

Citation: Williams v. Low
2000 BCSC 345

Date: 20000225
Docket: B960549
Registry: VANCOUVER

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**KATHLEEN FRANCIS WILLIAMS
BY HER GUARDIANS AD LITEM
SALLY FORMAN AND LINDA NICKERSON**

PLAINTIFF

AND:

SUSAN CATHERINE LOW

DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE MORRISON

Counsel for the Plaintiff: Art E. Vertlieb

Counsel for the Defendant: Robert K. Hartshorne
Kirsten Mehl

Date and Place of Trial: January 4-7, 17-21, and
February 4, 2000
VANCOUVER, B.C.

[1] On December 11, 1995, at 7:30 a.m. life changed for Kathleen Williams, tragically and forever. She was struck by an automobile driven by the defendant in a crosswalk while going to her job as a bank teller, and suffered serious brain and orthopaedic injuries. After being in a coma for a number of months in Lions Gate Hospital, North Vancouver, she was moved on November 13, 1997, to Evergreen House, an extended care facility attached to Lions Gate Hospital, where she remains to this date. Severe permanent brain injury has left her a quadriplegic who is incontinent, must be fed by gastrostomy tube, with only an elementary ability to communicate.

[2] A previous trial determined the defendant to be 100 per cent responsible for the accident, and this trial was for assessment of damages only. The plaintiff's action was brought by her guardians ad litem, her two older sisters, Sally Forman and Linda Nickerson.

[3] The plaintiff was born in Quesnel on June 24, 1947. She was 48 years old at

the time of the accident, and 52 by the time the trial occurred. In 1965, at 18, she married, a union that lasted two years. She then re-married in 1972, and separated six years later. The plaintiff has a son from the second marriage, Whitney Williams, born February 1970, now 30 years of age.

[4] Ms. Williams worked mainly as a bank teller throughout her adult life, and in June 1991, she began with Scotiabank as a teller, employment that continued up to the time of the accident.

[5] Prior to the accident, Ms. Williams was an attractive, outgoing, independent and socially lively woman of 48. She had permanent employment with Scotiabank, owned her own apartment, and her cat was a manifestation of her great love of animals. She had a boyfriend, but she was not cohabiting at the time of the accident. Witnesses at the trial stressed how much Ms. Williams loved people and animals, how suited she was to her work, dealing with the public at all times, and how much she enjoyed all her activities, including travel, her friends, and her family.

[6] Probably the most important issue at trial was whether the award for cost of future care for the plaintiff should be based on a plan for home care, or based on the plaintiff remaining in institutionalised care, in a facility such as Evergreen House, or a similar facility closer to one of the sisters. I advised counsel on February 4 of this year that my decision on that issue was that the damages awarded should be based on Kathleen Williams being in a home setting, rather than in an institution. I indicated I would expand on the reasons for my decision in the judgment, but I felt that it was important for Ms. Williams' two sisters, her guardians, to be ready to make their plans as soon as possible, to arrange for the necessary home care. The two sisters and their families have committed themselves to virtually a change in their lifestyles, and there will be a lot of immediate planning and work to begin as quickly as possible.

LEVEL OF AWARENESS

[7] A great deal of the evidence at trial centred around Ms. Williams' level of awareness, which would ultimately determine which plan, home care or institutional care, would be the most appropriate. Immediately following the accident, there was almost no level of awareness, as Ms. Williams was in a coma or near coma state for some months. She emerged from that condition, and as she slowly improved, her general practitioner, Dr. Michael Marshall, wrote a letter to I.C.B.C. on September 27, 1996, while Ms. Williams was still in Lions Gate Hospital, suggesting there be a long term care aide to provide help for the plaintiff.

[8] In November 1996, the plaintiff was moved to Evergreen House, and in mid-December, Lila Quastel, an occupational therapy consultant first saw Ms. Williams to arrange for independent rehabilitation care to begin. That rehabilitation care began in January 1997 and continues to this date, Ms. Williams being seen by a rehabilitation assistant three or four times a week.

[9] The testimony and records of Ms. Quastel and her rehabilitation assistants provided much of the evidence with regard to Ms. Williams' level of awareness. The evidence of Sally Forman and Linda Nickerson has also been helpful in that regard. Ms. Forman lives in Lillooet and suffers from arthritis and has not been as mobile as she was formerly. She worked for 15 years as a licensed practical nurse. Ms. Nickerson lives near Kimberley and distance proved to be a problem in visiting frequently. However, when the two sisters visit with the plaintiff, they are able to stay in the plaintiff's apartment and stay for longer periods of time.

