SUPREME COURT OF YUKON

Citation: *E.S.N. (Re)*, 2013 YKSC 89

Date: 20130809
S.C. No.: 09-B0057
Registry: Whitehorse

IN THE MATTER OF THE APPLICATION FOR GUARDIANSHIP OF E.S.N.

There is a ban on the publication of any information which would identity the adult in these proceedings.

Before: Mr. Justice L.F. Gower

Appearances:
Judith Hartling — Counsel for the Public Guardian and Trustee
Norah Mooney — Counsel for the Department of Health and Social Services

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is an application by the Public Guardian and Trustee ("PGT") under s. 51(1)(a) of the *Adult Protection and Decision Making Act*, S.Y. 2003, c. 21, Schedule A (the "*Act*"), for the cancellation of a guardianship order made by Mr. Justice Veale on June 15, 2010. That order appointed the PGT as the guardian for S.N., pursuant to s. 32(1) of the *Act*, with authorization to make decision in the following areas:

A. financial matters;

B. legal proceedings that do not relate to the adult's estate;

C. health care in accordance with the *Care Consent Act*; and

D. personal affairs.

[2] The order further specified that decisions were to be made based on consultation and recommendations from S.N.'s support team, including workers from Supported Independent Living, which is an arm of Health and Social Services in the Yukon, the Fetal Alcohol Syndrome Society of Yukon ("FASSY"), support workers in Old Crow, and others that compose the support team at the time the decision is made.

[3] The order did not further specify the particular nature of the powers under each of the four areas where the PGT was authorized to make decisions for the adult.

[4] Section 51(1)(a) reads:

> "A guardian must apply to the Supreme Court for a review of the terms and conditions of an order appointing the guardian if, since the order was made,
>
> (a) the adult's needs, circumstances or ability to manage their affairs has changed significantly, and a change or cancellation of the order appears to be in the best interest of the adult;"

[5] For the reasons which follow, I am not satisfied that the PGT has met the onus arising from that provision.

[6] By way of some background, S.N. is now 56 years old. She was a resident of the remote community of Old Crow until approximately 2003, when she moved to Whitehorse.

[7] On September 25, 2006, S.N. was struck by a motor vehicle. She retained legal counsel who recommended that a litigation guardian be appointed for her due to some

perceived cognitive deficiencies. On May 12, 2009, the PGT was appointed as a litigation guardian for S.N. As the litigation guardian, the PGT agreed to a settlement of $90,000, less disbursements. Due to the large settlement and S.N.'s suspected cognitive deficiencies, the PGT made an application to become a temporary guardian of S.N. for financial purposes and was so appointed on September 22, 2009.

[8] On the expiration of that temporary guardianship order, which was for a period of 180 days, the PGT made an application to become the permanent guardian for S.N.'s personal, health, legal, and financial matters. S.N. was resistant to that appointment and was able to retain counsel at the time to formally oppose the application. However, the PGT was ultimately appointed as a permanent guardian on June 15, 2010, with the authorities that I have indicated.

[9] The net amount of the settlement of some seventy-plus thousand dollars after legal fees was presumably paid to S.N. through the PGT's office and, over the intervening years, that sum has now been exhausted. S.N.'s income is now limited to what little she is able to earn as a domestic house cleaner and some income that she receives from Social Assistance, and her First Nation, which is the Vuntut Gwitchin First Nation in Old Crow.

