
CANADA / JUDGMENT

Uragi (Re)

2016 BCSC 1517

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Supreme Court of British Columbia

DECIDED

8 July 2016

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2016 BCSC 1517 Uragi (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Uragi (Re),

2016 BCSC 1517

Date: 20160708

Docket: S156627

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 Chita Uragi

Before: The Honourable Madam Justice Fleming

Oral Ruling

In Chambers

Counsel for the Petitioners,

Kimihisa Ito and Yoshiko Ito:

K.M. Kuntz

A.S. Boucher

Counsel for the Respondent,

Fusako Yoshimura:

J.W. Zaitsoff

Counsel for the Public Guardian and

Trustee of British Columbia:

D.J. Herbert

Place and Date of Hearing:

Vancouver, B.C.

July 6 and 7, 2016

Place and Date of Ruling:

Vancouver, B.C.

July 8, 2016

- [1] THE COURT: This matter concerns the ongoing care of Ms. Chita Uragi, a 94-year-old woman who lives in her own home on a large rural property in the Lower Mainland. Although she moved to Canada from Japan in 1975 and became a Canadian citizen in 1979, she speaks no English. Her husband, Kyozo Uragi, died in 2005. She has no other family in Canada. Her only relatives live in Japan.
- [2] The petitioners, Mr. and Ms. Ito, are her long-time friends. The respondent, Fusako Yoshimura, is Ms. Uragi's niece.
- [3] The parties share the view that Ms. Uragi is unable by reason of mental infirmity to manage her personal and financial affairs and the court should therefore declare her to be a patient under the Patients Property Act, R.S.B.C. 1996, c. 349 [PPA].
- [4] Both the petitioner Yoshiko Ito and Ms. Yoshimura have asked to be appointed as the committee of Ms. Uragi's person. Each regards the other as unsuitable.
- [5] Ms. Yoshimura's primary goal is to take Ms. Uragi back to Japan where she would be cared for until her death. To that end she has also applied for an order authorizing the travel.
- [6] The petitioners are prepared to agree to an order that the Public Guardian and Trustee (the "PGT") be appointed as committee of Ms. Uragi's person. Ms. Yoshimura is not, unless the court grants her travel application or in the alternative adjourns it briefly so the PGT can investigate the proposed plan.

Background

- [7] Ms. Uragi was born on February 8, 1921. Her husband is buried near her home. Ms. Uragi has no children. She has apparently never returned to Japan since coming to Canada in 1975. Ms. Uragi had four siblings. Two of her sisters are still alive. Ms. Yoshimura is the daughter of Ms. Uragi's younger sister, and she herself has two siblings and nine cousins on her mother's side.
- [8] Ms. Yoshimura deposes to sharing a very close relationship with Ms. Uragi all of her life. She said she visited her aunt and uncle often as a child and lived with them for two years while attending university. After they left Japan Ms. Uragi maintained close ties through regular correspondence with Ms. Yoshimura and other family members. Ms. Yoshimura said she visited Ms. Uragi as often as she could and came almost every year from 2005 to 2009.
- [9] Ms. Uragi's friendship with the petitioners emerged from business dealings between Mr. Ito and Mr. Uragi. After emigrating from Japan the Uragis purchased large amounts of land in Alberta as well as eight lots in Maple Ridge. Ultimately the petitioners and the Uragis became the owners of a company called Bow River Developments Ltd. Apparently the Uragis transferred various of their Alberta properties to the company in exchange for shares. Ms. Uragi remained a director of Bow River along with the Itos until in or about May 2015.
- [10] In 2003 Ms. Uragi appointed the petitioners as her attorney and representatives for health care pursuant to a power of attorney and a representation agreement. Ms. Uragi also nominated the petitioners for appointment as her committee if she became incapable of managing herself or her affairs.
- [11] In March 2004 the Uragis executed a trust agreement that provided for a joint partnership trust. The Itos are the trustees and the residual beneficiaries. It appears the property held by the trust includes the Uragis' shares in the Bow River company, which on the face of the documents I received during the hearing, show a redemption amount of several million dollars.
- [12] Mr. Uragi was diagnosed with cancer in September 2004. From that time onwards the petitioners began to assist the Uragis with health care decisions. Since the death of Mr. Uragi in 2005 the petitioners have spent considerable time with Ms. Uragi. Ms. Ito in particular has also assisted her by managing her care, arranging for caregivers, health and other medical treatments as well as arranging for the upkeep of her home and property. Until being prevented from doing so by Ms. Yoshimura, she would visit Ms. Uragi every Saturday and provide her with lunch and dinner.
- [13] Ms. Uragi's main caregiver has been a woman named Mrs. Lee. She and her husband live on an adjacent property owned by Ms. Uragi. Until on or about September 2015 she provided care to Ms. Uragi about 10 hours a day, six days a week. She also performed other tasks such as grocery shopping, purchasing household and medical supplies, et cetera. Her husband apparently assisted with maintenance and repair of the house and the yard and garden. In

