

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MARGARET ANNE BENTLEY,
by her Litigation Guardian KATHERINE HAMMOND,
JOHN BENTLEY and KATHERINE HAMMOND

PETITIONERS

AND:

MAPLEWOOD SENIORS CARE SOCIETY,
FRASER HEALTH AUTHORITY and
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

MAPLEWOOD SENIORS CARE SOCIETY
1919 Jackson Street
Abbotsford, B.C.
V2S 2Z8

AND TO:

FRASER HEALTH AUTHORITY
Suite 400, Central City Tower
13450 - 102nd Avenue
Surrey, B.C.
V3T 0H1

AND TO:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
c/o Minister of Justice and Attorney General of British Columbia
1001 Douglas Street
Victoria, B.C.
V8V 1X4

This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the Petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the Petitioners,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the Registry is: 800 Smithe Street Vancouver, British Columbia V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the Petitioners is: c/o Kieran A.G. Bridge Barrister & Solicitor 1400 – 1125 Howe Street Vancouver, B.C. V6Z 2K8 Attention: Kieran A.G. Bridge Fax number for delivery: 1-888-665-7448

E-mail address for delivery:
kieran@kieranbridgelaw.com

(3) The name and office address of the Petitioners' lawyer is:

Kieran A.G. Bridge
Barrister & Solicitor
1400 – 1125 Howe Street
Vancouver, B.C.
V6Z 2K8

CLAIM OF THE PETITIONERS

Part 1: ORDERS SOUGHT

1. A declaration that the Petitioner, Margaret Anne Bentley ("Margot") is in a condition such that "there is no reasonable expectation of [her] recovery from extreme physical or mental disability" (the "Condition") within the meaning of the document signed by Margot dated November 24, 1991 (the "Statement of Wishes").

2. A declaration that the Statement of Wishes states that in her present Condition, Margot is to be fed "No Nourishment or Liquids" (the "Instruction Not to Feed") .

3. A declaration that the Statement of Wishes, including the Instruction Not to Feed, constitutes Margot's refusal to consent to being fed nourishment or liquids in her Condition.

4. In the alternative, a declaration that the Statement of Wishes, including the Instruction Not to Feed, as reinforced and/or supplemented by Margot's oral statements and/or instructions consistent therewith and expressed while she was capable (the "Orally Supplemented Statement

of Wishes") constitutes Margot's refusal to consent to being fed nourishment or liquids in her Condition.

5. A declaration that the Statement of Wishes, or alternatively the Orally Supplemented Statement of Wishes, or both, are under the common law valid and enforceable refusal of consent by Margot to being fed nourishment or liquids in her Condition.

6. A declaration that feeding nourishment or liquids to Margot in her Condition constitutes battery.

7. A declaration that feeding nourishment or liquids to Margot constitutes "health care" within the meaning of the *Health Care (Consent) and Care Facility (Admission) Act*, R.S.B.C. 1996, c. 181, as amended (the "*Health Care Consent Act*"), the *Adult Guardianship Act*, R.S.B.C. 1996, c. 6, as amended (the "*Adult Guardianship Act*") and the *Representation Agreement Act*, R.S.B.C. 1996, c. 405, as amended (the "*Representation Agreement Act*").

8. A declaration that in her Condition and her present mental state, Margot cannot:

- (a) give consent to health care within the meaning of or as required by *Health Care Consent Act* section 6; or
- (b) reasonably be consulted with to determine her current wishes, within the meaning of *Representation Agreement Act* section 16(2) and (3).

9. Declarations that the Statement of Wishes, including the Instruction Not to Feed, or alternatively the Orally Supplemented Statement of Wishes, or both, constitute Margot's:

- (a) refusal to consent to health care within the meaning of *Health Care Consent Act* sections 4 and 9;

- (b) refusal to consent to health care while she was a capable adult, and are not affected by her subsequent incapability within the meaning of *Health Care Consent Act* section 9(1.2); and
- (c) "instructions or wishes [Margot] expressed while ... she was capable" within the meaning of *Health Care Consent Act* section 19(1)(b) and *Representation Agreement Act* s. 16(3);

10. Further, or in the alternative, declarations and orders that:

- (a) the Statement of Wishes constitutes an "advance directive" within the meaning of the *Health Care Consent Act*, and is a valid and enforceable advance directive under that Act and under the *Health Care Consent Regulation*, B.C. Reg. 20/2000, as amended;
- (b) the Statement of Wishes is a refusal by Margot to consent to health care, within the meaning of and in accordance with *Health Care Consent Act* sections 19.7 and 19.9; and
- (c) the Respondents must comply with the Statement of Wishes, including the Instruction Not to Feed, pursuant to *Health Care Consent Act* sections 19.7 and/or 19.9.

11. Further, or in the alternative, declarations and orders that:

- (a) Margot is a "person in care" and Maplewood is a "licensee" within the meaning of the *Community Care and Assisted Living Act*, S.B.C. 2002, c. 75 (the "CCALA");
- (b) the Statement of Wishes, including the Instruction Not to Feed, or the Orally Supplemented Statement of Wishes, or both, constitute Margot's "preferences", "choices", and "views" within the meaning of the *CCALA* and its Schedule (the "Residents' Bill of Rights");
- (c) Margot has a right under *CCALA* section 7(1)(b)(ii) and (1.1) and the Residents' Bill of Rights not to be fed nourishment or liquids contrary to her Statement of Wishes;
- (d) John and Katherine are Margot's "family or representatives" within the meaning of the *CCALA* and the Residents' Bill of Rights; and
- (e) the Statement of Wishes, including the Instruction Not to Feed, the Orally Supplemented Statement of Wishes, and/or John and Katherine's instructions and/or directions

consistent therewith must be complied with and implemented by the Respondents pursuant to *CCALA* section 7 and the Residents' Bill of Rights.

12. Further, or in the alternative, a declaration that the Statement of Wishes constitutes a "representation agreement" within the meaning of the *Representation Agreement Act* and the *Health Care Consent Act* and is a valid representation agreement under sections 9 and 13 of the *Representation Agreement Act*.

13. In the alternative, a declaration and order under *Representation Agreement Act* section 13(7) that if there is any defect in the execution of the Statement of Wishes, it is not invalid as a representation agreement solely because of that defect, and is valid and enforceable as a representation agreement under the *Representation Agreement Act*.

14. Further, or in the alternative, declarations and orders that:

- (a) the Representatives, John and Katherine, are Margot's representatives under the Statement of Wishes and as defined and in accordance with the *Representation Agreement Act* and the *Health Care Consent Act*;
- (b) the Statement of Wishes, including the Instruction Not to Feed, and the authorization the Statement of Wishes gives to the Representatives as set out herein, is lawful and enforceable under *Representation Agreement Act* s. 9;
- (c) the Statement of Wishes authorizes John, or alternatively Katherine, to refuse to consent to health care for Margot, including by complying with and implementing the Instruction Not to Feed, and by instructing and/or directing the Respondents to comply with and implement the Instruction Not to Feed; and
- (d) the Representatives are obligated and required to comply with and implement the Instruction Not to Feed, and to instruct and/or direct the Respondents to comply with and implement the Instruction Not to Feed, including pursuant to *Representation Agreement Act* section 16(2), (2.1) and (3).

15. Further, or in the alternative, declarations and orders that:
- (a) The Petitioners, John Bentley ("John") and Katherine Hammond ("Katherine") (collectively, the "Representatives") are Margot's "spouse" and "child", respectively, within the meaning of *Health Care Consent Act* s. 16(1)(a) and (b);
 - (b) in light of Margot's Condition and her present mental state, the Respondents, including any employee, contractor or agent of any of the Respondents, may not lawfully provide health care to Margot:
 - (i) contrary to the Statement of Wishes, including the Instruction Not to Feed;
 - (ii) without the substitute consent of John pursuant to *Health Care Consent Act* s. 16(1)(a); or
 - (iii) alternatively, without the substitute consent of Katherine pursuant to *Health Care Consent Act* s. 16(1)(b); and
 - (c) the Representatives, in exercising their powers as Margot's substitute decision makers under *Health Care Consent Act* sections 16 to 19, must, under section 19(1)(b) of that Act, comply with and implement, and must instruct and/or direct the Respondents to comply with and implement, the Statement of Wishes, including the Instruction Not to Feed and the Orally Supplemented Statement of Wishes.
16. A declaration that feeding nourishment or liquids to Margot is a provision of "health care services" within the meaning of the *Adult Guardianship Act*, including s. 53(2) of that Act.
17. A declaration and order that under *Adult Guardianship Act* Part 3, the Respondents must not feed nourishment or liquids to Margot unless permitted or directed to do so by an order of the court under *Adult Guardianship Act* s.56(3).
18. An order that the Respondents must comply with the Statement of Wishes, including the Instruction Not to Feed, or the Orally Supplemented Statement of Wishes, or both, and any instructions and/or directions from the Representatives consistent therewith, including an order that the Respondents cease to feed nourishment or liquids to Margot and cease to direct, require

or permit anyone, including their respective employees, agents and contractors, to feed nourishment or liquids to Margot.

19. Declarations that:

- (a) the purported order or direction contained in the letter from the Respondent, Fraser Health Authority ("FHA") to the Respondent, Maplewood Seniors Care Society ("Maplewood") dated December 18, 2012, as follows:

In the event that John Bentley (spouse) and/or Katherine Hammond (daughter) attempt to remove or remove Margot Bentley from the premises of Maplewood House then the Abbotsford Police must be contacted to report that Margot Bentley is being removed or has been removed in contravention of the *Adult Guardianship Act* and must be returned to the care of Fraser Health immediately.

(the "Police Order"); and

- (b) any other purported order or direction made by FHA or issued by FHA to Maplewood or any other person that purports to prohibit or impede removal of Margot from the Facility by or at the request or direction of John or Katherine (collectively, "Non-Removal Orders")

were at all relevant times and are beyond the statutory power of FHA to make, and are void and unenforceable.

20. A declaration that any regulation, order, policy, standard, guideline, directive, instruction or agreement of any nature issued, entered into, created or implemented by any of the Respondents or their respective employees, agents or contractors, including by FHA under the *Adult Guardianship Act*, or otherwise, or by the "minister" within the meaning of and under the *Continuing Care Act*, R.S.B.C. 1996, c. 70, the *Health Authorities Act*, R.S.B.C. 1996, c. 180, or otherwise, that requires or permits that Margot be fed nourishment or liquids by anyone contrary to the Statement of Wishes, including the Instruction Not to Feed, or contrary to the Orally Supplemented Statement of Wishes, is contrary to and/or inconsistent with the *Health Care*

Consent Act, the *Representation Agreement Act*, and/or the *CCALA*, including the Residents' Bill of Rights, and is to that extent of no force or effect.

21. Further, or in the alternative, a declaration that:

- (a) the Statement of Wishes, including the Instruction Not to Feed, or alternatively the Orally Supplemented Statement of Wishes, or both;
- (b) the instructions and/or directions of the Representatives consistent therewith, including instructions and/or directions by the Representatives not to feed nourishment or liquids to Margot;
- (c) Margot's Common Law Rights; and/or
- (d) the statutory provisions referred to herein that require or permit compliance with and implementation of the the things and matters referred to in paragraphs (a), (b) and (c),

constitute a "lawful excuse" within the meaning of *Criminal Code*, R.S.C. 1985, c. C-46, s. 215(2) for any person who might otherwise be obligated under that section to feed nourishment or liquids to Margot not to do so.

22. Further, or in the alternative, declarations and orders that:

- (a) any support and assistance plan in relation to Margot created by FHA or any of the other Respondents or their respective employees, agents or contractors must, under *Adult Guardianship Act* s. 53(2), comply with the *Health Care Consent Act* as set out or referred to herein, including by complying with and requiring the implementation of the Statement of Wishes, including the Instruction Not to Feed, and/or the Orally Supplemented Statement of Wishes, and any instructions and/or directions from the Representatives consistent therewith; and
- (b) complying with and implementing Margot's Statement of Wishes, including the Instruction Not to Feed, or the Orally Supplemented Statement of Wishes, or both, does

not constitute "abuse" or "neglect" of Margot within the meaning of the *Adult Guardianship Act*.

23. Further, or in the alternative, declarations and orders that:

- (a) any regulation, order, policy, standard, guideline, directive, instruction or agreement of any nature, including but not limited to the Police Order and any Non-Removal Orders;
- (b) conduct by any of the Respondents or their respective employees, agents or contractors acting under their direction and/or control; and
- (c) the *Adult Guardianship Act*, *CCALA* s. 34, *Community Care and Assisted Living Regulation*, B.C. Reg. 217/2004, as amended, s. 2 and *Residential Care Regulation*, B.C. Reg. 96/2009, as amended, Part 5, Division 3 and Part 6, Division 1, s. 83, *Criminal Code* s. 215(2), and/or any other statute or regulation on which the Respondents may rely as allegedly requiring or permitting any such regulation, order, policy, standard, guideline, directive, instruction or agreement of any nature or any such conduct,

under which Margot is or may be fed nourishment or liquids by anyone contrary to the Statement of Wishes, including the Instruction Not to Feed, or contrary to the Orally Supplemented Statement of Wishes, or contrary to the instructions and/or directions of the Representatives consistent therewith, are contrary to and/or inconsistent with and unjustifiably infringe upon Margot's rights under the Canadian *Charter of Rights and Freedoms* (the "*Charter*") including Margot's rights:

- (d) under section 2(a) of the *Charter* to freedom of conscience and religion;
 - (e) under section 2(b) of the *Charter* to freedom of thought and belief;
 - (f) under section 7 of the *Charter* to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice;
- and

- (g) under section 15 of the *Charter* to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on religion, age or mental or physical disability,

and are to that extent unlawful and/or of no force or effect.

24. An Order granting the Petitioners liberty to apply for further and other relief as may appear necessary.

25. An award of costs of these proceedings.

26. An Order granting the Petitioners such further and other relief as the Court considers necessary and appropriate.

Part 2: FACTUAL BASIS

The Parties

1. The Petitioner, Margaret Anne Bentley, also known as Margot Bentley ("Margot") is a Canadian citizen and resident of British Columbia who was born on May 28, 1931. Margot is a former nurse and businesswoman. At all relevant times, Margot has been an adult as defined in and/or for the purposes of all relevant legislation and regulations.

2. The Petitioner, John Bentley ("John") is retired. At all relevant times, John has been Margot's spouse as defined in and/or for the purposes of all relevant legislation and regulations.

3. The Petitioner, Katherine Hammond ("Katherine") is a businesswoman and former nurse. At all relevant times, Katherine has been Margot's child as defined in and/or for the purposes of all relevant legislation and regulations.

4. The Respondent, Maplewood Seniors Care Society is a society incorporated or continued under the *Society Act*, R.S.B.C, 1996, c. 433, and has a registered address of 1919 Jackson Street, Abbotsford, British Columbia.
5. Maplewood Seniors Care Society was created on July 2, 2010, by the amalgamation of The M.S.A. Manor Society and Maplewood House Society, both of which were societies incorporated or continued under the *Society Act*.
6. The M.S.A. Manor Society, Maplewood House Society and Maplewood Seniors Care Society are collectively referred to herein as "Maplewood".
7. The Respondent, Fraser Health Authority ("FHA") is a health authority created or continued under the *Health Authorities Act*, R.S.B.C. 1996, c. 180, and has an office at Suite 400 Central City Tower, 134500 - 102nd Avenue, Surrey, British Columbia.
8. The Respondent, Her Majesty the Queen in Right of the Province of British Columbia (the "Province") has an address for service of Attorney General of British Columbia, Ministry of Justice, 1001 Douglas Street, Victoria, British Columbia.

The Facility

9. At all relevant times, Maplewood has owned and operated a facility under the name Maplewood House and located at 1919 Jackson Street, Abbotsford, British Columbia (the "Facility").
10. The Facility is licensed as a "community care facility" within the meaning of the *CCALA*. Maplewood is a licensee within the meaning of that Act.
11. The Facility is a "care facility" within the meaning of the *Health Care Consent Act*, the *Adult Guardianship Act* and the *Representation Agreement Act*.

12. At all relevant times, Maplewood has been an "operator", and the Facility has been an "facility", within the meaning of the *Continuing Care Act*.
13. At all relevant times, Maplewood's operation of the Facility and Margot's presence in the Facility and the related matters as described herein have constituted "continuing care" within the meaning of the *Continuing Care Act*, and have been prescribed services under that Act and the *Continuing Care Programs Regulation*, B.C. Reg. 146/95, as amended.
14. Further, or in the alternative, at all relevant times, Maplewood's operation of the Facility and Margot's presence in the Facility and the related matters described herein have constituted "residential care services" within the meaning of the *Continuing Care Fees Regulation*, B.C. Reg. 330/97, as amended.
15. Maplewood is the employer of persons who work in and operate the Facility, and who are involved in Margot's presence in the Facility and the related matters described herein. Further, or in the alternative, Maplewood has contracted with and directs and controls the actions of such persons, who are agents and/or contractors of Maplewood.
16. Further, or in the alternative, at all relevant times FHA has been deemed to be the employer of some or all of the persons described in the preceding paragraph, pursuant to the *Public Sector Employers Act*, R.S.B.C. 1996, c. 384, s. 1, as amended, and the *Health Care Employers Regulation*, B.C. Reg. 427/94, s. 2, as amended.
17. Further, and in any event, FHA has, through its own employees, contractors and agents, been involved in Margot's ongoing presence in the Facility and the related matters described herein.

18. Further, and in any event, FHA has directed and controlled, or purported to direct and control, Maplewood's employees, contractors and agents who are involved in Margot's ongoing presence in the Facility and the related matters described herein.

19. Maplewood or FHA, or both, by feeding nourishment or liquids to Margot, provide "health care" within the meaning of the *Health Care Consent Act*, the *Adult Guardianship Act* and the *Representation Agreement Act*, and feeding nourishment or liquids to Margot is a provision of "health care services" to Margot within the meaning of the *Adult Guardianship Act*, including s. 53(2) of that Act.

20. Maplewood or FHA, or both, are "health care providers" in relation to Margot within the meaning of the *Health Care Consent Act* and the *Health Care Consent Regulation* and are obligated to comply with the provisions of that Act pertaining to health care providers.

Margot, her Statement of Wishes and her Condition

21. Margot was born in 1931. She was born to a single mother who was unable to care for her. At less than one year of age, she was adopted by the late Honourable Charles Tysoe and his wife. Mr. Tysoe was at that time a lawyer and later became a Justice of the Court of Appeal of British Columbia.

22. Margot had a comfortable life and received a good education. In the early 1950s, she qualified as a registered nurse, and later worked as a nurse, including at Vancouver General Hospital and Mission Hospital. In her work as a nurse, she frequently observed and came into contact with patients suffering from Alzheimer's disease and other forms of dementia.

23. Prior to approximately 2002, Margot had an active and fulfilling life. She travelled extensively and enjoyed horses, gardening and painting. Margot practised as a registered nurse and also became a successful realtor.