[10] Counsel for the PGT has placed a lot of emphasis on the guiding principles under s. 2 of the *Act*, and I will quote three of those provisions, as they relate to this matter:

> "2 This act is to be administered and interpreted in accordance with the following principles:
>
> (a) all adults are entitled to live in the manner they wish and to accept or refuse support, assistance, or protection as long

> as they do not harm others and they are capable of making decisions about those matters;
>
> …
>
> (c) all adults should receive the most effective, but the least restrictive and intrusive form of support, assistance, or protection when they are unable to care for themselves or manage their affairs;
>
> (d) the Supreme Court should not be asked to appoint, and should not appoint guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered;"

[11] It is the position of the PGT's office that there is no longer any necessity to continue this guardianship. The PGT does not assert that S.N. is currently capable in all respects. However, counsel submits that S.N. is sufficiently capable of dealing with her affairs under the four areas of the guardianship order such that she can manage without a guardian. This is providing that S.N. has continuing access to the supports of her family, the FASSY personnel, the various agencies within Health and Social Services, such as the Adult Protection Unit, the Supported Independent Living Unit, as well as the assistance of her First Nation while she is in Old Crow. It is the PGT's position that by proceeding on that route, the Court would be honouring the intent of the *Act*, which is to provide adults with the least restrictive and intrusive form of assistance and support possible.

[12] The problem that I have with that approach is that we began this application with the acknowledgment that we have an existing guardianship order, and that order, pursuant to s. 27, would not have been made but for this Court previously making a determination that S.N. was an adult who was incapable of managing all or part of her affairs. Although the order does not expressly address that issue, it was made on the

basis of an Incapability Assessment Report dated February 12, 2010, prepared by Wade Scoffin, an occupational therapist, i.e. who opined that S.N. is incapable in that regard.

[13] I neglected to indicate at the outset that this application is opposed by the Department of Health and Social Services, who is represented in this hearing by Norah Mooney. Ms. Mooney has pointed out several areas within the Incapability Assessment Report which indicate support for the ultimate conclusion of Mr. Scoffin, that S.N. was incapable and needs a guardian to manage her financial affairs, her legal affairs, her health care, and her personal affairs.

[14] In the interest of time and given that Ms. Mooney just made her submissions on these points of detail in the Incapability Assessment Report, I will not repeat those areas which she has drawn to the Court's attention, but suffice it to say there are numerous areas of concern.

[15] In addition, Wade Scoffin had the benefit of access to an earlier report dated May 13, 2008, which was entitled an "FAS [or Fetal Alcohol Syndrome] Evaluation." That report indicated that S.N. continued to struggle to manage her daily needs and that that placed her at risk for mental health issues, as well as ongoing alcohol issues:

> "She is essentially a young child trying to cope with adult expectations. Unless [S] receives more structure, support, and security in her life, there are significant concerns regarding her well-being."

And further:

> "[S.] is very socially vulnerable and is at high-risk for victimization in society.

> ...
>
> [S.] does not have friends and relies on the activities at FASSY and interactions with her FASSY worker for social opportunities. She is essentially socially isolated, which places her at risk for mental health issues."

Further:

> "… [S.] continues to have contact with her ex-husband [otherwise known as her common-law partner elsewhere] due to the need to interact about the children."

At that time, S. had two older teenage children.

> "Apparently these interactions [those being with the ex-common-law] are often conflicted. [S.] is very vulnerable in these interactions and is unable to protect herself. This situation also needs monitoring and if necessary, intervention sought to protect [S.]"

Further:

> "[S.] has severe brain dysfunction and is not employable in a competitive environment."

[16] The authors of the FAS Evaluation concluded in their summary:

> "Theoretically, [S.]'s formal diagnosis of 'sentinel FAS physical findings, static encephalopathy, unknown alcohol exposure' does not fall within the range of FASD. However, this is because prenatal alcohol exposure was not confirmed. Given her physical findings as well as the broad nature of her functional deficits, it is likely that [S.]'s difficulties are indeed due to a prenatal exposure, such as alcohol, rather than a genetic or familial cause. As such, FASD remains the most likely cause of [S.]'s difficulties.
>
> [S.] has a severe disability and requires significant supports in all areas of personal functioning. She needs assistance to establish a safe home setting, in-home support, positive social contacts, and a purpose to her day."

