

("Jayelle"). All of the siblings are residents of Manitoba, save for Jayelle. Dallas is not a party to these proceedings. However, he has filed an affidavit in support of Heather.

[3] Dustin's wife, Kathleen Ardri Wiebe ("Kathleen") is also not a party to these proceedings. However, she has filed an affidavit in support of Travis and Dustin.

[4] The materials filed by the parties depict not merely a legal dispute, but a significant breakdown in family relationships. It is against this deeply unfortunate backdrop that I must address the legal issues raised in these proceedings.

BRIEF PROCEDURAL HISTORY

[5] Heather was appointed committee for John, by order of the Court of King's Bench dated December 7, 2020 ("Committee Order"), in File No. CI 20-01-28997 ("File No. 289"). The Committee Order was based on medical assessments finding that John was incapable of managing his property and personal care. All family members were supportive of Heather's appointment at the time.

[6] On or about July 16, 2021, a Notice of Motion was filed by Heather in File No. 289 seeking, *inter alia*, her removal as committee and the appointment of Dallas in her stead. This motion did not proceed, and a Notice of Abandonment was filed on July 7, 2022. On or about July 4, 2022, Heather filed a second Notice of Motion in File No. 289, seeking Dallas's appointment as co-committee, jointly with her. This motion also did not proceed, and a Notice of Abandonment was filed on December 20, 2022. On or about March 3, 2025, Heather filed a Notice of Motion, to bring in and to pass accounts. That motion was adjourned *sine die*, purportedly on account of the within proceedings.

RELIEF SOUGHT IN THESE PROCEEDINGS

[7] Travis and Dustin seek various relief under ***The Mental Health Act***, C.C.S.M. c. M110 (the "***Act***"), namely:

- a) An order under s. 101(1)(a) of the ***Act*** terminating Heather's appointment as committee for John;
- b) An order under s. 101(1)(b) of the ***Act*** appointing two or more of Travis, Dustin and/or Dallas to replace Heather as co-committees;
- c) An order under ss. 81(1) and 92 of the ***Act*** granting further powers to the new co-committees, namely:
 - i. The power to sell John's real property;
 - ii. The power to carry on John's trade or business;
 - iii. The power to exercise all shareholder rights and obligations of John, including the removal of Heather as an officer and director of D.P. Wiebe & Sons Ltd. ("D.P. Wiebe"), and the appointment of an alternate; and,
 - iv. The power to commence divorce proceedings on John's behalf.

[8] Heather resists the application. However, she submits that the only practical and economically feasible change, if any, would be to appoint Dallas as co-committee jointly with her.

II. DECISION

[9] As will be discussed in more detail below, I have determined as follows:

- Heather's appointment as committee of both property and personal care for John is terminated.
- Dustin and Dallas are appointed as co-committees of John's property and personal care. They are also granted further powers as set out below.
- The request for authority to commence divorce proceedings on John's behalf is denied, without prejudice to a future application.

III. FACTS

[10] The evidentiary record consists of extensive affidavit materials filed by all parties, namely:

- a) Travis's Affidavit, affirmed, February 12, 2025;
- b) Heather's Affidavit, affirmed, March 28, 2025;
- c) Dallas's Affidavit, affirmed, March 28, 2025;
- d) Kathleen's Affidavit, affirmed, April 9, 2025;
- e) Travis's Affidavit, affirmed, April 15, 2025;
- f) Dustin's Affidavit, affirmed, April 16, 2025; and,
- g) Heather's Affidavit, affirmed, April 25, 2025.

[11] These affidavits are supplemented by transcripts of the cross-examinations of Travis, Dustin and Kathleen, all dated April 30, 2025. In addition, the affidavits filed in these proceedings also contain, *inter alia*, all the affidavits previously relied upon in File No. 289.

JOHN'S INCAPACITY

[12] Notwithstanding the considerable disagreement between the parties, there is one issue on which all are aligned, that John is incapable of making decisions regarding his property and personal care. The parties agree on very little else.

[13] Concerns regarding John's capacity first emerged around 2018. In 2020, John was hospitalized and medically assessed as incapable of managing both his property and personal care. Following his hospitalization, John entered long-term care. Initially, he entered the Vita Personal Care Home in Vita, Manitoba. In or around 2022, John was transferred to the Heritage Life Personal Care Home in Niverville, Manitoba, where he presently resides.

HISTORY OF THE FARMING OPERATIONS AND FAMILY INVOLVEMENT

[14] The Wiebe family has long been involved in farming. John's father founded D.P. Wiebe as a chicken-hauling business. John and Heather expanded the operations into a multi-faceted farm and transportation enterprise (including hogs, sheep, chickens, significant cultivated acreage, including special seed crops, and a trucking/shipping operation). The operations later grew to include Apex Farms (1986) Ltd. ("Apex"), whose shares are owned by 2749867 Manitoba Ltd., a holding company wholly owned by Heather.

[15] D.P. Wiebe holds real property, including farmland and livestock facilities, while Apex owns equipment and manages egg-laying and transport operations. Although legally distinct, D.P. Wiebe and Apex are closely integrated operationally and financially,

sharing equipment and engaging in cross-guaranteed bank loans. The combined operations are said to be worth several millions of dollars.

