

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the Matter of the Patients Property Act (PPA)

AND

Kathleen Palamarek, Patient

**LOIS SAMPSON REPLY
TO THE WRITTEN SUBMISSIONS OF
RALPH AND ROBERT PALAMAREK**

*MAY IT PLEASE THE COURT, THIS IS LOIS SAMPSON'S RESPONSE
TO THE WRITTEN SUBMISSIONS OF MESSRS. RALPH AND ROBERT PALAMAREK.*

GENERAL CAUTION

Generally, the written submissions of Ralph and Robert Palamarek, in several areas, grossly overstate or misstate the evidence before the court, as will be shown below. With respect, it is suggested that the court use caution when absorbing the submissions of Ralph and Robert Palamarek and ensure that those submissions are grounded in the evidence, to avoid being persuaded by wrongful overstatements or misstatements of the evidence. Often, in Chambers, overstatements of fact are made perhaps with the best of intentions but sometimes without a proper foundation in the evidence and this could lead, if absorbed by the Court at face value, to result in mis-appreciation of the evidence.

One glaring example, is the reference in the Submissions of Messrs Palamarek that: "Lois has commenced an action against all of her brothers." What are they referring to? It is hoped that no new documents will be submitted to the Court other than authorities or material collated from the existing evidence. If the brothers refer to any existing claim in law extant before the Courts, they would want to advise Lois Sampson of their intention in this regard to avoid ambush.

Another egregious example of Submissions by the Palamarek brothers that are not supported in the body of evidence is the reference, ¶111, to a finding of "psychotic symptoms in September 2010" by Dr. Leishman. **There is no evidence whatsoever of a psychiatric assessment, or any assessment, or any diagnosis done in "September 2010".**

Lois Sampson, while asking the court to be diligent in substantiating submissions by Ralph Palamarek and Robert Palamarek against the actual evidence before the court, expects and welcomes that this rule of law be applied against her as well. Indeed, it is her intention to lead the Court through the evidence, salient fact by salient fact.

Further, and generally, the Palamarek brothers' Submissions omit any reference to the ongoing campaign by the brothers to paint Lois Sampson as suffering from a mental disorder and what they have been telling the patient's health care workers about Lois Sampson's aversion to pharmaceutical products. These unbelievable allegations are all over the evidence and will be shared with the Court. But there is no apology for these actions nor are they otherwise mentioned in these Submissions as if they were other than substantially relevant to the Court's appreciation of the candidates for guardianship.

COSTS

At ¶47, 49, 52 and 155-159, Ralph Palamarek and Robert Palamarek raise the issue of costs as if it were not automatically before the court. The rule of law, that costs follow the event, is ancient and need not be plead or, until the time comes when success is clear, argued. With respect, arguing costs in written submissions, especially in such detail, in anticipation of that moment, is a waste of the Court's time and an attempt to pre-condition the Court to the suggestion of costs against a particular litigant other than through reference to evidence, and the suggestion of litigation conduct that is associated with client-solicitor costs.

These gentlemen seek to influence the court by making repeated references to costs payable by Lois Sampson. These references are not only unnecessary but they are based on false allegations. Lois Palamarek is not responsible for much of the delay, assuming even for a minute that "all" of the delay was unnecessary and that some "delay" did not serve justice. Indeed, it was Lois Sampson, in spite of the inertia of the Interim Committee, who has pushed for this final hearing.

There is a reference to "8 lawyers" at ¶155. Whatever could be meant by this suggestion cannot be substantiated in the evidence. But in any event, what could be the point of mentioning the number of lawyers except a further awkward attempt to prejudice the court against Lois Sampson other than through reference to the evidence before it.

Because of the typographical errors in ¶156, it is uncertain exactly what is meant by the Submission. The suggestion that delay was caused by Lois Sampson's concealment of expert reports runs upstream from the evidence. First, at any time the interim committee could have set this matter down for a hearing and this would have most assuredly sprung from Lois Sampson her expert reports if, as the petitioners in 07 3415 allege, she was sitting on them. Secondly, Dr. Perry's first affidavit was sworn on December 12, 2009. His second affidavit is sworn January 18, 2010. The affidavit of the occupational therapist Mair Edwards is sworn on June 8, 2010. The assessment document referred therein is stated to be prepared on June 2, 2010. The affidavit of Dr. Kushner-Kow was sworn on June 9, 2010. The assessment report attached thereto is dated June 2, 2010.

The above documents were filed and delivered on June 11, 2010. Are Messrs Ralph and Robert Palamarek suggesting that all those expert reports ought to have been sworn-to earlier. At all times prior to filing, the reports were quite likely in preparation and let us not forget the fact in 2010, the Interim Committee has taken no initiative to set the matter down for a final hearing.

