

CANADA / JUDGMENT

Swereda (Re)

2020 BCSC 701

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2020 BCSC 701 Swereda (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Swereda (Re),

2020 BCSC 701

Date: 20200506

Docket: S194898

Registry: Vancouver

In the Matter of the Patients Property Act,

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

and In the Matter of Joyce Swereda

Before: The Honourable Madam Justice Shergill

Reasons for Judgment

Counsel for the Petitioner, Deborah Anne Jumaga:

M. Chandler

Counsel for the Respondent, the Public Guardian and Trustee:

M.T. Wolf

Place and Date of Hearing:

Vancouver, B.C.

November 29, 2019

Supplemental Submissions by the Petitioner:

April 16, 2020

Supplemental Submissions by the Respondent:

April 9, 2020

Place and Date of Judgment:

Vancouver, B.C.

May 6, 2020

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I. Overview

- [1] This petition was originally filed seeking a declaration that Joyce Swereda (the "patient") was incapable of managing herself and her affairs by reason of mental infirmity arising from disease, age or otherwise. The petitioner, Deborah Anne Jumaga, sought to be appointed committee of the person and estate of the patient.
- [2] However, the patient passed away on October 22, 2019, before the petition could be heard. The petitioner now seeks costs of the application to be paid out of the patient's estate as special costs.

- [3] The respondent, the Public Guardian and Trustee ("PGT") opposes the application, and seeks its own award of special costs payable from the estate of Ms. Swereda. Though there is no cross application filed by the PGT, the petitioner is not opposed to my hearing the PGT's application at the same time as the petitioner's.
- [4] The parties appeared before me on November 29, 2019. The matter did not complete, and was scheduled to continue on April 9, 2020. However, on March 18, 2020, the Chief Justice of the Supreme Court of British Columbia ordered the suspension of all regular operations of the court effective immediately and until further notice, due to the COVID-19 pandemic. Consequently, by way of memorandum to the parties issued March 19, 2020, I invited the parties to complete the hearing by filing supplemental written submissions.
- [5] The sole question before me is whether the petitioner and/or the respondent should be granted costs of the application out of the patient's estate as special costs.

II. Background

- [6] Joyce Swereda was born on April 20, 1937 and was 82 years old at the time of her death. She married Michael Swereda ("Michael") on August 29, 1970. The marriage ended upon Michael's death on April 15, 2008. They had no children.
- [7] Ms. Swereda had two siblings named Shirley Elder and Carol Simon. Both siblings are deceased and neither sibling had children. Ms. Swereda's parents are also deceased, and she has no known blood relatives.
- [8] Ms. Swereda's Will has not been probated. The Executor of the patient's estate (the "Estate") is her brother-in-law who resides in Saskatchewan.
- [9] Ms. Jumaga is 58 years old. She worked as a teacher for the Coquitlam School District from 2001 until her retirement in 2017.
- [10] The petitioner refers to Ms. Swereda as her aunt, though she is not related to the patient by blood. Rather, they are related through Michael. Ms. Jumaga and the patient also had a close personal bond right up until the patient's death. The petitioner provided regular care and companionship, and was otherwise actively involved in ensuring that Ms. Swereda's needs were being met by her caregivers and the PGT.
- [11] Ms. Jumaga knew Ms. Swereda for 29 years. Over the years they became closer, meeting regularly for dinner and spending many holidays and birthdays together. By the end of 2017, Ms. Jumaga was seeing Ms. Swereda almost daily.
- [12] Over time, Ms. Jumaga witnessed a gradual decline in Ms. Swereda's health. Ms. Swereda was suffering from memory loss, had her driver's license revoked, became socially isolated, and eventually and tragically became the victim of financial abuse from her niece, Shelley. Shelley convinced Ms. Swereda to sell her home and purchase a condominium in which Shelley could live with her. In addition, it appears that at Shelley's behest, Ms. Swereda

began withdrawing large sums of money from her own bank account on a daily basis. These funds were far in excess of what Ms. Swereda needed to meet her own living costs.

Consequently, the bank and Ms. Jumaga independently contacted the PGT with concerns about the patient's welfare.

