

CANADA / JUDGMENT

Turney (Re)

2022 BCSC 1801

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Supreme Court of British Columbia

DECIDED

4 August 2022

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2022 BCSC 1801 Turney (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Turney (Re),

2022 BCSC 1801

Date: 20220804

Docket: S-215700

Registry: Vancouver

In the Matter of the Patients Property Act

Re: Albert James Turney

Before: The Honourable Mr. Justice Gaul

(appearing by videoconference)

Oral Reasons for Judgment

(In Chambers)

Counsel for the Petitioner Cynthia Marie Bramhall appearing by videoconference:

G. Douvelos

Counsel for the Public Guardian and Trustee appearing by videoconference:

M. Wolf

Counsel for the Respondent Imelda Cabalona appearing by videoconference:

D.K. Magnus

M. Sidhu

Counsel for the Respondent Albert Turney appearing by videoconference:

M.C. Canofari

Place and Date of Hearing:

Vancouver, B.C.

April 25, 2022

May 6, 2022

July 29, 2022

Place and Date of Judgment:

Vancouver, B.C.

August 4, 2022

- [1] THE COURT: The subject of this litigation is Albert James Turney. Mr. Turney is 81 years old and in failing health.
- [2] Cynthia Bramhall is Mr. Turney's 61-year-old daughter. By petition filed 14 June 2021, Ms. Bramhall seeks the following relief pursuant to the Patients Property Act:
- a) A declaration that her father is by reason of mental infirmity arising from disease, age or otherwise, incapable of managing his affairs;
 - b) an order appointing her as committee for her father; and
 - c) costs.
- [3] One of the respondents to the petition is Ms. Imelda Cabalona. Ms. Cabalona is the estranged spouse of Mr. Turney.
- [4] Not only are Ms. Cabalona and Mr. Turney estranged spouses, they are litigants in at least two other legal actions aside from the present one. The first action was started by Mr. Turney. Ms. Cabalona is the defendant. In that action Mr. Turney seeks damages from Ms. Cabalona for, amongst other things, breach of trust, breach of fiduciary duty, unjust enrichment, fraud, and conversion. Those are serious allegations, particularly the last two. The second action is a family law action started by Ms. Cabalona on 12 July 2021. Mr. Turney is the defendant. There may well be a third action. I heard little about it. It appears it may be an action involving a credit card debt owed to the Bank of Montreal. Apparently Mr. Turney is the defendant in that action and he has issued a third party notice alleging that the alleged debt owed to the bank, if there is one, is the responsibility of Ms. Cabalona and not his.
- [5] Suffice to say there is a serious rift in the relationship between Mr. Turney and Ms. Cabalona. There is also significant tension between Ms. Bramhall and Ms. Cabalona.

- [6] In or around May of 2021, Mr. Turney left the residence he was sharing with Ms. Cabalona and began living with Ms. Bramhall and her family in her home. At some point afterwards, Ms. Cabalona left the family residence as well. Shortly thereafter, the locks on the residence were changed and Ms. Cabalona has not been able to return there since that occurred.
- [7] By notice of application filed 25 November 2021 in these proceedings Ms. Cabalona has brought a cross application seeking the following relief:
- a) An order that the court pass over Ms. Bramhall as committee of Mr. Turney's person and estate;
 - b) an order appointing the Public Guardian and Trustee as committee of the person and estate of Mr. Turney; and
 - c) costs.
- [8] With consent of the parties, both the petition and notice of application were heard at the same time.
- [9] During the first day of the hearing, counsel for Ms. Bramhall applied to amend the petition so that the relief sought reads as follows:
3. Declaration that Albert James Turney is by reason of mental infirmity arising from disease, age or otherwise, incapable of managing his affairs and his person.
 4. Order appointing the petitioner, Cynthia Marie Bramhall as Committee for Albert James Turney for managing his affairs and his person.
- [10] The proposed amendments were not objected to by any of the respondents and consequently the request was granted and the petition was amended.

Issues

- [11] There are three principle issues before the court:
- a) Is Mr. Turney incapable of managing himself and his affairs?
 - b) If so, then who should be appointed committee over his person and his affairs?
 - c) Who amongst the parties, if any, ought to have their costs?