[17] As I understand it, Mr. Scoffin had access to an additional report, also done in 2008, entitled "Psycho-Educational Assessment." That report indicates:

> "[S.] and her five siblings grew up with their parents in Old Crow. [S.]'s mother struggled with alcohol use. [S.] attended school in Old Crow until Grade 6. She is unable to recall the details of her education. [S.] moved to Whitehorse five years ago."

[18] Later, under a table which lists an area entitled "Psychosocial Factors," the report continues in bullet points:

> "
> - born to mother who struggled with alcohol use, experienced an unstable childhood
> - divorced from her husband five years ago, but he continues to be a negative influence in her life
> - two sons (ages 15 and 20) who were in and out of her care
> - has struggled with alcoholism throughout her life."

[19] I have reviewed a number of affidavits in support of the application. The second affidavit of Julie Pruden of the PGT's office purports to generally set out a positive description of S.N.'s ability to cope with a number of day-to-day matters. Ms. Pruden has also quoted from sections of the Incapability Assessment Report which, in a number of respects, again appear to be positive.

[20] Elsewhere, reference has been made to the 2008 Psycho-Educational Assessment, which detailed at one point some ten areas of what were referred to as "Adaptive Skill Areas", and noted that in the areas of "Self-Direction" S.N. was rated with a score of eight out of ten, which was described as an average score. In the area of "Community Use", again an average score, and in the area of "Home/School Living", a score of seven, which was "Below Average". However, the overall table of Adaptive Skill Areas includes ten areas, and all of the other areas were referred to either as "Borderline," "Extremely Low," or "Below Average".

[21] A generous interpretation of the selective quotes from the Incapability Assessment Report noted by Ms. Pruden would be that the PGT has put forward all that could be said in favour of the suggestion that S.N. is now at a stage where she is able to thrive, or at least cope, without the benefit of a guardian. A more jaundiced view of the approach would be that the PGT has cherry-picked from the Incapability Assessment Report which, as I have indicated earlier, contains numerous references to S.N.'s incapability in various areas for various reasons.

[22] One of the points that was made by counsel for the PGT in this hearing was to pose the question: What decisions can the PGT properly, effectively, or practically make on S.N.'s behalf?

[23] I am going to return to that theme in a minute, but I want to go back to my suggestion that the second affidavit of Julie Pruden creates an unrealistically rosy description of S.N.'s current abilities. I say that because, although there are some positive references in the Incapability Assessment Report, the third affidavit of Julie Pruden, which was sworn May 13, 2013, indicates that during a period of time when the guardianship order was in place, there were numerous difficulties experienced by S.N. Paragraph 3:

> "Between August 26, 2009 and October 11, 2012, the PGT was informed on numerous occasions, either by Mary Amerongen, [who is a FASSY support worker], Caroline Watt, Darline Lumstrom, or Pierre Allard ('[S.]'s supports') that [S.] was physically beaten during altercations that occurred due to her socializing with undesirable people."

Paragraph 4:

> "Between August 26, 2009 and October 11, 2012, the PGT was informed by [S.]'s supports that [S.] attended or was admitted to the hospital numerous times due to her injuries from altercations and/or alcohol abuse."

Paragraph 5:

> "On November 16, 2010, the PGT was informed by [S.]'s supports, after the fact, that [S.] had been stabbed during an altercation."

Paragraph 6:

> "On October 6, 2011, the PGT was informed by [S.]'s supports that [S.] was raped during a social gathering consisting of undesirable people."

Paragraph 7:

> "On August 21, 2012, the PGT was informed by [S.]'s supports that [S.] was thrown from a moving vehicle during an altercation."

[24] There was also a reference in one of the PGT's affidavits emphasizing that the PGT's office had not been required to make decisions in various areas since the guardianship order, including the areas of health and personal issues. However, that information is directly contradicted by the affidavit of Mary Amerongen, on behalf of FASSY. She deposed, although the date is not clearly specified, to what I gather is a relatively recent incident where S.N. attended at the Whitehorse General Hospital for some medical care. Ms. Amerongen was asked to provide a consent for medical procedures, which she declined to do because of the guardianship order. However, a representative from the PGT's office was contacted, attended the hospital, and signed the consent.

