

Kathleen's demise: a cautionary tale

BY ROB WIPOND, JULY 2011

There's much to learn about BC's laws and eldercare system from the last years of Kathleen Palamarek's life in a local nursing home—especially from the battles that were fought in her name between her children, care providers and the Vancouver Island Health Authority.

It was a small but important epitaph for a much-loved woman. NDP West Kootenay MLA Katrine Conroy spoke in the provincial legislature in June in support of a public inquiry into the recent “suspicious death” of Kathleen Palamarek, an 88-year-old resident of Broadmead Lodge in Saanich.

During Lois Sampson née Palamarek's five-year struggle to help get her mother out of the nursing home, Kathleen became an icon to local seniors advocates. That's why the Saanich Peninsula Health Association, Vancouver Island Association of Family Councils, Old Age Pensioners Organization local, and others have been blitzing politicians, media and public agencies with requests for an inquiry.

“[T]he suspected abuse was due to overmedication, and the family needs answers,” said Conroy.

Yet the story involves much more than possible improper medicating; I've been following it since 2006. Kathleen's life, and now death, is a tragic example of how our outdated guardianship laws summarily declare seniors “incapable” and thereby turn them into battle zones over which families, health professionals and others fight for control amidst an increasingly troubled eldercare system.

Measuring incapability

In BC, assessments about whether or not people are “incapable” of managing their own affairs are usually conducted by medical doctors. The final declaration occurs before a judge, but unless someone protests (and typically the person in question isn't notified, so as not to cause him or her undue anxiety), that's a rubber-stamping.

Once deemed incapable under the BC Patients Property Act, you have no legal right to make any decisions. Those rights are transferred to a court-appointed representative, usually a relative or the Public Guardian.

And here's the kicker: BC capability assessments, from a scientific point of view, are a joke.

The “Guidelines for Issuing a Certificate of Incapability Under the Patients Property Act” issued by the BC Public Guardian and Trustee states, “there is no standard procedure for carrying out an assessment.” In addition, their detailed 2009 report written by UBC expert Deborah O'Connor explains that the science of capability assessment is “under-developed” and there are no established best practices whatsoever. The “Mini Mental Status Examination” (MMSE), she writes, “is unquestionably the most widely used tool,” even though this crude 30-point cognition test involving counting backwards, repeating odd phrases, and drawing geometric shapes “was never intended...as an assessment of capacity.” O'Connor advises that tests like the MMSE are “often inappropriately relied upon” by physicians and courts who don't recognize there's “inadequate evidence” linking such tests with “actual behaviour” in the “real world.”

O'Connor also explains that mid-range MMSE scores are especially unreliable—and that's where Kathleen Palamarek usually scored.

Dubious science, unchecked powers



Kathleen Palamarek

After being hospitalized with haemorrhaging from an apparent medication error in 2006, Kathleen was declared mentally incapable and eventually moved to Broadmead Lodge, while control of her affairs went to her son Ralph Palamarek, who had her signed Power of Attorney for finances and Representation Agreement for health care decisions.

During this time, a history of conflict amongst Kathleen's children escalated into frequent arguments, physical confrontations, and a prolonged court battle for legal "committeeship" or full guardianship authority over Kathleen under the Patients Property Act, with Lois on one side and her three brothers on the other.

It's clear from court documents that, generally, Lois wanted to care for her mother at her own home and distrusted the quality of life and care at Broadmead Lodge, while her brothers distrusted Lois and felt their mother generally had good care and a good life at the Lodge.

There were serious differences: When Kathleen was agitated, was it due to a poor quality of life at the Lodge and side effects of medications, or due to Lois visiting too frequently and speaking ill of the Lodge? Was it a conflict of interest when lawyer Heather Fisher sometimes represented Ralph in disputes with Lois, while Fisher doubled as a director on Broadmead Lodge's board? Was it necessary for Kathleen to be taking antidepressants, antipsychotics and benzodiazepine sedatives, all at the same time? The antipsychotics were of particular concern because Health Canada had warned about a doubling of death rates in elderly people with dementia, mostly from heart attacks (see "Crisis Behind Closed Doors," Focus, June 2011)—Kathleen had dementia and a history of heart troubles.

Meanwhile, a diminutive, deferential lady, Kathleen's own feelings, and degree of ability to express those, also became matters of contention.

MMSE results were the primary tests featured in assessments and court documents, although the underlying dubious science sometimes peeked through. Dr Art Prowse wrote, "Her mini mental status score of 27/30 suggests a higher level of function than she actually has." Dr Dale Nicholl later scored Kathleen at 17/30 and cited that earlier 27/30 score as evidence that Kathleen had suffered "a significant decline in her functioning level" since then. Still later, VIHA psychiatrist Dr Michael Cooper scored Kathleen at 20/30—she lost the 5 points that would've graded her as normally functional by not being able to name the exact date. No scoring adjustment was made for the fact that she was living in an institutional environment with no strong reason to keep daily track of dates, nor for the medications known to negatively affect cognition and memory.

