

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *PATIENTS PROPERTY ACT*
R.S.B.C. 1996, CHAPTER 349 AS AMENDED

-AND-

IN THE MATTER OF KATHLEEN PALAMAREK, PATIENT

BRIEF OF ARGUMENT OF LOIS SAMPSON

Prefatory Note:

1. This is an interlocutory hearing. In the main proceeding, Ms. Sampson has not yet replied to the affidavits of her brothers in relation to her Petition. Accordingly, whatever the result of this interlocutory hearing, the record should be clear that not all the evidence is before the court at this time.

Topics That Will be Covered in Oral Argument:

2. The following topics will be addressed by Ms. Sampson in oral argument:
 - (a) Mrs. Palamarek has consistently been saying, for a period of months, that she no longer wishes to live in the Lodge at Broadmead (the "Lodge"), that she wants to live in her home, and that she wants Lois to look after her;
 - (b) The Representation Agreement executed by Ms. Palamarek on October 27, 2008 is a reflection of her wishes, as supported by strong and independent evidence;

(c) Lois has demonstrated the love and affection that qualifies her to be appointed committee. She is prepared to care for her mother, at her own expense, in her own home, pending the outcome of this proceeding.

(d) The accusation of Lois' brothers that she is anti-conventional medicine and anti-medication, and that she would take her mother off her medications, is nothing but scare-mongering without foundation;

(e) Ralph Palamarek is in a position of conflict; he and his wife are living in his mother's home rent-free;

(f) Robert Palamarek is not a suitable committee because, *inter alia*, he lives in Alberta and visits Victoria only two or three times per year; further, in his first Affidavit he failed to disclose one of the estate's assets – money he owes his mother;

(g) The Palamarek brothers have tried to limit Lois' access to her mother, have routinely failed to share information with her, and have actively tried to poison staff at the Lodge so that staff do not treat Lois the same way they treat the brothers, all of which suggests they are unfit to be committees;

(h) The brothers have turned Dr. Nicoll into a partisan in this proceeding and Dr. Nicoll has rendered opinions which he should not have rendered. Further, Dr. Nicoll's invocation of the *Mental Health Act*, which appears to have been jointly planned with the brothers, appears to have been more a tactic to get Mrs. Palamarek away from Lois than a reflection of any mental health concerns requiring Mrs. Palamarek's involuntary committal;

(i) The application by the brothers for interim committee is not an appropriate response to Mrs. Palamarek's execution of a new Representation Agreement. If the brothers want to challenge the new Representation Agreement, there is a process under the *Representation Agreement Act* for doing so;

(j) When Ms. Sampson moved her mother into her own home, she did everything necessary to look after her mother's health and acted very responsibly to ensure her mother's well being;

(k) There is no need for a committee to be appointed on an interim basis. There is no urgency. It has been well over a year since the brothers filed their petition and in the interim the existence of a Representation Agreement has sufficed;

(l) If the court decides to appoint an interim committee, and concludes for any reason that the committee should not be Lois, then the PGT should be appointed on an interim basis.

Background

3. Lois Sampson is a retired management consultant with experience leading operational reviews and strategic planning projects for hospitals, long-term care organizations and government ministries. See Affidavit #1 of Lois at para. 5-7 (TAB 14).
4. Lois's husband Gil is a consultant who designs information systems for the Provincial and Federal Governments for the health care sector, and in particular has designed clinical and administrative systems for health care delivery. See Affidavit #1 of Lois at para. 8.
5. It was in late 2006 that Mrs. Palamarek was hospitalized as a result of internal bleeding and a fall she suffered: see Affidavit #1 of Lois at para. 59 (TAB 14). At that point, Mrs. Palamarek was living in her home with Ralph and Ralph's wife who were helping to look after her.
6. Prior to Mrs. Palamarek's hospitalization, Lois and Ralph got along well. See Affidavit #1 of Lois at para. 58 (TAB 14).
7. However, in early December, 2006, relations between them started to strain when a difference of opinion arose between them as to where Mrs. Palamarek should live when she was discharged from the hospital.

