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(Winnipeg Centre)  
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## **COURT OF QUEEN'S BENCH OF MANITOBA**

### **BETWEEN:**

SEAN WILLIAM KENNEDY and )	<u>Counsel:</u>
LINDA DIANE KENNEDY, )	
)	<u>SHERRY D. BROWN</u>
Applicants, )	for the applicants
- and - )	Sean William Kennedy and
)	Linda Diane Kennedy
)	
KRYSTLE ROSE McKENZIE, )	<u>SARAH R. McEACHERN</u>
)	<u>JESSE A. GIETZ</u>
Respondent. )	for the applicant
)	Kimberly Waldner
)	
<b>AND BETWEEN:</b> )	<u>BRYAN M. HYMAN</u>
)	for the Public Guardian and Trustee
KIMBERLY WALDNER, )	of Manitoba
)	
Applicant, )	<u>CHARLES N. GUBERMAN</u>
)	on a watching brief
- and - )	on behalf of Rick Klym
)	
KRYSTLE ROSE McKENZIE, )	
)	<u>JUDGMENT DELIVERED:</u>
Respondent. )	October 1, 2020

APPLICATIONS UNDER: ***The Mental Health Act***, C.C.S.M. c. M110

## **TURNER J.**

### **I. INTRODUCTION**

[1] Krystle McKenzie (Krystle), mother of four young children, suffered a traumatic brain injury that has left her incapable of managing her property and

incapable of personal care. The issue before me in these two highly contested applications is with respect to the appointment of a committee who would be responsible for making crucial decisions on behalf of Krystle about that property and concerning personal care.

## **II. DECISION**

[2] For the reasons that follow, I grant Kimberly Waldner's application for an order appointing her as committee.

## **III. FACTS**

[3] During the evening of November 16, 2019, Krystle was walking in the area of Chief Peguis Trail and Gateway Road, in the City of Winnipeg. A motor vehicle struck her and she suffered serious injuries, including a head injury. She was taken to the Health Sciences Centre where she underwent surgery to relieve pressure from the swelling of her brain.

[4] Although Krystle has made great strides in her recovery, both parties and her medical team agree that she continues to suffer cognition issues and is incapable of managing her property and incapable of personal care. There is no dispute that Krystle requires a committee appointed under ***The Mental Health Act***, C.C.S.M. c. M110 (***Act***), to make decisions on her behalf. The affidavits of Dr. Neil Reginald Berrington affirmed January 8, 2020, and Dr. Frederick Adam Zeiler affirmed January 7, 2020, confirm that Krystle "is incapable of managing

her property and assets and personal care due to mental incapacity, and she requires decisions to be made on her behalf in this regard.”

[5] Two competing applications come before me seeking an order appointing a committee for Krystle. Sean Kennedy (Sean) and Linda Kennedy (Linda) brought the first application (collectively, the Kennedys). Kimberly Waldner (Kimberly) brought the second application. The applications were consolidated and heard together.

**A. Prior to the Accident**

[6] Prior to the accident, Sean and Krystle lived common-law with their three children (aged four, three, and just under two years). Krystle’s daughter from a previous relationship, who is eleven years old, lived with them approximately half the time. Krystle did not work outside the home and was the primary caregiver to the children. Sean worked (and continues to work) for a family company controlled by his brother. His mother, Linda, also works at the family company.

[7] Sean and Krystle were in a common-law relationship for approximately nine years. They separated between September 2016 and May 2017; however, they reconciled and resumed living together. A more thorough review of the dynamics of their relationship is set out below; by all accounts, their relationship was tumultuous.

[8] Kimberly is Krystle's mother. Krystle moved away from her parents' home prior to the accident when she was fourteen years old, and she never returned to live with her parents.

**B. Since the Accident**

[9] After two emergency surgeries at the Health Sciences Centre, Krystle was in a coma. Eventually, she regained consciousness and stayed at the Health Sciences Centre for four months. Thereafter, she was moved to Concordia Hospital. She was to remain at Concordia Hospital until space became available at the Selkirk Mental Health Centre, where her rehabilitation would continue.

[10] Due to the COVID-19 pandemic, space was not available at the Selkirk Mental Health Centre for six to twelve months, and it was not possible for Krystle to remain at Concordia Hospital. A plan was made to release Krystle into Kimberly's care on April 28, 2020. Sean advised staff at Concordia Hospital that he could not provide Krystle with the supervision she needed at the time because he was working full time and caring for their three children.

