

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the Matter of the Patients Property Act (PPA)

AND

Kathleen Palamarek, Patient

WRITTEN SUBMISSIONS OF LOIS SAMPSON

Kathleen Palamarek, The Person

Kathleen Palamarek is 88 years old and has been diagnosed with dementia.

Ralph and his brother Robert Palamarek filed their Patients Property Act Petition in August of 2007. Lois Sampson filed her Petition in January of 2008 but filed an Amended petition in July of 2010.

In November of 2008, Justice Johnston of the Court, after a 4-day hearing. The hearing occurred in the immediate aftermath of a crisis and resulting involuntary apprehension under the provincial Mental Health Act which, the evidence will show, was sparked intentionally by Ralph Palamarek. In any event, Justice Johnston issued an interim committee order naming Ralph Palamarek interim committee.

But the present PPA applications proceed before the Court as a hearing de novo. The interim order is relevant as an event but it carries no presumption whatsoever as regards one applicant over another.

It does, however, give one advantage to the Court and the body of evidence upon which the Court must draw to come to a well-informed decision.

It allows the Court to see almost exactly what the future would hold for Kathleen Palamarek under Ralph and/or Robert Palamarek's guardianship since Ralph Palamarek has had committee authority for two years. That, provided, of course, that Ralph and Robert Palamarek have produced before the Court all relevant documents and all relevant evidence; both that which supports their appointment and that which is relevant even if it does not.

The evidence will show that they have not done so.

All parties agree that Kathleen Palamarek is a "patient" as defined in the relevant adult guardianship statute, British Columbia's *Patient's Property Act (PPA)*:

"[P]atient means (a) a person who is described as one who is, because of mental infirmity arising from disease, age or otherwise, incapable of managing his or her affairs, in a certificate signed by the director of a Provincial mental health facility or psychiatric unit as defined in the Mental Health Act, or (b) a person who is declared under this Act by a judge to be ... incapable of managing himself or herself or his or her affairs."¹

All parties agree that the 88-year old elderly lady falls under the auspices of the Court's statutory and common law *parens patrie* jurisdiction as an adult in need of a *PPA* guardianship order.

The issue before the Court is: **who should be guardian?**

Our adult guardianship statute, in British Columbia, does not provide guidance in that regards except, arguably, §18 and 28:

"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....

"If there is insufficient provision in this Act, the court may at any time, on the application of any person, make an order not in contradiction to this Act or the regulations that it considers necessary for or in the interests of the proper, honest and prudent management and administration of the estate of a patient."

The applicable law, taking into account §18, is summarized by Justice Murphy of the Court in *Re Leeming*, at ¶10 and 11:

"The *Patients Property Act* does not set out any guidelines either for the appointment or rescission of the appointment of a committee, in circumstances such as this where the basic issue between the competing factors is the custody of the patient. Section 18 of the Act states that the committee shall exercise his powers for the benefit of the patient and his family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and his family. I think that section relates solely to the financial administration of the patient's estate. Section 28 provides that where there is insufficient provision in the Act the court may at any time, on the application of any person, make an order not in contradiction to the Act or the regulations that it considers necessary for or in the interests of the proper, honest and prudent management and administration of the estate of a patient. This also relates to the financial administration.

"The authorities are to the effect that the best interests of the patient are paramount."²

What is the value of her estate?

¹ *Patients Property Act*, R.S.B.C. 1996, c. 349

² *Re Leeming*, 14 D.L.R. (4th) 315 (1984, BCSC)

As best we can determine - the Interim Committee has produced no accounts either during his tenure or as an update to the Affidavit of Kindred and Fortune he and his brother the co-applicant Robert Palamarek prepared in July of 2007 - is worth about \$600,000.

Her house on Bowerbank Road in Sidney, is worth \$436,000 according to the BC Assessment of 2009, as obtained by Lois Sampson.³ The resale value is more likely \$600,000 or more - again, we have no appraisal other than the conservative estimate by BC Assessment.

There are no charges that we know of on title - again, there are no accounts made available by the Interim Committee to the Court even though they have been prepared and given to the Public Guardian and Trustee).