Understandably, then, though everyone agreed Kathleen had poor hearing and some short-term memory problems, the question of the degree of her "incapability" became contentiously polarized and fuelled family conflict, especially when Kathleen began more frequently expressing to various parties her wishes to live with Lois.

In an affidavit, Dr David Leishman at Broadmead Lodge described Kathleen as having "no understanding or appreciation for what is happening around her." In her affidavit, retired nurse Carol Pickup, a seniors advocate who visited with Kathleen for years, conversely described Kathleen as having better and worse days, but generally as "well aware," "coherent," "quite savvy" and with "a good sense of humour." A lengthy video of her mom in conversation in 2011 posted by Lois on YouTube certainly gives the impression Pickup had a better read. (<http://www.youtube.com/watch?v=hrzngkyy6Ds>)

With Lois' help, in 2007-08 Kathleen met quietly off and on with lawyer John Jordan. He concluded Kathleen was competent enough to give him instruction and consistent in her desire to do a new Representation Agreement naming Lois her health care representative. On October 28, 2008, Lois joyously took her mother home.

The next morning while Lois, her husband Gil, Kathleen, and nurse and seniors advocate Lyne England were having tea, three police officers, two paramedics, and two emergency mental health response team members showed up at Lois' door. Broadmead Lodge's

attending physician, Dr Nicholl, had issued an emergency certificate under the Mental Health Act to take Kathleen to the psychiatric hospital.

“It was a nightmare!” declared England to me shortly afterwards.

The Mental Health Act is the ultimate hammer in the doctors' tool bag of draconian powers in BC, giving them the ability to instantly and indefinitely, without any judicial oversight, incarcerate and forcibly “treat” anyone for the “protection” of that person or others, or to prevent “mental or physical deterioration.” These broad, vague terms aren't defined anywhere, so essentially they're a blank cheque for doctors to seize control of virtually anyone's life.

Throughout all these events until today, the health professionals at Broadmead Lodge and VIHA have always portrayed themselves as “neutral” in what they describe as this “family conflict.” But behind-the-scene records revealed in court about the involuntary apprehension of Kathleen show how the health professionals' powers have sometimes exacerbated and even played deciding roles in those conflicts.

Use or abuse of power?

VIHA records written by a staff member show Ralph had long been telling staff at Broadmead Lodge and VIHA that Lois was a volatile, physically confrontational and mentally ill person: “[Ralph] has said that sister has gone off her meds for Schizophrenia & has become more erradict [sic]... [Broadmead Lodge Director of Care] Fiona Sudbury has connected [with] their risk management team & consulted [with] legal advice as to this situation...” Ralph apparently described Lois as believing “pills are poisons,” and the notes variously imply Lois likely could not be trusted with Kathleen's medications.

According to Lois, her husband of 30 years Gil Sampson, and her family doctor who reviewed her medical records, she has never been diagnosed with schizophrenia and has no blanket dislike for medications. In response to Lois' recent defamation lawsuit, Ralph has countered that, “in the past, [Lois] told members of her immediate family that she had been diagnosed with schizophrenia.”

Regardless, Lois' removal of Kathleen from Broadmead Lodge in October 2008 apparently ignited many of the health professionals' prejudices and fears. Two days later, Giuseppe Scaletta, co-ordinator of VIHA's Elderly Outreach Services, wrote in an email to senior VIHA doctors and staff, including Dr Michael Cooper and Dr Janet Mak, “The daughter who removed this lady from Broadmead has a history of schizophrenia and does not believe in medications... I believe that this is an abuse/neglect situation that warrants some intervention on our part.”

Scaletta began the discussions suggesting the doctors do an independent “assessment” of the situation and decide what actions might be “appropriate,” but by the end of the discussions all pretence to objectivity seems to have been lost.

“Here is our plan,” concluded outreach nurse Jessica Celeste. “The [Victoria Police Department] will meet Dr Mak and I in front of the building... We will then assess and request for ambulance to transport [Mrs. Palamarek] to [Royal Jubilee Hospital] for psychgeriatric [sic] assessment... She will then be transported back to the Lodge at Broadmead. Her son Ralph is aware. The Lodge of Broadmead's Director of Care is aware of the same plan and will readily admit her.”

It looked like an unequivocal plan for VIHA doctors and staff to neither question the portrayal of Lois they'd heard, nor uphold Kathleen's own right to at least be independently examined for her current mental health status and ability to make decisions.

And that's pretty much what happened.

