

**REPORT TO THE COURT OF QUEENS BENCH  
(SURROGATE MATTER)  
JUDICIAL DISTRICT OF EDMONTON**

**IN THE MATTER OF THE  
NEGLECT, ABUSE AND DEATH OF  
JAMES KEITH BAIN**

**PREPARED BY  
*ELDER ADVOCATES OF ALBERTA***

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# Elder Advocates of Alberta

September 11, 2001

**The Honourable Mr. Justice R.P.Belzil**

Judges Chambers,  
Law Courts of Alberta  
Edmonton, Alberta

Your Honour:

**RE: Guardianship Application JAMES Keith BAIN November 17, 2000**

This matter was heard before your Honour on the 17th Day of November, 2000. *Elder Advocates of Alberta* was assigned costs.

The following individuals strongly opposed the Application of *Elder Advocates of Alberta*. By their utterances, they lead the court to believe that the blind, debilitated, physically and chemically restrained Mr. Bain, who appeared comatose on afternoon of the court hearing, was not in need of guardianship:

Ms. Pat Henderson, Counsel for the *Public Guardian's Office*,  
Mr. Les Hills, lawyer, *Office of the Public Trustee*  
Mr. Richard Hreczuch, Trust Officer, *Office of the Public Trustee*, by affidavit

Ms. Doris Bonora Counsel for *St. Josephs Auxiliary Hospital*.

Ms. Colleen Freese, *Public Guardian Representative* filed an affidavit.  
Her affidavit **cites the Public Guardian as Applicant**.  
Ms. Freese was present in court. **TAB ( 1 )**

1. Ms. Pat Henderson, made certain that the court was influenced against the *Elder Advocates of Alberta* when she urged the court to review the *Decision of Justice Marshall - DA 8809* a decision which had no relevance to the *Application For Guardianship* which was before your Honour.

We perceive the *Marshall Decision* to be flawed because the participating lawyer and her client misled the court with untruths.

The *Office of the Public Guardian* and the *Office of the Public Trustee* continue to publish this *Decision* to the court:

In contravention of Section 49 (3) (b) of the *Dependent Adults Act*,  
Influencing the court against us.

Recently, they did so again during the *Emma Frank* hearing even though Mr. Jack Klinck QC, *The Public Trustee of Alberta* and others have been informed of the flawed nature of this *Decision*.

2. October 25/00 We made a complaint to the *Protection For Persons in Care Act* Abuse Line alleging that **Mr. Bain was not being adequately fed and hydrated.**

Ms. Bonora acting for *St. Josephs Auxiliary Hospital*, stated that in fact that there were **orders** on the file of Mr. Bain that **Mr. Bain was not to be fed or hydrated, "not to receive things by mouth"**. She verified our allegation. (Transcript P 29 Lines 1-6.)

- 3 Pat Henderson, *Office of the Public Guardian*, informed the court that the facility **"also opposed"** guardianship.

This statement is contradicted by the following:

a). **October 26/00** - During a meeting with Marilyn Snow RN, Administrator and Lynn Olinek RN of St. Josephs Auxiliary Hospital, Snow informed us that she would inform the *Office of the Public Guardian* that **Mr. Bain required guardianship.** At that time we also notified the Guardian Office.  
TAB ( 2 )

b). **November 8/00** Colleen Freese, *Public Guardian Representative's* letter states that **hospital staff informed her that Mr. Bain's condition had deteriorated.** In this letter, Colleen Freese says that *in the near future* she will meet Mr. Bain. In fact she visited him on the same day, the 8th. This letter was copied to Elaine Saunders, Public Guardian, North Region. The letter of Freese threatened us with costs. TAB ( 3 )

c) **November 8/00** - Ward Supervisor, Deborah Papanikolaou, RN *Functional Assessment* paints a picture of a totally dependent individual, who needs to be fed all meals and exhibits "*self-neglect*".  
She recorded:

***"Would need decision maker now as care has deteriorated due to refusal to accept care and ongoing changes"***. TAB ( 4 )

d) **November 15/00** RE: a memo to Pat Henderson from Colleen Freese, concerning a request from St. Josephs Auxiliary Hospital:

***"to reassess Mr. Bain for Guardianship"***

This memo indicated that the matter of Mr. Bain's deteriorating condition **was again** being brought to the **attention of the Public Guardian's Office**. They both Henderson and Freese were aware of the information.

(1) This memo included 9 pages of documentation.  
**What was the documentation that was included in the nine pages which were disregarded by Ms. Freese and Ms. Henderson?** TAB ( 5 )  
Ms. Freese casually notes that he was:



*"much the same"*

on November 8/00 as when she first met him in February of that year.

(2) Her observation of Mr. Bain is frightening considering that she is a paid, public advocate who is mandated to protect and speak for vulnerable persons. The memo is titled *re: R. Adria?*.

e) **November 16/00** Colleen Freese noted in her Affidavit paragraph 7, that she had received another call from *St. Josephs Auxiliary Hospital* in regard to the grave condition of Mr. Bain:

*"advising that Mr. Bain's health has deteriorated"*,

Affidavit was issued after Mr. Bain's decease. **TAB (1)**

**Despite the continuing appeals from the facility and despite the documentation received from the facility, Ms. Colleen Freese, Public Guardian Representative, did not reassess or visit Mr. Bain after November 8/00 despite the November 15/00 memo to Henderson. (TAB 5)**

Furthermore Ms. Henderson informed the court that

*"He knew his own mind"*.

The following documents and events contradict this statement:

f) **September 10,1999** The assessment by Dr. Harry Zirk, *Schedule Form I*, records that Mr. Bain was:

*"unable to care for himself and to make reasonable judgements"*.

Dr. Zirk emphasized this matter **three times**, he circled the statement twice and once wrote it by hand on page 2. Dr. Harry Zirk directed that they should **not serve him** because James Bain

*"would not understand the documents"*. **(TAB 6)**

g) **November 3, 2000** The *Schedule Form I* assessment of Dr. Philip Klemka states that Mr Bain is:

- *"unable to care for himself"*. -
- *"unable to make reasonable judgements in respect of matters relating to himself"*.

**Diagnosis: Dementia (progressive - frontal) Delusional Disorder.**  
**TAB (7)**

h) **August of 1999**, Louis Ayala, *Public Guardian Representative* of the *Office of the Public Guardian*, initiated an *Application for Guardianship* of James Bain. **TAB ( 8 )**

i) January of 2000, the Public Trustee assumed the Trusteeship of

Mr. Bain. TAB (9)

j) February 14, 2000, "**Colleen**" visited Jim Bain and informed him that she was his *guardian*.

He said:

"she was dirty as hell"

and she informed him that he would *never leave* there.

We later found out that "**Colleen**" was **Colleen Freese**  
**Public Guardian Representative**.

4. Furthermore, Ms. Henderson stated that Mr. Bain was able to make *reasonable decisions*. Nevertheless his wishes were disregarded and his rights abrogated.

Transcript Page 18 Lines

a) Such as on November 15/01 the blind Mr. Bain was informed by Debbie Papanikoloau RN BSc that Ruth was there.

He responded in the affirmative. Then she asked if he wanted Ruth to be there and without hesitation he responded,

"*Why not?*"

(conversation was taped).

**However, Mr. Bain's wishes were not considered.**

She ordered me out:

"**Leave**".

Then she sought two other staff persons for support, Mary Dobson and a staff person from palliative care. Because I did not wish to cause a disturbance, I quietly left.

b) November 16/00 @ 9:00PM, We were notified by a visitor of Mr. Bain that Mr. Bain was gravely ill, therefore we attended at his room and he indeed appeared gravely ill and non-responsive. **He was not receiving IV or clysis.**

5. *Elder Advocates of Alberta* called an ambulance Re: Directive of the **Protection For Persons in Care Act**. TAB (10)

Ms. Henderson referred to our calling the ambulance as a "**misconduct**".

Transcript Page 36 Lines 1-10

*"We have, I would suggest it's a blameworthy conduct on the part of Ms. Adria that there should be indemnification for the costs, we're actually dealing with the issue of solicitor/client costs, and there has been misconduct. The whole process of involving the ambulance last night. She. . ."*

Ms. Henderson was ill informed or was deliberately misleading the court when she stated that calling an ambulance was a "**misconduct**" TAB (10)

6. Ms. Bonora stated that the ambulance attendant (resident) who was with the ambulance "*decided he (Mr. Bain) did not need to be taken to a hospital*". Transcript P. 22 lines 3-6

a) **No ambulance personnel was allowed an opportunity to examine, view or even enter the room of Mr. Bain.**



The ambulance person with whom we spoke (conversation was taped) said he could not act in the face of Ms. Snow RN, Ms. Olenek RN (who were present) and Dr. Klemke (by phone). He said that Dr. Klemke forbade him to transfer Mr. Bain to an active treatment hospital where he could receive hydration and treatment for the advanced bedsore.

The ambulance stayed on site for close to an hour.

7. November 16/00 - Ms. Snow and Ms. Olenek informed us that they had called the police.

Ms. Bonora's statements are inaccurate concerning the attendance of the policemen on the evening of the 16th.

I was not the only one who was present, there were four of us. The police arrived in two cars, three police  rushed into the building, however when they saw the four sedate persons standing in the lobby, two police officers immediately left.

Bonora stated that:

*"the police spoke to her and finally convinced her (Ruth Adria) to leave the facility"*. Transcript Page 27, lines 18-17

In fact, the constable who spoke to all of us, told us that he had no authority except to ask us to leave because of the instructions of Ms. Marilyn Snow, *Administrator* and Ms Lynn Olenek, *Director of Care* who said we were trespassing on private property.

8. November 17/00 Ms. Henderson **stated to the court:**

1) that Mr. Bain *"has pneumonia"* and indicated that his condition is *"serious"*. Transcript Page 19 line 18-19

2) But Ms. Bonora stated that he was:

*"doing quite well"* Transcript Page 37 line 22,  
nevertheless when we went to serve Mr. Bain with the affidavit at 1:00 PM, he appeared non- responsive, comatose.

9. Ms. Bonora stated that CAPS did an assessment. **Really!** When he was being evicted from his suite in June of 1999, CAPS informed us that he could move *"where he likes."*  
**TABS (15) (16) (17)**

10. The graphic images of Mr. Bain suggest that Colleen Freese, *Public Guardian Representative*, must not have observed Mr. Bain too carefully or did she in fact even visit him on November 8th/00 ? **Tab (11)**

11. November 17/00 - Mr. Richard Eng and I **served Mr. Bain with the affidavit concerning the Guardianship Application JAMES Keith BAIN** which was to be held @ 3:00pm. Mr. Bain appeared to be totally non-responsive, comatose.

12. November 17/00 - A guard was posted at the door of Mr. Bain's room disallowing visits from friends and advocates.

13. On November 17/00 @ 3:00 PM, our Guardianship Application RE: JAMES Keith BAIN was heard before the court and dismissed.

14. November 18/00 - Mr. Bain's family phoned both from Scotland and England, they were disallowed to speak with him. The family from England phoned three times around 5 or 6 PM. and were given mixed messages such as:

*A staff said they were unable to hook the phone to the bed.*

*Mr. Bain did not wish to speak to anyone.*

*You want Mr. McKenzie?*

*He's not very well*

The family in England informed us that they believed that Mr. Bain was being held incommunicado.

15. November 20/00 letter from Doris Bain, sister of Mr. Bain of Aberdeen Scotland which requested an independent assessment and possible transfer to another facility. **Her letter was disregarded. TAB (12).**

16. November 20, 2000 A visitor to Mr Bain, Mr. Rejean Clement was informed by an RN that it was not Mr. Bain's wishes to have his family, friends and advocates denied access and information, that in fact it was:

*"the Directors, the Guardianship, the authorities".*

**TAB (13)**

17. On a number of occasions we were informed by (evening) nursing staff (Donna) that they believed that Mr. Bain was under guardianship. Who disseminated that misinformation?

18. November 21/00 **A priest, Father Paul, was denied access** to visit Mr. Bain by Ward Supervisor Debbie Papanikolaou RN BSc.

19. Less than a day later, November 22/00 Mr. Bain was dead.

20. The court was informed that the **bedsore** was at "*its commencement*". In fact it was an **advanced # 4 bedsore**. According to the dressing nurse, Dagmar, the flesh at the heel of the foot was falling away. **TAB (11) Pages 5 & 7 of 7.**

21. Dr. Klemke was not aware of the state of the bedsore and had to have the LPN, dressing nurse, Dagmar explain the status of the bedsore on the morning of Friday October 27/00.

October 27/00 - 10:50 AM Dagmar, LPN, in to do dressing When she arrived in the room, she questioned whether I should hear and he indicated it was alright for me to hear her explanation of the pressure sore - She **explained the following** to Dr. Klemka:

- That Mr. Bain has to be administered sedation 1/2 hour prior to having the dressing changed so that Mr. Bain can tolerate the pain. (Dr. Klemka indicated that he was not aware of this pre sedation.)

- That there was an excoriated area - 3" to 4" in diameter up to and around the ankle
- The affected area was markedly reddened and infected
- There was a necrotic area and crust



- Ball of flesh, (the heel) was in the process of falling out.

(Was Dr. Klemka not aware of the situation of this advanced, # 3 - #4 ulcer that he had an LPN explain to him what was going on?)

22. All three advocates,  
Mr. Les. Hills,  
Ms. Pat Henderson  
Ms. Doris Bonora

failed to react to the photograph of the bedsore as contained in our affidavit. They did not at any time address the matter of neglect.

### **Bedsore**

are also called pressure sores or decubitous ulcers due to pressure from prolonged confinement in a wheelchair or bed. They consist of ulceration and necrosis of a localized area resulting in gangrenous tissue. Contributing factors are, reduced circulation, poor nutrition, poor nursing care. Conscientious staff must conduct regular skin checks to avoid these skin wounds and promptly adjust the plan for care and treatment in order to prevent the *progression* of pressure sores. There is no reason for pressure sores to reach "stage 3" or "stage 4" where muscle or bone is exposed to the air and infection.

23. Ms. Henderson speaks with somewhat less than accuracy with untruths that were obviously fed to her by Mr. Les Hills and Mr. Richard Hreczuch.

*"Yes and sir this is a pattern that's gone on in the past, too. The arrangements for the one month with the friend Mira Nikolic, and I was advised just today, the public Trustee was that arrangement and it was totally inappropriate for him, basement suite and it wasn't cheap either. It's just not suitable. I don't think we're dealing --- we're dealing with someone who is imposing their views over and above what this dependent adult has indicated his wishes are."*

Indeed! He was being evicted and we took mercy upon him. The letter of Mr. Charles Cousineau to Ms. Sheila Weatherill CEO of the Capital Health Authority, dated July 15/99 clearly articulates the perilous situation of the blind, 89 year old Mr. Bain. **TAB**  
( 14 )

24. The monies which Mira received were considerably less than the amount that the St. Josephs Auxiliary Nursing Home received total for the daily care of Mr. Bain. And when Mr. Bain was in the home and care of Mira, he was out of bed, fully dressed every day, his teeth were in place, his glasses on and he was washed and shaved.

Henderson refers to him as a dependent adult?

25. Furthermore, Henderson states that Colleen Freese did an *assessment* in February, we believe that there are no documents verifying this statement. Colleen Freese attended to assume guardianship.

Furthermore, to refer to Ms. Freese's visit on November 8/00 as an assessment is taking liberty with the English language. If she had truly assessed him, she would have proceeded with an application for protection of this man, notwithstanding the further request for assessment by the St. Josephs facility on November 15/00. Transcript P. 23, lines 1-8



26. Ms. Bonora refers to CBC television and again fails to speak the truth stating that:

***'They came with reporters and an investigative team and ultimately determined that there was no story and no story was done'.***

CBC cameras did attend at the St. Josephs facility on late afternoon of November 6/00 however **were disallowed access**. They were given a *Form* to give to us in order that we would obtain a signature of permission from Mr. Bain. If he was coherent and his self determination was being honored, why did they not allow CBC to approach Mr. Bain and get the signature/permission or no permission from him?

Contrary to Ms. Bonora's statement, a story was done on CBC evening news that same day, November 6/00, concerning his bed sore and other issues, I was interviewed.

A number of persons later spoke to us and applauded us that we were bringing these serious nursing home issues forward.

Transcript P.27, lines 13-14

27. Ms. Henderson informed the court that maybe "*before there may have been a need for a public guardian when he was living on his own*".

**We expressed many concerns to various persons and agencies while Mr. Bain was living in the community. TAB (15)**

Indeed, Mr. Bain had been referred to the Office of the Public Guardian but no one rendered him assistance. Please note letter from the Office of the Minister of Justice, the Honourable Mr. Hancock. **TAB (16)**  
**He was abused by the home care people.**

Prior to Mr. Bain's admission to St. Josephs, Mr. Bain had been given an eviction notice.

This blind ailing man would have been **out on the street**. We were informed by the *Capital Health Authority* that he could **move where he likes**. Therefore we referred him to the care of Mira Nikolic who compassionately accepted him. WE moved him to her home. No one within the system offered him assistance. **TAB (17)**

There were other ways that when Mr. Bain was in care, these public advocates failed to ameliorate the difficulties of Mr. Bain- April 19/00 Letter to Richard Hreczek, Trustee Officer **Tab (18)**

We had requested that Mr. Bain be provided a paid companion for several hours, at least three times a week in order to provide social and mental stimulation for him. **Hreczek, his trustee, denied this request.**

*Long term care* does not provide mental stimulation for persons like Mr. Bain. They are often terribly lonely. Often they become unable to speak, virtually catatonic, because no one interacts with them.

This paid companion was also intended to provide additional personal care, in this instance, assist him to eat and drink. Additional care is not available in such a facility. We have observed, that in far too many elder care facilities, when the elderly persons become totally dependent, their care is often less than custodial, particularly if they have no loved one or *significant other* to monitor their care. This was the situation with Mr. Bain. **Tab (18)**

Bonora stated: "*there were times when he was not to receive things by mouth. On those days when you match the nurse's notes to Ms. Adria's Affidavit, he was fed by her on those days*".

a) Why were his meal trays not cancelled if there were was an **Order** not to feed him? Whenever I or (Mira N). fed him, I fed him what was on his tray and after that, anything additional I had brought from home.

Is this something which is carried out on the confines of the ward and not disclosed to auxiliary staff, dietary and kitchen staff?

b) Why was there no sign on the bed or anywhere in the room that he was not to be fed or receive nothing by mouth?

c) In any facilities in which I have worked, when there is an Order for *nothing by mouth*, a **NOTHING BY MOUTH** sign was posted on the bed or above the bed. Others who fed him or visited him can corroborate that there was no sign, at any time.

d) **I was never ordered not to feed him.** As a matter of fact on the evening of October 23/00, the PCA brought Mr. Bain in from the hallway  
On the day of November 15, 00, I was told to leave however nothing was said about feeding.

e) There was never an *Intake & Output* sheet.

f) **Who** wrote the alleged order? November 14/00 AM, Mr. Bain said he was hungry! He **begged** Mira to feed him.

**Why** would there be such an order?

g) If in fact there was an order of *nothing by mouth*, why was no IV or clysis administered?

h) Was he being deliberately dehydrated? In a long term care facility, administering clysis is within the scope of the facility to administer.

**Ms. Bonora has failed to explain to us why there was a *no feed* order on the file. TAB (25).**

**Ms. Bonora made an undertaking to the court to provide an affidavit which she has failed to honor.**

**The result of a *nothing by mouth* order would rapidly result in dehydration, especially in an elderly person.**

**DEHYDRATION** Lack of fluid results in electrolyte imbalance, shock; kidney or bladder infection; elevated temperature due to water lack which regulates temp mechanism. The decreased plasma volume due to lack of fluid due to dehydration results in decreased blood flow to kidneys and ultimately results in kidney failure; cellular dehydration in brain results in apprehension, restlessness and confusion, followed by coma, cardiac insufficiency and death.



28. The complaint which was dismissed by the *Protection For Persons in Care Act* investigative person and disregards that the Act directs **mandatory reporting**. The dismissal of this complaint is to their shame and is indicative of the fact that Canada is presently lagging far behind the U.S. in recognizing and **penalizing elder abuse such as bedsores, weight loss, malnutrition, dehydration** *New York Times* December 4/00 (TAB(19)).

29. The complaint made to the *Protection For Persons in Care Act* investigative officer was referred to by Ms. Bonora who stated that although there was yet no written report, **"no official written report done"**, that **"there was no concern for his care"**. Transcript Page 26, lines 15-17.

(1) The information that a complaint has been dismissed comes from the Office of the Minister. How did Ms. Bonora have this privileged information? How did she or persons of the St. Josephs facility by pass the official process or was she fabricating the information?

**We received a response concerning this complaint made to the *Protection For Persons in Care Act* on December 4/00, whereas Ms Bonora was apparently privy to this confidential information on November 17/00 or earlier. ~~TAB(20)~~.**

(2) It strongly appeared that Ms. Bonora treated our *Protection For Persons in Care Act* complaint as something to be trivialized and disdained. It is obvious that she is not aware of the mandatory reporting directive of the Act. Mr. Bain did suffer from contracted limbs, severe foot drop, an advanced # 4 bedsore, complained of being hungry and was being chemically restrained.

30. Ms. Bonora informed the court that **she had:**

**"reviewed the nurses' notes".**

**Again, HOW DID MS. BONORA OBTAIN THIS PRIVILEGED INFORMATION? WHO GAVE HER ACCESS TO THE NURSING FILE? A nursing file is confidential, not even the *Protection For Persons in Care* investigator can access this file. Who would have given this lawyer permission to **review Mr. Bain's file?****

Transcript page 28 lines 1-4

31. Bonora stated that there were,

**"orders on his chart"**

**"not to receive things by mouth".**

Transcript P. 29 Lines 1-3

**Her disclosure explains Mr. Bain's empty colostomy which not only appeared to be empty but appeared absolutely clean at all times of the day, without any apparent flatus.**

Her disclosure accounts for Mr. Bain's illness and subsequent death.

32) Is dehydration and starvation something that is routinely carried out with elderly patients in our long term care facilities?  
Are they deliberately released from life by the ward supervisor WITH THE FULL KNOWLEDGE OF and blessing of the PUBLIC ADVOCATES of the OFFICE OF THE GUARDIAN AND TRUSTEE?

33. Relevant entry notes from our file:

On October 25/00 5:50PM - I called the *Butterfly* unit and spoke to the RN - Donna  
She said that Jim was pretty much the same- had not been doing well for some time - took dinner and supper well yesterday - eating and drinking well- having difficulty last week. (Mira fed him dinner the day before, and I fed him a nourishment)  
I mentioned to her that he has **no guardian**, she responded - "***I think you're wrong***"

October 27/00, Friday- I fed him dinner which consisted of pureed main food - dish of jello - glass of milk (not thickened).

**Jim told me that he had to put his affairs in order.** I told him to rest and that this could be done once he was better.

October 27/00, Friday, @ 1:30 PM, (after dinner) Mira again fed Jim homemade cooked potatoes, smoked sausage (ground) with carrots, coffee, 2 X ice cream and a banana. She said he could hardly stay awake between mouthfuls. - Jim was very grateful and thanked her. She went home around 4:00PM.