[10] Two of the three rehabilitation workers who have worked three and four days a week with Ms. Williams testified; Sandra Croley, whose previous experience included

being an activation co-ordinator in geriatrics and Amy Cooper, whose prior work experience included working with mentally handicapped persons. The third rehabilitation worker, Debra Tiede, who initially began with the plaintiff, was giving birth at the time of the trial and unable to attend. However, some of her notes were introduced as exhibits.

[11] There was also evidence from Dr. Marshall, who had seen Ms. Williams approximately one hundred times; Dr. Michael Jones, a neurologist, who saw the plaintiff on October 7, 1999, for approximately 20 to 30 minutes; and Dr. Keith Chambers, a consulting clinical epidemiologist, who interviewed Ms. Williams on August 18, 1999.

[12] The evidence of the rehabilitation assistants and the two sisters were the most helpful in determining what level of awareness Ms. Williams now has, and how that level of awareness appears to have increased over the past three or four years. Dr. Jones and Dr. Chambers saw the plaintiff only briefly, and their evidence was not as helpful in determining the plaintiff's level of awareness. They simply did not have the same opportunity over weeks, months and years to observe as the rehabilitation workers, Dr. Marshall and her family did.

[13] From the evidence, I have accepted the following facts: Kathi Williams is someone who always loved animals, cats particularly, and she lights up visibly when the resident cat at Evergreen House is brought in for a visit. She also likes dogs and has responded very favourably to two dogs that have been brought to visit her. When the rehabilitation workers want to cheer her up or get her attention, they will often bring out a picture of her cat or pictures of other cats and her reaction is usually very positive. Within the last year, one her nieces brought her young baby to visit. Ms. Williams reached out to touch the baby, with tears in her eyes. On another occasion, she had tears in her eyes when one of the rehabilitation assistants recounted a story from the newspaper where a man and his young son had been riding a motorcycle and were killed by an out-of-control vehicle.

[14] Ms. Williams is in a ward with three other roommates, most of them elderly, as most residents in Evergreen House are in palliative care. Ms. Williams has an awareness of her room-mates; in one instance, she was found to be tired and upset after one of them was screaming and pounding the wall during the night. She is aware when there is a death in the room and on one occasion, when her rehabilitation assistant attempted to introduce her to a new roommate by the name of Eve, Ms. Williams shook her head to indicate that that was not Eve. The roommate who had just died coincidentally had also been named Eve, and she was indicating that the new person was not Eve; she was aware that Eve had died.

[15] If the plaintiff receives a needle or other treatment without a prior explanation from who ever is providing the treatment, she usually tries to move away by jerking her arm or body away, and is visibly stressed. That reaction does not seem to occur if the nurse or nurse's aide from Evergreen takes the time to explain what they are going to do. She is able to indicate pain, although not verbalise this. On December 30, 1997, it was discovered that she had a broken arm, the origin of which has never been explained. When the rehabilitation assistant tried to do her usual exercises, she would not let the assistant do any exercises in that area, which caused the worker to alert staff and the break was discovered.

[16] Ms. Williams lights up when people she knows enter the room. She follows them intensely with her eyes and with her head, appropriately. She speaks, although there is little, if any volume to her words. Amy Cooper testified that she has used the following words, in appropriate contexts: "Sally, Linda, Whitney, December, Evergreen, 47, Vancouver, and flowers". The latter word has been provided by Ms. Williams when she has been shown the calendar and the rhyme has been put to her, "April showers bring May flowers". She provides the last word in an appropriate manner when that rhyme is spoken by the assistant.

[17] Sandra Croley relates that Ms. Williams has said, again appropriately, "hi, good morning, my birthday (in response to the month of June), help me (said on October 6, 1999), flowers, yes, Kathy, Sally, and Linda". On one of the exhibits, a note from Debra Tiede (who was visibly pregnant when she was last visiting the plaintiff) indicated that Ms. Williams had said "a baby" and "baby girl" in the appropriate contexts.

