



Affidavit #5 of Ralph James Palamarek
Sworn June 26, 2009

Action No. 07 3415
Action No. 08 0327
Victoria Registry



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

AFFIDAVIT OF RALPH PALAMAREK

I, RALPH JAMES PALAMAREK, federal government employee, of 10324
Bowerbank Road, Sidney, British Columbia, MAKE OATH AND SAY THAT:

1. I am a son of Kathleen Palamarek ("Mother") and one of the Petitioners in Action No. 07 3415, Victoria Registry and one of the Respondents in Action No. 08 0327, Victoria Registry and as such have personal knowledge of the matters hereinafter deposed to except where the same are said to be on information and belief, in which case I verily believe the same to be true.
2. On November 19, 2008, my Mother was declared unable to manage her own affairs or person by this Court. I was appointed as the interim committee for my Mother after a hearing contested by my sister, Lois Sampson ("Lois"). Attached as Exhibit "A" to this Affidavit is a copy of the Order (the "Interim Committee Order").
3. When the Interim Committee Order was made, I expected that a hearing for a final order would be scheduled in the early spring of this year.

4. Lois changed lawyers in early December 2008. She made an application for access over Christmas which was resolved by a consent order, a copy of which is attached as Exhibit "B" to this Affidavit (the "Access Order").
5. The terms of the Access Order were reached after consultation with Mother's psychiatrist, Dr. Leishman. He had previously stipulated in a Leave Authorization that access to my Mother be restricted, a copy of which is attached as Exhibit "C" to this Affidavit. It was his opinion that these terms of access should continue as being in Mother's best interest.
6. Since the beginning of January 2009, access to Mother by all of her children has continued along the lines of Dr. Leishman's restrictions. My wife, Donna, and I have visited Tuesdays, Thursdays and Sundays for no more than two hours at a time and often only one hour. My brother, Robert Kenneth Palamarek ("Bob") has travelled from Alberta to visit Mother every month on average for 1 ½ weeks, and also visits for two hours or less at a time. My brother, Ernest visits regularly once a week on Wednesdays plus on special occasions.
7. I am aware that Lois wishes to have more extended access to Mother. However, I believe that the current access arrangement is in my Mother's best interests, and her other three children accept it. It gives Mother time to rest and to participate in the activities at the Lodge.
8. My brothers and I have all noticed that Mother is a lot calmer and less delusional than she was last summer and fall. Her memory problems have become more pronounced; she often repeats herself, forgetting that she has asked a question just moments earlier. She does not know what day it is even though she has two large calendars, forgets recent events and parts of her own history, she has difficulty identifying family and friends, but still recognizes familiar faces. She no longer remembers visits from family members, and greets us as if she has not seen us for a long time. She loses or misplaces possessions and takes things belonging to others. She has a declining ability to concentrate, seems confused and

had difficulty organizing thoughts or following logic. She is disorientation to time and place, has some problems understanding and expressing spoken and written language and difficulty making choices.

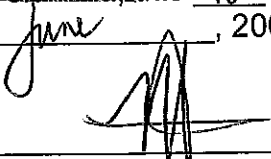
9. Mother's long term memories are also starting to deteriorate. My wife and I bring her photo albums almost every time we visit, and she now has a hard time remembering some of her old friends and family members in the photos.
10. Mother tires more easily now, although she is still able to take part in Lodge activities and socializes with other Lodge residents, expressing her enjoyment about doing so. She loves to read her newspaper and books, although she cannot remember afterwards what she has read or watched earlier. She lives very much in the moment with very little memory of what transpired earlier. She continues to tell us that the Lodge is her home.
11. As we have not heard anything from Lois' lawyer since January 21, 2009, Bob and I instructed our lawyer to set a hearing date for final order of Committeeship. We have been advised that the hearing will occur during the week of July 20th, 2009.
12. Bob and I believe that it is time to resolve this litigation for the following reasons:
 - a. When this matter is heard, it will have been eight months since the Interim Committee Order was made;
 - b. Since our Mother's return to the Lodge on October 31, 2008, her health has become more stabilized and she is comfortable and secure; although her memory has deteriorated, she continues to express her satisfaction with her accommodation and environment at the Lodge, the care facility which she chose when she was capable.