Friday, October 27/00 8:30 PM I fed him juice 1/3 cup, 2 dixie cups of ice cream and a whole banana, he said he felt full and thanked me for it.

October 28/00, I went to to feed him breakfast and banana. He was not so strong that day - he said,  
***"Can I die from an ulcer?" "I want to give somebody something"***.

November 10, 00 - He told Mira ,  
***"I need your help". "I'm in trouble", "I need some action here"***.

November 11/00 - Mira to visit -, she was told by the ward supervisor, Debbie Papanikolaou RN BSc that she was to leave Mr. Bain's room for awhile. She then heard the RN ask Mr. Bain if he wanted Mira to visit, "*Mira is here*".

His response was "***Mira is in my heart***". When she was allowed to re-enter, she fed him all the food she had brought. He thanked her profusely for coming, *thank you , thank you*, she told him that she would return on Monday. He then fell asleep.

34. In the case of Mr Bain, was there an *order* which was not shared with persons such as the *Elder Advocates of Alberta* or even *dietary staff* or *ward staff* such as the *PCA's*? Mr. Bain had a strong desire to live. He said he had "*unfinished business*". He said he wanted to "*give someone something*".

35. Ms. Bonora was vague and misleading when she stated that the nurse  
***"found them"***

The inference was that Mira and I were feeding him hard candies. She continues and apologizes to the court that because the nurses' notes are not clear, **she therefore excuses her**

***"allegations"***  
which she then terms as:



**"inappropriate".**

Indeed! The allegations could be termed **untruthful**.

Her allegations to the court could only be interpreted that I had fed Mr. Bain hard candies.

**At no time did I feed Mr. Bain hard candies.**

Transcript Page 29 Lines 7-17

36. Ms. Bonora also stated:

***"he has difficulty swallowing".***

Where did she get that information?

At no time did any of us note that he had difficulty swallowing.

At all times, during that period, on and after October 22/00, when he was offered food, he was hungry, eager to eat and able to eat. Except, when he was so heavily medicated (chemically restrained) that he could not stay awake during mouthfuls. He fell asleep with food in his mouth.

Sometimes the trays contained liquids that had been *thickend*, sometimes they were not. Evening liquids left on his bedside table, water and juice was never thickened. Trays always appeared when we were there.

Ms. Bonora stated:

**"Some people can't be fed".**

What did she mean?

She did not express a remedy such as another means of feeding or giving fluid, tube feeding, IV or clysis. What is her medical education to allow her to make this pronouncement?"

37. Ms. Bonora stated, **as if it were fact**, that we were responsible for the alleged pneumonia of Mr. Bain. Her allegation cannot be substantiated.

***"The people at the facility at St. Joes believe that Ms. Adria is actually a DANGER to Mr. Bain and here are the reasons. First of all, his pneumonia that he presently has is likely aspirated pneumonia from being fed."***

Transcript Page 28 lines 23-27.

***a) Aspiration pneumonia is most difficult to diagnose unless done so by X Ray which would not have happened in regard to Mr. Bain. Furthermore, aspiration pneumonia is characterized by abrupt onset accompanied by dyspnea, cyanosis, low grade fever and rales.***

***b) Mr. Bain apparently became ill again on the 16th.***

***c) The morning of November the 13/00 was the last time Mira Nikolic fed Mr. Bain. I attempted to feed him in the evening but was unable to because he appeared to be too heavily medicated and could not stay awake. Mira again visited on the morning of the 14th of November at which time Debbie Papanikoloau, RN did not allow her to feed Mr. Bain.***

d) November 15/01, I was present at 9:00 AM and was immediately ordered to leave by Debbie Papanikoloau. There was no tray because the breakfast normally arrived at 9:30AM.

e) **On the morning of the 15th, Mr. Bain exhibited no dyspnea, cyanosis, rales or any kind of difficult respiration or evidence of distress.**

That morning, we taped the **conversation that we had with Mr. Bain.**

f) As stated above Aspiration pneumonia is characterized by abrupt onset.  
**How could I be responsible for the alleged pneumonia of the 16th?**

g) **It is more likely that the illness was a resurgence of the virulent sepsis which was due to the exposed muscle and bone of the bed sore or that that Mr. Bain was finally succumbing to the lack of fluids resulting in dehydration and starvation.**

### **38. Affidavit of Colleen Freese, Public Guardian Representative TAB (1 ).**

is contradictory and less than accurate, truthful or complete.

a) **Her Affidavit cites the PUBLIC GUARDIAN as the APPLICANT and the PROCEDURE as an APPLICATION FOR GUARDIANSHIP.** Was that filed in the court in that way to confuse anyone who would review the file and disallow us or anyone to access the file? **TABs (8) (9)**

b) According to staff at the surrogate court counter, we were told that we had not been the applicants, we were disallowed to review the file.

c) Ms. Freese **fails to mention** our *Application For Guardianship* court hearing of November 17/00 in her affidavit. **+ TAB (8)**

d) Ms. Freese said she visited Mr. Bain on the 8th of November. When we visited him on the evening of the 8th of November, 2000, he was heavily medicated (chemically restrained), **he did not even stir** when I examined his severe bed sore which previously would have brought a loud outcry.

**TAB (5 )**

e) Her affidavit **fails to adress** the serious condition of Mr. Bain, the fact that he was blind and ailing and belted to a recliner. She **fails to mention** his advanced bed sore, his contracted limbs, his inability to give himself any self care or feed himself.

f) Ms. Freese mentions the Louis Ayala assessment of February of 2000, **but fails to mention** that Mr. Ayala had already commenced an Application for Guardianship on September 9/99 which was halted when we brought forward a person in the community as a possible guardian. **TAB ( 8 ).**

g) She states that she went to assess Mr. Bain in February but **fails to mention that**



**in fact she went to inform him that she was his guardian.** He was very upset by her visit.

h) Her affidavit is dated well after Mr. Bain's decease however she **fails to mention** his decease.

i) Her affidavit **fails to mention** that on November 16/00 she informed Mr. Cousineau that the office of the Public Guardian would not proceed with an Application.

Transcript P 15, lines 6-9.

j) Ms. Freese, the *Public Guardian Representative* **failed to mention** in her affidavit that she had threatened *Elder Advocates of Alberta* with costs.

k) Ms. Freese **fails to mention** the 10 page memo of November 15/00 which notes that St Josephs Auxiliary Hospital requests her to reassess Mr. Bain which contained nine pages of documentation. The memo was copied to Ms. Henderson. **She fails to reveal what was in the extensive attached documentation. TAB (5 )**

l) Her affidavit indicates that this public advocate made no effort to again visit Mr. Bain after the 8th of November/0. She **fails to mention that counsel of the Public Guardian's Office** strongly opposed the Application for Guardianship on the 17th of November but rather presents her as the Applicant.

m) Her affidavit **fails to mention** that Mr. Bain was referred to the *Office of the Public Guardian* when he still lived in the community and was being abused by homecare (1999). The letter of the Honourable Mr. Hancock. **TAB (15) (16)**

Mr. Bain died on the November 22/00.

**39) Affidavit of Mr. Richard Hreczuch Trustee Officer**

**filed by Les Hills, lawyer for the Office of the Public Trustee TAB (20 )**

a) Mr. Hreczuch states in paragraph # 2 that the *Office of the Public Trustee* was appointed as Trustee in January 24/00 when in fact this application was begun in September of 1999.

Mr. Hreczuch **fails to mention** the *Form I* which was prepared by Dr. Harry Zirk on September

b) After Mr. Bain became a resident of St Josephs Auxiliary Hospital, Richard Hreczuch and Les Hills went to the home of Mira Nikolic in a little old car. **They entered her home, looking (snooping) through the lower rooms, the living room and bedroom where Mr. Bain had lived, looking for and asking for information concerning where his bank accounts were located.**

They wanted to know from her where his bank accounts were. She was intimidated by them and therefore let them in.

c) Mr. Hreczuch and Mr Hills **fails to mention** this incident in their affidavit.

d) This happened in October, long before they were appointed trustee by the courts.

The Public Trustee was appointed in January.

e) Representatives of the *Office of the Public Trustee* have stated that Mr. Bain had wanted them to be his trustee.

So why did Mr Bain not inform them of where his monies and assets were?.

f) Why did he not sign a consent for them which would have avoided a court hearing?

g) Why on November 23/99 did Mr. Bain ask Ruth Adria **to set up a flexible account** with CIBC in favour of his sister Doris Bain? Ultimately he would not sign this request, shouted, made a scene and embarrassed her.

Mrs Mickey Berezan was the contact at CIBC, Ph. 429 7505.

h) Why did Mr. Bain ask Ruth Adria in December of 1999, to obtain a money Order for 100 pounds, to send to his sister Doris Bain for Christmas? **Why did he not ask them? TAB (21 )**

i) Paragraph 3 of Richard Hrezcuch's Affidavit states that he attended with Les Hills at the nursing home on July 16/00 at the request of Mr. Bain. In fact it was a response to our appeal of April 19/00 for care. Our request was repeated on September 4/99. **TAB (18 )**

i) Mr. Hrezcuck **fails to mention** in his affidavit that **he did in fact visit Mr. Bain on or about May 11/00** in his first response to our April 19/00 letter which was our appeal to gain some assistance for Mr. Bain. **TAB (18)**

j) Mr.Hrezcuch and Mr. Hills knew how to aggravate and destabilize Mr. Bain.

Transcript Page 28, lines 2-13)

This caused the reaction of Mr. Bain to say he did not wish any interference in his affairs, especially spending his money on wheel chairs and such..

Mr. Bain was a confirmed miser and that was how he was able to accumulate his hundreds of thousands in savings. On one occasion when we had taken him to the doctor and later attended at a pharmacy to fill his prescription, Mr. Bain wished us to pay for the prescription.

k) On Sunday May 14/00, We visited and found Mr. Bain to be **most angry** about the wheel chair in the bathroom because he thought that he had been made to pay for it. He said, "*I can walk*" When I examined the chair I found that it was a chair belonging to the facility.

**Who gave Mr. Bain this misinformation?** He was blind and could not walk without assistance, so he could not have come to that conclusion on his own.

Mr.Hrezcuch and Mr. Les Hills knew which buttons to push to cause Mr. Bain to fall into a rage concerning his money.

l) That Sunday his pants (pyjama bottoms) were half-way off, he still had a bib on. Hrezcuch and Hills refused to allow his money to be spent to ameliorate his needs. Mr. Bain did not have a will and had no family in this country.

m) Mr. Hrezcuch's affidavit **fails to mention** that Mr. Bain was either heavily



medicated or confused, that he suffered from contracted limbs, a number # 4 bed sore and was unable to give himself any self care or even feed himself.

n) Dr. Harry Zirk filled out a *Form I*, nine days after Mr. Bain was admitted to the Grey Nuns Hospital, which facilitated the *Office of the Public Trustee* to assume trusteeship of Mr. Bain **without the permission or even knowledge** of Mr. Bain. If we had not have opposed the application, the application would have been processed like a hamburger at McDonalds.

o) **When we made *Application For Trusteeship* of Mr. Bain, we were informed by our lawyer that Mr. Jack Hoffman, Lawyer, Public Trustee Office stated that we were "tainted". Mr. Hoffman refused to withdraw their Application and therefore we withdrew.**

40. On November 17/00 before the court, Les Hills, Public Trustee counsel, stated

*"I guess it would be the position of the Public Trustee that this is hardly an urgent matter*

*"I'm not sure why we are here on an urgent basis on a Friday afternoon given the circumstances".*

Was this public advocate trivializing Mr. Bain's situation? Even if Mr. Bain had not developed the severe life threatening infection due to the bed sore, Mr. Bain was in difficult circumstances. He was totally helpless and dependent due to his blindness and colostomy.

Was Mr. Hills not briefed and warned of Mr. Bain's illness or did he deliberately choose to ignore his grave condition? **TABS (4) (5) (6) (7) (11)**

Our affidavit verbally described Mr. Bain's condition and contained photographs of the bed sore and Mr. Bain's grave condition which Ms Henderson referred to as the "*lengthy one*". Obviously it was not long enough for her or the others to get the message.

41. Mr. Hills further stated that:

*"If Ms. Adria ... if her concerns are bonafide, I mean, she could work with hospital staff. Instead she's chosen to bring this application on a rush basis without appropriate notice and so the Public Trustee would also be seeking costs against the applicant."*

Indeed:

a) In August of 1999, we and others commenced Application for Guardianship and later for Trusteeship. This is extensively documentation All Applications were strongly opposed by the public advocates.

b) September 11, letter to Mr. Carl Roy and Dr. Harry Zirk, no response was received.

**It was Dr. Harry Zirk, who filled out the Form I** and who recommended that Mr. Bain not be notified of this matter. This is a most disturbing and even frightening matter. **TAB (22) (6)**

c) We appealed to Dr. Klemka, his physician who did not return our calls. Finally we were able to access his assistant, Dr. Newnham and told him that Mr. Bain was being overmedicated, that his cheek was swollen and therefore was unable to put his teeth in his mouth and **that he was drooling**. The physician thought I was phoning from the ward and informed me that the *Risperdol* had been **bumped up**. December 6/99

Did these professionals not observe the serious side effects of the over-medication?

**February 3/00 we again expressed concerns regarding the overmedication of Mr. Bain, this time by letter. TAB (23)**

d) We had appealed to the Trustee's office for amelioration of Mr. Bain's needs to which he and his staff did not have the courtesy to even respond. However finally, Mr. Hills and Mr Hreczuch did visit Mr. Bain and gave him misinformation which distressed him. **TABS (18 )**

e) We also contacted Ms. Fairweather who was his SW who failed to respond. We then were able to determine that a Ms. Doreen Andrews was the contact however she never did respond to our concerns. April 19/00 **TAB (18)**

f) We appealed to Ms. Debbie Papanikolaou RN by telephone and also at his bedside, that Mr. Bain wished to have his *wafer* cut with a larger opening (the colostomy prosthesis) because it was causing him discomfort. December 19/99

g) Phoned **Debbie Papanikolaou RN** that he required assistance with feeding, they should announce that the tray is in his room and assist to set up, cut up his meat, inform him what is on the tray. Sometimes Mr. Bain was not aware that it had been brought into his room or when he was sleeping. She responded that this blind man **should ask**. December 20/99

h) October 24/00 T/C to Ms. Marilyn Snow Director, informed her that Mr. Bain was out in hallway with no fluids. This gravely ill man belted to a recliner chair in the hallway, **presented a macabre picture**.

i) We met with Ms. Snow, *Director* of St. Josephs Hospital and Ms. Lynn Olenek, *Director of Care* in the Office of Ms. Snow on October 26/00. Amongst other things, I mentioned that he liked coffee and ice cream. This request was not honoured.

j) October 24/00 Phoned the Ministers Office, Mr. Stan Woloshyn, *Minister for seniors, Community Development*. The lady on the phone, Sharon Schneider told me that she was not sure what she should do, I advised her to please phone the St. Josephs Hospital.

k) October 25/00, Phoned Mr. Bain's physician, Dr. Klemka, he did not return our call, later said he had lost the phone number.

l) Called for an ambulance according to the *Protection For Persons in Care Directive*, November 16/00. We were told to leave by Snow and Olenek. **TAB ( 10 )**

n) November 21/00, a Priest was denied access to a catholic facility.

**At no time did it appear that concerns were being heard or dealt with.**



42. Throughout this hearing and the affidavits and court testimony, there are conflicting statements as to whether Mr. Bain

- 1) **appreciated** the visits of Mira Nikolic and Ruth Adria,
- 2) **merely tolerated** them
- 3) **told them to get out.** Mr. Hreczuch again refers to this matter in paragraph

Either the affiants who submitted sworn evidence are being dishonest and telling the story as suits their agenda or Mr. Bain was inconsistent in his statements to them.

We have a taped statement, when asked if he wanted Ruth Adria present saying,

**"Why not?",**

m) Informed the family of his grave condition and they sent a letter, November 20/00 which was disregarded. This letter was also hand delivered to my MLA, the Honourable Mr. David Hancock and was not acted upon. **TAB (12 )**

n) November 21/00, a Priest was denied access to a catholic facility.

**At no time did it appear that concerns were being heard or dealt with.**

43. Throughout this hearing and the affidavits and court testimony, there are conflicting statements as to whether Mr. Bain

- 1) **appreciated** the visits of Mira Nikolic and Ruth Adria,
- 2) **merely tolerated** them
- 3) **told them to get out.** Mr. Hreczuch again refers to this matter in paragraph 5 of his affidavit.

Either the affiants who submitted sworn evidence are being dishonest and telling the story as suits their agenda or Mr. Bain was inconsistent in his statements to them.

We have a taped statement, when asked if he wanted Ruth Adria present saying,

**"Why not?",**

For example, Ms. Henderson contradicted the *Guardianship Information Form of November 8/00* of Deborah Papanikolaou, RN, BScN, charge nurse of Mr. Bains's ward. Papanikolaou stated that Mr. Bain:

**"did not enjoy visitors"**

and that he rudely told them to leave and that he told Ruth and Mira to leave,

Whereas, Ms. Henderson informed the court a number of times that Mr. Bain

**"enjoyed the company of Ms. Adria and M. Nikolic.** This is later repeated by her,

***"He enjoys people coming for visits".***

Transcript P. 21, line 14

**44 It becomes patently clear that the *Office of the Public Guardian* and the *Office of the Public Trustee* will stop at nothing to deny us the right accorded by the *Dependent Adults Act, Section 5* to advocate for a vulnerable elder. They clearly do not wish us to have any window into their behavior or activities.**

45 To date, this *Application For Guardianship* has cost us close to \$1,600.00 in fees, fees to Counsel, transcript fees, and other considerable costs. Nevertheless we were denied access to review the file at the court house, note the cover of the transcript. **TAB (24)**

46 We submit that Mr. Bain:

- Was not adequately fed or hydrated to sustain life
- Was hungry - begged to be fed
- Evidenced severe neglect
- Evidenced dramatic weight loss
- Expressed fear of his situation, said he was *in trouble*
- Expressed concern about unfinished business - wished to *give someone something*
- Was chemically restrained.
- Suffered from an advanced # 4 bed sore which could necessitate amputation of leg or result in systemic sepsis which could cause death.
- Suffered from a virulent infection
- Suffered from bone contractures, severe foot drop
- Was administered poor hygiene, frequently did not appear washed, shaved or cared for  
teeth not in place,
- Failed to be taken out of bed or out of facility
- Was neglected by the physician who failed to keep himself informed of Mr. Bain's health issues and bedsore

Ultimately Mr. Bain was disallowed any outside contact - totally isolated,

- not allowed to receive phone calls from family in Scotland and England
- not allowed visitors and advocates
- not allowed a **visit by Priest**

47. Isolating this elderly man from family, friends and community is in contravention of the ***Protection for Persons in Care Act Chapter P-19,5***

This Act defines ***abuse*** to include:

**1(a) ii "*Intentionally causing emotional harm. . . . coercing or restricting from appropriate social contact* ".**

It is difficult to understand why these public advocates opposed an *Application for Guardianship* on **November 17/00 @ 3:00PM.**

Mr. Bain died at noon on **November 22/00.**

Respectfully submitted,

*Elder Advocates of Alberta*

per: 

Ruth Maria Adria

Copy:

The Honourable Mr. David Hancock QC, *Minister of Justice* MLA  
The Honourable Chief Justice, Mr. Allan Wachowich.

**HAND DELIVERED**

COURT FILE NUMBER	10673
COURT	Surrogate Court of Alberta
JUDICIAL DISTRICT	Edmonton
PERSON IN RESPECT OF WHOM THE APPLICATION IS BEING MADE	JAMES BAIN
PROCEDURE	Application for Guardianship
DOCUMENT	AFFIDAVIT
NAME OF APPLICANT	The Public Guardian

---

I, Colleen Freese, of the city of Edmonton, in the Province of Alberta, Public Guardian Representative, affirm as follows:

1. In early February Luis Ayala, Public Guardian Representative, met with Mr. Bain to ascertain the appropriateness for guardianship. Mr. Ayala determined he did not meet the criteria of the Dependent Adults Act.
2. On February 14, 2000, I visited with Mr. Bain at St. Joseph's Auxiliary Hospital to provide a second opinion as to whether or not he met the criteria for guardianship. I agreed with the original assessment that Mr. Bain did not meet criteria. He advised that he did not want Ruth Adria or Moira Nikolic to be his trustee or guardian. He told me he did not consider them friends but is willing to have them visit for now.
3. Debbie Papanikolasu, Registered Nurse, advised that a woman by the name of Ms. Nikolic had misrepresented herself as Mr. Bain's niece. Ms. Nikolic did state at a later time that she was not, in fact, Mr. Bain's niece.
4. Mr. Bain has demonstrated the ability to make his own decisions based on information available to him. He proceeded to have himself put on the waiting list for placement at Dickinsfield.
5. The staff of St. Joseph's have stated to me Mr. Bain has advised that he does not want Ruth Adria speaking for him.
6. On November 8, 2000, I visited with Mr. Bain at St. Joseph's Auxiliary Hospital. He stated he did not want Ruth Adria, Moira Nikolic or the Public Guardian to be his guardian. He stated that he did not want a guardian. He was able to make reasonable decisions and make his wishes known.
7. On November 16, 2000, I received a call from staff at St. Joseph's Auxiliary Hospital advising that Mr. Bain's health has deteriorated. He has pneumonia and has made the decision that he does not want to go to active treatment hospital. He is therefore being treated at St. Joseph's Auxiliary Hospital.



8. As of November 8, 2000, I do not feel Mr. Bain meets the criteria for guardianship under the Dependent Adults Act.

Affirmed before me at

Edmonton, Alberta

(city/town/municipality)

on November 28, 2000

Gail McConnell

Signature of a Commissioner for Oaths  
in and for the Province of Alberta

Colleen Freese

(Applicant's Signature)

4th Floor, 9942 - 108 Street

(address)

427-0017

(phone number)

Print or Stamp Name and Appointment Expiry Date

GAIL MCCONNELL  
October 29, 2002

Action Number 10673

In The Surrogate Court of Alberta

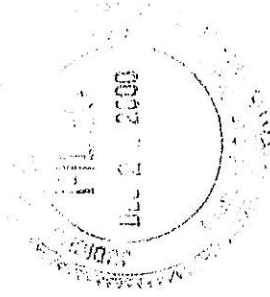
Judicial District of Edmonton

AFFIDAVIT FOR GUARDIANSHIP  
APPLICATION

JAMES BAIN

Filed By:

Department of Justice  
Family Law  
6th Floor, 10365 - 97 Street  
Edmonton, AB  
422-3715  
427-0017





# Elder Advocates of Alberta

October 26, 2000

*Ms. Elaine Saunders*  
*The Public Guardian*  
Office of the Public Guardian  
Edmonton Alberta

VIA FAX # (403) 422 9138

Dear Madame:

Re: JAMES BAIN - St. Joseph's Hospital, Edmonton, AB.

Just prior to noon today, during a meeting with Ms. Marilyn Snow, Administrator, and Ms. Lynn Olinek of the St. Josephs Hospital. Ms. Snow stated that she would contact your Office concerning the guardianship of the above named person, Mr. James Keith Bain. She stated that she felt that Mr. Bain now requires a guardian.