Ms. Bramhall's Position

- [12] Ms. Bramhall maintains that the medical evidence, especially the supplemental evidence that was filed on the second day of the hearing, should persuade the court that Mr. Turney suffers from a medical condition that impacts his cognitive abilities to such an extent that he is no longer able to manage his personal financial affairs.

- [13] In light of her father's deteriorating condition, Ms. Bramhall contends that a committee needs to be appointed to manage and protect Mr. Turney's estate, as well as his person. As the member of Mr. Turney's immediate family who has been most closely associated with him recently, and presently provides care for him, Ms. Bramhall submits that she is the proper person to be appointed as committee over both her father's estate and his person.
- [14] Ms. Bramhall is prepared to agree to the conditions and restrictions on committee ship suggested by the Public Guardian and Trustee during the course of this hearing, and she is also prepared to either directly or through counsel keep Ms. Cabalona apprised of Mr. Turney's health and medical condition.
- [15] Finally, as the relief she seeks is for the benefit of her father and his estate, Ms. Bramhall seeks an order that she be awarded her costs.

Ms. Cabalona's Position

- [16] Ms. Cabalona is in a somewhat difficult and challenging position given the extant actions that she and Mr. Turney are involved in, especially their family law case.
- [17] Over the course of this hearing Ms. Cabalona's position, as initially articulated in her response to the petition and her notice of application, has changed. She now does not take issue with the medical evidence that has been presented to the court regarding Mr. Turney's current condition. More specifically, she no longer contends that he is capable of managing his person or financial affairs. Recognizing as well that she is not a suitable candidate to be appointed as his legal committee, Ms. Cabalona submits that the Public Guardian and Trustee ought to assume that role for Mr. Turney's financial affairs.
- [18] As far as committee over Mr. Turney's person is concerned, Ms. Cabalona now somewhat reluctantly accepts that in light of the Public Guardian and Trustee's position on this issue, Ms. Bramhall is the most appropriate candidate for the appointment.
- [19] Finally, with respect to costs, it would appear that Ms. Cabalona seeks her costs, assessed at special costs, and payable from Mr. Turney's estate.

Mr. Turney's Position

- [20] Mr. Turney was represented by counsel on this petition and application. His counsel made it clear in his submissions and in the materials filed with the court that Mr. Turney supports and desires the relief sought in Ms. Bramhall's petition. Concurrently, counsel made it equally clear that Mr. Turney opposes the relief sought by Ms. Cabalona in her application.
- [21] In his affidavit sworn 13 June 2021 and filed in support of Ms. Bramhall's petition, Mr. Turney explains:

2. I was recently advised by Dr. Mary Borg that I am suffering from cognitive impairment and memory loss. I have noticed over the past number of years that I have become forgetful at times sometimes I become disoriented and have trouble understanding things that are explained to me. I have good and bad days and in swearing this affidavit I feel very lucid and fully understand the purpose of this affidavit, which is to support a court application with the objective of having my daughter, Cynthia Bramhall ("Cindy") appointed as my committee.
- ...
6. I have always had a very loving relationship with my daughter, and I trust her to make decisions about my finances and health. It was for that reason I recently signed a power of attorney appointing Cindy as my attorney, I also signed a representation agreement allowing Cindy to make health care decisions for me.
26. The prognosis for my cognitive impairment is not good and I want to make it clear that it is my desire for my daughter, Cindy to be named as the committee to oversee my affairs.
- [22] As for costs, Mr. Turney says that Ms. Cabalona's conduct during the course of this proceeding is worthy of judicial rebuke and consequently she should have to pay his costs assessed as special costs. Counsel for Mr. Turney suggests that those costs ought to be assessed summarily at \$20,000 and made payable forthwith.