On October 31, 2008, VIHA emergency psychiatrist Dr Janet Mak visited Kathleen at Lois' home. She noted that Kathleen couldn't name the exact date or the floor and suite number of Lois' apartment, or say where her medications were. Despite the fact Kathleen

had been at Lois' apartment only about 48 hours, those observations were all Mak wrote to explain her conclusion: "Ms. Palamarek was not oriented to time or place." Mak then described Lois' behaviour at length: "Lois was quite involved during the interview. She requested me to leave my folder/portfolio on the table because it's 'too official'. She instructed me to speak slowly and loudly. Lois brought out Kathleen's medications in a blister pack. She also showed me a box of nitro patch and a fentanyl patch. She requested me to note one used fentanyl patch as 'evidence' that she has been giving Kathleen her meds. Lois also reported I can speak to the pharmacist to confirm she has been giving Kathleen her meds as instructed."

While one might think Lois' concerns for Kathleen's anxiety and poor hearing, and Lois' efforts to show that Kathleen's medications were in order would reassure the doctor, especially considering the previous day's email discussions in which Lois' responsibility with medications was in doubt, the opposite seemed to happen. Mak commented cryptically, "Lois responded with this series of actions after I simply asked Kathleen to show me her meds." Mak then added, "Collateral history indicates one is uncertain of the level of care Ms Palamarek is currently receiving," and advised Kathleen be taken to hospital.

At hospital, psychiatrist Dr Michael Cooper then conducted an MMSE and wrote up a five-page overview of Kathleen's history and the family conflict. He concluded that Kathleen's health and wellbeing would be best served on "neutral territory." So Cooper then ordered that Kathleen be held at Broadmead Lodge, and he added a variety of other provisions to her "treatment plan" as previously requested by the Lodge's director of care, including curtailing visiting rights of Lois, Gil or anyone connected with them. "I would hope that the Mental Health Act will be only a stopgap measure to ensure Mrs Palamarek's safety until the guardianship issues are resolved," he commented.

Ironically, Cooper concluded that he did not want to see Kathleen be "a pawn in the disagreement between the two family groups." So instead, he put her back to square one himself.

A brush with death

The oft-delayed, prolonged court case over who would have control of Kathleen concluded on February 18, 2011, with judgement pending.

As of press time, Saanich police were still conducting an investigation into what happened next.

On February 23, Lois, Gil and Pickup discovered Kathleen in a "semi-conscious state" at Broadmead Lodge, according to records filed with police.

In her testimony, Pickup wrote that when they arrived, "I observed a dramatic change in [Kathleen's] general condition since my visit on February 19th. She was almost totally unresponsive, moaning, and her colour was ashen." A Broadmead nurse came in, wrote Pickup, "with a syringe of medication which he injected into a butterfly pick (sic) which had been inserted into her chest."

A butterfly, or intravenous PICC (peripherally inserted central catheter) is often used to directly pump powerful painkillers into a person to alleviate severe, intractable pain or during the final stages of dying. The drugs themselves can sometimes accelerate death.

The three returned the next morning and found Kathleen in an even worse state. Panicking, Lois called an ambulance.

According to the testimony of all three, a number of Broadmead staff tried to prevent the paramedics from seeing Kathleen, and became even more upset when the paramedics decided to take Kathleen to hospital. The ambulance attendants then determined Kathleen had indeed been receiving the powerful opiate hydromorphone. The paramedics began administering an antidote to the narcotic, and by the time Kathleen was at hospital she was awake and responsive. Ralph arrived and, according to Lois, Gil and Pickup, the doctor then said he'd received instructions from Ralph to conduct no further tests and Kathleen would be returned immediately to Broadmead.

In the ensuing weeks, Kathleen seemed by the accounts of Lois, Gil and Pickup to be fine or even better than normal.

In a March 17 letter, Lois, Pickup and England asked VIHA Chief Medical Health Officer Dr Richard Stanwick to investigate: “We believe that Kathleen Palamarek’s life has been, and continues to be, in danger.”

On March 31, citing the history of Lois’ “disruptive behaviour” (the removal of her mother by ambulance, is one example given), Broadmead reduced the visiting hours of Lois and anyone associated with her to four hours per week total, and a security guard began to accompany their visits with Kathleen.

Then, in an April 27 email to Lois, Ralph wrote, “Mom had a stroke today.” He added that Kathleen would be kept at Broadmead Lodge instead of being sent to hospital. “Mom is not in any life-threatening situation at this time.”

On May 3, the court judgement granted Ralph full committeeship over Kathleen.

On May 4, Ralph emailed to Lois that their mom “may have suffered a severe cardiac event sometime this morning.” That evening, Kathleen Palamarek died.

Along with police, the Regional Coroner is now investigating.