See Affidavit #1 of Lois at Exhibits "M" and "N"

8. These documents show that Ralph had concluded that Mrs. Palamarek should live in long-term care, and should stay in the hospital until an opening in a long-term care

facility became available, whereas Lois wanted the family to explore having a live-in caregiver for Mrs. Palamarek so she could stay in the comfort of her own home.

9. It was immediately following this exchange that the first Representation Agreement was signed, December 12, 2006. Yet Ralph never told Lois that he was going to have his mother sign a Representation Agreement, and kept the existence of it hidden from Lois for the next nine months. Lois did not become aware of the Representation Agreement until she was served with her brothers' Petition in September of 2007.

See Affidavit #1 of Lois at para. 76

10. Mrs. Palamarek was kept at Saanich Peninsula Hospital for approximately 8 months until a room became available at the Lodge at Broadmead in August of 2007.
11. In July of 2007, Lois wrote a letter to her brother Robert which expressed grave concern about the fact that their mother was being kept at the hospital, and which aimed to reach out to Robert to have him discuss with Lois options other than having their mother live in an institution. The letter was written before the litigation commenced, and it is evidence of how attentive Lois was to her mother's situation, and that she was trying to promote dialogue with her brothers about their mother's situation. She hand-delivered the letter to Robert on July 15, 2007 (their mother's birthday). Robert never replied to the letter. The next day, he swore the affidavit of Kindred and Fortune.

See Affidavit #1 of Lois at para. 81 at Exhibit "O"

See Affidavit of Robert #2 at para. 28 (TAB 17)

12. Even though it was obvious by the summer of 2007 that Lois and her brothers had a difference of opinion as to whether their mother should return to live in her home, and even though Ralph and his wife continued to live in their mother's home rent-free, Ralph and Robert failed to disclose Ralph's potential conflict in their first Affidavit.

See Affidavit of Kindred and Fortune at TAB 9, para. 10.

13. Lois had to raise the issue in her first Affidavit. See Affidavit #1 of Lois at para. 71.

14. Ralph's answer on this issue is given in his Affidavit #2 (TAB 18) at paragraph 5. His answer is deficient and fails to explain why he and his wife continue to not pay rent even though they have not been tasked with the day-to-day care of Mrs. Palamarek for close to two years now.
15. On the issue of deciding where it would be best for Mrs. Palamarek to live, Ralph is in an obvious conflict since he and his wife have a self-interest in Mrs. Palamarek not returning to her home (regardless of whether his motives are pure). The magnitude of that conflict is revealed by the evidence of Ms. Pickup and Ms. England, discussed below, and by the instructions received by Mr. John Jordan from Mrs. Palamarek.
16. Robert Palamarek was not ever his mother's Representative. He lives in Alberta and only visits Victoria periodically. See Affidavit #2 of Robert (TAB 17) at para. 5. Robert owes his mother money, and he failed to disclose this fact when he listed his mother's assets in his first Affidavit. Lois had to raise this in her Affidavit before particulars of this loan were given. See Affidavit #2 of Robert at para. 27 (TAB 17).
17. It has been Lois' concern ever since the exchange of emails in December of 2006 that Ralph has failed to provide her information about her mother's care and has tried to shut her out of the decision-making process in relation to their mother.

Affidavit #1 of Lois at para. 85-94 (TAB 14)

18. Examples include:

- the brothers did not advise Lois of the Representation Agreement and she did not know of it until she was served with the brothers' Petition;
- the brothers did not advise Lois of their decision in July 2007 (or earlier) that they were going to apply for committeehip and never discussed this with her. They simply served her with the court documents in September of 2007;
- Lois found out about her mother's transfer from the hospital to the Lodge by accident when she was at the hospital. Her brothers had not informed her;
- the brothers' failure or refusal to discuss with Lois the option of having Mrs. Palamarek live assisted outside the institution; and

- the brothers' refusal to provide Lois with an accounting of Mrs. Palamarek's income and assets (see Affidavit of S. Matheson at Exhibit "A").

