



L. Sampson #6  
Sworn December 14, 2009

NO. 07 3415  
~~and 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**

I, LOIS SAMPSON, of 303 – 1015 Pandora Avenue, in the City of Victoria, British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Petitioner in Action No. 08 0327 and the Respondent in Action No. 07 3415 and the daughter of Kathleen Palamarek (“Mom”) and as such have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are said to be made on information and belief, in which case I verily believe them to be true.
2. My husband, Gil Sampson, and I have not been allowed to take Mom out on Christmas Day since she was institutionalized in November of 2006. My brother, Ernie Palamarek, has monopolized Christmas Day with Mom.
3. Last year, I was permitted, by the Order of Mr. Justice Macaulay of December 24, 2008, to take Mom on a four hour outing on December 24, 2008, to visit her at The

Lodge At Broadmead for three hours on December 26, 2008 and to take her on a four hour outing on January 1, 2009.

4. As her only daughter, I would like to have the opportunity, on occasion, to spend time with my mother on Christmas Day in our own home.

5. Gil and I would be happy to include a visit with her grandchildren for part of our outing with Mom. My niece and Mom's granddaughter, Sandi, lives only 5 minutes' drive from Broadmead Lodge, and we would be glad to take Mom for a visit with Sandi and her family on our way back to Broadmead Lodge.

6. I am also requesting that I be permitted to take my mother on an outing for five hours on January 6, 2010 as that is Ukrainian Christmas Eve. For the past three years Gil and I have cooked a traditional meal and taken it to share with Mom, first in Saanich Peninsula Hospital, then at Broadmead Lodge, something we had previously done for the entire family, including my brothers. We would like to serve Mom this meal in our home, so that we can do it properly.

7. Lest it be perceived that I am requesting more than my fair share of time with my mother, since her institutionalization in November of 2006 I have never been permitted to host her for meals at Easter or Thanksgiving. Consistently, when there is a holiday or special occasion, my brothers have made the arrangements they want to make with respect to spending time with Mom. Only then have they agreed to my having visits or outings with Mom on the days when they do not intend to visit.

8. In July 2007, my brothers attempted to take Mom away for the day on her 85<sup>th</sup> birthday without informing me so that I could not help her celebrate that occasion. When Mom found out that I had not been told of their plans or invited, she insisted to Ralph that I be present to share in her birthday celebration, which Gil and I did.

9. In December 2007 my brothers, arbitrarily and without consulting me, booked my mother for both December 24 and 25<sup>th</sup>, and I acquiesced so as not to cause my mother distress over where she should spend Christmas.

10. I am requesting that the outings over this Christmas season be for a minimum of five hours. The outings we've had in the past (including the ones over Christmas 2008 for 4 hours) felt very rushed. We were always having to hurry through things: Mom getting ready to go out, not being able to enjoy a leisurely meal, and very little time to just relax and enjoy one another's company. The time restrictions imposed also have to take into account travel time. The round trip from our home to The Lodge At Broadmead eats up almost one hour, sometimes more depending on traffic.

11. I understand that Mom's medication schedule may require that some medications be administered during the hours that she is away from The Lodge At Broadmead on outings. I have always administered all of my mother's medications as prescribed and at the scheduled times. When taking my mother on outings, I will administer all of her medications as prescribed and at the scheduled times, as may be directed by her doctors or the staff at The Lodge At Broadmead.

12. On November 30, 2009, my counsel, Irene C. Faulkner, on my instructions, wrote to Mr. Les Jamieson, counsel for my brothers, requesting that they consent to the outings as set out in Ms. Faulkner's letter. A copy of that letter is attached hereto as Exhibit "A".

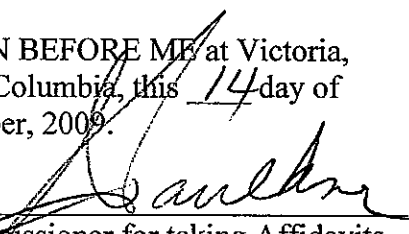
13. Attached hereto as Exhibit "B" is a copy of Mr. Jamieson's response to Ms. Faulkner dated December 1, 2009.

14. Attached hereto as Exhibit "C" is a copy of Ms. Faulkner's letter to Mr. Jamieson dated December 11, 2009.

15. Attached hereto as Exhibit :”D” is a copy of a letter from Mr. Jamieson to Ms. Faulkner dated December 12, 2009.

16. Attached hereto as Exhibit “E” is a copy of a letter from Ms. Faulkner to Mr. Jamieson dated December 14, 2009.

17. Attached hereto as Exhibit “F” is a copy of a letter from Ms. Colleen Kovacs to Mr. Jamieson and Ms. Faulkner dated December 11, 2009.

SWORN BEFORE ME at Victoria, )  
British Columbia, this 14 day of )  
December, 2009. )  
 )  
A Commissioner for taking Affidavits )  
within British Columbia )

  
LOIS SAMPSON

**IRENE C. FAULKNER**  
**Barrister & Solicitor**  
**1127 Fort Street**  
**Victoria BC Canada V8V 3K9**

IRENE C. FAULKNER  
BARRISTER & SOLICITOR

Our file: 50022

November 30, 2009

Leslie B. Jamieson  
Patterson Adams  
#402 - 707 Fort Street  
PO Box 1231, Stn. CSC  
Victoria, B.C. V8W 2T6

<sup>A</sup>  
This is Exhibit... referred to in the  
Affidavit of ...*Lois Sampson*...  
Sworn before me at the City of  
*Victoria* BC, this ...*7* day  
*of December* 2009.