24. In approximately 1953, Margot married Frank Dolman ("Frank") with whom she had four children, Katherine, Danielle, Stephen and Cameron, who drowned in 1978 at the age of 20. Around that time, Margot and Frank divorced. In 1981, Margot married John, whom she had met in the late 1970s. Around 1981, Margot stopped working. Together, Margot and John had a comfortable life in the Fraser Valley and at their winter home in Mexico. John had horses which Margot enjoyed, and she was also able to enjoy gardening, painting, fishing, golf and swimming. Most winters until 2004, they took extended vacations in Mexico, where they owned several homes over the years.

25. At all relevant times until around 2003, Margot was capable of expressing her instructions and/or wishes regarding her health care, including health care which might be offered or available to her in the future.

26. On November 24, 1991, Margot executed the Statement of Wishes, including the Instruction Not to Feed. Margot thereafter frequently referred to her Statement of Wishes as her "living will".

27. On the same date, John executed a statement of his wishes in identical terms except for Margot's handwritten additions to her Statement of Wishes. Both Margot's and John's statements of wishes were witnessed by their friends, Judy and Jim Clifford.

28. Margot was of sound mind and capable of expressing consent or refusal to consent to health care when she made her Statement of Wishes. Margot's Statement of Wishes is in a form and executed in a manner that complies with *Representation Agreement Act* s. 13.

29. Eight years later, in December 1999, Margot received from her medical advisers the diagnosis that she has Alzheimer's disease (the "Diagnosis"). The Diagnosis included long-term degenerative dementia.

30. Following her Diagnosis, Margot frequently expressed, including to John and Katherine, her concern that she did not want to live in a state of advanced Alzheimer's disease or dementia, that as a nurse she had seen what the advanced stages of Alzheimer's disease and dementia are like, and that she wished to be allowed to die if she reached such a state. She frequently discussed her concern and wish, and frequently acknowledged, including with John and Katherine, the fact that she had made her living will and that she believed it would result in her being allowed to die if she reached a state of advanced Alzheimer's disease or dementia. She also frequently expressed relief regarding that fact and belief.

31. Margot's mental condition deteriorated after 1999. She was last able to make a trip to Mexico with John in 2004. By 2005, John was 78 years old and was not able to provide adequate care for Margot at home. A representative of FHA came to their home in 2005 to discuss whether Margot might live in a residential care facility. Margot's Statement of Wishes was discussed with FHA's representative at that time. Later that year, Margot moved into a facility known as Ebenezer Home.

32. In 2009, Ebenezer Home was closing, and Margot was transferred to Maplewood House.

33. Since no later than 2010, Margot has been in a vegetative state. She has not recognized or responded to John, Katherine or any other member of her family in any way, has not spoken, and has made only extremely limited physical movements, such as occasionally rubbing the back of her hand or her arm or face. Her eyes are closed most of the time and she lies motionless in bed or slumped in a wheelchair. She is diapered.

34. Between 2009 and 2011, Margot's doctor at Maplewood House was Dr. Chan.

35. By no later than the fall of 2011, Dr. Chan and Maplewood's Director of Care, Corey Primus, received from John copies of Margot's Statement of Wishes.

36. By letter to Maplewood dated November 15, 2011, and copied to Dr. Chan, John and Katherine quoted the Statement of Wishes, and specifically the Instruction Not to Feed, and stated:

"Therefore, in keeping with her wishes, and as per her living will, the family hereby requests that, effective immediately, no nourishment or liquids be given to Margot. However, it is extremely important that she be kept as comfortable as possible, and that any pain or suffering be prevented or alleviated immediately with sedation and/or analgesics. The family would prefer the use of oral narcotics, such as Percocet.

Dr. W. Chan has requested that the staff at Maplewood fax him with a request for an order for medication.

The family thanks the staff at Maplewood for their ongoing care of Margot and for their respect of her wishes, and the wishes and direction of the family."

37. In late 2011, it was agreed among John, Katherine, Dr. Chan and Maplewood that Margot would no longer be fed nourishment or liquids, in accordance with her Statement of Wishes.

38. A short time after this agreement was reached, John was informed that FHA would not permit the cessation of feeding of nourishment and liquids.

39. Since late 2011, Margot's doctor has been Dr. Andrew Edelson.

40. In early 2012, John and Katherine requested that Margot be transferred to a palliative care facility. Dr. Edelson arranged for the Christine Anne Morrison Hospice to accept Margot. FHA denied this request by letter dated December 21, 2012.

41. Between late 2011 and early 2013, several meetings took place among John, Katherine, Dr. Edelson, Maplewood's personnel and representatives of FHA. Maplewood and/or FHA failed and/or refused, and continue to fail and/or refuse, to comply with and/or implement Margot's Statement of Wishes, including the Instruction Not to Feed, and to follow John and Katherine's instructions and/or directions to comply with and/or implement Margot's Statement of Wishes.

42. In December 2012, a representative of FHA, Leanne Lange, stated to Katherine that if John or Katherine tried to move Margot to a palliative care facility or to a private residence, "We will physically stop you."

43. In a document dated December 5, 2012, entitled "Clinical Ethics Consult for Margaret Bentley, Maplewood House, Abbotsford", which was provided to John and Katherine, FHA summarized a legal opinion that FHA apparently received from a lawyer regarding the Statement of Wishes and Margot's ongoing health care. FHA relied on that summary as justification for their failure and refusal to comply with and implement Margot's Statement of Wishes, including the Instruction Not to Feed, and to comply with John and Katherine's instructions and/or directions in that regard. However, the summary does not identify any statute, regulation or case law. By letter of the same date, Katherine requested a copy of the legal opinion that FHA had summarized, and on December 6, 2012, John made a written request for a copy of the legal opinion. However, FHA refuses to provide a copy of the legal opinion or any part of it.

44. Around the same time, Dr. Edelson was advised by Andrew Webb, a senior employee of FHA, that FHA has a legal opinion that says complying with the Instruction Not to Feed would be illegal and that FHA is legally obligated not to allow Margot's family to transfer her to a place where she would not be fed. Dr. Edelson then asked to speak to FHA's in-house lawyer, Alexis Kerr, about those suggestions, but Ms. Kerr refused to speak to Dr. Edelson.

45. Unbeknownst to the Petitioners or Dr. Edelson, by letter from FHA to Maplewood dated December 18, 2012, FHA purported to order and direct Maplewood and its personnel as follows:

In the event that John Bentley (spouse) and/or Katherine Hammond (daughter) attempt to remove or remove Margot Bentley from the premises of Maplewood House then the Abbotsford Police must be contacted to report that Margot Bentley is being removed or has been removed in contravention of the *Adult Guardianship Act* and must be returned to the care of Fraser Health immediately.

(the "Police Order").

46. The Petitioners and Dr. Edelson only became aware of the Police Order on July 30, 2013, after Dr. Edelson saw it in Margot's file at Maplewood. Maplewood's personnel refused to provide a copy of the letter to Dr. Edelson, but he was able to take photographs of its two pages using his telephone.

47. Because of the failure and/or refusal by FHA and Maplewood to provide documentation and information to the Petitioners, they do not know what other orders and directions FHA may have purported to make regarding or affecting Margot.

48. Neither Maplewood nor FHA has ever provided a detailed legal basis or explanation for why they have failed and refused to comply with and implement the Statement of Wishes, including the Instruction Not to Feed, and to comply with John and Katherine's instructions and/or directions in that regard.

49. In its letter dated December 21, 2012, FHA asserted, without citing any case law or other legal authority, that failure to feed Margot would, regardless of Margot's wishes, "meet the definition of 'neglect' in the *Adult Guardianship Act*." FHA also threatened John and Katherine by stating that if they were "unwilling to support the continued provision of nutritional care to [Margot] at Maplewood House, then the only option available to Fraser Health is to proceed to court to apply for a support and assistance order pursuant to section 54(1) of the *Adult Guardianship Act*."

50. Such an application would require, under the *Adult Guardianship Act*:

- (a) that FHA prepare under s. 53(2) a "support and assistance plan" for Margot that "the designated agency [*i.e.*, FHA] must ensure" complies with the *Health Care Consent Act*"; and
- (b) that the application to the court be accompanied, under s. 54(3), by both a "support and assistance plan that is prepared by the designated agency [*i.e.*, FHA]" in accordance with

the *Health Care Consent Act* as described in the preceding sub-paragraph, "*and includes a statement of the adult's wishes if known*" (emphasis added).

In addition, at the hearing of such an application, under *Adult Guardianship Act* s. 56(3) "the court must take into account the information in the documents mentioned in section 54(3)."

51. FHA has produced documentation indicating that FHA completed a Support and Assistance Plan in relation to Margot dated January 29, 2013. However, despite an express request from Katherine to be provided with a copy of Margot's Support and Assistance Plan, by letter dated July 12, 2013, FHA expressly stated that it is not required to provide it, and FHA refused to provide it. On July 30, 2013, Dr. Edelson made a written request to Maplewood for a copy of Margot's care plan, but to date it has not been provided to him.

52. FHA has not made any application to court for an order in relation to Margot under the *Adult Guardianship Act*, and has not served a copy of any such application on John or Katherine under s. 54(2).

53. As a result, John and Katherine have no further information as to whether FHA or Maplewood has produced any care plan or support and assistance plan for Margot or, if so, whether they have complied with *Adult Guardianship Act* s. 53(2).

54. At no time, as far as the Petitioners are aware, have any of the Respondents applied for or received any court order providing any of them, or any person nominated by or acting on behalf of any of them, with any guardianship, committeehip or other legal authority in relation to Margot.

55. At no time has either FHA or Maplewood made known to John or Katherine the existence or terms of Margot's statutory rights under the Residents' Bill of Rights that comprises the Schedule to the *CCALA*, and as required by *CCALA* s. 7(1)(c.2).

56. In March 2013, a consultant apparently retained by FHA to assess Margot's condition expressly acknowledged and reported to FHA that Margot is in stage 7 of 7 of her degenerative dementia, described as "Very severe cognitive decline (Severe Dementia)" and as including the following symptoms and characteristics:

"All verbal abilities are lost over the course of this stage. Frequently there is no speech at all - only unintelligible utterances and rare emergence of seemingly forgotten words and phrases. Incontinent of urine, requires assistance toileting and feeding. Basic psychomotor skills, e.g., ability to walk, are lost with the progression of this stage. The brain appears to no longer be able to tell the body what to do. Generalized rigidity and developmental neurological reflexes are frequently present."

57. In light of Margot's Condition and her current mental state as described herein and as confirmed by the assessment quoted in the preceding paragraph, John and Katherine have repeatedly given instructions and/or directions to the Respondents to comply with and implement Margot's Statement of Wishes, including the Instruction Not to Feed.

58. The Respondents and their respective employees, agents and contractors have failed and refused, and continue to fail and refuse, to comply with or implement the Statement of Wishes, including the Instruction Not to Feed, or the instructions and/or directions of John and Katherine consistent with Margot's Statement of Wishes.

Part 3: LEGAL BASIS

The Court's Powers

1. In addition to its inherent jurisdiction in matters of interpretation and to grant the declaratory relief and orders requested herein, the Court has relevant statutory powers that are applicable to the circumstances of this proceeding.

2. Under *Health Care Consent Act* s. 33.4, on an application by, *inter alia*:
 - “(b) an adult's representative or personal guardian;
 - (c) a person chosen under this Act to give or refuse substitute consent to health care or admission to a care facility on behalf of an adult who is incapable;
 - (d) an adult who is assessed as incapable of giving or refusing consent to health care or admission to a care facility.”

the Court may do, *inter alia*, any one or more of the following:

- “(b) give directions respecting
 - (i) the interpretation of a provision of an advance directive, or any other health care instruction or wish, made or expressed by an adult when capable, or
 - (ii) who should be chosen to provide substitute consent under this Act for an incapable adult;
- (c) confirm, reverse or vary a decision by
 - (i) an adult's representative or personal guardian, or
 - (ii) a person chosen to provide substitute consent under this Act, to give or refuse consent to health care or admission to a care facility;
- (d) make any decision that a person chosen to provide substitute consent under this Act could make.”

3. In addition, the Court has jurisdiction under *Representation Agreement Act* s. 34(2), upon application by a representative, to give directions or give an opinion about the interpretation of a provision of a representation agreement.

Margot is an Adult

4. Margot has been an adult at all relevant times and within the meaning of all relevant legislation.

Health Care Consent Act s. 1

Representation Agreement Act s. 1

CCALA s. 1

Adult Guardianship Act s. 1

Margot's Common Law Rights

5. Margot has relevant rights at common law (the "Common Law Rights") including a right not to be fed nourishment or liquids or otherwise touched without her consent or contrary to her refusal to consent. Margot's Statement of Wishes, including the Instruction Not to Feed, or the Orally Supplemented Statement of Wishes, or both, constitute her refusal to consent to being fed nourishment or liquids in her Condition. Her Statement of Wishes was made when she had capacity, and remains valid and enforceable at common law notwithstanding her later incapacity.

Fleming v. Reid (1991), 82 D.L.R. (4th) 298, 1991 CanLII 2728 (Ont. C.A.)

Ciarlariello v. Schacter, [1993] 2 S.C.R. 119, at p. 135

A.C. v. Manitoba (Director of Child and Family Services), 2007 MBCA 9, at para. 2; affirmed 2009 SCC 30, [2009] S.C.R. 181, at para. 39 to 45, 81 and 101 per: Abella, J., LeBel, Deschamps, and Charron, JJ. concurring

6. In the absence of consent by Margot, and in light of her express refusal of consent, feeding her nourishment or liquids constitutes battery.

Malette v. Shulman (1990), 67 D.L.R. (4th) 321 (Ont. C.A.)

A.C. v. Manitoba (Director of Child and Family Services), *supra* (S.C.C.) at para. 41 per: Abella, J., LeBel, Deschamps, and Charron, JJ. concurring

7. In addition, Margot has relevant rights under the *Charter*, including rights of individual liberty, and sovereignty over her person, that are consistent with and reinforce her Common Law Rights, as discussed below.

Fleming v. Reid, *supra*

Margot's Statutory Rights

8. In addition, Margot has statutory rights under the laws of British Columbia to have her Statement of Wishes, including the Instruction Not to Feed, and the Orally Supplemented Statement of Wishes respected, complied with and implemented.

9. Margot's statutory rights may be respected and enforced by either or both:

- (a) the direct enforcement of Margot's Statement of Wishes, including the Orally Supplemented Statement of Wishes, under the relevant legislation, and
- (b) the exercise by the Representatives, John and Katherine, of their statutory powers and obligations, as Margot's representatives and/or substitute decision makers, to comply with and implement, and to direct and instruct the Respondents to comply with and implement, Margot's Statement of Wishes, including the Orally Supplemented Statement of Wishes.

Statutory Rights to Direct Enforcement of Margot's Statement of Wishes

10. Margot's statutory rights to the direct enforcement of her Statement of Wishes, including the Instruction Not to Feed, arise from the following provisions and principles.

11. Feeding nourishment and liquids constitutes "health care" within the meaning of the *Health Care Consent Act* and other legislation which adopts the definition in that Act, such as the *Adult Guardianship Act* and the *Representation Agreement Act*. *Health Care Consent Act* s. 1 defines "health care" as follows:

"health care" means *anything* that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other purpose *related to health*, and includes ..."
(emphasis added)

12. It is clear on the face of this definition that includes the feeding of nourishment and liquids, and the case law confirms that is so.

Ng v. Ng, 2013 BCSC 97, at para. 4 and 44-45

Health Care Consent Act Part 2

13. *Health Care Consent Act* ss. 4 and 5 set out the following fundamental principles, which are consistent with Margot's Common Law Rights and *Charter* rights:

4. Every adult who is capable of giving or refusing consent to health care has
- (a) the right to give consent or to refuse consent on any grounds, including moral or religious grounds, even if the refusal will result in death,
 - ...
 - (d) the right to expect that a decision to give, refuse or revoke consent will be respected, and
 - (e) the right to be involved to the greatest degree possible in all case planning and decision-making.

5(1) The health care provider must not provide any health care to an adult without the adult's consent except under sections 11 to 15.

(2) The health care provider must not seek a decision about whether to give or refuse substitute consent to health care under section 11, 14 or 15 unless he or she has made every reasonable effort to obtain a decision from the adult.

14. In her current Condition and mental state, Margot is not capable of consenting to health care under the criteria specified in *Health Care Consent Act* s. 6, which include the following, and *all of which* must be present in order for any consent to be valid:

- 6. An adult consents to health care if
 - ...
 - (b) the consent is given voluntarily,
 - ...
 - (d) the adult is capable of making a decision about whether to give or refuse consent to the proposed health care,
 - ...
 - and
 - (f) the adult has an opportunity to ask questions and receive answers about the proposed health care.

It is beyond question that Margot is not capable of consenting under these criteria.

15. It is also clear that under her Statement of Wishes, Margot refused consent to receive, in her current Condition, health care in the form of "nourishment or liquids". Under *Health Care Consent Act* s. 9(1.2), as under Margot's Common Law Rights, her refusal to consent to health care "is not affected by any subsequent incapability."

16. Accordingly, under *Health Care Consent Act* ss. 4 and 5, as well as under Margot's Common Law Rights, the Respondents must respect Margot's Statement of Wishes and must comply with and implement it, including the Instruction Not to Feed.

17. Moreover, none of the statutory exceptions in the *Health Care Consent Act*, which in limited circumstances allow the provision of health care without an adult's consent, apply to permit the provision of health care contrary to the Instruction Not to Feed:

- (a) Section 11 does not apply because Margot does not have a "personal guardian", and her "representative", as discussed below, is either John or Katherine, neither of whom has given "substitute consent" as required by s. 11(b)(iii);

- (b) Section 12 does not apply because:
- (i) the criteria in s. 12(1) for the existence of an urgent or emergency situation are not satisfied, including because Margot does have a "representative" as referred to in s. 12(1)(c), namely John and/or Katherine, as discussed below;
 - (ii) section 12.1 precludes reliance on s. 12 because Maplewood and/or FHA, as "health care providers", have reasonable grounds to believe that Margot, while she was capable and over the age of 19, "expressed an instruction or wish applicable to the circumstances to refuse to consent to health care." It is noteworthy that under s. 12.1, the expression of an instruction need not be in the form of an "advance directive". Advance directives are governed by and other Part of the *Health Care Consent Act*, specifically Part 2.1, as discussed below; and
 - (iii) under section 12.2, the provision of emergency health care (leaving aside the point, as discussed above, that the ongoing feeding of Margot is not directed at any such emergency) to an incapable person despite the refusal to consent by his or her representative (*i.e.*, by John or Katherine) may only occur if the health care provider believes the representative did not comply with the representative's duties under *Health Care Consent Act* or any other Act. John and Katherine's duties as Margot's representatives include their obligations to "comply with any instructions or wishes the adult expressed while he or she was capable": *Health Care Consent Act* s. 19(1)(b). See also *Health Care Consent Act* s. 4 and *Representation Agreement Act* s. 9(1)(b)(vii) and (3), which further inform the Representatives' obligations to Margot to comply with her Statement of Wishes;
- (c) Sections 13 and 14 do not apply, because the health care in question does not constitute either a preliminary examination or "major health care" as defined in the *Health Care Consent Act*;

- (d) Section 15 does not apply because, although the health care in question is "minor health care" as defined in the *Health Care Consent Act*:
- (i) Margot does have a "representative" who is capable of giving or refusing consent within the meaning of s. 15(b), namely John and/or Katherine as discussed below; and
 - (ii) even if neither John nor Katherine was a "representative" within the meaning of s. 15(b), no one chosen under s. 16 of the *Health Care Consent Act* (who would have to be John or alternatively Katherine, under s. 16(1)(a) and (b)) has given "substitute consent to the minor health care" as required by s. 15(c).