TYPOGRAPHICAL ERRORS

Further, there are numerous typographical errors in the document which are, presumably, not all intended as misstatements, which we will leave it to Counsel for Ralph and Robert Palamarek to correct during the hearing, as he will be wont to do as soon as possible. Some such errors include, *inter alia*, the reference to "309" days at ¶40; the reference to "2007" at ¶20 (should read "2008"); the reference to \$12,413.78 at ¶125 (the amount Robert says he owes his mother is \$12,437.78); the reference at ¶90 to "July 2008" should be "2009" and the entirety of ¶93 which we must not guess as to the meaning of the purported submission.

SUBSTANTIAL ERRORS

☞ ¶4: It has never been alleged nor is it true that Lois Sampson kept the whereabouts of their mother from all three of her brothers for the entire duration of the 1996 sanctuary period. The brothers knew where their mother was as they knew where Lois Sampson and Gil Sampson resided. It was only for the brief several week interval of hospitalization that, pursuant to medical direction, their mother's hospitalization and whereabouts was subject to a strict privacy code.

Further, there is no evidence of a "stroke".

☞ ¶13: To date, Kathleen still attends to her own personal hygiene so it is doubtful that four years ago, she needed assistance from Donna.

☞ ¶14: That Ralph only "began" using the power of attorney in 2006 appears very unlikely and is not at all what is stated in paragraph 12 of the affidavit #2. In 2002, Ralph sold two pleasure boats belonging to his mother. Presumably, these transactions would have occurred pursuant to his authority under the power of attorney. In addition, paragraph 12 says that as of 2006, he was using the power of attorney "on a regular basis"; not that he had just begun to use it.

☞ ¶16: There is no evidence of Kathleen Palamarek went on an on-site visit of Broadmead Lodge prior to admission as is implied in this paragraph although no issue is taken with the statement that Ralph and Donna Palamarek may well have done so as they looked for a place to place Kathleen Palamarek.

☞ ¶19: This allegation referring to Dr. Prowse being behind the representation agreement while the patient was hospitalized in November 2006, "on the advice of Dr. Prowse" runs completely contrary to the evidence which purports to support it. The affidavit referred to, and at ¶16, refers to a recommendation alleged to have been made by "Dr. Trottershaw".

☞ ¶20: This is false. Kathleen Palamarek left her home at Bowerbank Road in Sidney on November 22, 2006 never to return. But her first year was spent at Saanich Peninsula Hospital (until August 13, 2007 when she was transferred to Broadmead Lodge).

☞ ¶21: This paragraph of the written submissions of Ralph Palamarek suggests that Kathleen Palamarek was removed from Broadmead Lodge before proper communication of the legal authority to do so was delivered to the institution. Again, this is false. In support of this

submission, Ralph and Robert Palamarek rely on ¶3 of the Affidavit of the Lodge CEO at Tab 61. Nothing in that affidavit supports this allegation.

David Cheperdak was sworn to two (2) affidavits. Unfortunately, his lawyer identified his second affidavit also as "Affidavit #1". His oldest and true first affidavit is at Tab 35, Book 2. That affidavit, also identified as "Affidavit #1 of David Cheperdak" also lends no support to the allegation made in the Written Submissions of Messrs. Palamarek at ¶21. That affidavit does not at all suggest that Kathleen Palamarek's "removal was already underway".

On the contrary. According to Lodge records, Kathleen Palamarek's lawyer, John Jordan, ensured that the legal authority for the action was delivered to the Lodge at "1405" *before Kathleen Palamarek changed residences* at "1445"¹

John Jordan went to great pains to make sure that the authority existed and had been delivered to interested parties before assisting in the relocation of his client, Kathleen Palamarek. On October 28, 2008, letters were couriered, with copies of the Representation Agreement, by counsel for Kathleen Palamarek, to Ralph Palamarek. Such a letter and attachment was mailed to the Public Guardian and Trustee and faxed at 2:50 p.m. to Ralph and Robert's then-lawyer - all detailed for the Court at Book 2, Tab 46 of the Application Record.

☞ ¶22: Gil Sampson was never invited to a private meeting nor given his interlocutor's name or position as CEO. He was approached by an unidentified man who sought to discuss private matters in the most public areas of a residential care facility.²

☞ ¶25: This is false. Kathleen Palamarek was transported from the home of Lois and Gil Sampson to the Royal Jubilee Hospital.

☞ ¶31: Dr. Kow is a geriatric medical specialist, although the Submissions go to pains to phrase it differently.