In July of 2007, she had \$18,000 in cash and \$93,000 in investments. There would obviously be income from those investments but we and the Court are in the dark on this.

Mrs Kathleen Palamarek's income was stated to be \$19,476 but we hope that she now has a flow of monthly rental income from the Interim Committee he, in conflict of interest, resides in the Patient's house with his spouse. We do not know if he and his wife pay rent - the evidence shows that sometime he says he is, sometimes he says he isn't.

In considering a *Patients Property Act* application(s), a court of law needs to consider the unique circumstances of the particular individual incapable of managing herself.

Kathleen Palamarek suffered spousal abuse in her marriage. The spousal abuse was so significant that Robert Palamarek says: "I advised mom not to go back to live with dad after she left him (in July of 1996)."

When she did seek sanctuary, Kathleen Palamarek chose Lois Sampson and her husband Gil Sampson.

Although there is no evidence linking the two, it is noteworthy that weeks after she fled her husband in the summer of 1996, she suffered a heart attack, an event often associated with building stress.

When hospitalized (in the Fall of 1996) at the Royal Jubilee Hospital, the health care staff was so concerned for Kathleen Palamarek's personal safety as a victim of spousal abuse that they issued a strict privacy code ("Code A") which directed that staff, and Lois and Gil Sampson were not to disclose Kathleen Palamarek's whereabouts during the duration of her short hospital stay, in September of 1996.

Kathleen Palamarek returned to live with her husband in the latter months of 1996.

The permanent effects of spousal abuse are not readily appreciated by everyone. It typically leaves the victim more vulnerable and less likely to assert herself generally and especially in regards to males. In light of the commandeering nature of her father, towards his wife Kathleen

³ LS Aff. #8, ¶17 and Exh. D @ p. 22 (Application Record, Book 3, Tab 73)

Palamarek, the spousal abuse admitted by Robert Palamarek and not denied by Ernest or Ralph, Lois states her reasonable belief that she was then, and only then intentionally omitted from her mother's estate planning when Ernest and Ralph, and not her, were elevated to the alternate executor position in Kathleen Palamarek's May 25, 1998 Will and Power of Attorney.

In her Affidavit #1, Lois Sampson believes that it was her father's influence, and in the context of historic spousal abuse, to have Lois removed from her position as co-executrix under her mother's Will because of her defiance of him in providing sanctuary to her mother during the Palamarek marital crisis of 1996.

In any event, no other reason is put forward for this sudden change on the part of Kathleen Palamarek except for the inexplicable move to the inside of Ralph and Ernest in Kathleen Palamarek's circle of trust.

One does not need a plan of care from Ralph Palamarek to see what the future holds for Kathleen Palamarek were he appointed committee. One needs only to absorb the evidence that will be bared at the hearing of this matter - the record of his tenure: the false allegations in regards to his sister's mental health; the involuntary apprehension of his mother which was encouraged and enabled by Ralph on the basis of his false allegations in regards to his sister; at the innumerable slanderous remarks made to professional caregivers and ultimately successful effort to create a very negative impression of Lois Sampson and of her husband in the appreciation of them by the professional caregivers; the unbelievable mobility and access/visitation restrictions still imposed upon his mother by Ralph though he would like the Supreme Court to think that these restrictions are grounded in medicine and made by doctors (the evidence will show otherwise); the apparently complete abandonment of his mother to the sometimes cursory and questionable assessments made by a variety of Lodge staff doctors and the litany of antipsychotic medication and other extraordinary pharmaceutical products which are and have been given to his mother, not by any process strictly supervised by a loving, educated, fair-minded and discriminate child, but by doctors for which Kathleen Palamarek can only ever be but a "patient".

Lois Sampson

Kathleen Palamarek' daughter Lois Sampson is 58 and in perfect health.

Lois Sampson is an ideal candidate for the guardianship of her mother. Alone amongst the applicants for guardianship to share gender with her 88-year old mother, neither Ralph nor Robert has such an uninterrupted history of advocacy, emotional and physical care commitment to her mother.

