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David Sutherland	David F. Sutherland & Associates	(604) 737-8655
<b>From:</b>	<b>Telephone:</b>	<b>Date:</b>
David Gooderham	(604) 484-1788	November 24, 2010
<b>Sender:</b>	<b>Matter Number:</b>	<b>Pages (incl. cover):</b>
Janice Lam	1116396	10
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**ORIGINAL TO FOLLOW**

**Re: Sampson v. Scaletta and Vancouver Island Health Authority  
SCBC Action No. 10 3097, Victoria Registry**

Please see attached.

**IF YOU DID NOT RECEIVE OR CANNOT CLEARLY READ ALL PAGES,  
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**ALEXANDER  
HOLBURN BEAUDIN  
& LANG LLP**

*Barristers & Solicitors • Trade-mark Agents*

Suite 2700-700 West Georgia Street, Vancouver, BC, Canada V7Y 1B8 Tel: 604-484-1700 Fax: 604-484-9700

November 24, 2010

**VIA FAX**

Reply to: David A. Gooderham  
Direct Line: (604) 484-1788  
Direct Fax: (604) 484-9788  
E-mail: dgooderham@ahbl.ca  
Matter No.: 1116396

David F. Sutherland & Associates  
Barristers & Solicitors  
2000 Ontario Street  
Vancouver, BC V5T 4W7

**Attention: David Sutherland**

Dear Sirs/Mesdames:

**Re: Sampson v. Scaletta and Vancouver Island Health Authority  
SCBC Action No. 10 3097, Victoria Registry**

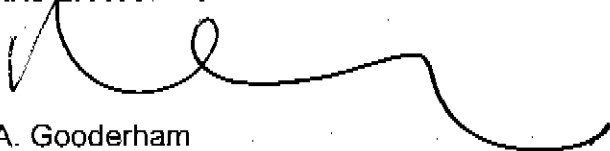
Please find enclosed for service upon you the Response of Civil Claim filed on behalf of the Defendants Giuseppe Scaletta and Vancouver Island Health Authority dated November 22, 2010.

Kindly acknowledge receipt of same by signing and returning the enclosed copy of this letter to the attention of the writer.

Yours truly,

**ALEXANDER HOLBURN BEAUDIN & LANG LLP**

Per:



David A. Gooderham

DG/jl

Enclosure - Response

ALEXANDER  
HOLBURN BEAUDIN  
& LANG LLP

Barristers & Solicitors • Trade-mark Agents

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Per:

David A. Gooderham

DG/jl

Enclosure - Response

<p>Service/Delivery of a true copy hereof admitted this ____ day of _____, 2010.</p> <p>_____</p> <p>Solicitor for the _____</p>
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NO. S-107065  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Lois Sampson

PLAINTIFF(S)

AND

Giuseppe Scaletta, Vancouver Island Health Authority, Ralph Palamarek, Robert  
Palamarek, Ernest Palamarek

DEFENDANT(S)

**RESPONSE TO CIVIL CLAIM**

**Filed by: Giuseppe Scaletta and Vancouver Island Health Authority,  
(the "Defendants")**

**Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Defendants' Response to Facts**

1. The facts alleged in paragraphs 1, 2, and 3 of Part 1 of the Notice of Civil Claim are admitted with the exception that the alleged fact that the Plaintiff is a retired business management consultant is outside the knowledge of the Defendants.
2. The Defendants deny the facts alleged in paragraphs 7, 8, 25 – 30, 35, 36, 50 and 51.
3. The facts alleged in paragraphs 4, 5, 6, 9 - 24, 31 - 34, and 42 – 49 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendants.
4. In answer to the facts alleged in paragraph 37 of Part 1 of the Notice of Civil Claim, the Defendants admit that on Thursday, October 30, 2008 in electronic correspondence sent to Dr. Michael Cooper, Dr. Janet Mak, and Jessica Celeste (hereinafter "the October 30, 2008 e-mail"), the Defendant, Giuseppe Scaletta, an officer and employee of defendant VIHA and in that capacity, published the following words concerning the Plaintiff, Lois Sampson:

**"The daughter who removed this lady from Broadmead has a history of schizophrenia and does not believe in medications."**