☞ ¶63: Here the Palamarek brothers refer to Carol Pickup and Lois Sampson as being the only two persons to whom Kathleen has expressed a desire for at-home care. Perhaps this is another typo but that list should also include not only solicitor John Jordan and Lyne England, R.N., but also Kathleen Palamarek herself as recorded throughout the Lodge records.

☞ ¶65. Fiona Sudbury, for whom no statement of qualification is provided generally, and in regards to psychiatric diagnosis specifically, cannot be providing the Court with any such expert evidence. It is an error and contrary to the most basic of rules of evidence that Ralph and Robert Palamarek would seek to provide and then to rely on a care home administrator, a registered nurse, to deliver a psychiatric or psychological diagnosis and prognosis to a Court of law.

May it please the Court to compare this offering with the comment made at ¶87 about the lack of qualifications of registered nurses Lyne England and Carol Pickup to make certain statements. In

¹ Lodge Records, Aff. #8 of LS, Book 3, Tab 73, page 107. The actual letter hand-delivered to the Lodge by John Jordan is at Book 2, Tab 46, Exhibit C to the Affidavit of Elizabeth McMillan.

² Gil Sampson, Affidavit #1 [Book 3, Tab 68], ¶31-45.

any event, may it further please the court, Lyne England and Carol Pickup report their observations. They do not, as Fiona Sudbury does, purport to observe that Kathleen Palamarek suffers from specified psychiatric conditions.

¶69: With respect, again in the face of an apparent typographical error that makes it difficult to understand the precise submission, the full evidence of Carol Pickup, R.N. and senior's advocate is:

"I can advise the court that Mrs. Palamarek has continued since July [2008] to say, on numerous occasions, that she does not want to live in the Lodge any more. She has advised me on a number of occasions that she wants to live in her home. She has also told me on several occasions that she would like to live with Lois and her husband Gil and have them look after her."

¶71. Again, the evidence cited offers no support that Kathleen Palamarek has stated that she is "perfectly happy" at the Lodge. Ralph Palamarek does allege at ¶17 of his Affidavit #2 that Kathleen has "an off again on again" relationship with her daughter "during the past 6 years" (which is false) but he does not allege any statement by his mother is regards to her feelings about living at the Lodge.

¶79. This statement suggests that the Lodge records, since July 2009 are bereft of Kathleen's pleas to "go home" or to "leave the Lodge". This is grossly misleading in that there has been no disclosure of Lodge records since September of 2009 so this allegation remains unverifiable and, secondly, it is not improbable that direction came down to Lodge staff to the effect that such annotations were irrelevant and not to be recorded. We simply do not know as the application for updated records was dismissed.

However, Lois Sampson, Gil Sampson, Carol Pickup, Lyne England and John Jordan all swear under oath that Kathleen Palamarek continues unabated to ask that she live in a home environment outside of the Lodge.

Further, if, as Ralph Palamarek says, and we believe it to be true, that "Kathleen is very vulnerable and easily influenced", it is highly probable that she is now keeping her thoughts to herself in this regard as far as the Lodge staff or her sons are concerned because, after years of begging for it, she has become resigned to the fact that her desires are ignored, or there is some residual effect of spousal abuse at work in a capitulation. Further, she may have come to realize that seeking to leave the Lodge and expressing that, gives displeasure to her sons. Worse, and the evidence shows that this has happened,³ she has been medicated on some occasions when, too forcefully, she makes these observations.

¶95. Ralph and Robert Palamarek, in their written submissions, tender the falsehood that Dr. Perry's only point of reference is a documentary review. Again, the Court must be alive to the ongoing inclination on the part of Ralph Palamarek and Robert Palamarek to purport to summarize evidence without any grounding within the corners of a sworn affidavit before the

³ For example, see Book 3, Tab 72, Affidavit of Ron Tisdell, ¶41.

Court. In incontrovertible fact, Dr. Perry spent time, person to person, in Victoria, with Kathleen Palamarek.

☞ ¶108. The Affidavit of Ron Tisdell was delivered to Ralph and Robert Palamarek on September 15, 2010 pursuant to the terms of a Case Planning Conference Order and not, as stated, in "October 2010".

☞ ¶111. Ralph Palamarek and Robert Palamarek complain in their written submissions that had Lois Sampson made Dr. Perry's affidavit available earlier, this would have led to a cessation of the use of Fentanyl.

It ought not to be lost on the court that this is the same Dr. Perry that the Palamarek brothers suggest should not be believed because (1) he was paid by Lois and (2) he did not have all the necessary information.