[25] Another point that was made by the PGT's counsel is that there are certain individuals, one, the former common-law partner, R.W., and two sisters of S.N., one residing in Old Crow, C.N., and one residing in Whitehorse, G., who would be willing and appropriate to act as substitute decision makers to assist S.N. in her ongoing challenges. There was an earlier mention of S.N.'s mother also being willing and able to act in that capacity, but that appears to have been an error, since there is a more recent reference to S.N.'s mother being incapacitated and residing in the Copper Ridge continuing care facility. None of these people have provided any direct evidence in this regard.

[26] I have some concerns with respect to all three suggested substitute decision makers. First, with respect to R.W., there are the historic references in the Assessment Report and the FAS material indicating that there have been conflicts, at the very least, between R.W. and S.N., and that he has been a negative influence in her life in the past. This runs contrary to the suggestion in the affidavit of Ms. Pruden that more recently R.W. has been someone who has been regularly available to S.N. as a support, who apparently is sober, has taken her to various appointments, and so on.

[27] The other reason I have a concern about R.W. is that, I believe it was in 2011, he and S.N., acting without legal counsel, submitted a consent order to this Court directing that S.N. pay $300 a month to R.W. as child support, because he was looking after S.N.'s younger son, who was then an older teenager. That order was granted because it was submitted on a consent basis. However, when the PGT learned about the order, they realized that there was no significant benefit to R.W. because he was on social assistance at the time and any money that he received from S.N., presumably coming

from the settlement funds, would have been deducted from his social assistance payments in any event. Accordingly, the PGT made an application to rescind that order and the rescission was granted. All of this calls into question the propriety of R.W.'s involvement in submitting the consent order in the first place.

[28] S.N.'s sister in Old Crow, C.N., was also suggested as a potential substitute decision maker. C.N. was portrayed in one of Ms. Pruden's affidavits as a sober person who, again, was suitable to act in that capacity. However, more recent information from Kelly Cooper, the manager of the Seniors' Services/Adult Protection Unit of Health and Social Services, indicates that she has interviewed C.N.'s son, L.N. I assume L.N. to be an older teenager, who indicates that as recently as June of this year, C.N. was a practicing alcoholic. L.N. described an incident where C.N. came to Whitehorse for the graduation of L.N.'s younger brother, and in the course of the weekend of June 6, 2013, S.N.'s father and mother, both effectively went missing for a brief period of time. The father was located wandering around the community of Carcross, and a search was made for S.N.'s mother. Eventually, both were located. The father was returned to Old Crow and the mother was returned to the Copper Ridge care facility. Significantly, it appears that C.N. was involved in that mismanagement of her parents.

[29] With respect to the remaining individual, G., who resides in Whitehorse, she again is portrayed by the PGT's staff as a sober individual. There is no evidence to the contrary in that regard. However, as recently as this past July, G. declined to cooperate with Ms. Amerongen in making an arrangement to have S.N. spend the night with G. in a sober environment so that she could take the plane back to Old Crow the following

day. Thus, it appears that G. is not unconditionally willing to cooperate with S.N.'s supports in all regards.

[30] The upshot is that there does not appear to be a significant change of circumstances in the extent to which S.N.'s family is prepared to step forward and help her, either acting in the role of a guardian or in the role of a substitute decision maker. To the extent that these individuals may be willing to act in the latter capacity, I have significant concerns about their ability to do so in a manner which is consistent with S.N.'s best interests.

[31] I will now return to the question posed by the PGT's counsel in this hearing, which was: What decisions can the PGT effectively make on S.N.'s behalf? I think the best answer to that question comes from a letter which was sent by the Director of Health and Social Services to the PGT dated November 29, 2012, arising from a meeting where the various caregivers and support agencies met to discuss the potential discontinuance of the guardianship order. In expressing her concerns in that regard, the Director of Health and Social Services wrote to the PGT:

> "Question #2: In what type of situation do you see PGT being essential as guardian?"

