columbia

### DECIDED

30 September 2020

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

2020 BCSC 1718 Schultz (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Schultz (Re),

2020 BCSC 1718

Date: 20200930

Docket: S226463

Registry: New Westminster

In the Matter of the Patients Property Act,

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

And In the Matter of Brigitte Ursula Schultz

Before: The Honourable Mr. Justice Riley

Oral Reasons for Judgment Re: Application to Appoint a Committee

Counsel for Mr. Boudreault:

J.C. Legaree

Counsel for Ms. Boudreault:

M. Gladkikh, Articled Student

K. Suprynowicz

Counsel for Public Guardian and Trustee:

No Appearance

**Place and Dates of Hearing:**

New Westminster, B.C.

September 25, 30, 2020

**Place and Date of Judgment:**

New Westminster, B.C.

September 30, 2020

**Introduction**

- [1] This is a petition brought by Ryan Boudreault, and a cross-Petition by Cindy Boudreault, for various orders relating to their mother, Brigitte Schultz, under the Patients Property Act, R.S.B.C. 1996, c. 349 [PPA]. Mr. Boudreault, in his petition filed 8 April 2020, seeks a declaration that Ms. Schultz is incapable of managing her affairs, and an order appointing Mr. Boudreault to act as committee of the person and estate of Ms. Schultz. Ms. Boudreault, in her petition filed 3 June 2020, seeks the same declaration regarding Ms. Schultz's incapacity, and either an order appointing both Ms. Boudreault and Mr. Boudreault as co-committees, or alternatively an order appointing the Public Guardian and Trustee to fill that role.
- [2] Ms. Schultz was personally served with the petition materials and has not filed a response. This is not surprising, since there is reliable, uncontested evidence that she is mentally incapable of managing her own affairs
- [3] The Public Guardian and Trustee initially filed a response to Mr. Boudreault's petition, consenting to the declaration that Ms. Schultz was incapable of managing herself or her affairs, and consenting to the appointment of Mr. Boudreault as committee, with no conditions. However, after Ms. Boudreault filed her cross-petition, the Public Guardian and Trustee filed an amended or updated response, again consenting to the declaration of incapacity, but taking no position on who should be appointed committee. The amended response also states that the Public Guardian and Trustee would obviously be prepared to fill the role of committee if ordered to do so, but points out that this should be considered the option of last resort.

**Evidence**

- [4] Mr. Boudreault and Ms. Boudreault have each filed two affidavits.
- [5] I also have before me affidavits of two medical practitioners, speaking principally to the issue of Ms. Schultz's capacity to manager herself and her affairs, but also including some information relevant to the question of committeeship.

- [6] Counsel points out that there are factual disputes in the affidavit evidence of Mr. Boudreault and Ms. Boudreault. Each of them alleges various forms of impropriety on the part of the other. I agree with counsel for Mr. Boudreault that it is not necessary to resolve these conflicts in the evidence, because the objective facts concerning Ms. Schultz's circumstances, and certain key facts about her personal history, her medical conditions, her past and present living arrangements, her needs, her care, and even the future treatment plan for her, are not in dispute.
- [7] Another point of fact in dispute has to do with the personal views or wishes of Ms. Schultz at various points in time. On that issue I will say that apart from a Power of Attorney document, and a Last Will and Testament and accompanying affidavit, all of which documents were signed by Ms. Schultz on 25 March 2015, there is no reliable, non-hearsay evidence of Ms. Schultz's wishes. The statements of the parties regarding Ms. Schultz's views at various points in time are all hearsay. I have serious concerns about the admissibility of such evidence, or at the very least the weight that can be attached to it.
- [8] Specifically, Ms. Boudreault has presented a handwritten letter from Ms. Schultz, which is said to be dated 12 February 2020. This is a hearsay document. Above and beyond this, it was written at a point in time when there was every reason to believe Ms. Schultz was incapable of making her own decisions. This must be juxtaposed with the affidavit of Dr. Nanda, who personally assessed Ms. Schultz on 30 September 2019, and on the basis of that assessment determined that Ms. Schultz did not have the mental capacity to make decisions regarding her person or her finances.
- [9] Both parties have also included in their affidavits various assertions about things said to them by Ms. Schultz regarding her wishes at various points in time. These statements are also hearsay and for a variety of reasons their reliability is suspect such that even if they were admissible they should not be given any weight. Ms. Boudreault deposes that at times Ms. Schultz has moments of lucidity, but in view of the medical history and the independent, objective evidence of the two medical doctors regarding Ms. Schultz's mental state, I am not prepared to place any weight on the parties' second hand accounts of Ms. Schultz's wishes from the point of her hospitalization onward. At best, the statements attributed to Ms. Schultz are admissible as narrative to inform or explain the actions of the parties, Mr. Boudreault and Ms. Boudreault.
- [10] A skeletal review of the basic facts and the relevant chronology is as follows:
- a) Ms. Schultz is 72 years old, about to turn 73.
  - b) Ms. Schultz married Gerry Boudreault and later divorced. She has two children, Mr. Boudreault and Ms. Boudreault.
  - c) On 25 March 2015, Ms. Schultz signed an enduring power of attorney document appointing Mr. Boudreault as her attorney to make decisions and act as Ms. Schultz's agent.