[11] Krystle moved into her grandmother, Gladys Moroz's (Gladys), house after her discharge. Kimberly decided to move Krystle there because Gladys's house is a bungalow, and there were concerns that Krystle could not safely manage stairs given her injuries. Kimberly moved out of the two-storey home that she shares with her husband to move to Gladys's house in order to supervise and assist Krystle.

**IV. MOTION TO EXPUNGE PORTIONS OF AFFIDAVITS**

[12] As a preliminary matter, the Kennedys seek to have portions of the affidavits filed in support of Kimberly's application expunged. At the hearing, I dismissed the Kennedys' motion and indicated that I would provide more thorough reasons with my reasons on the substantive application.

[13] The Kennedys point to approximately seventy-seven paragraphs, sentences and phrases in the affidavits of Kimberly, Jordan Waldner, and Kandace Geurts that they say are inadmissible for a variety of reasons.

[14] I will not go through all the paragraphs, sentences and phrases about which the Kennedys complain. This motion to expunge is simply not proportionate to the circumstances of this application. Asking me to sift through all the seventy-seven statements with a fine-toothed comb would be contrary to the principles that matters should be heard in the most expeditious and least expensive manner possible. While the rules of evidence are important and certainly applicable to this application, some of the minutiae about which the Kennedys complain take attention away from the extremely important issue on this application of Krystle's best interests and her future care.

[15] In addition, given the evidence that was provided in support of Kimberly's application and corroborated by Sean's own cross-examination, I find that much of the evidence about which the Kennedys complain is not required to determine the question of who can best serve as Krystle's committee. As set out below, my

decision on the substantive application is based on the evidence that either Sean or Linda confirmed or admitted in their respective cross-examinations.

**V. THE LAW**

**A. Best Interests**

[16] The Kennedys and Kimberly each bring an application under section 71(1)(b) of the *Act*.

**Application to court for committee**

**71(1)** Any person resident in the province may apply to the court for an order appointing, in respect of another person,

(a) . . .

(b) a committee of both property and personal care.

[17] There is no dispute that Krystle is an “incapable person” as defined by the *Act*. All applicants are residents of Manitoba and, therefore, qualify to be appointed.

[18] The *Act* does not provide direction as to what determinative factors should be applied when selecting a committee. The *Act* does provide some guidance, however, regarding the criteria to be applied when a committee is making decisions on behalf of an incapable person:

**Criteria for making other personal care decisions**

**96(2)** In making decisions about personal care, other than treatment or health care decisions under subsection (1), a committee of both property and personal care shall be guided by the following considerations:

(a) *the incapable person’s wishes;*

(b) *the incapable person’s values and beliefs,* if the committee has no knowledge of the incapable person’s wishes and has used reasonable diligence to ascertain whether there are such wishes;

- (c) *the best interests of the incapable person*, if
  - (i) the committee has no knowledge of the incapable person's wishes, values and beliefs, and has used reasonable diligence to ascertain whether there are such wishes, values or beliefs, or
  - (ii) the committee cannot follow those wishes, values or beliefs without endangering the health or safety of the incapable person or another person.

[emphasis added]

[19] In *Stewart (Re)*, 2014 BCSC 2321 (CanLII), the British Columbia court compiled a non-exhaustive list of factors to be considered when assessing the patient's best interests (at para. 29):

- (a) whether the appointment reflects the patient's wishes, obviously when he or she was capable of forming such a wish;
- (b) whether immediate family members are in agreement with the appointment;
- (c) whether there is any conflict between family members or between the family and the patient, and whether the proposed committee would be likely to consult with immediate family members about the appropriate care of the patient;
- (d) the level of previous involvement of the proposed committee with the patient, usually family members are preferred;
- (e) the level of understanding of the proposed committee with the patient's current situation, and will that person be able to cope with future changes of the patient;
- (f) whether the proposed committee will provide love and support to the patient;
- (g) whether the proposed committee is the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit;
- (h) whether a proposed committee has breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to properly handle the patient's affairs;
- (i) who is best to advocate for the patient's medical needs;
- (j) whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry it out; and
- (k) whether a division of responsibilities such as between the patient's estate and the patient's person to different persons would serve

the best interests of the patient, or would such a division be less than optimal for the patient.

