

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

| | | |
|---|---|-------------------------------------|
| PAUL COELHO, |) | <u>Jessica M. Hersey</u> |
| |) | for the applicant |
| applicant, |) | |
| |) | |
| - and - |) | <u>Francisco Jose Soares Coelho</u> |
| |) | on his own behalf |
| FRANCISCO JOSE SOARES COELHO, |) | |
| as Attorney under a Power of Attorney for |) | |
| FRANCISCO DARIO DIAS COELHO, |) | <u>Jana Taylor</u> |
| and FRANCISCO JOSE SOARES COELHO |) | for the Public Guardian and |
| in his personal capacity, |) | Trustee of Manitoba |
| |) | |
| respondents. |) | |
| |) | Judgment Delivered: |
| |) | June 2, 2026 |

WOOLLEY J.

OVERVIEW

[1] Francisco Dario Dias Coelho is 87 years of age and is a resident of the Actionmarguerite St. Joseph personal care home in Winnipeg ("ASJ"). For 55 years, Mr. Coelho was married to Mariana Coelho, who passed away in 2015. They had two sons, Paulo Coelho and Francisco Jose Soares Coelho.

[2] To avoid confusion, I shall refer to the members of the Coelho family using their first names: Francisco Dario Dias Coelho shall be referred to as "Frank Sr.", Paulo Coelho

shall be referred to as "Paul" and Francisco Jose Soares Coelho as "Frank Jr.". This follows the naming convention used by the parties in their materials.

[3] This proceeding involves a dispute between Paul and Frank Jr. over who should manage the affairs of Frank Sr. In particular, Paul is seeking to replace Frank Jr. as attorney for Frank Sr.

EVIDENCE BEFORE THE COURT

[4] Before proceeding further, I will make note of the evidence put before me in this matter. In support of his application, Paul filed an affidavit affirmed on November 26, 2025 ("Paul's Affidavit"). His counsel also filed affidavits from two of the its employees evidencing issues they encountered in serving court documents on Frank Jr. The employees' affidavits attached correspondence between Paul's counsel and Frank Jr., as well as correspondence between Paul's counsel and Nancy Gonçalves, a lawyer who had acted for Frank Sr. in the past.

[5] Frank Jr. was present in Court on April 14, 2026 and was advised of the May 8, 2026 hearing date as well as the deadlines for him to file his responding materials. Despite this attendance, Frank Jr. did not file any evidence with the Court in this matter, nor did he conduct any cross-examinations of the deponents who filed affidavits in support of Paul's application.

[6] Frank Jr. indicated that he attempted to file an affidavit on April 17, 2026 but the filing could not be completed as he did not bring a separate copy. There was no explanation as to why he did not make a further attempt to file his affidavit.

BACKGROUND

[7] Paul is a 65-year-old resident of Winnipeg. He is married and has two adult children. He is retired after a 40-year career with the same company. Frank Jr. is Paul's younger brother.

[8] Frank Sr. worked for Motor Coach Industries ("MCI") for approximately 20 years, retiring in 2004. At that time, Frank Sr. was 65 years old. Subsequent to his retirement, Frank Sr. has been receiving a pension from MCI and also receives Canada Pension Plan and Old Age Security payments. Frank Sr.'s main asset is a house located at 17 Pearce Avenue in the City of Winnipeg (the "Property").

[9] After his wife's passing in 2015, Frank Sr. was initially able to manage his own affairs. Paul said that in 2018 he started to notice a change in Frank Sr.'s behaviour and emotional stability and that these changes continued to progress in subsequent years. According to Paul, Frank Sr. had become unusually quiet, withdrawn and disengaged. While Paul stated that his father had a longstanding habit of hoarding papers, he claims that the Property had become significantly more cluttered after 2018 and that Frank Sr. refused Paul's offer to obtain assistance with cleaning. Paul also indicated that Frank Sr. had a notable change in personal hygiene matters, exhibiting problems with disposal of adult diapers and experiencing issues with toileting.

[10] Paul further claims that in 2019 his father, without apparent reason became agitated, irritated and suspicious of him, to the point where Frank Sr. excluded Paul from the Property and changed the locks. Frank Sr. further advised Paul that he was visiting his lawyer and making changes to his will.