- d) On the same date, Ms. Schultz signed a Last Will and Testament. In it, Ms. Schultz appointed Mr. Boudreault as the executor of her estate and Ms. Boudreault as an alternate executor. The will specified that 50% of the estate was to pass to Mr. Boudreault, and the other half was to be divided equally between Ms. Boudreault and her two children.
- e) In order to furnish a justification for the unequal division, Ms. Schultz also signed an affidavit dated 25 March 2015 stating that while her relationship with Ms. Boudreault was a loving and affectionate one, Ms. Schultz did not believe that Ms. Boudreault could handle money wisely.
- f) For quite some time until recently Ms. Schultz lived in her own home at 7784 Cedar Street, Mission. She owns the property and there is apparently no mortgage on it.
- g) From time to time, Ms. Schultz's daughter Ms. Boudreault lived with Ms. Schultz at the Cedar Street property.
- h) In December 2017, there was a fire at the Cedar Street property. It caused significant damage. There was no insurance on the home at the time. Ms. Schultz moved out, as did Ms. Boudreault. For the next year or so, while extensive repairs were done on the Cedar Street property, Ms. Schultz lived together with Ms. Boudreault and her family in an apartment rented by Ms. Boudreault.
- i) Some time in January of 2019, the repairs to the Cedar Street property were completed and Ms. Schultz and Ms. Boudreault moved back in. Ms. Boudreault asserts that she offered to pay rent but Ms. Schultz declined, apparently in recognition of the fact that Ms. Schultz lived rent free with Ms. Boudreault while the house was being fixed. There is no independent or confirmatory evidence of this assertion by Ms. Boudreault, but it is largely immaterial because Ms. Boudreault did not live long in the home with Ms. Schultz before things changed drastically.
- j) On or about 26 January 2019, Ms. Schultz was admitted to the hospital after showing signs of a stroke.
- k) On 21 April 2019, in a handwritten letter, Dr. Barnsdale declared that Ms. Schultz was mentally incapable of managing her own affairs.
- l) On 13 May 2019, Ms. Schultz was transferred from the hospital to a long term care facility called Menno Place, in Abbotsford. Ms. Schultz has been living at Menno Place - an assisted care facility - ever since. The evidence is that she pays about \$1,650 per month for lodging and fees.
- m) On 12 August 2019, Mr. Boudreault filed a civil action in the name of Ms. Schultz, seeking to evict Ms. Boudreault from the Cedar Street property. Ms. Boudreault later filed a response to the civil suit, asserting that she had the permission of Ms. Schultz to live in the house. Ms. Boudreault submits before me that Mr. Boudreault did not have authority to file the civil claim because no guardian ad litem has been appointed to authorize the action in Ms.

Schultz's name, relying on *Paterson v. Vancouver General Hospital*, 2016 BCSC 590 at para. 26-28.

- n) On or around 4 September 2019, after Mr. Boudreault filed his notice of civil claim, Ms. Boudreault unilaterally took Ms. Schultz out of the Menno Place and brought her back to the Cedar Street property. Ms. Boudreault then tried to arrange for a nurse to make a home assessment of Ms. Schultz's treatment needs. Meanwhile, Mr. Boudreault was notified by the police that Ms. Schultz had been taken from Menno Place. Mr. Boudreault went to the Cedar Street property and collected Ms. Shultz, took her to the bank to restore his signing authority on her bank accounts per the power of attorney, and then returned her to Menno Place.
- o) On 30 September 2019 Ms. Schultz was assessed by Dr. Nanda, at Menno Place, and after performing a battery of tests, the doctor determined that Ms. Schultz was not mentally competent to manage herself or her affairs. Dr. Bhalla later assessed Ms. Schultz and reached the same conclusion.
- p) On 24 December 2019, Mr. Boudreault took Ms. Schultz out of Menno Place and brought her to the Cedar Street property to spend Christmas Eve with Ms. Boudreault and her family. When Mr. Boudreault collected Ms. Schultz the next day, he noted that she had not been given her medications as required.
- q) On 8 April 2020, Mr. Boudreault filed his petition in the matter now before the court.
- r) On 3 June 2020, Ms. Schultz filed the cross-petition.
- s) With regard to Ms. Schultz's assets, she presently owns (i) the Cedar Street property, value approximately \$620,000, with no mortgage; (ii) a plot of land in Newfoundland worth some \$4,600, (iii) a property in Spences Bridge, British Columbia, registered in someone else's name but with Ms. Schultz having beneficial ownership, worth some \$202,000, (iv) savings of some \$386,000 in a bank account, (v) a vehicle worth some \$1,500, (vi) personal effects, furniture, and clothing.
- t) With regard to Ms. Schultz's debts, it appears she has a small amount of credit card debt.
- u) Ms. Schultz's income is approximately \$2,800 per month in the form of pensions and interest on investments.
- v) Ms. Schultz's monthly expenses, including lodging and other fees for her residence at Menno Place, and utilities and insurance for the Cedar Street property, add up to about \$2,200 per month. Ms. Schultz also has annual property taxes of some \$5,500 per month, most of which are for the Cedar Street property.