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5. It is further admitted that the Defendant, Giuseppe Scaletta, also published in the October 30, 2008 email with the following words:

"I believe that this is an abuse/neglect situation what warrants some intervention on our part."
6. The Defendants deny that the statements in the October 30, 2008 email were made falsely and maliciously.
7. In answer to the facts alleged in paragraph 39 of Part 1 of the Notice of Civil Claim, the Defendants say that the words in the October 30, 2008 email were understood to mean that the Plaintiff suffers from a mental disorder, namely schizophrenia or that she had suffered from schizophrenia.
8. The Defendants admit that the words in the October 30, 2008 email meant that the Plaintiff was neglecting her care, but deny that the words meant that Lois Sampson was physically abusing Kathleen Palamarek and deny the words meant that the Plaintiff would knowingly compromise the health of her mother. The Defendants admit that the words in the October 30, 2008 email meant that it was detrimental to Kathleen Palamarek's health and safety for her to be in the company of or care for by Lois Sampson.
9. In further answer to paragraph 37 of Part 1 of the Notice of Civil Claim, the Defendants admit that on October 30, 2008 Jessica Celeste, in her capacity as a VIHA employee, further communicated and circulated the October 30, 2008 email to Dr. Frank Loomer by forwarding the email to Dr. Loomer. The Defendants deny that Jessica Celeste published the email to Dr. Loomer falsely and maliciously.
10. In answer to the facts alleged in paragraph 40, the Defendants admit that on October 30, 2008 Jessica Celeste, an employee of the Defendant VIHA, stated to the police that Kathleen Palamarek had been without her medication since October 27, 2008, or words to that effect. The Defendants deny the other facts set out therein and deny that the words communicated by Jessica Celeste to the police conveyed the meanings set out in paragraph 41 of the Notice of Civil Claim.
11. The Defendants deny the facts alleged in paragraph 50.
12. The Defendants deny the facts alleged in paragraph 51.

#### **Division 2 – Defendants' Version of Facts**

1. The Defendant Scaletta sent an email dated October 30, 2008 to Dr. Michael Cooper, Dr. Janet Mak, and to Jessica Celeste. The full content of the e-mail provided the context for the words complained of, and the full text of the email will be referred to at trial.

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2. At all material times the Defendant Scaletta was the coordinator of the Elderly Outreach Service for the Defendant Health Authority.
3. Jessica Celeste is a registered nurse and an employee of the Defendant Health Authority. At all material times she was a member of the Transition Team assigned responsibility to carry out urgent clinical assessments of elderly patients for the Defendant Health Authority. On October 30, 2008 Jessica Celeste in her capacity as a member of the Transition Team was assigned responsibility to coordinate an urgent clinical assessment of Kathleen Palamarek (hereinafter "Palamarek") scheduled to take place on October 31, 2008.
4. Upon receipt of the October 30, 2008 e-mail from the Defendant Scaletta, Jessica Celeste forwarded a copy of the email to Dr. Loomer, a physician who was scheduled to be on duty on the following day, October 31, 2008, on which date it was anticipated that he would conduct a medical assessment of Palamarek.
5. The complained of words contained in the October 30, 2008 email were communicated to medical professionals experienced in matters of mental health and were not capable of conveying any defamatory meaning, and did not convey any meaning defamatory of the Plaintiff. Furthermore the email in question was communicated solely to the four recipients who received the email in connection with their professional work, and the complained of contents had no impact on the character, credit or reputation of the Plaintiff.
6. The words in their natural and ordinary meaning were not capable of and did not in fact mean that the Plaintiff would knowingly compromise the health of her mother, Kathleen Palamarek. The words meant that the Plaintiff had in the past a history of suffering from schizophrenia and that the recipients should be aware that the Plaintiff's conduct could be affected by that condition and meant and were understood to mean that the Plaintiff was not or may not be providing medications to Palamarek.
7. The Plaintiff has a history of having suffered from schizophrenia and by her actions has demonstrated a lack of confidence in prescribed medication and a disinclination to follow medical instructions to take medication.