*Irene C. Faulkner*  
A Commissioner for taking Affidavits  
for British Columbia

Via email

Dear Mr. Jamieson:

**Re: Proposed Committeeship of Kathleen Palamarek  
SCBC Actions 07-4315 and 08-0327, Victoria Registry**

I write with respect to the limitations placed on my clients with respect to visiting Mrs. Sampson's mother.

As I'm sure you are aware, Mr. and Mrs. Sampson's visits to Mrs. Palamarek are limited to one hour 3 times per week and they have been prohibited from taking her on outings from the Lodge at Broadmead. These restrictions result from a medical order of Dr. Leishman of November 20, 2008. There are no limitations on the length of visits that the Palamarek brothers and their wives may have with Mrs. Palamarek and they are permitted to take her on outings twice per week.

While it is our view that there is no reason to restrict Mrs. Palamarek's visitors or outings in any way, the current regime which restricts Mr. and Mrs. Sampson's access while providing her brothers much more liberal access clearly cannot be medically justified.

Accordingly, I write to seek the consent of your clients to having the restrictions on Mr. and Mrs. Sampson's access to Mrs. Palamarek lifted, and to hopefully reach an agreement with respect to a visitation schedule and outings. Initially, we would propose that Mrs. Sampson be allowed the same visitation and outing schedule as that of her brothers - i.e. no limit on the time Mrs. Sampson may spend with her mother at The Lodge at Broadmead, and that she be permitted to take her mother on outings of 2 hours duration. We propose that this be implemented immediately.

Mr. and Mrs. Sampson would also like to take Mrs. Palamarek on extended outings over the Christmas season, as they did last year at this time. In that regard they propose the following dates:

December 25, 2009  
December 31, 2009  
January 6, 2010 (Ukrainian New Year's Eve)

If that is not acceptable to your clients, then Mr. and Mrs. Sampson would be agreeable to outings on the following dates:

December 24, 2009  
December 27, 2009

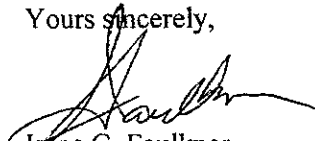
January 1, 2010  
January 6, 2010

They request that each of these outings be at least 5 hours in length as they have found previous outings over the holidays which were limited to 4 hours to have been very rushed, especially for Mrs. Palamarek. Mrs. Sampson would expect to be provided with any medications which her mother may require during these outings, which she will ensure are administered to her mother at the appropriate times, as directed.

In addition to the foregoing there is the matter of Mrs. Palamarek's phone having been removed. My clients ask that your clients arrange to have the telephone reinstalled in order that Mrs. Palamarek may communicate with her daughter and others as and when she wishes to do so.

In the event that you are unable to obtain instructions to consent to the foregoing, then I suggest that we deal with this at the same time as our application for financial disclosure.

Yours sincerely,



Irene C. Faulkner

cc: John Jordan  
client

**PATTERSON**  
**ADAMS**  
*Barristers & Solicitors*

December 1, 2009

Via E-Mail and Fax

Irene C. Faulkner  
Barrister & Solicitor  
1127 Fort Street  
Victoria, BC V8V 3K9

Dear Madam:

**Re: Palamarek, Kathleen**  
**Supreme Court Actions 07-4351 and 08-0327**  
**Our File Reference: 24477.001**

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This is in response to your letter of November 30.

We are advised that the time limits relating to visitations were recommended by Dr. Cooper and Dr. Leishman. The original recommendation, we understand was that your client, Lois Sampson not be permitted any visitation rights at all. (You might wish to familiarize yourself with the report of Dr. Cooper dated November 3, 2008). Our clients did not agree with that position and, as a result of the request they made, limited visitation rights were granted to your client. There has been no reason to question the medical advice which gave rise to these limitations and our clients do not intend to request any change, as the status quo seems to benefit Mrs. Palamarek.

Your comments relating to "the Palamarek brothers and their wives" access not being limited and that they are permitted outings twice per week not being in your opinion able to be "medically justified" with respect, is out of your area of expertise.

In point of fact, however, your assertion that the brothers have been liberal in their access to their mother is not borne out by the facts. Unlike your client they understand the need for stability in her environment and also the need for her to adapt better to the routines of the lodge and, indeed, that this is beneficial to her emotionally, psychologically and also is best for her physical health. They voluntarily limit themselves to about three visits per week each of about 1 hour in duration. The exception being when Robert is in town, as he has, in practical

This Exhibit <sup>B</sup> referred to in the  
Affidavit of Lois Sampson  
Sworn before me at the City of  
Victoria BC, this 14 day  
of December A.D. 2009

A Commissioner for taking Affidavits  
for British Columbia

John D. Patterson  
(Deceased)  
David Adams  
Les Jamieson\*

Associate Counsel:  
Jack Angus  
Craig Beveridge\*

402 - 707 Fort St.  
Victoria, BC  
Canada

Mailing Address:  
PO Box 1231  
Victoria, BC  
Canada  
V8W 2T6

Phone:  
(250) 360-2991

Fax:  
(250) 360-2979

\*Denotes Personal  
Law Corporation

terms, less time to see his mother in any case due to his not residing in this area. In addition, we have been advised, there have been very few outings since last Christmas so any suggestion that your client is being treated unfairly in so far as visits are concerned is simply inaccurate.

Our clients have made a decision to adhere to the medical advice as to what is in their mother's best interests and is in fact beneficial to her physical and mental health. Until the physicians advise otherwise, they are not prepared to negotiate any new access. Your client is not deprived of time with her mother in relative terms and, as a practical matter, she does not get materially less time with her than do our clients.

With respect to Christmas, it is our clients' view that the arrangements made last year, should apply this year as well. Indeed, we understand there was an order of the court dealing with this matter and strictly speaking while this order applies to last year, we see no reason why this order could not be considered as having effect for this year. (see Order of Mr. Justice Macaulay 24<sup>th</sup> December, 2008).