18. Under the provisions cited above from Part 2 of the *Health Care Consent Act*, an adult's "instructions or wishes" or refusal of consent to health care need not be in any particular form, and need not even be written. Therefore, it does not matter whether the Statement of Wishes also constitutes an "advance directive" within the meaning of *Health Care Consent Act* Part 2.1.

***Health Care Consent Act* Part 2.1 - Advance Directive**

19. In any event, the Statement of Wishes does constitute an advance directive under Part 2.1 of the *Health Care Consent Act*.

20. Under the *Health Care Consent Regulation* s. 15, written instructions made by a capable adult prior to September 1, 2011 (the date on which Part 2.1 of the *Health Care Consent Act* came into force) "are deemed to be advanced directives is made and executed in accordance with sections 19.4 and 19.5 of the act, as if those sections had been in force at the time the written instructions were made."

21. The Statement of Wishes complies with s. 19.4 because it "indicates" that Margot was aware:

- (a) that a health care provider may not provide her with any health care for which she refused consent in the Statement of Wishes. Margot clearly stated that in her Condition, she wants "NO NOURISHMENT OR LIQUIDS"; and
- (b) that no one could be "chosen" to make decisions on her behalf "in respect of any health care for which [Margot] has given or refused consent in the advance directive." Margot expressly designated John or alternatively Katherine as her proxies "to carry out my wishes". This selection by Margot clearly "indicates" that Margot understood that no one else could be "chosen" to make decisions on Margot's behalf, and that the persons she chose were "to carry out [her] wishes" as expressed in her Statement of Wishes.

22. The Statement of Wishes complies with s. 19.5 because it was signed and witnessed in accordance with that section.

23. The Statement of Wishes also falls within the definition of "advance directive" in *Health Care Consent Act* s. 1, because it:

- "(a) gives or refuses consent to health care for the adult in the event that the adult is not capable of giving the instruction at the time the health care is required, and
- (b) complies with the requirements of Part 2.1." [as discussed in the preceding paragraphs]

24. A health care provider "must not provide health care to an adult if the adult has refused consent to that health care in the adult's advance directive." In addition, if a health care provider provides health care and later learns of an advance directive in which the adult refuses consent to that health care, "the health care provider must withdraw the health care, unless section 19.8 applies."

***Health Care Consent Act* s. 19.7(2)(b) and 19.9**

25. *Health Care Consent Act* s. 19.8 does not apply, because none of the criteria set out in s. 19.8(1) can reasonably be said to exist. Moreover, and in any event, if such criteria did exist, then under s. 19.8(2) the health care provider "must ... obtain substitute consent in accordance with section 11 or 16". In the present case:

- (a) under s. 11(b), Margot's "representative" (John or alternatively Katherine) does not consent to the health care in question; and
- (b) under s. 16, the substitute decision-maker must be either John (under s. 16(1)(a)) or Katherine (under s. 16(1)(b)) and the substitute decision-maker "must ... comply with any instructions or wishes [Margot] expressed while ... she was capable", under s. 19(1)(b). In order for John and Katherine to comply with that statutory duty, they must refuse consent to feeding nourishment or liquids to Margot, in accordance with her Statement of Wishes and the Orally Supplemented Statement of Wishes.

Margot's Statutory Rights under the Residents' Bill of Rights

26. Margot's statutory rights to enforce her Statement of Wishes both directly (*i.e.*, without need to rely on her representatives and/or substitute decision makers) and indirectly (*i.e.*, through John and Katherine as her "family or representatives") are confirmed and reinforced by the *Community Care and Assisted Living Act* ("CCALA") and its Schedule, which the Ministry of Health has entitled and publicizes as the "Residents' Bill of Rights".

27. Margot is a "person in care" and Maplewood is a "licensee" within the meaning of the *CCALA*.

28. Maplewood's obligations as a licensee include the following, under *CCALA* s. 7:

7(1) A licensee must do all of the following:

...

- (b) operate the community care facility in a manner that will promote

- (i) the health, safety and dignity of persons in care, and
- (ii) in the case of adult persons in care, the rights of those persons in care;

...

(c.1) display the rights of adult persons in care

- (i) in a prominent place in the community care facility, and
- (ii) in a form and in the manner acceptable to the minister;

(c.2) make the rights of adult persons in care known, orally and in writing, to persons in care and their families and representatives;

...

(1.1) For the purposes of subsection (1) (b), (c.1) and (c.2), the rights of adult persons in care are the rights set out in section 1 of the Schedule.

29. The Residents' Bill of Rights includes the following:

1. An adult person in care has the right to a care plan developed
 - (a) specifically for ... her; and
 - (b) on the basis of ... her unique abilities, physical, social and emotional needs, and cultural and spiritual preferences.

2. An adult person in care has the right to the protection and promotion of ... her ... dignity, including a right to all of the following:
 - (a) to be treated in a manner, and to live in an environment, that promotes ... her ... dignity;
 - ...
 - (c) to have ... her ... choices respected and supported ...
 - ...

3. An adult person in care has the right to participate in ... her own care and to freely express ... her views, including a right to all of the following:
 - (a) to participate in the development and implementation of ... her care plan;
 - ...
 - (d) to have access to a fair and effective process to express concerns, make complaints or resolve disputes within the facility;

...
 (f) to have ... her family or representative exercise the rights under this clause on ... her behalf.

30. The Statement of Wishes, including the Instruction Not to Feed, or the Orally Supplemented Statement of Wishes, or both, constitute Margot's "preferences", "choices", and "views" within the meaning of the *CCALA* and the Residents' Bill of Rights.
31. Margot has a right under *CCALA* section 7(1)(b)(ii) and (1.1) and the Residents' Bill of Rights not to be fed nourishment or liquids contrary to her Statement of Wishes or the Orally Supplemented Statement of Wishes, or both.
32. John and Katherine are Margot's "family or representatives" within the meaning of the *CCALA* and the Residents' Bill of Rights.
33. The Statement of Wishes, including the Instruction Not to Feed, the Orally Supplemented Statement of Wishes, and/or John and Katherine's instructions and/or directions consistent therewith must be complied with and implemented by the Respondents pursuant to *CCALA* section 7 and the Residents' Bill of Rights.

Indirect Enforcement of Margot's Statement of Wishes -

John and Katherine are Margot's Representatives and Substitute Decision Makers

34. John and Katherine are also Margot's "representatives" within the meaning of the *Representation Agreement Act* and the *Health Care Consent Act*, and are Margot's substitute decision makers under s. 16 of the *Health Care Consent Act*. However, it is not necessary to rely upon John and Katherine's statutory status as Margot's representatives or substitute decision makers unless the Court finds that the Statement of Wishes, including the Instruction Not to Feed, cannot be directly enforced (*i.e.*, cannot be enforced except through instructions by John and/or Katherine as Margot's representatives or substitute decision makers).

Representation Agreement

35. The Statement of Wishes constitutes a "representation agreement" within the meaning of the *Representation Agreement Act*, and is a valid representation agreement under sections 9 and 13 of that Act. If there is any defect in the execution of the Statement of Wishes, which the Petitioners say there is not, it would be appropriate for the court to order under *Representation Agreement Act* section 13(7) that it is not invalid as a representation agreement solely because of any such defect, and is valid and enforceable as a representation agreement under s. 9 of that Act.

36. As noted above, the Court has jurisdiction under *Representation Agreement Act* s. 34(2), upon application by a representative, to give directions for an opinion about the interpretation of the provision of a representation agreement.

37. Under *Representation Agreement Act* s. 9(1)(b), a representative may:

"... give or refuse consent to health care for the adult, including giving or refusing consent, in the circumstances specified in the agreement, to specified kinds of health care ..."

38. Under *Representation Agreement Act* s. 9(3):

"In a representation agreement made under this section, if a representative is provided with the power to give or refuse consent to health care for the adult, a representative may give or refuse consent to health care necessary to preserve life."

39. The Representatives, John and Katherine, are obligated and required to comply with and implement the Instruction Not to Feed, and to instruct and/or direct the Respondents to comply with and implement the Instruction Not to Feed, including pursuant to *Representation Agreement Act* section 16(2), (2.1) and (3).

40. In addition to John and Katherine's powers and obligations as representatives under the *Representation Agreement Act*, under *Health Care Consent Act* s. 1, "representative" is defined to mean a person authorized under a "representation agreement" made under the *Representation*

Agreement Act, and includes an "alternate representative". Accordingly, John and Katherine are Margot's "representatives" within the meaning of the *Health Care Consent Act*.

Substitute Decision Makers

41. If, contrary to the Petitioners' position, Margot did not have any "representative" within the meaning of the *Representation Agreement Act* and *Health Care Consent Act*, then under *Health Care Consent Act* s. 16(1)(a) and (b), John and Katherine, as Margot's "spouse" and "child" respectively, are her substitute decision makers.

42. In exercising their powers as Margot's substitute decision makers under *Health Care Consent Act* sections 16 to 19, John and/or Katherine must, under section 19(1)(b) of that Act, comply with and implement, and must instruct and/or direct the Respondents to comply with and implement, the Statement of Wishes, including the Instruction Not to Feed and the Orally Supplemented Statement of Wishes.

43. The Respondents may not lawfully provide health care to Margot:

- (a) without the substitute consent of John pursuant to *Health Care Consent Act* s. 16(1)(a); or
- (b) alternatively, without the substitute consent of Katherine pursuant to *Health Care Consent Act* s. 16(1)(b).

Adult Guardianship Act

44. Under the *Adult Guardianship Act* s. 1, "health care" under that Act has the same meaning as under the *Health Care Consent Act*. Feeding nourishment or liquids to Margot is a provision of "health care services" within the meaning of the *Adult Guardianship Act*, including s. 53(2).

45. FHA is a “designated agency” for the purposes of *Adult Guardianship Act* Part 3 (sections 44 to 60.1) under the definition in s. 1 and under the *Designated Agencies Regulation*, B.C. Reg. 19/2002.

46. Under *Adult Guardianship Act* Part 3 the Respondents must not feed nourishment or liquids to Margot unless permitted or directed to do so by an order of the court under s.56(3).

47. Any support and assistance plan in relation to must, under *Adult Guardianship Act* s. 53(2), comply with the *Health Care Consent Act*. As set out herein, the Health Care Consent Act requires compliance with and implementation of the Statement of Wishes, including the Instruction Not to Feed, and/or the Orally Supplemented Statement of Wishes, and any instructions and/or directions from the Representatives consistent therewith.

48. Complying with and implementing Margot's Statement of Wishes, including the Instruction Not to Feed, or the Orally Supplemented Statement of Wishes, or both, does not constitute "abuse" or "neglect" of Margot within the meaning of the *Adult Guardianship Act*. The *Adult Guardianship Act* requires compliance with and is subject to the provisions of the *Health Care Consent Act* as set out herein.

49. A contrary interpretation of the *Adult Guardianship Act* would also be inconsistent with Margot's Common Law Rights and her statutory rights under the *Representation Agreement Act*, the *CCALA* and the Residents' Bill of Rights.

Purported Orders by FHA

50. FHA has no statutory power to make the Police Order or any Non-Removal Orders. Accordingly, all such orders are void and unenforceable.

Inconsistency with and Violation of Margot's Statutory Rights

51. Margot's relevant statutory rights arise under the *Health Care Consent Act*, the *Representation Agreement Act*, and the *CCALA*, including the Residents' Bill of Rights, and are as described herein.

52. Any regulation, order, policy, standard, guideline, directive, instruction or agreement of any nature issued, entered into, created or implemented by any of the Respondents or their respective employees, agents or contractors, including by FHA under the *Adult Guardianship Act*, or otherwise, or by the "minister" within the meaning of and under the *Continuing Care Act*, the *Health Authorities Act*, or otherwise, that requires or permits that Margot be fed nourishment or liquids by anyone contrary to the Statement of Wishes, including the Instruction Not to Feed, or contrary to the Orally Supplemented Statement of Wishes, is contrary to and/or inconsistent with Margot's statutory rights, and is to that extent of no force or effect.

"Lawful Excuse" under *Criminal Code*

53. If anyone would otherwise be under an obligation under *Criminal Code* s. 215(2) to feed nourishment or liquids to Margot, which the Petitioners say is not the case, then there is a "lawful excuse" within the meaning of that section. The lawful excuse consists of:

- (a) the Statement of Wishes, including the Instruction Not to Feed, or alternatively the Orally Supplemented Statement of Wishes, or both;
- (b) the instructions and/or directions of the Representatives consistent therewith, including instructions and/or directions by the Representatives not to feed nourishment or liquids to Margot;
- (c) Margot's Common Law Rights; and/or
- (d) the statutory provisions referred to herein that require or permit compliance with and implementation of the the things and matters referred to in paragraphs (a), (b) and (c).

Margot's *Charter* Rights

54. Margot's rights under the *Charter* including rights:

- (a) under section 2(a) of the *Charter* to freedom of conscience and religion;
- (b) under section 2(b) of the *Charter* to freedom of thought and belief;
- (c) under section 7 of the *Charter* to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice; and
- (d) under section 15 of the *Charter* to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on religion, age or mental or physical disability.

55. Margot's *Charter* rights include rights not to be fed nourishment or liquids by anyone contrary to the Statement of Wishes, including the Instruction Not to Feed, or contrary to the Orally Supplemented Statement of Wishes, or contrary to the instructions and/or directions of the Representatives consistent therewith.

56. To the extent that any law or regulation, any policy, standard, guideline, directive, instruction or agreement made or entered into by a government or a governmental agency, and any conduct by a government or a governmental agency is contrary to and/or inconsistent with Margot's *Charter* rights, they are (a) unjustifiable under the *Charter*, and (b) to that extent should be declared unlawful and/or of no force or effect.

57. Statutes, regulations and Rules relied upon:

Adult Guardianship Act, R.S.B.C. 1996, c. 6, as amended

Community Care and Assisted Living Act, S.B.C. 2002, c. 75

Community Care and Assisted Living Regulation, B.C. Reg. 217/2004, as amended

Constitution Act, 1982, Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, Canadian Charter of Rights and Freedoms sections 1, 2(a) and (b), 7, 15, 24(1) and 32(1)

Continuing Care Act, R.S.B.C. 1996, c. 70

Continuing Care Fees Regulation, B.C. Reg. 330/97, as amended

Continuing Care Programs Regulation, B.C. Reg. 146/95, as amended

Criminal Code, R.S.C. 1985, c. C-46

Crown Proceedings Act, R.S.B.C. 1996, c. 89, as amended

Health Authorities Act, R.S.B.C. 1996, c. 180

Health Care (Consent) and Care Facility (Admission) Act, R.S.B.C. 1996, c. 181, as amended

Health Care Consent Regulation, B.C. Reg. 20/2000, as amended

Health Care Employers Regulation, B.C. Reg. 427/94, as amended

Public Sector Employers Act, R.S.B.C. 1996, c. 384, as amended

Representation Agreement Act, R.S.B.C. 1996, c. 405, as amended

Residential Care Regulation, B.C. Reg. 96/2009, as amended

Society Act, R.S.B.C., 1996, c. 433

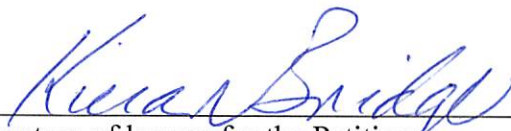
Supreme Court Civil Rules 2-1(2), 14-1, 16-1, 20-2 and the inherent jurisdiction of the Court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of John Bentley dated August 4, 2013.
2. Affidavit #1 of Katherine Hammond dated August 4, 2013.
3. Affidavit #1 of Dr. Andrew Edelson dated August 4, 2013.
4. Affidavit #1 of Danielle Tuck to be sworn.
5. Such further material as counsel may advise and the Court may permit.

The Petitioners estimate that the hearing of the Petition will take two days

Dated: August 4, 2013



Signature of lawyer for the Petitioner
Kieran A.G. Bridge

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

.....
.....
.....

Date:

.....

Signature of Judge Master

NO.
VANCOUVER REGISTRY

**IN THE SUPREME COURT
OF BRITISH COLUMBIA**

BETWEEN:

MARGARET ANNE BENTLEY,
by her Litigation Guardian KATHERINE HAMMOND,
JOHN BENTLEY and KATHERINE HAMMOND

PETITIONERS

AND:

MAPLEWOOD SENIORS CARE SOCIETY,
FRASER HEALTH AUTHORITY and
HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

RESPONDENTS

PETITION

Kieran A.G. Bridge
Barrister & Solicitor
Law Corporation
1400 – 1125 Howe Street
Vancouver, B.C.
V6Z 2K8
Telephone: 604-687-5546
Facsimile: 1-888-665-7448
kieran@kieranbridgelaw.com

KATHERINE HAMMOND #1
SWORN AUGUST 4, 2013

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MARGARET ANNE BENTLEY,
by her Litigation Guardian KATHERINE HAMMOND,
JOHN BENTLEY and KATHERINE HAMMOND

PETITIONERS

AND:

MAPLEWOOD SENIORS CARE SOCIETY,
FRASER HEALTH AUTHORITY and
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

RESPONDENTS

**AFFIDAVIT
of
KATHERINE HAMMOND**

I, Katherine Hammond, businesswoman, of Berth #4, 3871 River Road West, Delta, British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a daughter of the Petitioner, Margaret Anne Bentley ("Margot"). I have personal knowledge of the facts and matters deposed to below.
2. I have read "Part 2: Factual Basis" of the Petition. The best of my knowledge, all the facts stated there are true.
3. I will use in this Affidavit the capitalized expressions found in the Petition, and adopt the definitions of those expressions as set out in the Petition.

4. Margot has two other living children, Danielle Tuck and Stephen Dolman ("Stephen"). Stephen is currently on an extended solo sailing voyage across the South Pacific, and for that reason is not able to provide an Affidavit in this matter. However, we have discussed many times Margot's Statement of Wishes, including the Instruction Not to Feed. Stephen has told me that he would like to see the Statement of Wishes followed, and that based on Margot's Statement of Wishes, he does not want the feeding of Margot to continue.

Maplewood and the Facility

5. Attached and marked collectively as Exhibit A are true copies of the following:
- (a) the Society Summary for Maplewood Seniors Care Society obtained from BC Registry Services by my legal counsel on July 8, 2013; and
 - (b) Ledger Details obtained from BC Registry Services by my legal counsel for "The M.S.A. Manor Society" and "The Maplewood House Society", indicating that those two societies amalgamated under the new name "Maplewood Seniors Care Society" on July 2, 2010; and
 - (c) a page from the internet web site operated by Maplewood Seniors Care Society, which states that it operates a "nursing home" facility in Abbotsford named Maplewood House.