19. Further, the brothers have repeatedly refused to allow Lois to take her mother to an independent physician of Lois's choice. The result has been that the brothers have, throughout this litigation, maintained a monopoly over the medical evidence.

See, for example, Exhibit "C" and paragraph 5 of Ms. Matheson's Affidavit

20. Lois did not know the full extent of Ralph's efforts to shut her out until the documents of the Lodge were produced. The key documents in this regard are the Progress Notes which are attached to the Affidavit #2 of Ms. Sudbury (TAB 29), who is the Director of Care at the Lodge. This is addressed in the next section of the Argument.

The Poisoning of Lodge Staff and the Partisanship of the Lodge and its Resident Doctor

21. The Progress Notes are a stunning record of how Ralph and his brothers have attempted, behind Lois's back, to demonize her in the eyes of staff at the Lodge and to undermine her ability to have normal relations with her mother's care givers. The notes further show a concerted effort by Ralph to try to limit Lois's access to her mother. See, for example, the following entries in the Progress Notes:

- (a) 8/13/2007 at 14:25 (the day Mrs. Palamarek was admitted to the Lodge);
- (b) 8/15/2007 at 22:26;
- (c) 9/5/2007 at 14:01;
- (d) 9/5/2007 at 19:32;
- (e) 9/10/2007 at 09:47;
- (f) 10/3/2007 at 14:13;
- (g) 10/3/2007 at 16:06;
- (h) 11/27/2007 at 21:38;

(i) 12/14/2007 at 14:46;

(j) 1/13/2008 at 14:33;

(k) 3/4/2008 at 21:27;

and numerous other entries.

22. The notes show that the brothers, primarily Ralph, have repeatedly said to staff that Lois is a danger to her mother because she does not believe in conventional medication and will throw out her mother's medication, and that she has engaged in a history of abuse toward her mother. The brothers also paint Lois as unstable and that there may be a need for staff at the Lodge to call the police to remove Lois.

23. Lois was completely unaware that this campaign to paint her in this fashion, and limit her access to her mother, was taking place. This all took place after the brothers had decided to Petition for Committeeship and continued while this litigation has been underway, yet Lois has had no opportunity before now to respond to any of the allegations and innuendo.

24. Lois has responded to the Progress Notes in her Affidavit #3 (TAB 35) at paragraphs 60-67 and says the statements of her brothers are full of falsehoods and wrongful innuendo.

25. In response to a concern expressed by Lois in her first affidavit that hospital staff were not always friendly toward her, Ralph swore in his second affidavit as follows:

“I have no idea why the staff at the SPH or the Lodge would be unfriendly to Lois, unless it was because of Lois' attitude and manner toward them”

See Affidavit #2 of Ralph at para. 32(c) (TAB 18)

26. It is submitted that this statement is disingenuous in light of the content of the Progress Notes.

27. Other reasons why Ralph's evidence cannot be believed are revealed by the Progress Notes. For example, in his Affidavit #3 Ralph says that when a private room became

available at the Lodge for Mrs. Palamarek in the Spring of 2008, his mother was “definite that she wanted a private room” (see TAB 23 at para. 12). Yet the Progress Notes of May 7, 2008 at 15:04 state as follows:

“Resident’s son Ralph called re possibility of transfer of resident to private room. He wished to consult with his family first. Consultation occurred including a phone call from his brother to resident. According to Ralph, resident indicated that she was happy staying where she was for now and family are supportive”.