## Issues

- [11] There are two substantive issues to be decided on this application. The first is whether there should be a declaration that Ms. Schultz is incapable of managing her person and affairs. The second is who should be appointed committee with respect to Ms. Schultz's person and affairs.
- (1) Declaration of Incapacity
- [12] Under s. 2 of PPA, an application may be made for a declaration that a person, the patient, is incapable of managing his or her person and affairs because of, inter alia, mental infirmity arising from disease or age. Under s. 3 of the PPA, the court must make a declaration of incapacity if satisfied on the evidence of two medical practitioners that the statutory test for incapacity described above has been met.
- [13] In this case there are affidavits from two medical practitioners who have examined, met with, and evaluated Ms. Schultz and concluded that she is incapable of managing her person or affairs due to mental infirmity arising from disease and age. That conclusion is supported by all parties concerned, Mr. Boudreault, Ms. Boudreault, and the Public Guardian and Trustee. I therefore grant the application for a declaration under s. 2 of the PPA that Ms. Schultz is incapable of managing both her person and her affairs.
- (2) Appointment of Committee
- [14] Under s. 6 of the PPA, an immediate family member may apply for appointment of a person to serve as committee for the patient. The powers of a committee are set out in s. 15, subject to any limitations imposed by the court under s. 16. Where a patient is declared incapable of managing both the patient's person and affairs, s. 15(1)(b)(iii) provides that the committee has authority to exercise all decision making powers with respect to the patient's personal treatment and the patient's estate.
- [15] Under s. 16, the court is given the authority to attach conditions or restrictions on the committee's exercise of these aforementioned powers. The principal and overriding consideration in determining who should be appointed as committee is the best interest of the patient: *Balducci v. Valeria*, 2016 BCSC 2333 at para. 37, citing *Reisinger (Re)*, [2002] B.C.J. No. 3162 (S.C.) at para. 30.
- [16] In determining what is in the patient's best interests, the court may consider a wide array of factors. In *Stewart (Re)*, 2014 BCSC 2321 [*Stewart (Re)*] at para. 29, the court set out a non-exhaustive list of considerations, which I will now review and apply to the circumstances of this case.
- (a) Wishes of the Patient, at the Point that she was Capable of Forming and Expressing Them

- [17] The most reliable, objective evidence as to Ms. Schultz's wishes concerning who should be responsible for managing her affairs and her person comes from the power of attorney, the will, and the associated affidavit executed by Ms. Schultz in 2015.
- [18] At that time, Ms. Schultz executed a power of attorney giving Mr. Boudreault authority to make decisions and take actions regarding her affairs. That really pertains to her estate, not her person, but it is a strong indication that Ms. Schultz placed her confidence and trust in Mr. Boudreault.
- [19] There is also the will. Ms. Schultz made Mr. Boudreault the executor. It is true that she also made Ms. Boudreault the alternate executor. This indicates that Ms. Schultz did not have a complete lack of confidence or trust in Ms. Boudreault, but it does give some suggestion that at least back in 2015, as between Mr. Boudreault and Ms. Boudreault, Ms. Schultz placed greater confidence in Mr. Boudreault to administer her estate upon her passing. This suggests that Ms. Schultz placed confidence in Mr. Boudreault's ability and trustworthiness in managing her property.
- [20] This same conclusion is reinforced, at least somewhat, by the will and accompanying affidavit. Ms. Schultz evinced an intention to leave one half of her estate to Mr. Boudreault, and only one-quarter to Ms. Boudreault, explaining that she had some concerns that Ms. Boudreault was not financially responsible.
- [21] The balance of the evidence cited by the parties as to the wishes of Ms. Schultz at various points in time is hearsay. It is vague, self-serving from the mouths of the declarants, and unreliable. It does not provide any objectively reliable evidence of Ms. Schultz's wishes.
- (b) Whether Immediate Family Members are in Agreement with the Proposed Committeeship
- [22] Ms. Boudreault accepts or agrees with the appointment of Mr. Boudreault as committee; her position is that she should be appointed as co-committee. Mr. Boudreault does not agree to Ms. Boudreault's appointment as a co-committee; his position is that he should be the only committee. Mr. Boudreault takes the view that Ms. Boudreault is not suitable, and also that the two of them will not be able to agree or work together in the management of Ms. Schultz's affairs.
- (c) Conflict between Family Members or with the Patient, and Likelihood of Consultation
- [23] The text messages attached to Ms. Boudreault's affidavit show considerable acrimony between her and Mr. Boudreault, specifically on the subject of the treatment and care for their mother, and on the status of the Cedar Street property.
- [24] With regard to the issue of consultation, there is evidence that Mr. Boudreault and Ms. Boudreault have both acted unilaterally and without input from the other. In Mr. Boudreault's case, he acted unilaterally in commencing litigation to force Ms. Boudreault out of the Cedar Street property. In Ms. Boudreault's case, she acted unilaterally in taking Ms. Schultz out of Menno Place, and bringing her back to the Cedar Street property after Mr.

Boudreault commenced the civil action. This was obviously a serious matter since Mr. Boudreault learned about when contacted by the police.

[25] All of this suggests a disinclination on the part of either party to consult the other in regards to making significant decisions about their mother's care or the handling of her property.

(d) Level of Previous Involvement of the Proposed Committee with the Patient

[26] There is evidence that both petitioners, Mr. Boudreault and Ms. Boudreault, have close relationships and significant involvement with their mother.

[27] Ms. Boudreault points to Ms. Schultz's affidavit, sworn in conjunction with her will, in which she characterizes the relationship between herself and Ms. Boudreault as a loving and affectionate one. Ms. Boudreault has lived with Ms. Schultz from time to time, and indicates that she has provided care for Ms. Schultz when she has been in need, including after a fall Ms. Schultz had back in 2015.