#### **Division 3 – Additional Facts**

1. The Plaintiff is the daughter of Palamarek. Palamarek is also the mother of Ralph James Palamarek and two other sons.
2. From in or about December 2006 to August 2007 Palamarek was a patient in Saanich Peninsula Hospital initially in the emergency care unit, and thereafter in acute care and in the geriatric care wing of the hospital. In or about August 2007 Palamarek became a resident at a long-term care (LTC) facility known as the Lodge at Broadmead (hereinafter "Broadmead"), where Palamarek was a patient with a diagnosis of dementia complicated by depression and psychosis.

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3. Differences arose between the Plaintiff and Ralph James Palamarek with respect to the appropriate care for Palamarek. In or about July 2007 the Plaintiff commenced a proceeding in the Supreme Court of British Columbia pursuant to the *Patients Property Act*, R.S.B.C. 1996 c. 349 to be appointed committee of Palamarek. The application by the Plaintiff was opposed and contested by Ralph James Palamarek, and as of the end of October 2008 no committee had been appointed with respect to the person or property of Palamarek.
4. On or about October 27, 2008 a lawyer acting on the instructions of the Plaintiff informed Broadmead that he had been appointed to represent Palamarek, and Palamarek at the direction of the Plaintiff was removed from Broadmead and taken to the Plaintiff's home. At the time Palamarek was removed from Broadmead, the Defendant Health Authority had knowledge that Palamarek had a diagnosis of dementia complicated by depression and psychosis, and she was taking the medications Olanzapine and Citalopram for depression and psychosis. Palamarek was removed from Broadmead without medical advice.
5. On or about October 30 the Defendant Health Authority was informed that the Plaintiff had removed Palamarek from Broadmead. The Defendant Health Authority through its employees was informed that there were serious concerns that Palamarek following her removal from Broadmead was not being provided with the medications she required, and that following her removal to the Plaintiff's residence, Palamarek was not receiving adequate care having regard to her medical condition. The Defendant Health Authority was informed that the Plaintiff had a history of schizophrenia and that the Plaintiff did not believe in taking prescribed medicines. In particular the Defendant Health Authority received information that a physician who had previously attended on Palamarek was concerned that, following her removal from Broadmead, Palamarek was no longer receiving her prescribed medications and that a failure to prescribe her medications could hasten death, and that a failure to take medications could result in unmanageable pain and withdrawal symptoms.
6. The Defendant Health Authority and its employees were informed of information concerning the circumstances of Palamarek as set out in paragraph 5 above by persons who purported to be knowledgeable about the circumstances of Palamarek.
7. At all material times the Defendant Scaletta was the coordinator of the Elderly Outreach Service for the Defendant Health Authority.
8. The Defendant Health Authority on October 30, 2008 through its coordinator of Elderly Outreach Service, the Defendant Scaletta, made a decision that Palamarek should be referred to the Health Authority's Transition Team to be urgently assessed, because it was believed that as a result of her removal from Broadmead and the possible interruption of her medications that Palamarek's health may be at serious risk. A decision was made that in order to protect the health and interests of Palamarek that Dr. Janet Mak, a physician and member of the Elderly Outreach Service, would attend at the Plaintiff's residence on October 31, 2008 to assess

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Palamarek and if appropriate to take Palamarek to Royal Jubilee Hospital to meet with Dr. Michael Cooper, a geriatric psychiatrist, for the purposes of an assessment. Jessica Celeste, a registered nurse and an employee of the Defendant Health Authority, was responsible for coordinating the assessment scheduled to take place on October 31, 2008.