In an email, Broadmead Lodge CEO David Cheperdak wrote that, “privacy laws and respect for the confidentiality of our residents prevent me from commenting on any specifics related to Mrs. Palamarek.”

“As this matter is unresolved, and litigation is on-going, neither Mr Ralph Palamarek nor I am prepared to make any comment on this matter at this time,” wrote lawyer Les Jamieson.

Will a fair investigation occur?

The issues in this long, complex story, many not even mentioned so far, expand far beyond the scope of ordinary police or coroner investigations.

These include differences over appropriate nursing home staffing levels; mounting stress in our eldercare system; quality of mediation options and complaint processes within care facilities and health authorities; effectiveness of self-regulating health professions; access to appeals for involuntary apprehensions; regular use of drugs for behaviour control which can be fatal; influence of health professionals on police and lawyers; use of “comfort care” medications which may accelerate death; and most importantly, the crudeness of our legal framework which gives inordinate power to care providers.

These issues also couldn’t be properly explored in the committeeship hearing, as Justice David Harris’ written judgement showed the focus was on simply deciding who was the best person to have authority over Kathleen. In that effort, it was sufficient for him to conclude that Ralph is “suitable” if not “perfect,” Lois is “rude,” “high-handed” and “aggressive”, and Broadmead Lodge “provides a safe setting” where Kathleen is treated by professional staff “in a dignified and respectful manner.”

Yet the foundation of Harris’ conclusions was deeply and problematically embedded in that same legal framework and way of thinking that accepts health care professionals having enormous, unaccountable powers. For example, key aspects of the case turned on Harris’ decision that Kathleen had no right to even solicitor-client privilege—a stunning precedent undermining even further BC’s weak rights protections for those declared incapable. Harris also disparaged the main independent medical experts who criticized Kathleen’s medication regimes for not consulting closely enough with her treating physicians. And he criticized Lois for turning to two health professional disciplinary bodies, as if requesting the very independent investigations that do exist to hold our health professionals accountable is by definition harassment.

The court case, then, is really just one more reason that a full, independent public inquiry into all these matters could be helpful.

Improving the laws

Still, it's possible none of this would've happened if Kathleen Palamarek had been legally able to maintain control over her own life at a level more appropriate for her abilities. The siblings and health professionals, then, would have had much less to fight over.

In that regard, legislation changes that have been held in limbo for several years could've helped.

On September 1, BC will finally enact new legal tools to help people construct Advance Directives—documents that you can write ahead of time to guide your representatives' decision-making more explicitly and with greater detail.

Unfortunately, enactment of other parts of our new guardianship legislation has been postponed indefinitely. Those laws would require more sophisticated, lengthy capability assessments involving interdisciplinary teams working in consultation with relatives, and would allow for grey areas—for example, a person could be deemed incapable of handling their finances or living on their own, but still capable of participating in health care decisions.

Jay Chalke, Public Guardian and Trustee, is frank about what's holding up enactment of this important legislation.

“The difference between the Patients Property Act and a modern guardianship law is akin to the difference between an on-off light switch and a dimmer switch,” says Chalke. To get the greater degree of nuance and personal tailoring in our lighting, he explains, “costs a lot more.”

The current government doesn't want to fund such teams or more complex processes of assessing people's rights, he clarifies.

So what is the projected cost?

Four million dollars a year, answers Chalke.

I gasp. So little to help ensure British Columbians retains the basic rights to control their lives that they deserve, and yet it won't be done?

“I certainly think it's an expenditure whose time has come,” comments Chalke.

Yet, another shadow still casts itself across all of this. Even if all these legal changes were implemented, all of your and your family's wishes could still be trumped at any moment by a doctor using our draconian Mental Health Act.

Thankfully, more people are beginning to show concern about that. Pointing to a case where antipsychotics were used as chemical restraints against the express wishes of an elder's family, independent Cariboo North MLA Bob Simpson recently asked the government to investigate, amongst other eldercare issues, the “loophole” that allows health authorities to use the Mental Health Act to override other legislated rights.

A government investigation is currently underway. Meanwhile, Lois Sampson is appealing aspects of the committee's judgement. The Ombudsperson's long-delayed report on seniors care, which will address legal issues, is also scheduled to be released this year.

And perhaps the government can be stirred into conducting a public inquiry into the story of Kathleen Palamarek.

(Correction: The print and earlier online version of this story incorrectly named Fiona Hunter as Broadmead Lodge's Director of Care. Fiona Sudbury is Broadmead Lodge's Director of Care. Fiona Hunter is another lawyer from the law firm Horne Coupar who, along with Heather Fisher, represented Ralph Palamarek from 2007 to 2009.)

Rob Wipond met Kathleen Palamarek and remembers her as warm, thoughtful and witty.

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