[28] There is uncontested evidence that Mr. Boudreault has been closely monitoring Ms. Schultz's health since at least the point when she went into long term care at Menno Place.

(e) Proposed Committee's Level of Understanding of Patient's Present Situation and Needs, and any Potential Future Changes

[29] The evidence indicates that both Mr. Boudreault and Ms. Boudreault have a fair understanding of Ms. Boudreault's medical conditions and challenges. Both are now basically in agreement as to the future care plan, which is essentially for Ms. Schultz to continue to reside at Menno Place, where there is a professional staff available to provide her with the personal care and attention she needs.

[30] However, the evidence that Ms. Boudreault unilaterally removed Ms. Schultz from Menno Place and brought her back to stay at the Cedar Street property suggests that Ms. Boudreault may not have had full insight into Ms. Schultz's physical and medical needs, and the level of care that she requires on a daily basis. It is true that Ms. Boudreault took steps to have a nurse conduct an assessment of Ms. Schultz's care needs, but in my view the real concern is that Ms. Boudreault saw fit to remove Ms. Schultz from Menno Place in the first place, acting unilaterally and without consultation.

[31] I also accept the evidence of Mr. Boudreault, not specifically contested by Ms. Boudreault, with respect to what occurred when Ms. Schultz stayed with Ms. Boudreault at the Cedar Street property on 24 December 2019. In particular, I accept the evidence of Mr. Boudreault that he specifically instructed Ms. Boudreault about the medications Ms. Schultz was required to take, and that when Mr. Boudreault returned to get Ms. Schultz the next day, the medications had not been taken.

(f) Whether the Proposed Committee Will Provide Love and Support to the Patient

- [32] Neither party suggests that the other would not provide love and support to Ms. Schultz. There is certainly evidence that both parties care for their mother and are willing to support her to the best of their abilities.
- (g) Whether the Proposed Committee is the Best Person to Deal with the Patient's Financial Affairs
- [33] Mr. Boudreault lives in his own property, has stable employment, and appears to be financially secure. His ability to manage his own finances and estate suggest that he would be well suited to managing the financial affairs of his mother. What is more, Mr. Boudreault has had a power of attorney for Ms. Schultz since 2015, although his position is that he did not act on this document until after Ms. Schultz was hospitalized and he obtained a letter from Dr. Barnsdale certifying that she was mentally incompetent. In any event, Ms. Schultz clearly placed confidence in Mr. Boudreault's ability to manage her affairs at a point in time when she was able to make an informed judgment about such matters. Mr. Boudreault has managed Ms. Schultz's affairs for a number of years, for at least several years now.
- [34] There is one specific point of concern raised in Ms. Boudreault's affidavit evidence with respect to Mr. Boudreault's handling of their mother's finances. Specifically, Ms. Boudreault suggests in her affidavit that Mr. Boudreault emptied some \$110,000 from Ms. Schultz's RRSP account to fund the purchase of his home. The only evidentiary support for this allegation is a copy of a bank statement dated 31 July 2018 indicating that the opening monthly balance in Ms. Schultz's RRSP account was \$110,000 and the closing balance was zero. As far as I can tell, Mr. Boudreault does not appear to have addressed this allegation in his affidavit evidence. This is a serious matter, and at some point Mr. Boudreault may be expected to explain to Ms. Boudreault what he knows about what became of these funds. However, at this point I am not prepared to infer that Mr. Boudreault has misappropriated the funds in the absence of some clear evidence as to where the funds were placed after they were removed from the RRSP account. I take this view at least in part because, while Ms. Boudreault raised this issue in her affidavit, at the end of the day she does not oppose Mr. Boudreault's appointment as committee. Her position is simply that she should be appointed as co-committee. I note as well that the change in the status of this account occurred at a point in time before Ms. Schultz was hospitalized with signs of a stroke. In supplementary submissions this morning, counsel for Mr. Boudreault suggested that on the record before me, I could reach the conclusion that Mr. Boudreault never purported to act on the power of attorney up until the point that Ms. Schultz had been hospitalized and a doctor certified in a handwritten note that she no longer had the mental capacity to manager her own affairs. In any event, in my view Mr. Boudreault will be obliged to explain this transaction. If the explanation is not satisfactory, then Ms. Boudreault would be at liberty to raise the matter with the Public Guardian and Trustee, or alternatively to bring a court application before me, to revisit the appointment of Mr. Boudreault as a committee, much in the same way as contemplated in *Vranic (Re)*, 2007 BCSC 1949 at para. 99.