In spite of the concerted efforts to unfairly and falsely paint Lois Sampson and her husband Gil as *extremists* in the eyes of those care institutions which have housed her mother, as well as, now, in the mind of the presiding justice of the Supreme Court of British Columbia, she has never thrown in the white towel and chosen the easier (and less expensive) path which would have beckoned many a less dedicated candidate for the role of guardian of another adult; a path

where she could forgo the time commitments inherent in adult guardianship but where she could also hide from her brothers' campaign to paint her with the vicious brush of mental disorder.

Instead, she perseveres and confidently and assertively seeks, with the full support of her husband Gil, an order appointing her guardian of the person and of the estate of her mother Kathleen Palamarek. The evidence will show that in keeping with the best interests of Kathleen Palamarek, and on no other ground, she is the preferred guardian and that a continuation of the tenure of Ralph Palamarek will be a continuation of the *status quo*, as that *status quo* at Broadmead Lodge will be bared before the Court; a *status quo* not of care by Ralph Palamarek, but of care surrendered, to all extents and purposes, as it would appear from the evidence, to the non-profit, 225bed Broadmead Lodge.

Lois Sampson wants the Justice of the Supreme Court to listen for the faint but clear and persistent murmur of Kathleen Palamarek's agreement with Lois' policy of at-home care if doable, and her application for guardianship: evidence of that jumps out of the medical records.

Notwithstanding the campaign by the brothers to defame their sister in the context, now, of contested *PPA* applications, their objections do not stand against the test of history. Consider that Ernest, Ralph and Robert all oppose the application by Lois Sampson and weigh that against the unequivocal historical record:

- Her brother Robert asked her to be god-parent to his children.⁴
- A cousin, Danny Palamarek, asked Lois Sampson to stand as legal guardian of their children in the event of his and his wife's death before Danny's children attained the age of majority.
- Gil Sampson's best friend, Mr. Tim Hicks asked Lois Sampson and Gil Sampson to stand as legal guardian of their children in the event of his and his wife's death before the Hicks children attained the age of majority.⁵
- In 1979, Kathleen Palamarek (the Patient) signed a Will in which she nominated Lois Sampson as the alternate executrix.⁶ Though Lois Sampson is the second youngest of the Patient's four children, there is no residual alternative executorship provided for any of her sons in this 1979 Will.
- In 1987, K. Palamarek signed a revised Will, this time appointing Lois not just alternate, but co-executor with the father, Wasyl Palamarek (who died in 2001). In this 1987 Will, Mrs. Palamarek does appoint as alternative executors, her sons Ralph and Ernest but only if Lois is "unable or unwilling to act".

⁴ Book 3, Tab 73, paras. 4 and 5.

⁵ Book 3, Tab 66, paras.9.

⁶ Book 2, Tab 42, Exh. A.

- In 1996, when Kathleen Palamarek sought refuge from the abusiveness of her husband Wasyl Palamarek, she requested sanctuary with Lois and Gil Sampson (see below).

In her Affidavit #8, Lois Sampson produced an unsigned version of a 1989 Will, and demands from the Interim Committee (Ralph Palamarek) that he produce *for the Court* the original from the Patient's papers, or from the identified Notary Public.

Ralph Palamarek does not produce the original in his subsequent and final affidavit.

It would have been important for the court to see that signed document.

It is important for the court to have all relevant information so that it can make the best decision in keeping with the best interests of this 88-year-old senior.

Ralph Palamarek, a Canada Revenue Agency employee of long tenure, has a unique position in that he is currently vested with the authority of the Supreme Court of British Columbia in acting as the "interim committee" of his mother. In addition to his responsibilities as a litigant and candidate for "permanent" committee, but more importantly in his capacity as Interim Committee, Ralph Palamarek, instructed by legal counsel all along, is under an obligation to produce relevant documents to the other side *and to the Court*. He cannot pick and choose to produce those documents which only support his case. He cannot do this as a bare litigant and he certainly ought not to do so when he sits in the courtroom as a judicially-appointed Interim Committee pursuant to an adult guardianship statute.

If, as instructed by legal counsel throughout, Ralph Palamarek cannot find it within himself to produce a 1989 Will, this begs the question: what else has not been produced from the papers of the Patient?