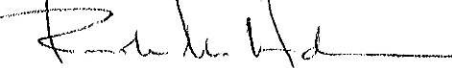
The matter of Mr. Bain not having a guardian was also discussed with Ms. Snow during a telephone conversation with Ms. Snow on the early afternoon of Tuesday, October 24/00.

Please be aware, that I have engaged Mr. Charles Cousineau, Barrister and Solicitor, to prepare an Application for the guardianship of Mr. Bain on my behalf.

Thank you for your anticipated cooperation in this matter .

Yours most truly,

*Elder Advocates of Alberta*

per: 

Ruth Maria Adria

C.C. Mr. Charles Cousineau

Office of the Public Guardian  
North Region

4th floor, 108 Street Building  
9942 - 108 Street  
Edmonton, Alberta  
Canada T5K 2J5

Telephone 780/427-0017  
Fax 780/422-9138

November 8, 2000

Ruth Adria  
Box 45028  
Edmonton, AB  
T6H 5Y1

Dear Ms. Adria:

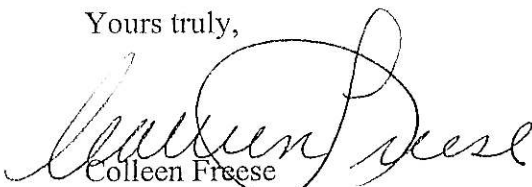
Re: James Bain

Thank you for your correspondence of October 26, 2000. The Public Guardian has passed your letter on to me for reply as I am the representative for the facility in which Mr. Bain currently resides.

It has been recently brought to my attention that in the opinion of hospital staff, Mr. Bain's condition may have deteriorated. I will meet with Mr. Bain in the near future to determine if he now meets the criteria for guardianship.

Should guardianship be required at this point, we will proceed. Any legal costs incurred regarding your actions will be your responsibility.

Yours truly,



Colleen Freese

Public Guardian Representative

c.c. Mr. Charles Cousineau, Barrister and Solicitor  
Elaine Saunders, Public Guardian – North Region

This is Exhibit ... to the  
Affidavit of K. M. U. MARIA ADRIA  
sworn before me this ... 1.7... day  
of ... A.D. 19 2000. at  
Edmonton, Alberta.

### GUARDIANSHIP INFORMATION

COMMISSIONER for OATHS/NOTARY PUBLIC  
IN AND FOR THE PROVINCE OF ALBERTA

### PART III - SUBSTANTIAL BENEFIT INFORMATION

1. Describe the individual's degree of dependence on helpers, friends and relatives, when decisions need to be made.

Doctor will discuss situation & elicit and offer  
choices - resident may or may not agree or cooperate.  
Resident needs total care for ADL's (cooking, washing,  
dressing, transferring by a person helper and enemas, colostomy  
bag emptied and incontinent product changed (etc's)).

2. Is there a social support system (e.g., friends, family, etc.) available to assist with decision making? Please explain briefly.

His support system is sister in Scotland whom he  
talks to on occasion and public trustee staff  
have become like family and he will accept care  
& full dressing changes almost daily. When he is angry  
they will leave & try again after. Moira visits 91-2 months  
(previous 1 and 1/2 & 3 mos)

3. Do the decisions made with/by this support system (#2 above) meet the proposed dependent adult's needs and ensure a good quality of life (e.g., get adequate medical care, not at risk of abuse or victimization, etc.)?

Would need decision-maker now as care has  
deteriorated due to his refusal to accept care &  
ongoing danger

4. Describe any instances of abuse, neglect or exploitation (by self or others).

Resident will refuse care at times thus self-neglect.  
Also has told "Buth" another person visiting him to  
"get out" & leave him alone. She has continued to return at times  
Staff request him to leave when they do care other wise  
instructs on staying in home.



NOV-16-2000 02:58PM FROM-PUBLIC GUARDIAN EDMONTON

780-422-8188

T-072 P.000/009 F-500

- 2 -

5. What are the risks of physical/mental harm coming to the individual if a guardian is not appointed? Are the risk(s) imminent?

*Resident may be swayed to make decisions he does not want. May also really not want to see "Ruth" or "Miche" but both keep returning*

6. How would the person benefit if a guardian was appointed? (For example, what services are not available because of the lack of a guardian?)

*Can suggest case worker appropriate, visitors as appropriate make decisions that will benefit client*

7. Is the person aware of the potential guardianship application? Yes ☒ No ☐  
If "yes," how did he/she become aware and what is his/her response?

*not sure if he wants someone. States does not want it to be either "Ruth" who has been visiting or "Miche" who also visits*

#### V. ASSESSOR INFORMATION

D. Papanikolaou  
Name

D. Papanikolaou  
Signature

RN, BEN  
Professional status

~1 year 3 months  
Length of time you have known the adult.

10707 29 Avenue  
Address

Edmonton, Alta  
City Postal Code

Nov 8, 2000  
Date of Completion

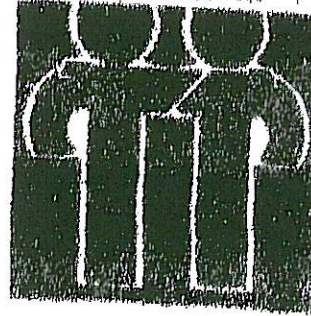
# Alberta

Human Resources & Employment

ALBERTA  
JUSTICE

NOV 15 2000

FAMILY LAW



## OFFICE OF THE PUBLIC GUARDIAN

North Region, Edmonton Office  
4<sup>th</sup> Floor, 106 Street Building  
1042 - 106 Street  
EDMONTON, AB T6K 2J5

Phone: (780) 427-0017

Fax: (780) 427-0130

TO:

FROM:

RE:

COMMENTS:

*Pat Henderson*  
*Callen Jones*  
*R. Adams / J. Barr*  
I received these as a result of a request by St. Joseph's to reassess the basis for guardianship. The decision whether or not to proceed has not yet been made. I wanted to visit him on a date I had arranged for Nov. 8. He's physical condition seemed much the same as when I last saw him. He stated that he did not want to be a trustee for his guardianship as he asked.

FAX NUMBER: 780-427-0130 DATE: Nov 15 2000

TOTAL NUMBER OF PAGES: 10  
(Including Cover Page)



## SCHEDULE

## FORM 1

## REPORT OF A PHYSICIAN OR PSYCHOLOGIST

Patient's Name: James Bain Birthdate: April 17, 1910Address: Stn 51 Grey Nuns Hospital, Edmonton.In my opinion: James Bain  
(Full Name)★ A. is repeatedly or continuously unable

(i) to care for himself/herself, and

(ii) to make reasonable judgments in respect of matters relating to himself/herself;

★ B. is

(i) unable to make reasonable judgments in respect of matters relating to all or any part of his/her estate, and

(ii) in need of a trustee.

I have formed my opinion based on the following observations or symptoms:

- (1) Mr. Bain has a history of incorrectly paying bills
- (2) On questioning he is unable to detail his assets & expenditures and becomes defensive.

Diagnosis: Frontotemporal dementiaPrognosis: Slow decline in function anticipatedBased on this, I am of the opinion that it would be in his/her best interests for a trustee  
(guardian/trustee)  
to be appointed for him/her.Harry Zink  
(Physician's or Psychologist's Name)Harry Zink  
(Physician) (Psychologist)Harry Zink Grey Nuns Hospital Sept 10 / 99  
(Signature) (Address) (Date)★ Delete whichever or what is not applicable  
(including, if appropriate, the whole of paragraph A or B)

# Medical Opinion In Support of Dispensing With Service

The *Dependent Adults Act* requires the documents be served on the Dependent Adult unless the court considers it appropriate to dispense with this provision. Please sign and date this form only if in your medical opinion the Dependent Adult

would not understand the documents, or  
would understand the documents but service upon the person would cause undue stress and would be detrimental.

*Would NOT understand  
and would cause a great  
deal of stress*

In my opinion, the Dependent Adult would not understand the documents.

In my opinion, the Dependent Adult would understand the documents but service upon that person would cause undue stress and would be detrimental.

cross out  
inappropriate  
case.

if this phrase  
applies, please  
provide details in  
space below  
as to why service  
would be  
detrimental.

*Grey Nuns Hospital*

*Harry Zirk*  
\_\_\_\_\_  
Physician's or Psychologist's name

*Harry Zirk*  
\_\_\_\_\_  
Signature

*Harry Zirk*  
\_\_\_\_\_  
Physician's or Psychologist's address

*Sept 10 / 99*  
\_\_\_\_\_  
Date



NOV-11

THIS IS EXHIBIT ... to the

Affidavit of Ruth Adria

sworn before me this ... 17 ... day

of N.O. A.D. 18 2000 at

Edmonton, Alberta.

SCHEDULE  
FORM 1

COMMISSIONER for OATHS/NOTARY PUBLIC  
IN AND FOR THE PROVINCE OF ALBERTA

REPORT OF PHYSICIAN OR PSYCHOLOGIST

Patient's Name  
Birth Date  
Address

JAMES KEITH BAIN

APRIL 17, 1912

Room 406, ST. JOSEPH AUXILIARY HOSPITAL

In my opinion

JAMES KEITH BAIN

"A. is repeatedly or continuously unable

(i) to care for himself/herself, and

(ii) to make reasonable judgments in respect of matters relating to himself/herself;

"B. is

(i) unable to make reasonable judgments in respect of matters relating to all or any part of his/her estate, and

(ii) ~~in need of a trustee.~~ (He has a trustee)

I have formed my opinion based on the following information, observations or symptoms:

1. Whilst he is able to express his wishes, these wishes do not reflect full incorporation of environmental factors.
2. Some of his wishes before decline in his capabilities have been documented in court records.

Diagnosis:

DEMENTIA (progressive/frontal) and DELUSIONAL DISORDER

Prognosis:

LIKELY TO DETERIORATE.

Based on this, I am of the opinion that it would be in his/her best interests for a guardian ~~to~~ be appointed for him/her.

Date November 07/2000.

Philip Klemka MD  
Physician's or Psychologist's Signature

Name: PHILIP KLEMPKA  
Address: 2927-96 Street  
Edmonton, Alberta

\* Delete whichever or what is not applicable (including, if appropriate, the whole of Paragraph A or B)



## Elder Advocates of Alberta

October 15, 1999

The Public Guardian  
Office of the Public Guardian  
Edmonton Alberta

VIA FAX # (403) 422 9138

Dear Sir:

Re: Guardianship - JAMES BAIN - St. Joseph's  
Hospital, Edmonton, AB.

On Wednesday, the 13th, October, 1999, we met with Mr. Louis Ayala concerning proposed guardianship of the above named person.

We put forward the name of a person in the community who is suitable, responsible and able to assume the responsibility of this guardianship.

Mr. Ayala stated that this would be acceptable and that he had the necessary documents for the filing of the guardianship in hand. Presently, he is on holidays.

We therefore request that the necessary documents be forwarded at your earliest convenience to the office of :

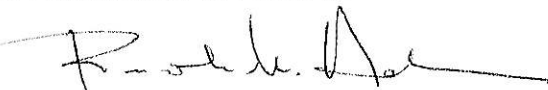
Hladun and Company,  
# 100, 10187 - 104th Street.  
Attention: Mr. Michael Furman, barrister and  
solicitor.

Thank you for your cooperation in this matter .

Yours most truly,

*Elder Advocates of Alberta*

per:



Ruth Maria Adria

C.C. Mr. Michael Furman

# Elder Advocates of Alberta

February 22, 2000

Ms. Elaine Saunders, Officer  
Office of the Public Guardian  
Edmonton, Alberta

VIA FAX # (780) 422 9138

Dear Madame:

Re: Guardianship - JAMES KEITH BAIN - St. Joseph's Hospital,  
Edmonton, AB.

Further to our morning's faxed letter and phone call. We regret that there are misapprehensions on your part concerning the Guardianship Application concerning the above named James Bain.

1. As stated in previous correspondence to your Office. Ms. Mira Nikolic has met with Mr. Michael Furman, of the firm of Hladun and Company in order to make Application for the Guardianship of Mr. Bain.
2. Relevant and necessary documents such as the *Functional Assessment*, have been forwarded from Mr. Ayala of the *Office of the Public Guardian*, to the Office of Mr. Michael Furman.
3. We wish to register a strong concern to your Office, that the *Office of the public Guardian* has begun to act as Guardian in the absence of a Court Order pursuant to the *Dependent Adults Act*.

We trust the above contained information will be helpful to you.

Most sincerely,

*Elder Advocates of Alberta*

per: 

Ruth Maria Adria

c.c The Honourable Minister of Justice Mr. Hancock QC

# HLADUN & COMPANY

BARRISTERS • SOLICITORS

Robert W. Hladun, Q.C.  
(also Sask. Bar)  
Michael L. Furman  
Kenneth F. Slupek  
Eric C. Lund  
Jeffrey M. Chow

100, 10187 - 104 Street  
Edmonton, Alberta, T5J 0Z9  
Phone (780) 423-1888  
Fax (780) 424-0934  
E-Mail: inquiries@hladun.com

OUR FILE

YOUR FILE

16800 MLF

February 24, 2000

VIA FAX 422-9138

Office of the Public Guardian  
4<sup>th</sup> Flr., 9942 - 108 Street  
Edmonton, Alberta  
T5K 2T8

Attention: Elaine Saunders

Dear Sirs/Mesdames:

Re: Application of Guardianship of James Bain

We are the solicitors for Mira Nikolic. We have in hand the letter from Ruth Adria addressed to yourselves dated February 22, 2000.

It is indeed correct that I have been retained to bring an application on behalf of Mira Nikolic to be appointed as the Guardian on behalf of Mr. Bain. I hope to have the Affidavit finalized and served by March 6, 2000. I would have dealt with it sooner but I was involved in a lengthy murder preliminary hearing in Wetaskiwin. In addition, I am now taking a short vacation and will not return until March 3, 2000.

In the meantime, we can assure you that the application will proceed shortly thereafter. In the meantime, if the Public Guardian is still considering bringing an application, I would ask that you kindly provide us with notice of same.

Yours truly,

**HLADUN & COMPANY**

Per:

MICHAEL L. FURMAN  
MLF/cb  
cc Mira Nikolic

February 24, 2000

Ruth Adria  
Box 45028  
Edmonton, AB  
T6H 5Y1

Dear Ms. Adria:

Re: Guardianship -- James Keith Bain

Thank you for your letters of February 22, 2000. This is to advise you the Office of the Public Guardian has closed the investigation regarding the need for guardianship for the above gentleman.

As Mr. Bain has now been placed in an appropriate facility to see to his health and personal care needs and has been placed on a waiting list for the facility of his choice; and based on the fact that facility staff have stated there are no outstanding health care concerns, this Office has concluded guardianship would not be of substantial benefit to Mr. Bain, at this time.

Please be advised unless circumstances change, the Office of the Public Guardian will oppose any applications made for guardianship of this gentleman based on this conclusion.

Yours truly,



Elaine Saunders

Public Guardian -- North Region

cc. Tina Still, Social Worker, St. Joseph's Auxiliary Hospital;  
Michael Furman, Hladun & Company



COURT FILE NUMBER # 10673



IN THE SURROGATE COURT OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

PERSON IN RESPECT OF WHOM THE APPLICATION IS BEING MADE James Bain

PROCEDURE:

OBJECTION TO APPLICATION FOR TRUSTEESHIP - DEPENDENT ADULTS ACT, BEING CHAPTER D-32 OF THE REVISED STATUTES OF ALBERTA, 1980M AS AMENDED (the "Act")

DOCUMENT:

NOTICE OF OBJECTION

1. I was served with notice or other wise became aware of the application for an Order of appointment of Public Trustee as trustee of James Bain on September 24, 1999
2. I object to this application being considered in the absence of the applicant and any of the persons who were served with a copy of the application.
3. I understand that, by filing this Notice of Objection with the Clerk of the Court,
  - (a) a hearing will be held;
  - (b) the applicant must serve notice of the hearing on me and on all the persons who were served with a copy of the application.
  - (c) the court may order that costs of any application made under the Dependent Adults Act be paid by a person opposing the application where the court is satisfied that the opposition is frivolous and vexatious.

Dated: at Edmonton, Alberta on September 13, 1999

Signature Ruth Maria Adria

Name of Person Objecting Ruth Maria Adria,

Elder Advocates of Alberta

Mailing Address, Box, # 45028, Edmonton, Alberta T6H 3T3

Ph./Fax (780) 438 8314

1. Several person in the community are available and willing to serve as trustee
2. Mr. Bain's needs are complex and would probably not be well served by an Officer of the Public Trustee's Office who often has upwards of 500 client files.

If in fact the Public Trustee's Office was appointed, social workers and other professionals and public persons would be responsible for determining that the care and needs of Mr. Bain would be met, however in the immediate past, such persons have denied him required, necessary services and care.

We also object to the fact, that the Office of the Public Trustee has begun to act in the absence of appointment and authorization by the court



## HOW DO I REPORT ABUSE?

If a person's life or well-being is in immediate danger, call the police or an ambulance.

In non-crisis situations, call **1-888-357-9339** (toll-free) Monday-Friday 8:15am - 4:30pm. After hours or on holidays, please leave your name and phone number on the voice mail, and your call will be returned on the next working day.

## WHAT IS ABUSE?

Abuse is *intentionally* caused harm, including:

- bodily injury, such as hitting, kicking, or biting;
- emotional harm, such as threatening, humiliating, harassing, or socially isolating a person in care;
- administering or prescribing medication for an inappropriate purpose;
- forcing a person in care into unwanted sexual activity;
- stealing money or valuables; and
- failing to provide the necessities of life, such as food or medical attention.

## WHAT HAPPENS WHEN A REPORT IS MADE?

All reports are reviewed by the appropriate government department to determine if the department has the legal authority to investigate the matter. If so, an investigator is assigned to the report.

The investigator will make recommendations to the Minister responsible for the facility involved. The Minister will take appropriate action based on the investigator's findings, such as reviewing the facility's funding, recommending that an employee be disciplined, or dismissing the report if there is no reason to believe abuse has occurred.

Where criminal activity is suspected, the investigator must refer the matter to the police.

The medical and clinical records of people in care are private and will not be examined during an investigation without their consent.

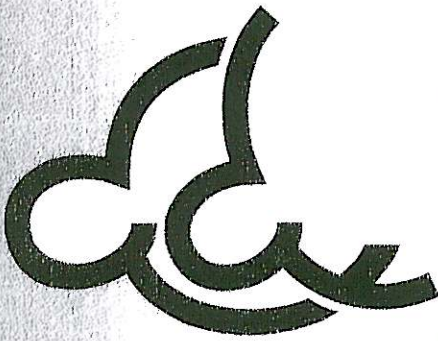
A copy of the Minister's decision will be given to the person who made the report and to the care facility involved.

CALL (TOLL-FREE)

**1-888-357-9339**

FOR MORE INFORMATION

November 1998



# Protecting PEOPLE IN CARE

**Alberta**  
GOVERNMENT OF ALBERTA



## WHAT IS THE PROTECTION FOR PERSONS IN CARE ACT?

**T**he *Protection for Persons in Care Act* is legislation to protect adults in care facilities from abuse.

The act was passed in 1995. Consultations with service providers, seniors' groups and people in care facilities and their families were held in 1996 to clarify sections of the act. The *Protection for Persons in Care Amendment Act*, which reflects the feedback received from stakeholders, was passed in 1997.

The *Protection for Persons in Care Act* will help Alberta adults, especially those who are vulnerable, live with dignity and respect.

## WHO IS COVERED BY THE ACT?

**T**he *Protection for Persons in Care Act* protects adults in publicly-funded care facilities including:

- hospitals;
- seniors' lodges;
- group homes; and
- nursing homes.

## WHAT DOES THE ACT DO?

**T**he *Protection for Persons in Care Act*:

- defines abuse;
- makes it mandatory for people who suspect abuse to report it;
- protects people who report abuse in good faith from retaliatory action;
- establishes a toll-free phone line where people can report abuse;
- requires a criminal record check for new employees and volunteers of care facilities;
- specifies penalties for failing to report suspected abuse and for knowingly making false reports; and
- sets out a process for investigating and resolving reports of abuse.

## DO I HAVE TO REPORT ABUSE?

**Yes.** If you have reason to believe that an adult in a care facility is being intentionally abused, or has been abused, you must report it. You could be fined up to \$2,000 for not reporting abuse if you know or suspect it has occurred.

## CAN ACTION BE TAKEN AGAINST ME FOR REPORTING ABUSE?

**No** action can be taken against you for reporting suspected abuse if you have reasonable grounds to believe abuse has occurred.

Individuals who take action against people who report abuse can be fined up to \$5,000.

Care facilities that take action against people who report abuse can be fined up to \$25,000.

People who intentionally make false reports of abuse can be fined up to \$2,000.

CALL (TOLL-FREE)

1-800-57-9EE9

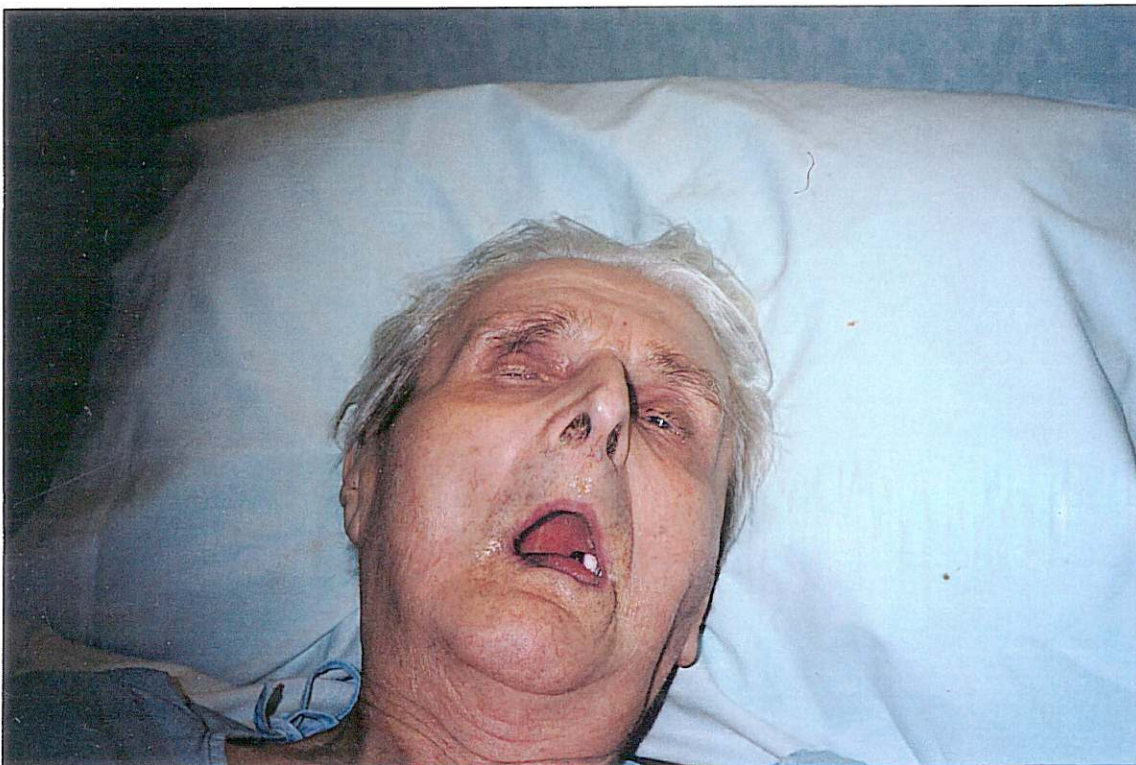
TO REPORT ABUSE IN A  
CARE FACILITY



We visited Sunday evening, October 22/00 6:30 PM. There were pink *toothet* mouth swabs on his bedside table which one only finds at the bedside of post surgical patients and terminally ill patients who are unable to eat or take fluids and therefore require mouth care. That same evening, I fed him three dixie cups of ice cream and a muffin which he eagerly received. I later wondered why these oral swabs were there when in fact he appeared to be eating well. -



Oct. 24/00 3:15 PM. Mr. Bain was on a semi-recliner. Around his mouth was dirty, there was some remnants of yellowish liquid which had dripped down his cheeks and onto his neck and onto a dirty towel, his face was unwashed, unwashed eyes. He was unshaven and unkempt, his gown was filthy. The soiled towel around his neck covered the night gown which was soiled from spilled liquid but had dried. He appeared heavily drugged, totally neglected and gravely ill. We found later that he had a severe infection from the bed sore. Shortly prior to 5:00 PM, we called the *Elder Abuse Line*, but it was already closed. We reported to the *Abuse Line* next morning at 8:20PM - had to repeat the complaint 3 times to three different people, all RN's.