addition Ms. Uragi had caregivers from a private agency twice a week and more recently caregivers from the Fraser Health Authority during the evenings.

- [14] In 2006, Ms. Uragi executed a will with the advice and assistance of her counsel. The will appoints the Itos as executors and trustees. It gives her Lower Mainland property to various family members in Japan equally and the residue of the estate, to the Itos.

Circumstances Leading to Current Applications

- [15] Ms. Yoshimura deposes that Ms. Uragi had complained many times in letters about the Itos and Ms. Ito in particular. She provided her own interpretation of aspects of several letters with various dates from 2010 to 2013 to demonstrate how unhappy and suspicious her aunt was with respect to the Itos. The translations later provided by a certified interpreter indicated the complaints Ms. Uragi made were far more muted than Ms. Yoshimura portrayed.
- [16] On or about April 22, 2015, Ms. Yoshimura arrived from Japan. She states that Ms. Uragi expressed a wish to return to Japan and had been thinking this way for a long time. Without informing the Itos, Ms. Yoshimura began to make arrangements for Ms. Uragi's travel, which included obtaining a Canadian passport. She retained the services of two Japanese physicians to accompany Ms. Uragi on a flight.
- [17] Ms. Yoshimura deposes that when she arrived in April 2015 she found Ms. Uragi in bad shape. She also says Ms. Uragi told her she wanted to be with her living relatives and visit the burial sites of her deceased relatives in Japan. According to Ms. Yoshimura since then, Ms. Uragi has since told her every day they have been together that she wants to return to Japan. When she is on the phone with family members she tells them she is coming back for sure.
- [18] Ms. Yoshimura alleges Ms. Uragi told her in May 2015 that Ms. Ito had given her a brown scarf a long time ago and she thought at the time Ms. Ito was going to strangle her with it. Ms. Yoshimura said she did not believe her aunt but viewed the comment as indicating how afraid she was of Ms. Ito. Ms. Yoshimura further alleges when she arrived Mrs. Lee told her if things continued as they had been, Ms. Ito would kill Ms. Uragi. Although Ms. Yoshimura goes on to say she did not believe Mrs. Lee, this is extraordinary hearsay evidence that could not be more prejudicial to the petitioners, which they dispute. The respondent has not provided an explanation as to why they have not relied upon Mrs. Lee's own evidence.
- [19] In May 2015 the Itos depose they became aware that plans were being made to take Ms. Uragi to Japan. They allege she never expressed to them any wish to do so. They also allege they became concerned Ms. Yoshimura was not ensuring that Ms. Uragi was eating properly. They sought legal advice and retained counsel. On May 19, 2015, they attended Ms. Uragi's home with their own lawyer, a Japanese speaking lawyer, and the RCMP to inform Ms. Yoshimura of their legal authority to determine where Ms. Uragi resided and to prevent anyone else from removing her from the jurisdiction.