28. A further example is Ralph’s evidence in his Affidavit #3 at paragraphs 10, 11 and 17 where he testifies that his mother has always expressed to him the view that she would like to live in the Lodge. This is contradicted by the Progress Note at 6/8/2008 at 23:16.
29. Further evidence of Ralph potentially misconducting himself comes in the Affidavit #1 of Carol Pickup, a Senior’s advocate who met with Mrs. Palamarek a number of times. Ms. Pickup swears that Mrs. Palamarek told her that Ralph said to his mother that if she went to live with her daughter Lois, that Ralph and his brothers would not longer come visit her.

Affidavit of Pickup #1 (TAB 19) at para. 14.

30. On the issue of Mrs. Palamarek expressing her wish that she no longer live in the Lodge, see also the following Progress Note entries:

- 6/9/2008 at 16:40;
- 6/29/2008 at 22:19;
- 8/17/2008 at 08:37; and
- 8/28/2008 at 22:40.

31. Ralph and his brothers have tried to paint Lois, both in this litigation and to staff at the Lodge, as someone who is radical in her views of the medical system and in her views of medication. This is baseless demonizing and is demonstrably false on the only objective evidence available. Before this litigation began, at a time when Ralph and Lois were still getting along, there was an exchange between them in relation to a medication that their mother was on known as Zyprexa. That exchange, to be reviewed in oral argument, provides the best evidence of Lois' approach to the issue of medications.

See Affidavit #1 of Lois at Exhibit "Z"

See Affidavit #1 of Lois at paragraph 96(e) and 98-107.

32. The brothers' misguided view of Lois' approach to medications seems clearly to have been a factor in Mrs. Palamarek's involuntary committal under the *Mental Health Act*. However, again the Progress Notes show this worry was misplaced. Dr. Nicoll is reported as saying on October 31, 2008 at 16:57, that "Kay has probably had all of her medications over the past few days including the Fentanyl patch changed yesterday".

Affidavit #3 of Fiona Sudbury, TAB 34 at Exhibit "B".

33. In his campaign to discredit Lois and attempt to limit her access to her mother, Ralph was able to make a partisan out of Dr. Nicoll. Dr. Nicoll's Affidavit #1 contains opinions relating to Lois that are obviously outside his expertise and role, are groundless, and were made solely on the basis of information obtained from one party in this litigation.

See Affidavit #1 of Dr. Nicoll (TAB 12) at para. 9 and 10.

34. The lawyer who commissioned Dr. Nicoll's Affidavit, who acts for Ralph and his brothers, is on the Board of Directors of the Lodge. See Affidavit #1 of Susan Matheson at Exhibit "B" [to be handed up]. It is not suggested that this puts Horne Coupar in a position of conflict. Rather it is suggested that this adds to the appearance that Dr. Nicoll, in giving such an affidavit, has lost his independence.

35. The partisanship of the Lodge is further exemplified by the Affidavit evidence of Ms. Sudbury. For example, why would Ms. Sudbury testify in her Affidavit #3 that after Mrs. Palamarek returned to the Lodge after being involuntarily committed, Mrs. Palamarek stated it was “good to be home again”, when in her Affidavit #1 (filed to oppose the appointment of a Friend of the Court) she testified, in essence, that one cannot trust anything Mrs. Palamarek says because of her condition.

Affidavit #3 of Fiona Sudbury (TAB 34) at para. 3

Affidavit #1 of Fiona Sudbury (TAB 22) at para. 8

36. Further, in her Affidavit #1, Ms. Sudbury states her opinion that the Lodge is the best place for Mrs. Palamarek to live. She gives that opinion without any explanation of why she is rendering it, why she believes it, what factors she considered in rendering such an opinion, what other care options she analyzed before giving this opinion, and what expertise she has to render such an opinion.

Affidavit #1 of Ms. Sudbury (TAB 22) at para. 20.

37. Ms. Sudbury’s opinion is refuted by Ms. Lyne England, a Registered Nurse who is eminently qualified to render such opinions, who says there is “nothing I have observed to date about Mrs. Palamarek which suggests to me that she needs to be in an institutional setting as long as she is looked after by family or other care givers and continues to receive nurturing ongoing support”.