[18] Her family has testified that Kathleen Williams always had a strong will, and her behaviour now demonstrates that she still retains that strength of will. She has moods, good days and bad days, which are clearly obvious to those who are with her and know her. She loves make-up being put on, and always did. There are times when she simply refuses to do things; for example, in the video shown in court, she appeared to have had enough of the toothbrush in her mouth and simply closed her mouth and turned her head, resisting any further brushing or cleaning. She frowns when she is upset, and when she is upset, her mouth turns down, she becomes red-faced, sometimes has tears, and clearly demonstrates that she is upset. She lifts her head for her hair to be brushed, and has nodded in the affirmative when asked if she misses food. She is unable to swallow and therefore must take all food through the tube. Although the evidence indicates that she does swallow at times, there is a fear of her choking. Ms. Quastel believes that speech therapy would give the plaintiff mouth and tongue exercises that might be beneficial in aiding her to possibly swallow more in the future.

[19] Ms. Williams' mouth moves considerably at times. Dr. Jones testified that this was simply reflex action, but the rehabilitation workers and her family have observed that those movements usually when she is trying speak or communicate in some way.

[20] The videotape shown at trial confirmed the evidence that Kathi Williams clearly enjoys being outside in the sunshine in her wheelchair. She is able to move her body in a limited manner, and has considerable movement with her left leg, which can move on command. That leg also comes up when she is resisting some treatment. The video also showed her moving her right foot with some quickness when the rest pedal of the wheelchair was being removed to show the different aspects of the chair. She clearly wanted her foot back on the pedal, and once the pedal had been placed back in position, her foot went back on the pedal rest and the movements stopped.

[21] Ms. Williams is able to move both arms somewhat. She holds a mirror up to see herself, and has grabbed and held a pamphlet to look at it. This was observed as early as 1997, along with other intentional movements of her hands to satisfy personal goals, according to Ms. Quastel. In 1997, Lila Quastel reported, "While her gains have been small, they have been steady", and that appears to be the continuing process with Ms. Williams.

[22] It was interesting to note that around December 17, 1999, Ms. Cooper reported that Ms. Williams was very tired, and in her notes, Ms. Cooper wondered if the new medication that had been prescribed could be responsible for this change in Ms. Williams. Her notes almost daily after that time indicate that Ms. Williams was again very tired, that she was falling asleep "several times" during that visit and her evidence at trial was that after that time in mid-December, there were no other attempts at talking by Ms. Williams. It was indicated at trial that the difference in medication was going to be looked at.

[23] The defence seems to suggest that Ms. Williams is one notch up from being in a vegetative state. I would not agree with that description. The case authorities provided by both counsel were helpful, but there can be no two fact situations the same. This is not a person in a vegetative state or even a near vegetative state. Ms. Williams has lost a great deal of her abilities, capabilities and quality of life, and the court must determine the extent to which this plaintiff has

experienced a sense of her loss, something that is admittedly difficult to determine. But there must be presumption in favour of the plaintiff, not the defendant in this determination. This is someone who has said within the last six months, "help me" to one of her rehabilitation care workers. This is not "an unaware" plaintiff.

HOME CARE OR INSTITUTION CARE

[24] I do not believe that it is appropriate to leave this particular 52 year old woman in an institution where the other elderly residents are in palliative care. The average age at one of these institutions in the Kootenays is estimated to be 80 to 85 years of age. In an institution, there are staff changes, and staff shortages. There is a greater risk of infection, and a lack of rehabilitation facilities. There is minimal staff on duty at night, and during the day, staff are not able to give the continuous one-on-one care to the plaintiff she would receive in a home setting with the proposal as outlined by counsel for the plaintiff.

[25] This is not an exercise in how to save money. This is an analysis of how best to compensate the plaintiff for her grievous injuries and her loss of quality of life that occurred through no fault of her own but, rather, because of the negligence of the defendant. This is not a discussion of retribution but, rather, one of compensation.

[26] It could never be put better than it was by Mr. Justice Dickson in **Andrews v. Grand & Toy Alberta Ltd.**, [1978] 2 S.C.R. 299, when he stated as follows:

Money is a barren substitute for health and personal happiness, but to the extent within reason that money can be used to sustain or improve the mental or physical health of the injured person it may properly form part of a claim . . .