Margot's Life and her Statement of Wishes

6. Margot was an active, vibrant and creative person until the early 2000s. The descriptions of her life and activities in the Petition are accurate.

7. Attached and marked as Exhibit B is a true copy of the original Statement of Wishes, which bears the original signatures of Margot and the two witnesses, Judy and Jim Clifford, from November 24, 1991. The original Statement of Wishes also bears the original signatures of John

and me, which we recently made on the Statement of Wishes on the advice of our legal counsel. My surname as of 1991 was Littler; I am "Kathy Littler" as referred to in Exhibit B.

8. Exhibit B is the same as the copies of the Statement of Wishes that have previously been provided to Maplewood and FHA at least as early as 2011, except for the signatures of John and me as described above.

9. Following her Diagnosis, Margot discussed with me many times her fear of suffering a lingering death because of her Alzheimer's disease and degenerative dementia. She also frequently referred to her Statement of Wishes, which she referred to as her "living will", and said that she believed her living will would prevent her from lingering in at state of mental incapacity, which she said she had seen many times among dementia patients when she was a nurse.

10. There is no question in my mind that Margot wanted her Statement of Wishes, including the Instruction Not to Feed, complied with and implemented when she reached her current Condition.

Margot's Condition and the Respondents' Refusal to Comply with her Statement of Wishes

11. By 2004, Margot was a shadow of her former self. Her mental condition had deteriorated very significantly, and she was more frail and less active than she had been for most of her life.

12. After she moved into Ebenezer Home in 2005, her mental and physical condition continued to deteriorate, but she was still able to recognize people, feed herself and move around with some difficulty.

13. When she moved into Maplewood House in 2009, Margot was very much less aware of and responsive to people and her surroundings, and had extremely limited mobility. If she was touched or spoken to, she would sometimes have a limited physical response, and her speech

became increasingly garbled and incomprehensible until she was unable to talk at all. She continued to deteriorate after 2009.

14. Margot has not indicated in any way that she recognizes me, John or anyone else for at least the past three years. By 2010, I realized Margot no longer existed as my mother and the person I had known all my life. At that point, any communication with her had become impossible, and she was in a vegetative state, physically disabled but alive and not functioning mentally in any discernible way.

15. In 2011, after John and I discussed Margot's Condition, we both recognized and agreed that it was time for her Statement of Wishes, including the Instruction Not to Feed, to be complied with. Copies of her Statement of Wishes were given to both Dr. Chan and to Corey Primus of Maplewood.

16. Attached and marked as Exhibit C is a true copy of a letter dated November 15, 2011, that John and I wrote and sent to Mr. Primus, with a copy to Dr. Chan. John and I also discussed with them our desire to have Margot's Statement of Wishes respected and followed.

17. Around late November 2011, it was agreed among John, me, Dr. Chan and Mr. Primus that the feeding of nourishment and liquids to Margot would cease. John told me he had discussed with personnel at Maplewood who were involved in Margot's care how long she would likely live after feeding ceased, and was told it would probably be one to two weeks.

18. A short time later, John told me that Maplewood had called him and said that FHA would not allow the transfer would not allow Margot's Statement of Wishes to be implemented.

19. In early 2012, John and I requested that Margot be transferred to a palliative care facility. FHA denied that request in a letter dated December 21, 2012, which is attached and marked as Exhibit J and discussed below.

20. Numerous conversations about Margot's Condition and the implementation of her Statement of Wishes have taken place with personnel at Maplewood and FHA since late 2011. To date, Maplewood and FHA have refused to comply with or implement Margot's Statement of Wishes, and in particular the Instruction Not to Feed, despite the fact that both John and I have repeatedly told them that it should be complied with and implemented.

21. Neither Maplewood nor FHA has ever given a clear reason for their failure and refusal to implement Margot's Statement of Wishes.

22. Attached and marked as Exhibit D is a true copy of the document dated December 5, 2012, entitled "Re: Clinical Ethics Consult for Margaret Bentley, Maplewood House, Abbotsford" (the "Clinical Ethics Consult") signed by Katherine Duthie of FHA, which I received on that date.

23. When I read the Clinical Ethics Consult of Margot, I was struck by the statement in the second paragraph on page 2: "She is alert when awake but does not appear to respond to voices." The suggestion that Margot was "alert" at any time in 2012 is, unfortunately, absurd. She has not been alert since prior to 2010. When I expressed my disbelief and questioned FHA about this gross misdescription of Margot, Katherine Duthie apologized and re-issued the report with a correction which deleted that part of the sentence and replaced it with, "She does not appear to respond to voices".

24. The Clinical Ethics Consult indicates that FHA personnel apparently received a legal opinion from an unnamed lawyer, but the summary of the legal opinion contained in the document does not refer to any statute, regulation or case law.

25. It was (and is) not clear what was the legal basis for Maplewood's and FHA's position, so I asked for a copy of that legal opinion. Attached and marked as Exhibit E is a true copy of a letter from me to Kathy Lehn of Fraser Health Residential Services dated December 5, 2012, asking for a copy of the legal opinion in advance of a meeting that was scheduled for December 11, 2012.

26. FHA did not provide the legal opinion in advance of that meeting, and in a letter dated February 4, 2013, a true copy of which is attached and marked as Exhibit F, FHA expressly refused to provide a copy of the opinion. FHA claimed that "[t]he legal opinion is subject to solicitor-client privilege and therefore will be withheld from disclosure", despite the fact that FHA has summarized and revealed to John and to me the contents of that legal opinion, as described above. The legal opinion has never been provided to me, John or any member of Margot's family.

27. On December 11, 2012, a meeting took place among John, me, and representatives of Maplewood and FHA. Attached and marked as Exhibit G are the first version of the minutes of that meeting prepared by someone at FHA and provided to me by Katherine Lehn on December 17, 2013. There were points missed in Exhibit G which I brought to FHA's attention. Attached and marked as Exhibit H is the revised version of the minutes of that meeting which were later prepared by FHA.

28. The minutes discuss on the second page the fact that I had not been provided with the legal opinion that I requested from FHA. Again, one of FHA's representatives, Leanne Lange, referred in very general terms to FHA's legal position, but did not refer to any specific statute, regulation or case law in support of that position. She stated that Margot's family would have to go to a judge for an interpretation of the "Living Will", but did not explain why we should have to do so. She later suggested that FHA had "a legal mandate to enact the Adult Guardianship Act if they feel neglect is possible."

29. Another representative of FHA, Katherine Duthie, referred on December 11, 2012, to "staying within the law" and "elements of the criminal code", but made no specific reference to what part of "the law" was an issue or what "elements of the criminal code" might be relevant.

30. In December 2012, another representative of FHA, Leanne Lange, stated to me that if John or I tried to move Margot to a palliative care facility or to a private residence, "We will

physically stop you." No explanation was ever given to me by FHA or Maplewood as to what legal basis might exist for physically stopping us from moving Margot.

31. On July 30, 2013, I learned for the first time of the existence of a letter dated December 18, 2012 from Leanne Lange of FHA, apparently to Maplewood because it purports to give instructions to personnel at Maplewood. I understand from Margot's doctor, Andrew Edelson, that he saw copy of that letter in Margot's file at Maplewood on July 30, 2013, and although his request for a photocopy was denied by personnel at Maplewood, he took photographs of both pages of the letter. Copies of those photographs are reproduced and marked collectively as Exhibit I. I was never provided with a copy of this letter by anyone, and was unaware until I first saw it on July 30, 2013:

32. Attached and marked as Exhibit J is a true copy of the memorandum from FHA to John and me dated December 21, 2012, following up on the meeting of December 11, 2012 described above. The memorandum makes no reference to the letter from FHA to Maplewood dated December 18, 2012.

33. The memorandum of December 21, 2012, states in part that failure to feed Margot by hand "will meet the definition of 'neglect' in the *Adult Guardianship Act*." No case law is cited, and no other explanation is given for this conclusion. FHA has never provided any such case law or other explanation. The memorandum goes on to state:

Since Fraser Health is unable to support your recommended care options for Margot, and you are unwilling to support the continued provision of nutritional care to her at Maplewood House, and the only option available to Fraser Health is to proceed to court to apply for support and assistance order pursuant to Section 54(1) of the *Adult Guardianship Act*.

34. However, to the best of my knowledge neither FHA nor Maplewood has ever made an application to court for any order under the *Adult Guardianship Act* or otherwise in relation to Margot or her care.

35. Attached and marked as Exhibit K is a true copy of an e-mail dated January 11, 2013, from Leanne Lange of FHA to me, with copies to John and Dr. Edelson. The e-mail states in part:

I will contact the Fraser Health staff person who is responsible for responding to the request for the legal opinion and get back to you with an update.

I am sorry that I am not able to estimate when the court date will be schedule. Fraser Health needs to follow all of the steps included in the Adult Guardianship Act (AGA) and because the timeframe for each step is variable it is impossible for me to venture a guess. Once we get a bit further in the process I will be able to provide an estimate.

Section 53(1) of the AGA requires Fraser Health to explain the plan and the proposed services to Margot. Section (53)(3)(b) [*sic*] of the AGA allows the adult's spouse or any relatives or friends who accompanied the adult or who offer their assistance, to help the adult to understand or demonstrate an understanding of the support and assistance plan. I would like to attend Maplewood House to do this with Kathy Lehn (FH Residential Care Liaison) sometime [*sic*] next week. In accordance with the AGA, would any of you or someone else like to be present for this?

36. Prior to January 11, 2013, both John and I had repeatedly made it clear to both Maplewood and FHA that we wanted Maplewood and FHA to comply with and implement Margot's Statement of Wishes. For that reason, I did not attend that Maplewood House in mid-January 2013 as suggested in Exhibit K to repeat my earlier statements to Maplewood and FHA.

37. I now understand that under *Adult Guardianship Act* section 54(3)(a), if FHA were to make an application to court under that Act, FHA would have to provide "a support and assistance plan that is prepared by the designated agency [which I understand FHA is] *and includes a statement of the adult's wishes if known*" (emphasis added).

38. Neither I nor, to the best of my knowledge, John or Dr. Edelson has ever been provided with a copy of any care plan for Margot prepared by either Maplewood or FHA, whether it complies with *Adult Guardianship Act* section 54(3)(a) or not.

39. In early July 2013, after obtaining legal advice in this matter, I asked FHA to provide a copy of the "Support and Assistance Plan (SAP)" dated January 29, 2013, that is referred to in a

report regarding Margot's incapability dated March 6, 2013, a copy of which is attached and marked as Exhibit L.

40. Attached and marked as Exhibit M is a true copy of a letter from FHA to me dated July 12, 2013, which refuses to provide a copy of the Support and Assistance Plan.

41. I now understand that under *Adult Guardianship Act* section 54(3)(b), if FHA were to make an application to court under that Act have to provide an assessment of whether Margot is incapable under section 53(5). I also now understand that under the *Adult Guardianship (Abuse and Neglect) Regulation*, B.C. Reg. 13/2000, an Incapability Assessment Report under section 53(5) of the Act must be in Form 1 that is part of that Regulation. Neither I nor, to the best of my knowledge, John or Dr. Edelson has ever been provided with such a form. To the best of my knowledge, no such form has ever been completed regarding Margot.

42. On April 15, 2013, a further meeting was held at Maplewood House among John, me and representatives of Maplewood and FHA. Maplewood and FHA's personnel reiterated that they would not implement Margot's Statement of Wishes, and would not permit John or me to transfer Margot to the palliative care facility or to a private residence. FHA's personnel also reiterated that if we attempted to do so, they would apply to court for an order under the *Adult Guardianship Act*.

43. In these circumstances, John and I believed we had no reasonable alternative than to acquiesce in Margot's remaining at Maplewood House. I stated at the meeting on April 15, 2013, that we felt forced to accept that we could not honour my mom's wishes and that my family unanimously felt horrified about this situation. I also stated that we felt forced to accept that, even in her state of gross physical and mental deterioration, she would continued to be fed by prompting. We requested less frequent prompting, after witnessing Maplewood's personnel pressing a spoon to Margot's lips up to six times before finally stopping. We also requested improved mouth care and increased medication for muscle rigidity and possible mouth pain due to tooth decay. However, at no time did we agree that Margot's Statement of Wishes should not

be complied with or implemented. FHA's personnel stated at the conclusion of the meeting that because Margot would remain at Maplewood House, FHA would not apply for court order.

44. Attached and marked as Exhibit N is a true copy of an e-mail dated April 22, 2013, from Leanne Lange of FHA to me and John regarding the meeting on April 15, 2013.

45. As described above, Maplewood and FHA have ignored or failed to follow the repeated requests by John and me to comply with and implement Margot's Statement of Wishes.

46. As of the date of this Affidavit, neither Maplewood nor FHA has provided any further explanation or clarification of the legal basis for their refusal to comply with and implement Margot's Statement of Wishes.

47. Attached and marked collectively as Exhibit O are true copies of a page from the internet website of the British Columbia Ministry of Health entitled "Residents' Bill of Rights", and a copy of the "Residents' Bill of Rights" that is referred to. The Residents' Bill of Rights states:

These rights are posted pursuant to section 7(a)(c.1)(ii) of the *Community Care and Assisted Living Act*.

48. I learned of the existence of the Residents' Bill of Rights on August 1, 2013, when it was brought to my attention by my legal counsel. I have never had those rights brought to my attention, orally or in writing, by anyone at FHA or Maplewood.

Margot's Current State

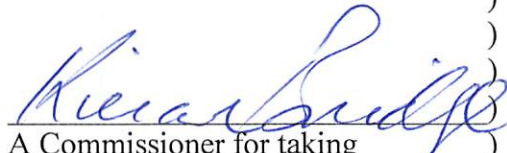
49. Attached and marked as Exhibit P is a disk that contains two short video recordings of Margot that were made at Maplewood House in March 2013. In the first video, entitled "Say Hello", John can be heard speaking to and is seen touching Margot, who is unresponsive. In the second video, entitled "Empty Spoon", my voice can be heard, and Margot is shown opening her mouth when prompted by an empty spoon.

50. Margot is no longer able to easily swallow liquids, so the nourishment that she is being fed by Maplewood's personnel is all in puréed or gelled form.

51. Based on my observations of Margot, I believe her opening her mouth when physically prompted with a spoon is simply a reflexive response and is an example of what is described in Exhibit L as applicable to Margot, as follows:

"The brain appears to no longer be able to tell the body what to do. Generalized rigidity and developmental neurological reflexes are frequently present."

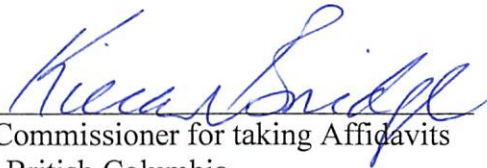
SWORN BEFORE ME at the City)
of Abbotsford, in the Province of)
British Columbia, this 4th day of)
August, 2013)


A Commissioner for taking)
Affidavits within British Columbia)


KATHERINE HAMMOND

KIERAN A.G. BRIDGE
BARRISTER & SOLICITOR
1400 - 1125 HOWE ST.
VANCOUVER B.C. V6Z 2K8

This is Exhibit "A" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.

A handwritten signature in blue ink, reading "Kieran Bridge", written over a horizontal line.

A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546



Society Summary

For

MAPLEWOOD SENIORS CARE SOCIETY

Date and Time of Search: July 8, 2013 09:03 AM Pacific Time
Currency Date: April 4, 2013

ACTIVE

Society Number: S-0056874 **Business Number:** 801000662BC0001
Name of Society: MAPLEWOOD SENIORS CARE SOCIETY
Incorporation Date and Time: Incorporated on July 2, 2010
Last Annual Report Filed: 2013 **Reporting Society:** Yes
Last Annual General Meeting: June 18, 2013 **Number of Directors:** 10
In Liquidation: No

REGISTERED OFFICE INFORMATION

Physical Address:
1919 JACKSON STREET
ABBOTSFORD BC V2S 2Z8

Mailing Address:
1919 JACKSON STREET
ABBOTSFORD BC V2S 2Z8

DIRECTOR INFORMATION

Last Name, First Name, Middle Name:

ADRIAN, PETER

Physical Address:
35300 MCCORKELL DR
ABBOTSFORD BC V3G 2C3

Mailing Address:
35300 MCCORKELL DR
ABBOTSFORD BC V3G 2C3

Last Name, First Name, Middle Name:

BARRETT, DEAN

Physical Address:
629 GLADWIN RD
ABBOTSFORD BC V2T 5Y1

Mailing Address:
629 GLADWIN RD
ABBOTSFORD BC V2T 5Y1

Last Name, First Name, Middle Name:

BROWN, GEOFF

Physical Address:
2288 ROSEWOOD DR
ABBOTSFORD BC V2S 3S8

Mailing Address:
2288 ROSEWOOD DR
ABBOTSFORD BC V2S 3S8

Last Name, First Name, Middle Name:

DEGEER, JAMES

Physical Address:

7 - 3384 GLADWIN RD
ABBOTSFORD BC V2S 7C9

Mailing Address:

7 - 3384 GLADWIN RD
ABBOTSFORD BC V2S 7C9

2

Last Name, First Name, Middle Name:

HAY, RICHARD

Physical Address:

106 - 31771 PEARDONVILLE RD
ABBOTSFORD BC V2T 5S7

Mailing Address:

106 - 31771 PEARDONVILLE RD
ABBOTSFORD BC V2T 5S7

Last Name, First Name, Middle Name:

HUME, JIM

Physical Address:

2663 COUNTESS ST
ABBOTSFORD BC V2T 2V8

Mailing Address:

2663 COUNTESS ST
ABBOTSFORD BC V2T 2V8

Last Name, First Name, Middle Name:

MACGREGOR, BILL

Physical Address:

32315 SOUTH FRASER WAY
ABBOTSFORD BC V2T 1W7

Mailing Address:

32315 SOUTH FRASER WAY
ABBOTSFORD BC V2T 1W7

Last Name, First Name, Middle Name:

MORRISON, CAROLYN

Physical Address:

3054 TRAFALGAR ST, APT 65
ABBOTSFORD BC V2S 7X6

Mailing Address:

3054 TRAFALGAR ST, APT 65
ABBOTSFORD BC V2S 7X6

Last Name, First Name, Middle Name:

SIMPSON, ANDREW

Physical Address:

57 - 32777 CHILCOTIN DR
ABBOTSFORD BC V2T 5W4

Mailing Address:

57 - 32777 CHILCOTIN DR
ABBOTSFORD BC V2T 5W4

Last Name, First Name, Middle Name:

WATERS, HENRIETTA

Physical Address:

2228 MOUNTAIN DR
ABBOTSFORD BC V3G 1E2

Mailing Address:

2228 MOUNTAIN DR
ABBOTSFORD BC V3G 1E2

From BC Online historical society search of "The M.S.A. Manor Society" on 10 July 2013:

Ledger Details

Incorporation / Registration Number in BC: S-0008595
BC or Extraprovincial Society Name: THE M. S. A. MANOR SOCIETY
Ledger Name: Administrative Dissolution
Date and Time Filed (Pacific Time): July 2, 2010 12:00 AM
Filed By:
Ledger Name:

Administrative Dissolution

Entry Date (Pacific Time)	Description
July 2, 2010 12:00 AM	RE: SECTION 17/SOCIETY ACT AMALGAMATED WITH S25016 UNDER THE NEW NAME "MAPLEWOOD SENIORS CARE SOCIETY", S56874

Ledger Details

Incorporation / Registration Number in BC: S-0025016

BC or Extraprovincial Society Name: THE MAPLEWOOD HOUSE SOCIETY

Ledger Name: Administrative Dissolution

Date and Time Filed (Pacific Time): July 2, 2010 12:00 AM

Filed By:

Ledger Name:

Administrative Dissolution

Entry Date (Pacific Time)	Description
July 2, 2010 12:00 AM	RE: SECTION 17/SOCIETY ACT AMALGAMATED WITH S8595 UNDER THE NEW NAME "MAPLEWOOD SENIORS CARE SOCIETY", S56874

5

Home || About Us || Programs || Services || Gallery || Contact Us

Font size

Board of Directors

Management

Testimonials

Future Expansions

About Maplewood Seniors Care Society

Maplewood Seniors Care Society is a non-profit society serving the community of Abbotsford and the surrounding neighborhood (formerly the MSA Manor Society and the Maplewood House Society). We are incorporated under the British Columbia Society Act with the quest for excellence in the provision of residential and care services for seniors.