- [13] In January 2018 an altercation occurred between Ms. Jumaga and Shelley. Ms. Swereda sided with Shelley and said she no longer wished to see Ms. Jumaga. It was not until August 2018 that the petitioner was able to see the patient next.
- [14] From January 2018 until August 2018, Ms. Jumaga contacted numerous agencies to report her concerns for the patient's safety and welfare, including the PGT, RCMP, and Fraser Health Authority.
- [15] The PGT commenced an investigation. A Certificate of Incapability was issued for Joyce Swereda on February 26, 2018, pursuant to the Adult Guardianship Act, R.S.B.C. 1996, c. 6 [AGA]. By operation of s. 32(5) of the AGA, the PGT became the patient's statutory property guardian and took control of the patient's assets and financial affairs. At the time, Ms. Swereda was living in her own condominium located in Burnaby.
- [16] On August 28, 2018 Ms. Jumaga received a phone call from Stephen Flynn, the case manager with the PGT. Ms. Jumaga learned that Shelley had not been seen for some time, and that the patient had been receiving daily homecare from a facility called Home Instead Senior Care ("HISC").
- [17] Ms. Jumaga visited the patient and raised concerns with the PGT about the state of the condominium and her belief that HISC was not adequately looking after Ms. Swereda's interests.
- [18] Ms. Jumaga recommenced her daily visits and became substantially involved in the patient's care. She took the patient to her medical appointments; administered medication; cooked meals; did her laundry, housekeeping, and meal planning; took her out into the community; and cared for her cat.
- [19] The patient was hospitalized from October 18, 2018 until November 22, 2018.
- [20] During the time that the patient was in hospital, there was discussion about whether she could return home. Ms. Jumaga was insistent that the patient needed to be moved to a facility where she could bring her cat as the cat was very important to her. Ultimately it was decided that Ms. Swereda would return home with 24-hour care until a bed opened up at a facility where she could keep her cat.
- [21] Throughout the fall and winter of 2018 and early 2019, the petitioner assisted with the patient's care, provided her companionship, and assisted her with shopping and other tasks.

- [22] In February 2019, Ms. Swereda moved into Crofton Manor, a long-term care facility. Ms. Jumaga was not happy with the PGT's level of involvement with the patient, and decided to pursue committee ship.
- [23] In March 2019, the PGT advised the petitioner's previous counsel that it would oppose Ms. Swereda's application for committee ship over concerns about "Ms. Jumaga's history of contentious interactions with Ms. Swereda's caregivers resulting in situations not in Ms. Swereda's best interests".
- [24] Ms. Jumaga's petition was filed April 24, 2019, in which she sought to be appointed as committee of the person and estate of Ms. Swereda. One of the effects of the orders sought under the petition would have been to remove the PGT as statutory property guardian. In support of her petition, Ms. Jumaga filed her own affidavit, and affidavits from two doctors attesting to Ms. Swereda's medical condition.
- [25] The petition response was filed by the PGT on June 5, 2019 opposing Ms. Jumaga's appointment as committee of the person and estate of Ms. Swereda. The PGT's supporting material consisted of affidavits from the operator of HISC; a social worker at Burnaby Hospital; the director of care at Crofton Manor; and the PGT case manager.
- [26] On July 11, 2018, counsel for the petitioner filed six additional affidavits sworn by the petitioner. They were served on July 15, 2019, along with a notice of hearing setting the petition hearing for August 6, 2019.
- [27] On July 25, 2019, counsel for the PGT advised petitioner's counsel that he would be objecting to the petitioner's affidavits for various reasons. The PGT also sought an adjournment of the August 6, 2019 hearing date on the grounds that it needed more time to respond to the petitioner's new affidavits.
- [28] On July 29, 2019, Ms. Jumaga swore a further affidavit. The PGT filed its further affidavit on August 2, 2019 from Chris Brettell, manager at the PGT.
- [29] The hearing proceeded on August 6, 2019 before Justice Wilson. After hearing the submissions, Justice Wilson adjourned the hearing generally, and provided the PGT until September 16, 2019 to file further responsive materials. Justice Wilson also ordered that the cost of the August 6, 2019 hearing be reserved to the judge hearing the petition.
- [30] The petition was reset to be heard on October 9, 2019. On September 13, 2018 Ms. Jumaga changed counsel to her current lawyer. The PGT filed a further affidavit from the PGT case manager Grainne Sheridan on September 16, 2019.
- [31] On October 7 and 8, 2019, the PGT filed and served four additional affidavits. These were from employees of Shylo Home Care who provided companion care services to the patient at Crofton Manor in September 2019.