There is a duty to be reasonable, there cannot be "complete" or "perfect" compensation. An award must be moderate and fair to both parties. Clearly compensation must not be determined on the basis of sympathy, or compassion for the plight of the injured person. What is being sought is compensation, not retribution. But, in a case like the present, where both courts have favoured a home environment, "reasonable" means reasonableness in what is to be provided in that home environment. It does not mean that Andrews must languish in an institution which on all evidence is inappropriate for him.

[27] Ms. Williams does not fall into any neat category. She is not mobile, nor is she entirely immobile. There have been slow, sometimes tiny, but always significant improvements in her ability to move. Where a change might be insignificant to those of us who are able-bodied, even the smallest change could make a tremendous improvement to her quality of life. Changes continue to be occurring, small though they may be. Nor can she be said to be in control of all her mental faculties. She is not. On the other hand, she is not in a vegetative state. Her awareness and her ability to communicate also seem to be improving on a slow path. Her family hopes that those improvements will continue, with the added stimulations that will occur in the home setting with one-on-one care.

[28] It is proposed that Linda Nickerson and her husband, recently retired, who live on a ten acre hobby farm six kilometres north of Kimberley, would build a structure next to their home suitable for the plaintiff and the care personnel that will be required. Mr. and Mrs. Nickerson have three children and ten grandchildren, all in the area, all frequent visitors to the farm. There are horses, three dogs, numerous cats, ducks and chickens on the hobby farm, and the Nickersons enjoy a lively and social life with family and friends, which includes recreation that they

propose to include Kathi in, with the assistance of a specially fitted van for her. Her son, Whitney, and her former boyfriend, Don, would be welcome any time at the farm, and Sally Forman, the other sister would make visits as time and her health would allow.

[29] Dr. Marshall is of the opinion that not only would Ms. Williams receive appropriate medical care in the home setting, but also that it would be as good or possibly better than what she is receiving now; also, that she would be better off generally in a home care situation, and that it is appropriate for her. Her medical condition is stable, and it is important to note that Dr. Marshall did not agree with Dr. Jones' description of the level of awareness for the plaintiff. Dr. Marshall felt that Kathi Williams' life would be enriched by the suggested change in her environment and, as her general practitioner, he is prepared to discharge her to a home care setting.

[30] Dr. Chambers also felt that the plaintiff's quality of life would be enhanced in a home setting and that it would be appropriate from a medical care point of view. Lila Quastel firmly supports a home care setting as preferable for Ms. Williams.

[31] However, Dr. Jones, called on behalf of the defendant, gave the opinion that Ms. Williams would not have her life enriched by the services that would be provided in home care. It was his opinion that she was "sufficiently neurologically impaired that she would not appreciate or be aware of or have her life enriched by these most generous gestures that are clearly coming from the heart, as being suggested by the family." He believes that "her injuries would preclude her from understanding or be aware of or appreciate the environment where she is." He further believes that the best care would come from the professionals that are in a structured long term facility.

[32] With great respect to the qualifications of Dr. Jones, in my view he did not have sufficient opportunity to observe the plaintiff on a continuing basis, and I do not accept his assessment that the plaintiff would be better off in institutionalised care, rather than the suggested home care setting.

[33] It should also be noted that Dr. Jones is a neurologist; he is not a specialist in rehabilitation.

[34] To sum up, I believe Kathi Williams will do better in a home care situation than she would in an institution for many reasons. First of all, she will have the love of her family, and that includes three generations of her sister and brother in law's family, Linda and Ben Nickerson. At trial, it was confirmed that Kathi's continuing care, should she be in a home care situation with them, would be covered by the next generation, in the event that anything should happen to Linda and/or Ben Nickerson. That means there will be continuity of care, with people who know and love the plaintiff. This is not possible in an institution setting.

[35] She will also have constant one on one care, plus the continuation of rehabilitation therapy which will not encounter any problems that might occur within an institution, such as financial cut-backs, union disputes, or staff shortages. In a home situation, she will have a chance to shower and/or bathe at her own choice and in her own time-table, rather than when an institution has time and/or staff to give her a shower only.

[36] In a home situation, the plaintiff will have her own home again. She will also have a chance to have her own pet or pets again. She will be able to have much more outdoor and sunshine experiences generally than she can in an institution. There will be provision that she will have her own van, so that her mobility will be greatly increased, and she will be able to join the family on their recreation

outings, summer or winter.