- [35] With respect to Ms. Boudreault, the evidence of her financial situation is not clear. She is presently living rent free at the Cedar Street property, although she deposes that this is the result of an arrangement she made with her mother, in recognition of her allowing Ms. Schultz to stay with her at an apartment while the Cedar Street property was being repaired. There is admissible evidence that Ms. Schultz, at a time when she was able to make an informed assessment, did not place the same confidence in Ms. Boudreault's ability to handle financial matters as she did with respect to Mr. Boudreault. Specifically, Ms. Schultz deposed in her affidavit that Ms. Boudreault was not good with money, and for this reason she structured her will to limit Ms. Boudreault's access to the estate.
- [36] As between the two parties, I conclude that Mr. Boudreault is in a better position to competently and prudently manage Ms. Schultz's financial affairs, subject to the outstanding concern I have expressed above about Ms. Schultz's RRSP account. Leaving that concern aside as something that Ms. Boudreault would be free to inquire about and pursue at a later time, either through the Public Guardian and Trustee or through a court application, on balance this factor weighs in favour of appointing Mr. Boudreault as committee. Again, I note that Ms. Boudreault does not oppose this, but rather submits that she and Mr. Boudreault should be appointed as co-committees. Even still, the evidence on this point weighs against such an outcome to the extent that there may be concerns about whether Ms. Boudreault would act prudently in discharging such responsibilities, even if shared with Mr. Boudreault. I point here to the instance in which, after Ms. Boudreault took Ms. Schultz out of Menno Place, arrangements were made to alter the signing authority on Ms. Schultz's bank account. I infer that Ms. Boudreault was involved in this, and that it was contrary to the terms of Mr. Boudreault's power of attorney in place at that time.
- (h) Whether a Proposed Committee has Breached a Fiduciary Duty to the Patient, or Engaged in Activity which Diminishes Confidence in his or her Ability to Handle the Patient's Affairs
- [37] There is no clear evidence that either party has breached a fiduciary duty toward Ms. Schultz. I should say there is some concern, mentioned under the preceding heading, that Mr. Boudreault has not adequately explained what became of the funds that were in Ms. Schultz's RRSP account. Again, I am not prepared to infer that Mr. Boudreault has appropriated these funds for his own purposes in the absence of some specific evidence as to where the funds went, particularly at a time where Ms. Schultz had not yet been hospitalized, and at least according to Mr. Boudreault, he did not purport to act under the power of attorney, and also considering that Ms. Boudreault does not oppose Mr. Boudreault's appointment as committee. Again, as noted above, I would expect Mr. Boudreault to explain what he knows about the status of these funds to Ms. Boudreault, who would then be free to raise the issue if the explanation is not satisfactory.
- [38] It is also suggested that Mr. Boudreault engaged in inappropriate conduct by bringing a civil action seeking to remove Ms. Boudreault from the Cedar Street property. Assuming without deciding that Mr. Boudreault initiated the law suit in Ms. Schultz's name, without obtaining proper legal authority to do so, in my view this does not cause any objective loss of

confidence in Mr. Boudreault's willingness or ability to properly manage Ms. Schultz's affairs in her best interest. I infer that Mr. Boudreault commenced the legal action believing he had authority to do so under the power of attorney given to him by Ms. Schultz. If he was legally wrong in this, it does not imply any dishonesty on his part. The fact that Mr. Boudreault acted unilaterally in an effort to have Ms. Boudreault removed from the Cedar Street property suggests that he has an extremely acrimonious relationship with Ms. Boudreault, but again does not necessarily suggest that he was intentionally acting against Ms. Schultz's best interests.

- [39] On the other hand, there is evidence that Ms. Boudreault has engaged in conduct that diminishes confidence in her ability to manage Ms. Schultz's affairs. I cite two examples.
- [40] The first is the incident with the bank account referred to under the previous heading. I infer that Ms. Boudreault was involved in changing the authorization for Ms. Schultz's bank account in circumstances where she must have know that this was contrary to the terms of the power of attorney given to Mr. Boudreault.
- [41] The second incident is the one in which quantities of building or landscaping supplies were delivered to the Cedar Street property, and a lien was placed on the property. There is evidence from Mr. Boudreault that Ms. Boudreault was involved in removing some of those supplies and taking them away from the Cedar Street property, to another location. This furnishes some evidence that Ms. Boudreault was involved, directly or indirectly, in a transaction which resulted in a lien being placed against the property in connection with supplies that were diverted to some other purpose. This diminishes confidence in Ms. Boudreault's ability to handle Ms. Schultz's financial affairs in Ms. Schultz's best interests.
- [42] Counsel for Mr. Boudreault also asserts that Ms. Boudreault is in a direct conflict of interest insofar as the status of the Cedar Street property is concerned. Counsel says that because Ms. Boudreault lives in the property rent free, she is not in a position to make decisions in Ms. Schultz's best interest regarding what should be done with the property. Indeed, counsel asserts that this is the entire reason why Ms. Boudreault opposes Mr. Boudreault's application and seeks to be appointed as co-committee.
- [43] While accepting that Ms. Boudreault's living in the Cedar Street property rent free is to her personal advantage, I do not necessarily see this as entirely inconsistent with or contrary to Ms. Schultz's best interests. It should be noted that Ms. Boudreault has lived with Ms. Schultz at the Cedar Street property in the past, although she admits that she previously paid \$700 per month to do so whereas now she pays nothing. Although Ms. Boudreault attributes this to an arrangement which she said was struck with Ms. Schultz shortly before she went into the hospital, there is no realistic way to test or evaluate this assertion, since the only person who could do so is Ms. Schultz, and Ms. Schultz is no longer in a position to give evidence one way or the other. Still, there is no evidence that Ms. Schultz objects to Ms. Boudreault living in the house, and no objectively verifiable independent evidence that Ms. Schultz was intending or planning to sell the Cedar Street property. Mr. Boudreault says that he and Ms.

Schultz discussed the possible sale of the property, but there is no way on the record before me to test or evaluate this self-serving assertion, just as there is no way to evaluate Ms. Boudreault's assertions about her mother's intentions concerning the Cedar Street property.