- [20] All of the evidence indicates Ms. Yoshimura and the other occupants of the home disputed the petitioners' authority as decision makers, although they were provided with the 2003 representation agreement. At the time, they denied any knowledge of Ms. Uragi's passport or her other identification which was missing from her wallet.
- [21] During this confrontation Ms. Uragi appeared gravely ill. An ambulance was called. She was admitted to Ridge Meadows Hospital where she remained for about ten days. Dr. Lai, who treated Ms. Uragi there, completed a statutory declaration on May 27, 2015, which provides she was very frail and weak and suffering from dehydration and malnutrition.
- [22] The police instructed Ms. Yoshimura and the others to leave the passport and Ms. Uragi's other identification in the home and to vacate the premises the following day. Ms. Yoshimura complied. She admits she had Ms. Uragi's passport on her person when she denied knowing its whereabouts, stating she was not persuaded she was required to relinquish it. She deposes she was entirely unaware of the representation agreement or the Itos' legal authority in relation to Ms. Uragi prior to the confrontation at the home that day.
- [23] Following Ms. Yoshimura's departure, Mr. Ito deposes to finding letters at Ms. Uragi's home written by Ms. Yoshimura and her mother that attempt to influence Ms. Uragi to dislike and mistrust the Itos and urge her to change her estate plans for their benefit. The letters indicate among other things that Ms. Yoshimura was in fact aware of the Itos' role in managing Ms. Uragi's affairs.
- [24] The content of the letters is indeed concerning. For example, on April 27, 2010, Ms. Yoshimura wrote:

The Itos are scary and they are not good people and just writing about Mr. and Ms. Ito makes me upset and become suspicious of them. They took everything that belonged to uncle without his consent, then tried to get what is yours.

- [25] On June 24, 2015, Ms. Yoshimura returned to Ms. Uragi's residence. That same day she arranged for Ms. Uragi to sign a revocation of the 2003 representation agreement and a new representation agreement appointing her as the representative for personal and health care decisions and routine management of Ms. Uragi's financial affairs. The agreement appointed Ms. Yoshimura's lawyer as the monitor.
- [26] Also on June 24, 2015, this same lawyer contacted the petitioners' counsel and demanded they cease any direct contact with Ms. Uragi and refrain from attempting to enter any property she owned. He suggested the petitioners might harm Ms. Uragi.
- [27] On or about July 26, 2016, counsel for the petitioners informed Ms. Yoshimura's counsel of the 2003 power of attorney. Shortly after that, her counsel provided a notice revoking that power of attorney and a new power of attorney signed the day before.

- [28] Ms. Yoshimura alleges the Itos exercised undue influence over Ms. Uragi and abused their authority as her attorneys. These allegations are based largely on her suspicions in relation to the Uragis' transfer of the Alberta lands to Bow River and the transfer in 2004 of one of the parcels of land owned by the Uragis in the Lower Mainland to the Itos for \$1. The property had an assessed value at the time of \$400,000. In addition Ms. Yoshimura complains about the Itos' suspected use of proceeds obtained from a mortgage on another parcel of land to pay Ms. Uragi's expenses rather than income from the trust or other assets.
- [29] Over the course of this litigation Ms. Yoshimura has conceded that the revocation of the power of attorney apparently by Ms. Uragi in July 2015, is invalid.