And then the following answers are posed:

> "• Making decisions regarding money that ensure the health and well-being of Ms. [N.] and that protect her from financial abuse from others;
> • Making decisions related to health and health care, coordinating health care (including transmission of pertinent health information), scheduling appointments, following-up and consenting to medical treatment;

> - Making decisions regarding appropriate housing, counselling and other daily living care required;
> - Making decisions and initiating action to ensure Ms. [N.]'s legal interests and responsibilities are looked after including accessing legal counsel, signing legal documents, accessing benefits to which she may have a legal entitlement."

[32] The PGT's counsel has further argued in this hearing that, as I understood her, the PGT is not in a position to make decisions over the objection of S.N. In particular, that S.N. is free to make decisions which are not in her best interests, such as continuing to abuse alcohol and spending time in Whitehorse, in and out of various undesirable accommodations and presumably on the street a good deal of the time, where she is exposed to the kind of danger that I have referred to earlier. I do not understand that submission. To the extent that the PGT's counsel has made the statement that the PGT's office is not in a position to direct where, for example, where S.N. may live, that submission is contradicted by the "personal affairs" decision making power in the order of Veale J. The submission also runs counter to the expressed powers set out in s. 38(1) of the *Act*:

> "38(1) Without limiting s. 36 or 37, the Supreme Court may authorize a guardian to do one or more of the following:
>
> (a) decide where the adult is to live and with whom, including whether the adult should live in a care facility;
>
> (b) decide whether the adult should work and, if so, the type of work, for whom the adult is to work, and related matters;
>
> (c) decide whether the adult should participate in any educational, vocational or other training and, if so, the type of training and related matters;
>
> (d) decide whether the adult should apply for any licence, permit, approval or other authorization required by law;

> (e) obtain legal services for the adult and instruct counsel to commence, continue, compromise, defend or settle any legal proceedings on the adult's behalf;
>
> (f) decide whether or not the adult should receive care, and give or refuse consent to care, in accordance with the *Care Consent Act*;
>
> (g) make decisions about daily living activities on behalf of the adult, including decisions about the adult's
>
> (i) hygiene, diet, and dress
> (ii) social activities, and
> (iii) companions;
>
> (h) physically restrain, move and manage the adult, or have the adult physically restrained, moved or managed." (my emphasis)

[33] As s. 38 also refers to s. 37, for completeness I will include that section also:

> "37(1) The Supreme Court may give a guardian only the authority that
>
> (a) is necessary to make or assist in making decisions about the adult's affairs;
>
> (b) will result in the most effective but the least restrictive and intrusive form of assistance and support for the adult; and
>
> (c) is required to provide the care, assistance and protection necessary to meet the adult's needs.
>
> (2) Subject to subsection (1), an order appointing a guardian may contain any provisions the Supreme Court thinks fit and in the best interests of the adult;"

[34] Section 37(1) is obviously a reflection of the principles set out in s. 2, which I dealt with at the outset of these reasons. However, it is clearly open to this Court to specifically authorize the PGT, for example, to decide where S.N. is to live and under what circumstances.

[35] Section 52 of the *Act* sets out the powers of this Court on an application to cancel the guardianship order:

> "52(3) After hearing the matter the court may
>
> (a) confirm the order appointing the guardian;
>
> (b) cancel the order;
>
> (c) change the order in any way that the court thinks fit and in the best interests of the adult, including, without limiting this,
>
> ...
>
> (iii) increase or decrease the power of a guardian ...
>
> …
>
> (d) make any other order that the court thinks fit and in the best interests of the adult."