Affidavit #1 of L. England, (TAB 33) at para. 20.

38. The campaign of the brothers to demonize Lois, and the impact this has had on Lodge staff, demonstrates how unsuitable the brothers are to be committees. A committee needs to be inclusive of family members.

Mrs. Palamarek's Wish to Move out of the Lodge and be Cared for By Lois:

39. The evidence that Mrs. Palamarek wants to move out of the Lodge and be cared for by Lois comes from several sources.

40. First, Ms. Pickup, who is a Seniors' Advocate, retired Nurse, and former Saanich councillor, testifies this is so on the basis of numerous meetings with Mrs. Palamarek.

See Affidavit #1 of Ms. Pickup, (TAB 19) at para. 1-7, and 10, 12, 13,

See Affidavit #2 of Mrs. Pickup, (TAB 26) at para. 6, 8, 15

41. Second, Ms. England, a Registered Nurse who has met with Mrs. Palamarek on several occasions, has given corroborative evidence.

See Affidavit #1 of Ms. England, (TAB 33) at para. 1-5, 13, and 16.

42. Ms. Sampson has given her own evidence of statements her mother has made to her about wanting to move out of the Lodge and be looked after by Lois. She has stated that her mother started to voice this view in 2008, increasingly so in the last half of the year.

See Affidavit #2 of Ms. Sampson (TAB 20) at para. 3-6, and 8(b);

See Affidavit #3 of Ms. Sampson (TAB 35) at para. 3, 7,

43. This is corroborated by the Progress Notes which contain several examples of Mrs. Palamarek telling staff she no long wants to live in the Lodge:

- 6/9/2008 at 16:40;
- 6/29/2008 at 22:19;
- 8/17/2008 at 08:37; and
- 8/28/2008 at 22:40.


44. In his letter of November 8, 2008 (to be handed up), Dr. Kelly states that he met with Mrs. Palamarek on October 30, 2008 in the company of Lois and Gil Sampson. He says

she had good awareness and she told him she wanted to stay with her daughter and not return to the Lodge.

45. Finally, until such time as it is shown (if ever) that the Representation Agreement executed by Mrs. Palamarek with Mr. John Jordan is invalid on the basis that she was not sufficiently capable to instruct Mr. Jordan, the execution of the Agreement stands as a strong statement of Mrs. Palamarek's wishes.

The Failure of the Brothers to Invoke Part 5 of the *Representation Agreement Act*

46. There is a well defined process for objecting to the making, or revocation, of a Representation Agreement in Part 5 of the *Representation Agreement Act* ("*RAA*").
47. The process contemplates that any person may make an objection to the Public Guardian and Trustee that the adult was not capable of making the Agreement or was subject to undue pressure or some other form of abuse in making the Agreement. The *RAA* then requires the PGT to promptly investigate the objection. The PGT may then apply to the court for an order, *inter alia*, cancelling the Agreement.
48. In this case, Ms. Sampson herself advised the PGT of the new Representation Agreement. The brothers have not, to our knowledge, invoked the objection provisions of the Act.
49. Respectfully, it does not lie in the mouth of the brothers to argue that the Representation Agreement of October 27, 2008 is invalid, not having invoked section 5 of the *RAA*. The validity of the Agreement is not before the court, and it is submitted that the court must assume, for present purposes, that the Agreement is valid.



Evidence Supporting the Legitimacy of the new Representation Agreement

50. Ms. Sampson did not attend the meetings that were held between Mrs. Palamarek and Mr. Jordan. Instead, the senior's advocate Ms. Pickup attended with Mrs. Palamarek.

Affidavit #3 of Lois (TAB 35) at para. 5

Affidavit #2 of Ms. Pickup (TAB 26) at para. 25

51. Ms. Pickup testifies that Mrs. Palamarek was able to communicate coherently and intelligently with Mr. Jordan and that she understood what she was doing.