[11] During the Covid-19 pandemic, Paul says he had no contact with Frank Sr. and would rely on his aunt and family friends for updates. He was advised that in 2022 or 2023 that Frank Sr. had a fall and suffered injuries to his rotator cuff and right arm. During this time, Frank Sr. required assistance with eating, shaving and other essential daily tasks. According to Paul, it was during Frank Sr.'s convalesce that Frank Jr. began to provide his father with regular assistance.

[12] Between March and May 15, 2025, Frank Sr. was hospitalized at Seven Oaks Hospital due to complications following prostate surgery. In July 2025, shortly after his discharge and release from Seven Oaks Hospital, Frank Sr. was placed in ASJ where he continues to reside.

[13] Attached as Exhibit "H" to Paul's Affidavit is a letter from Frank Sr.'s attending physician, Dr. Kathryn Glazner dated August 20, 2025, addressed "To whom it may concern". Dr. Glazer's letter indicates that "[Frank Sr.] is no longer capable of managing his personal affairs, due to his cognition impairment".

THE POWER OF ATTORNEY AND REQUESTS FOR INFORMATION

[14] In or about April 2025 Paul became aware that Frank Jr. was acting as attorney for Frank Sr. through a Power of Attorney dated January 16, 2024 (the "POA") that had been prepared and witnessed by Frank Sr.'s counsel, Ms. Gonçalves (Exhibit "A" to Paul's Affidavit).

[15] The POA appointed Frank Jr. as Frank Sr.'s attorney, with a general power to act as attorney in "all matters in which I am interested or concerned, and on my behalf to execute all documents and do all lawful acts". The POA further provides all powers over

Frank Sr.'s property as if the attorney was the owner thereof. The POA contains a provision indicating that the authority provided to the attorney shall continue despite any future mental infirmity or incompetency of Frank Sr. While the POA provides a power to arrange for personal care and accommodation in a personal care facility, it does not expressly provide the attorney with decision-making authority regarding medical care. The POA also provides the power to Frank Jr. to appoint a substitute to act as attorney for Frank Sr.

[16] Paul says that he requested a copy of the POA, along with information about his father's medical status, from Frank Jr. but he initially refused to provide this information. It was only after Paul retained counsel that he was able to obtain a copy of the POA through Ms. Gonçalves on August 19, 2025.

[17] From August to October of 2025, Paul's counsel made written requests for information from Frank Jr. with respect to the bank accounts and property of Frank Sr. There was periodic disclosure of information from Frank Jr. through Ms. Gonçalves, but this information gave Paul cause for concern. According to Paul, there were a number of unexplained charges against Frank Sr.'s bank accounts as well as cash withdrawals that had been made without explanation. Paul also made attempts, without success, to have the ASJ provide him with information about Frank Sr.'s medical condition.

[18] A further issue which caused Paul concern was Frank Jr. residing at the Property. Paul claims that Frank Jr. has lived at the Property since 2022-2023 and has continued to reside there without payment of rent since Frank Sr. was moved into the ASJ in July of 2025. Paul says that he is concerned that Frank Jr. has paid the bills for the

Property out of Frank Sr.'s funds and that since Frank Sr. moved into ASJ, Frank Jr. is the only party benefitting from the continued payments for the Property.

THE COMMENCEMENT OF PROCEEDINGS

[19] Since Paul was dissatisfied with the disclosure that he received from Frank Jr., he retained counsel who filed the notice of application in this matter on December 10, 2025. In the application, Paul not only sought an order for the removal of Frank Jr. as attorney, and his own appointment in his place, but he also sought an accounting, tracing and return of assets, restoration of losses and other related relief.

[20] On March 18, 2026, Frank Jr. entered into a Consent Order, whereby he agreed to provide (within 30 days) an accounting of the property of Frank Sr. during the time that Frank Jr. acted as an attorney, as well as an accounting relating to certain joint accounts that Frank Jr. shared with Frank Sr., tax returns and other financial documentation.

[21] Frank Jr. failed to file any of the required documentation with the Court and is not in compliance with the Consent Order. At no time prior to May 8, 2026 did Frank Jr. attend back before the Court to seek to vary the Consent Order to provide additional time for compliance.