- c. Our mother's doctor, Dr. Nicoll, and the management at the Lodge have expressed the wish to have a final determination of who will be our Mother's permanent committee, as the uncertainty continues to cause them concerns.
 - d. Bob and I agree with Dr. Leishman's assessment of our Mother's condition as indicated in both his affidavits #1 and #2, stating that Mother is no longer capable of making sound decisions and we (like Dr. Leishman) do not believe that she needs or would benefit from any further geriatric assessment or counselling on where she should live or who should be her committee.
 - e. Mother no longer expresses any interest in visiting her home, and it is time to sell her house and invest the capital to generate income for her ongoing care costs.
13. When the Petition was originally filed in August 2007, my wife and I were living in Mother's home. I have previously explained how this arrangement was made in my Affidavit #2 filed in this proceeding. When I was appointed the interim Committee for Mother's estate, my Wife and I began to pay rent of \$1,600 per month.
14. Mother's current monthly income and expenses are shown on Exhibit "D" of this Affidavit. I understand that the monthly care costs at the Lodge will likely increase as a result of the rental income she now receives, because the fees are based on her yearly income.
15. In early June, I was informed by our lawyer that Lois had changed her lawyer again. Since then, I have just learned that he has been replaced by another lawyer. This is her seventh lawyer since we originally filed our Petition in August 2007.
16. Since Lois and her husband, Gil, removed Mother from the Lodge in late October 2008, Lois has continued to criticize Mother's care at the Lodge. In particular, I am aware that:

- a. Lois made comments in an article in a local magazine about senior's abuse (although names were changed); the article was highly critical of me and the care facility, and failed to recognize that Mother is incapable;
 - b. Lois has continued to be aggressive when visiting Mother at the Lodge, making the staff's job of caring for Mother more challenging;
 - c. Lois has made a formal complaint against the Director of the Lodge, Fiona Sudbury to the College of Nurses, misrepresenting herself as Mother's representative;
 - d. Lois has made a formal complaint against Dr. Nicoll to the College of Physicians and Surgeons, misrepresenting herself as Mother's representative;
 - e. Lois has made a formal complaint to the Saanich Police of a sexual assault against Mother at the Lodge.
17. Lois has also refused to return Mother's furnishings and belongings which she removed from the Lodge in October 2008, despite several requests through our respective lawyers. Although Mother's memory is now so impaired that she does not remember missing her furniture any longer, it strikes my brothers and I as unfair and unkind to Mother to deprive her of her personal furnishings, belongings and other treasured items that family members have given her. The furniture was purchased by Mother during World War II and had been in her bedroom up until Lois and Gil took it away.
18. With the exception of Lois, Mother's family is of the view that the Lodge is the best environment for Mother to live out her final years in comfort. The twenty four hour care provided by the Lodge (which specializes in care for patients with dementia) is, in our view, essential for Mother's continued health, and she is clearly comfortable there. She enjoys visits from all her

children on a scheduled basis, and socializes regularly with other residents and the staff.

- 19. I know that Lois would like to care for Mother in Lois' apartment, but my brothers and I believe that such an arrangement would not provide the same level of care and social environment available at the Lodge. We are also very concerned that we would not be able to visit Mother with the regularity we now enjoy, given the animosity between Lois and us.
- 20. If Bob and I are appointed as the committees for our Mother, we would support a visitation schedule that would be in Mother's best interests. After consultation with Mother's health care providers, including Dr. Leishman, we would support the visitation schedule he proposes in his Affidavit #2. It will be necessary to ensure that visits are shared equally amongst Mother's children, and we believe that this will be best implemented with a visitation schedule. We do not wish to continue the animosity between Lois and ourselves, and a schedule would reduce the opportunity for disputes. It is our goal to arrange a visitation schedule that is in Mother's best interests and well being, and to ensure that she receives the rest and stability she needs at the Lodge.

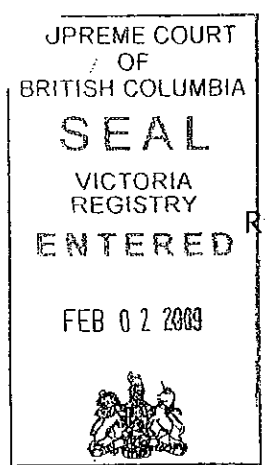
SWORN BEFORE ME at the City of)
 Victoria, in the Province of British)
 Columbia, this 26 day of)
June, 2009)

 _____)
 A Commissioner for taking Affidavits within)
 the Province of British Columbia)

FIONA HUNTER
 Barrister & Solicitor
 3rd Floor - 612 View St.
 Victoria, BC V8W 1J5



 RALPH JAMES PALAMAREK

Action No. 07 3415
Action No. 08 0327
Victoria Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *PATIENTS PROPERTY ACT*
R.S.B.C. 1996 CHAPTER 349 AND AMENDMENTS THERETO
AND
IN THE MATTER OF KATHLEEN PALAMAREK, PATIENT

ORDER

The Honourable
BEFORE MR. JUSTICE JOHNSTON
X

) WEDNESDAY, THE 19TH DAY
) OF NOVEMBER, 2008

THE APPLICATION of the Petitioners, Ralph James Palamarek and Robert Kenneth Palamarek, coming on for hearing at 850 Burdett Avenue, Victoria, British Columbia, on Monday, November 10, 2008 and Friday November 14, 2008, and on hearing Fiona Hunter, Counsel for the Petitioners, and on hearing Andrew D. Gay, Counsel for the Respondent, Lois Sampson and on hearing John Jordan, Counsel for Kathleen Palamarek, and no one appearing on behalf of the Public Guardian and Trustee although duly served, and on reading the material filed, and Judgment being reserved to this date:

THIS COURT DECLARES that:

- 1. The Patient, KATHLEEN PALAMAREK, is by reason of dementia incapable of managing herself and her affairs.