October 24/00 @ 3:15PM, I examined his colostomy bag and found it to be totally flat and empty, there was no flatulence in the bag, it appeared clean. There was a taut gauze bandage which came from his back and extended across the top of the round opening of the colostomy bag. I assumed that he must have a decubitus ulcer on his back and it was therefore the gauze bandage was placed tightly across the colostomy opening or did they attempt to close off the opening of the colostomy?



At other times we also found the colostomy bag empty, there was also no apparent flatulents.





His left foot was swollen. The severe, ulcerated area on his swollen foot is a pressure sore (bed sore) which is the result of neglect. We were told that the flesh on his left foot had become necrotic and had to be debrided, which caused the bones of the heel to be exposed. He also exhibited severe *footdrop* and *some positional deformity*, particularly of his left foot. He also suffered *contractures* of his legs.



October 26/00 10:35AM After Mr. Bain had eaten, food remained in his mouth because he was so excessively medicated he could not stay awake long enough to swallow.

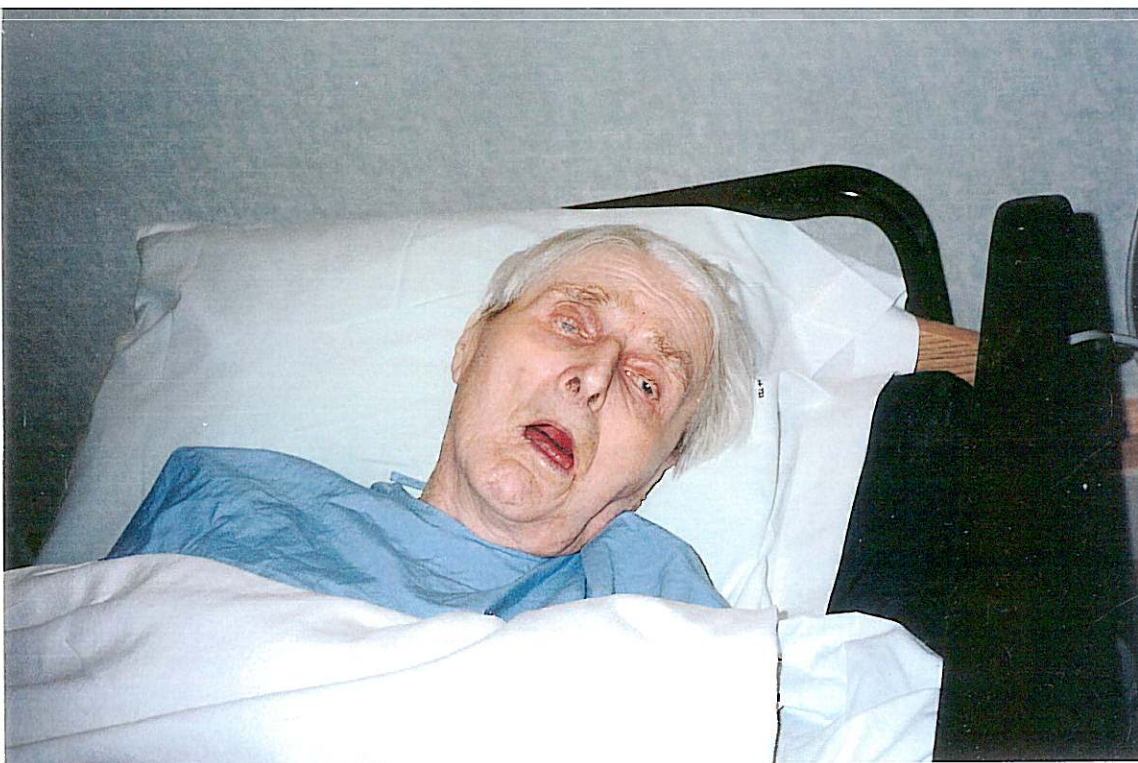
Lynn Olenek RN, *Director of Nursing Care and Pastoral Care* attended with another person, tall blonde, whom we believe to be the *Protection For persons in Care Abuse Act (PPCA)*

Investigator. Ms. Olenek introduced herself but did not introduce the person who was with her.

Ms. Olenek inquired who I was and then they both immediately left the room. They looked briefly at Mr. Bain but made no attempt to address him. Nor did he seem to be aware of them.







He was being chemically restrained. On November 12/00, he could not eat ice cream. He said he wished to have some but could not stay awake between mouthfuls.

He was also being physically restrained. He was tied to his bed/chair.

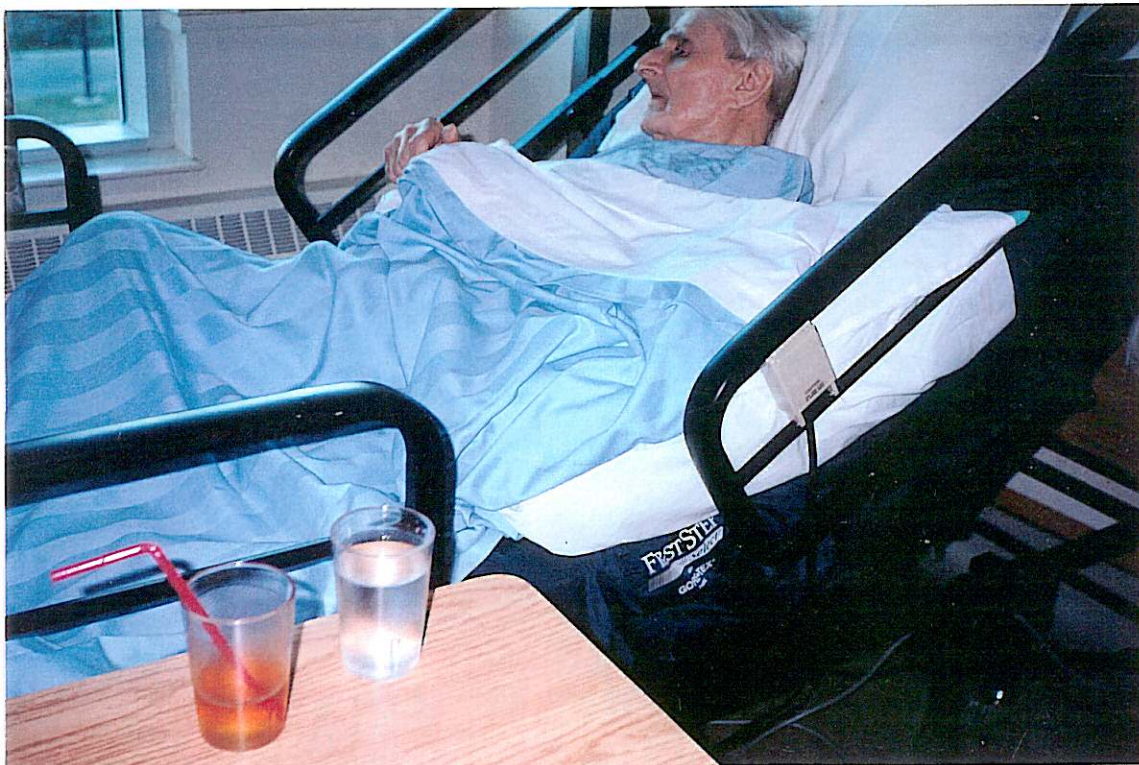






November 16/00 9:30 PM, We exposed the twisted, neglected limbs to the Chief Executive Officer, Marilyn Snow, RN and questioned her whether she was aware of his neglected condition. She replied a number of times that she was totally aware of everything in the facility.

Friday, November 17/00, a guard was posted at the door of his room & friends and advocates were denied access, on November 21/00 a priest was denied access, on November 22/00 he died.



October 26, 2000, Mr. Bain was on pressure bed. Sometimes he was given thickened fluids, and sometimes liquids. This indecisive process was evident on his meal trays. We have since learned from the lawyer for the Office of the Public Guardian, that there was an **ORDER NOT TO FEED** on his file. Nevertheless, we were never notified of this, there was no sign on the bed & whenever we or others were there to feed him, meal trays appeared. Page 5 of 7



November 17/00 3:00PM. Ms. Pat Henderson, Counsel for the Public Guardian's Office, and Ms. Colleen Freese, Public Guardian Representative, Mr. Les Hills, Trust Officer, Mr. Richard Hreczuch, Trust Officer, Ms. Doris Bonora Counsel for St. Josephs Auxiliary Hospital, made presentations to the court that this blind, ninety year old man could trust staff and that he did not require a guardian. The statement was also made that the *Protection For Persons in Care Act* investigator had found no evidence of neglect. He died at noon on November 22/00.



Even in death, his nails were not trimmed.





In nursing homes, nice, clean, neat, white bandages deceptively hide horrific secrets.



This is the bedsore of a neglected person who died in an Edmonton facility. The spine is visible in the body cavity. The stench was horrific.



64 Backgrove Terrace

Aberdeen

20<sup>th</sup> Nov, 00

Dear Sir or Madam,

I Miss Doris Bain the sister of  
James Keith Bain who now is in care  
at Joseph's Hospital Edmonton Alberta,  
would like to have my brother independently  
examined to ascertain and evaluate his  
state of well being and if necessary  
have him transferred to a suitable  
hospital should more suitable treatment  
be required

Yours respectfully,

D Bain



## Elder Advocates of Alberta

November 20, 2000

**Ms. Marilyn Snow, Chief Corporate Officer,  
Senior Executive  
St. Josephs Auxiliary Hospital**

VIA FAX 430 9777

Dear Madame:

RE: JAMES Keith BAIN -Room #806 #rd Floor - St. Joseph's  
Auxiliary Hospital

Please note the attached letter dated 20th, November, 2000, which was received from the sister of Mr. Bain, Ms. Doris Bain concerning the care of Mr. Bain.

We shall be waiting to hear from you. Thank you.

Yours truly,

*Elder Advocates of Alberta*

per:

Ruth Maria Adria

# Elder Advocates of Alberta

November 20, 2000

*The Honourable Mr. David Hancock QC*  
*Minister of Justice and Attorney General*  
Room # 320, Legislature Building  
10800 - 97 Avenue  
Edmonton, AB. T5K 2B6

Dear Mr. Minister:

RE: JAMES Keith BAIN -Room #806 #rd Floor - St. Joseph's  
Auxiliary Hospital

Please note the attached letter dated 20th, November, 2000,  
which was received from the sister of Mr. Bain, Ms. Doris Bain  
concerning the care of Mr. Bain.

We shall be waiting to hear from you. Thank you.

Yours truly,

*Elder Advocates of Alberta*

per:



Ruth Maria Adria

# Elder Advocates of Alberta

November 21, 2000

**The Honourable Mr. David Hancock QC**  
**Minister of Justice and Attorney General**  
Room # 320, Legislature Building  
10800 - 97 Avenue  
Edmonton, AB. T5K 2B6

Attention: Ms. Sharon Theuerkopf

Dear Mr. Minister:

RE: James Bain, St Josephs Auxiliary Hospital

We have learned that a person has been informed that it was in fact not Mr. Bain's wishes to have his family, us, and friends denied access and information, it was in fact the-  
"the Directors, the Guardianship, the authorities".

Further to our conversation of this morning, because a man is probably not being fed or being given fluids, (starved and dehydrated), we urge you to act and please give us a response before 1:30 PM.

If there is nothing to hide, why not have him transferred and examined, according to the wishes of the family, by Dr. David Skelton or Dr. Brenneis?

*Elder Advocates of Alberta*

per:



Ruth M. Adria

\*\*\*\*\* TRANSMISSION REPORT \*\*\* NOV. 21 '00 12:52 \*\*\*\*\*

• TELEPHONE NUMBER----- 4226621  
• NAME-----  
• PAGE/TIME----- 01 00H00'43"  
• RESULT----- G3 OK TRANSMISSION OK



**CHARLES D. COUSINEAU, B.A., LL.B.**  
**BARRISTER, SOLICITOR, NOTARY PUBLIC**

219 Centre 111  
11830 - 111th Avenue  
Edmonton, Alberta, T5G 0E1  
Telephone (780) 455-0485  
Facsimile (780) 447-5853

July 15th, 1999.

The Capital Health Authority,  
1J2,32 8440 - 112th Street,  
EDMONTON, Alberta,  
T6G 2B7.

ATTENTION: Sheila Weatherill.

Dear Madam:

Re: James BAIN of #7, 11514 St. Albert Trail, Edmonton  
My File 99071191

I have recently been involved in acting for Mr. Bain. Mr. Bain has recently been made the subject of an eviction application by his landlords to have him removed from the Baywood Apartments which he presently occupies in Edmonton.

This gentleman is in his 90's, is blind to the point that he can see virtually nothing, and has a colostomy requiring colostomy care and bag changes. He cannot see to do that job for himself although he has been forced to do it because of a lack of assistance to this time.

His present dilemma in being removed from his apartment is due to a number of complaints among which is the smell from his suite (associated with the problem of his colostomy bag and the lack of appropriate assistance in colostomy care), and smoke from his apartment ostensibly due to food burning during the cooking processes.

Apparently Mr. Bain was to receive home care. People were coming in to his apartment. However he could not see adequately to monitor the work that they were doing. It is questionable whether anything was being done for the money being paid. I have seen photographs recently taken of his suite. It is a virtual slum with tiles missing from the floor as well as lifting tiles, linoleum worn, plaster missing from around the windows, carpeting in the bedroom which is totally worn out to the point of being down to the jute backing. These are the conditions that this gentleman is presently living in. The lack of colostomy care has resulted in fecal materials on the floor and elsewhere.

FILE: Bain re: Osgoode  
DATE: July 15th, 1999  
TO: The Capital Health Authority

.....2

This man is obviously not capable of living independently. Because of his blind condition and his inability to monitor any kind of home care services that may be rendered in terms of cleaning, etc. and the sporadic and inadequate responses to his requests for assistance in colostomy care, this man presents as an emergency case that should be considered for priority in terms of placement into Dickinsfield or other similar facilities where in-house care, adequate meals and colostomy assistance can be provided.

Your urgent consideration to this mans rather desperate condition is requested. I have had an opportunity to speak to Ms. Ruth Adria, one of the Elder Advocates, who has been dealing with Mr. Bain and who was instrumental in my retainer, and further arrangements could be made through Ms. Adria. I would, however, appreciate receiving a copy of any correspondence or decisions taken in respect to this gentleman who has done no wrong rather than to grow old and suffer incapacities that may visit all of us at some time or another.

Yours truly,

A handwritten signature in black ink, appearing to read 'Charles D. Cousineau', with a large, stylized loop at the end.

Charles D. Cousineau.

CDC:cep

CC Minister of Health

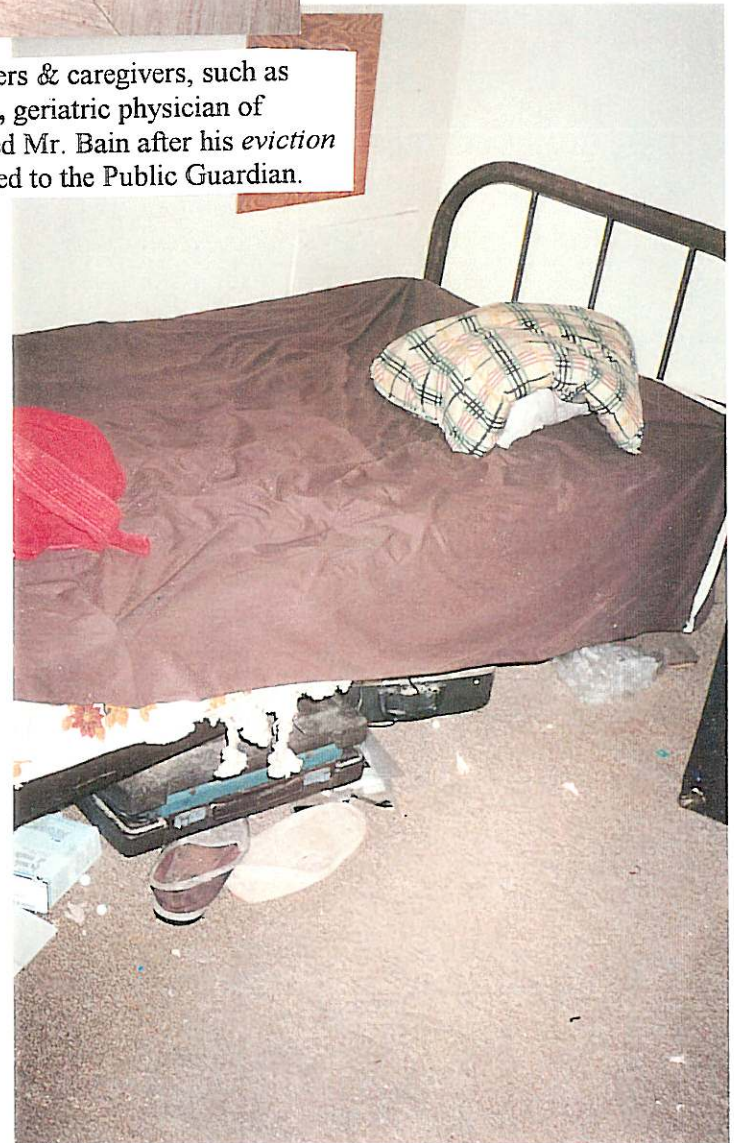
CC Ruth Adria





The ninety year old man, who lived in the suite suffered from severe glaucoma which rendered him to be legally blind. He also had a colostomy. The stench due to the improper & inadequate maintenance of the suite and the colostomy was overwhelming.

The suite was visited by professional social workers, RN case workers & caregivers, such as Candace Lizinski and Kate Herbert Battigalli. Dr. Assad Brahim, geriatric physician of Alberta Hospital & Rita Pfeffele of Regional Mental Health visited Mr. Bain after his *eviction notice* of June 1/99, did nothing to help him. He had also been referred to the Public Guardian.





Kitchen & living room floor



Bathroom ceiling



The bathroom had been cleaned that morning by a homecare worker July 30/ 99.





## Elder Advocates of Alberta

June 18 1999

VIA FAX 492 5267

3 Pages

**Ms. Sheila Weatherill, President & CEO**

The Capital Health Authority.

1J2, 32 8440 112th, Street

Edmonton, AB. T6G 2B7

Dear Madame:

**RE: JIM BAIN 11514 # 7 - St. Albert Trail, Bldg. # 24**

The above named elderly gentleman is legally blind and has a colostomy. Because he has on many occasions been forced to change the colostomy, his suite smells horribly. He has bowel movement on his shoes and elsewhere. He is in terrible condition and is therefore facing eviction.

Last Thursday, the 10th of June and Sunday, the 13th of June, his colostomy was cleaned by *24 hour intake*, whom I had appealed to for help. I have been calling since before 8:00 AM, firstly to the *24 hour intake* and then my call was transferred to the Office of **Ms. Candace Lyzinski and Kate Herbert Battigalli** who are his case workers, N.E. Office, of the Capital Health Authority. My calls have not been returned although we have been assured that Kate has been paged. On other occasions, messages were left with Candace. We have been attempting to discuss this matter with them since last week.

We are now appealing to your office to have this 90 year old's colostomy changed. We have come to learn that this is not the only elderly person who is having difficulty with their colostomy care.

Please note two attachments which grant authorization to discuss this matter with us. We will be most grateful for your assistance in this matter.

Yours truly,

Elder Advocates of Alberta

per. 

Ruth Maria Adria

## Elder Advocates of Alberta

June 19 1999

VIA FAX 407 7481

1 Page

**Ms. Sheila Weatherill, President & CEO**  
The Capital Health Authority.  
1J2, 32 8440 112th, Street  
Edmonton, AB. T6G 2B7

Dear Madame:

**RE: JIM BAIN 11514 # 7 - St. Albert Trail, Bldg. # 24**

Further to our faxed letter of appeal of June 18, 1999, the above named elderly gentleman did not receive a colostomy change yesterday. The bag has been on since Sunday the 10th of June, 1999, this is the eighth day. Can you imagine the stench?

We were promised yesterday by Kate, MSW, at 2.00PM., that in fact that evening a PCA would be trained and assigned to care for Mr. Bain's colostomy. An agency employee went to his suite yesterday evening, indicated she will order bags, phone him on Monday, but did not give colostomy care. Jim Bain has on many occasions stated that, *"They play games with me"*. We are inclined to agree. Today, an *after hours intake worker*, Noreen, Ph. 496 1300, who seems to be concerned and compassionate, has promised that the bag will be changed to day.

The Premier, Mr. Klein has on many occasions stated that seniors receive millions of our tax dollars for services. However, far too often, full time managerial staff who are senior RN'S and senior social workers, home care agencies such as *"We Care"* and others benefit rather than the isolated elderly person. The bottom line is that in this instance, a number of persons were rewarded for services, but the very necessary care was not received by Jim Bain.

Yours truly,

Elder Advocates of Alberta

per: 

Ruth Maria Adria



## Elder Advocates of Alberta

To The Honourable Mr Dave Hancock MLA  
Mrs Sharon Theuerkauf

**RE: JIM BAIN 11514 # 7 - St. Albert Trail, Bldg. # 24**

The above named elderly gentleman is blind and has a colostomy and we ask **that you come to see first hand, the condition, of this person who is under the care of *homecare* and for whom you and I are paying many tax dollars.** Because he had on many occasions, been forced to change the colostomy himself, his suite smelled horribly ( I gagged and my husband said he had to wait outside) when we first went to his suite on June 4/99. He had bowel movement on his shoes and elsewhere. He was and still is in terrible condition and is therefore facing eviction.