**B. The Legal Test**

[20] The parties agree that I should apply the test as set out in ***Smith et al. v. Smith et al.***, 2007 MBQB 126 (CanLII):

[20] The test to be applied in choosing a committee is the best interests of the incapable person. In ***Yaremko v. Manitoba (Director of Psychiatric Services)*** (2001), 154 Man. R. (2d) 295 (Man. Q.B.), Bryk J. cites with approval the decision of ***Mayede v. Oike***, [1990] B.C.J. No. 2819 (B.C.S.C.), which quotes Spencer J. in ***Pineo (Re)***, [1985] B.C.J. No. 1171 as follows:

The choice of a committee must be based on the best interests of the patient. That will include a consideration of who best can deal with his financial affairs, nurture his estate and see that his income and estate are applied for his greatest benefit. The choice of committee of this person will include a consideration of who best can provide the love and support which he will need in his few remaining years. ...

[21] The successful applicant must satisfy me, on a balance of probabilities, that the best interests and welfare of the incapable person would be served by his or her appointment: ***Yaremko v. Manitoba (Director of Psychiatric Services)***, 2001 MBQB 85 (CanLII) at paras. 35, 38.

**VI. ANALYSIS**

**A. Why Sean and Linda are not Appropriate Committees**

[22] As noted above, based on the evidence provided in support of Kimberly's application, which was then confirmed by the Kennedys' cross-examinations, I find that Sean and Linda are not appropriate committees for Krystle.

**1. Domestic Abuse**

[23] Sean confirmed in his cross-examination that the police were called in 2016 in response to a domestic dispute he had with Krystle. Krystle obtained a protection order against Sean in September 2016.

[24] I do not have any direct evidence of the facts upon which the protection order was granted. A justice of the peace may grant a protection order if the justice determines that the respondent is committing or has committed domestic violence against, or is stalking or has stalked, the person applying for the order (section 6(1) of *The Domestic Violence and Stalking Act*, C.C.S.M. c. D93). In the circumstances, I can infer that there was evidence of domestic violence or stalking before the justice of the peace.

[25] Sean confirmed one particular instance of domestic violence in his cross-examination. He confirmed that on October 24, 2019 (less than one month before the accident), he poured a beer on Krystle's face without her consent. What causes me great concern is not only the assault itself, but also the fact that Sean did not recognize this incident met the legal definition of an assault. In cross-examination, he stated:

173 Q Did you pour beer on her face on this day?

A Yes, I did.

174 Q Do you think pouring beer on someone's face is a form of abuse?

A No.

[See transcript of cross-examination of Sean William Kennedy taken June 22, 2020, at page 33, lines 10 to 14.]

[26] Krystle is now in an extremely vulnerable position as an incapable person. Above all else, her committee must always work in her best interests. This history of domestic abuse and Sean's inability to recognize his actions as an assault give me no confidence that Sean would work in Krystle's best interests if he were appointed committee.

## **2. Use of Illegal Drugs**

[27] Sean confirmed that he uses illegal drugs, including cocaine. On this issue as well, I have great concern about Sean's inability to recognize that he is engaging in criminal activity:

279 Q Circling back to your affidavit, you, as we looked at earlier, you admitted that you used drugs socially prior to the accident, correct?

A Yes.

280 Q Did these drugs include cocaine?

A Sure.

281 Q And you're aware that using cocaine is illegal?

A Using cocaine isn't illegal. Being in possession of it is.

282 Q Well, you have to be in possession of it to use it.

A Well --

283 Q So you agree that the use of cocaine is illegal?

A Well, you don't have to be in possession of it to use it. Somebody else can be in possession of it and you could be using it, so --

284 Q So your position is that using cocaine is not illegal?

A No, it's not at all.

285 Q Cocaine is not an illegal substance?

A Using it isn't.

...

BY MS. COUTTS:

287 Q So my question is: Did you purchase cocaine from a drug dealer?

Have you ever purchased cocaine?

MS. BROWN: You can answer the question.

THE WITNESS: Yes.

BY MS. COUTTS:

288 Q Would you use cocaine while you were in the house?

- A Yes, I would.  
289 Q Would you use cocaine around Krystle?  
A Yes.

[See transcript of cross-examination of Sean William Kennedy taken June 22, 2020, at page 49, line 18 to page 52, line 1.]

### **3. Financial Considerations**

[28] Sean and Linda have had a joint bank account for over ten years. According to their cross-examinations, this account is used for Sean's day-to-day, personal banking. Sean and Linda assert that Sean's account is set up in this manner so that Linda can provide "bookkeeping services" for Sean given his busy life as a working father. Both Sean and Linda acknowledged in cross-examination that the "bookkeeping services" that Linda provided were basic banking, such as paying Sean's bills. Given that Sean's eldest child is only four years old, the account was clearly set up in this way well before Sean was a working father.