As to January 6, 2010, we understand this is Ukrainian Christmas Eve, and it is our client's position that the visitation rights that applied last year can continue to apply this year.

With respect to medications, our client's being the committee of the person of their mother are not prepared to permit your client to deal with this. Your client has on a number of occasions called into question the appropriateness of the medication Mrs. Palamarek is being given. Accordingly, our clients have good reason to believe that your client may not comply with the regime of medication Mrs. Palamarek has been prescribed, your assurances notwithstanding. Medication is administered by the staff at Broadmead and our clients do not involve themselves in the administration of Mrs. Palamarek's medication.

With respect to the phone, it was removed on the Doctors' recommendation. Mrs. Palamarek was being called too late at night and this was interfering with her rest. The physicians felt that being called late at night was not good for Mrs. Palamarek's health and such calls were not conducive to her integrating into the routines of the lodge. Our client's see no reason to change this at this time.

As to the application for financial disclosure, we have not refused to provide you with the same. Before you take any steps to seek any orders, however, you need to be informed that our time in December is severely limited. In addition, we would also suggest that it is time for you to advise when, as you were asked by us long ago, when the various reports would be available and when we might expect to receive a copy of the same. We also need to determine, or more likely have Madam Justice Dorgan determine, what use is to be made of these reports and what rights we are to have after receipt of the reports. You are well aware that the question of Mrs. Palamarek's incapacity has not been appealed, so the use to which the reports can be put, is in our view, from a legal perspective limited to the questions of who should be Mrs. Palamarek's committee. Having not seen the reports, we cannot at this time even comment as to whether we will agree to their being admitted in evidence.

We repeat that we need to have some indication from you as to when the reports will be final. We requested you provide us with this information some time ago, but we have not received even the slightest indication that you have made any efforts to determine when we might expect to receive the



reports. We expect your assurances that you will (a) make reasonable efforts to find out when the reports are likely to be finalized and (b) when we might expect to receive the same, and (c) that you will deliver the same to us as soon as they are available. We also require information as to the circumstances under which the reports were prepared and all other relevant information which might affect the contents of the reports. We advised you that we were particularly concerned that at the initially scheduled examination Mrs. Pickup, an advocate fro your client was present. We have also made you aware that we have concerns about the Order of Madam Justice Dorgan that must be clarified before this matter can proceed to final hearing. We suggest that at that time any further relevant orders and the timing of compliance with the same can be established, all of which should be completed reasonably before the date set for hearing of this matter.

Yours truly,

**PATTERSON ADAMS**

Per: 

L.B. Jamieson

/jd

Enclosures

Receipt of enclosed acknowledged this            day of December 2009  Print name: _____ Signature: _____
---

Our file: 50022

December 11, 2009

Leslie B. Jamieson  
Patterson Adams  
#402 - 707 Fort Street  
PO Box 1231, Stn. CSC  
Victoria, B.C. V8W 2T6

This is Exhibit *C* referred to in the  
Affidavit of *Lois Sampson*  
Sworn before me at the City of  
*Victoria* BC, this *14* day  
of *December*, A.D. 20 *09*  
*[Signature]*  
A Commissioner for taking Affidavits  
for British Columbia

Via Fax: 250-360-2979

Dear Mr. Jamieson:

Re: **Proposed Committeeship of Kathleen Palamarek  
SCBC Actions 07-4315 and 08-0327, Victoria Registry**

I write in response to your letter of December 1, 2009.

We maintain our view that there is no reason to restrict Mrs. Palamarek's visitors or outings. In any case, there is certainly no justification as to why your clients are permitted more liberal access to Mrs. Palamarek than my clients are permitted.

Your letter suggests that the restrictions on my client's interactions with her mother are based on medical concerns and supported by doctor's orders. However, I note that in his affidavit #2 sworn June 26, 2009 Dr. Leishman stated that he was prepared to recommend changes to the access restrictions, including allowing for Mrs. Sampson to take her mother on outings. Indeed, the doctor's view was that all access should be shared equally. The fact that your clients choose not to take their mother on outings should not limit Mrs. Sampson's ability to do so.

Indeed, a review of the medical records provided by The Lodge at Broadmead demonstrates that it is your client, and not the doctors, who have opposed liberalizing Mrs. Sampson's access to her mother. The nursing notes show that as early as February 14, 2009 Dr. Leishman was considering a recommendation that Mrs. Palamarek be allowed to go out with Lois Sampson for 2hrs, 3 times per week. Your client, Ralph Palamarek, expressed concern about this recommendation to Broadmead staff. Despite the fact that Ralph Palamarek, in his Affidavit #5 sworn June 26, 2009 attests that he and his brother, Bob, would support the visitation schedule recommended by Dr. Leishman in his Affidavit #2, the nursing notes indicate that your clients have not supported lifting any of the restrictions placed on Mrs. Palamarek's visits and outings. For example, at a team and family care review meeting on July 30, 2009 it is reported that doctor's order limiting visits and outings was discussed and it was agreed that this should continue.

In this regard, I draw your attention to Mr. Justice Johnston's reasons for judgment of November 19, 2008, at para. 52:

...were I the judge eventually hearing it, I would take a dim view of any child who purported, without very good and clearly demonstrated reason, to block access of another child to a mother. I am not going to raise that as or put that the height of a direction or of an order. I am simply commenting, perhaps gratuitously, on what I expect would be the reaction of the judge eventually hearing this matter if there was any unnecessary restriction on access on the part of any of the children of Kathleen Palamarek to her, pending full hearing.

At paragraph 62, Johnston J. went on to provide that if a party felt that there had been an unfair restriction of access, they could apply to the court on four days' notice.