Lois Sampson submits that Ralph Palamarek is under an ongoing duty to be completely forthcoming to the Supreme Court of British Columbia as that body wrestles with a sacred duty, that of assessing the best interests of an aging citizen, a decision heavy with consequence for Kathleen Palamarek who will be in the necessary result, permanently stripped of her unfettered rights to control her ingestion of medication, where she lives, when she gets out, whether she can have a telephone, what type of nightgown she sleeps in, and who she sees.

Delay and an Accounting

Ralph Palamarek was appointed Interim Committee on November 19, 2008: 24 months, or *two years ago*.⁷ Since that time, nothing has or could have ultimately stopped him from setting the Petitions down for a final hearing. Instead, there has been a constant refrain in previous court hearings that the delay between the interim order and the hearing date of November 22, 2010, has been due to Lois Sampson.⁸

⁷ Order is at Book 1, Tab 7 and the Reasons for Judgment, at Book 3, Tab 53, Exhibit A (Aff. of Tammy Ages).

⁸ See, for example, submissions made by counsel for Ralph Palamarek on May 13, 2010, Transcript, pages 49 et ss.

This suggestion is preposterous. Both the old and the new court rules unequivocally enable a litigant in these circumstances to set a matter down for hearing unilaterally. This is not an accident of the court rules; they were designed this way to prevent litigants from unduly delaying a final hearing. Indeed, it was those same Court Rules that Lois Sampson readily utilized to force the hearing of this matter for November 22. Although creative reasons have been provided by Ralph Palamarek, always without any evidence, suggesting that he would have preferred to have the matter set down earlier, the Case Planning Conference Order is telling:¶ 8(a) to (e) of the August 26, 2010 CPC Order shows that the setting of the November 22, 2010 date did not go by consent.

The point is that Ralph Palamarek has had the ability since November 2008, and certainly throughout 2010 to unilaterally set this down for a hearing or to do so with the assistance of the Court as Lois Sampson has done so diligently since June of 2010.⁹

Given that Ralph Palamarek is the interim committee and that he has had legal counsel throughout, although he has changed lawyers on occasion, and that, in the two years since the interim committee order, the matters have not been set down for this final hearing but, rather, it was Lois Sampson who initiated and pursued the November 22, 2010 date.

Ralph Palamarek appears to have been in no hurry to have a final hearing. He was content to "run with" the interim order even though interim orders are not designed to "go the distance". They are but "interim" or interlocutory and to bridge a gap ... to carry over until the matter can be set down for full hearing or trial.

Two years ago, in the aftermath of the interim guardianship order, Lois Sampson needed to make a court application to secure Christmas access in December 2008.¹⁰ Then, in July of 2009, she was required to make another court application, this time to have her mother medically assessed. These applications were contested by the Interim Committee even though no harm could be done to his mother by access with Lois Sampson or having an alternate medical assessment done. Further, as Interim Committee, Ralph Palamarek ought to have embraced the opportunity of further medical evidence; all of which would assist a court in making such a difficult decision; a decision which would be a challenge for a jury, let alone a judge limited to affidavit evidence.

In the result, in July 2009, the court ordered the medical assessments asked for by Lois Sampson.¹¹

But, when the doctor showed up for the assessment on August 24, 2009, the institution then and still caring for the patient (Broadmead Lodge in Victoria), refused to allow access by the Vancouver-based doctor named in the first medical assessment order saying they were not told of

⁹ A July 16, 2009 date had been made peremptory but was adjourned so Lois Sampson could get medical assessments. A new date was set to October 13, 2009 but was again adjourned when Ralph and Robert Palamarek hired new counsel just prior.

¹⁰ Consent Order at Book 1, Tab 8

¹¹ Book 1, Tab 9.

the assessment.¹² This roadblock and resulting delay ought to fall squarely on the shoulders of the Interim Committee as he had full authority to instruct the care institution on a timely basis in all regards as to the terms of the July 2009 court order.

