

# SUPREME COURT OF YUKON

Citation: *J.A.M. (re Guardianship)*,  
2024 YKSC 51

Date: 20241002  
S.C. No. 24-B0004  
Registry: Whitehorse

BETWEEN:

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT*, S.Y. 2003, C. 21 (the “Act”); specifically SCHEDULE A, *THE ADULT PROTECTION AND DECISION MAKING ACT*, PART 3, COURT APPOINTED GUARDIANS (Part “3”)

IN THE MATTER OF THE APPLICATION FOR GUARDIANSHIP OF  
[J.A.M.] also known as [A.M.]

Before Chief Justice S.M. Duncan

Counsel for the Applicant,  
Public Guardian and Trustee

Cindy Freedman

Counsel for M.L.D.

Noel Sinclair

Counsel for J.A.M.

Vincent Larochelle

## ENDORSEMENT

[1] In the matter of the application for guardianship of J.A.M., also known as A.M., reasons for decision to grant the order were issued orally on February 29, 2024, and a transcript of those reasons filed on March 28, 2024. On September 9, 2024, an application to cancel the guardianship brought by the Public Guardian and Trustee (“PGT”) was heard and the decision reserved pending the receipt of additional information from J.A.M.’s relatives in Edmonton. On September 24, 2024, the PGT filed a new affidavit with exhibits withdrawing her application to cancel the guardianship.

[2] The PGT was appointed as guardian for J.A.M. on February 29, 2024. The application hearing was highly contested by J.A.M.'s wife, M.L.D., currently living in Edmonton, Alberta. She retained local counsel to appear on her behalf, to cross-examine the assessor, to present evidence and to provide legal argument. The reasons for decision describe those proceedings.

[3] According to the affidavit of the PGT dated September 24, 2024, after the order for guardianship was made, the PGT attempted unsuccessfully on numerous occasions to speak with J.A.M. in Edmonton. All calls to his cell phone went directly to voice mail with M.L.D.'s voice asking the caller to leave a message. The calls were responded to by emails from J.A.M. or M.L.D. directing the PGT to stop calling him. On March 18, 2024, J.A.M.'s cell phone number was no longer in service and no new number was provided to the PGT. The PGT contacted the family and friends who attended and testified at the hearing to appoint the PGT as guardian and was advised they were unable to contact him. His daughter had spoken to him once when he called her. She did not know his phone number had changed, nor did she have his new one.

[4] As a result of the PGT's inability to communicate with and determine J.A.M.'s wishes, the active obstruction by M.L.D. of the attempts of the PGT to provide services, including threats, personal attacks, insults, and litigation against the PGT, and the PGT's belief that her attempted involvement was creating more unnecessary conflict for J.A.M., the PGT brought an application to cancel the guardianship.

[5] The application to cancel was heard on September 9, 2024. M.L.D. was represented by the same counsel, Mr. Noel Sinclair, who appeared at the initial hearing.

J.A.M. was represented at this hearing by his own counsel, Mr. Vincent Larochelle. Both supported the PGT's application to cancel the guardianship.

[6] The Court reserved its decision after the hearing, pending the receipt of further information through the PGT from J.A.M.'s nephew and niece, who live in Edmonton and have been in contact with him, as well as information about J.A.M.'s sister, in assisted living in Edmonton, to determine the extent of their involvement with and assistance to J.A.M.

[7] As a result of the PGT renewing contact with J.A.M.'s nephew and niece to obtain answers to the Court's questions, contact with J.A.M. was established. On meeting with him in person, without M.L.D., being present, the niece and nephew heard from J.A.M., unprompted, that he wished to return to Whitehorse and that he may want a divorce from M.L.D. The PGT was informed of this by the niece, and she spoke with J.A.M. by videoconference in the presence of J.A.M.'s niece, as well as J.A.M.'s sister's ex-husband, who remains on good terms with the family. J.A.M. repeated to the PGT that he wanted to return to Whitehorse permanently, that he did not want to live in Edmonton, that he thought he did not want to be married to M.L.D., and that he had told her of his wish to return to Whitehorse. He also advised the PGT that he was "OK with that", when asked if he wanted the PGT's role as guardian to continue. He said that "it would be best" for him to communicate directly with the PGT because M.L.D. goes through his phone and if she saw the PGT names, she would "freak out", as "she is extremely controlling." In a subsequent telephone conversation with the PGT, J.A.M. repeated clearly his unconditional wish to return to Whitehorse.

[8] J.A.M.'s niece reviewed J.A.M.'s phone and found that all of his contacts in Whitehorse and Edmonton have been blocked, except for his sister in Edmonton. J.A.M. told the PGT and his niece that he would like to have direct contact with his friends and family but that it would lead to arguments with M.L.D. and he has not pursued this. He said he wanted to contact P.R., the friend who testified at the original hearing, and that he wanted to get back in the band. He had been a member of a band in Whitehorse for many years.

[9] J.A.M. stayed with family members in Edmonton over the next several days. M.L.D., her lawyer, and J.A.M.'s lawyer were advised by the PGT and PGT's counsel of J.A.M.'s wishes to return to Whitehorse and that arrangements were being made by the PGT to do so. M.L.D. refused to allow J.A.M. and his family to collect his personal belongings from their house. The PGT obtained J.A.M.'s medications through the doctor's office at an Edmonton pharmacy. M.L.D. then left a message with J.A.M.'s niece that his belongings and medications could be collected from her lawyer's office in Edmonton. Her lawyer confirmed this to the PGT office. Her lawyer further advised that M.L.D. had filed for divorce from J.A.M. and she would be leaving their Edmonton house. The PGT deposed that she would retain a lawyer in Edmonton to represent J.A.M. in the divorce proceeding.

[10] The PGT has determined from the information provided by J.A.M.'s niece, in writing and in conversation, from her videoconference meeting and subsequent phone conversation with J.A.M. that he wishes to return to the Yukon, and it is in his best interests to do so, in accordance with the original plan of the PGT set out in her original

guardianship application. The PGT is also of the view that J.A.M. is no longer opposed to the PGT acting as his guardian.

[11] J.A.M. arrived in Whitehorse on September 19, 2024, accompanied by his former brother-in-law. The PGT advised he will stay with his daughter until permanent accommodations can be arranged for him, likely in Normandy Place, where he was living briefly before he went to Edmonton on December 26, 2023. The PGT has arranged for J.A.M. to have his Yukon health coverage reinstated.

[12] At a meeting between the PGT and J.A.M. on September 23, 2024, with J.A.M.'s lawyer present for part of the meeting, J.A.M. was asked about cancelling the guardianship order. He said: "I need the guardianship order to keep me on the straight and narrow and make sure my wishes are followed" and "I am being taken advantage of by my current wife" and "she doesn't have my best interests at heart". J.A.M.'s lawyer was present when the PGT explained how she can assist with decisions about his housing, health, and finances. J.A.M. confirmed he did not want to proceed with the application to terminate guardianship. He advised he wanted to stay in Whitehorse, play in the band, enjoy life with his friends and most importantly, be away from M.L.D.'s influences.

[13] All of these developments support the PGT's withdrawal of their application to cancel the guardianship order. The original order will remain in place for the reasons provided on February 29, 2024, along with the information from these new developments. I note that the lawyer for J.A.M. has filed a notice of intention to withdraw as his lawyer, dated September 26, 2024.

[14] As the Court has a *parens patriae* responsibility and interest in this matter, I wish to express my thanks in particular to J.A.M.'s niece, for her assistance to him in this difficult and emotionally intense matter, and to his nephew and former brother-in-law for their support to him.

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DUNCAN C.J.