The Public Guardian and Trustee's Position

- [23] Upon being given notice of the petition, counsel for the Public Guardian and Trustee filed a response indicating that it was not opposed to any of the relief sought and consequently would not be appearing at the hearing of the petition. However, in its response the Public Guardian and Trustee identified for the court's consideration what it believed were deficiencies in the petition's evidentiary foundation.
- [24] Within the petition response filed on behalf of the Public Guardian and Trustee, counsel notes:

4.7 The Public Guardian and Trustee submits that, regardless of the petitioner's relationship to the proposed patient, the Committee should either post security or have only restricted access to the proposed patient's assets. The Court has a duty to protect the proposed patient's interests and it cannot be assumed that safeguards are unnecessary.

Public Trustee of British Columbia vs. Macht (1991), 53 B.C.L.R. (2nd) 390 (B.C.C.A.)

4.14 The Public Guardian and Trustee requires a clear picture of the estate of an adult at the commencement of a committee's term. Otherwise when the Committee submits their first set of accounts there is nothing to evaluate the management of the Committee over the period covered by the accounting.

- [25] The situation changed for the Public Guardian and Trustee, as did its position in this proceeding, when Ms. Cabalona filed her notice of application. Given her desire to have the Public Guardian and Trustee appointed as committee of Mr. Turney's person and estate, the Public Guardian and Trustee was forced to take a more active interest and role in this litigation. In its application response, the Public Guardian and Trustee made it clear that it was opposed to the application's first two items of relief, being the passing over of Ms. Bramhall as committee for her father and the appointment of the Public Guardian and Trustee as a committee.
- [26] Moreover, with the additional affidavits that have been filed by Ms. Bramhall, the Public Guardian and Trustee is not opposed to Ms. Bramhall being appointed as committee for Mr. Turney's affairs on the following conditions:
- a) Ms. Bramhall as committee be restricted from accessing the proceeds of any sale of Mr. Turney's interest in the real property located at 19771 8th Avenue in Langley, B.C. (the "Property Proceeds of Sale").
 - b) Ms. Bramhall as committee be permitted to receive \$50,000 of Mr. Turney's interest in the Property Proceeds of Sale from the conveyancing lawyer's trust account, and that the funds be deposited into a bank account set up to hold only Mr. Turney's funds (the "New Bank Account") by Ms. Bramhall and that she have unrestricted access to the funds in that account for the care and expenses of Mr. Turney.
 - c) The balance of Mr. Turney's interest in the Property Proceeds of Sale be transferred from the conveyancing lawyer's trust account to a financial institution where an investment account has been established by Ms. Bramhall in compliance with the Trustee Act (the "Investment Account"), and that she have no access to the capital in the Investment Account other than for reinvestment purposes, without the prior written consent of the Public Guardian and Trustee or further order of the court on notice to the Public Guardian and Trustee. Additionally, the financial institution and any other successor institutions must be served with a copy of the order and proof of service of the order shall be provided to the Public Guardian and Trustee.
 - d) If assets are discovered which increase the value of Mr. Turney's estate, that upon the direction of the Public Guardian and Trustee, Ms. Bramhall shall apply to the court for further direction to address the issue of security for the management of the assets.
- [27] As I have indicated earlier, Ms. Bramhall is prepared to agree to those conditions should she be appointed as her father's committee.
- [28] With respect to costs, the Public Guardian and Trustee seeks its costs as against the estate, assessed as special costs.

Analysis

Is Mr. Turney capable of managing his affairs and his person?

[29] Over the course of the hearing of Ms. Bramhall's petition and Ms. Cabalona's application, additional evidence was presented, including supplemental affidavits from Dr. Mary Borg and Dr. Prabhjot Chahal.

[30] In her affidavit sworn 3 May 2022, and filed the next day, Dr. Borg opines:

3. I recently saw Mr. Turney on 27 April 2022, and I am still of the opinion that Mr. Turney has limited capability of managing both his personal and financial affairs by reason of mental infirmity arising from cognitive impairment diagnosed as dementia.
4. Mr. Turney is suffering from dementia and that is a condition that gets progressively worse over time and he has been taking donepezil which is not a cure for dementia.
7. In my opinion, due to Mr. Turney's cognitive impairment he requires ongoing supervision of his personal care, financial affairs, medication administration, organization and attending of appointments and supervision of meals.
10. Mr. Turney's mental infirmity has not improved, which is to be expected, since I diagnosed him with dementia last year and it remains my opinion that he is unable to look after his personal or financial affairs.
11. It is my opinion that Mr. Turney ought to have a committee appointed over both his person and financial affairs.