[37] The plaintiff will not be alone. There will be someone living in her home at all times. The plan is that her home will be built adjacent to that of her sister and brother-in-law. The Nickerson home cannot be adapted, and the best solution is to build a separate structure next to theirs. There will be no palliative, elderly room-mate in a ward setting, whose deaths from time to time can only upset the plaintiff. Care workers who are dealing on a day-to-day basis with the plaintiff will have time to explain all procedures to her, to avoid the upsets that occur when there is no time to do that within an institution.

[38] Her own home will have sufficient room either in her place or in the Nickerson's place for Whitney and/or Don, her former boyfriend, to come and visit, and stay overnight, and the family have made it clear that both are welcome at any time.

INJURIES TO THE PLAINTIFF

[39] In addition to the serious brain injury stem suffered by the plaintiff, she suffered the following orthopaedic injuries: a fractured right humerus, a fractured right tibia, medial collateral and anterior cruciate damage to the right knee, and collateral ligament damage to the left knee.

LIFE EXPECTANCY

[40] Counsel for the plaintiff suggests that the estimate of a life expectancy of 18 years from the date of accident given by Dr. Chambers is a realistic estimate, that Dr. Chambers felt he was being cautious and he was comfortable with that estimate. In his evidence, Dr. Chambers discussed the fact that Ms. Williams was in a relatively stable condition medically, and posed the question as to what she would die from. He said there was no increased risk from heart attack, or cancer. She is not a smoker. She had no serious respiratory problems, and she was receiving and would be receiving in the future, good medical care. In addition, she had already proved herself to be a survivor and has not only lived in spite of her grievous injuries, but has improved somewhat over the last four years since the accident. He indicated in his report that she has already shown an ability to survive in the short term, and "avoid some of the survival risk factors, such as aspiration, infection or embolism."

[41] Dr. Chambers confirmed there are no studies that involve survival estimates on patients who have a condition similar to the plaintiff.

[42] Dr. C.R. Rally, a specialist in internal medicine who had given evidence for the defendant had relied on certain reports that Dr. Chambers felt gave inappropriate comparisons.

[43] In part of his report of August 19, 1999, Dr. Chambers stated as follows:

There are no studies on survival involving a cohort of patients similar to Ms. Williams so analogies must be drawn which have the potential for error. Studies that yield estimates in the range of four to five years are clearly inappropriate in this case. The study by Strauss on those adults with cerebral palsy is the closest analogy that could be identified in the literature. Here the life expectancy was 16.1 years or 14.5 years depending on which figure you wish to accept. . . .

. . . It is my opinion that Ms. Williams has a life expectancy of 18 years from the date of the accident as she is most like those in the cerebral palsy study but has the added advantages of having already

survived four years and of having superior care based on my visit to Evergreen House. I assume this care will continue to be available to her. Please consider this is a point estimate and not a range. It is entirely possible that she could survive longer. I have had clinical experiences where long term care patients who are clinically similar to Ms. Williams have in fact survived longer than expected.

[44] Dr. Rally gave an opinion that Ms. Williams life expectancy from the date of the accident is 12 years. He stated that there are few studies on long term survival of patients with severe permanent brain damage and that most with such damage "fall into the category of a persistent vegetative state." While concluding that Ms. Williams had improved to the point where she was aware of her surroundings and could respond to occasional simple command, he said that this awareness would not necessarily contribute to her long term survival. He relied upon a study on survival of individuals with severe brain impairment by Richard Eyeman in 1990 and a second study done two or three years later on the life expectancy of profoundly handicapped people with mental retardation.

[45] Dr. Chambers was not in agreement with Dr. Rally's opinion, based on those studies. Without going into the details of the testimony of and studies relied upon by both Dr. Chambers and Dr. Rally, I will say that I accept the analysis of those studies done by Dr. Chambers, and find that given all the circumstances, Dr. Chambers' opinion gives greater recognition to the disabilities which have occurred to the plaintiff at her stage in life. I accept Dr. Chambers' explanation and opinion as to his analysis and appraisal of the two Strauss studies on which he relied, and I accept Dr. Chambers' opinion with regard to the estimate of life expectancy for Ms. Williams of 18 years.