[16] Heather and John have been married for over 50 years. All four children, and some grandchildren, have participated in the operations at various times. There is disagreement concerning the extent of the involvement and the nature of contributions made by each. However, the evidence suggests that amongst the children, Dustin and Dallas have been the most consistently and centrally involved with the operations.

THE PARTIES' ALLEGATIONS

[17] Travis and Dustin advance various and wide-ranging allegations against Heather and Dallas. Heather and Dallas deny those allegations and advance their own series of allegations against Travis and Dustin. What follows is not an exhaustive recitation of all the evidence, but rather a summary of the key facts necessary to determine the issues that are before the court.

CONCERNS RAISED BY TRAVIS AND DUSTIN

[18] Travis and Dustin contend that Heather has breached several duties owed to John as his committee and that she has conducted herself in a manner that has compromised her ability to fulfill those duties going forward. Travis and Dustin also contend that Dallas has influenced or instigated her conduct. I do not intend to address each of these allegations individually and will instead summarize them as follows:

- a) Heather has failed to bring in and pass accounts as directed by the Committee Order;

- b) During the initial application for committee membership, Heather significantly undervalued John's assets and did not disclose the existence of Apex or its interrelationship with D.P. Wiebe;
- c) Without the required authorization from the court, Heather has carried on John's business for approximately five years and has exercised his shareholder rights, by removing John as a director of D.P. Wiebe and appointed herself in his place;
- d) Heather and Dallas have restricted or withheld access to financial information related to the operations. In addition, it is alleged that Dallas has misused corporate funds;
- e) Heather and Dallas have acted in a heavy-handed manner towards Travis and Dustin and have sought out retribution against them for raising their concerns; and,
- f) Heather misrepresented the nature of her relationship with John, such that Travis and Dustin would not have consented to her appointment as committee had they known the truth. In any event, since her appointment, Heather has not been present regarding John's care and she has moved on and entered another intimate relationship.

[19] Heather and Dallas dispute these allegations. What follows is a more detailed review of the parties' respective positions as reflected in the evidence that has been filed.

FAILURE TO PASS ACCOUNTS AND UNDERVALUATION OF ASSETS

[20] Pursuant to the Committee Order, Heather was required to bring in and pass accounts on or before November 17, 2021, and every two years thereafter. There is no dispute that she has not done so, and she acknowledges as much. Travis and Dustin contend that in her affidavit dated July 12, 2021, (in File No. 289) Heather significantly undervalued John's assets and net worth. Heather denies any manipulation of the financial statements and maintains that her representations were based on the information available to her at the time, made in reliance on professional advice, and ultimately in what she believed to be the best interests of John and the operations.

CORPORATE GOVERNANCE CHANGES

[21] Travis and Dustin contend that since her appointment as committee, Heather has made a series of concerning corporate changes, all of which she was not entitled to do pursuant to the Committee Order:

- a) **Apex:** On October 19, 2020, Heather removed John as a director/officer and assumed the title of President. On March 18, 2021, Dallas was added as a director/officer and given the title of Secretary/Vice-President. Dustin was also added as a director/officer and given the title of Vice-President on March 18, 2021, but he was removed by Heather on June 16, 2022, and his employment with the operations was terminated in or around June 2023.
- b) **D.P. Wiebe:** On September 21, 2020, Heather was added as an officer and given the title of Secretary. On August 18, 2023, John was removed as director/officer and Heather was appointed director and given the title Secretary/President.

[22] Heather states that following John's incapacity, corporate and operational changes were necessary. In that connection, she removed John as director/officer and appointed herself as sole director of D.P. Wiebe to comply with the obligations under ***The Corporations Act***, C.C.S.M. c. C225.

[23] Heather further contends that she has worked closely with Dallas, who she describes as having effectively assumed a chief financial officer role. Heather and Dallas assert that in or around 2019–2020, the operations were in dire financial straits, having suffered losses of around \$1.2 million. They credit Heather's oversight and Dallas's contributions for stabilizing and returning the operations to profitability. Heather highlights steps that she has taken, such as liquidating personal assets, including selling two Florida condominiums, to inject funds into the operations during this period. It is further contended that Dallas has devoted immense time to the operations, working six to seven days per week with limited vacation. While Travis and Dustin acknowledge the period of financial strain, there is a fundamental disagreement as to its causes and the drivers of the financial turnaround of the operations.

[24] As to the causes of this financial strain, Heather and Dallas point to John's condition and his irrational financial decisions prior to his hospitalization. Travis and Dustin cite broader operational challenges, investment decisions, weather, and Covid-19 pandemic-related pressures. Travis and Dustin say that the stabilization and turnaround of the operations are the result of a concerted effort by all family members and not solely on account of Heather and Dallas. One of many examples Travis and Dallas provide is the purchase and subsequent sale of Ferme Clearspring Farm ("Clearspring"). Clearspring

was purchased by all the siblings in 2005, with each holding a 25% interest. It was sold in 2021, yielding a profit of \$500,000, which was then loaned to D.P. Wiebe and/or Apex. Travis and Dustin also contend they, along with other family members, took pay cuts and undertook cost-containment measures to return the operations to profitability. In that connection, they point to D.P. Wiebe's 2020 financial statements showing bank indebtedness of approximately \$1.96 million, reduced to about \$767,000 in 2021. Travis and Dustin attribute this to the cash injections and the cost-containment measures made by all members of the family.