[36] There is evidence on the record that suggests that S.N. does quite well when she is living in Old Crow because, (a) it is her home community; (b) there are a number of friends and family there that provide support for her; (c) she generally seems to be able to remain sober while she is there; and (d) she has the support of her First Nation and, in particular, an identified support worker. S.N. is also able to obtain a limited amount of employment in Old Crow as a domestic housecleaner, which I mentioned earlier. There is a reference to her being quite good, even excellent, in that regard. There is also a reference to her attending beading sessions with elders in the community, thus fulfilling some of her cultural pursuits. Generally speaking, the reports about S.N.'s progress are that she thrives when she is in Old Crow.

[37] Thus, I made the suggestion to the PGT's counsel about whether there would be some way of actually making a direction that she reside there, as the legislation seems to anticipate. Also, as many of S.N.'s trips to Whitehorse have been taken through medical evacuations, I asked whether some kind of a protocol could be put in place with the respective authorities in charge of those medical evacuations, and the airlines that

fly in and out of Old Crow, that S.N. not to be able to make bookings on her own behalf to fly to or from Whitehorse or elsewhere without the PGT's approval. I was informed in the hearing that this was previously tried with Air North without success. Nevertheless, I would encourage the PGT's staff to further pursue options in that regard, because if such a protocol could be put in place, it may well be a solution to many of these problems.

[38] The fact that S.N. is technically an adult, chronologically, is not a justification for anybody saying, "Well, she is an adult, she can make her own decisions and we are not going to restrict her from doing X, Y, or Z, including making bookings on charter or public airlines." That is not an answer, in my view. S.N. is deemed not to be capable in that area. Pursuant to the existing guardianship order, she is deemed to be incapable in financial, legal, health care, or personal matters. Thus, technically, S.N. should not be even be seen to be capable of making the simplest contract, which is what one does when one buys an airplane ticket. It must be remembered that, for all intents and purposes, S.N. seems to have the intellectual ability of a young, perhaps five or six-year-old child.

[39] S.N. is referred to in the FAS Evaluation as being functionally illiterate. There was a reference to her verbal I.Q. of 61, placing her in the extremely low range, the 0.5th percentile. Notwithstanding her ability to do certain things, and perhaps bluff her way through certain relationships, as the PGT stresses, I repeat that she is somebody who operates at the level of a relatively young child. Thus, I do not see why it would be so difficult to put a protocol in place to restrict her movements, which would eventually and

effectively result in her being confined to the community of Old Crow, with the possible exception of emergencies, where time is of the essence.

[40] The other point made by the PGT's counsel is that, given the small staff and limited resources of the PGT's office, the PGT does not have the wherewithal to make decisions about S.N.'s daily living needs. I understand and appreciate that. However, I also stress that the various support workers, including FASSY, the agencies within Health and Social Services, her support worker and her First Nation, have all indicated that they are prepared to continue to work with the PGT's office in providing the day-to-day assistance, so long as there is somebody at the top who can make the important decisions when they need to be made, for example, signing medical consents, dealing with legal issues, and so on.

[41] I also made the suggestion to counsel during the hearing that, in the event that I dismiss the application to cancel the order, a copy of the amended order, if it is amended, should somehow be electronically forwarded to Yukon Health and Social Services, so that S.N.'s file can be "flagged" accordingly. This is with the expectation that, in the event S.N. returns to the Old Crow Health Centre or the Whitehorse General Hospital Emergency Department, the first thing that a healthcare provider is going to see on the computer file is that S.N. is subject to a guardianship order and is not in a position to make her own demands and provide her own consents unless the PGT is involved. Again, I fail to see why that cannot be done and I encourage the PGT's staff to investigate this possibility as well.

[42] At the end of the day, I return to the language in s. 51(1)(a). The onus is on the PGT to satisfy me that:

> "(a) the adult's needs, circumstances, or ability to manage their affairs has changed significantly and a change or cancellation of the order appears to be in the best interests of the adult;" (my emphasis)

[43] Clearly, there has been a change, in terms of S.N.'s financial circumstances, since the seventy-plus thousand dollar settlement has been exhausted. However, I do not find that there has been a "significant" change in her needs or her ability to manage her affairs. Further, to the extent that there has been any such change, there is really no evidence that any change regarding her ability to cope is such that a "cancellation of the order appears to be in [her] best interests."