The subsequent unnecessary and extraordinary hoops the Interim Committee wanted Lois Sampson to jump through to finally get her independent medical assessments are detailed in the affidavit of Boies-Parker.¹³

The resulting impasse, and Ralph Palamarek's change of lawyers obliged Kathleen Palamarek to lose the anticipated October 13, 2009 final hearing date and await yet another contested court application while Lois Sampson had to get an order for access to her mother for the purposes of relevant medical assessments by another doctor¹⁴ - more months lost.

In December of 2009, Lois Sampson's then-counsel sent two notices of motion to the Interim Committee but without any supporting affidavits although an affidavit was noted in the body of the notice of motion. Because of this, time was not running against the respondent Interim Committee.¹⁵

In January of 2010, petitioner Lois Sampson decided to proceed on a self-represented basis. She had a reasonable suspicion that the Public Guardian and Trustee would have demanded accounts on the anniversary of the interim committee order (November 2009), and especially since, as she presumed, the PG&T would be alive to the fact that the guardianship order was granted only on the comparatively limited judicial analysis inherent to any interim order. But the PG&T had made no such demand on Ralph Palamarek.

Lois Sampson then demanded a copy of those accounts from the Interim Committee. He refused.¹⁶ Obligated again to litigate, in her Affidavit #7¹⁷, Lois Sampson again raises several significant conflicts of interest of the Interim Committee (Ralph Palamarek) and his co-applicant for "final" committee order, Robert Palamarek. This affidavit was promptly delivered to the Public Guardian and Trustee and was the evidence behind an application for disclosure of those accounts, ultimately dismissed by the court on May 13, 2010.¹⁸

On June 25, 2010, Lois Sampson retained her present counsel. On July 8, 2010, Lois Sampson filed her Amended Petition. Although delivered to the Interim Committee and the Public Guardian and Trustee, no Response was provided by either.

¹² See the evidence at Book 2, Tab 55, para. 2 (Affidavit of Catherine Boies-Parker).

¹³ Ibid.

¹⁴ Book 1, Tab 13: the Order does not refer to or use the word "consent".

¹⁵ Book 3, Tab 60, paras. 23-27 (Aff. #7 Lois Sampson).

¹⁶ Book 3, Tab 60, Exhibit J, pages 60 and 61 (Aff. #7, LS).

¹⁷ Book 3, Tab 60, especially paras. 1-12.

¹⁸ Order at Book 1, Tab 14. That order appears to have been based on a questionable appreciation of the relevant law. The backbone of adult guardianship is trust law except to the extent it has been displaced by a statute. Instead, the Court, on May 13, 2010, was clearly of the view that Ralph Palamarek, in acting as an Interim Committee, was not a trustee. Ref.: Transcript of May 13, 2010, page 18, lines 20-25.

In her Amended Petition, Lois Sampson alleges that her mother is incapable of managing her estate or her person and she seeks guardianship of both.

The position she took in her January 2008 PPA Petition was that she be appointed committee *if* her mother was declared incapable. In her affidavit #1¹⁹ in support of her original petition in January 2008, Mrs. Sampson raises concerns about necessity of so much antipsychotic medication administered to her mother sometimes not for any other reason but to "manage" her. Further, the evidence shows, there are concerns that rather than be an alleviating factor for dementia, it necessarily diminishes thinking ability. Any child - indeed, any guardian - would want to be full aware and alive to the full gamut of consequences of such a medley of powerful anti-psychotic drugs upon their 88-year old mother.

In any event, she objects to the proposed guardianship of her brothers in part because they defer entirely to the medical opinions of the Broadmead Lodge staff doctors in spite of documented past issues with antipsychotic and other powerful drugs being over-prescribed to Kathleen Palamarek.²⁰

In further regards as to an accounting, there is no rule of law that a committee appointed pursuant to the *PPA* produce accounts at any set interval. This is regrettable as the discretion in setting those intervals now falls upon an agency of the executive branch of government, a provincial bureaucracy, the Public Guardian and Trustee of British Columbia, based in Vancouver. This confusion as to a deadline to produce accounts is exacerbated by the grant of adult guardianship within an interim order, something not directly contemplated anywhere within the four corners of the statute. Rather than encourage the PG&T to demand accounts, at least on the anniversary of the appointment, it has inexplicably had them hold off (until recently as show below).