9. In his capacity as coordinator of the Elderly Outreach Service for the Defendant Health Authority, the Defendant Scaletta had a duty and interest to ensure that physicians and medical professionals who were undertaking to conduct an assessment of Palamarek on October 31, 2008 were informed of any information in the possession of the Health Authority that was relevant to ensuring that the health and safety of Palamarek was protected. The Defendants Scaletta and VIHA at the material time were in possession of information that the Plaintiff had a history of schizophrenia and that she did not believe in medications. The Defendants Scaletta and VIHA were in possession of information that Palamarek was not receiving her required medications. The Defendant Scaletta believed that this information should be furnished to the medical professionals who would be assessing Palamarek on October 31, 2008. In sending the October 30, 2008 e-mail the Defendant Scaletta was acting in good faith and without malice.
10. The Defendant Scaletta had a duty and interest to furnish to the medical professionals carrying out the assessment on October 31, 2008 all information in the possession of the Defendant Health Authority that he believed to be germane to ensuring that Palamarek's health was adequately protected, and in particular to ensure that the medical professionals made an informed determination as to whether Palamarek had been receiving her required medications.
11. Dr. Michael Cooper, Dr. Janet Mak, Jessica Celeste, and Dr. Loomer all had a legitimate interest to receive the email dated October 30, 2008 sent by the Defendant Scaletta.
12. That in the course of preparing to attend at the Plaintiff's residence on October 31, 2008 to assess Palamarek, Jessica Celeste who had been assigned responsibility to coordinate an urgent clinical assessment of Palamarek contacted the police to advise the police of the intended intervention.

## **Part 2: RESPONSE TO RELIEF SOUGHT**

1. The Defendants oppose the granting of the relief sought in paragraphs 1, 2, and 3 of Part 2 of the Notice of Civil Claim.

## **Part 3: LEGAL BASIS**

1. The words complained of are not capable of any meaning defamatory of the Plaintiff and are in fact not defamatory of the Plaintiff.



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2. The complained of words set out in the email dated October 30, 2008 were published on an occasion of qualified privilege, particulars of which are set out in Division 3 above.
3. Further and in the alternative, the complained of words are true in substance and in fact.
4. With respect to the relief sought in paragraph 3 of Part 2 of the Notice of Civil Claim, it is respectfully submitted that this Honourable Court has no jurisdiction to make an Order requiring the Defendant Health Authority to publish a notice as sought in the relief.
5. This action against the Defendant Scaletta is barred by section 60.1(1) of the *Adult Guardianship Act*, RSBC 1996 Chapter 6.
6. The Defendants Health Authority and Scaletta plead and rely on the provisions of section 46(1), (2), and (3) of the *Adult Guardianship Act*, RSBC 1996 Chapter 6.
7. By reason of the provisions of section 46(2) of the *Adult Guardianship Act* the Defendants by law are not permitted to disclose the identity of any person or persons who provided information to the Defendant VIHA, or to the Defendant Scaletta or Jessica Celeste in her capacity as an employee of the Defendant Health Authority concerning the circumstances of Palamarek.
8. Information that the Defendants Health Authority and Scaletta and Jessica Celeste received from persons concerning the circumstances of Palamarek was information indicating that Palamarek was abused or neglected within the meaning of the *Adult Guardianship Act* and that Palamarek was unable on her own behalf to seek support and assistance. The Defendant Health Authority is a designated agency under the provisions of the *Adult Guardianship Act* and having received the information concerning the circumstances of Palamarek it was under a mandatory duty to investigate the circumstances in order to protect the health and welfare of Palamarek.
9. In answer to the alleged claim based on negligence, the Defendants in the circumstances were under no duty of care to investigate or to make inquiries to ascertain the accuracy of information that had been communicated to them concerning the circumstances of Palamarek.
10. In further answer to the claims made for injurious falsehood, intentional infliction to mental distress and suffering, and intentional infliction of economic loss of damage the Defendants Scaletta and VIHA at all material times acted in good faith, without malice, and without any intention to cause injury or loss to the Plaintiff.
11. The Defendants deny the matters alleged in paragraphs 3(a) to (l) inclusive of Part 3 of the Notice of Civil Claim.

- 12. It is admitted that the Defendant Scaletta acted as an agent of the Defendant VIHA the publication of the October 30, 2008 e-mail.
- 13. It is admitted that Jessica Celeste, an employee of the Defendant VIHA acted as an agent of the Defendant VIHA in forwarding a copy of the October 30, 2008 e-mail to Dr. Loomer, and acted as an agent of VIHA in informing the police that the intervention was going to take place.

Defendants' address for service:

Alexander Holburn Beaudin & Lang LLP  
2700 – 700 West Georgia Street  
Vancouver, BC V7Y 1B8

Fax number address for service (if any): 604-484-9700

E-mail address for service (if any): N/A

Dated: November 22, 2010



Signature of

Defendant  lawyer for Defendant(s)

David Gooderham

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.