ISSUES

[22] At the contested motion on May 8, 2026, Paul confirmed that the only relief he was seeking at this time was the removal of Frank Jr. as attorney and his appointment in his brother's place. He requested that the balance of the relief claimed be adjourned to a further unspecified date. The issues before me are:

1. Should Frank Jr. be removed as attorney for Frank Sr.?
2. Can Paul be appointed as replacement attorney, and if so, should he be?
3. If Frank Jr. is removed and Paul is not appointed as his replacement, should the Court appoint a committee for Frank Sr.?

THE PARTIES' POSITIONS

A. Paul's Position

[23] It is Paul's position that Frank Jr.'s removal as attorney is justified due to breaches of ***The Powers of Attorney Act***, C.C.S.M. c. P97 (the "***POA Act***"). In particular, Paul cites s. 19(2) of the ***POA Act*** to establish that Frank Jr. owed Frank Sr. a duty of care to exercise "the judgment and care that a person of prudence, discretion and intelligence would exercise in the conduct of his own affairs".

[24] The duties of a party acting as an attorney were discussed in the decision of ***J.L. v. S.L.L. et al.***, 2006 MBQB 170, where this Court found that when handling the donor's property, the attorney must ensure that the donor's welfare is "paramount", and that the attorney cannot treat the donor's property simply as if it were his own (at paras. 11-12).

[25] In the decision of ***E.B. v. S.B. and B.K.***, 2010 MBQB 15, this Court held that an attorney cannot allow his personal interests to conflict with his fiduciary duty to the donor. Amongst his or her responsibilities a donor is obliged to keep proper records and to ensure that the donor's property does not become co-mingled with the attorney's in a way that would render a proper accounting impossible (at paras. 42-43 and 50).

[26] Paul further states that under s. 22(1) of the **POA Act**, Frank Jr. was obligated to provide an accounting to Paul, as the nearest relative to Frank Sr. He says that Frank Jr. failed in his obligation to do so, despite numerous demands from Paul and in breach of the Consent Order.

[27] While Paul concedes that some information was provided, he contends that it fell far short of a proper accounting. Paul relies on the decisions of **Norris v. Norris**, 2024 ABKB 21 (at paras. 188 and 190), and **Withenshaw v. Withenshaw**, 2023 NSCA 59 (at para. 38), in support of his submission that a proper accounting is more than just the provision of financial documents, and that some level of analysis needs to be provided to show what assets the attorney dealt with, what was done with those assets, and what property remained.

[28] Ultimately, Paul submits that the breaches of the standard in s. 19(2) of the **POA Act** and the failure to produce a proper accounting to this Court provide grounds to remove Paul pursuant to s. 24(1)(d) of the **POA Act**.

[29] Paul also suggests that I go further and not only remove Frank Jr. as attorney but also appoint Paul as attorney for Frank Sr.

[30] Paul submits that I have the authority to do so under s. 24(1)(g) of the **POA Act**. He argues that the legislative intent in making this power subject to the provision of the enduring power of attorney is to ensure that if the donor named a substitute attorney, the Court could not simply look past that choice and appoint a different person. As the POA in this case simply granted an open-ended power to appoint a substitute, Paul submits that this Court may appoint him as attorney in his brother's place.

[31] While Paul acknowledges that he would accept the appointment of the Public Guardian and Trustee (the "PGT") as attorney in this matter, he submits that this should only be as a "last resort" and relies on this Court's decisions in ***Kennedy et al. v. McKenzie***, 2020 MBQB 139, and ***Smith et al. v. Smith et al.***, 2007 MBQB 126. Paul submits that as a family member resident in Manitoba who is willing and capable of acting as attorney, the Court should prefer him to the PGT.

B. Frank Jr.'s Position

[32] Frank Jr. did not file an affidavit or a brief with respect to this application but did appear to make oral submissions. Much of Frank Jr.'s submission was devoted to providing his version of the facts of this matter. Counsel for Paul correctly observed that such facts were not properly in evidence. As such, Frank's submission can be taken as a statement of his position, without evidence in support.

[33] In his submissions, Frank Jr. indicates that he has always been close with his father, but particularly so since his mother passed away in 2015. Conversely, he says Paul has often been estranged from the family, having no contact for prolonged periods of time.

[34] In 2019, Frank Jr. says that his father became agitated when Paul tried to have him deemed incompetent, and at that time changed the locks and excluded him from the family home.