The suite is in serious disrepair and does not appear habitable. Certainly it cannot be properly cleaned due to loose and missing floor tiles, plaster is missing from the wall. The place is filthy.

Initially, home care gave us mixed messages, 1) He refuses homecare (colostomy care). 2) He is able to maintain his own colostomy care.

In regard to the cleaning of the suite, Jim Bain has told us that the cleaning person stays only about 10 or 15 minutes then asks him to sign for the cleaning, promising to return the next day to complete the cleaning. However the cleaning person never returns. He also told us that the RN who finally gave him colostomy care on Saturday evening as a result of our faxes to Ms. Weatherill, was "*flaming mad*", "*wouldn't talk*", "*mad as hell*", "*wouldn't give her name.*" (we got her name from the intake manager)

**Home care has failed to give appropriate and adequate care to Mr. Bain. When we first came to visit him, he appeared totally neglected.**

On Monday, June 14, 1999, we came to visit and the main security door to Building # 24 was ajar. A man who wore Jeans and had dark hair was observed at Mr. Bain's door. He reached quietly to close Mr. Bain's door which was also ajar and lock it from the outside with a key. He then left via the other stairs. Mr. Bain has told us that he feels most vulnerable, often intimidated and threatened. He says, "*They play games with me*". He refuses to leave his suite for medical care because he believes someone will enter his domicile and take his cheque blanks or rifle through his personal belongings. He has informed us that keys, certain documents and other items are missing.

This matter was referred to our office by the office of the Honourable Anne McLellan, MP, Minister of Justice.

July 5/99



(Bain Hancock)



Capital  
Health

*Healthier people in healthier communities*

**Corporate Office**

July 6, 1999

112 Waller C. Mackenzie  
Health Sciences Centre  
8440 - 112 Street  
Edmonton, Alberta  
Canada T6G 2B7  
Office: (780) 407-1000  
Fax: (780) 407-7161

Mrs. Ruth Adria  
Elder Advocates of Alberta  
P.O. Box 45028  
Edmonton Alberta  
T6H 5Y1

Dear Mrs. Adria:

Thank you for your letter of June 18 about Jim Bain, a Home Care client.

I understand Mr. Bain receives home care services on a regular basis from Capital Health's Northeast Office. In follow-up to your concerns, please contact the Home Care Manager, Carol Durocher at 496-1340. At the request of Mr. Bain, Carol will arrange to meet with both you and Mr. Bain to review the home care service plan.

Thank you for your letter.

Sincerely,



Sheila Weatherill  
President

cc: Susan Paul  
Vice President & Chief Operating Officer

Sharon Tell  
Senior Operating Officer  
Home Care/Regional Continuing Care





LEGISLATIVE ASSEMBLY  
ALBERTA

**DAVE HANCOCK, M.L.A.**

Edmonton Whitemud Constituency

March 29, 2000

Mrs. Ruth Maria Adria  
Box 45028  
Edmonton, Alberta  
T6H 5Y1

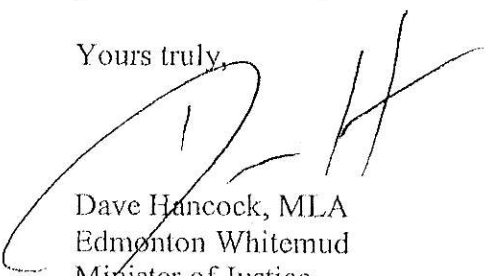
Dear Mrs. Adria:

Thank you for your letter of February 22<sup>nd</sup> regarding guardianship of Mr. James Bain. This matter has been reviewed with the Honourable Clint Dunford, Minister of Human Resources and Employment and is also responsible for public guardianship. He has provided me with the following information.

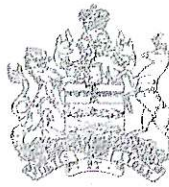
Mr. Bain was referred to the Office of the Public Guardian when he was at risk while living in the community. The Public Guardian has investigated this referral and also interviewed Mr. Bain and his service providers. Based on Mr. Bain's medical reports, his physician, staff from St. Joseph's auxiliary hospital as well as input from Mr. Bain personally, it was determined that no guardianship for Mr. Bain was required and that he is very much capable of making his own personal decisions. Should Mr. Bain's circumstances change, Mr. Bain as well as the staff of the auxiliary hospital, have been encouraged to contact the Office of the Public Guardian immediately. The Public Guardian's Office promotes and maintains independence for the elderly for as long as possible.

Your efforts of advocating for the elderly is to be commended. I appreciate you bringing your concerns to my attention.

Yours truly,



Dave Hancock, MLA  
Edmonton Whitemud  
Minister of Justice  
And Attorney General



ALBERTA  
MINISTER OF JUSTICE

---

320 Legislature Building, 10800 - 97th Avenue N.W., Edmonton, Alberta, Canada T5K 2B6  
Telephone 403/427-2339 Fax 403/422-6621

August 6, 1999

Ruth Adria  
Elder Advocates of Alberta  
P. O. Box 45028  
Edmonton, Alberta  
T6H 5Y1


Dear Ruth:

Thank you for your July 5<sup>th</sup> letter. I appreciate your letting me know about the circumstances of Mr. Jim Bain.

I have raised this issue with the Health and Wellness Minister and was advised by the Honourable Halvar Jonson that Mr. Bain's medical and social condition falls within the mandate of Capital Health Authority's Home Care program. I understand you have alerted Capital Health Authority to the situation. The Minister of Health and Wellness has been asked to follow up with Capital Health Authority to ensure that Mr. Bain's situation with Home Care is addressed.

Thank you for sharing your concerns with me.

Yours truly,



Dave Hancock  
Minister  
MLA - Edmonton Whitemud



## Elder Advocates of Alberta

June 14, 1999

VIA FAX 451 5894  
Pages 1

Ms. Candace Lizinski/  
Kate Herbert Battigalli  
Case workers, Home Care  
N.E. Office  
Capital Health Authority  
Edmonton, Alberta

Dear Kate, Candace:

RE: Mr. James Bain

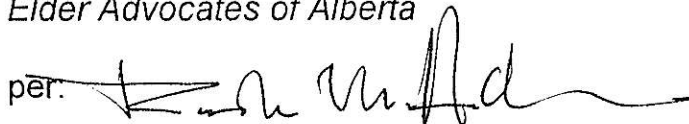
Mr. Bain has been notified that he will be evicted on Wednesday,  
June 16th/99 as you are aware. What do you propose will happen to  
him?

Please call us in regard to this matter.

Yours truly,

*Elder Advocates of Alberta*

per.



Ruth Maria Adria

*No  
answer*

# Elder Advocates of Alberta

June 9, 1999

VIA FAX 451 5894  
Pages 2

**Ms. Candace Lizinski/  
Kate Herbert Battigalli  
Case workers, Home Care  
N.E. Office  
Capital Health Authority  
Edmonton, Alberta**

Dear Madame:

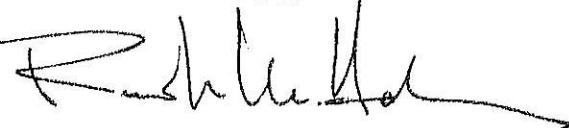
RE: Mr. James Bain

Please note the attached authorization of James Bain dated June 8 1999 which you requested.

We would be grateful if you would call us concerning this gentlemen at your earliest convenience.

Yours truly,

*Elder Advocates of Alberta*

per: 

Ruth Maria Adria



June 8 1999

I, James Bain , authorize Ruth Adria of *Elder Advocates of Alberta* to discuss with the Department of *Home Care*, the home care, health care monitoring, home making assistance and other assistance that I am receiving from *Home Care* under the direction of Kate Herbert Battigalli/ Candace Lizinski, or with their supervisors.

This is Exhibit ..... to the  
Affidavit of *Ruth Adria*  
sworn before me this *7* day  
of *May*, A.D. 19 *2000*, at  
Edmonton, Alberta.

*[Signature]*  
COMMISSIONER for OATHS/NOTARY PUBLIC  
IN AND FOR THE PROVINCE OF ALBERTA

*Jim Bain*

James Bain

#7, 11514 - St. Albert Trail

Phone 455 9005



Capital  
Health  
Home Care

## CONSENT FOR RELEASE OF INFORMATION

I, James Bain of Edmonton  
(name of client) (city/town)

authorize the Capital Health Home Care Program to release the following information:

(check one)

☒ any information:

☐ only the following information: \_\_\_\_\_

to: ~~other health professionals, agencies or institutions involved in my care.~~ Elder Advocates of Alberta

I release the Capital Health Home Care Program, its employees and agents, from all claims which may arise as a result of the release of information described above.

I am eighteen years of age or older.

Dated this: 14 day of June, 19 99

CLIENT or GUARDIAN:

WITNESS:

(signature)

Jim Bain

(witness' signature)

Whizzy

(relationship)

Client

(witness' name - please print)

Carla Lozysky



# Elder Advocates of Alberta

April 19, 2000

Mr. Richard Hreczek, Trust Officer,  
Office of the Public Trustee,  
Edmonton, Alberta

VIA FAX # 422 - 9136

Dear Mr. Hreczek:

Re: James Keith Bain, St. Josephs Auxiliary Hospital # 308

As you may or may not be aware, guardianship of Mr. Bain has been opposed by the *Office of the Public Guardian* and therefore we are advocating on his behalf. We request and recommend for Mr. Bain:

1. A heavy four wheel *walker* which would allow Mr. Bain to exercise (with an assistant).
2. A person who provides socialization, companionship and limited, personal care to Mr. Bain, for at least three or four days a week for a period of approximately 3 or four hours. We recommend that Mira Nikolic, his friend, who frequently visits him, be asked to fill that need.  
It would be preferable for her to be present during the dinner hour which would facilitate his eating. Presently he has difficulty feeding himself because he is blind and is given no assistance during meal time.

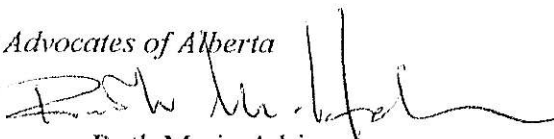
We recommend that he have this care and assistance, because often when we have attended at Mr. Bain, he has not been shaved or adequately cared for. When we attended for his birthday last Friday, the 14th of April, he had not been shaved and wore the same mauve colored, soiled T shirt which we had seen on him the previous evening. It was Mira Nikolic who saw to it, that his 90th Birthday was celebrated or there would have been no celebration.

When Mira Nikolic, his friend, visits him, she shaves him and makes him comfortable, brings him food which he enjoys and generally encourages him. Furthermore, he thrives on conversation, taking great interest in the world outside. Presently, he is often very lonely.

Thank you. We shall be waiting to hear from you at your earliest, concerning the above noted matters.

Elder Advocates of Alberta

per:



Ruth Maria Adria

# Elder Advocates of Alberta

April 19, 2000

*Ms. Katherine Fairweather, RN*  
*Case Co-ordinator, Capital Health Authority*  
#406 10216 124 Street  
Edmonton, Alberta , T5N 4A3

VIA FAX # 488 0587

Dear Ms. Fairweather:

Re: James Keith Bain, St. Josephs Auxiliary Hospital # 308

As you may or may not be aware, guardianship of Mr. Bain has been opposed by the *Office of the Public Guardian* and therefore we are advocating on his behalf. We request and recommend for Mr. Bain:

1. A heavy four wheel *walker* which would allow Mr. Bain to exercise (with an assistant).
2. A person who provides socialization, companionship and limited, personal care to Mr. Bain, for at least three or four days a week for a period of approximately 3 or four hours. We recommend that Mira Nikolic, his friend, who frequently visits him, be asked to fill that need.  
It would be preferable for her to be present during the dinner hour which would facilitate his eating. Presently he has difficulty feeding himself because he is blind and is given no assistance during meal time.

We recommend that he have this care and assistance, because often when we have attended at Mr. Bain, he has not been shaved or adequately cared for. When we attended for his birthday last Friday, the 14th of April, he had not been shaved and wore the same mauve colored, soiled T shirt which we had seen on him the previous evening. It was Mira Nikolic who saw to it, that his 90th Birthday was celebrated or there would have been no celebration.

When Mira Nikolic, his friend, visits him, she shaves him and makes him comfortable, brings him food which he enjoys and generally encourages him. Furthermore, he thrives on conversation, taking great interest in the world outside. Presently, he is often very lonely.

3. We also request that he be transferred to the *Extendicare Facility/Holyrood*, at 8008- 95Avenue. This would allow Mira Nikolic to be in closer proximity to his care facility.

. . . / 2



April 19, 2000

*Ms. Katherine Fairweather, RN*  
*Case Co-ordinator*

Page 2

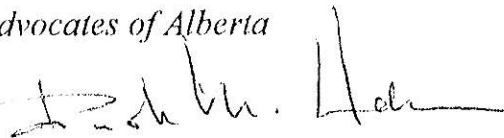
We recognize that he is presently on a list to be moved to Dickensfield. Unfortunately, such a move would make it virtually impossible for any of his friends to visit him.

Thank you. We shall be waiting to hear from you at your earliest, concerning the above noted matters.

Most sincerely,

*Elder Advocates of Alberta*

per:

A handwritten signature in dark ink, appearing to read 'Ruth Maria Adria', written over a horizontal line.

Ruth Maria Adria

Office of the Public Trustee

400 South, 10365 – 97 Street  
Edmonton, Alberta, Canada T5J 3Z8

Telephone: 780 427-2744  
Fax: 780 422-9136

Richard M. Hreczuch  
Direct Line: (780)422-4367  
E-Mail: richard.hreczuch@gov.ab.ca

Your File:  
Our File: 138,265

June 5, 2000

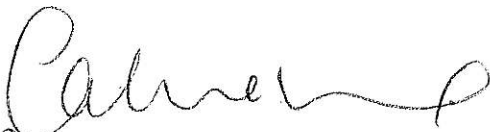
RUTH MARIA ADRIA  
ELDER ADVOCATES OF ALBERTA  
BOX 45028  
EDMONTON, AB T6H 5Y1

**James Keith BAIN, dependent adult**

I acknowledge receipt of your faxed letter dated April 19, 2000.

I have sent a copy of your letter to St. Joseph's Auxiliary Hospital to ask them whether or not our client would benefit from your recommendations. I have also sent a copy to the Public Guardian's Office for their input and advice. Upon receipt of their recommendations, we will be in touch with you.

Thank you.



**FOR**  
R.M. Hreczuch  
Trust Officer

RMH/kk



Your File:  
Our File: E 138,265

July 13, 2000

RUTH M ADRIA  
C/O ELDERS ADVOCATES OF ALBERTA  
BOX 45028  
EDMONTON AB T6H 5Y1

**James BAIN, dependent adult**

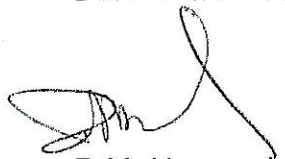
I am writing at your request to verify the information I gave to you in our phone conversation of Friday, July 7, 2000.

Your original concerns that were sent to this office were passed on to the Public Guardian's Office and to St. Joseph's Auxiliary Hospital.

When we communicated with the Public Guardian's Office we asked them to investigate whether there was a deemed need for a guardian at this time. We received a reply from them in the middle of June stating that they investigated the situation and felt that the Public Guardian would not be involved at this time.

I followed up with St. Joseph's Auxiliary Hospital in a letter and also by phone. I spoke with a social worker at the hospital by the name of Darlene Timmerman. She discussed the concerns that you have with Mr. Bain and Mr. Bain gave her instructions as to how he wanted these matters dealt with.

This office will be working with St. Joseph's Auxiliary Hospital to provide care for Mr. Bain at the level that he requests. Thank you for your concern.



R.M. Hreczuch  
Trust Officer

RMH/bc

## Elder Advocates of Alberta

September 4, 2000

**Mr. Richard Hreczek, Trust Officer**  
**Office of the Public Trustee**  
Edmonton, Alberta  
T5T 4M2

**VIA FAX # 422 - 9136**

Dear Mr. Hreczek:

Re: James Keith Bain, St. Josephs Auxiliary Hospital # 308

As stated earlier, guardianship of Mr. Bain has been opposed by the *Office of the Public Guardian* and therefore we are advocating on his behalf.

We again ask that Mira Nikolic, his friend, who frequently visits him, be retained to visit him three or four days a week for a period of approximately 3 or four hours.

Mr. Bain is totally isolated and is provided no mental stimulation whatsoever although he is being medicated which is obvious by his drooling. Long term care does not provide mental stimulation for persons like Mr. Bain, they are often terribly lonely.

When Mira visits him she laughs with him, brings him garlic sausage and keeps him in touch with reality. Mira cannot afford to visit him because she does not have a great deal of financial resources. She does not have a vehicle and lives a considerable distance from the facility.

We cannot always visit him because we have limited time.

You also failed to move him to *Extendicare Holyrood*, at 8008- 95 Avenue as we asked where Mira could easily visit him and feed this blind man at meal time.

He has told us that he wishes her to visit him. Of course he told the social worker that he does not wish to spend money, that was his lifelong problem. But that is allegedly why you assumed the trusteeship.

. . . / 2



September 4, 2000  
*Mr. Richard Hreczck, Trust Officer*

*Page 2*

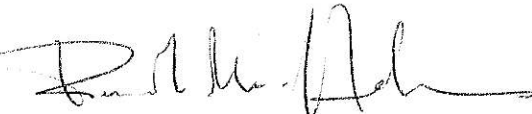
When we brought him meals when he lived in his apartment in May of 1999, we thought he was destitute. Since then we have found out that he has an account in excess of \$250,000.00.

His rent at St. Josephs was being paid by his Bank - you are not meeting his needs- so why did you assume trusteeship opposing others in the process? Why did you oppose guardianship not allowing him a guardian?

We would be grateful to be in receipt of your acknowledgement, addressing our concerns and be in such receipt by the 9th of September, 2000.

Sincerely,

*Elder Advocates of Alberta*

per: 

Ruth M. Adria

c.c. The Honourable Mr. David Hancock, QC, *Minister of Justice and Attorney General*  
Ms. Elaine Saunders, *Regional Public Guardian*

New York Times

December 4, 2000

## U.S. Toughens Enforcement of Nursing Home Standards

By ROBERT PEAR

**W**ASHINGTON, Dec. 3 — In a new crackdown on substandard care, federal officials have imposed fines on hundreds of nursing homes across the country, and courts have upheld penalties of more than \$1,000 a day for each violation.

The officials said they had increased the number of fines under instructions from President Clinton to toughen enforcement.

In the most recent fiscal year, which ended on Sept. 30, the federal government imposed five times as many fines as it had in 1996: a total of 1,000, up from 199.

The nursing homes have been accused of filing false claims for federal medical insurance when they harmed patients by not meeting federal standards.

The United States Court of Appeals for the 10th Circuit, in Denver, recently upheld a penalty of \$1,300 a day against a Utah nursing home that had allowed patients to develop pressure sores, or bedsores.

The court said the fine was "appropriate and reasonable" because the home, the South Valley Health Care Center in West Jordan, Utah, had caused harm to patients by flouting federal standards.

In another case, Beechknoll Convalescent Center in Cincinnati was fined \$153,000. The government said the home had failed to respect patients' privacy rights and to care properly for patients suffering from pressure sores, infections and incontinence. The home is contesting the fine.

Doctors and nurses consider bedsores potentially serious problems because, if neglected, they can damage surrounding tissue, extend deep into the muscle and bone and cause long hospital stays.

About 1.6 million people live in about 17,000 nursing homes nationwide. Ninety-five percent of the homes are subject to federal standards because they participate in Medicaid or Medicare, the government programs for low-income people and the elderly or disabled.

Using a new strategy, the Justice Department has begun to attack substandard care by asserting that nursing homes violate the False Claims Act when they file claims with the government seeking payment for care that was not adequate.

In recent lawsuits against three nursing homes in Philadelphia, the government said the homes had filed "false, fictitious or fraudulent claims" because they did not provide the nursing, nutrition and other services they had promised.

David R. Hoffman, an assistant United States attorney in Philadelphia, said: "The common thread in



Page 2 of 3  
these cases is that nursing home residents received grossly inadequate care. They were profoundly malnourished, lost significant amounts of weight and developed pressure ulcers that did not heal and were not treated.

"When nursing homes submit claims, they certify that they comply with all laws and regulations. But in these cases, that was false."

Nursing homes say they have a strong incentive to settle such cases because if they lose in court they can be required to pay \$10,000 for each false claim, plus three times the amount of any losses sustained by the government.

Two of the Philadelphia homes, the Mercy Douglass Center and the Stephen Smith Home for the Aged, agreed to settlements under which they paid the government \$80,000 apiece. They also agreed to accept the appointment of temporary managers to operate the homes, and to pay for federal monitors, who will visit the homes at least once a month to assess the quality of care.

The third home, the Ashton Hall Nursing and Rehabilitation Center, agreed last month to pay the government \$60,000 and to spend \$100,000 over the next two years on lighting, air-conditioning and other equipment.

Most of the recent cases involve civil fines or payments to the government to settle civil charges, but in a few cases the government has won criminal convictions.

In October, a former deputy commissioner of the Oklahoma Health Department and a nursing home owner were convicted of federal bribery charges. Prosecutors said the state official, Brent VanMeter, had given favorable treatment to certain nursing homes in return for the bribe.

Rodney A. Johnson, a lawyer in the Dallas office of the federal Department of Health and Human Services, said the recent enforcement actions had touched off "a maelstrom" in the world of long-term care.

"On almost any given day in this country," Mr. Johnson said, "a Medicare-certified nursing home receives a letter from the Health Care Financing Administration, notifying the home that one or more remedies have been imposed, including perhaps civil monetary penalties."

David M. Shell, a lawyer for the South Valley nursing home in Utah, said he thought the government had "run amok" in its crackdown. "The inspectors, the surveyors, are instructed to find deficiencies," he said. "It's very difficult for the homes to win, or even to get a fair hearing."

But consumer advocates welcome the federal crackdown. Esther Houser, the state long-term care ombudsman in Oklahoma, said, "We've been trying for at least 15 years" to get the state Health Department to take a more aggressive approach to enforcement.

In July 1998, under pressure from Congress, President Clinton ordered federal health officials to step up enforcement, to focus on nursing homes with a history of poor performance and to conduct more inspections at night and on weekends.

In February, the United States Supreme Court ruled that nursing homes must go through an elaborate sequence of administrative appeals before they can challenge fines in court. In that case, *Shalala v. Illinois Council on Long-Term Care*, the justices said they realized that their decision would cause hardship for some nursing homes, but they insisted that Congress wanted all Medicare claims to be reviewed first in the Department of Health and Human Services.

Marie C. Infante, a Washington lawyer who has advised many nursing homes, said: "In view of that decision, the cards are stacked in favor of the government now. For nursing homes to pursue an appeal

is a tortuous process."

Page 3 of 2

The federal government has posted evaluations of most nursing homes at [www.medicare.gov](http://www.medicare.gov).