RESTRICTING OR WITHHOLDING ACCESS TO FINANCIAL RECORDS

[25] Travis and Dustin state that repeated requests for access to the financial records of D.P. Wiebe and Apex have been denied by Heather and Dallas. They further state that in December 2024, Heather and Dallas advised them that they could review financial statements only upon signing a non-disclosure agreement, which they declined. Heather contends that requiring a non-disclosure agreement is a normal business practice in a competitive farm business.

[26] Travis and Dustin further state that all the siblings are entitled to repayment of the amounts loaned from Clearspring and they have requested repayment since 2023. Starting in May 2024, Dallas made monthly payments of \$3,000 to each sibling. These payments ceased in November 2024. They contend that Dallas has since refused to provide information about outstanding amounts. Dallas disputes this and states that relevant financial information was provided in September 2024.

MISUSE OF CORPORATE FUNDS BY DALLAS

[27] Travis and Dustin contend that Dallas has used corporate funds for personal expenses, including expenditures associated with construction of his new home and other non-business related items. They point to invoices which total approximately \$167,000 in expenses related to the construction of Dallas's home and charged to D.P. Wiebe. Heather and Dallas deny that there has been any misappropriation of funds. They assert that the expenditures relate to infrastructure for special soybean seed varieties and other legitimate business needs.

INTERFERENCE WITH DUSTIN'S EMPLOYMENT OPPORTUNITIES

[28] Dustin states that Heather terminated his employment, without any severance, in response to his raising concerns. He further contends that after his termination, Dallas took steps to limit his employment opportunities by contacting potential employers and clients, discouraging them from hiring or doing business with him. This is denied by Heather and Dallas, who state that Dustin was terminated pursuant to a last chance agreement which was put in place due to his alcohol abuse.

CONFLICTS OF INTEREST INVOLVING HEATHER

[29] Travis and Dustin contend that since approximately March 2022, Heather has been in an intimate relationship with Steve Castleman ("Steve"), a non-Canadian resident who lives in Florida. They further allege that since then, Heather spends approximately six months a year in Florida with Steve and a few weeks a year in Manitoba staying at John's cottage at Granite Lake.

[30] Moreover, Travis contends that Heather asked him to make an engagement ring for Steve and stated that she plans to marry him. Dustin and Travis say this relationship

undermines Heather's objectivity and ability to discharge her obligations as committee for John and may expose John's assets if the relationship with Steve is deemed common-law. Heather denies that her relationship with Steve has impaired her objectivity or created a conflict of interest regarding the discharge of her duties as committee.

[31] Travis and Dustin also state that Heather's relationship with John is not and was not, as warm and loving as suggested. They allege that since John has been in care, Heather rarely visits him and that she is often in Florida. Travis and Dustin also rely on instances in which they say Heather treated John poorly or spoke negatively about him and their marriage. In that regard, Dustin contends that during a telephone call in November 2020, he overheard Heather (then in Florida) tell John that he was "dead to her" and urged him to harm himself (Dustin's Affidavit, April 16, 2025, paras. 41-42). Heather does not meaningfully address this allegation in her evidence.

[32] Heather does, however, respond to the evidence of Kathleen, whose affidavit includes a surreptitiously recorded conversation in which Heather is alleged to have said she "hates" John and that they had agreed to divorce in April 2020. Heather states that she does not recall the conversation, characterizes her comments as venting, and asserts that Kathleen directed the discussion. She maintains that she has always loved John and that any expressions of "hate" reflected frustration with the circumstances rather than with John himself.

[33] In sum, Travis and Dustin contend that Heather has effectively abandoned her duties relating to John's emotional and physical well-being, leaving others to provide

support. They submit that while John is well looked after, his financial resources could be used to enhance his comfort and enjoyment of life beyond his current arrangements.

[34] Heather states that during John's two-and-a-half-year stay at Vita Personal Care Home and continuing after his transfer to Heritage Life Personal Care Home, she and Dallas regularly attended, while Dustin and Travis's visits were rare. This is disputed by Travis and Dustin, who state that all the brothers have been involved in managing John's emotional and physical well-being with the assistance of John's twin sister.

[35] Finally, Travis and Dustin also rely on the fact that John and Heather knowingly destroyed their Powers of Attorney on or about January 19, 2014. From their perspective, this demonstrates John's intention that he did not want Heather as his Power of Attorney and therefore would not want her as his committee. Travis and Dustin state that if they had known about the destruction of the Powers of Attorney and what they describe as John and Heather's troubled relationship, they would not have agreed to her appointment. Heather submits that she and John destroyed their Powers of Attorney on the advice of a friend and reiterates that she loves John and remains committed to providing him with the best quality of life possible.

ALLEGATIONS REGARDING TRAVIS AND DUSTIN

[36] Heather and Dallas contend that Travis's involvement and interest in the operations was limited and that he ceased working after 2006. Despite this, they say Travis continued to receive financial support from Heather and John. They also point to an alleged debt of approximately \$128,000 owed by Travis to D.P. Wiebe for legal services

related to his divorce and note that he has contemplated personal bankruptcy, which they say would preclude him from replacing Heather as committee.