[29] Sean and Linda are applying to have decision-making power over Krystle's finances. While I do not have evidence of exact amounts, from the materials provided, I can conclude that Krystle will be receiving payments from Manitoba Public Insurance because of the accident. I have concerns that Sean would not be able to manage responsibly Krystle's money given that he does not control his own finances and spends money on illegal drugs. In addition, if Sean was too busy to deal with his own routine banking prior to having his first child, now his

new role as a working father with sole responsibility to care for three young children will put an even greater strain on his time.

**4. Sean's Decision to Cut Off Access to the Children**

[30] Finally, it is extremely concerning to me that Sean has refused to allow Kimberly and Krystle's siblings to see the three children since December 2019. In his affidavit affirmed March 11, 2020, Sean offers two reasons for this decision.

[31] First, it is because Kimberly and Gladys went to Sean and Krystle's house and took things without Sean's permission. These things were all Krystle's possessions, not Sean's. Just because Kimberly and Gladys were in Sean and Krystle's house does not mean that Sean has the power to assert complete control over Krystle's possessions. Even if he was correct, it cannot justify punishment of the children by denying them access to their grandmother, aunt, and uncle.

[32] Second, and of even greater concern, is Sean's admission that he will not let Kimberly see her three grandchildren or allow Krystle's siblings to see their nephews and niece. Sean readily admits that this is in retaliation for their opposition to his application for an order appointing him as committee:

332 Q Sorry. So because they're contesting your application to be committee, you will not let Kandace, Jordan or Kim see your children?

A That is correct.

...

334 Q Do you think preventing Krystle -- sorry, the children from seeing Krystle's siblings and parents is in Krystle's best interest?

A Say that again, please?

335 Q *Do you think preventing Krystle's family from seeing her children is in Krystle's best interest?*

A *I don't believe it is, but -- it's in her best interest, but this is the way I'm doing it.*

336 Q You don't believe it's in her best interest?

MS. BROWN: I'm just going to ask: Do you understand the question?

THE WITNESS: It's not in her best -- like, no, *it's not good for Krystle to not let her parents see my kids*, that's what you're asking me. But that's totally not the reason why I'm doing this and --

BY MS. COUTTS:

337 Q *You said to Kim in December:*

*If you do not sign the committee papers, you will never see your grandchildren again.*

*Is that accurate?*

A *That is 100 percent accurate.*

[emphasis added]

[See transcript of cross-examination of Sean William Kennedy taken June 22, 2020, at page 59, line 15 to page 61, line 5.]

[33] I find it deplorable that the father of three young children, who have undoubtedly lost the mother they once knew, would deny them access to their grandmother, aunt, and uncle. This behaviour, especially in these tragic circumstances, cannot be in the best interests of the children. The children need all the love and support they can get during this difficult time in their young lives.

[34] Most importantly for this application, the fact that Sean readily admits to continuing this course of action despite the fact that he recognizes it is not in Krystle's best interests, speaks volumes as to why he should not be appointed as her committee.

**B. Why Kimberly should be Appointed as Krystle's Committee**

[35] In applying the non-exhaustive list of considerations as set out in *Stewart*, I find that Kimberly is the appropriate person to act as Krystle's committee.

**1. Does the appointment reflect the patient's wishes?**

[36] Kimberly asserts that Krystle has told her, since the accident, that she wants Kimberly to be her committee. Sean asserts that Krystle's desire to stay at his house with the children and the fact that they have resumed an intimate relationship since the accident demonstrate she would want him to be her committee.

[37] The accident that led to Krystle's incapacity was sudden and unexpected. This is not a situation where one can clearly say what Krystle's wishes would have been when she was capable of deciding who should be her committee. I find that this factor does not weigh in favour of or against either applicant.

**2. Are immediate family members in agreement with the appointment?**

[38] Sean, as Krystle's common-law spouse at the time of the accident, is clearly not in agreement with Kimberly's appointment. However, Krystle's two siblings, Jordan Waldner and Kandace Geurts, are in support of Kimberly's appointment. In their respective affidavits affirmed February 11, 2020, they assert that Kimberly is the person best able to take care of Krystle's property and personal care.