- [32] On October 4 and 8, 2019, Ms. Jumaga swore two further affidavits. Some of the information in these affidavits was regarding recent events, while other information was responsive to the recent PGT affidavits. There were a few paragraphs related to evidence that presumably could have been filed with the petition.
- [33] On the evening of October 7, 2019, counsel for Ms. Jumaga advised the PGT by email that Ms. Jumaga would only be seeking an order appointing her as the patient's committee of the person.
- [34] The parties attended for a hearing on October 9, 2019, however the matter did not proceed as a judge was not available. The matter was adjourned to November 29, 2019. By this time, a total of 23 affidavits had been filed between the parties on the committee application.
- [35] Ms. Swereda died on October 22, 2019.

III. Legal Framework

- [36] Ms. Jumaga seeks her costs payable out of the patient's estate on a special costs basis. The PGT opposes the application, but asks that its own costs be paid out of the patient's estate.
- [37] Special costs are a discretionary award, and may be ordered in committee proceedings: Patients Property Act, R.S.B.C. 1996, c. 349, s. 27 [PPA], *Gichuru v. Smith*, 2014 BCCA 414 at para. 90.
- [38] In *Pellerin v. Dingwall*, 2018 BCCA 110 at para. 45, the Court of Appeal held that s. 27 of the PPA, which confers broad discretion on the court to award costs, must be "read in a manner consistent with the provisions dealing with costs in other civil proceedings", citing *Vieira (Re)*, 2013 BCCA 420 at para 15.
- [39] Rule 14-1 of the Supreme Court Civil Rules, which governs the making of costs awards in civil proceedings, is also relevant to considerations for costs under s. 27 of the PPA: *Pellerin* at para. 39.
- [40] The court may award special costs from the patient's estate to reimburse the party who has brought an application that is found to be in the best interests of the patient. The application must have been brought in good faith, and where the applicant receives no obvious benefit from the appointment as committee: *Pellerin* at para. 47; *Vieira* at para. 17.
- [41] To that end, the court must have regard to the merits of the petition in order to determine the motivations of the applicant and the state of the estate or person: *Pellerin* at para. 57.
- [42] The successful applicant on the committee application is frequently awarded special costs from the estate. This is because it is generally understood that such applications are brought for the benefit of the patient to assist with the management of the person and estate: *Vieira* at para. 17.

- [43] However, the ability of the estate to bear an order for costs is also a relevant consideration: Vieira at para. 18.
- [44] Even if the applicant has failed, the award of costs from the estate of the patient may still be made, provided that the applicant was acting in good faith for the benefit of and in the best interests of the patient without any expectation of personal benefit: Bush (Committeeship of), 1995 B.C.J. No. 1343 (S.C.); Sangha (Re), 2013 BCSC 1965 at paras. 113-114.
- [45] The principles in Vieira can be distilled into the following considerations that are relevant to this case:
- a) was the applicant successful or would the applicant have been successful;
 - b) was the application in the best interests of the patient;
 - c) was the application brought in good faith;
 - d) did or would the applicant have received a benefit from her appointment; and
 - e) does the estate have the ability to bear an order for costs.
- [46] In the case at bar, the petitioner's success cannot be measured as the patient died before the application could be heard.
- [47] In Reinsinger (Re), 2002 B.C.J. No. 3162 (S.C.) at para. 30, the court noted the following factors that should be considered when assessing whether a proposed committee is acting in the best interests of the patient:
- a) the proposed committee's previous involvement with the patient and her affairs;
 - b) the proposed committee's knowledge and understanding of the patient's situation and needs;
 - c) the proposed committee's level of expertise and ability to perform the duties of the committee; and
 - d) whether the proposed committee has or may have a conflict of interest with the interests of the patient.
- [48] Justice Harris noted in Palamarek (Re), 2011 BCSC 563 at para. 17 that a committee should be the person best able to respond to the patient's potentially changing needs.
- [49] Absent a compelling inadequacy in a family member, a family member as committee is preferable even to the PGT: Kong v Kong, 2010 BCCA 298 at para. 17.

IV. Petitioner's Costs

- [50] I turn now to a consideration of the factors that merit an award of special costs, as they apply to this case.