[35] Frank Jr. says that he started to live with his father and take care of his affairs in 2024 after his father suffered a significant illness. He said that Paul was invited to the

Property during this time, but instead of comforting their father, Paul insisted upon questioning Frank Sr. about his financial affairs.

[36] Frank Jr. did not provide specifics about how the 2024 POA was entered into and says that he "didn't want the job" as attorney, but agreed to take it on in order to care for his father. He says that he did the best he could during this time, often paying his father's bills from his own accounts.

[37] Beginning in August 2025, shortly after Frank Sr. was placed at ASJ, Frank Jr. said that he was "bombarded" with requests from Paul and his counsel for information and financial records with respect to his father's financial affairs. Frank Jr. said that after only three weeks of Frank Sr. being in ASJ, he was concerned with his father's care and did not turn his attention to Paul's demands right away.

[38] Eventually, Frank Jr. says that he provided multiple bank statements of Frank Sr. as well as a list of furniture contained on the Property to Paul's counsel. Frank Jr. admits that he continued to reside at the Property without payment of rent after Frank Sr. was admitted to ASJ, but said that he now intends to move back to his own home in Winnipeg Beach.

[39] As to the Consent Order, Frank Jr. admits that he has not complied with it. He states that he needs more time and is seeking out legal advice. He identified Danielle Magnifico as a legal counsel that he has consulted with respect to this matter, but did not explain why he had not retained her as his lawyer.

[40] Frank Jr. indicated that at all times, he tried to discharge his role as attorney for Frank Sr. to the best of his abilities and that any shortcomings were a result of his

negligence, not any deliberate wrongdoing. Frank Jr. indicated his father's health and physical well-being were his primary concern. By his own admission, Frank Jr. indicated that "I am a better cook than an accountant".

[41] As to the outcome of this proceeding, Frank Jr. expressed a desire to remain as attorney for Frank Sr. and that he opposes any effort on the part of Paul to become attorney in his place. Frank Jr. has indicated that although he would like to continue as attorney, he would accept the appointment of the PGT if he were to be removed.

C. The PGT's Position

[42] The PGT was given notice of these proceedings pursuant to s. 24(3) of the ***POA Act***.

[43] The PGT takes no position as to whether or not Frank Jr. should be removed as attorney for Frank Sr.

[44] If I should remove Frank Jr. as attorney for Frank Sr., the PGT submits that I should follow the decision in ***Potasky v. Potasky***, 2002 MBQB 146, which holds that a power of attorney is to be strictly construed as it is a trust document giving rise to fiduciary obligations.

[45] It follows that a power of attorney that provides the named attorney with the power to appoint a substitute cannot be read as a general power for a court to step in and do the same. To do so would override the clear intentions of the donor, who only intended to give the named attorney the power to choose a substitute.

[46] Accordingly, if Frank Jr. is removed as attorney, the PGT submits that I should not appoint Paul as attorney, nor should I appoint anyone else as attorney (including the PGT) because that would be inconsistent with the donor's intention.

[47] If Frank Jr. is to be removed as attorney, the PGT suggests that I appoint a committee for Frank Sr. The PGT has indicated that it would be prepared to accept an appointment as committee if I deemed it appropriate.

ISSUE 1 – SHOULD FRANK JR. BE REMOVED AS ATTORNEY FOR FRANK SR.?

[48] A court must not interfere with a donor's intentions lightly. This Court in *J.L.*, has indicated that "there must be strong and compelling evidence of misconduct or neglect on the part of the [attorney] before the court [will] ignore the clear wishes of the donor and terminate such power of attorney" (at para. 10). In determining this issue, the Court must also consider whether the best interests of Frank Sr. would require Frank Jr. to remain as attorney.

[49] Pursuant to s. 19(2) of the *POA Act*, Frank Jr. is required to meet the standard that "a person of prudence, discretion and intelligence would exercise in the conduct of his own affairs".

[50] Compliance with the standard set out in s. 19(2) should be considered in the context of an attorney's obligations to the donor. In *E.B.*, Burnett J. (as he then was) cited the Alberta Court of Queen's Bench decision of *Brown v. Lefebvre*, 2007 ABQB 195, which sets out the following obligations of an attorney:

- 21 The obligations of an Attorney include:
1. keeping proper accounts of the trust estate;
 2. keeping the trust accounts distinct from other accounts;
 3. preserving receipts or cancelled cheques;
 4. producing accounts to the Donor or to the Court and to any beneficiary;
 5. ensuring the accounts clearly show all the monies and assets received are accounted for (citation omitted).