Accordingly, I have instructions to apply to the Court for an Order directing your clients to lift the restrictions imposed only on Mr. and Mrs. Sampson and to seek access over the holiday season in the terms set out in my letter of November 30, 2009. Please find enclosed our notice of motion in this regard. Please provide me with your available dates for a hearing of the motion in the next two weeks. If you are not available, given Johnston J.'s order, it would be appropriate for someone else in your office to attend.

As regards your clients' assertion that they have good reason to believe that my client may not comply with the regime of medication which Mrs. Palamarek has been prescribed, there is not an iota of evidence that Mrs. Sampson has not diligently administered prescribed medications to her mother. In fact, the evidence makes it clear that she has always administered her mother's medications as prescribed and at the appropriate times, as directed.

As regards the matter of having a phone reinstalled, Mrs. Sampson asserts that she has never called her mother late at night. If there is a problem with other people phoning her late at night, we see no reason why all family members could not agree to not call Mrs. Palamarek after a certain hour. This would easily address your clients' concerns while providing Mrs. Palamarek with the freedom to speak to her children on the phone.

As regards financial disclosure, you state that "we have not refused to provide you with same." Am I to take this as your clients agreement to provide full disclosure in this regard? If not, we will be proceeding with the enclosed notice of motion. It would be convenient to do so at the same time that we address access.

I have not yet heard from you with respect to your agreement with Dr. Kushner Kow's examination of Mrs. Palamarek on December 20, 2009. By email today you indicate that your clients previously rejected Dr. Kushner Kow as a candidate to be appointed as Friend of the Court. My understanding is that your clients initially took the position that if a Friend of the Court was appointed that it should be a lawyer. Further, I understand that by the time the application was heard the parties had agreed that it be Dr. Kushner Kow. While some of the terms under which the friend would conduct her meetings with Mrs. Palamarek remained to be resolved, the remarks of Mr. Gay and Ms. Hunter transcribed in the Oral Reasons for Judgment of Mr. Johnston of November 19 2008 (see paras. 87-111) bear out this understanding. If we are required to attend before Justice Dorgan to address the issue of Dr. Kushner Kow examining Mrs. Palamarek on December 20, 2009, perhaps it would be convenient to address these other matters as well at that time.

I would appreciate your prompt response.

Yours sincerely,

  
Irene C. Faulkner

cc: John Jordan  
client

**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

**NOTICE OF MOTION**

TO: Ralph James Palamarek, Robert Kenneth Palamarek,  
and Ernest Norman Palamarek

AND TO: Their Solicitor

AND TO: Kathleen Palamarek

AND TO: Her Solicitor

TAKE NOTICE that an application will be made by Lois Sampson, (the Respondent in Action No. 07-3415 and the Petitioner in Action No. 08-0327) to the presiding judge at the Courthouse at 850 Burdett Street, City of Victoria, in the Province of British Columbia at a date and time to be set, for Orders that:

1. Lois Sampson be permitted to visit her mother and take her mother on outings to the same extent as her brothers are permitted to so.
2. Lois Sampson be granted uninterrupted and unrestricted access to Kathleen Palamarek on each of December 25, 2009, December 31, 2009, and January 6, 2010 for a period of five hours on each of these dates.
3. Lois Sampson be provided by The Lodge At Broadmead staff the medications of Kathleen Palamarek in sufficient quantities to allow for Kathleen Palamarek to be absent from The Lodge At Broadmead on December 25, 2009, December 31, 2009 and January 6, 2010 for a period of five hours on each date.

4. The costs of this application be paid by the estate of Kathleen Palamarek or, in the alternative, by Ralph Palamarek, in any event of the cause.

The Applicant will rely on the Order and Reasons for Judgment of Mr. Justice Johnston of November 19, 2008, Rules 44(1) and 57 of the *Rules of Court, the Patients Property Act*, RSBC 1996, c. 349, and the inherent jurisdiction of the Court.

At the hearing of the application, the applicant will also rely on the following affidavit(s) and other documents:

1. Affidavit #2 of Dr. David Leishman
2. Affidavit #5 of Ralph Palamarek
3. Such further and other material as counsel may advise and this Honourable Court may allow.

The applicant estimates that the application will take 30 minutes.

If you wish to receive notice of the time and date of the hearing or to respond to the application, you must, within the proper time for response,

- (a) deliver to the applicant
  - (i) 2 copies of a response in Form 124, and
  - (ii) 2 copies of each of the affidavits and other documents, not already in the court file, on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
  - (i) one copy of a response in Form 124, and
  - (ii) one copy of each affidavit and other document, not already in the court file, on which you intend to rely at the hearing.

TIME FOR RESPONSE

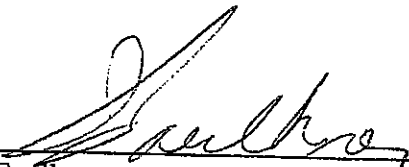
If the application is for a final judgment under Rule 18A, the response must be delivered on or before the 11th day after the delivery to you of the notice of motion.

In all other cases, the response must be delivered on or before the 8th day after the later of

- (a) the last date fixed for entry of appearance by you, and
- (b) the date on which the notice of motion was delivered to you.

In this case, pursuant to the Order of Johnston J., the response must be delivered on or before the 4<sup>th</sup> day after date on which the notice of motion was delivered to you.

Dated: December 11, 2009

  
\_\_\_\_\_  
Irene C. Faulkner  
Solicitor for Lois Sampson

This NOTICE OF MOTION is prepared by Irene C. Faulkner, Barrister and Solicitor whose place of business and address for delivery is 1127 Fort Street, Victoria, B.C. V8V 3K9. Telephone: 250-380-2788. Fax: 250-380-2799.