A. Potential Success

- [51] As the application for committee ship was moot, the parties did not make fulsome submissions on the merits of the petitioner's application for committee ship. Consequently, I am not in a position to decide the underlying application. Nor do I need to. The PGT concedes that costs can be awarded to an unsuccessful applicant if the other considerations weigh in favour of the award.
- [52] However, having regard to the evidence that was before me, I am satisfied that the petitioner had more than a reasonable prospect of success.

B. Best Interests of the Patient

- [53] The PGT argues that the petitioner had a history of conflict with Ms. Swereda's caregivers such that her increased involvement in the patient's affairs posed risks to her care. The various affidavits filed in support of the PGT set out a number of concerns about Ms. Jumaga's behaviour, which include:
- a) Ms. Jumaga was critical of the care provided by HISC;
 - b) She was disruptive to the care planned for Ms. Swereda;
 - c) She was rude to HISC caregivers and staff at Crofton Manor;
 - d) She was overly emotional with hospital staff and lashed out at persons involved in planning for the patient's care;
 - e) She resented the involvement of the PGT in the patient's financial affairs;
 - f) She was overbearing and intimidating with the patient; and
 - g) She surreptitiously removed the patient's cat.
- [54] The PGT says that due to the above behaviour, HISC considered withdrawing their services to the patient, Crofton Manor considered relocating the patient to a different facility, and the social worker assigned to the case reported not feeling comfortable working with Ms. Jumaga going forward.
- [55] The petitioner admits that at times she was emotional and expressed frustration with various caregivers. However, she says that this is not uncharacteristic of a family member motivated by a desire to have good care provided for their loved one. She also says that her forceful advocacy was motivated by her feelings of guilt that she was not able to protect Ms. Swereda from being taken advantage of by her niece. This contributed to her desire to be a powerful advocate for Ms. Swereda as her health declined.
- [56] While Ms. Jumaga's interactions with various healthcare providers may not always have been positive, they were certainly not always negative. Devon Sylva, a social worker who completed an assessment on October 25, 2018, said she found that Ms. Jumaga "appears to

be a supportive loved one with [the patient's] best interests at heart". The timing of this comment is important as it was made during the period that Ms. Swereda was hospitalized. It is in this same period that the PGT says Ms. Jumaga was emotional, lashing out, and resentful of the PGT's involvement. During this time, Ms. Jumaga visited the patient in the hospital on a daily basis, helping the nursing staff bathe her, get her medications, and feed her.

- [57] While the patient was in hospital, there was discussion about whether she could return home. Ms. Jumaga admits that she occasionally became angry and emotional about the level of control that the PGT was exerting over where Ms. Swereda should live. Ms. Jumaga was insistent that the patient needed to be moved to a facility where she could bring her cat as the cat was very important to her. In my view, regardless of how Ms. Jumaga expressed her viewpoint, trying to ensure that Ms. Swereda could have her cat with her was another example of Ms. Jumaga acting in the patient's best interests.
- [58] I also do not find that Ms. Jumaga surreptitiously removed the cat from Crofton Manor. I accept her explanation that the patient had asked her to take the cat due to her declining health, and that she took the cat home to care for it as she could not stay at Crofton Manor past 9 pm.
- [59] I give little weight to the allegation that Ms. Jumaga was overbearing and intimidating with the patient. It is based on hearsay, and like many other statements made in the affidavit material filed in support of the PGT, I find that the affiant lacks objectivity.
- [60] What is evident from the voluminous affidavit material filed by both sides is that Ms. Jumaga was a vocal and forceful advocate who at all times was trying to act in the patient's best interests. While it is clear that she ruffled more than a few feathers, I do not agree that she jeopardized the patient's care. The "fear" that Ms. Jumaga's actions may result in Ms. Swereda being moved to a different healthcare facility never materialized. Ms. Swereda remained a resident of Crofton Manor for the nine months up until her death.
- [61] I turn now to the factors set out in Reinsinger regarding whether a proposed committee is acting in the patient's best interests.
- [62] There is no doubt that Ms. Jumaga's involvement with the patient and her affairs has been extensive and supportive. Ms. Jumaga was present in the patient's life for almost 30 years, and they regularly spent time together for the latter half of those 30 years. Ms. Jumaga's care and support have been unwavering since the patient's diagnosis of dementia. While there was some time in 2017 and 2018 that she did not see the patient due to friction with the patient's niece, Ms. Jumaga maintained her involvement during that time by asking the authorities to perform regular welfare checks. As Ms. Swereda's health continued to decline, Ms. Jumaga assisted Ms. Swereda with her transition to Crofton Manor, cared for her cat, dealt with her healthcare providers, and assisted with her personal care.