During a recent family  
conference in Calgary -  
2 Mr. Puntigam stated that  
elderly persons not given  
same level of nursing care



DAD 14

COURT FILE NUMBER	10673
COURT	Surrogate Court of Alberta
JUDICIAL DISTRICT	Edmonton
PERSON IN RESPECT OF WHOM THE APPLICATION IS BEING MADE	James Bain
PROCEDURE	Application for appointment of Guardian Dependent Adults Act, R.S.A. 1980, C. D-32 as amended
DOCUMENT	Affidavit
DEPONENT(S) NAME(S)	Richard M. Hreczuch
DATE OF AFFIDAVIT	November 17, 2000


The applicant(s) swear under oath or affirm that the following information is within the applicants' knowledge and is true. Where the information is based on advice or information and belief, this is stated.

1. I am employed in the Office of the Public Trustee for the Province of Alberta as a Trust Officer and am informed of the matters herein deposed to based on my personal knowledge and on material taken from the file of the estate of James Bain on record at the Office of the Public Trustee, with which file I am familiar, and believe such information to be true.
2. The Public Trustee for the Province of Alberta was appointed as trustee of the estate of James Bain by order of Justice J. B. Oea dated January 24, 2000.
3. On July 10, 2000, I attended along with another representative from the Office of the Public Trustee at St. Joseph's Auxiliary Hospital in order to meet with James Bain. The meeting was scheduled by Darlene Timmerman, social worker at the hospital, at the request of James Bain.
4. During our meeting, I discussed with James Bain matters pertaining to his financial affairs and to his personal affairs, including the provision of companionship services to him, the services provided to him by the hospital staff, the care he was receiving at the hospital and his desire to contact his family members. While communication with Mr. Bain was slow and, at times, difficult, he was able to express his wishes about matters relating to his person.

DAD 14

3. Mr. Bain specifically advised me that while he appreciated the visits made to him by Ruth Adria and Mira Nikolic, that he did not want them to make personal decisions on his behalf.

SWORN or affirmed before me at

Edmonton Alberta  
(city, town, municipality)on 2000/11/7  
(year/month/day)  
Deponent's signature  
Signature of a Commissioner for Oaths in and for  
the Province of AlbertaKimberly E. Gossmann  
Registrar and Solicitor  
Office of the Public Trustee



COURT FILE NUMBER 10973

COURT Surrogate Court of Alberta

JUDICIAL DISTRICT Edmonton

PERSON IN RESPECT OF WHOM THE  
APPLICATION IS BEING MADE

James Bain

PROCEDURE

Application for Appointment of Guardian  
Dependent Adults Act, R.S.A. 1980, C. D-32  
as amended.

DOCUMENT

Affidavit

Lawyer for Applicant  
Responsible lawyer: Leslie A. Hillis  
Firm name: Office of the Public Trustee  
Complete Address:  
400 S. Brownlee Bldg.  
10365 - 87 Street  
Edmonton, AB T6J 3Z8  
Phone: (780) 427-2744  
Fax: (780) 422-9136  
File No.: 136285

/s/



INTERNATIONAL MONEY ORDER  
MANDAT INTERNATIONAL

970 348

866 BIL-98/01

JAMES BAIN

NAME OF REMITTER DONNEUR D'ORDRE

PAY TO THE  
ORDER OF  
PAYER À  
L'ORDRE DE

MS DORIS BAIN

TRANSIT NO. BRANCH  
N° D'IDENTIFICATION CENTRE BANCAIRE

00059 JASPER AVE. 2 100TH

DATE  
Dec/22/1999

\*\*\*\*\*100.00\*\*\*\*\*

GBP

THE SUM OF  
LA SOMME DE

ONE HUNDRED

NOT OVER FIVE HUNDRED POUNDS  
NE DOIT PAS EXCÉDER CINQ CENTES LIVRES

NOT OVER  
NE DOIT PAS EXCÉDER £ 500  
POUNDS STERLING  
LIVRES STERLING

TO  
TIRÉ:

LLOYDS BANK PLC  
INTERNATIONAL BANKING DIVISION  
11 - 15 MONUMENT STREET  
LONDON, ENGLAND  
EC3R 8JU

DETACH HERE  
ICI

CHARGE TO CUSTOMER À CHARGER AU CLIENT	
RATE COURS	2.4017
EQUIV. CAD	240.17
CONTRE-VALEUR EN CAD	
HANDLING CHARGES	0.00
COMMISSION DE MANIPULATION	
TOTAL COST	240.17
COÛT TOTAL	

CUSTOMER'S COPY  
RETAIN THIS COPY FOR YOUR RECORD  
SEE "NOTICE TO PURCHASER" ON REVERSE

COPIE DU CLIENT  
CONSERVER CETTE COPIE POUR VOS DOSSIERS  
VOIR «AVIS À L'ACHETEUR» AU VERSO

866

537169



## Elder Advocates of Alberta

September 11, 1999

**Mr. Carl Roy, Chief Corporate Officer, Senior Executive  
Grey Nuns Hospital**

VIA FAX 930 5998 - Pages 5

**Dr. Harry Zirk,  
Northern Alberta Regional Geriatric Centre  
Edmonton, Alberta**

Dear Sir:

RE: JAMES BAIN - UNIT # 51 - GREY NUNS HOSPITAL

The above named James Bain informed us that on Thursday, September 9th, 1999, a male person attended at his room who presented himself as a representative of Dr. Harry Zirk. Mr. Bain was not certain of the name of the person, nor did the person leave a card identifying himself as to his professional status.

According to Mr. Bain, the gentleman then proceeded to query him. He asked questions which Mr. Bain believed were meant to assess his mental capacity. He was asked what day it was, how to spell *little* and *worlds* backwards and other questions. Mr. Bain said that he thought that the gentleman was probably from *Alberta Hospital*.

According to Mr. Bain the gentleman failed to ask permission prior to the questioning, nor did he give him a reason for the querying. If in fact this gentleman was carrying out a *competency assessment* and *surrogate decision making process*, then the failure to obtain a valid form of consent is indeed an ethical failure and subject to challenge.

We are concerned regarding the intent of the questioning. Some months ago, when Mr. Bain lived alone in an apartment and was facing eviction, he received no support or assistance. We were told that *Central Placement* had no room for him and he could move "*wherever he likes*". Nevertheless one day, the Case Worker brought a gentleman to query Mr. Bain and failed to inform him as to his identity. Next day we telephoned the social worker as to the identity of the visitor and it turned out to be Dr. Assad Brahim of the Alberta Hospital. She then phoned Mr. Bain to *clarify* the situation.

. . . / 2

September 11, 1999

**Mr. Carl Roy, Chief Corporate Officer, Senior Executive**

Page 2

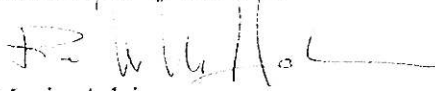
Mr. Bain is legally blind, and somewhat hard of hearing, therefore it would have been appropriate to have a friend and advocate present. Coincidentally, that same afternoon, Arlene Engel phoned the former caregiver, who has continued to be a compassionate friend to Mr. Bain. Ms. Engel requested information such as how much money Mr. Bain has, whether he has made funeral arrangements, or whether he has a will and other very personal questions of which she had no knowledge.

If you are aware of who was present in Mr. Bain's room querying him on September 9, 1999, please inform us .

We shall be waiting to hear from you. Thank you.

Yours truly,

*Elder Advocates of Alberta*

per:   
Ruth Maria Adria

Attachments: Letters to CEO Sheila Weatherill dated June 18, 19, 1999

Letter from The Honourable Minister of Justice, Mr. David Hancock dated August 6, 1999



coordination or muscle tension. It appears that Risperidone is somewhat less likely to cause this type of side effect.

Someti

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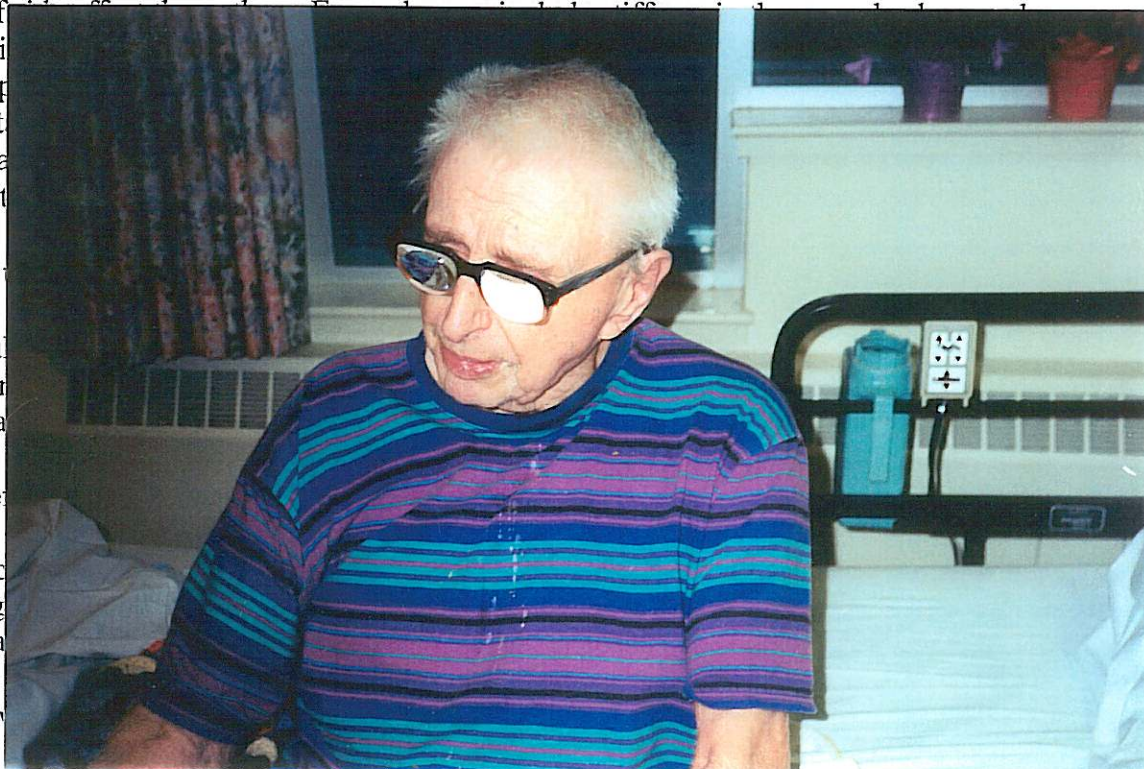
#### Stop taking

- Convul
- pressur
- unusua

#### Other side e

- More c
- feeling
- weak a

#### Side effects



- More common (10-15%): Abdominal or stomach pain or gas, constipation, cough, dizziness, drowsiness, headache, nausea, vomiting, stuffy nose, trouble with sleeping, agitation..
- Less common: Back or joint pain, decreased sexual desire or ability, fever, increased watering of mouth, rash or other skin problems, sore throat, toothache, burning sensation of legs and feet.

#### Other possible side effectts may include:

- Weight gain, breast pain and/or discharge.

#### The following other medications may need to be adjusted while taking risperidone:

- Antidepressants: Tricyclics (amitriptyline, clomipramine, desipramine, imipramine, nortriptyline), venlafaxine/Effexor, Fluoxetine/Prozac, paroxetine/Paxil, trazodone/Desryl, maprotiline.
- Other psychiatric medications: Clozapine/Clozaril, Haloperidol/Haldol, Perphenazine/Trilafon, Thioridazine/Mellaril.
- Other drugs: Carbamazepine/Tegretol, Codeine, dextromethorphan (found in many over-the-counter cough and cold medications), encainide, flecainide, metoprolol, mianserin, propafenone. St.John's Wort.

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# Elder Advocates of Alberta

February 3, 2000

**Ms. Marilyn Snow, Chief Corporate Officer,  
Senior Executive  
St. Josephs Hospital**

**VIA FAX 430 9777**

Dear Madame:

RE: JAMES Keith BAIN -Room #806 #rd Floor - St. Joseph's  
Auxiliary Hospital


We visited Mr. Bain at 11:40 AM this morning. He appeared to be heavily medicated and had great difficulty rousing. As a matter of fact we were able to briefly rouse him a number of times, but he was unable to stay awake.

Apparently he was in a similar state yesterday afternoon. However at that time, he was able to carry on some conversation and was totally lucid. He expressed strong concerns about the care he was receiving.

We shall be waiting to hear from you. Thank you.

Yours truly,

*Elder Advocates of Alberta*

per: 

Ruth Maria Adria RN (Assoc. Registration)

c.c.

Dr. PJ Klemka  
Ms. Sheila Weatherill, CEO Capital Health Authority  
The Honourable Minister of Justice, Mr. David Hancock  
Dr. Robert Bradstock



February 18, 2000

Elder Advocates of Alberta  
Box #45028  
Edmonton, AB T6H 5Y1

ATTENTION: RUTH MARIA ADRIA, RN

RE: BAIN, James

I visited the above named patient at St. Joseph's Auxiliary Hospital this morning. He was sitting at his bedside finishing his breakfast when I arrived. I found him to be alert and oriented in three spheres with no signs of over sedation. He was perfectly lucid and we had a fairly length conversation regarding his concerns over his current situation.

Mr. Bain's major concerns center around ongoing intermittent trouble with constipation for which he is receiving laxatives on an as needed basis. He also continues to request a transfer to Dickensfield where he feels he will be better off. His major concerns with St. Joseph's appeared to be centered around his perceived lack of control over basic activities of daily living. He also expressed concerns about the type of food he was being provided although he could not make any suggestions as to how this might be improved. We held a recent team conference where many of the same concerns were discussed with Mr. Bain and every effort is and has been made to accommodate his desires.

The only medications he is taking that could potentially be sedating would include Trazodone an antidepressant and Ativan a sedative. On examination of the records, it is apparent he has not received any Ativan for several weeks and the Trazodone has been a long-standing medication that he takes BID. Since the Trazodone could potentially cause some sedation, we have altered the dosing regimen to provide the medication only at bedtime.

On questioning the staff there have not been any significant episodes over sedation reported in conjunction with the staff at St. Joseph's Auxiliary Hospital. We are endeavoring to provide the best and most appropriate care for Mr. Bain that we are able to.

I hope this letter has addressed your concerns with respect to your recent visit with Mr. Bain. Should you have any further questions, please do not hesitate to contact us.

Sincerely,  
FORWARDED IN DOCTOR'S ABSENCE  
TO AVOID DELAY IN MAILING

Peter Newnham, MD  
Family Medicine Resident I for  
P.J. Klemka, MD, CCFP  
ULI# 39668-2410  
PN/srb

Cc: Dr. Robert Bradstock

# OFFICIAL TRANSCRIPT

No. DA03 10673

IN THE SURROGATE COURT OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

IN THE MATTER OF the Application for  
Appointment of Trustee Regarding Dependent  
Adult James Bain Under the Dependent Adults  
Act, R.S.A. 1980, C. D-32 as Amended

---

P R O C E E D I N G S

(EXCERPT)

---

Edmonton, Alberta  
17th November, 2000  
Transcript Management Services, Edmonton



## Elder Advocates of Alberta

July 26, 2001

*The Honourable Mr. David Hancock QC  
Minister of Justice and Attorney General  
Room # 208, Legislature Building*

VIA FAX 422 6621

Dear Mr. Minister:

*We made a Guardianship Application Re: JAMES Keith BAIN on November 17, 2000. Our Application was dismissed. Mr. Bain died five days later.*

Last Friday we attended at the clerk's office of the surrogate court in order to review the file. We were informed that we were not the *applicant*, that the file was under the *Office of the Trustee* (please note attached copy of transcript cover of the application for guardianship) and had no right to see the file. It strongly appeared that they had no knowledge that we initiated the application for guardianship.

Yesterday, having finally obtained a copy of the originating motion (attached) from the counsel whom we had retained, we returned to the clerk's office of the surrogate court with originating motion in hand. We presented the originating motion, filled out the *Search Request Form* and a young woman promised us that she would quickly obtain the file for us. However then again the supervisor came to the counter and informed us that we could not review the file. She said that she had spoken with Mr. Jack Hoffman the previous day and then to Mr. Roman Bombak, counsel for the *Office of the Trustee*. We do not fault the clerk's office.

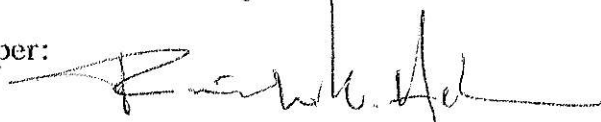
The previous day, the clerk had the entire file on the counter. The file apparently contains documents both of the *Trustee* and *Guardianship* applications however there appeared to be precious few documents there.

Please advise us concerning this matter.

Most sincerely,

*Elder Advocates of Alberta*

per:



Ruth M. Adria

Attachments

## Elder Advocates of Alberta

June 29, 2001

*Ms. D. Bonora, Barrister and Solicitor*  
Reynolds Mirth, Richards & Farmer  
3200 - 10180 101 St.  
Edmonton, Alberta

VIA FAX 429 3044  
Letter to follow

Dear Madame:

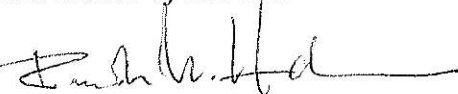
RE: Guardianship Application JAMES Keith BAIN  
November 17, 2000

During the said hearing of November 17, 2000 you stated that on the chart of Mr. Bain, there were orders which stated that he was *not to receive things by mouth*. Please inform us as to what date that this order was entered and by whom.

Thank you for your kind attention to this matter. We shall be waiting to hear from you.

Yours most sincerely,

*Elder Advocates of Alberta*

per: 

Ruth Maria Adria





BARRISTERS SOLICITORS

Reynolds Mirth Richards & Farmer

WRITER'S E-MAIL

YOUR FILE

[dbonora@rmrf.com](mailto:dbonora@rmrf.com)

WRITER'S DIRECT PHONE

OUR FILE

(780) 497-3370

75454-03-040

July 5, 2001

**Attention: Ruth Maria Adria**

Elder Advocates of Alberta  
Box #45028  
Edmonton, AB T6H 5Y1

Dear Madam:

**RE: Guardianship Application, James Keith Bain**

Thank you for your letter of June 29, 2001.

We cannot release any medical information to you. We can only release medical information to the Executor of Mr. Bain's estate. We will thus not be able to respond to your letter of June 29, 2001.

Yours very truly,

**REYNOLDS, MIRTH, RICHARDS & FARMER**

PER:

DORIS BONORA  
DB/po

cc: St. Joseph's Auxiliary Hospital

100725-1.wpd;05/07/01

# Elder Advocates of Alberta

September 10, 2001

*Ms. D. Bonora, Barrister and Solicitor*  
Reynolds Mirth, Richards & Farmer  
3200 - 10180 101 St.  
Edmonton, Alberta

VIA FAX 429 3044

Dear Madam:

RE: Guardianship Application JAMES Keith BAIN November 17/00.

During the said hearing of November 17, 2000 you undertook to prepare an affidavit which we have not yet received.

During the hearing, you stated to the court that I was a "*danger*" to Mr. Bain. You stated that you had reviewed the file of Mr. Bain and found that "*there are orders on his chart*" that he was "*not to receive things by mouth*", that I was responsible for his illness (pneumonia). You also made strong inference that I fed him hard candies. You also stated that after investigation by the CBC, CBC could find no story and therefore none was done. You noted a number of times that Mr. Bain "*yelled*".

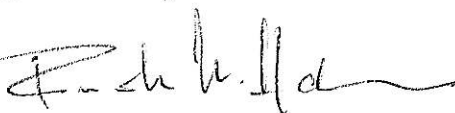
We would be grateful to review this information and other statements which you made to the court, in affidavit form.

Thank you for your kind attention to this matter. We shall be waiting to hear from you and would be grateful to be in receipt of your response by the 18th of September, 2001.

Yours most sincerely,

*Elder Advocates of Alberta*

per:



Ruth Maria Adria

C.C. Mr Charles Cousineau, Barrister and Solicitor





**JUSTICE**  
Family Law

Our File No.: 2201

Your File No.:

6<sup>th</sup> Floor North, J.E. Brownlee Building, 10368 - 97 Street, Edmonton, Alberta, Canada, T5J 3W7 (780) 422-3715 Fax 427-8914

**SENT VIA FAX**

November 16, 2000

Mr. Charles D. Cousineau  
Barrister and Solicitor  
210, 11830 - 111 Avenue  
EDMONTON, Alberta T6G 0E1

Dear Sir:

Re: BAIN, James Keith  
Dependent Adult Act

Further to the above noted matter, enclosed is a copy of the Functional Assessment and Guardianship Information.

Yours truly,

  
Patricia Henderson  
Barrister and Solicitor

Enc.

cc: Colleen Fresse

**RESPONSE BY ELDER ADVOCATES OF ALBERTA  
TO  
REPORT OF A DECISION RESPECTING # 1813  
PROTECTION FOR PERSONS IN CARE ABUSE LINE  
RE: OUR COMPLAINT OF OCTOBER 25, 2000  
JAMES Keith BAIN -**

Investigator - Marjorie Schmidt RN

The *Report of a Decision* does not bear any signature or the name of the elderly person, Mr. Bain.

*- The Investigator trivialized and appeared not to have carefully read our October 25, 2000 Complaint.*

*- The Investigator did not address:*

- failure to provide hydration to Mr. Bain.*
- failure to ambulate or reposition Mr. Bain.*

*- The Investigator of the Report of a Decision disregarded the blatant violation of the Protection For Persons in Care Act.*

1(a) "abuse" means

(i) *intentionally causing bodily harm*

(ii) *intentionally causing emotional harm. . . . coercing or restricting from appropriate social contact "*

(iii) *intentionally prescribing medication for an inappropriate purpose,*

(vi) *intentionally failing to provide adequate nutrition, adequate medical attention or other necessity of life without valid consent.*

---

**RE: Summary.**

**STATEMENT 1.:** *"Staff failed to feed the resident ("he is very thin")*

We did state that:

*"On October 22/00 @ 6:30 PM, Sunday evening, we visited Mr. Bain and found him to be extremely thin and emaciated, he appeared to have lost a lot of weight".*

We also said:

*"October 23/00, 10:45 AM, I had asked a person to attend to feed him because it strongly appeared that he was not being fed. She was disallowed to put his teeth in by staff who informed her that **he wasn't good any more. They said that he was unable to swallow**, however she fed him without any difficulty. She was treated rudely by staff. Many of the staff do not wear name tags".*

When staff told her not to feed him, this was a contradiction because there was a tray there. If he was unable to eat, why was the tray not cancelled?

We verified in the transcripts of the court hearing of November 17/00 and is contained in our *Complaint made to the Law Society* which will throughout this document be referred to as the Law complaint.

Law Complaint - Paragraphs # 30 & # 31 verify that there was:

*"orders on his chart"*

*"not to receive things by mouth".*

Indeed, he was not being fed which accounted for his emaciated condition.

This also accounted for his hunger. He asked to be fed. *"Feed me"*

**STATEMENT 2.** . We did not say in our complaint that he was:

*"sitting"*

in the hallway, we stated:

*"This gravely ill, blind man was lying in the hall, presented a macabre sight".*

We said that:

*"That it was difficult to understand, why this man who looked like imminent death, would be put out in the main hallway"*

**STATEMENT 3.:** "His colostomy bag was empty and tied shut".

We did not say that the colostomy bag was **tied** shut!