**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

**NOTICE OF MOTION**

TO: Ralph James Palamarek, Robert Kenneth Palamarek,  
and Ernest Norman Palamarek

AND TO: Their Solicitor

AND TO: Kathleen Palamarek

AND TO: Her Solicitor

TAKE NOTICE that an application will be made by Lois Sampson, (the Respondent in Action No. 07-3415 and the Petitioner in Action No. 08-0327) to the presiding judge at the Courthouse at 850 Burdett Street, City of Victoria, in the Province of British Columbia at a date and time to be set, for Orders that:

1. The Petitioners in Action No. 07-3415, Respondents in Action No. 08-0327, Ralph James Palamarek, Robert Kenneth Palamarek, and Ernest Norman Palamarek produce and deliver up to counsel for Mrs. Sampson, within 14 days of the date of this Order, a copy of all financial statements regarding Kathleen Palamarek, from the time that Ralph Palamarek began managing Kathleen Palamarek's financial affairs until the present, including but not limited to:
  - ( a ) Cashflow Statements – A complete accounting of receipts and disbursements with supporting backup documents;

- ( b ) Statements of Assets and Liabilities – A complete accounting, together with backup documentation, for all of Kathleen Palamarek’s assets and liabilities, specifying any acquisition, disposition, or change in value of any of the assets or liabilities during the time that Ralph Palamarek has managed her financial affairs;
  - ( c ) Income Tax Returns – A copy of all income tax filings and related correspondence for the years 2000 through 2008.
2. The costs of this application be paid by the estate of Kathleen Palamarek or, in the alternative, by Ralph Palamarek, in any event of the cause.

The Applicant will rely on Rules 32(1), 32(10), 51A and 57 of the *Rules of Court*, the *Patients Property Act*, RSBC 1996, c. 349 and the inherent jurisdiction of the Court.

At the hearing of the application, the applicant will rely on the following affidavit(s) and other documents:

1. Affidavit #1 of Ralph James Palamarek sworn July 16, 2007
2. Affidavit #1 of John E. Jordan sworn January 16, 2008
3. Affidavit #1 of Lois Sampson sworn January 18, 2008
4. Affidavit #1 of Robert Kenneth Palamarek sworn May 27, 2008
5. Affidavit #2 of Ralph James Palamarek sworn May 28, 2008
6. Affidavit #5 of Ralph James Palamarek sworn June 26, 2009
7. Affidavit #1 of Susan Sillem, sworn
8. Such further materials as counsel may advise and this Honourable Court may permit.

The applicant estimates that the application will take 30 minutes.

If you wish to receive notice of the time and date of the hearing or to respond to the application, you must, within the proper time for response,



- (a) deliver to the applicant
  - (i) 2 copies of a response in Form 124, and
  - (ii) 2 copies of each of the affidavits and other documents, not already in the court file, on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
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  - (ii) one copy of each affidavit and other document, not already in the court file, on which you intend to rely at the hearing.

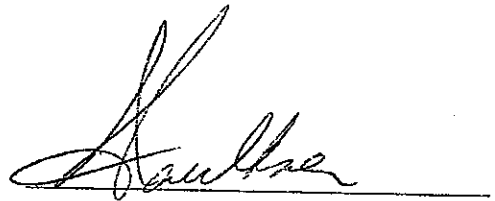
#### TIME FOR RESPONSE

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In all other cases, the response must be delivered on or before the 8th day after the later of

- (a) the last date fixed for entry of appearance by you, and
- (b) the date on which the notice of motion was delivered to you.

Dated: December 11, 2009



Irene C. Faulkner

Solicitor for Lois Sampson

This NOTICE OF MOTION is prepared by Irene C. Faulkner, Barrister and Solicitor whose place of business and address for delivery is 1127 Fort Street, Victoria, B.C. V8V 3K9. Telephone: 250-380-2788. Fax: 250-380-2799.

**PATTERSON**  
**ADAMS**  
Barristers & Solicitors

December 12, 2009

Via E-Mail and Fax

Irene C. Faulkner  
Barrister & Solicitor  
1127 Fort Street  
Victoria, BC V8V 3K9

Dear Madam:

**Re: Palamarek, Kathleen**  
**Supreme Court Actions 07-4351 and 08-0327**  
**Our File Reference: 24477.001**

---

This is in response to your letter of December 11, 2009.

With respect to visitation times and the like, our clients have acted on and in accordance with the advice of Mrs. Palamarek's physicians. They reject your client's assertions that they have acted in any manner whatsoever to give themselves more favourable treatment or to restrict your client's access.

To the extent that the physicians are prepared to relax prior restrictions, our clients continue to take the view that they will be guided by, and will act in accordance with, the advice of the doctors. This is a position they consistently have expressed and abided by.

The statements in paragraphs 3 and 4 of your letter concerning our clients opposing the liberalization of access are completely unfounded. The history of the restrictions, we understand, is that these were imposed by Dr. Leishman and Dr. Cooper having duly considered Mrs. Palamarek's condition.

You will not doubt recall that your client removed Mrs. Palamarek from the lodge with a view to permanently changing her residence and asserting control over her. On her return to the lodge, Dr. Cooper was strongly of the view that no access to Mrs. Palamarek be permitted by your client, because of his concerns for the effects on Mrs. Palamarek's health. We understand Mr. Robert Palamarek took that view that this was not appropriate, and, as a result, the proposed bar to visitation by your client was relaxed to permit her access to one hour, three times per week.