The November 19, 2008 interim committee order contains some problematic elements:

- It omits appointing Robert Palamarek as joint interim committee. Ralph's Petition was made jointly with Robert.
- ¶4 of the Order, which must mean something, states: "No specific finding is made with respect to the termination of any representation agreements signed by Kathleen Palamarek before the date of this order." Presumably, this is a reference to §13(b) of the PPA which provides that "...unless the court orders otherwise, every representation agreement made by the person is terminated." Kathleen Palamarek had signed a Representation Agreement on December 12, 2006 appointing Ralph as her Representative. However, she revoked that agreement by a subsequent Representation Agreement dated October 27, 2008, for which Mrs. Palamarek received independent legal advice²¹ (unlike the 2006 Representation Agreement) and in which she appoints Lois

¹⁹ Book 2, Tab 23, paras. 98 to 107.

²⁰ Lois Sampson Affidavit #1, paras. 98-107, Book 2, Tab 23.

²¹ Book 3, Tab 60, page 51.

Sampson as her Representative. Kathleen Palamarek adds, in her October 27, 2008 Representation Agreement, that it is effective immediately.²²

According to the Public Guardian and Trustee *Private Committee Handbook* (2006):

“As Committee, you must present your accounts to the Public Guardian and Trustee for approval at intervals set by our office. These intervals will be referred to in correspondence you will receive from our office. Your first reporting period will usually be for one year after your appointment.”²³

Thus, in the early Spring of 2010, Lois Sampson asked the PG&T about the status of their anticipated demand for accounts from the Interim Committee. In a letter dated April 27, 2010 and although not forming part of the sworn evidence before the court, nonetheless handed up to the court during the hearing of May 13, 2010, the PG&T confirm the 1-year interval but otherwise "taking no position" on the application that the Interim Committee produce accounts.²⁴ Subject to objections made by the Interim Committee as to the production of this letter, it is proposed to produce this letter to the Court.

Further, on September 24, 2010, almost a month before the last affidavit of the Interim Committee, the PG&T revealed to Lois Sampson that it *had* demanded, and *had received*, the accounts of the Interim Committee. As to when these accounts were submitted, we do not know but the Interim Committee obviously knows but he's not inclined to share that information with the Supreme Court of British Columbia. Again, subject to objections made by the Interim Committee in regards to the production of this letter, it is proposed to show that letter to the Court.

Lois Sampson has never alleged fraud on the part of either of the other two applicants for committeehip of the estate of their mother. But she has, most recently in her Affidavit #7, clearly established a real conflict of interest as well as monies and income which have not been reported upon since the initial so-called "Affidavit of Kindred and Fortune In Support of Motion For Appointment of a Committee" sworn by both brothers on July 16, 2007: over three years ago.

Ralph has made clear by his words and actions that he is unable to take care of his mother *in her residence*. But he and his wife Donna Palamarek live in his mother's residence which has become, to him and his wife, as important as a *home* is to any individual. Naturally, he would not want to compromise what has become his home. That is in his personal interest and it conflicts with Kathleen's.

In the meantime, Kathleen Palamarek has been obliged, by her son's decisions, to live outside of a home, in care institutions, and this since November 22, 2006: a total of *four years*. In those four

²² "4. EFFECTIVE DATE This agreement becomes effective when my health care representative, Lois Joan Sampson and I have both signed it." Book 3, Tab 60, Aff. #7 LS, at page 46.

²³ Public Guardian and Trustee of British Columbia, *Private Committee Handbook*, 2006, page 16 (<http://www.trustee.bc.ca/pdfs/STA/PCS%20Handbook%20-%20July%202006.pdf>)

²⁴ May 13, 2010 Transcript, page 19.

years, Ralph Palamarek has not moved out of his mother's house to rent to a third-party. He is still there today.

It remains a mystery as to whether or not he is paying rent. In his affidavit #2, Ralph says that he and his wife "paid rent" up to April 15, 2003.²⁵ He does not say how much he paid or when the rental payments started. More troubling, in the evidence, he makes no mention of rental payments in his first affidavit but only discloses it in response to the allegation of Lois Sampson sworn on January 18, 2008.