Medical Evidence

- [30] The medical evidence is that Ms. Uragi has been incapacitated both mentally and physically for some time.
- [31] On May 27, 2015, Ms. Uragi's long-time family physician, Dr. Lytle, declared her incapable of managing her affairs by reason of physical infirmity based on his assessment of her on April 18, 2015. He described her as very weak and frail.
- [32] Dr. Lai's statutory declaration referred to above also expressed the opinion she was incapable of managing her affairs by reason of physical infirmity. A Japanese speaking interpreter was not present when Dr. Lytle and Dr. Lai assessed Ms. Uragi, and so neither physician was able to properly determine her mental condition.
- [33] Subsequent assessments have been performed and physicians have provided opinions that Ms. Uragi is incapable of managing her affairs by reason of mental infirmity.
- [34] Dr. Sloan examined and assessed her on July 30, 2015, at her home, communicating through a Japanese interpreter. He found she was disoriented as to time and place and suffering from significant short-term memory impairment. She exhibited what he described as "nearly void understanding of her financial circumstances". She could not meaningfully discuss her income and expenses or her current financial management.
- [35] On September 21, 2015, Dr. Lytle conducted an assessment of Ms. Uragi at her home focused on her mental capacity. Based on her responses, he found she had moderate to severe dementia. Throughout the interview Ms. Uragi was lying flat on her back in bed, apparently comfortable. She was wide awake and smiling. Ms. Yoshimura was present and indicated to the doctor that Ms. Uragi did not initiate conversation and there was very little if any conversation. During the assessment Ms. Uragi did not know the year, the month or the day. She thought she may have been in the hospital at the time.
- [36] More recently on November 11, 2015, Ms. Uragi was assessed by Dr. Larry Dian at the request of Ms. Yoshimura for the purpose of determining whether she could safely travel to Japan if appropriate arrangements were made. He too met with Ms. Uragi with an interpreter and Ms. Yoshimura. Ms. Uragi presented as very frail, this time lying in a

wheelchair that was partially reclined. Again she was alert and smiling. Dr. Dian was told that since Ms. Yoshimura's return to Vancouver in June 2015, Ms. Uragi had been well. She had not taken any medication and not required the care of her family doctor. He noted she was immobile. Transfers from her bed to her wheelchair involved using a ceiling lift.

- [37] When specifically questioned, she expressed a wish to go back to Japan to visit her sister and the graves of her relatives. The plan presented to Dr. Dian was that two experienced doctors would fly to Japan with Ms. Uragi, and the flight would be modified to allow the wheelchair to be safely placed. Dr. Dian found the plan easily met the criteria to allow for a safe transfer of Ms. Uragi to Japan.
- [38] On April 18, 2016, Dr. Lytle attended Ms. Uragi's home to conduct a re-evaluation. He deposed that since he last examined her on September 25, 2015, her condition had "vastly improved". She had visibly gained weight. She was more animated, exhibited more facial expressions and she referred to him by his name throughout the examination. He said he observed modest improvement in her mental health.
- [39] In his actual report he summarizes his findings somewhat differently noting she had improved a little physically and mentally but still remained wheelchair bound and severely demented. He noted she knew the season and she knew she was in her home.

Legal Framework

- [40] The PPA provides the court may appoint a committee when it declares a person incapable of managing their personal or financial affairs. Section 3(1) of the PPA requires the court to consider affidavits from two medical practitioners setting out their opinion that the person is incapable of managing herself or her affairs because of mental infirmity arising from disease, age or otherwise before making such a declaration.
- [41] Pursuant to s. 3 of the PPA, a person declared incapable falls within the Act's definition of "patient". Section 19 sets out that when a person becomes a "patient", every power of attorney given by the person is terminated. The same occurs with every representation agreement, unless the court orders otherwise.
- [42] Under section 9, if there is a nomination in writing of a committee by the patient made when the patient was of sound and disposing mind, the nominee must be appointed unless there is good and sufficient reason for refusing the appointment.
- [43] I note the petitioners have not sought the appointment of Ms. Ito as committee of Ms. Uragi's person pursuant to s. 9 and the nomination signed by Ms. Uragi in 2003.

Declaration

- [44] Based on the medical evidence reviewed above I am satisfied and declare Ms. Uragi is incapable of managing her personal and financial affairs by reason of mental infirmity arising from a disease and/or her age, namely moderate to severe dementia. Accordingly Ms. Uragi is a "patient" within the meaning of the PPA.