[31] In his second affidavit, also sworn 3 May 2022, and filed the following day, Dr. Chahal explains:

2. On 11 June 2021 I swore an affidavit stating my opinion that Mr. Turney was suffering from cognitive impairment due to the onset of dementia. That condition only gets worse over time because there is no cure for it.
3. I have reviewed the 2nd affidavit of Dr. Borg and it seems that Mr. Turney's mental infirmity has not improved, which is to be expected, since I diagnosed him with dementia last year and it remains my opinion that he is unable to adequately look after his person or financial affairs.
4. In making my 1st affidavit I filled out the Physician's Questionnaire and I understand that there was some confusion between my affidavit evidence and the questionnaire relating to Mr. Turney's ability to manage his person where I ticked "yes" and then below ticked "no" to the Patient improving in that regard.
5. For clarity, it is my opinion that Mr. Turney's cognitive impairment requires ongoing supervision of managing his person, financial affairs, medication administration, organization and attending of appointments and supervision of meals.

8. It is my opinion that Mr. Turney ought to have a committee appointed over both his person and financial affairs.
- [32] None of the interested parties to this litigation, including Ms. Cabalona, take issue with the fact that Mr. Turney is now unable to care for himself or his personal affairs. Based on the evidence of Dr. Borg and Dr. Chahal, I am quite satisfied that on account of mental infirmity arising from his diagnosis of dementia, Mr. Turney is now incapable of managing himself or his affairs.

Who should be appointed committee over Mr. Turney's person and affairs?

- [33] Ms. Bramhall wishes to be her father's committee, and this includes over both his person and his estate. Mr. Turney agrees with his daughter and supports her position in this litigation.
- [34] Ms. Cabalona now accepts that Ms. Bramhall is the most appropriate person to act as committee over Mr. Turney's person. However, given the level of animosity and distrust between her and Ms. Bramhall and Mr. Turney, and given the existence of a family law proceedings she has initiated against Mr. Turney, Ms. Cabalona maintains that Ms. Bramhall is not suitable to act as committee over Mr. Turney's financial affairs or estate and that the Public Guardian and Trustee should assume that role.
- [35] The Public Guardian and Trustee does not wish to be named as committee over Mr. Turney's person. Furthermore, it is not opposed to Ms. Bramhall being appointed committee over both Mr. Turney's person and his estate. It will, however, act as committee over Mr. Turney's estate, if the court determines that it is the most suitable candidate available in the circumstances.
- [36] The question of who should become the committee over Mr. Turney's person is an easy one to decide. All parties including Ms. Cabalona are now in agreement that Ms. Bramhall ought to assume that role, and I agree.
- [37] Mr. Turney currently lives with his daughter and her family. She is the closest blood relative that he has. I accept that Ms. Bramhall is a loving daughter who is willing and capable of looking after her father. Mr. Turney loves his daughter as well and wishes her to assist in his latter years of life by becoming his committee. He has already named her in his last will and testament as the executor of his estate and he has given her a power of attorney. She is also his named representative in the representation agreement that he has created. These documents were prepared shortly before the petition was filed, and while it may be argued that the timing is suspicious, I am not able or prepared to infer that Ms. Bramhall with the assistance of legal counsel acted improperly in having those documents executed only shortly before filing her petition for a declaration that Mr. Turney was incapable of managing his affairs due to a mental impairment.

- [38] Overall, I accept that Ms. Bramhall will look out for her father's wellbeing and will ensure that his best interests are kept at the forefront when it comes to making decisions relative to his care.
- [39] The next question is: who should become committee over Mr. Turney's financial affairs or estate? Much like the first question, the answer to this second question begins with a consideration of what is in Mr. Turney's best interests?
- [40] In *Re: Stewart*, 2014 BCSC 2321, Mr. Justice Masuhara helpfully canvassed the relevant jurisprudence and offered the following observations and non-exhaustive list of factors that a court ought to consider when faced with a request for the appointment of a committee:
- [27] The application for an appointment invokes the *parens patriae* jurisdiction of the court and is governed by an assessment of who will serve the patient's best interest.
- [28] Section 18 of the Act states that:

A committee must exercise the committee's powers for the benefit of the patient and the patient's family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family.