But ¶111 is as good and truthful reflection of the quality of medical and psychiatric care that Kathleen Palamarek receives at Broadmead Lodge that their evidence offers. According to the toxicologist Ron Tisdell⁴ and Dr. Perry,⁵ Fentanyl is a narcotic pain-killer intended for treatment of chronic moderate to severe pain with potency that is 60 to 100 times greater than morphine and almost inevitably causes constipation and might impair overall cognitive function or alertness. Essentially, what the Palamarek brothers are saying are "but for" the involvement of Dr. Perry, Kathleen Palamarek would still be wearing, 24/7, a Fentanyl patch upon her elderly body.

In addition, the Court should observe that in October of 2007, Dr. Nicholl, G.P., not only refused Lois Sampson's suggestion for a referral to a "geriatric specialist" but he criticizes her for making the suggestion.⁶ Perhaps the Lodge doctor may have noticed that 3 years after the tailbone fracture which it was prescribed for, the 88-year old still had, on her back, and a fresh one put on daily, a Fentanyl patch. Perhaps, if she had of been welcomed at the many family conferences that were convened and at which the spouses of the Palamarek brother attended, Lois Sampson could of successfully raised the Fentanyl concerns earlier?

It is not the purpose of Lois Sampson's submissions to indict Broadmead Lodge generally. Each senior is a separate and different human being, with a wide variety of financial and family resources. For some, one of the 200+ beds at the institution may be the appropriate or only agency or environment of care available.

But given *Kathleen Palamarek* and the circumstances unique to her, Lois Sampson is of the view that Broadmead Lodge is not an optimal environment for care because, primarily (1) they have let themselves become biased, (2) their doctors have unfettered, unquestioned and unchallenged access to the arteries and veins of Kathleen Palamarek, (3) the environment itself provokes Kathleen's boredom, despair, isolation, and fear for her personal safety and (4) the Lodge costs money.

⁴ Book 3, Tab 72, page 10 of his Affidavit, ¶49.

⁵ Tab 59, page 8 and 32 of Exhibit A.

⁶ Affidavit #1, Dr. Nicholl, ¶7-8, Book 2, Tab 21. Also, Lois Sampson, Affidavit #1, ¶49-50, [Book 2, Tab 23].

The limitations of life at Broadmead Lodge are clear from the e-mail from Ralph Palamarek dated September 8, 2010, when he notes that a male resident was found wandering not only the halls but rummaging through Kathleen Palamarek's room. The Lodge's solution to the problem is almost comical: they put a feminine sign on Kathleen Palamarek door with her name on it "as they think this should help the individual recognizes this is not the door to his room". Lois Sampson describes the event and the Lodge's response at ¶54 of her Affidavit #8.

☞ ¶126. The proposed statement of the law in regards to a conflict of interest is made without any references and appears to be simply a generic statement pulled out of a hat.

In *Craig v Wilander*,⁷ the court wrote:

"[A] court may refuse to appoint a property guardian whose interests conflict, or may conflict, with those of the individual unable to manage his or her affairs. The courts have generally sought to balance the benefits of appointing a particular guardian against any evident conflict of interest. Courts have also clearly indicated that a conflict of interest will constitute a ground for a removal of a guardian."

Or in *Re Demontigny*⁸ in which Justice Purvis wrote:

"There are many and varied circumstances where the interests of a guardian and a dependent adult might conflict. In some cases the conflict could be considered as likely to arise. In others the likelihood of conflict, while possible, would best be described as remote.

"I do not believe that the legislature intended to bar the appointment as guardian, partial guardian or trustee of a person, otherwise suitable in all cases, where a conflict is only remotely possible."

In *Noel v Noel*,⁹ the guardianship of "Colin" was at issue, who had been seriously injured in an automobile accident:

"Here the applicants as Colin's parents wish to personally provide many of the services required to care for Colin. They want to be paid for those services. The parents would be in a conflict of interest and duty if they have to decide how much of Colin's money should be paid to themselves for services rendered. In my view the court should not put the parents in such a conflict of interest and duty.

"The rule is as follows: It is prohibited for ... a trustee to be in a position where the opportunity, and therefore the temptation, exists to prefer his interest over his duty."

⁷ 2004 BCSC 920

⁸ 19 Alta. L.R. (2d) 118 (1982)

⁹ 47 E.T.R. 318, 1992, NBQB

The Court may also wish to note §10(2) of the pending, but not yet in force *Adult Guardianship and Planning Statutes Amendment Act, 2007*¹⁰ (emphasis added):

"The court must not appoint the following persons as a guardian: (a) a person who has a conflict of interest with the adult; (b) a person, other than a near relative of the adult, who provides personal care or health care services to the adult for compensation."