This is Exhibit *P* referred to in the  
Affidavit of *Lois Sargison*  
Sworn before me at the City of  
*Victoria*, BC, this *14* day  
of *December*, A.D. *2009*.  
*[Signature]*  
A Commissioner for taking Affidavits  
for British Columbia

John D. Patterson  
(Deceased)  
David Adams  
Les Jamieson\*

Associate Counsel:  
Jack Angus  
Craig Beveridge\*

402 - 707 Fort St.  
Victoria, BC  
Canada

Mailing Address:  
PO Box 1231  
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\*Denotes Personal  
Law Corporation

The one portion of paragraph 3 of your letter that is correct is the last sentence. It was agreed that the doctors' order relating to limiting access should continue. It is the view of our clients that the doctors were not then prepared to make any change. The suggestion to retain the access limitation was made by Fiona Sudbury and Dr. Nicholl and our clients agreed to that. If the doctors are now prepared to recommend a change, then our clients are satisfied with that judgment and, as before, are prepared to comply with that.

Your client fails to appreciate that given the desire of all 4 of the children of Mrs. Palamarek to have access to their mother, our clients have to both ensure the doctors' recommendations are complied with and the rights of the four of them are balanced. This is all they try to achieve, being as fair to everyone as they can. Having said that it appears, except for Christmas period visitation in 2008 when Mr. Mulrone, one of your client's former solicitors, conducted a significant correspondence relating to visitations with our clients' former solicitor, that despite a significant number of requests made by our clients' former counsel to reach agreement on visitation, your client's former solicitors failed in each case to respond to such requests.

As to your reference to the reasons of Mr. Justice Johnston, there was no effort made by our client to limit access by your client to Mrs. Palamarek. You overlook the fact that it was your client that took Mrs. Palamarek from the lodge in an attempt to gain control over her and to eliminate any access to Mrs. Palamarek by our clients and Ernie as well. If the words are applicable to anyone, they apply to your client. Our clients only acted to assure that access to Mrs. Palamarek was consistent with what the doctors ordered. Indeed they supported access rights in favour of your client when at least one of the physicians was not in favour of any access to Mrs. Palamarek by your client at all.

In any case, we propose that whatever recommendations come out of the review that is apparently underway be implemented and that each of the children be permitted equal access. The only concern we have is that special accommodation be given to Robert Palamarek, as he is not resident in this area. Also, our clients have suggested that visitation by Mrs. Palamarek's grandchildren ought to be considered as well.

In relation to visitation, our client has advised that between the hours of 1 to 4 on December 15, 2009, the Lodge will have its annual party for residents. This year Ralph and his wife plan to attend. Previously Lois and Ernie and his wife attended. The proposal is that this event continue to rotate among the children.

With regard to the phone, again, it was the doctors who recommended discontinuance of the phone. In their view it was disrupting her routine and detrimental to her integration into the lodge and socializing with other residents. In our view, there is good sense in having no phone calls after certain hours. While more access should lessen the need for phone access, if phone access can be shut off after a certain time, our clients would be prepared to consider reinstating the phone. They would want to consult with the physicians and the lodge first. It would be appropriate to request this be considered in the course of the doctors' review.

As to the application for financial disclosure, you have not adequately explained the basis for this

request. We note that your client is not applying to be committee of the estate of Mrs. Palamarek. Your client is also aware that Mrs. Palamarek's financial resources are not extensive and that the home, which remains registered in her name, remains the most substantial asset of the estate. In light of your client's limited application, you will have to provide some explanation as to the reason for this request. Furthermore, your request for disclosure reaches far beyond any reasonable disclosure. The records for the periods your refer to apply to a period when Mrs. Palamarek was fully in control of her own affairs and have nothing to do with the current circumstances. This application is not based on any evidence, nor even an apprehension, that there has been any improper dealing with the assets of Mrs. Palamarek. You are also, of course, aware that there is provision under the Patient's Property Act for passing of accounts on a discharge of a committee, if the court so orders or if the Public Guardian and Trustee requires an accounting.

Finally, with respect, there is no urgency to this request. It is our view that hearing this application in the coming week is unnecessary. You were previously advised that we had little time available in the next few weeks. Unless you can provide substantial reasons, we remain of the view that there is no need for this application to be brought on short notice or in December at all.

With respect to the medication issue, our client has ample reason for concern. Your client has repeatedly railed against traditional medicine and Mrs. Palamarek's regime of medication. While some reasonable concern and inquiry is sensible, your client has gone far beyond that point. There is little point in saying anything more than that your client's statements and actions provide a reasonable explanation as to why our clients do not trust your client in this regard.

With respect to Dr. Kushner Kow, we are advised that your understanding of our clients' position with respect to her acceptability as a friend of the court is incorrect. That matter is also no longer relevant and, in any case, you are not proposing her as a friend of the court. We simply state that the order of Madam Justice Dorgan makes no provision for her to examine Mrs. Palamarek. Our clients do not propose to endorse her.

We also note that while you propose a hearing in February, you cannot assure us when the reports will be available. We also note that you have not stated whether any of the reports have been provided to you at this time. We expect you to confirm that (a) you do not have any of the reports at this time and (b) that the reports will be provided to us contemporaneously with delivery to you. We advise, in any case, we will not be in a position to agree on any hearing date until we have the opportunity to assess what the reports contain. Your office has not communicated with us at all in relation to the progress in obtaining the reports except for the first time last week. We note that you were engaged in August and one would have expected that all of the reports would by now have been completed as the order for them was made in July.

Yours truly,

**PATTERSON ADAMS**

Per: 

L.B. Jamieson

Our file: 50022

December 14, 2009

Leslie B. Jamieson  
Patterson Adams  
#402 - 707 Fort Street  
PO Box 1231, Stn. CSC  
Victoria, B.C. V8W 2T6  
Via Fax: 250-360-2979

Dear Mr. Jamieson:

**Re: Proposed Committeeship of Kathleen Palamarek  
SCBC Actions 07-4315 and 08-0327, Victoria Registry**

I write further to my letter of December 11, 2009 and in response to your letter of December 12, 2009.