- [29] As has been observed in other cases, the Act does not prescribe criteria for the selection of an appropriate committee. However, cases have identified various considerations; see for example: *Vranic (Re)*, 2007 BCSC 1949; *Bowman (Re)*, 2009 BCSC 523; *Palamarek (Re)*, 2011 BCSC 563; *Re Matthews*, 2013 BCSC 1045; and *Sangha (Re)*, 2013 BCSC 1965. They include:
- (a) whether the appointment reflects the patient's wishes, obviously when he or she was capable of forming such a wish;
 - (b) whether immediate family members are in agreement with the appointment;
 - (c) whether there is any conflict between family members or between the family and the patient, and whether the proposed committee would be likely to consult with immediate family members about the appropriate care of the patient;
 - (d) the level of previous involvement of the proposed committee with the patient, usually family members are preferred;
 - (e) the level of understanding of the proposed committee with the patient's current situation, and will that person be able to cope with future changes of the patient;
 - (f) whether the proposed committee will provide love and support to the patient;
 - (g) whether the proposed committee is the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit;

- (h) whether a proposed committee has breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to properly handle the patient's affairs;
 - (i) who is best to advocate for the patient's medical needs;
 - (j) whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry it out; and
 - (k) whether a division of responsibilities such as between the patient's estate and the patient's person to different persons would serve the best interests of the patient, or would such a division be less than optimal for the patient.
- [30] The above listing is of course non-exhaustive or in any particular order. The inquiry is fact specific and a particular factor may or may not be applicable and may attract different weight depending on the circumstances of a case.
- [41] Ms. Cabalona complains that Ms. Bramhall has acted inappropriately and has unduly and improperly influenced her father. In essence, she contends that Ms. Bramhall has been instrumental in unjustly turning her father against Ms. Cabalona. It is for this reason and the fact that she does not trust Ms. Bramhall to manage Mr. Turney's finances properly, that Ms. Cabalona seeks to have the Public Guardian and Trustee appointed as committee over Mr. Turney's financial affairs. As counsel for Ms. Cabalona put it during his submissions, there is a need to have calmer heads prevail.
- [42] Using the factors articulated by Justice Masuhara in *Stewart*, and keeping in mind the need to ensure to protect the best interests of Mr. Turney, I am satisfied that Ms. Bramhall and not the Public Guardian and Trustee is the best option for committeeship over Mr. Turney's estate and financial affairs.
- [43] I accept the evidence presented by Ms. Bramhall, including the evidence of Mr. Turney himself, that he wishes to have her as his committee. In my view, this militates in favour of her appointment.
- [44] Mr. Turney has been estranged from his siblings for many years. There is no evidence that they have been advised of these proceedings or would have been interested in them had they been contacted. In my view this is a neutral factor.
- [45] While there is conflict between Ms. Bramhall and Ms. Cabalona, I do not see that as being a barrier to Ms. Bramhall's appointment as a committee over her father's financial affairs. I say this because Ms. Cabalona is prepared to have Ms. Bramhall act as committee for Mr. Turney's person. If Ms. Bramhall is capable and trustworthy enough to manage her father's personal affairs, including his health care, then in my view, this supports her claim to be appointed as committee over his estate as well.