[37] Travis acknowledges leaving full-time work with the operations in 2006, but says this was due to cash-flow constraints, not disinterest. He further states that despite leaving full-time employment, he remained involved until 2017. Regarding the legal fees, he does not dispute this allegation, however he states that in or around 2019, while he was going through his divorce, John retained a lawyer to assist due to his concern that Travis's then spouse might claim an interest in D.P. Wiebe and/or Apex. While Travis acknowledges that he has mentioned petitioning into bankruptcy in the past, he maintains that he has neither done nor intends to do so.

[38] Heather acknowledges that Dustin (along with Dallas) was originally being groomed by John to run the operations, but this is no longer the case. Heather and Dallas contend that Dustin has struggled with alcohol and/or substance abuse since at least 2015 and that his employment was terminated in or around June 2023, for breaching a last-chance agreement dated March 1, 2022. They also raise allegations related to mental health issues, prior performance concerns, and improper use of corporate resources (e.g., obtaining personal vehicles).

[39] Dustin disputes the poor performance allegations. He further states that the last-chance agreement was signed under duress and that his employment was terminated in response to his raising concerns about governance, improper expenditures, and Heather's relationship with Steve. While acknowledging prior alcohol-related struggles, Dustin says this was related to an undiagnosed hyperthyroidism causing insomnia,

resulting in reliance on alcohol to assist him with sleeping. Dustin states that he has addressed his dependency issues and has received treatment. In addition, while Dustin acknowledges that in January 2024, he sought mental-health assistance, and states that he has since adhered to a treatment plan.

[40] In addition, Heather and Dallas also contend that Dustin cannot be appointed committee because he has started his own chicken-hauling business which competes with the operations. Dustin responds that after his termination, Dallas actively took steps to restrict his ability to obtain alternative employment by contacting potential employers and providing them with inaccurate information about his mental health and past performance issues. Dustin states this left him no choice but to provide for his family by starting an independent trucking/chicken-hauling business.

[41] In response, Heather and Dallas contend that post-termination, Dustin was offered an advisory role with the operations. While Dustin does not dispute this, he states that the position and the proposed salary were not acceptable. In any event, the offer was made well after he had reestablished himself.

[42] Finally, while the Public Guardian and Trustee of Manitoba ("PGT") is not a party to these proceedings, a representative appeared at the hearing. The PGT's representative advised that it is not seeking to be appointed as committee for John and that his personal care is not being questioned. As to who would be an appropriate committee for John, the PGT representative indicated a preference, where possible, for a willing and able family member to be appointed.

IV. THE LAW

LEGISLATION

[43] The relevant provisions of the **Act** that apply to this matter can be found at Schedule "A".

APPLICABLE CASELAW

[44] In the decision of ***Kennedy et al. v. McKenzie***, 2020 MBQB 139 (CanLII), at paras. 18-20, Turner J. (as she then was), provides a good overview of the relevant considerations when faced with such an application:

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

Criteria for making other personal care decisions

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

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

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

- (a) whether the appointment reflects the patient's wishes, obviously when he or she was capable of forming such a wish;
- (b) whether immediate family members are in agreement with the appointment;
- (c) whether there is any conflict between family members or between the family and the patient, and whether the proposed committee would be likely to consult with immediate family members about the appropriate care of the patient;

- (d) the level of previous involvement of the proposed committee with the patient, usually family members are preferred;
- (e) the level of understanding of the proposed committee with the patient's current situation, and will that person be able to cope with future changes of the patient;
- (f) whether the proposed committee will provide love and support to the patient;
- (g) whether the proposed committee is the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit;
- (h) whether a proposed committee has breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to properly handle the patient's affairs;
- (i) who is the best advocate for the patient's medical needs;
- (j) whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry it out; and
- (k) whether a division of responsibilities such as between the patient's estate and the patient's person to different persons would serve the best interests of the patient, or would such a division be less optimal for the patient.

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

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

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

(Also see ***McClelland v. Manitoba (Public Trustee)***, 2003 MBQB 4)

[45] In addition, the following passage from New Brunswick Court of King's Bench decision of ***Buckley v. Buckley***, 2009 NBQB 200 (CanLII), at para. 25, provides the following regarding appointing more than one committee:

... A court may appoint more than one person to act as property guardian if it considers this to be in the best interests of the mentally incompetent person. Although there may be a certain degree of inconvenience and additional expense involved in having more than one person managing the

estate, the appointment of co-property guardians can often have considerable advantages. For example, it is quite common for a court to appoint a near relative and a trust company as co-property guardians; the latter provides business and management expertise, while the former has personal knowledge of the incompetent person. Moreover; as we have already seen, the appointment of co-property guardians can often provide an effective safeguard against potential conflict of interests on the part of one of the property guardians.

V. ANALYSIS, DISCUSSION AND DECISION

[46] This application seeks an order terminating Heather's committee under the existing Committee Order and appointing a replacement with expanded authority, including, *inter alia*, the power to commence divorce proceedings on John's behalf.

[47] The parties agree, and the evidence establishes, that John is not competent in making his own decisions regarding his property and personal care. In that regard, I note that neither Travis nor Dustin contend that John's care is inadequate.