Committee of the Person

- [45] The PGT does not take a position regarding who should be appointed committee of Ms. Uragi's person, although they submit a neutral person should be appointed to act as committee of her estate. The PGT is prepared to act as committee for Ms. Uragi in the event the court determines that is in her best interests.
- [46] When determining whether or not to appoint a committee nominated by a patient, the court must consider the best interests of the patient and the patient's family (Re Garrett-Jones, 2006 BCSC 234 at paras. 10-11; Bowman (Re), 2009 BCSC 523 at paras.32-34). The test, as indicated by s. 9, considers the patient's wishes with regard to the identity of the committee. Other factors to consider include: the adult's autonomy and dignity, his idiosyncrasies and the way he chose to live his life while capable, the proposed committee's previous involvement with the patient or the family, his or her knowledge and understanding of the patient's situation and needs, his or her level of experience or capability in performing the duties of a committee, any kind of plan or scheme he or she may have for the management of the patient and any potential conflict of interest between the proposed committee and the patient (Vranic (Re), 2007 BCSC 1949 at paras. 92-93; Bowman (Re), paras. 33-34).
- [47] In Re Matthews, 2013 BCSC 1045, Madam Justice Fisher stated:
- [26] To this list, I would add that the court must also consider the effect on the patient of any conflict among family members.
- [48] The petitioners rely upon Ms. Uragi's nomination as a factor in favour of Ms. Ito's appointment as committee but, again, made no submissions about the application of s. 9. They take the position the court should simply proceed with their application that Ms. Ito be appointed as committee of Ms. Uragi's person. Similarly Ms. Yoshimura does not concede that the new representation agreement is invalid but she does not ask the court to uphold it and instead seeks the same appointment.
- [49] An application for appointment as committee invokes the court's parens patriae jurisdiction and is governed by an assessment of who will serve the patient's best interest (Re Stewart 2014 BCSC 2321). Section 18 of the Act requires a committee to exercise its 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.

- [50] Previous decisions observe the Act does not prescribe criteria for the selection of an appropriate committee. The cases have identified a number of factors. The inquiry is fact specific. As noted by the petitioners, preference is usually given to family members, but the paramount consideration remains always the patient's best interest. The PGT is typically appointed only when the court finds no other applicant suitable.
- [51] While the court considers the patient's own preferences regarding the appointee, care must be exercised in giving weight to express wishes where the patient suffers from a mental infirmity. The court will consider the proposed committee's previous involvement with the patient and her affairs, his or her knowledge of the patient and her needs and his or her level of expertise. Love and affection for the patient is another factor. The court must also consider whether the proposed committee has or may have a conflict of interest.

Analysis

- [52] In my view, Ms. Uragi's best interests require the PGT be appointed as committee of her person, despite the availability of Ms. Ito and Ms. Yoshimura.
- [53] The petitioners provided sparse evidence in the petition record regarding Ms. Uragi's financial circumstances and relied upon documents that set out an incomplete record of her assets and income. They also did not include evidence about their own financial interest in Ms. Uragi's financial affairs and her estate. Consequently, I was without any awareness of the content of Ms. Uragi's will and the extent of her assets until I raised this issue during the hearing, at which point I was provided with a copy of the will she executed in 2006 and declined to update in 2010 and the spousal trust.
- [54] I accept the petitioners took this approach because they were very concerned Ms. Yoshimura would seek to change those documents in light of the arrangements she made for Ms. Uragi to sign a revocation of the 2003 representation agreement and power of attorney and a new representation agreement in 2015. The will and the spousal trust reveal, however, that both Ms. Ito and Ms. Yoshimura are residual beneficiaries under the trust and beneficiaries under the will, and so their financial interests have the potential to affect decision making about Ms. Uragi's care, regardless of their own means. The Itos are also the trustees of the spousal trust.
- [55] The level of mistrust and suspicion that exists between the Itos and Ms. Yoshimura could not be higher, and yet it appears the three of them share with Ms. Uragi the most important relationships she has. I am concerned that if either Ms. Ito or Ms. Yoshimura is appointed as committee of Ms. Uragi's person, she will lose contact with "the other side".
- [56] Both have the ability to ensure that Ms. Uragi receives appropriate care.