Affidavit #2 of Ms. Pickup (TAB 26) at para. 25

52. The new Representation Agreement is wholly consistent with what Ms. Pickup says Mrs. Palamarek has been saying for months. It is also consistent with the evidence of Nurse England, and Ms. Sampson.

53. The Letter of Dr. Kelly dated November 8, 2008 suggests Mrs. Palamarek has good awareness and she indicated to him that she wants to stay with her daughter and not return to the Lodge.

54. Further, there are entries in the Progress Notes of the Lodge which suggest Mrs. Palamarek feels more comfortable with Lois than with Ralph. For example, on June 29, 2008 at 22:19, the notes state the following:

“Upon entering resident’s room, resident had newspapers all over bed and seemed upset that they were not in order. Resident told writer that she believes someone has come in on purpose and has been taking her newspapers. Resident began to cry at this point stating she no longer wants to live here. Writer sat on bed with resident and asked if she wanted to call her son for reassurance but resident stated that she ‘cannot let Ralph know about this stuff. I can only talk with my daughter’. Writer asked resident if she wanted assistance reorganizing newspapers but resident began to cry uncontrollably repeating that she no longer wants to live here and wants to go home.

Affidavit #2 of F. Sudbury, at Exhibit “A”

55. Another example dates from August 17, 2008 at 08:37 where the notes record Mrs. Palamarek as saying:

“I want to go home. I will contact my daughter and she will take care of me. They treat me like something off the street here”.

Affidavit #2 of F. Sudbury, at Exhibit “A”

56. The authors of the *Annotated British Columbia Representation Act* explain that the test for capability to execute a Representation Agreement is intentionally liberal, and that a person's capability can vary with the support they are provided. The authors state (at p. 25):

It is generally recognized that incapability with respect to decision making will often be a function of the level of support and assistance that are provided for an adult. An individual who at first may seem incapable of making decisions may respond extremely well with the help of a community advocate, friend or family member and, with their support, be able to absorb and process information, weigh options and make and communicate a decision. Adults are entitled to the presumption of capability and to the benefit of any doubt.

57. Section 3 of the *Representation Agreement Act* contains a presumption of capability.

Use of the Interim Committee Motion to get around Part 5 of the RAA

58. An application for committeeship must brought by Petition. The brothers filed their Petition in September of 2007. Lois filed her Petition in January of 2008. Both sides have taken considerable time preparing and replying to affidavits in this proceeding, and the proceeding to date has been characterized by an absence of urgency. Lois is still working on her reply affidavit to those filed by her brother in her Petition. It is anticipated that the final hearing of this case will occur in the next several months, as soon as the Friend of the Court (if appointed) has made his or her report.

59. One of the reasons for the absence of urgency is the fact that there has been a Representation Agreement in place since December of 2006. This of course permits the Representative to make decisions on the adult's behalf.

60. A Representation Agreement is still in place, it is just that the brothers contest its validity and do not support the choice of Representative.

61. It is unusual, though not unprecedented, for there to be any need for an application for interim committee. Such an application obviously results in duplication of effort and will typically take place without all the evidence being before the court. The norm is to have the Petition(s) heard which results in a final decision. Interim applications should be restricted to cases of true urgency, such as where a medical decision must be made for which the Representative has no decision-making authority.
62. In this case, it is submitted that the brothers have applied for interim committee in response to the execution of the new Representation Agreement as a means of circumventing Part 5 of the *RAA*. It is submitted that this is not a legitimate purpose of an interim committee application.
63. There is no urgency requiring the appointment of an interim committee at present and it is submitted that the use of such interim applications should be discouraged.
64. Further, it is useful to bear in mind that when the *RRA* was enacted, which occurred at the same time as the enactment of the *Adult Guardianship Act* and other related statutes, it was contemplated that the *Patients Property Act* would be repealed. The repeal of the *PPA* is indeed imminent.