[48] Rather, they submit that given the resources available to him, there is an ability to provide him with additional support and privileges to further enhance his quality of life. The central thrust of their concerns relates to Heather's ability to properly discharge her obligations as committee for John, particularly with respect to the management of his property. Regardless, the paramount consideration remains the best interests of John.

SHOULD HEATHER'S COMMITTEESHIP BE TERMINATED?

[49] I find that it is not in John's best interests for Heather to continue as his committee and her appointment should therefore be terminated. In arriving at my conclusion, I have considered the relevant provisions of the **Act**, and the applicable authorities, including the non-exhaustive factors set out in ***Stewart (Re)***. While I do not undertake

a factor-by factor analysis of those considerations, the reasons that follow set out the basis for my decision.

HEATHERS ACTIONS AS COMMITTEE OF PROPERTY

[50] There is significant discord among immediate family members concerning Heather's continued role. The fact that two of John and Heather's children brought this application underscores this fact. Also, while Dallas now supports Heather continuing as committee, he previously sought to replace her. Overall, I find that prior to Heather's appointment the family worked together toward common goals. That is no longer the case.

[51] As well, Heather has failed to bring in and pass accounts as required by the Committee Order, and she has acknowledged her failure to do so for more than five years. Heather states that she can now present an accounting to show that John's financial affairs are far better than in 2020. However, the duty to bring in and pass accounts is ongoing and mandatory, and a delayed reassurance does not cure non-compliance. That being said, a committee's failure to bring in and pass accounts may on occasion be overlooked if the committee has diligently maintained records and can properly account for the property at issue (see ***Smith v. Smith***, 2007 MBQB 126, at para. 30). That is not the case here.

[52] The initial inventory filed on or about June 30, 2021, significantly undervalued John's assets. Heather has attempted to explain why she did not take the necessary steps to bring in and pass accounts as directed by the Committee Order, namely John's health concerns and the unrelenting pressures associated with keeping the operations

solvent. However, this does not reconcile with the fact that during this time, Heather spent a great deal of time out of the country in Florida and still found time to file two motions in File No. 289. Overall, I find that she has not provided a satisfactory explanation why she failed to bring in and pass accounts during this time.

[53] Heather relies on a balance sheet prepared by MNP LLP dated December 6, 2024, to support her position that she has taken care of John's property while acting as committee. However, she does not satisfactorily explain the absence of Apex and its interrelationship with D.P. Wiebe from the initial inventory, nor does she provide evidence of sufficient record-keeping offsetting the failure to pass accounts. On the record before me, the threshold of diligent record-keeping and proper accounting has not been met.

[54] While there appears to have been a financial turnaround in the operations after 2019-2020, the causes of that turnaround are disputed. Heather and Dallas attribute it to their efforts. Conversely, Travis and Dustin attribute it to broader family efforts and changing conditions coming out of the Covid-19 pandemic. Absent a proper passing of accounts and a complete financial picture, it is not possible to resolve these disputes. This reinforces the need for a change in committee and for the accounts to be brought in and passed.

[55] Finally, Heather undertook decisions affecting John's business interests, such as removing John as a director of D.P. Wiebe, without first obtaining court authorization. While she says these steps were necessary to comply with corporate law and to stabilize the operations, proceeding without proper authority is inconsistent with her fiduciary

obligations as committee. Again, I find that Heather offers no satisfactory justification for her failure to obtain that authority.

HEATHER'S INVOLVEMENT WITH JOHN'S CARE

[56] Heather contends that she and Dallas have attended to the vast majority of John's care since his hospitalization. However, in support of this assertion, she provides limited evidence of correspondence with representatives of Southern Health. I find that if her level of involvement were as significant as she has suggested, there would be more evidence in that regard.

[57] Travis and Dustin submit that Heather is often away, primarily in Florida with Steve, and that she is not present for John. Heather disputes this and says that it is Travis and Dustin who do not spend much time with John. Heather's affidavit (March 28, 2025, at para. 20) puts these issues into sharp focus:

I do not see it as relevant to my duties as committee that I have other friendships or that I may travel when the opportunity arises during the cold winter months. When I do travel, I fly back virtually every month, and will produce the travel records to prove same if necessary at the contested hearing of this application.

[58] As noted above, while Heather provided limited evidence regarding her involvement with John's care, she has provided none of the referenced travel records in support of her assertion that she returns virtually every month. Conversely, Travis's affidavit (April 15, 2025, at paras. 26-27), includes text messages which run contrary to Heather's assertion that she was present when John was transferred from Vita Hospital to the Vita Personal Care Home.

[59] On balance, the evidentiary record does not substantiate Heather's claim of near-constant presence and involvement with John's care. I also find it difficult to

reconcile Heather's apparent efforts to downplay the nature of her relationship with Steve in the face of the evidentiary record. While I accept that Heather may continue to hold some degree of affection for John, the evidence demonstrates that she has moved on from that relationship.