- [46] The matrimonial relationship between Ms. Cabalona and Mr. Turney has foundered and is coming to an end. Ms. Cabalona is in no position to advocate for her appointment as committee and she has quite properly not done so. I accept the submission of Ms. Bramhall's counsel that Ms. Bramhall is prepared to keep Ms. Cabalona apprised of Mr. Turney's health status.
- [47] The level of Ms. Bramhall's recent involvement with her father and her understanding of his current situation is unsurpassed by any family member. She is clearly the person who is closest to Mr. Turney. In my view that militates in favour of her appointment as committee over both the person and the estate.
- [48] While there is some slim evidence of tension between Ms. Bramhall and Mr. Turney in past years, and in this regard I am referring to an email dated 31 December 2016 that has been attached as an exhibit to Ms. Cabalona's affidavit sworn 5 July 2021, overall I accept that Ms. Bramhall will provide the love and support that her father wants and needs.
- [49] I also note that there is no suggestion that Ms. Bramhall is unable or incapable of managing her father's financial affairs. On the contrary, it would appear that she has been quite able to manage his affairs since he moved in with her and her family. I accept that Ms. Bramhall is able and willing to properly manage Mr. Turney's estate, and I find this factor militates in favour of her appointment.
- [50] Ms. Cabalona says the temporal proximity between Mr. Turney's amending his will to make Ms. Bramhall his executor, and his granting her power of attorney, and then her petitioning the court for an order declaring him incapable of managing affairs or his estate, suggests that Ms. Bramhall is prepared to and has manipulated her father so as to protect her anticipated inheritance. While the timing is definitely tight, I do not conclude that it points to an improper motive or conduct on the part of Ms. Bramhall or her counsel.
- [51] Even if I accept the Public Guardian and Trustee's initial submission contained in its petition response that Ms. Bramhall being granted a power of attorney on 20 May 2021, and then appointed executor of her father's Will on 27 May 2021, should not be treated as existing positions of trust because their close proximity to the medical examinations of Mr. Turney on 7 and 11 June 2021 that concluded he was incapable of managing his affairs, I am satisfied that Ms. Bramhall has not engaged in any activity which diminishes her ability, desire or capacity to properly manage her father's affairs.
- [52] Ms. Bramhall is clearly the best person to advocate for her father's medical needs and his overall welfare, including the proper management of his finances. She has a plan in place that includes having him reside in an assisted living residence that Mr. Turney has seen and is keen to call home. Moreover, she is the person who, in my view, can make the transition to this new residence as easy and seamless as possible for Mr. Turney.

- [53] Finally, I am of the firm view that it would not be in Mr. Turney's best interests to have one committee over his person and another over his estate. The Public Guardian and Trustee clearly does not see itself or wish to be the committee over Mr. Turney's person. I have noted that previously. Counsel for the Public Guardian and Trustee explained the reasons for that and I accept that the Office of the Public Guardian and Trustee is not structured or resourced to properly and effectively take on that role. The Public Guardian and Trustee could, however, act as committee over Mr. Turney's estate. It has taken on this type of role in the past for others and will do so in the present case if required by the court. In my view there is no need to split the two roles. Additionally, I am of the opinion that to do so would run contrary to Mr. Turney's best interests.
- [54] Given that Ms. Bramhall is willing and able to assume both roles and given that there are no convincing reasons against her taking on those roles, I conclude that she is the right person to become the committee for both Mr. Turney's person and his estate.

Conclusion

- [55] The evidence before me points to there being significant tension and acrimony between Mr. Turney and Ms. Bramhall on one side, and Ms. Cabalona on the other. The evidence also points to the fact that Mr. Turney is no longer able to care for himself and his financial affairs and that he needs someone to assist him with these essential tasks.
- [56] On all of the evidence before me, I am satisfied that Ms. Bramhall is the best and most suitable person to take on the role of committee of her father and his estate. I should also say that I am satisfied this is what Mr. Turney wants and that his desire is a wilful and informed one.
- [57] I am therefore granting the principal relief sought by Ms. Bramhall in her petition.
- [58] I declare that Albert James Turney is by reason of mental infirmity arising from disease, age or otherwise, incapable of managing his person and affairs under s. 3 of the Patients Property Act.
- [59] Moreover, on account of Mr. Turney's condition, I appoint his daughter, Cynthia Marie Bramhall, as committee over his estate and person without bond.
- [60] The conditions and restrictions on Ms. Bramhall's committee'ship will be those proposed by the Public Guardian and Trustee that I have already articulated and that Ms. Bramhall has indicated she is prepared to agree to. For ease of reference, I will simply note that these conditions are set out at paragraphs 7, 8, 9 and 14 of the Public Guardian and Trustee's application response filed 14 December 2021.