- [63] I also find that Ms. Jumaga was capable of being a committee, and had the requisite expertise and knowledge of Ms. Swereda's situation and needs. Because of the consistency of her involvement throughout Ms. Swereda's life, she was well placed to understand the patient's unique needs. In contrast, there is very little evidence of direct interaction between the PGT representatives and Ms. Swereda. Neither Grainne Sheridan nor Chris Brettell report a single in-person interaction between themselves and Ms. Swereda.
- [64] Finally, I note that there is no evidence of a potential for a conflict of interest between Ms. Jumaga and the interests of the patient. Ms. Jumaga had nothing to gain personally by being appointed committee. She expended her own resources and a considerable amount of time taking care of Ms. Swereda's interests, all without any obvious personal benefit except that she cared for Ms. Swereda and wanted what was best for her.

C. Good Faith

- [65] The PGT argues that the petitioner brought the application to give herself greater control over the patient's affairs. In support the PGT points to the following passage in the petitioner's October 8, 2019 affidavit:

I am concerned as well, that if am denied this appointment, Crofton Manor will block me from any involvement or visitation rights, and Ms. Swereda will live out the remainder of her life, and die, without a family member at her side.

- [66] It is difficult to comprehend how the above passage supports the PGT's position. If anything it does the opposite. It shows that the petitioner was concerned that Ms. Swereda not spend her last days alone. The fact that Ms. Jumaga may also benefit by being able to spend more time with Ms. Swereda, for whom she cared deeply, does not mean that she was motivated by bad faith intentions. To accede to this argument would lead to the bizarre result that only someone who did not have an emotional attachment to the patient could become a committee.
- [67] Having regard to the evidence in this case, I conclude that the petition was brought in good faith.

D. Benefit from the Appointment

- [68] The PGT does not argue that the petitioner would actually receive a benefit from the appointment, nor do I find that she would.

E. Ability of the Estate to Bear Costs Award

- [69] The Estate exceeds \$1 million in assets. The PGT agrees, and I so find, that the Estate can bear the costs awards sought by the parties.

[70] In my view, Ms. Jumaga has satisfied the requisite criteria and should be awarded her special costs payable out of the Estate. Ms. Jumaga was acting in the best interests of the patient and acting in good faith. She stood to derive no personal benefit from the appointment. She was a supportive and loving family member and had a good prospect of succeeding in her application for committeeship.

F. Should Costs be Limited

[71] The PGT argues that if Ms. Jumaga is awarded costs, she should not receive her costs in relation to the following:

- a) Preparation of her affidavits 2-6 because they were not prepared in accordance with the Supreme Court Civil Rules as they were not served with the Petition and contained objectionable hearsay, speculation, and argument.
- b) Costs of preparing for and attending the hearing before Justice Wilson as the petitioner did not submit all her evidence with the petition as required by the Rules.
- c) Costs of preparing for the October 9 hearing once she admitted that the patient was getting "all the care she needed" and it was clear that the patient's health was declining and she was near death.

[72] I do not find Ms. Jumaga's failure to comply with the procedural aspect of the Rules a good reason to deprive her of her costs. Any alleged deficiencies in the petitioner's affidavits would not have obstructed the court's ability to make an order for committeeship and I do not find that they would have unduly lengthened the process. In addition, affidavits 2-6 were entered by Order of the Court. Both parties adduced additional evidence due largely to the changing nature of the patient's condition. This was necessary to put all of the relevant information before the court.

[73] Nor do I find that adjournment of the August 6 hearing, or the October 9 hearing, should cause me to deprive the petitioner of her costs. The patient's condition was rapidly changing and further evidence became necessary. It is evident that the August 6 hearing was necessary because counsel could not agree on the timing of delivery of further materials.