As I explained in an email to you on the evening of December 11, 2009, Ms. Kovacs letter of that date did not come to my attention until after I had faxed my letter to you. While my clients remain of the view that there ought to be no restrictions on visits or outings for Mrs. Palamarek, they will adhere to the new schedule set out in Ms. Kovacs' letter. Accordingly, we will not be pursuing the Order set out in paragraph 1 of our Motion.

We will, however, be pursuing the Orders sought in paragraphs 2, 3 and 4. My client is not agreeable to the Christmas schedule proposed by your clients and reiterates her request for outings as set out in my letter to you of November 30, 2009. My instructions are to pursue an Order at the earliest possible date. In that regard, I would appreciate it if you would advise me of your preference for dates at the end of this week (Thursday, December 17 or Friday, December 18) or Monday of next week (December 21).

As regards your remarks about the previous visitation schedule and the involuntary apprehension of Mrs. Palamarek from Mr. and Mrs. Sampson's home on October 31, 2008, suffice it to say that our respective clients have different perspectives. Mrs. Sampson took her mother to her home to live with her pursuant to a Representation Agreement which Mrs. Palamarek had executed after numerous discussions with her lawyer. Mrs. Sampson vehemently denies the motives attributed to her by her brothers as set out in your letter, i.e. that she took her mother from the lodge in an attempt to gain control over her and to eliminate any access to her by your clients.

As regards the social event at the Lodge tomorrow afternoon, back on November 9, 2009 Mrs. Palamarek invited Lois and Gil Sampson to accompany her and notified the Lodge to that effect (see attached). You have indicated that Ralph and Donna Palamarek intend to attend this function. Mr. and Mrs. Sampson do not object to this event rotating among the children and they will not attend tomorrow in order that Ralph and Donna may.

With respect to the telephone, and consulting with the physicians in this regard, I would draw your attention to the Order of Dr. Leishman of November 20, 2008, which states: "Mrs. Palamarek may have a telephone in her room only with authorization by interim committee Ralph Palamarek." As it would

This is Exhibit *f* referred to in the  
Affidavit of *Lois Sampson*  
Sworn before me at the City of  
*Victoria*, B.C., this *14* day  
of *December*, A.D. 20 *09*

.....  
A Commissioner for taking Affidavits  
for British Columbia

appear that Dr. Leishman has already approved a phone for Mrs. Palamarek we trust that your clients will now arrange to have the phone reinstated forthwith.

As regards Mrs. Palamarek's medication regime, my client denies that she "has rep

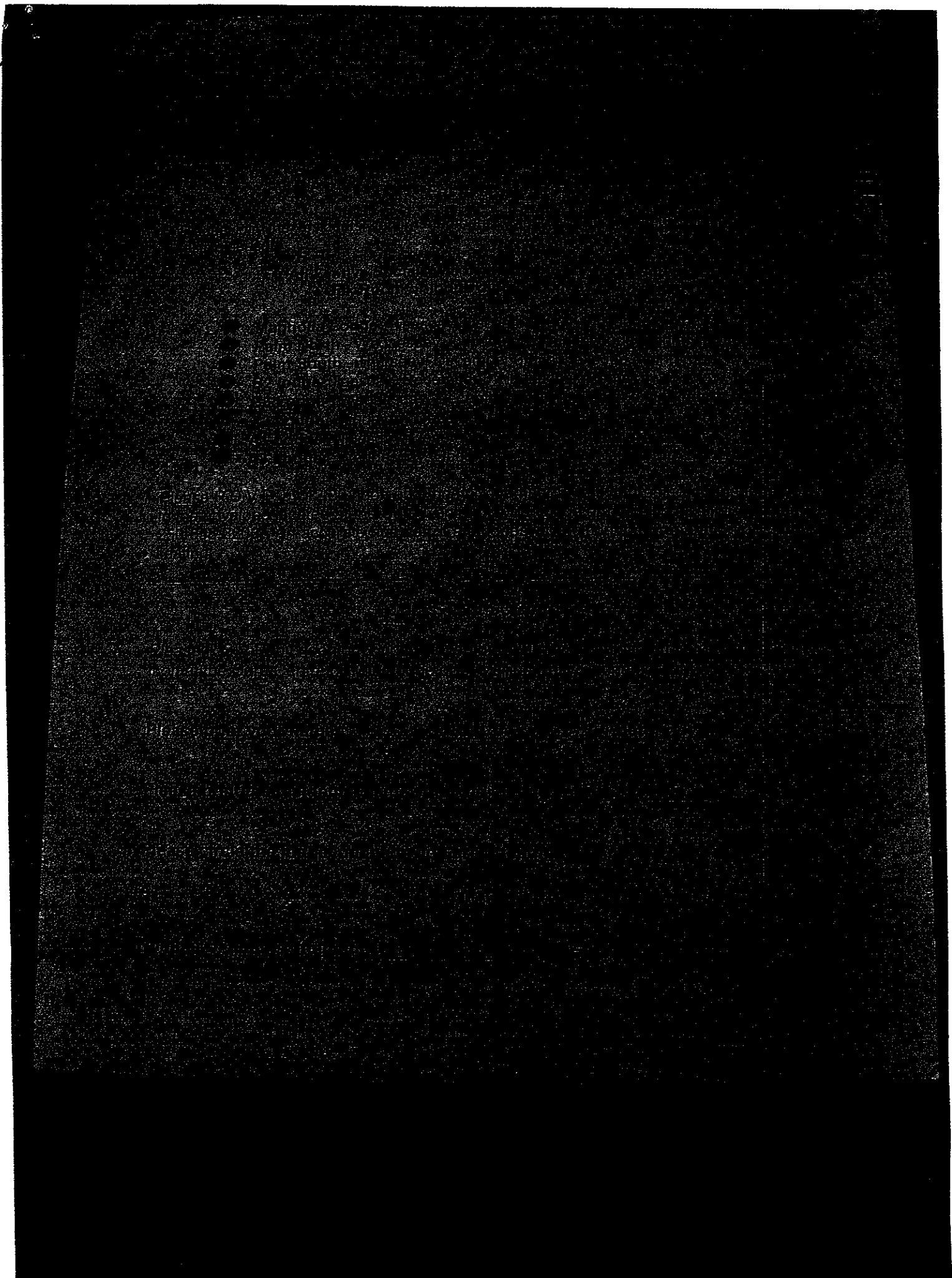
As regards your clients' refusal to endorse Dr. Kushner Kow to carry out the assessment of Mrs. Palamarek, I am well aware that the Order of Dorgan J. of July 16, 2009 does not name Dr. Kushner Kow. You will recall that Dr. John Sloan travelled from Vancouver on August 24, 2009 to carry out the assessment of Mrs. Palamarek as ordered. Dr. Sloan was prohibited from carrying out that assessment and you subsequently objected to his involvement as he was accompanied by Mrs. Palamarek's senior advocate, Ms. Carol Pickup. We have kept you apprised of our efforts to have a replacement doctor carry out this assessment. Dr. Kushner Kow has agreed to do this next Sunday, December 20, 2009. Ms. Kovacs has advised me that the Broadmead Care Society has no objection to Dr. Kusher Kow attending in place of Dr. Sloan. Please advise me on what grounds you object to Dr. Kushner Kow carrying out this assessment in place of Dr. Sloan. Given your position, I have spoken to Diane at Trial Division to ascertain whether Justice Dorgan might be available this week to resolve this. Diane has suggested that Justice Dorgan may be available to deal with varying the Order at 9:00 a.m. on Thursday, December 17, 2009. She will call me when she is able to confirm this. Please advise if you intend to appear and make submissions.