NON-PECUNIARY DAMAGES

[46] The upper limit for the present value of non-pecuniary damages as of January 2000 is \$267,240. Counsel for the defendant urges that there should be only 10 to 20 per cent of the maximum awarded in this case, and cited a number of cases in support of that position. In **Adelborg v. Van Boven** (unreported, February 21, 1986, Duncan Registry No.1414, Mr. Justice Hutchison) a pedestrian was struck in an accident with a motor cycle and was described as being in a condition of "coma vigil". He had never fully regained consciousness. In that case, non-pecuniary damages of \$7,500 were awarded. In **Knutson v. Farr** (1984), 55 B.C.L.R. 145 (B.C.C.A.), the plaintiff was described as unaware of his surroundings and insensitive to pain and suffering. Non-pecuniary damages were reduced from \$77,000 to \$15,000. In **Wipfli v. Britten** (1984), 56 B.C.L.R. 273 (B.C.C.A.), non-pecuniary damages of \$75,000 were held to be reasonable. This was a twin who suffered brain damage and cerebral palsy after he was resuscitated following birth. He is a child who was able to be at home on weekends only, and is in an institution otherwise, with no co-ordination in limbs or his head, incontinent, unable to feed himself, and unable to communicate.

[47] Counsel for the plaintiff cited the decision of **Beaudoin v. Enviro-Vac Systems Inc.**, [1992] B.C.J. No. 205, a decision of Mr. Justice Paris. The maximum allowable for non-pecuniary damages was awarded in that case where the female plaintiff was left severely injured, and needed help with her daily living. She was considerably better off than the plaintiff in this case, able to read, and resume living with her husband and daughter, although in vastly different circumstances than before her accident.

[48] While not agreeing that non-pecuniary damages should be awarded in this case at the full upper limit, given the circumstances of the plaintiff, I find that she is in a position to receive sufficient non-pecuniary compensation to make her life more tolerable, to provide solace.

[49] Although the plaintiff has suffered a severe brain injury, she has a level of awareness that I have tried to set out, and she has an ability to receive solace from an award of non-pecuniary damages. I do not agree with Dr. Jones' opinion that her condition is such that it would preclude her from understanding or being aware or of appreciating the environment in which she is. The other evidence at trial would indicate otherwise. Nor do I think it is accurate to describe Ms. Williams as being only "a notch above" a vegetative state. She is able to get around in a wheelchair, with help, so she is not completely bedridden.

[50] Compensation by way of non-pecuniary damages may allow the plaintiff to improve the quality of her life in small ways that may seem insignificant to the able bodied, but not to her. In my view, an award of \$175,000 for non-pecuniary damages is appropriate in the circumstances.

PAST WAGE LOSS

[51] Expert evidence called by the plaintiff placed the past wage loss calculation at \$94,562. There is no evidence or serious dispute to alter that figure and past wage loss is set at \$94,562.

FUTURE WAGE LOSS

[52] A representative of the Scotiabank confirmed that there was a no lay-off policy at the bank. So there is no reason to conclude that the plaintiff would not have continued with her employment until the age of 65, given her past employment history. PETA Consultants Ltd., a firm of consulting economists, specialising in litigation support services to the legal profession, was retained by both parties to prepare estimates of past and future loss of income and lost years' deductions applicable to the plaintiff. Their report took into account statistical contingency deductions for unemployment and non-participation due to disability. Counsel for the defence argues that there should have been additional negative contingencies also applied, to include, for example, part-time work. However, the evidence would not support those additional negative contingencies, in my view. The calculations do not allow for any salary increase due to promotion, but they do allow for positive contingencies for merit increases.

[53] As for the lost years' deductions, counsel for the plaintiff argues that this should be a conservative deduction, in spite of the fact that there is no evidence concerning the actual living expenses of the plaintiff.

[54] Assuming Ms. Williams would have retired with the bank at age 65, and now has an average life expectancy of 18 years from the date of the accident, her future income loss has been calculated at \$316,322. There will be a lost years' deduction of 63 per cent, with regard to future wage loss and that figure I believe to be \$36,623.

SPECIAL DAMAGES

[55] The plaintiff claims special damages of \$42,332.55 for North West Rehabilitation costs. There is no argument with regard to that item.

[56] The only other claim for special damages relates to travel and accommodation expenses of \$8,995 claimed for travel and other expenses for Sally Forman and Linda Nickerson. The defence has argued that the items pertaining to transportation to the lawyers' office should not be included, \$134.25, nor should the item for reading glasses for Kathi Williams, \$175. I agree that those items should be excluded. That leaves an amount for travel and accommodation expenses for the two guardians of the plaintiff of \$8,685.75.