[44] I conclude, however, that an amendment to the order would appear to be in S.N.'s best interests. At this point I would invite counsel to comment on incorporating an amendment to para. 1 of the June 15, 2010 order, to indicate, perhaps, something along the lines of "Without limiting the generality of the forgoing, the guardian is authorized to do the following," and then listing paragraphs (a) through (h) of s. 38(1) of the *Act*, as I have already into the record.

[45] Ms. Hartling, you wanted an opportunity to comment on that before I make the order.

[46] MS. HARTLING: Yes, I did. In particular -- if I can just have a moment to get the list. There is concern about being able to physically restrain, move, or manage the adult, or having the adult physically restrained, moved, or managed. PGT

does not want that specific term in there. They hesitate in any way to physically restrain anyone and it doesn't appear that S. would need that.

[47] THE COURT: Well, given the authority that you have to decide where she is to live and the other comments I have made about possible conditions that could be considered to restrict her movement, it may not be necessary.

[48] MS. HARTLING: Thank you.

[49] THE COURT: Ms. Mooney?

[50] MS. MOONEY: Well, I do believe it may be necessary. We don't know. I don't think it would hurt to have that in there. I think that's a common term in powers of attorney that people enter into, because we don't know what's going to happen and there may be a time where somebody has to be restrained and held in Copper Ridge, or held at Whitehorse Hospital, and that I think it would be appropriate for the guardian to have that ability should it be necessary.

[51] MS. HARTLING: The order is supposed to be least intrusive.

[52] MS. MOONEY: I don't think that that is intrusive. It may be something -- there are times where S. is at risk to herself. I think that if you have that ability to say, "No, she has to be held; she has to be kept in the hospital; she can't go," that that is something that is very foreseeable that that could happen and that it would be helpful to have that in the order. I think that is something that is regularly given to guardians, so I think it should be in.

[53] The other thing that I think my clients were interested in, they were seeking that all of those powers be incorporated into the order and wondered if it needed to specifically speak to travel. I think it's kind of implied in there that they would have the ability to say that she can't travel out of the Yukon, or she can't get on the plane, you know, with Air North, but I'm wondering if there should be a specific reference that she would need the permission of the guardian to travel?

[54] THE COURT: Well, okay. I have heard from counsel on the issue of the physical restraint provision in s. 38(1)(h). Given the concerns expressed with the various difficulties that S.N. has experienced: being assaulted and being sexually assaulted, being thrown from a vehicle, and so on, as were detailed in Ms. Pruden's third affidavit, I am anticipating that a scenario may arise where, for example, she is legitimately sent to Whitehorse General Hospital for some kind of medical treatment, and decides to walk out of the hospital and go drinking. If there is no option of physically restraining her from doing so or managing her in that regard, and she is at risk, then that is not in her best interest. Now, whether the PGT chooses to exercise that power in their discretion is another matter entirely, and it raises other issues, potentially, because they have certain obligations which arise by virtue of being a guardian, but that is for another day. I will, however, include sub-paragraph (h) as part of the amendment.

[55] For the sake of clarity, then, what I am going to order is that the order of Justice Veale of June 15, 2010, para. 1 be amended as follows, to add the following paragraph, that:

> The authorization to make decisions in those four areas includes specifically the authorization to the guardian to do one or more of the following:

Then there can be a verbatim recitation of paragraphs (a) though (h) as set out in s. 38(1). Then I will add paragraph (i), and that is to decide whether and how the adult is to be ...

[DISCUSSION RE WORDING OF TRAVEL RESTRICTIONS]

[56] THE COURT: "Permit or restrict travel between communities within the Yukon Territory or elsewhere." Something like that?

[57] MS. MOONEY: Yes.

[58] THE COURT: You can work on the terms of the order with Ms. Hartling and come up with something that is satisfactory to the two of you, but you know what my intention is.

_____

GOWER J.