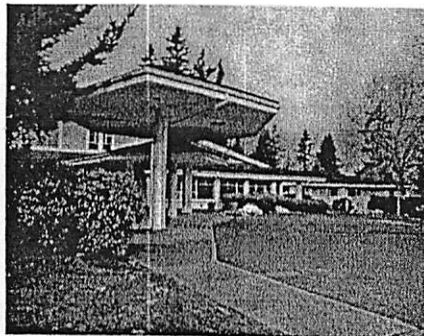
Maplewood Seniors Care operates two nursing home facilities in Abbotsford - The MSA Manor and The Maplewood House. The main purpose of our facilities is to provide quality residential care services for senior citizens. Our commitment to all who reside at MSA Manor and Maplewood House can be demonstrated by the uncompromised effort and resources devoted to maintain a home-like atmosphere and that residents' health, their physical, mental and social wellness are cared for while their independence are maximized.

Maplewood House is owned by The MSA Manor Society, opened in June of 1989 with 77 intermediate care beds, including a 23-bed Special Care Unit.

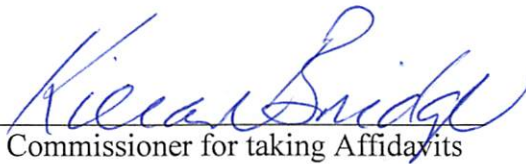
MSA Manor is owned by The MSA Manor Society, opened in the fall of 1973 as a "personal care" home for seniors in the Matsqui, Sumas and Abbotsford Area

We righteously assume social responsibilities and we are privileged to serve and advocate for our seniors. The Board of Directors is elected from the Society membership to lead and oversee the operations.

We welcome members of our community to join the Society; to be actively involved in serving our seniors and to have influence regarding social changes in the community.



This is Exhibit "B" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.

A handwritten signature in blue ink that reads "Kieran Bridge". The signature is written in a cursive style with a horizontal line underneath it.

A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546

ORIGINAL

6

TO MY FAMILY, MY PHYSICIAN, MY LAWYER & ALL OTHERS WHOM IT MAY CONCERN

I, Margaret A. Bentley of Mission B.C. hereby declare that if the time comes when I can no longer take part in decisions for my future, I wish this statement to stand as an expression of my wishes.

IF AT SUCH A TIME THE SITUATION SHOULD ARISE THAT THERE IS NO REASONABLE EXPECTATION OF MY RECOVERY FROM EXTREME PHYSICAL OR MENTAL DISABILITY, I DIRECT THAT I BE ALLOWED TO DIE AND NOT BE KEPT ALIVE BY ARTIFICIAL MEANS OR "HEROIC MEASURES".

I DO ASK THAT MEDICATION BE MERCIFULLY ADMINISTERED TO ME TO ALLEVIATE SUFFERING EVEN THOUGH THIS MAY SHORTEN MY REMAINING LIFE.

I MAKE THIS STATEMENT AFTER CAREFUL CONSIDERATION AND IS IN ACCORDANCE WITH MY CONVICTIONS AND BELIEFS.

I HEREBY ABSOLVE ALL WHO FOLLOW THESE INSTRUCTIONS TO BE FREE OF ANY LEGAL LIABILITY. IN PARTICULAR, I WOULD REQUEST THE FOLLOWING INSTRUCTIONS TO BE CARRIED OUT:

- A. NO ELECTRICAL OR MECHANICAL RESUSCITATION OF MY HEART WHEN IT HAS STOPPED BEATING,
- B. NO NOURISHMENT OR LIQUIDS.
- C. NO MECHANICAL RESPIRATION WHEN I AM NO LONGER ABLE TO SUSTAIN MY OWN BREATHING.
- D. NO SURGERY.
- E. OTHER In the event that mental deterioration is such that

I am unable to recognize the members of my family, I
ask that I be authorized.

I HEREBY DESIGNATE My husband John W. Bentley OF Mission B.C., Canada TO SERVE AS MY PROXY FOR THE PURPOSE OF MAKING MEDICAL DECISIONS ON MY BEHALF IN THE EVENT THAT I BECOME INCOMPETENT AND UNABLE TO MAKE SUCH DECISIONS FOR MYSELF. SHOULD John Bentley BE UNABLE TO CARRY OUT MY WISHES, I HEREBY APPOINT Kathy Kittle OF Mission B.C. AS AN ALTERNATE PROXY.

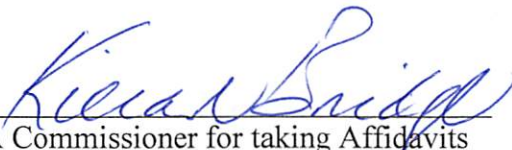
KATHERINE HAMMOND
AUG. 4, 2013

JOHN BENTLEY
AUG. 4, 2013

WITNESS: Judy Clifford
WITNESS: RJ Clifford

SIGNED: M.A. Bentley
DATE: Nov. 24 / 91

This is Exhibit "C" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546

To: Maplewood House
1919 Jackson St.,
Abbotsford, B.C.
V2S 2Z8

November 15, 2011

Re: Care of Margot Bentley, resident

To: Corey Primus, Assistant Director of Care

Dear Corey,

The family has had recent discussions with both yourself and Dr. W. Chan, Margot's family doctor, concerning her care; her living wills have also been reviewed.

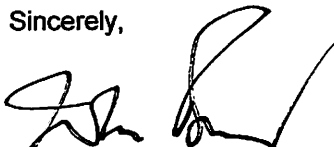
In particular, in her living will dated November 24, 1991, Margot specified:
B. No nourishments or liquids

Therefore, in keeping with her wishes, and as per her living will, the family hereby requests that, effective immediately, no nourishment or liquids be given to Margot. However, it is extremely important that she be kept as comfortable as possible, and that any pain or suffering be prevented or alleviated immediately with sedation and/or analgesics. The family would prefer the use of oral narcotics, such as Percocet.


Dr.W.Chan has requested that the staff at Maplewood fax him with a request for an order for medication.

The family thanks the staff at Maplewood for their ongoing care of Margot and for their respect of her wishes, and the wishes and direction of the family.

Sincerely,



John Bentley, Husband, Power of Attorney

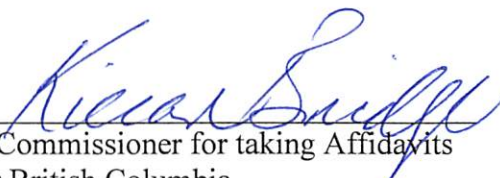


Katherine Hammond, Daughter

November 15, 2011
Date

cc: Dr. W,Chan

This is Exhibit "D" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546



fraserhealth Better health.
Best in health care.

December 5, 2012

Re: Clinical Ethics Consult for Margaret Bentley, Maplewood House, Abbotsford

An ethics consult was initially requested for the above mentioned patient in March 2012 by Dr. Lynne Potter. The Ethics Services received a second request for on-going ethics involvement from Corey Primus, Director of Care, Maplewood Seniors Care Society in November 2012. This note summarizes the process and results of both ethics consultations.

It is worth restating that the purpose of an ethics analysis is to assist the team (including the patient, patient's family, and care team) to determine the most ethically justified way of proceeding regarding the care of a patient. This process involves 1) identifying the principle guiding values most relevant to the situation and 2) determining what direction these provide for moving forward. A significant amount of very rigorous work on this consult was completed during the first half of this year, led by Sarah Gebauer, and completed in large part by Clinical Ethics Consult Team members Daphne Willisroft and Charlene Neufeld.

During the process of this consult, Ethics Consult Team Members held several meetings to discuss Mrs. Bentley's care with care providers at Maplewood, with Mrs. Bentley's husband, John, and her daughter, Katherine. Additional consultation was requested from Fraser Health Adult Guardianship and Adult Abuse and Neglect Specialists, the Abbotsford Hospice Palliative Care Team, and a Vancouver health lawyer. The key question that the team explored was around the care plan and corresponding goals of care for Mrs. Bentley. In particular, two dimensions of her care have been explored: 1) Mrs. Bentley's pain management, and 2) feeding/hydration.

Pain Management

Mrs. Bentley's family, her physician, and her care staff have all expressed their desire to effectively respond to and manage any pain that Mrs. Bentley may be experiencing. To ensure that Mrs. Bentley's needs were being met in this regard, Anita Wahl, a pain expert with Fraser Health, was brought in to assess Mrs. Bentley's pain needs and to provide recommendations for how best to respond. In addition to providing on-going pain medications, Maplewood staff continue to carefully assess Mrs. Bentley for signs of pain and administer additional medications as needed. In mid-November staff expressed some concern that the orders for pain medications were too strong for Mrs. Bentley's needs, however these orders have been modified, and staff now report feeling that they appropriately manage Mrs. Bentley's pain, without disproportionately affecting her alertness. As such, it is my sense that the question of pain control is resolved at present.

Feeding

Mrs. Bentley is described by family as having lived an extremely vibrant life. She was a talented artist, and enjoyed gardening and working with horses. She also has worked as a registered nurse. After her diagnosis with Alzheimer's disease, Mrs. Bentley could predict her illness trajectory, and took care to indicate her wishes verbally and in at least two written documents. While there is some discrepancy between the documents about Mrs. Bentley's wishes for feeding (refusing "nourishment and hydration" in one, and accepting "basic care" in another), Mrs. Bentley's family believes that Mrs. Bentley would not, in her current mental and physical state, consent to continued feeding if she were able to. Mrs. Bentley's family requested as early as August 2011 that Mrs. Bentley's Living Will be honoured and that her feedings be discontinued. They requested that this take place within a hospice palliative care setting to ensure that Mrs. Bentley received an appropriate level of care during this phase of her life. The family are clear that she would not want to live in this current condition and that by continuing to feed her we are not honouring her wishes.

Mrs. Bentley currently resides in residential care and is fully dependent on others for all activities of daily living. She is alert when awake, but does not appear to respond to voices. When offered food by prompting her lower lip with a spoon, Mrs. Bentley actively participates in eating by opening her mouth to receive food, chewing, and swallowing. She indicates she is finished eating when she stops opening her mouth. Mrs. Bentley's family interprets her behaviours while eating as basic and instinctive, and not indicative of desires on her part. In contrast, those who feed Mrs. Bentley interpret this as an indication that Mrs. Bentley wishes to be fed, and as an indication that she continues to need the nutrition she receives. Further, staff see voluntary feeding by mouth as part of basic care that they have a fundamental duty to provide. In part due to this perception, many members of the care team feel it would be inappropriate to withdraw food from Mrs. Bentley.

Staff and family agree that Mrs. Bentley's goals of care are primarily to maintain her comfort. This means that basic care (including voluntary feeding by mouth) is provided, but medical interventions intended to prolong Mrs. Bentley's life are not indicated. This also means that it would be appropriate to abstain from feeding by mouth if it begins to cause discomfort for Mrs. Bentley.

The primary tension is that Mrs. Bentley's living will and previously stated wishes, as confirmed by her family, conflict with Canadian law. One of the documents describing her wishes contains a request for euthanasia at such time as she is no longer able to recognize her family. It further states that she be allowed to die and not be kept alive by artificial means or "heroic measures." There is an additional stipulation around the receipt of nourishments and liquids. It is clear that Canadian law does not permit euthanasia and this request was denied on that basis alone. The challenge was around the statement about nourishments and liquids. Traditionally, this kind of statement refers to the receipt of artificial nutrition and is meant to encompass situations in which a patient, or their substitute decision-maker, either refuses artificial nutrition (provided through a PEG, NG tube or some other invasive means) or requests that it be discontinued. There is consensus in the health care setting that in the absence of these conditions, receiving nutrition falls within basic care and not heroic and/or extraordinary measures.

Consultation with a lawyer familiar with this area of law has confirmed the understanding that food by mouth that is actively taken in by the resident constitutes basic care. The lawyer further stated that the courts would likely not make a ruling that would support the family's request to withhold

feeding. The lawyer's response focused on the following three questions: 1) whether the Living will is valid and enforceable, 2) whether the family is able to interpret the Living Will, and 3) whether staff are legally liable if voluntary feeding were discontinued. The response suggests the Living Will is not legally binding under current legislation, but that it is an indication of Mrs. Bentley's prior expressed wishes. As such the family (and courts) are able to interpret such documents in order to honour the previously expressed wishes of a competent adult. And finally, Mrs. Bentley's care staff could be found liable if they discontinue active feeding by mouth.

Several values have emerged from the ethics consultation process. The discussion below explains these values and how they apply in this case.

Respect for patient autonomy. One of the most important values in health care, this value suggests that we ought to guide patient decision-making by an understanding of what is most important to the patient, and that our aim should be to advance the well-being of the patient from their perspective. In this situation, **respect for patient autonomy requires that the resident and/or substitute decision-maker be given an opportunity to meaningfully participate in the decision-making process about her care planning.** Living up to this value requires that Mrs. Bentley's family continue to actively participate in decisions about her care to ensure that Mrs. Bentley's voice is represented as much as possible.

Honour the deeply held values and beliefs of our patients. This value is highly consistent with respect for patient autonomy. It further suggests that any decisions about the care of a patient should be a reflection of what was most important to the patient. In this situation, **honouring the deeply held values and beliefs of our residents requires that our understanding of what she would have wanted be used to guide her treatment decisions.** This value requires that the decision-making team respond to Mrs. Bentley's wishes about feeding to the extent that is possible. There is a limit to what can be honoured however; no one can be asked to do that which is against the law, even if doing so is consistent with what the patient would have wanted. Although we are not able to discontinue nutritional supports, if Mrs. Bentley declines oral intake, care givers ought to respect this refusal and seek the appropriate level of supports for a patient who is not longer able to eat and does not consent to artificial means. Mrs. Bentley's care providers have confirmed that this value is significant to their approach to Mrs. Bentley's care, and that when Mrs. Bentley indicates that she is no longer interested in eating, that they will respect Mrs. Bentley's wishes not to pursue artificial nutrition or hydration.

Respect for the law. This value suggests that although there may be times when a decision reached through the application of ethical principles may be in tension with the law, it is important that the law be upheld. In this situation, **respect for the law means that we ought to seek guidance and clarity around what the law says, and ensure that any recommendation we make is consistent with this understanding.** As indicated above, an expert interpretation of the law indicates that Mrs. Bentley's health care providers have a legal obligation to provide food by mouth as long as she accepts it.

Do no harm. This value is a foundational principle in medicine and the field of bioethical and clinical ethics. Traditionally this refers to physical suffering and serves as a reminder to health care professionals that the benefit of their involvement and intervention ought to outweigh the potential for harm. In this situation, **there is a tension in the interpretation of harm and from whose perspective this ought to be viewed.** Members of the care team see a potential for great harm if Mrs. Bentley is not fed. The risk of feeding her is minimal whereas the risk of not doing so means

//

that death will be imminent. This death would be viewed as premature, and so would constitute harm to Mrs. Bentley. Within this perspective Mrs. Bentley's care providers have indicated that it is important that they honour and respond to Mrs. Bentley's physical indications of need whatever they may be. They perceive her continued participation in feeding is an indication that she is not yet ready to stop eating. They are very concerned about her comfort and would see the experience of dying from lack of nutrition to be very harmful. Even if Mrs. Bentley could be kept comfortable through this process (through heavy sedation), staff indicate that they feel they would be failing Mrs. Bentley by not responding to her needs.

Mrs. Bentley's family understands the risks of harm differently. They view the act of feeding to be harmful to Mrs. Bentley because continued feeding is not consistent with what Mrs. Bentley would have wanted, and because it causes her to continue in a state that they perceive to be "vegetative".

While Mrs. Bentley's care team and her family agree about the importance of Mrs. Bentley's comfort there are appear to be a number of important points where there is disagreement. It may be that agreement will never be reached on these matters, but either way, it will be important that the care team and family continue to collaborate in supporting Mrs. Bentley's care as much as possible. The desire to act on a loved one's wishes is strong, and is something that must be respected and commended. All decision-makers, including family members and health care providers, have a duty to respect and respond to their loved ones/patient's prior expressed wishes as much as is possible. This duty is not unlimited, however, and there will sometimes be legal and ethical circumstances which prevent families and care teams from meaningfully carrying out a request. In Mrs. Bentley's case, the request to discontinue voluntary feeding by mouth challenges some fundamentally held values and more decisively, is not consistent with current law in Canada.

Please do not hesitate to contact me or members of Ethics Services should you have any questions about the consult process or to provide additional support as required.

Kind regards,

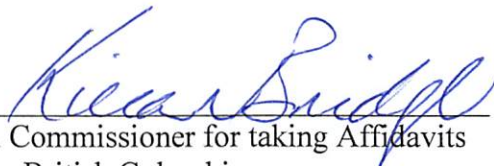
Katherine Duthie, MA
Leader, Clinical Ethics Consultation
604 807-2913 (o)
604 587-7879 (o)

Fraser Health Authority
Ethics Services

#400 – 13450 102nd Ave
Surrey, BC
V3T 0H1

Tel (604) 587-4486
Fax (604) 953-5137
www.fraserhealth.ca

This is Exhibit "E" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.

A handwritten signature in blue ink, reading "Kieran Bridge", written over a horizontal line.

A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546

**Meeting between Fraser Health, Maplewood, Dr. A. Edelson, GP
and family members of Margot Bentley: husband John Bentley and
daughter Katherine Hammond**

Proposed date of meeting: December 11, 2012

December 5, 2012

To: Kathy Lehn, Fraser Health Residential Services

Hello Kathy,

As per our discussion, we request that the following information be provided to the family and the GP prior to the meeting scheduled on December 11, 2012, if possible.