We did say that:



***"I examined his colostomy bag and found it to be totally flat and obviously empty. There appeared to be no flatulence in the bag, it appeared clean".***

We did not say in our complaint that the bag was tied shut.  
Who would tie a colostomy bag shut. This would be similar to having a blocked bowl. (see our statement below in paragraph # 5)

#### **STATEMENT 4.**

We did say in our complaint that it strongly appeared that Mr. Bain had received no ethical nursing care.

We said:

***"He appeared totally neglected".***

He did not have clothes on as such, he was in a hospital gown and was surrounded by hospital bedding and sheets. No one bothered to dress him in his own clothing after he arrived at St. Josephs Auxiliary Hospital.

We did say:

***"Around his mouth was dirty, there was some remnant of yellowish liquid he must have imbibed which had dripped down his cheeks and onto his neck and onto a dirty towel, his face was unwashed, unwashed eyes. He was unshaven and unkempt, his gown was filthy. The soiled towel around his neck covered the night gown which was soiled from spilled liquid but had dried".***

This is noted in the photographs in Tab # 11, page 1 & page 4..

#### **STATEMENT 5.**

We did not say in our complaint " *ulcerated heels*" (plural). We always stated that there was one affected heel.

We did say:

***"There was a large gauze dressing on his left foot particularly across his ankle. His foot appeared markedly swollen and discolored. When I lifted Mr. Bain's foot in order to examine the dressing, he moaned in pain and therefore I ceased to further examine this area. The sheet that he was on was dirty and there was a large area of dried blood on the sheet adjacent to the foot, approximately 5-6 inches in diameter which led me to believe that the area on his foot must be a very open, exposed, bloody area.***

***"On October 24/00 I attended at 3:15 PM. Mr. Bain was in the room on the semi-recliner, not on the bed. His left foot was unsupported and exhibits a severe footdrop".***

***- "His left foot was swollen. The severe, ulcerated pressure area on his swollen foot is the result of poor nutrition, poor circulation, failure to reposition, neglect. It is probable that the necrosis of the flesh will have caused the bones of his heel to be exposed".***

***" He exhibited severe footdrop, particularly his left foot which is the result of less than adequate nursing care by persons who apparently have little knowledge or understanding concerning the care of frail, elderly persons. They are untrained persons who apparently, have been given little or no instruction or supervision".***

## **STATEMENT 6**

We did say that he was heavily medicated:

***"Elderly are administered psychotropic chemicals upon admission to long term care and Jim Bain was also immediately given considerable medication at the long term care facility. This was evident by the obvious side effects of excessive saliva and drooling. He had some swelling on his cheeks and tenderness and was only able to wear his dentures with difficulty. The medication also appeared to cause him to be drowsy and at times unable to verbally communicate his wishes".***

Note TAB 23 of the Law Complaint.  
Also note TAB 11, pages 1, 3 & 4.

## **STATEMENT 7.**

We did not say in our complaint "Staff was harsh with him".

We said: :

***"He complained that the nursing staff would place his meal tray in his room, not giving him any assistance to find his utensils or inform him what was on the tray. Sometimes his tray was placed in his room and he was not even informed that it was there. He had great difficulty eating, having to eat with his hands, because he was blind. He was given no assistance. He often expressed great anger towards the staff concerning this matter".***

**Why did the Investigator not question him as to whether staff were rude to him?**

**Why did the Investigator not question him as to whether they assisted him at meal time or simply left the tray?**

**After all, three professional lawyers spent three hours convincing the court on November 17/00, less than a month after our complaint, that**



**Mr. Bain was totally able to self advocate.**

---

**RESPONSE TO PARAGRAPH 1:**

.I. You state that the staff was aware of his condition. Which staff were aware of his condition?

What was his condition?

It is disturbing to believe that the professional RN's were aware of his neglected state, the bed sore, the foot drop, the emaciation, the obvious neglect, the orders not to feed, yet trays not cancelled?

The doctor was not aware of his condition. We were present when the LPN described the condition of THE ADVANCED BEDSORE to him.

Please note Law Complaint - Paragraph # 21  
Law Complaint TAB (11)

On October 27/00, the LPN had to explain the condition of Mr. Bain's # 4 advanced bed sore. The bone was exposed and protruding and thus the severe septicemia developed which caused Mr Bain to be gravely ill and have to be treated with three different antibiotics. This was not a minor ulceration.

Doctors are not aware of much that transpires with nursing home patients. I have worked in nursing homes in the capacity of a Registered Nurse and have seen the problem first hand. The Doctor at the Dickensfield facility was not aware of the advanced bed sore (and emaciated condition) which is included with our photographs.

How could this injury to Mr. Bain have advanced to such severity if persons of senior level were aware or is this kind of neglect the norm?

**Please note Law Complaint Tab # 19, states that thousands of dollars of fines are being upheld against those nursing homes in the U.S. which allow patients to develop pressure sores, malnourishment and who are neglected.**

**RESPONSE TO PARAGRAPH 2:**

We deny that there was a special diet. He eagerly took the food. I and others fed him and never observed swallowing difficulties.

There was no special diet, except for pureed food which we initially had to request for him.

Sometimes, some foods were thickened but not always. The photographs clearly show that he was given clear fluids which were not thickened.



Why did the Investigator not question Mr. Bain in regard to his diet and his eating habits, his ability or inability to eat certain foods?

Note:

Law Complaint Tab 11, pages 1 & 5

Law Complaint - paragraphs #31, # 32, # 33, # 36 (Bonora)

### **RESPONSE TO PARAGRAPH 3**

- Who told the Investigator that he was a **thin man**, how did she come to that determination?

**In fact Mr. Bain was not being fed.**

This became aware at the court hearing of November 17/2000. Lawyer Doris Bonora let the cat out of the bag.

Though trays were never cancelled, there was not at any time a sign on the bed or door not to feed, there was apparently an order on the file.

**WHY? Was this man being euthanised? Heavily medicated and put down like a dog.**

Law Complaint - paragraphs #31, # 32, # 33, # 36 (Bonora)

### **RESPONSE TO PARAGRAPH 4**

We believe the new mattress was in place on first photograph of October 22/00. However, even if they wished to place a new mattress on the bed, why would they have this gravely ill man lying in the main hallway all day for several days?

The room was large, probably 12' x 12'. and he could have been on that recliner bed in his room, the photograph, Tab # 11, page 4, bottom picture, is of him on the recliner bed in his room.

In the hallway, he presented a macabre sight. Staff admit that there were no fluids available to him throughout the day.

It strongly appeared that they disliked him, wanted to punish him and make an example of him.

Note our statement concerning **DEHYDRATION** at the conclusion of #31 in the Law Complaint.

We did not say in our complaint he was "sitting" in the hallway.

We said he was "**lying in the hall**". #13

### **RESPONSE TO PARAGRAPH 5**

We did not say that:

*"the colostomy bag was tied shut to prevent it from making a mess".*

We said:

*"There was a taut gauze bandage which came from his back and extended across the top of the round opening of the colostomy bag. I assumed that he must have a decubitus ulcer on his back and it was therefore the gauze bandage was tightly placed across the colostomy opening".*

*Not only was the colostomy bag empty, there was no flatus or any liquid which is most unusual for a colostomy bag.*

**Indeed the colostomy was empty on a number of occasions because Mr. Bain was not being fed. This was verified during the court hearing of November 17/00 and by the Transcripts.**

### **RESPONSE TO PARAGRAPH 6**

The response is not reasonable. The man was obviously neglected. After we made the complaint and made a daily or twice daily presence or every other day, the man was cleaned up as noted in the photographs.

The pink swabs disappeared after we and others began attending on a daily or every other day basis.

Why did the Investigator not question Mr. Bain in regard to whether he had been washed and given nursing care?

### **RESPONSE TO PARAGRAPH 7**

**Their response stated "*that the issue of staff being harsh with the resident cannot be substantiated or denied*"**

**The following named individuals strongly opposed the Application of *Elder Advocates of Alberta* for Guardianship of JAMES Keith BAIN on November 17, 2000 in the Court of Queen's Bench of Edmonton, AB..**

**Ms. Pat Henderson, Solicitor, Office of the *Public Guardian*,  
Mr. Les Hills, Solicitor, *Office of the Public Trustee*  
Ms. Doris Bonora Solicitor for *St. Josephs Auxiliary Hospital*.**

**Despite documented evidence, these persons, by their utterances, lead the court to believe that the blind, debilitated, physically and chemically restrained Mr. Bain, who was suffering obvious neglect such as the No. # 4 advanced bedsore, was able to self advocate and was not in need of guardianship:**

**Furthermore, the Response in Paragraph # 6 states that Mr. Bain "*had refused to allow staff to wash his face and change his clothes*".**

**If Mr. Bain was so in charge of the world around him, why did Ms. Marjorie Schmidt RN, the Investigator for the *Protection For Persons in Care Act* not ask him if he had been harshly treated?**

### **RESPONSE TO PARAGRAPH 8**

1. Why did the Investigator not ask Mr. Bain if he was being fed and if he was being adequately fed?
2. Why did the Investigator not question Mr. Bain in regard to his diet and his eating habits, his ability or inability to eat certain foods?
3. Why did the Investigator not question Mr. Bain whether he was concerned regarding his bedsore?

Law Complaint paragraph # 33, October 28/00 entry.

**Indeed. Mr. Bain was severely neglected.**

**Note- Law Complaint, TAB 19 which outlines legislation and nursing home standards in the US - Fines of over \$1,000. dollars per day for bedsores, neglect and malnutrition.**

**Mr.Bain:**

- was given less than ethical nursing care - evidenced severe neglect
- Was not adequately fed or hydrated to sustain life
- Was hungry - begged to be fed
- Evidenced dramatic weight loss
- Expressed fear of his situation, said he "*in trouble*"
- Expressed concern about unfinished business - wished to "*give someone something*".
- Was chemically restrained.
- Suffered from an advanced # 4 bed sore which could necessitate amputation of leg or result in systemic sepsis which could cause death ( result of poor nutrition, poor circulation, failure to reposition, neglect).
- Suffered from a virulent infection
- Suffered from bone contractures, severe foot drop
- Was administered poor hygiene, frequently did not appear washed, shaved or cared for, teeth not in place,



- Failed to be ambulated - taken out of bed or out of facility
- Was neglected by the physician who failed to keep himself informed of Mr. Bain's health issues and bedsore

Ultimately Mr. Bain was disallowed any outside contact - he was totally isolated by means of a (guard) at the door.

- disallowed to receive phone calls from family in Scotland and England
- disallowed visitors and advocates
- disallowed a **visit by Priest**

5 Isolating elderly persons from family, friends and community is in contravention of the **Protection for Persons in Care Act Chapter P-19,5**

This Act defines **abuse** to include:

**1(a) ii "Intentionally causing emotional harm. . . . coercing or restricting from appropriate social contact ".**

- Mr. Bain was denied visitors and friends.
- He was denied phone calls from his family in Scotland and England.  
Note Law Complaint paragraphs # 41 - # 47.
- He was denied a priest.
- Note Law Complaint - Tab # 13 - Letter to the Honourable Mr. David Hancock - It was in fact the authorities who were isolating Mr. Bain.

## **RESPONSE TO PARAGRAPH 9**

- If Mr. Bain had been moved to an acute care facility, he would have been fed when he said he was hungry and requested food.
- Mr. Bain, was said to have pneumonia and ethically should have been administered Intravenous fluids, appropriate, ethical nursing care and surgical intervention for his injury.
- Mr. Bain's family wished to have him assessed and moved to an acute care facility.**  
Note Law Complaint Tab # 12..

**Prior to November 17/00, Lawyer, Ms. Doris Bonora knew that our complaint to the *Protection For Persons in Care* had been dismissed. How was she privy to that information? Did she ask the permission of Mr.**

**Bain to view the file?**

The response to our October 25/00 which we received was dated December 6/00.  
Law Complaint paragraphs #28, # 29, & # 30.

**RESPONSE TO PARAGRAPH 10**

**Noting the sad, neglected and abused condition of Mr. Bain, it is disturbing that the Investigator, a Registered Nurse, applauds the facility for the unethical nursing care received. She provides a pathetic response to a serious complaint. It is further pathetic that a professional nurse cooperates with this flawed, immoral process.**

**She should be reported to her professional association.**

# Elder Advocates of Alberta

November 21, 2000

*The Honourable Mr. David Hancock QC*  
*Minister of Justice and Attorney General*  
Room # 320, Legislature Building  
10800 - 97 Avenue  
Edmonton, AB. T5K 2B6

Attention: Ms. Sharon Theuerkopf

Dear Mr. Minister:

RE: James Bain, St Josephs Auxiliary Hospital

We have learned that a person has been informed that it was not Mr. Bain's wishes to have his family, us, and friends denied access and information, it was in fact the-  
*"the Directors, the Guardianship, the authorities".*

Further to our conversation of this morning, because a man is probably not being fed or being given fluids, (starved and dehydrated), and isolated from advocacy, family and friends, we urge you to act and please give us a response before 1:30 PM.

If there is nothing to hide, why not have him transferred and examined, according to the wishes of the family, by Dr. David Skelton or Dr. Brenneis?

*Elder Advocates of Alberta*

per:



Ruth M. Adria



VIA FAX 422 5954

RE: JAMES Keith BAIN -Room #806 3rd Floor - St. Joseph's Auxiliary Hospital

The following is the Complaint made to the *Protection For Persons in Care Act* abuse line on October 25/00. This complaint was first made to Yvonne who took the call, then repeated to Roberta (Bobby) Murphy RN and then again repeated to Margery Schmidt RN, Investigations Officer for the *Protection For Persons in Care* abuse line.

1. I represent *Elder Advocates of Alberta*. We advocate for the frail, dependent elderly.
2. I have known Mr. James Keith Bain since May of 1999 at which time the Office of Ms. Anne McLellan, the Honourable Federal Minister of Justice, referred the matter of the concerns of Mr. Bain to the *Elder Advocates of Alberta*. Mr. Bain has an elderly sister in Scotland and a brother in England, but no relatives in Canada.
3. Mr. Bain was a frail, dependent, feisty, elderly person, who became 90 years of age on the 17th of April of this year. Mr. Bain suffered from total blindness due to glaucoma and a post-cancer surgery colostomy.
4. In mid October, 1999, he became a resident of the *St. Joseph's Auxiliary Hospital*, Room # 806- 3rd Floor *Butterfly* 10707-29 Avenue - Edmonton, AB.T6J 6W1 (As of November 21/00, Mr. Bain has been moved to # 804)
5. Elderly are administered psychotropic chemicals upon admission to long term care and Jim Bain was also immediately given considerable medication at the long term care facility. This was evident by the obvious side effects of excessive saliva and drooling. He had some swelling on his cheeks and tenderness and was only able to wear his dentures with difficulty. The medication also appeared to cause him to be drowsy and at times unable to verbally communicate his wishes.
6. Mr. Bain was ambulatory prior to being admitted to St. Josephs Auxiliary Hospital where he was almost continuously left in bed.
7. At the St. Josephs Auxiliary Hospital, he complained that the nursing staff would place his meal tray in his room, not giving him any assistance to find his utensils or inform him what was on the tray. Sometimes his tray was placed in his room and he was not even informed that it was there. He had great difficulty eating, having to eat with his hands, because he was blind. He was given no assistance. He often expressed great anger towards the staff concerning this matter.

. . . / 2

8. We had requested that Mr. Bain be provided a paid companion for several hours, at least three times a week in order to provide social and mental stimulation for him. Mr. Bain had hundreds of thousands of dollars. His trustee denied this request. Long term care does not provide mental stimulation for persons like Mr. Bain. They are often terribly lonely. Often they become unable to speak, virtually catatonic, because no one interacts with them.

9. This paid companion was also intended to provide additional personal care, in this instance, assist him to eat. Additional care does not appear to be available in such a facility. We have observed, that in far too many elder care facilities, when the elderly persons become totally dependent, their care is often less than custodial, particularly if they have no loved one or *signifigant other* to monitor their care. This appeared to be the situation with Mr. Bain.

10. On October 22/00 @ 6:30 PM, Sunday evening, we visited Mr. Bain and found him to be extremely thin and emaciated, he appeared to have lost a lot of weight. There were pink *toothet* mouth swabs on his bedside table which one only finds at the bedside of post surgical patients and terminally ill patients who are unable to eat or take fluids and therefore require mouth care.

That same evening, I fed him three dixie cups of ice cream and a muffin which he eagerly received. I later wondered why these oral swabs were there when in fact he appeared to be eating well.

11. We later learned that Mr. Bain had been gravely ill during the week of October 15/00 due to an infection which resulted from the ulcerated bedsore.

12. October 23/00, 10:45 AM, I had asked a person to attend to feed him because it strongly appeared that he was not being fed. She was disallowed to put his teeth in by staff who informed her that *he wasn't good any more. They said that he was unable to swallow,* however she fed him without any difficulty. She was treated rudely by staff. Many of the staff do not wear name tags.

13. On October 23/00 - 5:45 PM, I attended at Mr. Bain's room. Mr. Bain was in the hallway on a type of reclining bed. This gravely ill, blind man, lying in the hall, presented a macabre sight. It was difficult to understand, why this man who looked like imminent death, would be put out in the main open hallway.

14. A staff person brought him into the room. When she left I examined his colostomy bag and found it to be totally flat and obviously empty. There also appeared to be no flatulence in the bag, it appeared clean. There was a taut gauze bandage which came from his back and extended across the top of the round opening of the colostomy bag. I assumed that he must have a decubitus ulcer on his back and it was therefore the gauze bandage was tightly placed across the colostomy opening.

15. There was a large gauze dressing on his left foot particularly across his ankle. His foot appeared markedly swollen and discolored. When I lifted Mr. Bain's foot in order to examine the dressing, he moaned in pain and therefore I



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ceased to further examine this area. The sheet that he was on was dirty and there was a large area of dried blood on the sheet adjacent to the foot, approximately 5-6 inches in diameter which led me to believe that the area on his foot must be a very open, exposed, bloody area.

16. October 24/00 I attended at 3:15 PM. Mr. Bain was in the room on the semi-recliner, not on the bed. His left foot was unsupported and exhibits a severe *footdrop*.

Around his mouth was dirty, there was some remnant of yellowish liquid he must have imbibed which had dripped down his cheeks and onto his neck and onto a dirty towel, his face was unwashed, unwashed eyes. He was unshaven and unkempt, his gown was filthy. The soiled towel around his neck covered the night gown which was soiled from spilled liquid but had dried. His colostomy bag was totally flat and appeared totally empty. His left ulcerated foot is unsupported and exhibits a severe *footdrop* which probably cannot be reversed.

He appeared not to have been fed, (his colostomy bag was totally empty)  
He appeared totally neglected.

17. At 4:45 PM, I attempted to call the *Protection For Persons in Care Act* abuse line however they were closed for the day.

October 25/ 00, 8:22 AM, I was able to contact the *abuse line* to notify them of the above noted abuse and neglect and informed them it was an emergency.

October 25/00 T/C to Dr. PJ Klemka Ph. 461 3533, he did not return the call.

18. Mr. Bain had to be administered sedation 1/2 hour prior to having the dressing on his ulcerated foot changed so that he could tolerate the pain.

19. At no time, when Mr. Bain was so gravely ill, was there evidence of force fluids beside his bed table, there was no intake or output record. When he was *parked* in the hallway, there was no evidence of any fluid in proximity of his chair.

At no time was he given fluid by intravenous or clysis drip  
He was not sent to an active treatment hospital for care.

- His left foot was swollen. The severe, ulcerated pressure area on his swollen foot is the result of poor nutrition, poor circulation, failure to reposition, neglect. It is probable that the necrosis of the flesh will have caused the bones of his heel to be exposed.

- He exhibited severe *footdrop*, particularly his left foot which is the result of less than adequate nursing care by persons who apparently have little knowledge or understanding concerning the care of frail, elderly persons. They are untrained persons who apparently, have been given little or no instruction or supervision concerning safe, ethical nursing care.

- Since having been admitted to St. Josephs Auxiliary Hospital, Mr. Bain had been almost continuously left in bed even though he was ambulatory



when he arrived at the long term care facility.

He was seldom repositioned, in fact he should have been turned every two hours

- He was heavily medicated.
- It strongly appeared that he received less than custodial care.
- He appeared to be suffering from severe neglect.

*Elder Advocates of Alberta*

per:

Ruth Maria Adria

Office of the  
Deputy Minister

December 6, 2000

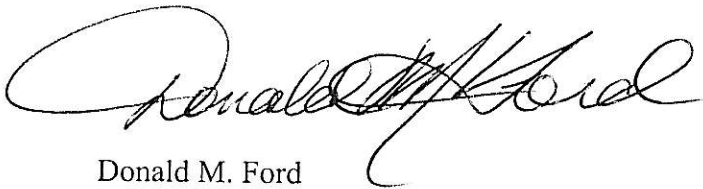
Ms. Ruth Adria  
Box 45028  
Edmonton, Alberta  
T6H 5Y1

Dear Ms. Adria:

In accordance with section 8(6) of the *Protection for Persons in Care Act* (the *Act*), I am providing you with the decision taken, as attached, following the investigation into your October 25, 2000, report of abuse defined as intentionally failing to provide the basic necessities of life under the *Act*.

Thank you for your report under the *Protection for Persons in Care Act*. It is the intent of the *Act* to better protect the health, safety and well being of adults in care.

Yours truly,



Donald M. Ford  
Deputy Minister

Attachment  
File #: 1813

## PROTECTION FOR PERSONS IN CARE

### Report of a Decision Respecting Complaint #1813

The Ministry approves the Investigator's recommendation that the allegation of abuse defined as intentionally failing to provide the basic necessities of life and referred to as an "emergency situation," be dismissed due to lack of evidence to support the following allegations:

1. Staff failed to feed the resident (he is very thin);
2. Left him sitting in the hallway with no fluids near him;
3. His colostomy bag was empty and tied shut;
4. He and his clothes were filthy;
5. His ulcerated heels were not adequately cared for;
6. He was heavily medicated; and
7. Staff was harsh with him.

The Investigator's findings were:

- Staff at the facility was fully aware of the health status of the resident and the doctor was involved in his care and treatment, therefore no emergency situation was apparent.
- The resident has a swallowing problem, was on a special diet, and was being fed by staff. The resident's visitors were feeding him items other than what was provided and did not check with staff regarding his swallowing difficulties.
- With respect to the resident's compromised nutritional status, he is a thin man
- One October 23, 2000, at 17:45 hours, the resident was sitting in the hallway as a new mattress was to be delivered; at 16:00 hours it was heard the mattress was not going to be delivered and the resident was put back in bed. No fluids were near the resident at this time as there was no place to put them and the resident is blind.
- The colostomy bag was empty and was tied shut to prevent it from making a mess. If the bag had been soiled, it would have been emptied and cleaned. On October 24, 2000, the colostomy bag was empty as staff emptied and cleaned it when it becomes soiled.
- The eye drops used by the resident results in debris building up and crusting around his eyes. The resident had refused to allow staff to wash his face or change his clothes. Staff used pink swabs to provide mouth care for the resident.

...cont.