THIS COURT ORDERS that:

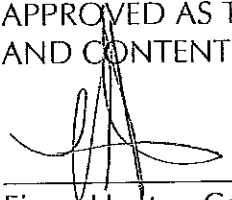
- 2. Ralph James Palamarek is appointed, on an interim basis, as Committee of the person and property of Kathleen Palamarek, pending a full hearing of the Petitions;
- 3. Lois Sampson is at liberty to apply on four (4) days notice to Ralph James Palamarek for an order for access to Kathleen Palamarek if access is unreasonably restricted;

This is Exhibit A
Affidavit of Ralph James Palamarek referred to in the
sworn before me at Victoria, BC
this 21 day of June 20 09
A Commissioner for Taking Affidavits
for British Columbia

- 4. No specific finding is made with respect to the termination of any Representation Agreements signed by Kathleen Palamarek before the date of this Order;
- 5. The issue of costs is reserved to the Court hearing the Petitions.

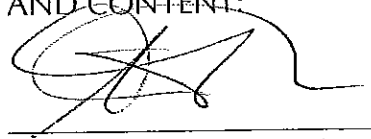
BY THE COURT
 V. Hedrich Deputy Registrar
 Per. *Thomas Hedrich*
 District Registrar

APPROVED AS TO FORM
 AND CONTENT:



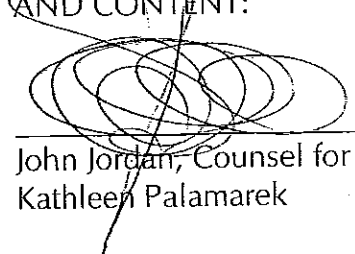
Fiona Hunter, Counsel for the
 Petitioners, Ralph James Palamarek
 and Robert Kenneth Palamarek

APPROVED AS TO FORM
 AND CONTENT:



David S. Mulroney, Solicitor for the
 Respondent, Lois Sampson

APPROVED AS TO FORM
 AND CONTENT:



John Jordan, Counsel for
 Kathleen Palamarek

Action No: 07 3415
Action No. 08 0327
Victoria Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE PATIENTS PROPERTY ACT R.S.B.C.
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HORNE COUPAR

Barristers & Solicitors

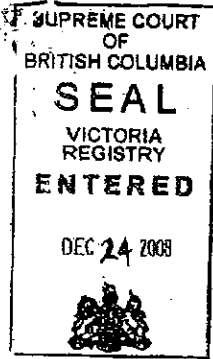
3RD FLOOR, 612 VIEW STREET
VICTORIA, BRITISH COLUMBIA
CANADA V8W 1J5

TELEPHONE (250) 388-6631
FAX (250) 388-5974

Court Box: 11

File No: FILE#18477-FH*tfa

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No. 08 0327
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF *THE PATIENTS PROPERTY ACT*
R.S.B.C 1996 CHAPTER 349 AND AMENDMENTS THERETO
AND

IN THE MATTER OF KATHLEEN PALAMAREK, PATIENT

ORDER

BEFORE *The Honourable* Mr. Justice *Macaulay*

Wednesday
Tuesday, the
24th day of
December, 2008

THE APPLICATION of the Respondent, Lois Sampson coming on for hearing at Victoria, B.C. on the 24th day of December, 2008, and on hearing Christopher A. Siver, counsel for the Petitioner and by consent:

THIS COURT ORDERS that:

1. Lois Sampson be granted uninterrupted and unrestricted access to Kathleen Palamarek for a consecutive four hour period on December 24, 2008 wherein Kathleen Palamarek is permitted to be in the company of Lois Sampson away from The Lodge At Broadmead subject to the consent of Kathleen Palamarek.
2. Lois Sampson be granted uninterrupted access to Kathleen Palamarek for a consecutive three hour period on December 26, 2008 wherein Kathleen Palamarek is permitted to be in the company of Lois Sampson only within the boundaries of The Lodge At Broadmead subject to the consent of Kathleen Palamarek.

This is Exhibit " *B* " referred to in the
Affidavit of *Ralph James Palamarek*
sworn before me at *Victoria, BC*
this *20* day of *June* 20 *09*
[Signature]
Commissioner for Taking Affidavits
for British Columbia

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3. Lois Sampson be granted uninterrupted and unrestricted access to Kathleen Palamarek for a consecutive four hour period ending at 2:00 p.m. on January 1, 2009 wherein Kathleen Palamarek is permitted to be in the company of Lois Sampson away from The Lodge At Broadmead subject to the consent of Kathleen Palamarek.