(i) The Best Advocate of the Patient's Needs

[44] The evidence indicates to me that Mr. Boudreault has been more directly involved with Ms. Schultz's medical care providers than Ms. Boudreault has been since her hospitalization. Ms. Boudreault suggests that Mr. Boudreault has been limiting her access to information and ability to see Ms. Schultz at Menno Place, but Ms. Boudreault's assertions on this point are conclusory and speculative. There is no objective evidence to support this position.

(j) Proposed Care Plan

[45] Both Mr. Boudreault and Ms. Boudreault agree as to the future care plan for Ms. Schultz, subject only to a dispute about what to do with the Cedar Street property. In my view, the status of the Cedar Street property has very little bearing on the future care plan for Ms. Schultz, either practically or financially. To return to the care plan, as I say, both parties now agree that Ms. Schultz should continue to reside at Menno Place because this is where she can receive care and attention from professionally qualified staff who are able to meet her physical and medical needs. I note that Mr. Boudreault initially proposed this plan, and Ms. Boudreault only later came to agree with it. But the fact that she now agrees with it is at least some evidence that Ms. Boudreault can bend to reason and is capable of changing her personal view in order to adopt the course that is in Ms. Schultz's best interests.

(k) Whether a Division of Responsibility, Such as between the Patient's Estate and Person, would be in the Patient's Best Interests

[46] In my view, this is not a situation where it would be in Ms. Schultz's best interest to divide responsibility for her care, for example by giving one party committee ship over her person and the other committee ship over her estate. Because Ms. Schultz lives in a residential care facility, and the plan is for her to stay there, decisions relating to Ms. Schultz's person are closely tied to decisions relating to her estate and financial affairs. Above and beyond this, this is clearly not a case where the parties, Mr. Boudreault and Ms. Boudreault, have shown themselves willing or able to divide responsibility for various decisions regarding their mother. There is considerable acrimony and distrust between the parties, and I do not believe a division of responsibility is workable or appropriate here.

## Conclusion Regarding Committee ship

[47] For the same reason discussed in the preceding paragraph, I must reject Ms. Boudreault's argument for joint committee ship as between herself and Mr. Boudreault. I do not see that as an arrangement which is in the best interests of Ms. Schultz for the reasons outlined above.

- [48] In this particular case, the only two realistic options as far as committee ship is concerned are either appointment of Mr. Boudreault as sole committee of Ms. Schultz's person and estate, or appointment of the Public Guardian and Trustee as committee with respect to both Ms. Boudreault's person and estate. Taking into account all of the factors discussed above, I conclude that Mr. Boudreault is indeed an appropriate person to appoint as committee of both Ms. Schultz's person and her estate. Mr. Boudreault has largely been functioning in this role since Ms. Schultz's hospitalization. He has been dealing with the staff and medical professionals, and he has had a power of attorney with respect to Ms. Schultz's affairs. Moreover, there is objective evidence that when Ms. Schultz was in a position to make her own informed decision on such matters, she had confidence in Mr. Boudreault to properly manage her affairs. I refer here to the will and to the power of attorney documents.
- [49] I accept the submission of the Public Guardian and Trustee that appointment of the Public Guardian and Trustee as committee should not be the option of first resort. I also accept the submission of Mr. Boudreault that appointing the Public Guardian and Trustee would involve additional and unwarranted costs, which would be a drain on Ms. Schultz's financial means. It would seem unnecessary to involve the Public Guardian and Trustee where all the evidence, on balance, indicates that Mr. Boudreault is an appropriate person to serve as committee of both Ms. Schultz's person and her affairs. This is subject only to the concern about the handling of Ms. Schultz's RRSP account, a concern which I have addressed above and could justify revisiting the appointment.
- [50] What remains to be considered is Ms. Boudreault's alternative submission that if Mr. Boudreault is appointed committee, the court should impose conditions or restrictions on his exercise of authority. The legal authority for the imposition of such conditions is found in s. 16 of the PPA, which provides as follows:

### **Special direction limiting powers of committee**

- 16 (1) On the appointment of a committee, the court may, by the same order, attach conditions or restrictions on the committee's exercise of certain rights, privileges or powers specified in the order, including requiring the written consent of the Public Guardian and Trustee prior to the committee's exercise of any right, privilege or power.
- (2) If, under subsection (1), the court has attached a condition that the consent of the Public Guardian and Trustee is required prior to the committee's exercise of any right, privilege or power, the registrar of the court must send a copy of the court's order to the Public Guardian and Trustee.