[60] Finally, I will also address Travis and Dustin's allegation that Heather's attitude toward John has essentially become one of contempt. First, I find that Kathleen's Affidavit which details and attaches a surreptitiously recorded conversation to be troubling. There was no apparent justification for recording a private conversation concerning sensitive family matters and I therefore afford no weight to that evidence. However, I find that Heather has established a new relationship and a life apart from John. There is no reason to regard this fact as being blameworthy by any measure. Rather, I find that these circumstances have, to some extent, impeded her ability to fully and properly discharge her duties as John's committee.

REPLACEMENT CO-COMMITTEES AND SCOPE OF POWERS

[61] Having determined that Heather's committee ship should be terminated, I will now turn to who should replace her and whether the Committee Order should be expanded. Travis and Dustin submit that Heather should be removed and replaced with two or more of Travis, Dustin, and/or Dallas. Heather's position is that if a change is to be made, the only practical and economically feasible option is to appoint Dallas as co-committee jointly with her.

[62] I find that appointing Dustin and Dallas as co-committees of John's property and personal care is appropriate in the circumstances. Again, in coming to my conclusion, I

have considered the relevant provisions of the *Act*, and the applicable authorities, including the non-exhaustive factors set out in *Stewart (Re)*. The reasons that follow set out the basis for my decision.

[63] Our courts have recognized that all things being equal, a family member is generally preferred over an outsider as a committee (see *Smith*, at para. 23). In that regard, given the Wiebe family's long history of running the operations, I find that appointing John's sons is consistent with his wishes. Dustin and Dallas have had the most significant and consistent involvement in the operations. Both have demonstrated an understanding of the needs and requirements of the operations, and both have expressed willingness to act as a committee. This is not a judgment on Travis's suitability. Rather, considering the significant family discord, Heather and Dallas on one hand, and Travis and Dustin on the other, the appointment of Dustin and Dallas as co-committees provides a measured balance that best serves John's interests.

[64] I am equally satisfied that Dustin and Dallas have had sufficient involvement with John's care and a sufficient understanding of his personal and property affairs to cope with future changes. In addition, the evidence before me demonstrates that Dustin (and Travis) have consulted independent expertise (Mr. Gordon Earl), proposed a framework for family collaboration, involved John's sister in his care, and identified practical measures to enhance John's quality of life. These factors, viewed cumulatively, satisfy me that there is an appropriate and workable plan for John's care and the management of his affairs.

[65] I pause to address the allegations advanced by Heather and Dallas concerning Dustin's suitability to act as a committee. With respect to his past substance abuse and mental health challenges, I find that Dustin has been forthright regarding these challenges, and I accept that he has taken meaningful steps to address them.

[66] As to the alleged conflict of interest, Dustin explains that he established his own business following the termination of his employment, which he attributes to interference with his ability to secure alternative employment. It is not in dispute that Dustin's employment with the operations was terminated. Also, I find that Heather and Dallas have not made any meaningful effort to refute the allegation of interference. Overall, I accept Dustin's evidence as it relates to this issue.

[67] Conversely, I note that there remain concerns regarding Dallas's alleged misuse of corporate funds. These will need to be addressed moving forward.

[68] Also, there is the status and treatment of the sibling loans advanced through Clearspring. In sum, based on the materials filed, it appears that each of the siblings may, at least in theory, stand as a creditor of D.P. Wiebe and/or Apex.

[69] Taken together, these considerations underscore that no outcome is without difficulty. That is, all of the foregoing are circumstances that could give rise to potential conflicts requiring careful management. However, the continuation of the *status quo* is simply no longer tenable. Weighing these competing concerns, I remain satisfied that the appointment of Dustin and Dallas as co-committees best serves John's interests.

[70] Finally, Travis and Dustin request that the powers granted to the new co-committees be expanded to include the ability to commence divorce proceedings on

John's behalf. I decline to grant that power at this time. The family has endured significant discord and conflict. I find that granting that power now risks exacerbating this situation. If, in the future, the co-committees determine that such proceedings are in John's best interests, they may return to the court to seek that relief with a supporting record.

VI. CONCLUSION

[71] For all the reasons outlined above, I order as follows:

- a) Heather is removed as committee for John;
- b) Dustin and Dallas are appointed as replacement co-committees of both the property and personal care for John, without security;
- c) Dustin and Dallas shall be granted full power to administer and manage both the property and personal care for John (for clarity this includes the power to sell John's real property, in particular the cottage at Granite Lake);
- d) Dustin and Dallas are granted the additional powers to:
 - i. Carry on the business of John; and,
 - ii. Exercise all the shareholder rights and obligations of John as the sole shareholder of D.P. Wiebe for the purpose of carrying on the business of D.P. Wiebe, including the removal of Heather as an officer/director of D.P. Wiebe and appointing an alternate officer/director in her place;
- e) Dustin and Dallas shall bring in and pass accounts for the period of Heather's original appointment pursuant to the Committee Order to the date

of their appointment as co-committees and shall thereafter make a like accounting no later than 60 days following every second anniversary date following their appointment as co-committees.

[72] If the parties are unable to agree on costs, they may make submissions.