[51] The duty to account is codified in s. 22(1) of the **POA Act**. As explained in **Withenshaw** there is no requirement for this Court to draw an adverse inference from a failure to provide an accounting. The failure to provide an adequate accounting (without an acceptable explanation) is, in itself, a breach of the attorney's duty (at para. 38).

[52] In this case, Paul has been requesting an accounting from Frank Jr. since August of 2025. Frank Jr. had some legal assistance at that time (through Ms. Gonçalves) and he did provide some disclosure of information. The information provided indicated the existence of other bank accounts (for which details have not been provided), payment of bills without receipts and unexplained cash withdrawals. A complete picture of Frank Jr.'s management of Frank Sr.'s assets and obligations cannot be discerned from the information provided. This falls short of the standard required for a proper accounting. (See **Norris**, at paras. 188 and 190)

[53] Frank Jr. was given a further chance to provide an accounting by entering into a Consent Order on March 18, 2026. Frank Jr. has not complied with that Order and has made no discernable attempt to do so. At the hearing, Frank Jr. indicated that he

was continuing to seek legal counsel and needed additional time, all of which underscores the difficulty he is having in properly looking after Frank Sr.'s financial affairs.

[54] The responses provided by Frank Jr. indicate that he has neither fully investigated the extent of Frank Sr.'s financial holdings, nor has he maintained the paperwork (account statements, receipts, etc.) in a manner expected from a prudent and reasonable person.

[55] Further, the failure to provide a full and complete accounting in response to the legal proceedings commenced and the Consent Order of this Court falls well short of the standard of a prudent and reasonable person.

[56] There is compelling evidence to support the finding that Frank Jr. is having difficulty fulfilling the obligations of an attorney, and accordingly it is not in Frank Sr.'s best interests to have Frank Jr. continue in that role.

Decision with respect to Issue 1

[57] In the circumstances, I find that an order to remove Frank Jr. as attorney for Frank Sr. is appropriate.

[58] I make this determination without any inference or finding of deliberate wrongdoing on the part of Frank Jr. My finding is based solely upon Frank Jr.'s demonstrated inability to comply with the requirements of acting as attorney for Frank Sr.

ISSUE 2: CAN PAUL BE APPOINTED AS REPLACEMENT ATTORNEY, AND IF SO, SHOULD HE BE?

[59] Given my finding on issue 1, I must consider Paul's request to be named as attorney in his brother's place.

[60] The Court's power to name a substitute attorney is contained in ss. 24(1)(g) of the ***POA Act***. The relevant text reads as follows:

Jurisdiction of the court

24(1) Upon an application made in respect of an enduring power of attorney, the court may, having regard to the power of attorney and the donor's intentions, make any order the court considers appropriate, which may include the following:

.....

(g) subject to the provisions of the enduring power of attorney, an order appointing a person as an attorney in place of the attorney appointed under the enduring power of attorney.

Compétence du tribunal

24(1) Le tribunal peut, sur requête et après avoir pris en considération la procuration et les intentions du mandant, rendre les ordonnances qu'il estime appropriées. Il peut notamment, par ordonnance :

.....

g) sous réserve des dispositions de la procuration durable, remplacer le mandataire.

[Emphasis added]

[61] Paragraph 28 of the POA gives the power to appoint a substitute to Frank Jr., and it also provides him with the power to revoke a substitution. It does not name a specific person who is intended to act as the alternate attorney.

[62] Paul suggests that the fact that the POA does not name a specific person as the substitute attorney gives me the authority to exercise my discretion under s. 24(1)(g) of the **POA Act** to name a substitute, as it would not be displacing a substitute attorney named by the donor.

[63] In **J.L.**, the court utilized its powers under s. 24(1)(g) of the **POA Act** to name the PGT as substitute attorney, but there was no discussion in that decision as to whether the provisions of the power of attorney spoke to a power of substitution. This stands in

contrast to the *Potasky* decision, where the court specifically considered the wording of the power of attorney in response to a request for the court to appoint a substitute.