Clearly, Robert Palamarek is in a conflict of interest because of the loan.

Ralph Palamarek is not alone, therefore, as an applicant for committeship standing with one hand in his pocket. But even more so, his wife Donna also has a conflict of interest in her benefit of the home owned by the Patient, but exclusively occupied by her and her husband.

It is the position of Lois Sampson that especially where, as Ralph and Robert Palamarek suggest at ¶149(e) of their Written Submissions, "Kathleen is very vulnerable and easy influenced", the Guardian appointed ought not to have a conflict of interest especially under circumstances in which the candidate has not been forthcoming in providing accounts to the court or proper documented responses to the conflict of interests raised not by him initially - and this is not a small point - but by Lois Sampson.

On this basis alone, she should be preferred as guardian because she has no conflict of interest and to compare her specifically to Ralph Palamarek, nor does her husband Gil Sampson.

☞ ¶144(a): Again, and this may be another typographical error but this statement is patently false. On two separate occasions, in 1979 and again in 1987, Kathleen Palamarek chose Lois as her executrix. On a subsequent occasion, October 2008, she chose Lois as her Representative.

☞ 144(b). Against this statement, which Lois Sampson says is false, one must weigh the fact that when she sought sanctuary from spousal abuse, she chose to seek that sanctuary with Lois and Gil Sampson.

☞ ¶144(c) and ¶152: In essence, what the Palamarek brothers are telling the court here is that because, according to their statement, they have an irreconcilable relationship with their sister, she will thwart access. This is an interesting statement because under the stewardship of Ralph Palamarek and his interim committeship, considerable access restrictions have been imposed upon Kathleen Palamarek. Contrast this with the brief period of time that Lois Sampson acted as guardian in October of 2008 where she immediately communicated and implemented arrangements for access between her mother and her sons. Further contrast this with her statement that she would like to convene her brothers to family conferences to be held regularly when a significant decision has to be made in regards to their mother. Further, and on the record, within her Plan of Care, and at page 133 of her Affidavit #8 (Book 3, Tab 73), consider her conciliatory words towards her brothers and this phrase in particular:

¹⁰ Retrieved from the BC Legislative Assembly website, http://www.leg.bc.ca/38th3rd/3rd_read/gov29-3.htm, on November 17, 2010.

"I do not have any difficulty spending time with my family and my husband and I will do our utmost to ensure that the family had ample opportunity to enjoy Mom's company including of course visits and outings away from her home, and even overnight visits at their home."

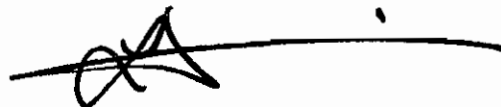
Against the uncompromising positions of the Palamarek brothers, Lois Sampson and her husband Gil offer to open their homes and hearts so that access between Kathleen Palamarek and her sons would be far in excess of the access that Kathleen has had with Lois and Gil at least since it was restricted by Dr. Nicholl over three years ago as set out at ¶9 and 10 of his Affidavit #1, because of allegations made by "Ralph and Donna Palamarek" that Lois caused Kathleen to miss her medications.

☞ ¶147. Once again, this bland statement of law is misleading to the court and ignores the terms of ¶4 of the order of Mr. Justice Johnston on November 19, 2008.¹¹ §19 of the Patients Property Act does indeed provide that powers of attorney and representation agreements are terminated at the moment of any PPA order. But 19(b) allows representation agreements to be saved by the court which is what Justice Johnston did in his November 19, 2008 order.

☞ ¶153: It is the submission of Lois Sampson that on the contrary, at-home care will provide Kathleen Palamarek with more, and not less supervision, not to mention considerably more privacy and what the non-profit institution simply cannot provide, 24/7 love and companionship.

☞ ¶158: It is respectfully submitted that Lois has not been "hostile or combative". True, she has been greatly confused by the cold reception at the various care facilities particularly since she was then completely unaware of the campaign of defamation then ongoing by her brothers. She became increasingly confused as this campaign spread successfully through their institutions and their medical professionals. On the basis of these allegations, her mother was involuntarily apprehended by three police officers from Lois' home and in the aftermath of that, and ever since, she has been shut out of consultations in regards to your mother, and the most severe of limitations have been placed on her mother's access to her only daughter. Nonetheless, she has not been "hostile or combative". Indeed, she has taken the necessary precautions to remain polite throughout knowing that the interim committee would quickly respond to any so-called "combativeness" with further restrictions on the mother-daughter relationship.

Signed in Victoria on this 18th day of November, 2010 by the lawyer for Lois Sampson.



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¹¹ Application Record, Book 1, Tab 7.