_____ J.

Schedule "A"

The Mental Health Act C.C.S.M. c. M110

<p>Application to the court for committee 71(1) Any person resident in the province may apply to the Court for an Order appointing, in respect of another person,</p> <p>(a) a committee of property; or,</p> <p>(b) a committee of both property and personal care.</p>	<p>Requête au tribunal 71(1) Tout résident de la province peut présenter une requête au tribunal afin que soit rendue une ordonnance portant nomination, pour une autre personne:</p> <p>a) d'un curateur aux biens;</p> <p>b) d'un curateur à l'égard des biens et des soins personnels.</p>
<p>Criteria for committee of property 71(2) An Application for an Order appointing a Committee of Property may be made for a person who,</p> <p>(a) because of mental incapacity, is incapable of managing his or her property; and,</p> <p>(b) needs decisions to be made on his or her behalf about that property.</p>	<p>Critères applicables au curateur aux biens 71(2) La requête en vue de l'obtention d'une ordonnance portant nomination d'un curateur aux biens peut être présentée pour une personne qui:</p> <p>a) en raison de son incapacité mentale, est incapable de gérer ses biens;</p> <p>b) a besoin que des décisions soient prises en son nom au sujet des biens en question.</p>
<p>If another person is already committee 71(3) An Application for an Order appointing a committee of both property and personal care may be made for a person who meets the criteria in clauses 2(a) and (b) and, in addition,</p> <p>(a) is incapable of personal care; and,</p> <p>(b) needs decisions to be made on his or her behalf concerning personal care.</p>	<p>Critères applicables au curateur à l'égard des biens et des soins personnels 71(3) La requête en vue de l'obtention d'une ordonnance portant nomination d'un curateur à l'égard des biens et des soins personnels peut être présentée pour une personne qui remplit les critères énoncés aux alinéas (2)a) et b) et qui:</p> <p>a) est incapable de s'occuper de ses soins personnels;</p> <p>b) a besoin que des décisions soient prises en son nom au sujet de ses soins personnels.</p>

<p>If another person is already committee 71(4) An Application may be made even though the Public Guardian and Trustee or another person is already Committee.</p>	<p>Autre curateur 71(4) Il est permis de présenter la requête même si le tuteur et curateur public ou une autre personne est déjà curateur.</p>
<p>Two of more committees 76(1) The Court may appoint two or more persons jointly as Committee of Property, or as Committee of both properties and personal care.</p>	<p>Nombre de curateurs 76(1) Le tribunal peut nommer au moins deux personnes conjointement afin qu'elles agissent à titre de curateurs aux biens ou à titre de curateurs à l'égard des biens et des soins personnels.</p>
<p>Powers of committee specifically conferred by court 81(1) The court may, on application by a committee of property, authorize the committee to do any or all of the following in respect of the property of an incapable person under his or her committeeeship:</p> <ul style="list-style-type: none"> (a) purchase, sell, dispose of, encumber or transfer personal property having a fair market value greater than the amount referred to in clause 80(1)(b); (b) purchase, sell, dispose of except by way of lease, mortgage, encumber, or transfer real property; (c) grant or accept a lease of real property for more than three years; (d) exchange or partition property or give or receive money for equality of exchange or partition; (e) surrender a lease, with or without accepting a new lease, or accept a surrender of a lease; (f) carry on the incapable person's trade or business; 	<p>Pouvoirs conférés par le tribunal 81(1) Le tribunal peut, sur requête du curateur aux biens, autoriser celui-ci à accomplir l'ensemble ou certains des actes suivants à l'égard des biens de l'incapable assujettis à sa curatelle:</p> <ul style="list-style-type: none"> a) acheter, vendre, aliéner, grever ou transférer des biens personnels dont la juste valeur marchande est supérieure à la somme mentionnée à l'alinéa 80(1)b); b) acheter, vendre, aliéner, sauf par bail, hypothéquer, grever ou transférer des biens réels; c) accorder ou accepter des baux à l'égard de biens réels pour une période de plus de trois ans; d) échanger ou partager des biens et donner ou recevoir une soulte; e) résigner un bail, même en n'acceptant pas un nouveau bail, ou accepter une résignation de bail; f) exploiter le commerce ou l'entreprise de l'incapable;

<p>(g) exercise a power or give a consent required for the exercise of a power vested in the incapable person;</p> <p>(h) exercise a right or obligation to elect belonging to or imposed on the incapable person;</p> <p>(i) compromise or settle a debt owing by or to the incapable person;</p> <p>(j) make expenditures from the incapable person's property for gifts, donations or loans;</p> <p>(k) with or without consideration, surrender, transfer or otherwise dispose of onerous real property of the incapable person.</p> <p>Restrictions and conditions 81(2) The powers under subsection (1) may be granted subject to any restrictions and conditions that the court considers appropriate.</p>	<p>g) exercer un pouvoir ou donner un consentement nécessaire à l'exercice d'un pouvoir conféré à l'incapable;</p> <p>h) exercer tout choix que peut ou doit exercer l'incapable;</p> <p>i) faire une transaction à l'égard de sommes dues à l'incapable ou que celui-ci doit ou régler ces sommes;</p> <p>j) engager des dépenses sur les biens de l'incapable en vue de dons, de donations ou de prêts;</p> <p>k) moyennant contrepartie ou non, rétrocéder ou transférer des biens réels de valeur de l'incapable ou en disposer autrement.</p> <p>Restrictions et conditions 81(2) Les pouvoirs prévus au paragraphe (1) peuvent être assujettis aux restrictions et conditions que le tribunal estime indiquées.</p>
<p>Filing of inventory on appointment 85(1) Unless the court directs otherwise, a committee of property shall,</p> <p>(a) within six months after being appointed, file with the court an inventory and account of the incapable person's property, including debts and liabilities, for which he or she is appointed committee;</p> <p>(b) immediately file a revised inventory and account if any property, including debts and liabilities, is discovered after the inventory and account is filed under clause (a); and</p> <p>(c) bring in and pass his or her accounts when required to do so by the court.</p>	<p>Dépôt d'un inventaire 85(1) Sauf ordonnance contraire du tribunal, le curateur aux biens:</p> <p>a) dépose auprès du tribunal, dans les six mois suivant sa nomination, un inventaire et un compte des biens de l'incapable, y compris les dettes, à l'égard desquels il a été nommé curateur;</p> <p>b) dépose immédiatement un inventaire et un compte révisés si des biens, y compris des dettes, sont découverts après le dépôt de l'inventaire et du compte que vise l'alinéa a);</p> <p>c) dépose et rend ses comptes lorsque le tribunal lui ordonne de le faire.</p>
<p>Limitation re custody and divorce 92 Committee of both property and personal care may not</p>	<p>Restriction concernant la garde et le divorce</p>