Please provide:

- A. A copy of the legal opinion, including Summation and Conclusion, with respect to honoring the Living Will prepared and signed by Margot Bentley on November 24, 1991; the family understands that the wording used in the Living Will is not sufficiently clear with respect to "No nourishment or liquids". The family asks that wording be provided that is sufficiently clear and legally binding, specifically with respect to mental disability and the withholding of nourishment and liquids.
- B. The results of the three Assessments done of Margot Bentley; I understand that she has been assessed by Dr. Neal Hilyard, of Palliative Care, as well as a Clinical Resource Nurse named Lynn and a Clinical Nurse Specialist, Anita Wahl.

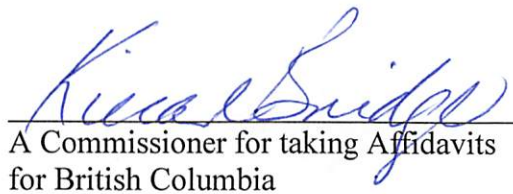
We understand that Adult Guardianship is not in place at this time, but that they have been consulted in the past concerning the care of my mom, and that Leanne Lang will be present at the meeting to answer our questions; is this correct?

The family believes that the ongoing depositing of food into Margot Bentley's mouth has contributed to excessive weight gain and tooth decay with resulting pain and the family feels that mouth care is inadequate. However, in general, they are grateful to the staff at Maplewood for the excellent, ongoing care that they have provided.

Many thanks for your assistance in this matter. Please don't hesitate to contact me by phone or e-mail if necessary.

Katherine Hammond
Cell: 778-990-9770

This is Exhibit "F" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546



fraserhealth

Better health.
Best in health care.

13

FHA File: 1-457-FOI

February 4, 2013

Mr. John Bentley
c/o
Katherine Hammond
Berth #4
3871 River Road West
Delta, BC
V4K 3N2

Dear Mr. Bentley:

**Re: *Freedom of Information and Protection of Privacy Act (FIPPA) Request –
Legal Opinion from the records of Margaret Anne Bentley***

The Fraser Health Authority (“Fraser Health”) received your request for access to records under FIPPA on December 6, 2012. You have requested the following records:

“Legal opinion including Summation and Conclusion” from the records of Margaret Bentley.

This is Fraser Health’s response to your request for records. The legal opinion is subject to solicitor-client privilege and therefore will be withheld from disclosure under Section 14 of FIPPA.

Should you find this response unsatisfactory, you may ask the Information and Privacy Commissioner to review Fraser Health Authority’s decision. You have 30 business days from receipt of our final response to this request a review by writing to the Office of the Information and Privacy Commissioner. Detailed information on how to request a review by OIPC is available on the OIPC website: <http://www.oipc.bc.ca>.

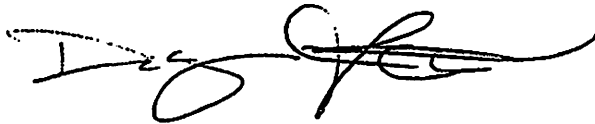
Fraser Health Authority
Corporate Office
Legal Services

Suite 400 – Central City Tower
13450 - 102nd Avenue
Surrey, BC V3T 0H1

Tel (604) 587-4437
Fax (604)-587-4666
www.fraserhealth.ca

If you have any questions or require any clarification regarding the processing of your request, please email our FOI team at FOI@fraserhealth.ca.

Sincerely,



Doug Luther
FOI Coordinator
Legal Services
Fraser Health Authority

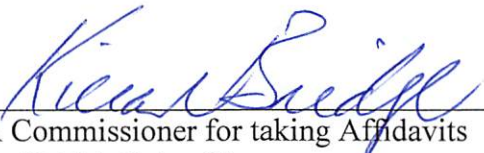
604-587-4437

Fraser Health Authority
Corporate Office
Legal Services

Suite 400 – Central City Tower
13450 - 102nd Avenue
Surrey, BC V3T 0H1

Tel (604) 587-4437
Fax (604)-587-4666
www.fraserhealth.ca

This is Exhibit "G" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546



Maplewood Seniors Care Society

Minutes of Meeting Regarding Care of Margot Bentley
December 11th, 2012 1030 – 1200 hours

Participants: Mrs. Margot Bentley
Mr. John Bentley – Margot's Husband
Katherine Hammond – Margot's Daughter
Dr. A. Edelson – Margot's Physician
Katherine Duthie – Leader, Clinical Ethics, Fraser Health Ethics Service
Leanne Lange – Clinical Specialist, Adult Abuse and Neglect
Anita Wahl – Clinical Nurse Specialist with Fraser Health
Laura Choroszewski – Manager, Residential Services
Corey Primus – Director of Care Maplewood Seniors Care
Dee Stewart – Director of Nursing Maplewood Seniors Care
Katherine Lehn – Residential Care Liaison

Kathy Lehn opened the meeting by welcoming everyone and asked that everyone introduce themselves.

After introductions Kathy stated the objectives of the meeting as information sharing and to have a discussion of the roles and responsibilities of the care providers. We hope to end by developing and/or updating Margot's care plan to guide the team in meeting Margot's needs and wishes as stated in her Living Will.

Kathy asked the family to state their concerns/perspectives as to Margot's wishes and kind of care plan they would like to see.

John Bentley – Margot had asked him to promise her that her Living Will be honoured and followed. Margot has had Alzheimer's for 13 years now, and John is very adamant that Margot did not want to live this way and he wants to fulfill his promise to her.

Katherine Hammond – Stated we are here to honor Margot's wishes and this isn't about our wishes or our beliefs, it's about what Margot wanted and the family's promise to Margot they would do everything they could to honor her wishes. Katherine stood beside her mom and spoke to her asking her to open her eyes or raise her arms to indicate she was aware we were there to discuss her care needs. Margot did not respond to Katherine's questions. Katherine talked about Margot prior to her illness and how horrified her mom was when she was diagnosed with Alzheimer's. Katherine discussed in detail her mom's wishes and Living Will. Katherine states the family is united and unanimous in their wish to help Margot fulfill her Living Will. Katherine stated she promised her mom she would do everything she could to meet her needs. Family feel it has been 5 years since Margot has recognized them. Katherine questioned the ethics review where it stated that Margot was "alert". Kathie Duthie interjected at this time to state it was an error to write "alert" and she would not use that word. Katherine read the definition of alert from the dictionary, and stated she would like to know if any of the participants felt Margot was alert according to those definitions.

Katherine stated they feel that when Margot opens her mouth it is a reflex just like an infant would root to seek a possible food source. She states it is not implied consent by Margot as family knows Margot very clearly stated she would not want nourishment. Katherine wanted the participants to agree that Margot would be considered palliative and there was a brief discussion about the state of palliative versus end stage. Katherine wanted the lawyer's opinion requested by Fraser Health and wanted to know what wording would be necessary to indicate very clearly that someone does not wish to be fed so that this would not be something that happened to another family. Katherine questioned why they did not receive the lawyer's consult report or Dr. Hillard's palliative report. Katherine ended her concern with stating she feels Margot is being assaulted by the staff because they feed her against her wishes.

Leanne Lange – Spoke first to the lawyer's consult and clarified that the request goes to Fraser Health and they have 30 business days to send the report or put in writing why they will not send the report or why they chose to only send parts of the report. Nobody at the meeting today was aware of the status of this request. Kathy confirmed the request for information was sent to Fraser Health Freedom of Information Department the day it was received from Mr. Bentley. Leanne discussed that a Living Will is not legally recognized in BC and that the new law that came out in September is about Advanced Directives. There are very clear guidelines to how the Advanced Directives need to be written and what has to be included, as well as clear guidelines on how to interpret wishes. Leanne discussed the obligations of Fraser Health to make sure neglect does not occur and that resident basic care needs are being met. Nourishment is not considered a health care need it's considered a basic need. Leanne stated the family would need to take their concerns and Margot's Living Will to a judge and the judge would need to decide the interpretation of the Living Will. We are bound by legislation.

Dr. Edelson – Disagrees with Leanne and states there are lots of precedents set about these kinds of questions. Patients and their spokespersons have the right to make decisions. When a person comes into care they have to sign a consent form and they can rescind that consent at any time. Dr. Edelson feels this has become complex in an artificial manner. Margot has the same right to refuse nourishment and by the staff forcing a spoon into her mouth and Margot reflexively opening her mouth Margot is being assaulted 3 X a day. Dr. Edelson stated that the over-arching question is, how to respect Margot's wishes and autonomy and the facility remaining comfortable ethically and morally. Family agreed with Dr. Edelson on this point.

Katherine Duthie – Went over her opinion and stated she was profoundly moved by the families wishes to honor Margot. Katherine discussed how we have to look at not harming Margot as well as staying within the law. There are limitations to what we can request. There are elements of the criminal code and we have to reflect the legal piece. The law is the bottom line.

Dr. Edelson - Questioned the notes and reiterated that Margot's ability to eat is not voluntarily it is reflexive. Family would have no problem if Margot voluntarily ate. However, if we were to put food in front of her, Margot would not grab the spoon and bring it to her mouth. Margot does not have the power to stop the feeding. Dr. Edelson feels the ethics note is not an ethics document but a legal document. Dr. Edelson stated

he sympathizes with the facility and knows this is a sensitive issue. Dr. Edelson feels the ethics report shows clear bias toward Fraser Health. Dr. Edelson and the family would like Margot to move to another facility that would support Margot's wishes. He believes there is room for compromise which involves caregivers not touching Margot's lips to initiate the feeding process.

Katherine Hammond – stated her mom is no longer a cognitive human being. She can't say she doesn't want to be fed. Katherine doesn't understand why nurses won't follow Dr. Edelson's orders. Why would nurses question the orders? When she was a nurse she followed doctors' orders.

Leanne - Stated Fraser Health has a legal mandate to enact the Adult Guardianship Act if they feel neglect is possible. Family do not feel we are honoring Margot and want a decision made today to state how we are going to move forward. Leanne stated she was not prepared to give an answer today as she has to consult with others such as Risk Management and the Executive Director. Leanne stated she would get back to the family in one week from today with the final decision. Leanne clarified with the family what they wanted to see happen.

Laura – Stated we need to figure out how to move forward, so that we honor Margot, support the family and facility. Laura stated that Fraser Health will come back to them with clear direction in one week.

Anita – Talked about her assessment and her preliminary findings. Anita stated she noted how distressed Mr. Bentley was by seeing his wife this way. Anita stated it was very important to her to have this meeting come together so we could move forward with the plan of care for Margot.

Corey – Stated that we will continue with our current care plan and would modify it depending on the outcome of this meeting. We reiterated to family that we offer Margot food but we do not force feed her and if Margot does not open her mouth then we would not feed her. Margot's pain is being managed and Margot's care needs have not changed much over the last two years.

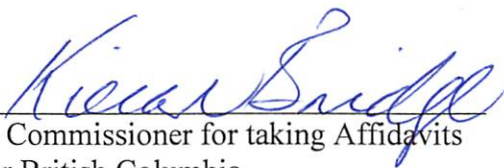
Family and Dr. Edelson's wishes:

1. Margot be moved to hospice/palliative care such as Christine Morrison Hospice or another facility that would respect Margot's wishes as indicated in her Living Will.
2. Margot be discharged home to the care of the family and they would provide her with 24 hour professional care. They would provide nourishment if Margot voluntarily wanted it.
3. If Fraser Health enacts the Adult Guardianship Act and takes away the family's right to make decisions and move Margot then the family feel Fraser Health should pay for her care.

Margot sat through the meeting with her eyes closed the majority of the time. She would periodically open her eyes, scratch her arm or yawn.

The meeting came to a close at 1200 hours and Fraser Health assured the family they will get back to them in one week with their decision and clear direction.

This is Exhibit "H" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546



Maplewood Seniors Care Society

19

Minutes of Meeting Regarding Care of Margot Bentley
December 11th, 2012 1030 – 1200 hours

Participants: Mrs. Margot Bentley
Mr. John Bentley – Margot's Husband
Katherine Hammond – Margot's Daughter
Dr. A. Edelson – Margot's Physician
Katherine Duthie – Leader, Clinical Ethics, Fraser Health Ethics Service
Leanne Lange – Clinical Specialist, Adult Abuse and Neglect
Anita Wahl – Clinical Nurse Specialist with Fraser Health
Laura Choroszewski – Manager, Residential Services
Corey Primus – Director of Care Maplewood Seniors Care
Dee Stewart – Director of Nursing Maplewood Seniors Care
Katherine Lehn – Residential Care Liaison

Kathy Lehn opened the meeting by welcoming everyone and asked that everyone introduce themselves.

After introductions Kathy stated the objectives of the meeting as information sharing and to have a discussion of the roles and responsibilities of the care providers. We hope to end by developing and/or updating Margot's care plan to guide the team in meeting Margot's needs and wishes as stated in her Living Will.

Kathy asked the family to state their concerns/perspectives as to Margot's wishes and kind of care plan they would like to see.

John Bentley – Margot had asked him to promise her that her Living Will be honoured and followed. Margot has had Alzheimer's for 13 years now, and John is very adamant that Margot did not want to live this way and he wants to fulfill his promise to her.

Katherine Hammond – Stated we are here to honor Margot's wishes and this isn't about our wishes or our beliefs, it's about what Margot wanted and the family's promise to Margot they would do everything they could to honor her wishes. Katherine stood beside her mom and spoke to her asking her to open her eyes or raise her arms to indicate she was aware we were there to discuss her care needs. Margot did not respond to Katherine's questions. Katherine talked about Margot prior to her illness and how horrified her mom was when she was diagnosed with Alzheimer's. Katherine discussed in detail her mom's wishes and Living Will. Katherine states the family is united and unanimous in their wish to help Margot fulfill her Living Will. Katherine stated she promised her mom she would do everything she could to meet her needs. Family feel it has been 5 years since Margot has recognized them. Katherine questioned the ethics review where it stated that Margot was "alert". Kathie Duthie interjected at this time to state it was an error to write "alert" and she would not use that word. Katherine read the definition of alert from the (Oxford on-line) dictionary, and stated she would like to know if any of the participants felt Margot was alert according to those definitions;

attendees of the meeting were asked by Katherine to raise their hands if they felt that Margot Bentley represented an alert adult. None of the people present raised their hands.

20

Katherine stated they feel that when Margot opens her mouth it is a reflex just like an infant would root to seek a possible food source. She states it is not implied consent by Margot as family knows Margot very clearly stated she would not want nourishment or liquids. Katherine wanted the participants to agree that Margot would be considered palliative and there was a brief discussion about the state of palliative versus end stage. Katherine wanted the lawyer's opinion requested by Fraser Health and wanted to know what wording would be necessary to indicate very clearly that someone does not wish to be fed so that this would not be something that happened to another family. Katherine questioned why they did not receive the lawyer's consult report or Dr. Hillard's palliative report. Katherine ended her concern with stating she feels Margot is being assaulted by the staff because they feed her against her wishes.

Leanne Lange – Spoke first to the lawyer's consult and clarified that the request goes to Fraser Health and they have 30 business days to send the report or put in writing why they will not send the report or why they chose to only send parts of the report. Nobody at the meeting today was aware of the status of this request. Kathy confirmed the request for information was sent to Fraser Health Freedom of Information Department the day it was received from Mr. Bentley. Leanne discussed that a Living Will is not legally recognized in BC and that the new law that came out in September is about Advanced Directives. There are very clear guidelines to how the Advanced Directives need to be written and what has to be included, as well as clear guidelines on how to interpret wishes. Leanne discussed the obligations of Fraser Health to make sure neglect does not occur and that resident basic care needs are being met. Nourishment is not considered a health care need it's considered a basic need. Leanne stated the family would need to take their concerns and Margot's Living Will to a judge and the judge would need to decide the interpretation of the Living Will. We are bound by legislation.

Dr. Edelson – Disagrees with Leanne and states there are lots of precedents set about these kinds of questions. Patients and their spokespersons have the right to make decisions. When a person comes into care they have to sign a consent form and they can rescind that consent at any time. Dr. Edelson feels this has become complex in an artificial manner. Margot has the same right to refuse nourishment and by the staff forcing a spoon into her mouth and Margot reflexively opening her mouth Margot is being assaulted 3 X a day. Dr. Edelson stated that the over-arching question is, how to respect Margot's wishes and autonomy and the facility remaining comfortable ethically and morally. Family agreed with Dr. Edelson on this point. Dr. Edelson made a point about patient consent by asking the attendees if he had a patient who was Jehova's Witness and who required a blood transfusion, would they honour his patient's decision to refuse the transfusion? The consensus appeared to be that they would honour the patient's wishes.

Katherine Duthie – Went over her opinion and stated she was profoundly moved by the families wishes to honor Margot. Katherine discussed how we have to look at not harming Margot as well as staying within the law. There are limitations to what we can

request. There are elements of the criminal code and we have to reflect the legal piece. The law is the bottom line.

Dr. Edelson - Questioned the notes and reiterated that Margot's ability to eat is not voluntarily it is reflexive. Family would have no problem if Margot voluntarily ate. However, if we were to put food in front of her, Margot would not grab the spoon and bring it to her mouth. Margot does not have the power to stop the feeding. Dr. Edelson feels the ethics note is not an ethics document but a legal document. Dr. Edelson stated he sympathizes with the facility and knows this is a sensitive issue. Dr. Edelson feels the ethics report shows clear bias toward Fraser Health. Dr. Edelson and the family would like Margot to move to another facility that would support Margot's wishes. He believes there is room for compromise which involves caregivers not touching Margot's lips to initiate the feeding process.

Katherine Hammond – stated her mom is no longer a cognitive human being. She can't say she doesn't want to be fed. Katherine doesn't understand why nurses won't follow Dr. Edelson's orders. Why would nurses question the orders? When she was a nurse she followed doctors' orders.

Leanne - Stated Fraser Health has a legal mandate to enact the Adult Guardianship Act if they feel neglect is possible. Family do not feel we are honoring Margot and want a decision made today to state how we are going to move forward. Leanne stated she was not prepared to give an answer today as she has to consult with others such as Risk Management and the Executive Director. Leanne stated she would get back to the family in one week from today with the final decision. Leanne clarified with the family what they wanted to see happen.

Laura – Stated we need to figure out how to move forward, so that we honor Margot, support the family and facility. Laura stated that Fraser Health will come back to them with clear direction in one week.

Anita – Talked about her assessment and her preliminary findings. Anita stated she noted how distressed Mr. Bentley was by seeing his wife this way. Anita stated it was very important to her to have this meeting come together so we could move forward with the plan of care for Margot.

Corey – Stated that we will continue with our current care plan and would modify it depending on the outcome of this meeting. We reiterated to family that we offer Margot food but we do not force feed her and if Margot does not open her mouth then we would not feed her. Margot's pain is being managed and Margot's care needs have not changed much over the last two years.