The 2008 Annotated British Columbia Representation Agreement Act at p. 1

See *Macdonald Estate v. British Columbia (Public Guardian and Trustee)*, [2003] B.C.J. No. 1908 (C.A.) at para. 51

65. The Court of Appeal has commented that the intent of these relatively new statutes was “to move toward less institutionalization of disabled adults and to provide them with more options for controlling their own lives than had been available to them under prior legislation”.

See *Macdonald Estate* at para. 49

66. The authors of the *Annotated Representation Agreement Act* also comment on this at page 5-6.

67. The intent of the new legislative scheme is that there should be no need to appoint a committee if a Representation Agreement is in place:

The 2008 Annotated British Columbia Representation Agreement Act at p. 12

Steps Taken By Lois Sampson After Being Appointed her Mother's Representative:

68. The steps taken by Lois to move her mother to her own home are extensively documented in her Affidavit #3 which will be reviewed in oral argument.
69. In summary, Lois made arrangements to obtain and furnish a new apartment that was suitable for her mother, made arrangements with a pharmacist to ensure all her mother's medications were continued, made arrangements for her mother to see a new family physician, and had a nurse attend at her apartment several times to give advice on safety issues in the apartment and to meet with Mrs. Palamarek to make sure she was doing well.
70. All of the available evidence makes clear that Mrs. Palamarek was doing fine while in Lois' care and was not in danger or in distress.
- See Affidavit of Lyne England (TAB 33) at para. 15-18, 21-24;
 - See Letter of Dr. Kelly dated November 8, 2008;
 - See Affidavit #3 of Lois (TAB 35) at para. 25-41; and
 - Dr. Nicoll's comment in the Progress Notes on October 31, 2008 that Mrs. Palamarek had probably had all her medications while with Lois (see Affidavit #3 of Ms. Sudbury at Exhibit "B"); and
 - There is no evidence filed by the brothers suggesting that Mrs. Palamarek was found to be in ill-health, distressed, wanting for medication, or anything of this sort on October 31, 2008 when she was taken by the police to Royal Jubilee Hospital.

71. It is clear that Ms. Sampson took all precautions to look after her mother appropriately in the days when her mother was in her care.

The Invocation of the *Mental Health Act*

72. The Medical Certificate completed by Dr. Nicoll is curious. The bases contained therein for involuntarily committing Mrs. Palamarek are not compelling, and are articulated in the most general of terms.

73. The apprehension was clearly done in conjunction with the brothers. They called Ms. Sampson to say they wanted to visit their mother at 3:00 on the 31st. They did not show up. Instead, they were waiting at Royal Jubilee Hospital when the police arrived with their mother.

74. The apprehension of Mrs. Palamarek by a team of police officers and paramedics must have been terribly stressful and confusing for Mrs. Palamarek, and the available evidence confirms this. See Affidavit of L. England (TAB 33) at para. 29-33. Ms. England (who was present at the apartment) and Lois confirm that there was insufficient time to explain to Mrs. Palamarek what was happening, why the police were present, and that she was being taken to the hospital. See Affidavit #3 of Ms. Sampson (TAB 35) at para. 47-50. Mrs. Palamarek was loaded into an ambulance and there was no time to bring any of her personal effects.

75. It was wholly unnecessary for such a blunt instrument to be used. At no time since going to live with Lois did any of the brothers ask to speak to their mother on the telephone. Dr. Nicoll learned on the day before the apprehension that the pharmacist had filled all of Mrs. Palamarek's prescriptions. Arrangements had been made for the brothers to see their mother the day of the apprehension. The brothers could have taken Mrs. Palamarek that day to see a physician at that time (assuming she consented). Lois's counsel advised the brothers' counsel earlier that day that Mrs. Palamarek had been seen by a nurse and by Dr. Kelly.