<p>(a) change arrangements in response of custody of or access to a child; or</p> <p>(b) commence divorce proceedings on behalf of the incapable persons;</p> <p>Unless the Court has specifically granted that power at the committee's request.</p>	<p>92 À moins que le tribunal ne lui ait accordé explicitement, à sa demande, le pouvoir de le faire, le curateur à l'égard des biens et des soins personnels ne peut:</p> <p>a) modifier des arrangements pris à l'égard de la garde d'un enfant ou à l'égard des droits d'accès se rapportant à un enfant;</p> <p>b) intenter une action en divorce au nom de l'incapable</p>
<p>Application for termination, replacement or variation</p> <p>101(1) Any person may apply to the court for one or more of the following:</p> <p>(a) termination of a committee's appointment;</p> <p>(b) appointment of a person to replace a committee whose appointment has been terminated or who has died;</p> <p>(c) variation of the committee's appointment.</p>	<p>Demande de révocation, de remplacement ou de modification</p> <p>101(1) Toute personne peut présenter une requête au tribunal en vue de l'obtention de l'une ou plusieurs des mesures suivantes:</p> <p>a) la révocation de la nomination d'un curateur;</p> <p>b) la nomination d'une personne afin qu'elle remplace un curateur dont la nomination a été révoquée ou qui est décédé;</p> <p>c) la modification de la nomination d'un curateur.</p>
<p>Decision to terminate</p> <p>102(1) On an application under clause 101(1)(a), the court</p> <p>(a) shall make an order terminating the committee's appointment if it is satisfied that any of the criteria for the appointment of a committee of property under subsection 75(1), or a committee of both property and personal care under subsection 75(2), as the case may be, and are no longer met; and,</p>	<p>Révocation</p> <p>102(1) Saisi de la requête que vise l'alinéa 101(1) a), le tribunal:</p> <p>a) révoque par ordonnance la nomination du curateur s'il est convaincu que l'un des critères de nomination prévus au paragraphe 75(1) ou 75(2), selon le cas, n'est plus rempli;</p> <p>b) peut révoquer par ordonnance la nomination du curateur s'il est convaincu que cette mesure serait dans l'intérêt</p>

<p>(b) may make an order terminating the committee's appointment if it is satisfied that terminating the appointment would be in the best interests of the incapable person and that the committee</p> <p>(i) is unable or unwilling or refuses to act or continue to act as committee,</p> <p>(ii) has failed to act in accordance with this Act or the terms and conditions of appointment,</p> <p>(iii) has acted in an improper manner or in a manner that has endangered or that may endanger the well-being or property of the incapable persons, or,</p> <p>(iv) is no longer a suitable person to act as committee.</p>	<p>véritable de l'incapable ou que le curateur:</p> <p>(i) n'est pas en mesure de remplir ses fonctions, n'est pas disposé à les remplir ou refuse de les remplir ou de continuer à le faire,</p> <p>(ii) a fait défaut de remplir ses fonctions en conformité avec la présente loi ou avec les conditions de sa nomination,</p> <p>(iii) a agi d'une façon irrégulière ou d'une façon qui a mis ou peut mettre en danger le bien-être ou les biens de l'incapable,</p> <p>(iv) n'est plus apte à remplir ses fonctions.</p>
<p>Court to be satisfied about alternative arrangements</p> <p>102(2) Before making an order under subsection (1), the court shall satisfy itself that, if necessary,</p> <p>(a) suitable arrangements have been made regarding the incapable person's property or personal care, as the case may be; or,</p> <p>(b) an application has been to appoint another committee.</p>	<p>Mesures de rechange</p> <p>102(2) Avant de rendre l'ordonnance prévue au paragraphe (1), le tribunal doit être convaincu qu'au besoin:</p> <p>a) des mesures appropriées ont été prises à l'égard des biens ou des soins personnels de l'incapable;</p> <p>b) une demande a été présentée en vue de la nomination d'un autre curateur.</p>