Yours sincerely,



Irene C. Faulkner

cc: John Jordan  
client



BROADMEAD LEGAL CENTRE

COLLEEN M. KOVACS  
BARRISTER AND SOLICITOR

TELEPHONE: (250) 727-9938  
FACSIMILE: (250) 727-9826

530-777 ROYAL OAK DRIVE  
VICTORIA, BRITISH COLUMBIA  
CANADA V8X 4V1

December 11, 2009

MR. LESLIE B. JAMIESON  
PATTERSON ADAMS  
#402-707 FORT STREET  
VICTORIA, B.C.  
V8W 2T6

MS. IRENE C. FAULKNER  
BARRISTER & SOLICITOR  
1127 FORT STREET  
VICTORIA, B.C.  
V8V 3K9

Dear Mr. Jamieson and Ms. Faulkner:

**RE: KATHLEEN PALAMAREK**

As you know, we are Solicitors for the Broadmead Care Society. Said Society has asked the attending Physicians to review the present visit and outing restrictions for Mrs. Kay Palamarek. The Society initiated the review because the Order has been in place for a year, and given the improvements in the resident's health, the Society wished to determine if more flexibility could be provided for all family members to visit Mrs. Palamarek. We understand that the Resident's health is stable and it would appear that all family members have endeavoured to honour the restrictions put in place one year ago. Effective immediately and predicated upon the medical review of Dr. Leishman and Dr. Nicoll, all family members may visit with Mrs. Palamarek at the Lodge for up to two hours twice a week. In addition, all family members may take the Resident off the grounds of the Facility once per week for a maximum of three hours.

It is the expectation that all family members will respect Mrs. Palamarek's ability to tolerate the length of any given visit and honour her wishes as to whether or not she wants to partake in any outing. It is our hope that all visit and outing restrictions may eventually be lifted. To that end, the Physicians will re-evaluate the effect of the relaxed restrictions on Mrs. Palamarek's health and well-being in two months (or earlier should the resident exhibit any of the ill effects earlier experienced). After the two-month period, all going well, there shall be no restrictions. The Broadmead Care Society will not be overseeing visits and outings by any given family member. Rather, it shall simply monitor the Resident's well-being and health.

This is Exhibit <sup>f</sup>.....referred to in the  
Affidavit of *L. S. Sampson*  
Sworn before me at the City of  
*Victoria* BC, this *14* day  
of *December*, A.D. *2009*  
*[Signature]*  
A Commissioner for taking Affidavits  
for British Columbia



**Broadmead Legal Centre**  
Page 2  
December 11, 2009

We encourage the family members to establish a visiting and outing schedule to avoid conflicts. As the Christmas Season approaches, it is imperative that the family members resolve the schedule amongst themselves well in advance of the desired dates.

Yours very truly,

**BROADMEAD LEGAL CENTRE**

Per:

*Colleen Kovacs*

**COLLEEN M. KOVACS**  
CMK/kdn

Message Confirmation Report

DEC-18-2009 12:23 PM FRI

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Elapsed Time : 00'00"  
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Results : No Answer

IRENE C. FAULKNER,

BARRISTER & SOLICITOR

FAX COVER SHEET

DATE: December 18, 2009

FILE NO: 50022

FOR THE IMMEDIATE ATTENTION OF:  
FAX NUMBER:

John Jordan  
250-386-1421

FROM:

Irene C. Faulkner

NO OF PAGES:

MESSAGE:

Please see attached.

IF YOU DO NOT RECEIVE ALL OF THE FOLLOWING PAGES,  
PLEASE CONTACT (250) 380-2788

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