- [51] There are many cases where courts have seen fit to impose conditions or restrictions on the committee's powers, both in terms of decision making regarding the patient's person, and decision making regarding the patient's estate and financial affairs. See, for example, see *Stewart (Re)* at para. 47-48; *Balducci* at para. 49, 52; *Cho (Re)*, 2020 BCSC 689 at para. 40; *Fraser v. Fraser*, 2008 BCSC 1733 at para. 25; *Palamarek (Re)*, 2011 BCSC 563 at para. 284.
- [52] Counsel for Mr. Boudreault objected to the court's consideration of terms or conditions on Mr. Boudreault's committee's powers, arguing that this issue had not been plead in Ms. Boudreault's reply to the petition. I do note that point number five in the orders sought in Ms. Boudreault's cross-petition is "such further order or declaration as the court sees fit". This general pleading is enough to encompass the alternative relief now argued for, specifically limitations on Mr. Boudreault's powers as committee. Still, because this specific form of relief was not spelled out in Ms. Boudreault's pleadings, there was a concern that Mr. Boudreault and his counsel were caught by surprise and unable to properly respond. To address this, the court agreed to stand down the hearing from the morning until the afternoon court sitting, to give Mr. Boudreault's counsel a chance to consider her position and, if necessary, to take instructions. I also indicated that I would be prepared to consider Mr. Boudreault's application for a lengthier adjournment, of perhaps a week or so, if counsel felt it was necessary. When the case was recalled in the afternoon session, Mr. Boudreault's counsel indicated she was prepared to respond to the alternative submission advanced by counsel for Ms. Boudreault. In the end, I am satisfied that it is necessary and appropriate to consider the alternative submission advanced by Ms. Boudreault, namely the imposition of terms or conditions on Mr. Boudreault's committee's powers, because in deciding what is in the best interests of the patient, the court should have the benefit of considering all legally available options. See *Balducci* at para. 35.
- [53] The two specific limitations contended for by Ms. Boudreault are as follows. First, Ms. Boudreault seeks a term requiring that Mr. Boudreault keep her informed regarding Ms. Schultz's living situation and medical status and consult with Ms. Boudreault before making any significant decisions regarding Ms. Schultz's care or medical treatment. Second, Ms. Boudreault seeks a term providing that Mr. Boudreault is not to dispose of or alter the form of any significant assets, most specifically the Cedar Street property, without obtaining the prior approval of the Public Guardian and Trustee. I will deal with each of these submissions in turn.
- [54] Focusing on the first condition, which would represent a limitation on Mr. Boudreault's authority as committee of Ms. Schultz's person, I see much benefit and really no detriment to ordering such a condition. Mr. Boudreault's counsel submitted that it is inappropriate for the court to strip away or intrude into the authority of the committee to make decisions as to what kinds of living arrangements and medical care is in the best interests of the patient. But I do not see a term requiring Mr. Boudreault to keep Ms. Boudreault informed and to consult with her as a significant limitation on Mr. Boudreault's decision making authority. If anything such a term will in almost all instances further the best interests of the patient, by

ensuring that the patient's close relatives - in this case her daughter - are fully aware of her personal circumstances and medical care. And, as noted in the case law, the concept of consultation in this context does not mean a requirement to secure Ms. Boudreault's agreement with any particular decision, but rather it means an obligation to solicit and receive input from Ms. Boudreault before he makes any significant decisions regarding Ms. Schultz's care. See *Stewart (Re)* at para. 48.

- [55] Moving then to the second condition, the focus of the argument here was on whether Mr. Boudreault should be limited or restricted in his decision making as regards the status of the Cedar Street property. It is Mr. Boudreault's stated intention to sell the property and then manage the proceeds.
- [56] Ms. Boudreault points out that while this is said to be part of Mr. Boudreault's care plan for Ms. Schultz, it is not obvious or apparent that it is necessary to liquidate the Cedar Street property in order to properly fund Ms. Schultz's continued residence at Menno Place. Ms. Schultz's pension income from all sources appears to be sufficient to cover the monthly residence fees at Menno Place. Ms. Schultz also has over \$387,000 in a savings account.
- [57] The only additional or new expenses identified by Mr. Boudreault as part of his proposed care plan are for "haircuts", "special activities", and "extra care or services she would like or require", all of which Mr. Boudreault would propose to fund by topping up Ms. Schultz's "comfort fund" at Menno Place. All of these things seem reasonable and it would no doubt be in Ms. Schultz's best interests to have them. Indeed, there is no reason why Ms. Schultz should not be able to personally benefit from funds and property in her estate to the extent that they will improve her comfort or standard of living. However, looking at matters objectively, it is not apparent that additional funds for haircuts, special activities, or even extra care would be so financially demanding that they would warrant liquidation of Ms. Schultz's most significant asset, real property with a value in excess of \$600,000.
- [58] There is, of course, a legitimate and objectively reasonable concern that the property itself may diminish in value due to poor maintenance or financial wasting. There is also an equally legitimate concern that the carrying costs of the Cedar Street property, including property taxes and house insurance, are a drain on Ms. Schultz's estate, and that the property is not presently generating any revenue to cover these costs.
- [59] On the other hand, a strong case can also be made for saying that Mr. Boudreault should not make a unilateral decision to significantly alter the composition of Ms. Schultz's estate, without being able to make an objectively reasonable business case for doing so. In this regard, the standard that would be expected of Mr. Boudreault as committee in managing his mother's affairs is that of a reasonably prudent business person. To be clear, the court is not being asked to approve or disapprove of Mr. Boudreault's proposal to liquidate the Cedar Street property. But, in light of that fact that Mr. Boudreault has fully disclosed this intention, the question is whether it is appropriate to allow him unfettered authority to alter the composition of the assets in Ms. Schultz's estate, or whether he should only be permitted

to do so with the prior written approval of the Public Guardian and Trustee.