4. Lois Sampson is not permitted to administer any medication to Kathleen Palamarek.

5. The costs of this application are in the cause.

By the Court.

ms
L. Kleian
REGISTRAR

APPROVED AS TO FORM AND CONSENTED TO:

"David S. Mulroney"
David S. Mulroney
Solicitor for the Petitioner Lois Sampson

[Signature]
John Jordan
Solicitor for Kathleen Palamarek

[Signature]
Patrice Newman
Solicitor for the Respondents Ralph Palamarek, Ernest Palamarek and Robert Palamarek

Minutes attached
Margaret Mutch
Solicitor for the Public Guardian and Trustee

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-2. MINUTES

3. Lois Sampson be granted uninterrupted and unrestricted access to Kathleen Palamarek for a consecutive four hour period ending at 2:00 p.m. on January 1, 2009 wherein Kathleen Palamarek is permitted to be in the company of Lois Sampson away from The Lodge At Broadmead subject to the consent of Kathleen Palamarek.

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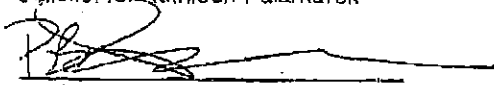
By the Court.

REGISTRAR

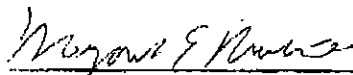
APPROVED AS TO FORM AND CONSENTED TO:

David S. Mulroney
Solicitor for the Petitioner Lois Sampson

John Jordan
Solicitor for Kathleen Palamarek



Patrice Newman
Solicitor for the Respondents Ralph Palamarek, Ernest Palamarek and Robert Palamarek



Margaret Mutch
Solicitor for the Public Guardian and Trustee

FORM 20
MENTAL HEALTH ACT
[Section 37, R.S.B.C. 1996, c. 288]

LEAVE AUTHORIZATION

Kathleen Palamarek is released on leave from
first and last name of patient (please print)
Royal Jubilee Hospital
name of designated facility (please print) 31 / 10 / 2008
date (dd / mm / yyyy)

The above-named patient's medical certificate expires on 30 / 11 / 2008
date (dd / mm / yyyy)

CONDITIONS OF LEAVE (must be completed)

- ① Patient must reside at the Lodge at Broadmead
 - ② Patient must take medications as prescribed by Dr. R. D. Nicoll, Dr. D. Leishman or their designates
 - ③ Patient is not permitted to go on passes or outings with Lois and/or Gil Sampson or any person authorized by Lois or Gil Sampson
 - ④ Patient may only go on passes or outings to a maximum of 2 hours twice / week with Robert, Ernest, Ralph, Sharon, Donna, Maria Palamarek.
 - ⑤ To ensure Kathleen Palamarek's health, and to allow his participation in programs at the Lodge at Broadmead, visits by Lois and/or Gil Sampson or persons authorized by them are limited to one hour 3 times per week.
Note: if above space is insufficient, continue on back of form.
- It is my opinion that appropriate supports exist in the community to meet the conditions of leave.

I hereby authorize the physician named below, who has agreed to do so, to assume the following responsibilities:

- clinical care of the patient
- completion of renewal certificate
- renewal and modification of conditions of leave
- recall from leave
- discharge of the patient

This is Exhibit " C " referred to in the Affidavit of Ralph James Palamarek
sworn before me at Victoria, BC
this 26 day of July 20 09
A Commissioner for taking Affidavits
for British Columbia
(250) 519-1554
phone number

Dr. D Leishman
physician's name (please print)
1952 Bay St, Victoria
physician's address

[Signature]
director's signature
31 / 10 / 2008
date signed (dd / mm / yyyy)

I confirm that the conditions of my leave have been explained to me.

signature of patient

June 4, 2009

1. Kathleen Palamarek's Current Finances:

Current Monthly Income: (in even dollars)

Old Age Security	639.00
CPP	784.00
GST Credit	39.00
House Rental (from Ralph)	1600.00
Total Monthly Income	3062.00

Current Monthly Expenses: (in even dollars)

Lodge at Broadmead	932.00
Related fees – foot care, manicure, hair cut, dentist, companion ,etc	223.00
Medications (St. Anthony's Pharmacy)	280.00
Property Taxes	133.00
Home owner Insurance	46.00
Total Monthly Expenses	1614.00

This is Exhibit " D " referred to in the Affidavit of Ralph James Palamarek sworn before me at Victoria, BC this 26 day of June 20 09

A commissioner for taking Affidavits
for British Columbia