Family and Dr. Edelson's wishes:

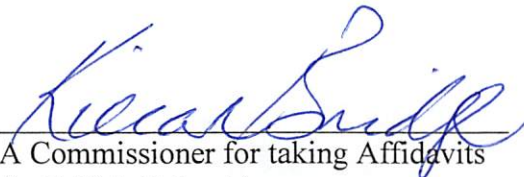
1. Margot be moved to hospice/palliative care such as Christine Morrison Hospice or another facility that would respect Margot's wishes as indicated in her Living Will.

2. Margot be discharged home to the care of the family and they would provide her with 24 hour professional care. They would provide nourishment if Margot voluntarily wanted it.
3. If Fraser Health enacts the Adult Guardianship Act and takes away the family's right to make decisions and move Margot then the family feel Fraser Health should pay for her care.

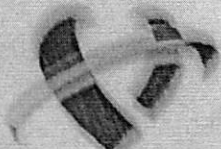
Margot sat through the meeting with her eyes closed the majority of the time. She would periodically open her eyes, scratch her arm or yawn.

The meeting came to a close at 1200 hours and Fraser Health assured the family they will get back to them in one week with their decision and clear direction.

This is Exhibit "I" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546



Fraser Health
Better health
Best in health care

December 18, 2012

Adult Guardianship Act - Notice of Emergency Intervention

Re: Margot Bentley
DOB: May 28, 1931

Fraser Health is a Designated Agency under the *Adult Guardianship Act*, to provide support and assistance for adults who are *abused or neglected and who are unable to seek support and assistance because of:*

- (a) physical restraint
- (b) a physical handicap that limits their ability to seek help, or
- (c) an illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect

Fraser Health has determined that Margot Bentley is in need of protection in accordance with Section 59(1) of the *Adult Guardianship Act* if she is removed from Maplewood House by John Bentley (spouse) and/or Katherine Hammond (daughter).

Section 59 reads as follows:

Section 59(1) A person from a designated agency may do anything referred to subsection (2) without the adult's agreement if:

- (a) the adult is apparently abused or neglected,
- (b) it is necessary, in the opinion, of the person from the designated agency, act without delay in order to
 - (i) preserve the adult's life
 - (ii) prevent serious physical or mental harm to the adult, or
 - (iii) protect the adult's assets from significant damage or loss, and
- (c) the adult is apparently incapable of giving or refusing consent

In order to fulfill this statutory obligation, Fraser Health has determined that it is appropriate as per Section 59(2)(e) to take any other emergency measure that is necessary to protect the Margot Bentley from harm. Therefore, Margot Bentley

**fraserhealth**Better health.
Best in health care.

must not be removed from Maplewood House in Abbotsford until a Support and Assistance care plan has been developed to ensure her safety.

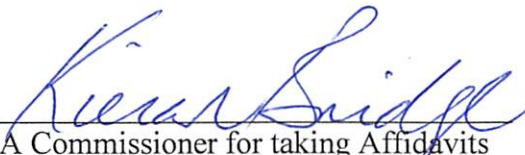
Recommended Safety Plan While in Maplewood House

In the event that John Bentley (spouse) and/or Katherine Hammond (daughter) attempt to remove or remove Margot Bentley from the premises of Maplewood House then the Abbotsford Police must be contacted to report that Margot Bentley is being removed or has been removed in contravention of the *Adult Guardianship Act* and must be returned to the care of Fraser Health immediately.

Prepared by:

Leanne Lange
Clinical Specialist, Adult Abuse & Neglect
Fraser Health

This is Exhibit "J" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546



fraserhealth

25

Fraser Health Authority
Integrated Risk Management
Suite 400 - 13450 - 102nd Avenue, Surrey, B.C. V3T 0H1
Telephone: (604) 587-4633 Fax: (604) 587-4656

Date: December 21, 2012

Attention: Mr. John Bentley / Ms. Katherine Hammond

Sent via Email

Re: Ms. Margot Bentley

Thank you for meeting with staff from Maplewood House and Fraser Health on December 11, 2012 to discuss Margot's current and future care needs.

During our meeting, you both were very clear articulating Margot's previously expressed wishes regarding her care. At the end of our meeting you provided the group with three care options that you suggest will honour Margot's wishes. Your recommended care options for Margot include (1) a transfer to Christine Morrison Hospice; (2) a move to a different residential care facility; or (3) a move to Katherine's home.

Since our last meeting, I consulted with Fraser Health's End of Life Program. I was advised by the Director that Margot is not a candidate for transfer to the Christine Morrison Hospice at this time.

With respect to your remaining recommended care options, Fraser Health has determined that as a designated agency under the *Adult Guardianship Act*, we are unable to support Margot's move to a different residential care facility or to Katherine's home. The reason for this decision is because you indicated that in both of these environments Margot would not be provided with food unless she communicates, in some way, her desire to be fed. From Fraser Health's clinical knowledge of Margot, we know that if Margot is not fed by hand by a caregiver then her basic nutritional needs will not be met. This failure to provide Margot with her basic nutritional needs will meet the definition of "neglect" in the *Adult Guardianship Act*.

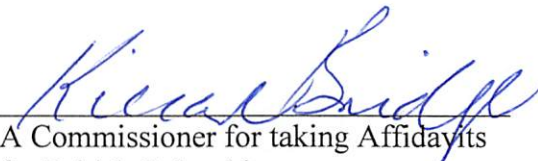
Since Fraser Health is unable to support your recommended care options for Margot, and you are unwilling to support the continued provision of nutritional care to her at Maplewood House, then the only option available to Fraser Health is to proceed to court to apply for a support and assistance order pursuant to Section 54(1) of the *Adult Guardianship Act*.

Please do not hesitate to contact me at 604-777-7393 if you have any questions about the next steps that Fraser Health will take with respect to this matter.

Regards,

Leanne Lange
Clinical Specialist, Adult Abuse & Neglect

This is Exhibit "K" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546

26
Katherine Hammond <katherinehmd@gmail.com>

Request for Information

Lange, Leanne <Leanne.Lange@fraserhealth.ca>

Fri, Jan 11, 2013 at 1:27 PM

To: Katherine Hammond <katherinehmd@gmail.com>

Cc: John Bentley <j_mbentley@hotmail.com>, asedelson <asedelson@shaw.ca>

Hi Katherine,

I will contact the Fraser Health staff person who is responsible for responding to the request for the legal opinion and get back to you with an update.

I am sorry but I am not able to estimate when the court date will be scheduled. Fraser Health needs to follow all of the steps included in the Adult Guardianship Act (AGA) and because the time frame for each step is variable it is impossible for me to venture a guess. Once we get a bit further in the process I will be able to provide an estimate.

Section 53(1) of the AGA requires Fraser Health to explain the plan and the proposed services to Margot. Section (53)(3)(b) of the AGA allows the adult's spouse or any relatives or friends who accompany the adult or who offer their assistance, to help the adult to understand or demonstrate an understanding of the support and assistance plan. I would like to attend Maplewood House to do this with Kathy Lehn (FH Residential Care Liaison) sometime next week. In accordance with the AGA, would any of you or someone else like to be present for this?

Please advise me as soon as possible so we can schedule this visit.

Regards,

Leanne Lange
Clinical Specialist - Adult Abuse & Neglect
Fraser Health
Unit 6 - 2601 Lougheed Highway
Coquitlam, BC
Tel: 604-777-7393
Fax: 604-777-7392

-----Original Message-----

From: Katherine Hammond [mailto:katherinehmd@gmail.com]

Sent: January 11, 2013 12:50 PM

To: Lange, Leanne

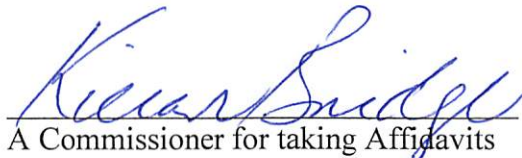
Cc: John Bentley; asedelson

Subject: Re: Request for Information

[Quoted text hidden]

 **Adult Guardianship Act2012.mht**
89K

This is Exhibit "L" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.

A handwritten signature in blue ink that reads "Kieran Bridge". The signature is written in a cursive style with a large, looping initial 'K'.

A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546

CONFIDENTIAL

**ASSESSMENT OF INCAPABILITY
Adult Guardianship Act**

Final Report – March 6, 2013

Name of Person Assessed: Margot Bentley
Address: Maplewood House, 1919 Jackson St
Abbotsford, BC, V2S 2Z8

Date of Birth: May 28, 1931

Assessor Information: Deborah O'Connor Ph.D., RSW
2080 West Mall
Vancouver, BC, V6T 1Z2
Phone: (604) 551-0459

Preparation:

Mrs. Margot Bentley is an 81 year old married woman in the advanced stages of Alzheimer's Disease living at Maplewood House since August, 2009. An *Assessment of Incapability* pursuant to Section 53 of the Adult Guardianship Act was requested by Leanne Lange, Clinical Specialist, Adult Abuse and Neglect, Fraser Health related to concerns that Mrs. Bentley's family is requesting that prompted feeding of Mrs. Bentley be discontinued. The family believes, based both on their personal knowledge of Mrs. Bentley's values and lifestyle choices, and drawing on two documents signed by her earlier in her dementia journey when she was allegedly still capable, that this would be honoring Mrs. Bentley's wishes. Fraser Health however believes that withholding food denies Mrs. Bentley basic care – and while Mrs. Bentley's wishes around "heroic care" are well-document, those related to basic care are not clear in either of the two documents. Moreover, there is concern that withholding food - knowing that it will result in Mrs. Bentley's death - is neither legal nor humane and, because Mrs. Bentley continues to readily accept food that this constitutes acceptance on her part.

X I only signed

I was asked to participate in the assessment of incapability by Goran Todoravic of the Office of the Public Guardian and Trustee in a letter dated February 7, 2013 (signed by Leanne Dospital).

Collateral Information and Consultation

In preparation for the initial contact with Mrs. Bentley, I reviewed the Support and Assistance Plan (SAP) and supporting documentation completed by Leanne Lange, dated January 29, 2013. In individual telephone conversations with each, I also obtained collateral information from the following people: Leanne Lange, Katherine Hammond (Mrs. Bentley's daughter); John Bentley (Mrs. Bentley's husband); and Corey Primus (Director of Care, Maplewood House).

During the assessment, further collateral information was also obtained from the care staff at Maplewood, especially Mrs. Bentley's primary care attendant, Eily.

Following the initial meeting with Mrs. Bentley, further collateral information was obtained by reading Mrs. Bentley's chart notes compiled during her stay at Maplewood House, giving particular attention to the past 18 months. In addition to the day-to-day nursing notes – focused largely on a) tracking percentage of meals consumed, b) addressing any signs that Mrs. Bentley might be experiencing pain; and providing care for pitted edema - the following reports were also available:

- Two consultation reports (dated January 28, 2013 and December 3, 2012) completed by Kathrine Duthie, MA, PhD©, Clinical Ethics Consultant and Leader, Fraser Health Ethics Services pertaining to a case planning meeting held on December 11, 2012;
- A consultation report by Dr. Neil Hilliard, Hospice Palliative Care Physician, assessing Mrs. Bentley's suitability to be moved into Palliative care dated June 5, 2012;
- A report by Anita Wahl, CNS, Residential Care and Assisted Living, Fraser Health, dated November 9, 2012; and
- The medical notes compiled by Dr. Edelson, who is Mrs. Bentley's attending physician.

Conducting the Assessment Interview

I conducted the assessment interview at Maplewood House on Tuesday, March 5, 2013. In attendance were Mrs. Bentley's daughter, husband, and former care-aid (now attending to Mr. Bentley) Jocelyn. Per our re-arranged plan, I arrived shortly before lunch in order to first speak with Mrs. Bentley and then observe her feeding routine. In total, I spent approximately 90 minutes interacting or observing Mrs. Bentley.

Observational Information

Mrs. Bentley was slumped and sleeping in her chair when I arrived. Throughout my stay, she remained largely unresponsive, except that she grasps the hands of the speaker when someone bends to talk to her. Her eyes were closed for most of the time that I observed her – I am told that she is a bit more alert in the morning but that what I was observing was not uncharacteristic.

Physically, she presents as a youngish-looking for her age, clean and appropriately dressed. She is a solid-looking woman with no signs of malnourishment or inadequate nutrition. Her legs (especially her ankles) were swollen (pitted edema) but she did not display any obvious signs of pain or discomfort. During the entire period of my interactions with her, I did not observe any spontaneous or purposeful movement on her part, and when later put into her bed, her body took some time to unfold related to the severity of its rigidity.

I tried several strategies to make contact both verbally and non-verbally. These were largely unsuccessful. If I put my hand on hers, she did hold it, but aside from this, I received no observable response to my interactions and when I told her that I would be removing my hand, there was no discernable change in pressure. I was not able to reliably gain eye-contact at any point, nor did she respond to requests to blink her eyes (or tighten her hand) as signs of understanding. In fact, for the duration of my visit I did not hear her utter any sound whatsoever. In addition to my own efforts trying to engage her, I also observed how her daughter, husband and primary care-aid interacted with her to see if they were more successful in achieving a purposeful response – they were not. She gave no evidence to suggest that she recognized

anyone or that she was aware of her environment.

On the seven stage Global Deterioration Scale (GBS) it is my opinion that she has reached level 7. (See Appendix 1)

Telling the Adult about the Assessment

Prior to the in-person meeting, I explained my role separately to both Mr. Bentley and Ms. Hammond. In particular, I assured them that I was an independent assessor with no formal affiliation with Fraser Health and that my role was confined to assessing Mrs. Bentley's capacity to turn down the SAP. They were aware that this situation is likely to go to court for a decision, and I explained that my assessment could be used in the court proceeding.

When I met with Mrs. Bentley, I immediately introduced myself and provided a very simple statement regarding why I was there. Specifically, I indicated that her family did not think she would want to be kept alive through the current way of feeding her but the facility felt that they could not comply with their request to discontinue prompted feeding. I indicated I was there to try to assess her ability to provide input into this decision. I received no response – in fact Mrs. Bentley appeared to sleep through it. Hence, I did not feel it made sense to provide any further information and discontinued my explanation.

Health Status and Communication Issues

Information obtained through the family and her chart indicates that Mrs. Bentley was in good health prior to her diagnosis of Alzheimer's Disease in 1999. The first sign that the family had that something was seriously wrong occurred following surgery on Mrs. Bentley's injured ankle when she became very disoriented, paranoid and anxious, could not figure out what she was doing in the hospital and tried to leave by walking prematurely on her injured ankle. She was treated with medication (Aricept) to try to slow the process, but responded negatively to it so it was discontinued.

With the help of Mrs. Bentley's daughter, Mr. Bentley cared for his wife at home until December 2005 and then had her admitted to Ebenezer Home. She remained there until August 2009 when it closed and she moved to Maplewood House. According to the family her current condition is essentially unchanged from when she was admitted. It has been several years since she recognized her family, could communicate in any meaningful way, and/or showed pleasure in day-to-day activities and/or previous interests.

The family indicate that Mrs. Bentley was a lively, involved woman who, was upon discovering that she had Alzheimer's Disease, was adamant that she never wanted to become a total burden and dependent upon others. Rather, she begged her family to euthanize her should she ever not recognize them. Two documents, one dated November 24, 1991 (pre-diagnosis) and the other undated (but written before her daughter's name change), outline her request to be allowed to die should she be rendered incapable of rational existence. She desires aggressive palliative care including drugs for pain relief, and will accept only basic care.

In accordance with the above, Mrs. Bentley is being treated aggressively for any signs or symptoms of pain. Although it is apparently difficult to tell for sure, staff feels that she is able to convey when she is in pain by moaning and tightening her facial muscles.

Currently, she is on hydromorphine .25 mg every four hours and is now apparently not demonstrating any signs of pain. It is unclear whether the hydromorphine is contributing to her state of semi-consciousness but the consensus among the family and care staff appear to be that she needs this in order not to be in pain.

As noted above, I found no way to communicate meaningfully with Mrs. Bentley so much of my assessment consisted of observing others interact with her.

Determining Understanding

Method of Explaining Support and Assistance Plan

There are two services being offered in the SAP – the first is to continue prompted feeding and the second is that Mrs. Bentley remain at Maplewood House. It was clear from the onset that Mrs. Bentley was not able to intellectually understand the Support and Assistance Plan so a full explanation of it was not completed. In particular, I abandoned any attempt to deal with the of the SAP regarding her continued residence at Maplewood House.

Following a futile effort to communicate directly with her regarding the first service – to continue prompted feeding – I let Mrs. Bentley know that I would be observing her in the dining room. I told her that I would be trying to understand whether she had any way of consistently demonstrating any choice around eating or not eating. Unsurprisingly, I received no response to this, but since she did not refuse I took this as consent.

I sat across from Mrs. Bentley throughout her lunch. A care-aid, Elly, sat between Mrs. Bentley and another woman, and took turns spoon-feeding each of them. This was interesting because it allowed some comparison between how the two different woman responded, highlighting how different their responses were. Specifically, no prompting was required when feeding the other resident who readily opened her mouth whenever asked, until her meal was finished.

With Mrs. Bentley, Elly began by touching the spoon of thickened cranberry juice to Mrs. Bentley's bottom lips – at the touch of the spoon on her lip Mrs. Bentley opened her mouth. This happened several times. Throughout this process there was no sign of pleasure, but neither was there any sign of discomfort. Elly then switched to main course – pureed potatoes, chicken and gravy. When the same process was attempted with the main course, Mrs. Bentley did not readily open her mouth. With a bit more prodding, she did open her mouth but after eating about a quarter of the main course she refused to open her mouth again. Elly tried six times, and then discontinued. Elly then switched to desert, letting Mrs. Bentley know that she was doing this. Mrs. Bentley opened her mouth to the desert on the first prod. Throughout this process Elly maintained an ongoing dialogue with Mrs. Bentley, keeping her informed of what she (Elly) was doing.

It appeared to me watching this that Mrs. Bentley had a clear idea of what she liked and what she did not like. I attempted to verify this by asking Elly, if she thought Mrs. Bentley expressed preferences – Elly confirmed my unstated observation that it was her impression that Mrs. Bentley prefers sweet food. I asked her daughter if she had always had a sweet tooth, her daughter indicated that in fact she had not, but that the

family had observed that after the diagnosis Mrs. Bentley's eating habits changed. For example, prior to her diagnosis she was a coffee drinker but within a few years of the diagnosis, she stopped drinking coffee. Her daughter was no longer certain what foods Mrs. Bentley preferred.

Aside from being able to express some food preference, I found it difficult to know for sure when Mrs. Bentley was actively refusing food. With sweet food she generally responded more quickly but with other food she needed much more prodding and did not seem to open her mouth as wide. My suspicion is that there is a fine line between when she is willingly accepting food and when she is trying – sometimes unsuccessfully – to refuse.

Factors influencing understanding

Mrs. Bentley is in the final stages of Alzheimer's Disease – there is question as to whether or not she meets the criteria for being palliative. At least part of this may be because dementia has often not been treated from a palliative perspective. As Dr. Hilliard's report acknowledged, few people with advanced dementia ever go into the Palliative program.