3. **Is there any conflict between family members or between the family and the patient?**

[39] There is clearly a great deal of conflict between Sean and Kimberly.

[40] Sean says that there is conflict between Kimberly and Krystle because Krystle left her mother's home at fourteen years old. While the two may have had their differences in Krystle's younger years, the text messages included in Kimberly's affidavit affirmed February 11, 2020, show that Krystle communicated with her mother on a regular basis. She turned to her mother when she was upset, seeking her advice and support.

[41] In contrast, based on my comments of domestic abuse noted above, the conflict between Sean and Krystle was violent. The negative inferences from this domestic violence far outweigh any potential inferences from mother-daughter disagreements that occurred years ago.

[42] In addition, I contrast Sean's refusal to allow the children to see their grandmother, aunt, and uncle because of this dispute, with Kimberly's willingness to allow Krystle to see Sean. Based on all the material before me, Kimberly has great concerns and trepidation about Krystle's relationship with Sean. Despite that, she recognizes that Krystle wishes to see Sean and especially see their children so Kimberly has accommodated those wishes.

**4. What is the level of previous involvement of the committee with the patient?**

[43] Since the accident, Kimberly has been a constant presence at Krystle's side. Kimberly was at the Health Sciences Centre and then Concordia Hospital with Krystle every day for several hours. When Krystle was granted day passes from the hospital, Kimberly would pick her up and return her to the hospital. Since Krystle's discharge, Kimberly has been her primary caregiver and intends to remain so until space is available at the Selkirk Mental Health Centre. Kimberly moved out of the home she shares with her husband in order to move in with Krystle at Gladys's home.

[44] It is clear to me that Kimberly has completely adjusted her life to care for Krystle. Krystle's care has become her primary focus. Kimberly has remained up to date on Krystle's treatment, prognosis, and medical plan.

**5. What is the committee's level of understanding with the patient's current situation, and will that person be able to cope with future changes of the patient?**

[45] As noted above, Kimberly ensures that she is aware of Krystle's medical situation. She is also prepared to care for Krystle until space becomes available at the Selkirk Mental Health Centre.

[46] Kimberly is able to cope with the difficulties that come with caring for Krystle. Understandably, it is sometimes difficult for Krystle to accept that her abilities have changed since the accident. On April 18, 2020, Krystle took part in

an interview with Dr. G. Bhangoo, a psychiatrist, to assess her cognitive abilities before her discharge from Concordia Hospital. Dr. Bhangoo noted in his report:

[Krystle] also complained about not receiving her medications regularly, and perseverated on not having received them the morning of this assessment either. I asked for Kimberly to confirm this, who informed me that she had received her medications in the morning and had been receiving them regularly, despite Krystle's beliefs to the contrary. This resulted in an argument between mother and daughter, which was initiated by Krystle, who used foul language to express herself. *Kimberly remained calm and successfully de-escalated the situation.*

[emphasis added]

**6. Will the committee provide love and support to the patient?**

[47] I have no doubt that Kimberly will continue to provide love and support to Krystle. As noted above, Kimberly has taken significant steps to change her life to provide for Krystle's care.

[48] In addition, Dr. Bhangoo noted in his report: "[Krystle's] mother and grandmother are supportive, and she appears to trust them, and considers them to be in her close social network."

[49] Kimberly was a support for Krystle prior to the accident, has been her primary support during the past few months, and, I have no doubt, will continue to love and support Krystle in the future.

**7. Is the committee the best person to deal with the patient's financial affairs?**

**8. Has the committee breached a fiduciary duty owed to the patient or engaged in activity that diminishes**

**confidence in the committee's abilities to properly handle the patient's property?**

[50] I will deal with these two considerations together.

[51] The Kennedys allege that, in the past, Kimberly has not acted in Krystle's best interests when it comes to financial matters. They point to three particular examples.

[52] First, Kimberly co-signed with Krystle when Krystle purchased a 2017 Dodge Durango in February 2018. At the time, Krystle's main sources of income were the Canada child benefit, GST credit, and child support payments. The Kennedys say that Kimberly's assistance to Krystle with this purchase shows a lack of financial responsibility given that Krystle was unemployed at the time. They acknowledge that Krystle needed a vehicle to care for the four children. Their critique of Kimberly's behaviour is that a more economical vehicle must have been available. There is no evidence that Sean objected to Krystle's purchasing the Durango.