- [61] There will be one additional condition. Ms. Bramhall is to make reasonable efforts to keep Ms. Cabalona aware of Mr. Turney's health and state of care. This can be accomplished either by direct communication between Ms. Bramhall and Ms. Cabalona or through counsel.
- [62] As for Ms. Cabalona's application, it is dismissed.
- [63] Finally, I am not satisfied that counsel have sufficiently addressed the issue of costs. The issue is more complicated than usual, given the number of parties involved, including the active participation of the Public Guardian and Trustee. If the parties wish to address the issue, then they may do so by scheduling an appearance before me through Supreme Court Scheduling. Such an appearance can, if necessary, take place by MS Teams video link, though my preference at this point is for it to be an in-person hearing.
- [64] In the event there is such a hearing, I will want counsel to address the following:
- a) Who is entitled to their costs and who should pay those costs?
 - b) What is the applicable scale of costs? Should it be a Scale B, special costs, or something else?
- [65] Those are my reasons. So let me start with you, Mr. Douvelos. As counsel for the petitioner, were you able to hear them?
- [66] Mr. DOUVELO: Yes, Justice, thank you.
- [67] THE COURT: Mr. Magnus, you were able to hear them?
- [68] CNSL D. MAGNUS: Yes, Justice, thank you.
- [69] THE COURT: Mr. Canofari?
- [70] CNSL M. CANOFARI: Yes, Justice.
- [71] THE COURT: Thank you. Mr. Douvelos, without asking you to re-argue anything, is there anything arising from my reasons?
- [72] CNSL G. DOUVELO: No, Justice.
- [73] THE COURT: Mr. Magnus?
- [74] CNSL D. MAGNUS: No, Justice.
- [75] THE COURT: Mr. Canofari?
- [76] CNSL M. CANOFARI: Justice, just in terms of costs, I was wondering if it may be at least an option in your mind, Justice, and if the other parties are okay with it, that we provide written submissions. It just may make things a little bit easier.
- [77] THE COURT: I am not opposed to that idea; however, for now I will leave the issue with counsel. If there is a consensus that the issue of costs can be addressed by written submissions then, Mr. Douvelos, as counsel for the petitioner, you are to advise the court of

that and I will set out a timeframe to do so. At this point my preference is for an in-person hearing; but if all counsel are ad idem that the issue can be addressed by written submissions, then, Mr. Douvelos, with copies to your friends, let me know through Trial Division that this is counsel's desire and then I will by memorandum let you know whether I agree or whether I still wish to have an in-person hearing.

[78] CNSL G. DOUVELO: [Indiscernible/overlapping speakers]

[79] THE COURT: Stand by, Mr. Douvelos. Anything else arising, Mr. Canofari?

[80] CNSL M. CANOFARI: No, nothing, thank you, Justice.

[81] THE COURT: Mr. Wolf?

[82] CNSL M. WOLF: Nothing, Justice.

[83] THE COURT: Mr. Douvelos?

[84] CNSL G. DOUVELO: As the court pleases, I would just like to -- obviously if there is going to be written submissions, if the page numbers could be limited to a specific number of pages and spacing, unless Justice is of the view if we do them -- make submissions in writing, the court will make further directions in this regard.

[85] THE COURT: I will. But first, counsel are to discuss whether you need to address the issue of costs. It may well be that you can work things out and not need to make submissions on costs. If so, good on you. If you cannot, then you are to advise me by memorandum and also let me know if you wish to address the issue by written submissions.

[86] CNSL G. DOUVELO: Yes, Justice, thank you.

[87] THE COURT: Mr. Magnus, clear what the options are?

[88] CNSL D. MAGNUS: Crystal clear, thank you.

[89] THE COURT: And Mr. Canofari?

[90] CNSL M. CANOFARI: Understood, thank you.

[91] THE COURT: Mr. Wolf?

[92] CNSL M. WOLF: Understood, Justice.

[93] THE COURT: All right. Very good. Thank you, counsel. The court will stand down.

"G.R.J. Gaul, J."

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