- [57] Ms. Yoshimura proposes an elaborate care plan for Ms. Uragi in the event she is taken to Japan. I note the improvement in Ms. Uragi's condition during the time she has been cared for by Ms. Yoshimura. At the very least this indicates to me that she has been well cared for and has benefitted significantly from living with a Japanese-speaking person and the greater stimulation that this must provide for her. Ms. Uragi's needs will only become greater and more complex as time passes.
- [58] I am very troubled however, by Ms. Yoshimura's conduct in arranging for Ms. Uragi to revoke and sign new legal documents without the benefit of independent legal advice and at a time when she must have been aware her aunt was incapable or of very diminished capacity. If she was in fact concerned Ms. Uragi was at some risk of harm from the Itos, the appropriate steps would have been to notify the PGT and perhaps the Fraser Health Authority.
- [59] At the same time I am firmly of the view it would not be in Ms. Uragi's best interests to disregard the family she has in Japan. Ms. Ito is simply not in a position, given all that has happened, to objectively explore whether and how Ms. Uragi might benefit from contact or involvement with those family members.

Evidentiary Issue

- [60] Ms. Yoshimura urged the court to consider Ms. Uragi's express wish to return to Japan to be with family in determining the appropriate person to appoint as committee of her person and the application for an order authorizing travel.
- [61] The petitioners argue the hearsay evidence of Ms. Uragi's current wishes is inadmissible. Hearsay evidence is presumptively inadmissible. Absent falling within a specified exception, it must meet the criteria of necessity and reliability under the principled approach.
- [62] Ms. Uragi is incapable of managing her personal or financial affairs based on a mental infirmity, and in addition she is immobile. The necessity criteria is therefore met. Turning to the requirement for threshold reliability. The central concern is that hearsay evidence cannot be tested and a principled approach is required to identify cases where this problem is sufficiently overcome to justify receiving the evidence. Among the factors the court considers in assessing threshold reliability is the declarant's mental capacity at the time the statement was made.
- [63] In this case there are a number of reasons to be concerned about the threshold reliability of the hearsay evidence. Ms. Uragi never visited Japan after moving to Canada when she was capable and had the means to do so. There is no evidence Ms. Uragi ever expressed a desire to return to Japan except to Ms. Yoshimura and then not consistently until on or about April 2015. By that time Ms. Uragi was in all likelihood incapable by reason of the moderate to severe dementia that was identified by Mr. Lytle in September 2015.

- [64] Leaving aside the unanswered question of whether Ms. Uragi is capable of making meaningful statements about her wishes, since June 2015 Ms. Uragi has been utterly dependent on Ms. Yoshimura's care and care arrangements and is therefore very vulnerable to her influence. The petitioners and Ms. Yoshimura describe Ms. Uragi as a shy, quiet and compliant person. It is clear that since at least 2010, Ms. Yoshimura has expressed a negative view of the Itos to Ms. Uragi. I have formed the impression that apart from the Itos and her caregiver Ms. Lee, Ms. Uragi is entirely isolated. Although the medical evidence causes me to doubt the extent to which Ms. Uragi may be able to articulate genuinely held views regularly and consistently, I am concerned that if she did so it may have been in an attempt to please. I have not ignored Dr. Dian's evidence that when he visited with Ms. Uragi in November 2015, she said she wished to visit her sister in Japan and the graves of deceased family members upon specific questioning. Ms. Yoshimura was present during his evaluation, however, the purpose of which was not to assess her capacity to express her wishes, but to determine whether she was medically well enough to travel to Japan with appropriate accommodations. Dr. Dian's report does not indicate he reviewed any of the prior evaluations of Ms. Uragi's capacity.
- [65] I conclude the hearsay evidence regarding Ms. Uragi's wishes does not meet the criteria for threshold reliability and is therefore not admissible. My concerns about Ms. Yoshimura's credibility are not so grave, however, that I reject her evidence entirely regarding what Ms. Uragi has apparently said to her. Clearly she made a similar statement to Dr. Dian, and so I am left to conclude there remains a live but unanswered question as to what Ms. Uragi's real wishes may be and whether she is capable of meaningfully holding such views.