In the summary accounting provided at exhibit C to his first affidavit, Ralph Palamarek makes no mention of any rental payments from him to his mother's bank accounts. He does not say if he so much as pays her property taxes for her every year as at least a token contribution, or what proportion if any, they might share in terms of the payment of utilities or house or content insurance. We have no accounts so as far as the Supreme Court of British Columbia goes at this final *PPA* hearing, and according to Ralph Palamarek and his brother Robert, "who" pays for "what" should be left to the confidential discretion of Ralph Palamarek.

Then, apparently out of the blue, starting in November 2008, he starts to pay \$1600 a month rent. This, he alleges, at ¶13 of his June 26, 2009 Affidavit #5.²⁶

In his Affidavit #6 sworn three days later, on June 29, 2009, he provides what is his last evidence on his guardianship of the estate by exhibiting a cursory document dated June 4, 2009 entitled "Kathleen Palamarek Current Finances". According to that document, property taxes and home insurance are charged to his mother. There is no mention of any investment income notwithstanding the \$110,000 (approx.) on financial holdings alleged in July of 2007.²⁷

Further, those 2007 financial statements sworn to be true by both Ralph and Robert Palamarek, omit any mention of a \$31,000 loan still outstanding and payable by Robert to his mother. No reason for this significant omission was given by Robert when he was challenged on this by his sister in her Affidavit #1 at ¶80. But required to address this, then, Robert deposes that the loan was \$34,000 and was granted with a significant level of conditions including an amortization period (12 years) and a set interest rate (5%).

What the money was for ... whether this is set down in writing somewhere ... we are not told. What we are told is, according to Robert, on what appears to be March of 2002, his mother "called" him to tell him he did not have to pay any more and he could just deduct the amount owing from his inheritance. Again, no document or reason has been produced to support any of this other than the bare allegation of it in Robert's Affidavit #2, and nothing more, even though his co-applicant, brother Ralph Palamarek has had unfettered access to their mother's financial records since at least "the fall of 2006".²⁸

²⁵ Book 2, Tab 27, at ¶ 5.

²⁶ Book 2, Tab 49.

²⁷ Ralph and Robert Aff. #1, Book 2, Tab 18, Exh. C.

²⁸ In his Affidavit #2, at Book 2, Tab 27, Ralph says: "By the Fall of 2006, I was using the power of attorney ... on a regular basis...."

In her very first affidavit in January 2008 but especially as summarized in her affidavit #7, ¶10, Lois Sampson asks for an accounting on the sale of *two pleasure boats* made on behalf of her mother by Ralph Palamarek which do not appear to have ever been reported or for which an accounting has ever been provided.

So, Ralph Palamarek now comes before the court without any accounting of his tenure. For that, he will seek to shield himself with *res judicata* - the May 2010 order of the court which dismissed the application of Lois Sampson that he produce such accounts.²⁹

He cannot say that it would be an onerous duty for him to prepare accounts for the court since they already exist and appear to have been provided to the Public Guardian and Trustee.

Ralph Palamarek wants to have his interim committee order converted into a final order but would prefer to have that order made without disclosing to the court any status report as to the estate of Kathleen Palamarek in spite of a 2-year tenure as, on behalf of the Supreme Court of British Columbia to whom he ultimately reports, as manager of his mother's estate.

Lois Sampson says that Ralph Palamarek must show his accounts to the court - that the Court ought to see these to address, if it can be done, the real and substantial conflict of interest issues which have been raised.

In addition to her other concerns, Lois Sampson says that, under all the circumstances, for the interim committee to rely on out-dated accounts and to fail to provide recent accounts where such accounts are readily available, is irresponsible and not in keeping with the properly managed tenure of a guardian of another's estate pursuant to the *Patients Property Act*, and augurs poorly for the estate of Kathleen Palamarek in the future under Ralph or Robert Palamarek.

Signed in Victoria on this 16th day of November, 2010 by Lloyd Duhaime, lawyer for Lois Sampson.



Lloyd Duhaime

²⁹ Followed by Justice Metzger in October of 2010 at the last CPC.