- [60] To Mr. Boudreault's credit, he has fully disclosed his intent to liquidate the property in the event that he is granted committeehip. If he were thinking tactically, Mr. Boudreault might have simply remained silent about his plan, obtained an unlimited appointment of committeehip, and then liquidated the property. It appears that Mr. Boudreault wished to be more transparent than that, and as I say that weighs in his favour and shows me that he has no intention to act in bad faith or to use his authority as committee in a way that is underhanded or abusive.
- [61] In the final analysis, I conclude that Mr. Boudreault's expressed intent to liquidate the most significant and valuable asset in Ms. Schultz's estate is significant enough that it should only be put into action with the prior written approval of the Public Guardian and Trustee. I say that at least in part because the court is in no position to evaluate the prudence of this decision. On the face of it, it would not seem to be necessary from the point of view of financial need. It may or may not be a prudent decision as far as Ms. Schultz's financial interests are concerned. It is true that Ms. Schultz will most certainly never return to live in the Cedar Street property on a full time basis. However, selling the property would deprive her of the opportunity to visit her daughter and granddaughter at the property. It would also require the disposal of some of Ms. Schultz's furniture and other personal belongings. Is this necessary or prudent? It is impossible for the court to say, and the court is not being asked to decide the point. But it seems to me that before taking this step, Mr. Boudreault should have to get the approval of the Public Guardian and Trustee, to ensure that there is some objective assessment of the reasonableness and prudence of this step, in terms of what is in Ms. Schultz's best interests.
- [62] I note that Ms. Schultz has other real property interests, including a \$202,000 interest in a real property at Spences Bridge, where she does not live and from which she does not appear to derive any personal benefit. Is it advisable for Mr. Boudreault to liquidate Ms. Schultz's family home at Cedar Street while continuing to hold onto her interest in the Spences Bridge property? Again, the court is in no position to say, one way or the other.
- [63] I can understand how Mr. Boudreault might be concerned about the wasting of the Cedar Street property due to disrepair, or that covering the carrying costs of the property out of the estate will cause the overall value of the estate to dissipate. There may be ways to resolve this concern in a manner that is less drastic than selling the Cedar Street property. For example, Mr. Boudreault might try to negotiate with Ms. Boudreault to see if she would agree to pay market rent, or at least rent at a monthly rate that would cover the carrying costs for the property, so that it will not be necessary to sell it. If Mr. Boudreault tried to negotiate such an arrangement and Ms. Boudreault refused, this might well be relevant information for the Public Guardian and Trustee in the event that Mr. Boudreault ultimately determined that it was in Ms. Schultz's best interest to liquidate the Cedar Street property.

[64] For all of these reasons, I find that it is appropriate and necessary to include a term in the order providing that Mr. Boudreault shall not transfer or alter the composition of any significant assets in Ms. Schultz's estate without the written prior approval of the Public Guardian and Trustee, and further that Mr. Boudreault would be obliged to give Ms. Boudreault written notice of any such proposal to be submitted to the Public Guardian and Trustee for approval.

## Costs

[65] In deciding upon the appropriate costs order, I begin by noting that under s. 27 of the PPA, costs in proceedings such as these are at the discretion of the court. I will not thoroughly review the positions of the parties concerning costs. It is enough to say that each party asserts that the other is acting in self-interest and therefore should be denied costs, or should have to pay the other party's costs on this petition. I take a fundamentally different view, principally because I am not prepared to find that either party has acted solely or primarily in pursuit of some "ulterior motive" as discussed in *Vieira (Re)*, 2013 BCCA 420 at para. 17. I find, rather, that both parties have engaged in the litigation "with the genuine goal of protecting and promoting the best interests of the patient", a phrase I have borrowed from Madam Justice Dardi in *Bowman (Re)*, 2009 BCSC 523 at para. 50. Accordingly, I order that both parties are to be awarded special costs to be paid from the patient's estate.

## Summary of Order

[66] In summary, I would make an order with the following terms:

- (1) The Court declares that Brigitte Ursula Schultz is by reason of mental infirmity arising from disease, age, or otherwise, incapable of managing herself or her affairs.
- (2) Ryan Boudreault is appointed committee of the person and estate of Brigitte Ursula Schultz, without bond, and subject to the following conditions or restrictions:
  - (a) Ryan Boudreault is to keep Cindy Boudreault informed regarding Brigitte Ursula Schultz's living situation and medical status, and Ryan Boudreault shall consult with Cindy Boudreault before making any significant decisions regarding Brigitte Ursula Schultz's care or medical treatment. Consultation does not mean agreement but rather an obligation on the part of Ryan Boudreau to solicit and receive input from Cindy Boudreault before he makes any significant decisions regarding Brigitte Ursula Schultz's care.
  - (b) Ryan Boudreault shall not transfer or alter the composition of any significant assets in Brigitte Ursula Schultz's estate without the prior written approval of the Public Guardian and Trustee, and further that Ryan Boudreault is obliged to give Cindy Boudreault written notice of any such proposal to be submitted to the Public Guardian and Trustee for approval.
  - (c) In the event that Cindy Boudreault enquires into the transaction involving Brigitte Ursula Schultz's RRSP account in July 2018, and is not satisfied with the information or explanation she receives as a result, and in the event that this is raised with the Public Guardian and

Trustee but Ms. Boudreault is not satisfied with the result, she will be at liberty to apply to the Court for a remedy in respect of that issue, and specifically whether any such concern would justify revisiting of the committeeship order in this case. Mr. Justice Riley will be seized of any such application.

- (3) Both parties, Ryan Boudreault and Cindy Boudreau, are awarded special costs, to be paid out of the estate of Brigitte Ursula Schultz.

"Riley 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/20/17/2020BCSC1718.htm>

**CASE PAGE**              <https://chat.esheria.ai/case-law/canada/schultz-re-2020>

Prepared on 26 October 2026 · Esheria