[57] That leaves a total for special damages of \$51,018.30.

COST OF FUTURE CARE

[58] The report of Lila Quastel sets out in detail the cost of future care for the plaintiff in the event of home care. I find her report to be reasonable and comprehensive.

[59] The construction costs for the separate living unit for the plaintiff on the Nickerson hobby farm have been agreed at \$147,125. This includes the necessary construction of a separate septic tank, fuel, etc. (In argument, an additional figure of \$8,700 was given by counsel for the plaintiff for the septic tank field and well that would be required. If this is not included in the sum of \$147,125, then the additional amount is awarded as well.)

[60] Counsel for the plaintiff points out that the remainder of the costing does not include provision for GST or PST. I will decline the kind suggestion that the court determine the appropriate amount and add the taxes, and suggest that counsel calculate those appropriate additions for GST and PST, with liberty to apply if agreement cannot be reached.

[61] In addition to the housing costs set out above, there will be an additional cost for a bathtub and patient lift for the purposes of that tub, for a total cost of \$11,585.

[62] In all other respects, the costs of future care set out in Lila Quastel's report that dealt with the plaintiff in a home situation are accepted and awarded. In my view, those costs regarding both personnel and equipment, including an equipped van for transportation, are reasonable and appropriate.

COMMITTEE COMPENSATION

[63] In support of a claim for compensation to the committees, counsel for the plaintiff cites the decision in *Semenoff (Committee) v. Kokan*, [1991] B.C.J. No. 2674, (B.C.C.A.), a decision of Hutcheon, J.A. In the *Semenoff* case, the plaintiff's wife had been appointed a committee by order of the Supreme Court. Under the Patients Property Act she would be allowed to claim reasonable compensation from the estate upon the passing of accounts. Mr. Justice Hutcheon stated that the Public Trustee performing the same functions would be entitled to 5 per cent of cash received, and upon termination of the committee ship, to 5 per cent of the gross value of all other assets. He found that the estate would be required to compensate Mrs. Semenoff by payment to her of a reasonable fee, and that that expense was a proper charge against the defendant. Under the circumstances of that case, he reduced the regulatory fee to 3 per cent.

[64] In the circumstances of this case, an appropriate fee to compensate the committees appointed to act on behalf of the plaintiff would be 3 per cent, that being 3 per cent of the cash received, whether that be classified as capital or income.

COSTS

[65] Costs may be spoken to at the convenience of counsel.

"N. Morrison, J."
Madam Justice N. Morrison

To sum up, I believe Kathy Williams will do better in a home care situation

than she would in an institution for many reasons. First of all, she will have the love of her family, and that includes three generations of her sister and brother in law's family, Linda and Ben Nickerson. At trial, both Mr. and Mrs. Nickerson, as well as one of their daughters, confirmed that Kathi's continuing care should she be in a home care situation with them would be covered by the next generation, in the event that anything should happen to Linda and/or Ben Nickerson. That means there will be continuity of care, with people who know and love the plaintiff. This is not possible in an institution setting.

She will also have constant one on one care, plus the continuation of rehabilitation therapy which will not encounter any problems that might occur within an institution, such as staff cut-backs, union disputes, or staff shortages. In a home situation, she will have a chance to shower and/or bathe at her own choice and in her own time-table, rather than when an institution has time and/or staff to give her a shower only.

In a home situation, the plaintiff will have her own home again. She will also have a chance to have her own pet or pets again. She will be able to have much more outdoor and sunshine experiences generally than she can in an institution. It is planned that she will have her own van, so that her mobility will be greatly increased, and she will be able to join the family on their recreation outings, summer or winter.

The plaintiff will not be alone. There will be someone living in her home at all times. The plan is that her home will be built adjacent to that of her sister and brother in law. Their home cannot be adapted, and the best solution is to build a separate dwelling next to theirs. There will be no palliative, elderly room-mate in a ward setting, whose deaths from time to time can only upset the plaintiff. Care workers who are dealing on a day to day basis with the plaintiff will have time to explain all procedures to her, to avoid the upsets that occur when there is no time to do that within an institution.

Her own home has sufficient room either in her place or in the Nickerson's place for Whitney and/or Don, her former boyfriend to come and visit, stay overnight, and the family have made it clear that both are welcome at any time.