[64] The court's decision in *Potasky* was based upon a strict reading of the donor's intentions as expressed in the power of attorney. Where the power of attorney gives the attorney the authority to name a substitute, the power is given to that person alone. As the Court cannot infer an intention beyond the plain wording of the power of attorney itself, I am satisfied that the donor's stated intention must prevail.

Decision with respect to Issue 2

[65] In this matter, a plain reading of the POA strongly indicates that Frank Sr. intended Frank Jr. alone to be the person to name a substitute attorney. In fact, Frank Jr. not only had the power to name a substitute but also retained the power to revoke that substitution. This suggests that at all times, Frank Sr. intended Frank Jr. to be in full control. The authority provided to this Court by the *POA Act* requires me to give careful consideration of Frank Sr.'s intention and makes the power of substitution subject to the provisions of the POA itself. I cannot override Frank Sr.'s clear intention to provide the power to name a substitute to Frank Jr. alone. Accordingly, I am dismissing Paul's request for an order naming him as the substitute attorney in place of Frank Jr.

ISSUE 3: IF FRANK JR. IS REMOVED AND PAUL IS NOT APPOINTED AS HIS REPLACEMENT, SHOULD THE COURT APPOINT A COMMITTEE FOR FRANK SR.?

[66] My findings on issues 1 and 2 leave Frank Sr. with no attorney in place to handle his financial affairs.

[67] While I do not have any affidavits from any medical officials as to Frank Sr.'s current competency, the best evidence before me is Dr. Glazner's short letter dated

August 20, 2025, which clearly sets out that Frank Sr. is not capable of handling his personal affairs.

[68] In the circumstances, counsel for the PGT has suggested that it would be appropriate to appoint a committee for Frank Sr. Given the obvious animosity between Paul and Frank Jr., the PGT confirmed that it would be willing to act as the committee for Frank Sr. if ordered to do so.

[69] I have the power to appoint a committee over the property and/or personal care of an individual pursuant to Part 9 of *The Mental Health Act*, C.C.S.M. c. M110 (the "*MH Act*"). Under s. 71(1) of the *MH Act*, the Court may make such an order upon the application of any person resident in the province.

[70] Paul's application does not include the specific request for a committee to be named, but paragraph 1(t) of the notice of application does call upon the Court to make such further and other order(s) that may be considered just and appropriate in the circumstances. The PGT has suggested that this wording is sufficiently broad to trigger my power to appoint a committee under s. 71(1) of the *MH Act*.

[71] This type of clause is often referred to as a "basket clause" and is commonly included in notices of motion or notices of application. The Supreme Court of Canada commented on the use of basket clauses in the decision of *Native Women's Assn. of Canada v. Canada*, 1994 CanLII 27 (SCC), [1994] 3 S.C.R. 627, and found that a court could rely upon a basket clause to grant relief that is ancillary or necessarily incidental to the relief requested. However, in interpreting a basket clause, courts must use caution to ensure that there is no breach of procedural fairness. Parties are entitled to know the

case that they must meet in advance of the hearing. A decision to grant alternate relief not specifically claimed may catch parties by surprise and deprive them of a meaningful chance to make submissions. (See ***Premium Host Inc. v. Paramount Franchise Group et al.***, 2021 ONSC 1832.)

Decision with respect to Issue 3

[72] In this matter, I am not persuaded that the appointment of a committee would be ancillary or necessarily incidental to the relief claimed. The relief claimed in this application was the removal of an attorney and the appointment of a replacement under the ***POA Act***. The procedure and requirements governing the court appointment of a committee are contained in the ***MH Act***, a separate piece of legislation that was not referenced at all in the materials filed. While the parties were able to give short submissions on the issue in reply to the PGT, I am concerned that a court order appointing the PGT as committee would deprive both Paul and Frank Jr. of an opportunity to consider this issue and make a meaningful response.

[73] However, I note that during her submission counsel for the PGT outlined the process for the appointment of the PGT as committee without the requirement of a Court order. As both parties indicated that they would accept the PGT acting as POA (albeit as relief in the alternative), they may wish to consult with the PGT about that process and how it could assume responsibility to act as the committee for Frank Sr. I would encourage the parties to investigate this option prior to commencing further Court proceedings.

COSTS

[74] The parties may arrange to speak to costs in this matter if they cannot agree, provided they file briefs in advance.

Woolley J.