[53] In her cross-examination, Kimberly was very detailed about her understanding of Krystle's income at the time. She provided the amounts that Krystle was receiving for the Canada child benefit, GST credit, and child support (a total of approximately \$1,600 per month). She testified that she believed, at the time, Krystle had sufficient income to make the payments for the Durango. I have no evidence of the amount of those monthly payments. In addition,

Kimberly was clear that she understood, as co-signer, she would be responsible for the payments if Krystle was unable to make them.

[54] Kimberly's willingness to co-sign for the Durango, with the understanding that she would be responsible for payments if Krystle could not make them, demonstrates financial responsibility. In addition, her detailed explanation of Krystle's income stream demonstrates a good understanding of Krystle's financial circumstances at the time.

[55] Second, the Kennedys argue that Kimberly assisted Krystle in preparing an incorrect income tax return filed with the Canada Revenue Agency for the year 2018. As a result, they say that I should have less confidence in Kimberly's abilities to handle Krystle's financial affairs.

[56] Kimberly worked with the Canada Revenue Agency as an office auditor. That position included reviewing several aspects of individuals' tax claims. Kimberly assisted Krystle with her income tax returns for approximately fifteen years prior to the accident.

[57] For the 2018 tax year, Krystle indicated on her income tax return that she was single, despite the fact that she and Sean had resumed their common-law relationship in May 2017. As a result, the Canada Revenue Agency audited her return.

[58] Kimberly said in her affidavit affirmed June 2, 2020, and during her cross-examination that she told Krystle to indicate that she was in a common-law relationship on her 2018 income tax return.

[59] Krystle was a competent adult at the time. I believe that Kimberly tried to persuade Krystle to indicate her relationship status correctly on her income tax return. The fact that Krystle chose not to take her mother's advice and filed the return incorrectly does not reflect poorly on Kimberly's abilities to handle Krystle's finances.

[60] Third, the Kennedys say that after the accident, Kimberly assisted Krystle with getting a new cellular phone. This included Krystle entering into a new contract, despite the fact that she is an incapable person.

[61] During Kimberly's cross-examination, there was clearly some confusion in Kimberly's mind whether Krystle was entering into a new contract or simply continuing her previous contract given that the same cellular company was providing the service.

[62] Kimberly had confirmed with Krystle's medical team that it was appropriate for Krystle to have a cellular phone. Krystle's phone was not working so Kimberly assisted her with getting a new one. I do have concerns that Kimberly assisted Krystle in entering into a new contract; however, I can understand Kimberly's confusion in thinking that this was simply a continuation of the previous contract given that the same cellular company was providing the service.

[63] In the totality of circumstances, this incident does not undermine my confidence in Kimberly's desire or abilities to act in Krystle's best financial interests.

**9. Who is best to advocate for the patient's medical needs?**

[64] Kimberly has been unfailingly at Krystle's side since the accident. She has consulted with many individuals on Krystle's medical team on a regular basis. She has advocated on Krystle's behalf, and I am sure she will continue to do so.

**10. Does the committee have an appropriate plan of care for the patient, and is that person able to carry it out?**

[65] Krystle's medical team believes that it is in her best interests to participate in the Selkirk Mental Health Centre's Acquired Brain Injury Program as soon as space becomes available.

[66] Although Kimberly's affidavit does not expressly indicate that she supports Krystle's participation in the program, she does say, "As I live in Selkirk, it will be even easier for me to continue to visit and spend time with Krystle if her application is approved." See affidavit affirmed February 11, 2020, at paragraph 31. Given the context of all the material provided by Kimberly, I have high confidence in finding that she will support Krystle's entry to the program as soon as possible. I am also satisfied that Kimberly will continue to be Krystle's primary caregiver until that time. This seems to be the most appropriate plan of care for Krystle in the circumstances.

**11. Would a division of responsibilities between the patient's estate and the patient's person to different persons serve the patient's best interests?**

[67] For all these reasons, a division of responsibilities would not serve Krystle's best interests.

**C. The Public Guardian and Trustee of Manitoba**

[68] The Public Guardian and Trustee of Manitoba should only be appointed as committee as a last resort. Having found that Kimberly is an appropriate committee, I do not have to address the appointment of this agency.

**VII. CONCLUSION**

[69] For all the reasons outlined above, I grant Kimberly Waldner's application for an order appointing her as committee for Krystle McKenzie. Sean and Linda Kennedy's application is dismissed.

[70] The parties can speak to costs if they cannot agree.

\_\_\_\_\_J.