[74] Prior to the October 9, 2019 hearing, despite the fact that Ms. Jumaga was made a substitute decision maker in a Medical Order for Scope of Treatment on September 24, 2019, it is evident that she was not being taken seriously by the staff at Crofton Manor, nor by the PGT. Rather, they viewed her as a nuisance and accused her of "catastrophizing" the patient's condition. For example, a September 29, 2019 email sent by a Crofton Manor staff member states that the petitioner has "catastrophized thinking [the patient] is on her death bed. In my experience, I would not say this is accurate." Contrary to the assertions of the staff member, Ms. Jumaga's suspicions were validated by Ms. Swereda's death only a few weeks later.

- [75] Finally, I note that the PGT's own affidavit material falls short of the standards it wants to hold the petitioner to. A number of the affidavits filed by the respondent had considerable overlap, and did little to advance the PGT's position. For example, two of the affidavits filed on October 8, 2019 contain references to personal interactions with Ms. Jumaga in which Ms. Jumaga describes the patient's situation as urgent and wants her care adjusted. Again, the patient's death two weeks later makes it obvious that the situation was urgent.
- [76] I conclude that there is no basis to limit the costs award to Ms. Jumaga. While there may have been procedural steps that she could have taken to streamline the litigation process, I find that a large part of the reason for the protracted and costly proceedings has been the unnecessarily antagonistic position taken by the PGT in this case. This is evident in its opposition to the appointment of Ms. Jumaga as committee of the person of Ms. Swereda, despite there being no compelling inadequacy in Ms. Jumaga.
- [77] I am satisfied that Ms. Jumaga should receive her special costs of the entire proceeding, payable out of the Estate.

G. Conclusion

- [78] In its supplemental submissions the PGT relies on the recent decision in *Horton (Re)*, 2020 BCSC 87, where at paras. 72-74, Justice Warren refused to award any costs to the sibling applicants because "each of them engaged in conduct that was motivated by animus against the other. These applications were necessitated by their ongoing power struggle."
- [79] In *Horton*, neither sibling was found suitable to be a committee. Here I have concluded that Ms. Jumaga had a reasonable prospect of success in her committee application.
- [80] The power struggle in this case, if there is one, is between the PGT and Ms. Jumaga. However, I do not fault Ms. Jumaga for taking the position that she has taken, and find no evidence to support the PGT's contention that Ms. Jumaga was trying to "gain control over Ms. Swereda". Rather, the contentious interactions between Ms. Jumaga and the various care providers stem from the petitioner's desire to ensure that appropriate care was provided to Ms. Swereda, and their view that she was unnecessarily intrusive and difficult to deal with. I see no nefarious purpose on the part of Ms. Swereda as suggested by the PGT.
- [81] Having regard to all of the evidence in this case, I conclude that Ms. Jumaga brought the petition in good faith for the benefit of the patient and with the patient's best interests as her paramount consideration.
- [82] I conclude that Ms. Jumaga's full legal costs of the proceeding should be borne by the Estate on a special costs basis.

V. PGT's Costs

- [83] The petitioner concedes that the PGT has a unique role in being tasked to look after the interests of the patient and to that extent should get its costs. However, the petitioner submits that the PGT should not receive its special costs as it has taken an unnecessarily aggressive stance against the petitioner by making personal attacks.
- [84] I agree that the PGT was far more aggressive than necessary, and took steps that were not always logical. For example, the PGT has maintained throughout that it only had authority over the patient's estate. The PGT's response to any concerns regarding the patient's care was to refer any care recommendations to the health authority. The PGT knew that there was no one tasked with looking after the patient's interests and making decisions regarding her care. Yet rather than working with the only person and family member that was taking an interest in the patient's wellbeing, the PGT took a needlessly adversarial stance with Ms. Jumaga.
- [85] Further, what should have been a fairly straightforward matter has taken an enormous amount of resources to complete. On the matter of costs alone, in addition to the half-day hearing with oral arguments, a total of 31 pages of written and reply submissions were received from the petitioner, and 26 pages of responding submissions and supplemental submissions were received from the PGT.
- [86] However, for the same reasons which support the making of an award of special costs to the petitioner, I am awarding special costs to the PGT, payable out of the Estate. The PGT was attempting to act in the best interests of the patient, and while its actions may have been overzealous, I do not find that the PGT's position was motivated by any improper reasons.
- [87] Given the size of the Estate, it has the ability to bear an award of special costs to the PGT as well as the petitioner.
- [88] As such, I conclude that the PGT is entitled to its legal costs of the proceeding payable out of the Estate on a special costs basis.

"Shergill J."

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