Mrs. Bentley is on morphine for pain. Since her dosage was increased, both the family and nursing staff feel that there have been fewer incidents to raise concern that Mrs. Bentley is in pain. However, whether this is interfering with her alertness is unknown. Even if it is however, it appears to be the family's wishes and likely Mrs. Bentley's in accordance with previously stated values and wishes, that the avoidance of pain be prioritized above all else.

My impression watching the care staff with Mrs. Bentley, is that she is clearly seen holistically and caringly, within the context of who she has always been. Similarly, the family retain a clear understanding of who Mrs. Bentley is and what she would have wanted. There are two questions here: First, would Mrs. Bentley have seen feeding as a 'heroic' measure designed to keep her alive long after she had reached a point that she clearly stated she did not want to go, and; Second, would this still reflect her choice – people's ideas of what they think they would want often change in the face of actual circumstances. Thus, whether she derives enough contentment from eating, especially sweet things, that she would wish this to continue, is unclear.

Findings of Assessment

Assessments of incapacity under Part 3, include three criteria: Does the Adult understand what services are being offered; Does s/he understand why the services are being offered, and; Does s/he understand the potential consequences of turning down the services?

There is no dispute among all those who are involved with her – family and care-providers alike - that Mrs. Bentley does not have the cognitive capacity to understand the information necessary to make a decision. Certainly she cannot communicate in any meaningful way any level of understanding whatsoever. This would include the decision to turn down a SAP that stipulates that she remain at Maplewood House.

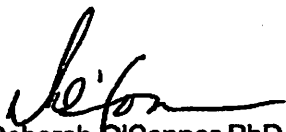
What is in dispute is whether or not Mrs. Bentley is capable of exercising any choice over the decision to eat or not eat. The family firmly believes that her eating is reflexive,

and not indicative of choice. The care staff feel that she is able to exercise some choice by closing her mouth and refusing to eat.

My finding is that it is somewhere in between. Observing her, I was able to determine what food Mrs. Bentley preferred – suggesting that she does have some means for communicating. I was also able to determine when she was clear that she did not want more food. However, there was a grey space where it was unclear how much she was responding reflexively to continued prompting and hence, unable to exert a choice. Erring on the side that she does retain some capacity here, my suggestion would be that fewer attempts be made to convince her to continue eating.

Communicating Results to the Adult

No attempt was made to communicate the results of this assessment to Mrs. Bentley because it was clear to me that she would not understand. I did however communicate my opinion to her husband and her daughter and assured them that they would receive a copy of the final report.



Deborah O'Connor PhD, RSW
March 7, 2013

Name: Margot Bentley
 Date: March 6, 2013

Appendix 1

33

The Global Deterioration Scale for Assessment of Primary Degenerative Dementia

The Global Deterioration Scale (GDS), developed by Dr. Barry Reisberg, provides caregivers an overview of the stages of cognitive function for those suffering from a primary degenerative dementia such as Alzheimer's disease. It is broken down into 7 different stages. Stages 1-3 are the pre-dementia stages. Stages 4-7 are the dementia stages. Beginning in stage 5, an individual can no longer survive without assistance. Within the GDS, each stage is numbered (1-7), given a short title (i.e., Forgetfulness, Early Confusional, etc.) followed by a brief listing of the characteristics for that stage. Caregivers can get a rough idea of where an individual is at in the disease process by observing that individual's behavioral characteristics and comparing them to the GDS. For more specific assessments, use the accompanying Brief Cognitive Rating Scale (BCRS) and the Functional Assessment Staging (FAST) measures.

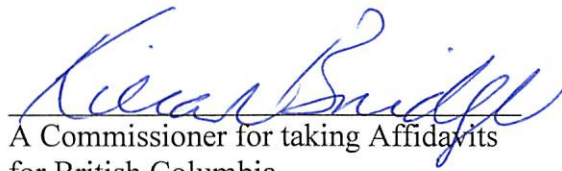
Level	Clinical Characteristics
<p style="text-align: center;">1 No cognitive decline</p>	<p>No subjective complaints of memory deficit. No memory deficit evident on clinical interview.</p>
<p style="text-align: center;">2 Very mild cognitive decline (Age Associated Memory Impairment)</p>	<p>Subjective complaints of memory deficit, most frequently in following areas: (a) forgetting where one has placed familiar objects; (b) forgetting names one formerly knew well. No objective evidence of memory deficit on clinical interview. No objective deficits in employment or social situations. Appropriate concern with respect to symptomatology.</p>
<p style="text-align: center;">3 Mild cognitive decline (Mild Cognitive Impairment)</p>	<p>Earliest clear-cut deficits. Manifestations in more than one of the following areas: (a) patient may have gotten lost when traveling to an unfamiliar location; (b) co-workers become aware of patient's relatively poor performance; (c) word and name finding deficit becomes evident to intimates; (d) patient may read a passage or a book and retain relatively little material; (e) patient may demonstrate decreased facility in remembering names upon introduction to new people; (f) patient may have lost or misplaced an object of value; (g) concentration deficit may be evident on clinical testing. Objective evidence of memory deficit obtained only with an intensive interview. Decreased performance in demanding employment and social settings. Denial begins to become manifest in patient. Mild to moderate anxiety accompanies symptoms.</p>
<p style="text-align: center;">4 Moderate cognitive decline (Mild Dementia)</p>	<p>Clear-cut deficit on careful clinical interview. Deficit manifest in following areas: (a) decreased knowledge of current and recent events; (b) may exhibit some deficit in memory of one's personal history; (c) concentration deficit elicited on serial subtractions; (d) decreased ability to travel, handle finances, etc. Frequently no deficit in following areas: (a) orientation to time and place; (b) recognition of familiar persons and faces; (c) ability to travel to familiar locations. Inability to perform complex tasks. Denial is dominant defense mechanism. Flattening of affect and withdrawal from challenging situations frequently occur.</p>

<p style="text-align: center;">5 Moderately severe cognitive decline (Moderate Dementia)</p>	<p>Patient can no longer survive without some assistance. Patient is unable during interview to recall a major relevant aspect of their current lives, e.g., an address or telephone number of many years, the names of close family members (such as grandchildren), the name of the high school or college from which they graduated. Frequently some disorientation to time (date, day of week, season, etc.) or to place. An educated person may have difficulty counting back from 40 by 4s or from 20 by 2s. Persons at this stage retain knowledge of many major facts regarding themselves and others. They invariably know their own names and generally know their spouses' and children's names. They require no assistance with toileting and eating, but may have some difficulty choosing the proper clothing to wear.</p>
<p style="text-align: center;">6 Severe cognitive decline (Moderately Severe Dementia)</p>	<p>May occasionally forget the name of the spouse upon whom they are entirely dependent for survival. Will be largely unaware of all recent events and experiences in their lives. Retain some knowledge of their past lives but this is very sketchy. Generally unaware of their surroundings, the year, the season, etc. May have difficulty counting from 10, both backward and, sometimes, forward. Will require some assistance with activities of daily living, e.g., may become incontinent, will require travel assistance but occasionally will be able to travel to familiar locations. Diurnal rhythm frequently disturbed. Almost always recall their own name. Frequently continue to be able to distinguish familiar from unfamiliar persons in their environment. Personality and emotional changes occur. These are quite variable and include: (a) delusional behavior, e.g., patients may accuse their spouse of being an impostor, may talk to imaginary figures in the environment, or to their own reflection in the mirror; (b) obsessive symptoms, e.g., person may continually repeat simple cleaning activities; (c) anxiety symptoms, agitation, and even previously nonexistent violent behavior may occur; (d) cognitive abulia, i.e., loss of willpower because an individual cannot carry a thought long enough to determine a purposeful course of action.</p>
<p style="text-align: center;">7 Very severe cognitive decline (Severe Dementia)</p>	<p>All verbal abilities are lost over the course of this stage. Frequently there is no speech at all - only unintelligible utterances and rare emergence of seemingly forgotten words and phrases. Incontinent of urine, requires assistance toileting and feeding. Basic psychomotor skills, e.g., ability to walk, are lost with the progression of this stage. The brain appears to no longer be able to tell the body what to do. Generalized rigidity and developmental neurologic reflexes are frequently present.</p>

Reisberg, B., Ferris, S.H., de Leon, M.J., and Crook, T. The global deterioration scale for assessment of primary degenerative dementia. *American Journal of Psychiatry*, 1982, 139: 1136-1139.

Copyright © 1983 by Barry Reisberg, M.D. Reproduced with permission.

This is Exhibit "M" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546



fraserhealth

Better health.
Best in health care.

35

July 12, 2013

Katherine Hammond
Berth #4, 3871 River Road West
Delta, BC
V4K 3N2

Dear Ms. Hammond,

This letter is in response to your request to receive a copy of the support and assistance plan which was created by Fraser Health regarding your mother, Margot Bentley.

Fraser Health created the support and assistance plan in order to meet the requirements set out in Section 51(1) (g) of the *Adult Guardianship Act*. As a result of the meeting which you attended on April 15, 2013, Fraser Health determined that it would not take further steps to apply for a support and assistance order. Therefore, Fraser Health is not required to provide you with a copy of the support and assistance plan.

Please do not hesitate to contact me at (604) 777-7393 if you require any further assistance.

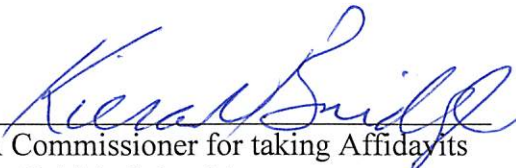
Regards,

Leanne Lange
Clinical Specialist, Adult Abuse & Neglect

Integrated Risk Management
#400 – 13450 – 102 Avenue
Surrey, BC V3T 0H1
T. (604) 587-4633



This is Exhibit "N" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546



Katherine Hammond <katherinehmd@gmail.com>

36

Follow-Up to Our Meeting at Maplewood House on April 15, 2013

Lange, Leanne <Leanne.Lange@fraserhealth.ca>

Mon, Apr 22, 2013 at 10:43 AM

To: "Katherine Hammond (katherinehmd@gmail.com)" <katherinehmd@gmail.com>, "John Bentley (j_mbentley@hotmail.com)" <j_mbentley@hotmail.com>

Cc: "Parkins, Sandra" <Sandra.Parkins@fraserhealth.ca>, "Choroszewski, Laura" <Laura.Choroszewski@fraserhealth.ca>, Corey Primus <cprimus@maplewood.bc.ca>

Dear John & Katherine,

Thank-you for meeting with Laura, Corey, Sandra, and I last week at Maplewood House to discuss Margot's care.

During the meeting you advised that you will accept Margot's continued residence at Maplewood House. You requested the staff at Maplewood House to provide increased mouth care and continue to provide medications to manage Margot's pain as per Dr. Edelson's orders. The number of times that Margot is prompted to be fed by the care staff was also discussed. From the clinical perspective, Corey and Laura were in agreement that it is reasonable for staff at Maplewood House to prompt Margot to feed a couple of times before moving on to offer her a different food/liquid. Corey agreed to work with the dietician and staff to update Margot's care plan to reflect this standard of care.

Based on the fact that Margot will remain at Maplewood House and her care plan will be updated regarding her feeding then Fraser Health will conclude its investigation under the *Adult Guardianship Act*. Fraser Health will not apply for a support and assistance court order at this time.

Please do not hesitate to contact me at 604-777-7393 if you have any further questions.

Regards,

37

Leanne Lange

Clinical Specialist - Adult Abuse & Neglect

Fraser Health

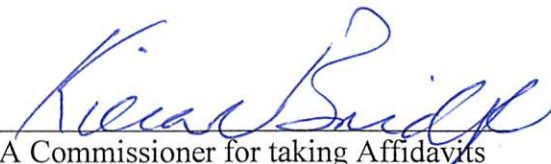
Unit 6 - 2601 Lougheed Highway

Coquitlam, BC

Tel: 604-777-7393

Fax: 604-777-7392

This is Exhibit "O" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546



Print and Close

Cancel

Ministry of Health

Residents Bill of Rights

In 2009 government passed a Residents' Bill of Rights to promote the rights of adults who live in residential care facilities. As there are many types of residential care, the bill of rights applies broadly to all facilities that provide residential care to adults. These facilities include those licensed under the Community Care and Assisted Living Act, which includes long term care facilities, mental health and substance use care facilities, community living homes and hospices, as well as private hospitals and extended care facilities licensed under the Hospital Act.

The Residents' Bill of Rights is a comprehensive set of rights that is grouped into four main themes: commitment to care; rights to health, safety and dignity; rights to participation and freedom of expression; and rights to transparency and accountability.

It is important that residents in care facilities have a publicly available, comprehensive list of their rights posted inside their care facility that is displayed in a place easy for them to see. Care facilities are required to post the Residents' Bill of Rights in a prominent location. To assist you with making these rights known, download the Residents' bill of rights [\(PDF 496K\)](#).

Operators of care facilities are required to comply with the Residents' Bill of Rights to promote the health and dignity of residents. Compliance with the bill of rights is monitored in two ways:

- Patient Care Quality Offices of each health authority track complaints about non-compliance with the Residents' Bill of Rights and report this information to the ministry on a quarterly basis.
- Compliance with the bill of rights is also monitored by the community care facilities licensing programs within each health authority. When a facility is inspected, a licensing officer assesses whether the operator is complying with the Residents' Bill of Rights.

Print and Close

Cancel



RESIDENTS' BILL OF RIGHTS

Commitment to care

1. An adult person in care has the right to a care plan developed:
 - (a) specifically for him or her, and
 - (b) on the basis of his or her unique abilities, physical, social and emotional needs, and cultural and spiritual preferences.

Rights to health, safety and dignity

2. An adult person in care has the right to the protection and promotion of his or her health, safety and dignity, including a right to all of the following:
 - (a) to be treated in a manner, and to live in an environment, that promotes his or her health, safety and dignity;
 - (b) to be protected from abuse and neglect;
 - (c) to have his or her lifestyle and choices respected and supported, and to pursue social, cultural, religious, spiritual and other interests;
 - (d) to have his or her personal privacy respected, including in relation to his or her records, bedroom, belongings and storage spaces;
 - (e) to receive visitors and to communicate with visitors in private;
 - (f) to keep and display personal possessions, pictures and furnishings in his or her bedroom.

Rights to participation and freedom of expression

3. An adult person in care has the right to participate in his or her own care and to freely express his or her views, including a right to all of the following:
 - (a) to participate in the development and implementation of his or her care plan;
 - (b) to establish and participate in a resident or family council to represent the interests of persons in care;
 - (c) to have his or her family or representative participate on a resident or family council on their own behalf;
 - (d) to have access to a fair and effective process to express concerns, make complaints or resolve disputes within the facility;
 - (e) to be informed as to how to make a complaint to an authority outside the facility;
 - (f) to have his or her family or representative exercise the rights under this clause on his or her behalf.

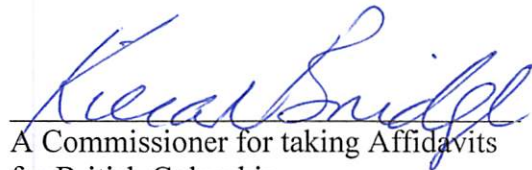
Rights to transparency and accountability

4. An adult person in care has the right to transparency and accountability, including a right to all of the following:
 - (a) to have ready access to copies of all laws, rules and policies affecting a service provided to him or her;
 - (b) to have ready access to a copy of the most recent routine inspection record made under the Act;
 - (c) to be informed in advance of all charges, fees and other amounts that he or she must pay for accommodation and services received through the facility;
 - (d) if any part of the cost of accommodation or services is prepaid, to receive at the time of prepayment a written statement setting out the terms and conditions under which a refund may be made;
 - (e) to have his or her family or representative informed of the matters described in this clause.

Scope of rights

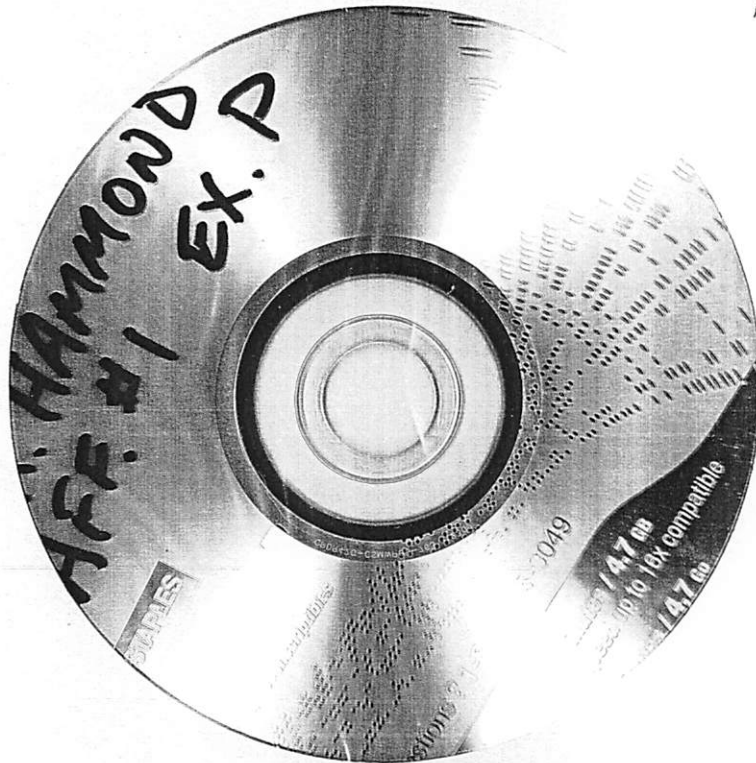
5. The rights set out in clauses 2, 3 and 4 are subject to:
 - (a) what is reasonably practical given the physical, mental and emotional circumstances of the person in care;
 - (b) the need to protect and promote the health or safety of the person in care or another person in care, and
 - (c) the rights of other persons in care.

This is Exhibit "P" referred to in the Affidavit of Katherine Hammond sworn before me at Abbotsford in the Province of British Columbia this 4th day of August, 2013.


A Commissioner for taking Affidavits
for British Columbia

Kieran A.G. Bridge
Barrister & Solicitor
1400 - 1125 Howe Street
Vancouver, British Columbia
V6Z 2K8
Tel. 604-687-5546

40



NO.
VANCOUVER REGISTRY

**IN THE SUPREME COURT
OF BRITISH COLUMBIA**

BETWEEN:

MARGARET ANNE BENTLEY,
by her Litigation Guardian KATHERINE HAMMOND,
JOHN BENTLEY and KATHERINE HAMMOND

PETITIONERS

AND:

MAPLEWOOD SENIORS CARE SOCIETY,
FRASER HEALTH AUTHORITY and
HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

RESPONDENTS

**AFFIDAVIT OF
KATHERINE HAMMOND #1**

Kieran A.G. Bridge
Barrister & Solicitor
Law Corporation
1400 – 1125 Howe Street
Vancouver, B.C.
V6Z 2K8
Telephone: 604-687-5546
Facsimile: 1-888-665-7448
kieran@kieranbridgelaw.com