Affidavit #3 of Ms. Sampson at Exhibit "K"

Affidavit #3 of Dr. Nicoll (TAB 27) at para. 5

76. It very much appears that the invocation of the *MHA* was the result of a fear that Mrs. Palamarek was somehow in danger or in distress while with Lois, presumably on the basis of a belief that Lois would not give her mother her medications. Undoubtedly, the reason Dr. Nicoll had that fear is because of the misinformation about Lois that Ralph and his brothers have been giving Dr. Nicoll for months.

Affidavit #3 of Dr. Nicoll (TAB 27) at para. 5

77. It turns out that this fear was completely unfounded. Lois did give her mother her medications and Mrs. Palamarek was at all times well in Lois's care.

Affidavit #3 of Lois (TAB 35) at para. 25 and 36

Affidavit of L. England (TAB 33)

Letter of Dr. Kelly

78. These events, along with the content of Dr. Nicoll's Affidavit #1, and along with the content of the Progress Notes, set out above, suggest strongly that the brothers have been too influential over Dr. Nicoll, or that he has allowed himself too easily to be influenced by them.

79. Even though the fear was unfounded, the "Leave Authorization" allowing Mrs. Palamarek to be transferred from Royal Jubilee Hospital back to the Lodge provides that Lois and her husband, or any person authorized by them, may not take Mrs. Palamarek on outings from the Lodge. Further, their visits have been limited to one hour, three times per week. The brothers are not under these restrictions. With respect, this is draconian and is not in the best interests of Mrs. Palamarek. In the absence of some evidence that shows Mrs. Palamarek was harmed by Lois while living with her, these restrictions show unwarranted favouritism toward the brothers by the physicians associated with the Lodge.

See Affidavit of Ms. Sudbury #3 at TAB 34, Exhibit "A".

If an Interim Committee is to be Appointed, It should be Lois or the PGT


80. Ms. Sampson submits that if anyone is to be appointed interim committee, it should be her. In the alternative she submits the PGT would be preferable to her brothers.
81. Ms. Sampson has a history of helping her mother in all kinds of ways, and showing the love and affection vital to being a committee: see Affidavit #1 of Lois (TAB 14) at para. 11-36. This has included everything from trimming her mother's facial hair, mending her mother's clothes, buying her mother a newspaper subscription to taking her mother on numerous outings.
82. Appointing Ms. Sampson as committee would better reflect Mrs. Palamarek's wishes as expressed over the past 5 months as documented in the evidence of Ms. Pickup, Ms. England, and in the execution of a new Representation Agreement.
83. The appointment of Ms. Sampson will mean that Mrs. Palamarek will be able to live in the comfort of her daughter's home and be looked after by a family member. The alternative is for Mrs. Palamarek to stay in an institution with which she is clearly dissatisfied.
84. Ralph has shown a pattern of conduct, set out above, which suggests he is not suitable to be appointed committee. Robert lives in Alberta and has participated in conduct with Ralph which suggests he too is not suitable to appointed committee.
85. Lois does not apply to be interim committee of the estate. The estate can be managed by Ralph pursuant to his Power of Attorney.
86. The PGT has issued a letter to the parties, taking a neutral position on this application. If the PGT is appointed interim committee, it wishes to be both committee of the person and of the estate.
87. The PGT, if appointed, will eliminate the spectre of Ralph's conflict, and will ensure that the question of whether to move Mrs. Palamarek out of the Lodge at Broadmead will be objectively considered. This is a significant emotional health issue for Mrs. Palamarek as she appears to be quite unhappy living there.
88. Section 16 of the *Patients Property Act* provides that the court may make an order attaching conditions or restrictions on the committee's exercise of certain rights. If a

committee is appointed, there should be a condition ensuring full and proper access of all of Mrs. Palamarek's children to her.

89. If Mrs. Palamarek is to continue to reside at the Lodge, Ms. Sampson asks this court for an order that she be given access equal to her brothers, both for visits and for outings with her mother.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED This 10th Day of November, 2008



Counsel for Lois Sampson