Conclusion Regarding Committee of the Person

- [66] The PGT has assured this Court that if appointed as committee of Ms. Uragi's person, the office would thoroughly assess whether Ms. Yoshimura's proposal that Ms. Uragi travel to Japan is in her best interest. As part of that assessment the PGT would evaluate her ability to express her wishes and what those wishes might be in the absence of those who could influence her.
- [67] Accordingly, in light of their financial conflicts of interest, the deep mistrust between the Itos and Ms. Yoshimura and Ms. Yoshimura's attempts to undermine the relationship between Ms. Uragi and the Itos, as well her conduct in relation to the execution of the revocations and the new representation agreement, I find it is not in Ms. Uragi's best interests for either Ms. Ito or Ms. Yoshimura to be appointed committee of her person. With respect to my refusal of Ms. Ito's application, I base my decision in part on s. 9 of the PPA. Pursuant to s. 19(2) of the Act, I order that all previous representation agreements be terminated. Any powers of attorney are required to be terminated by s. 19(1). I therefore appoint the PGT as committee of Ms. Uragi's person. In the event this occurred, the parties consented to the PGT also being appointed committee of her estate. I therefore make that appointment also.

Application for Authorization to Travel

- [68] What remains is Ms. Yoshimura's application for authorization to travel with Ms. Uragi to Japan where she would stay until her death. Ms. Yoshimura argues even if the court rejects the hearsay evidence of Ms. Uragi's wishes, it remains in her best interests to return to Japan given the presence of the family and friends there, the suitable care plan and the high level of care Ms. Yoshimura has provided over the past year.
- [69] The PGT and the petitioners take the position this decision must be made by the committee of Ms. Uragi's person, based on that his or her assessment of what is in her best interest. Although s. 16(1) of the PPA allows the court to attach conditions restricting a committee's exercise of certain rights, privileges or powers, the cases I have been referred to are consistent with this position.
- [70] Based on all of the evidence I am satisfied that decisions about how Ms. Uragi should be cared for and whether she should travel to Japan to visit or remain there until her death, are decisions that should be made by the PGT after a thorough review of Ms. Uragi's mental and emotional health, her ability to express her wishes, the proposed care plan and the views of those who have been involved in her care over the long term, namely her family doctor, Mrs. Lee and perhaps others.
- [71] In addition to immigration matters, there is no evidence before the court as to how long Ms. Uragi as a Canadian citizen would be permitted to remain in Japan or even if she was be allowed entry as a person suffering from significant physical and mental infirmity. Accordingly Ms. Yoshimura's application is dismissed.
- [72] MS. HERBERT: My Lady, I believe counsel for the petitioners on the first day of hearing also agreed that the Itos would be providing an accounting and further documentation to the committee --
- [73] THE COURT: Right.
- [74] MS. HERBERT: -- of person -- or committee of estate.
- [75] THE COURT: Yes.
- [76] MS. HERBERT: That is found at page 2 of the petitioners' submissions. The PGT had recommended that --
- [77] THE COURT: Right. So I will make -- I will grant an order that they deliver up to the PGT an accounting of their role as Ms. Uragi's attorneys, including a full summary of her assets and liabilities. And I think that necessitates them being provided with access to Ms. Uragi's home, which I take the PGT would allow.

- [78] MS. HERBERT: I believe what would happen, My Lady, is that there would be a field officer attend and potentially the case management attend at Ms. Uragi's home, collect the personal papers and financial papers of Ms. Uragi. I note that the Itos say that they require some of those documents in order to properly account, and I am sure there would be a sharing of information.
- [79] THE COURT: Right. Okay. I trust you can work that out.
- [80] MS. HERBERT: Yes.
- [81] THE COURT: You know, we have not dealt with costs. I have another matter in four minutes. I am firmly of the view the PGT should have their costs from the estate.
- [82] MS. HERBERT: On the basis of special costs.
- [83] THE COURT: On the basis of special costs.
- [84] But I will need further submissions about costs for the other two parties. And so counsel will have to schedule a costs hearing through the registry.
- [85] MR. BOUCHER: My friend Ms. Kuntz and I have contemplated that yesterday evening because she was not here today.
- [86] MS. HERBERT: Thank you, My Lady.
- [87] MR. BOUCHER: Thank you.
- "Fleming J."

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