- The issue of staff being harsh with the resident cannot be substantiated nor denied.
- There is no evidence to support the allegation that the resident was being neglected, a series of treatments were tried for the ulcers, the area was derided by the doctor, and a special mattress had been obtained. Staff fed the resident, but he also made choices about what he would and would not eat. There was no evidence that the resident was being heavily medicated, he preferred to sleep a lot, which could be attributed to his physical and mental status, rather than being chemically induced.
- The care the facility provided to the resident was more appropriate for him at that time then could be accomplished by relocating him to an acute care facility.

The Investigator further recommended that St. Joseph's Auxiliary Hospital, Edmonton:

- Be supported for its efforts to provide a safe environment for and protection for the resident and his rights of the resident during the time he resided at the facility and prior to his death.

Date: December 4, 2000

VIA FAX 422 5954

RE: JAMES Keith BAIN -Room #806 3rd Floor - St. Joseph's Auxiliary Hospital

The following is the Complaint made to the *Protection For Persons in Care Act* abuse line on October 25/00. This complaint was first made to Yvonne who took the call, then repeated to Roberta (Bobby) Murphy RN and then again repeated to Margery Schmidt RN, Investigations Officer for the *Protection For Persons in Care* abuse line.

1. I represent *Elder Advocates of Alberta*. We advocate for the frail, dependent elderly.
2. I have known Mr. James Keith Bain since May of 1999 at which time the Office of Ms. Anne McLellan, the Honourable Federal Minister of Justice, referred the matter of the concerns of Mr. Bain to the *Elder Advocates of Alberta*. Mr. Bain has an elderly sister in Scotland and a brother in England, but no relatives in Canada.
3. Mr. Bain was a frail, dependent, feisty, elderly person, who became 90 years of age on the 17th of April of this year. Mr. Bain suffered from total blindness due to glaucoma and a post-cancer surgery colostomy.
4. In mid October, 1999, he became a resident of the *St. Joseph's Auxiliary Hospital*, Room # 806- 3rd Floor *Butterfly* 10707-29 Avenue - Edmonton, AB.T6J 6W1 (As of November 21/00, Mr. Bain has been moved to # 804)
5. Elderly are administered psychotropic chemicals upon admission to long term care and Jim Bain was also immediately given considerable medication at the long term care facility. This was evident by the obvious side effects of excessive saliva and drooling. He had some swelling on his cheeks and tenderness and was only able to wear his dentures with difficulty. The medication also appeared to cause him to be drowsy and at times unable to verbally communicate his wishes.
6. Mr. Bain was ambulatory prior to being admitted to St. Josephs Auxiliary Hospital where he was almost continuously left in bed.
7. At the St. Josephs Auxiliary Hospital, he complained that the nursing staff would place his meal tray in his room, not giving him any assistance to find his utensils or inform him what was on the tray. Sometimes his tray was placed in his room and he was not even informed that it was there. He had great difficulty eating, having to eat with his hands, because he was blind. He was given no assistance. He often expressed great anger towards the staff concerning this matter.



8. We had requested that Mr. Bain be provided a paid companion for several hours, at least three times a week in order to provide social and mental stimulation for him. Mr. Bain had hundreds of thousands of dollars. His trustees denied this request. Long term care does not provide mental stimulation for persons like Mr. Bain. They are often terribly lonely. Often they become unable to speak, virtually catatonic, because no one interacts with them.

9. This paid companion was also intended to provide additional personal care, in this instance, assist him to eat. Additional care does not appear to be available in such a facility. We have observed, that in far too many elder care facilities, when the elderly persons become totally dependent, their care is often less than custodial, particularly if they have no loved one or *significant other* to monitor their care. This appeared to be the situation with Mr. Bain.

10. On October 22/00 @ 6:30 PM, Sunday evening, we visited Mr. Bain and found him to be extremely thin and emaciated, he appeared to have lost a lot of weight. There were pink ~~tooth~~ mouth swabs on his bedside table which one only finds at the bedside of post surgical patients and terminally ill patients who are unable to eat or take fluids and therefore require mouth care.

That same evening, I fed him three dixie cups of ice cream and a muffin which he eagerly received. I later wondered why these oral swabs were there when in fact he appeared to be eating well.

11. We later learned that Mr. Bain had been gravely ill during the week of October 15/00 due to an infection which resulted from the ulcerated bedsore.

12. October 23/00, 10:45 AM, I had asked a person to attend to feed him because it strongly appeared that he was not being fed. She was disallowed to put his teeth in by staff who informed her that *he wasn't good any more. They said that he was unable to swallow*, however she fed him without any difficulty. She was treated rudely by staff. Many of the staff do not wear name tags.

13. On October 23/00 - 5:45 PM, I attended at Mr. Bain's room. Mr. Bain was in the hallway on a type of reclining bed. This gravely ill, blind man, lying in the hall, presented a macabre sight. It was difficult to understand, why this man who looked like imminent death, would be put out in the main open hallway.

14. A staff person brought him into the room. When she left I examined his colostomy bag and found it to be totally flat and obviously empty. There also appeared to be no flatulence in the bag, it appeared clean. There was a taut gauze bandage which came from his back and extended across the top of the round opening of the colostomy bag. I assumed that he must have a decubitus ulcer on his back and it was therefore the gauze bandage was tightly placed across the colostomy opening.

15. There was a large gauze dressing on his left foot particularly across his ankle. His foot appeared markedly swollen and discolored. When I lifted Mr. Bain's foot in order to examine the dressing, he moaned in pain and therefore I



ceased to further examine this area. The sheet that he was on was dirty and there was a large area of dried blood on the sheet adjacent to the foot, approximately 5-6 inches in diameter which led me to believe that the area on his foot must be a very open, exposed, bloody area.

16. October 24/00 I attended at 3:15 PM. Mr. Bain was in the room on the semi-recliner, not on the bed. His left foot was unsupported and exhibits a severe *footdrop*.

Around his mouth was dirty, there was some remnant of yellowish liquid he must have imbibed which had dripped down his cheeks and onto his neck and onto a dirty towel, his face was unwashed, unwashed eyes. He was unshaven and unkempt, his gown was filthy. The soiled towel around his neck covered the night gown which was soiled from spilled liquid but had dried.

His colostomy bag was totally flat and appeared totally empty. His left ulcerated foot is unsupported and exhibits a severe *footdrop*, which probably cannot be reversed.

He appeared not to have been fed, (his colostomy bag was totally empty)  
He appeared totally neglected.

17. At 4:45 PM, I attempted to call the *Protection For Persons in Care Act* abuse line however they were closed for the day.

October 25/00, 8:22 AM, I was able to contact the *abuse line* to notify them of the above noted abuse and neglect and informed them it was an emergency.

October 25/00 T/C to Dr. PJ Klemka Ph. 461 3533, he did not return the call.

18. Mr. Bain had to be administered sedation 1/2 hour prior to having the dressing on his ulcerated foot changed so that he could tolerate the pain.

19. At no time, when Mr. Bain was so gravely ill, was there evidence of force fluids beside his bed table, there was no intake or output record. When he was *parked* in the hallway, there was no evidence of any fluid in proximity of his chair.

At no time was he given fluid by intravenous or dlysis drip  
He was not sent to an active treatment hospital for care.

- His left foot was swollen. The severe, ulcerated pressure area on his swollen foot is the result of poor nutrition, poor circulation, failure to reposition, neglect. It is probable that the necrosis of the flesh will have caused the bones of his heel to be exposed.

- He exhibited severe *footdrop*, particularly his left foot which is the result of less than adequate nursing care by persons who apparently have little knowledge or understanding concerning the care of frail, elderly persons. They are untrained persons who apparently, have been given little or no instruction or supervision concerning safe, ethical nursing care.

- Since having been admitted to St. Josephs Auxiliary Hospital, Mr. Bain had been almost continuously left in bed even though he was ambulatory

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when he arrived at the long term care facility.

He was seldom repositioned, in fact he should have been turned every two hours

- He was heavily medicated.
- It strongly appeared that he received less than custodial care.
- He appeared to be suffering from severe neglect.

*Elder Advocates of Alberta*

per:

Ruth Maria Adria

## Elder Advocates of Alberta

January 25, 2001

VIA FAX 427 5362

*Mr. Donald Ford, Deputy Minister  
Community Development,  
Alberta Government*

Dear Mr. Deputy Minister:

Complaint to THE PROTECTION FOR PERSONS IN  
CARE ACT made December 6, 2000 - RE: JAMES Keith  
BAIN - St. Josephs Auxiliary Hospital

To date we have not received a response to the above noted matter which was a complaint of five pages.

Furthermore, we still have not received a response to our Complaint to the *PROTECTION FOR PERSONS IN CARE ACT* abuse line dated October 29/98 RE: Irene Simpson, Guardian/ Trustee of mother Eva Proskow who had been denied access to her dying mother, Room # 3108, *Jubilee Lodge Nursing Home*, Edmonton, AB.

We would be grateful to have a response concerning these serious matters and be in receipt of such response by the 7th of February, 2001.

Thank you for your attention to these matters.

*Elder Advocates of Alberta*

per: 

Ruth Maria Adria

C.C. The Honourable Mr. David Hancock QC Minister of  
Justice and Attorney General, MLA

The Honourable Mr. Stan Woloshyn, Minister of  
Community Development



Office of the  
Deputy Minister

7th Floor, Standard Life Centre  
10405 Jasper Avenue  
Edmonton, Alberta  
Canada T5J 4R7

Telephone 403/427-2921  
Fax 403/427-5362

AR8081

January 30, 2001

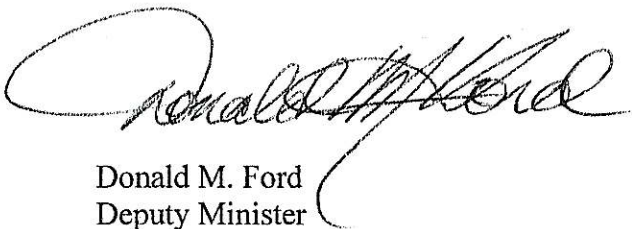
Ms. Ruth M. Adria  
Elder Advocates of Alberta  
Box 45028  
Edmonton, Alberta  
T6H 5Y1

Dear Ms. Adria:

Thank you for your letter of January 25, 2001, concerning a Protection for Persons in Care file #1813, dated October 25, 2001, involving Mr. James Bain, deceased resident of St. Joseph's Auxiliary Hospital, Edmonton.

Our records indicate that in accordance with section 8(6) of the *Protection for Persons in Care Act*, as reporter, you were provided with a copy of the decision dated December 6, 2000. I have attached a copy of the letter and decision, which were sent to you regarding file #1813.

Yours truly,



Donald M. Ford  
Deputy Minister

Attachment

cc: Honourable David Hancock (letter only)  
Minister of Justice and Attorney General

Office of the  
Deputy Minister

December 6, 2000

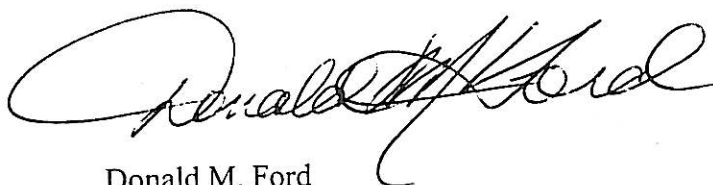
Ms. Ruth Adria  
Box 45028  
Edmonton, Alberta  
T6H 5Y1

Dear Ms. Adria:

In accordance with section 8(6) of the *Protection for Persons in Care Act* (the *Act*), I am providing you with the decision taken, as attached, following the investigation into your October 25, 2000, report of abuse defined as intentionally failing to provide the basic necessities of life under the *Act*.

Thank you for your report under the *Protection for Persons in Care Act*. It is the intent of the *Act* to better protect the health, safety and well being of adults in care.

Yours truly,



Donald M. Ford  
Deputy Minister

Attachment  
File #: 1813

**COPY**

**PROTECTION FOR PERSONS IN CARE**

**Report of a Decision Respecting Complaint #1813**

The Ministry approves the Investigator's recommendation that the allegation of abuse defined as intentionally failing to provide the basic necessities of life and referred to as an "emergency situation," be dismissed due to lack of evidence to support the following allegations:

1. Staff failed to feed the resident (he is very thin);
2. Left him sitting in the hallway with no fluids near him;
3. His colostomy bag was empty and tied shut;
4. He and his clothes were filthy;
5. His ulcerated heels were not adequately cared for;
6. He was heavily medicated; and
7. Staff was harsh with him.

The Investigator's findings were:

- Staff at the facility was fully aware of the health status of the resident and the doctor was involved in his care and treatment, therefore no emergency situation was apparent.
- The resident has a swallowing problem, was on a special diet, and was being fed by staff. The resident's visitors were feeding him items other than what was provided and did not check with staff regarding his swallowing difficulties.
- With respect to the resident's compromised nutritional status, he is a thin man
- One October 23, 2000, at 17:45 hours, the resident was sitting in the hallway as a new mattress was to be delivered; at 16:00 hours it was heard the mattress was not going to be delivered and the resident was put back in bed. No fluids were near the resident at this time as there was no place to put them and the resident is blind.
- The colostomy bag was empty and was tied shut to prevent it from making a mess. If the bag had been soiled, it would have been emptied and cleaned. On October 24, 2000, the colostomy bag was empty as staff empty and clean it when it becomes soiled.
- The eye drops used by the resident results in debris building up and crusting around his eyes. The resident had refused to allow staff to wash his face or change his clothes. Staff used pink swabs to provide mouth care for the resident.

...cont.



COPY

Report of Decision respecting complaint #1813  
Page Two

- The issue of staff being harsh with the resident cannot be substantiated nor denied.
- There is no evidence to support the allegation that the resident was being neglected, a series of treatments were tried for the ulcers, the area was derided by the doctor, and a special mattress had been obtained. Staff fed the resident, but he also made choices about what he would and would not eat. There was no evidence that the resident was being heavily medicated, he preferred to sleep a lot, which could be attributed to his physical and mental status, rather than being chemically induced.
- The care the facility provided to the resident was more appropriate for him at that time then could be accomplished by relocating him to an acute care facility.

The Investigator further recommended that St. Joseph's Auxiliary Hospital, Edmonton:

- Be supported for its efforts to provide a safe environment for and protection for the resident and his rights of the resident during the time he resided at the facility and prior to his death.

Date: December 4, 2000

## Elder Advocates of Alberta

March 7, 2002

**Mr. William Byrne Ph.D.**  
**Deputy Minister of Community Development**  
Responsible for Administration of the PROTECTION FOR PERSONS IN CARE ACT

VIA FAX 427 5362

Dear Mr. Deputy Minister:

**RE: Complaint to THE PROTECTION FOR PERSONS IN CARE ACT. of December 6/00 RE: JAMES Keith BAIN -Room #806 3rd Floor - St. Joseph's Auxiliary Hospital**

The above noted complaint was a detailed supplement to the Complaint made on October 25/00 to the *Protection For Persons in Care Act* abuse line concerning the above named James Keith Bain.

In reviewing our files, we note that we have not received a response to our five page faxed supplementary complaint of October 6/00.

We would appreciate it if your office investigates this matter. We would be grateful to be in receipt of your response by the 15th of March 2002.

Yours truly,

*Elder Advocates of Alberta*

per: 

Ruth Maria Adria

AR8081A

March 20, 2002

Ms. Ruth M. Adria  
Elder Advocates of Alberta  
Box # 45028  
Edmonton, AB T6H 5Y1

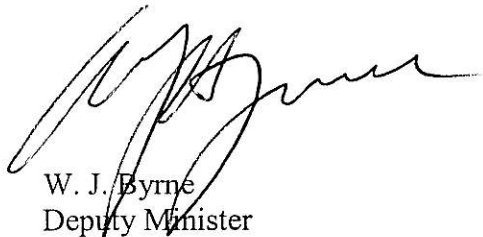
Dear Ms. Adria:

Thank you for your March 7, 2002, letter concerning a Protection for Persons in Care file #1813, dated October 25, 2000, involving Mr. James Bain, deceased resident of St. Joseph's Auxiliary Hospital, Edmonton.

Our records indicate that in accordance with section 8(6) of the *Protection for Persons in Care Act*, as reporter, you were provided with a copy of the decision dated December 6, 2000. The information in the fax you sent on December 5, 2000, was a written report of the October 25, 2000, complaint to the reporting line. Therefore, this matter was already investigated and a response to the information in this fax was covered within the decision of file #1813. You were informed by fax on December 6, 2000, at 10:58 am that this was our process for responding to your fax.

A second copy of decision #1813 was sent to you on January 30, 2001, and copied to the Honourable David Hancock, Minister of Justice and Attorney General. As there was no other investigation, there is no other decision to be sent.

Yours truly,



W. J. Byrne  
Deputy Minister



## Elder Advocates of Alberta

March 26, 2002

**Mr. William Byrne Ph.D.**

**Deputy Minister of Community Development**

Responsible for Administration of the **PROTECTION FOR PERSONS IN CARE ACT**

VIA FAX 427 5362

Dear Mr. Deputy Minister:

**RE: Complaint to THE PROTECTION FOR PERSONS IN CARE ACT of**  
**December 6/00 RE: JAMES Keith BAIN -Room # 806 - 3rd Floor - Butterfly Unit**  
**St. Joseph's Auxiliary Hospital**

Thank you for your letter dated March 20, 2002 which we received today.

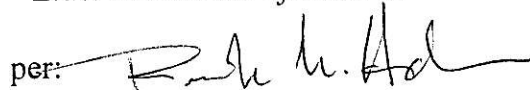
- Unfortunately it does not appear that you did indeed read our letter of March 7, 2002 (attached) in which we refer to a *supplementary complaint* made to **THE PROTECTION FOR PERSONS IN CARE ACT** abuse line on December 6, 2000.
- This *supplementary complaint* concerns such matters as Mr. Bain being denied phone calls from his family in the British Isles which is a violation of the **PROTECTION FOR PERSONS IN CARE ACT.**
- He was denied a visit by a priest.
- We also now have documented evidence that in fact Mr. Bain was not being fed or receiving adequate nutrition or hydration which is a violation of the **PROTECTION FOR PERSONS IN CARE ACT.**

We would appreciate it if your office investigates this matter. We would be grateful to be in receipt of your response by the 5th of April 2002.

Yours most truly,

*Elder Advocates of Alberta*

per:



Ruth Maria Adria

Attachment - Our letter to your office dated March 7, 2002.

# Elder Advocates of Alberta

March 7, 2002

**Mr. William Byrne Ph.D.**

**Deputy Minister of Community Development**

Responsible for Administration of the PROTECTION FOR PERSONS IN  
CARE ACT

VIA FAX 427 5362

Dear Mr. Deputy Minister:

**RE: Complaint to THE PROTECTION FOR PERSONS IN CARE  
ACT of December 6/00 RE: JAMES Keith BAIN -Room #806 3rd Floor -  
St. Joseph's Auxiliary Hospital**

The above noted complaint was a detailed supplement to the Complaint made on October 25/00 to the *Protection For Persons in Care Act* abuse line concerning the above named James Keith Bain.

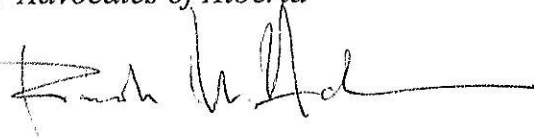
In reviewing our files, we note that we have not received a response to our five page faxed supplementary complaint of October 6/00.

We would appreciate it if your office investigates this matter. We would be grateful to be in receipt of your response by the 15th of March 2002.

Yours truly,

*Elder Advocates of Alberta*

per:



Ruth Maria Adria

AR8081B

April 12, 2002

Ms. Ruth M. Adria  
Elder Advocates of Alberta  
Box # 45028  
Edmonton, AB T6H 5Y1

Dear Ms. Adria:

Thank you for your March 26, 2002, faxed letter concerning a Protection for Persons in Care file #1813, dated October 25, 2000, involving Mr. James Bain, deceased resident of St. Joseph's Auxiliary Hospital, Edmonton.

This file has been thoroughly reviewed, and it appears that the only faxed letter sent to Protection for Persons in Care further to your report to the reporting line was one received December 6, 2000. The information in this fax was a written report of the October 25, 2000, complaint to the reporting line. Your letter is enclosed. There is no mention in this letter of the late Mr. Bain being denied a visit by a priest nor being denied phone calls from his family in the British Isles. Nor did you mention this to the Investigation Coordinator or the Investigator when they both spoke to you.

However, during the Investigator's interviews, staff told her that Mr. Bain had a sister in Scotland whom he had spoken to a few times by phone. The matter of the priest's attendance was also discussed with the facility. The facility indicated that Mr. Bain was of no religious affiliation. When the priest arrived, he would not identify himself or tell the facility staff who had called him to Mr. Bain's bedside. When Mr. Bain was asked if he wished to have the priest attend to him, he refused. Since Mr. Bain was not considered a dependent adult and had no formal guardian, his wishes were respected. Staff stated that Mr. Bain had ordered a friend of his to leave the room when she was praying over him. They took this as a confirmation of wish not to have clergy present. As these two issues were not part of the allegation, they were not specifically listed as a part of the Investigator's findings in File #1813.

.../2



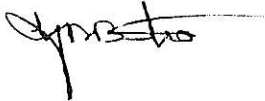
Ms. Ruth Adria  
Page Two


The allegation of Mr. Bain not being fed was investigated, and the allegation could not be substantiated in interviews with eight staff and a brief conversation with Mr. Bain. When the Investigator spoke to Mr. Bain, he was being fed porridge and tea. Mr. Bain's medical record was not reviewed, as the Investigator did not have consent from Mr. Bain to view his medical file.

I am satisfied that the issues of the priest's visit, Mr. Bain's communication with his family and his nutritional status were all reviewed. No further investigation will occur and the file is considered closed.

I hope this clarifies the matter.

Yours truly,

A handwritten signature in black ink, appearing to read 'W. J. Byrne', with a horizontal line extending to the right.

 W. J. Byrne, Ph.D.  
Deputy Minister

Enclosure

VIA FAX 422 5954

RE: JAMES Keith BAIN -Room #806 3rd Floor - St. Joseph's Auxiliary Hospital

The following is the Complaint made to the *Protection For Persons in Care Act* abuse line on October 25/00. This complaint was first made to Yvonne who took the call, then repeated to Roberta (Bobby) Murphy RN and then again repeated to Margery Schmidt RN, Investigations Officer for the *Protection For Persons in Care* abuse line.

1. I represent *Elder Advocates of Alberta*. We advocate for the frail, dependent elderly.
2. I have known Mr. James Keith Bain since May of 1999 at which time the Office of Ms. Anne McLellan, the Honourable Federal Minister of Justice, referred the matter of the concerns of Mr. Bain to the *Elder Advocates of Alberta*. Mr. Bain has an elderly sister in Scotland and a brother in England, but no relatives in Canada.
3. Mr. Bain was a frail, dependent, feisty, elderly person, who became 90 years of age on the 17th of April of this year. Mr. Bain suffered from total blindness due to glaucoma and a post-cancer surgery colostomy.
4. In mid October, 1999, he became a resident of the *St. Joseph's Auxiliary Hospital*, Room # 806- 3rd Floor *Butterfly* 10707-29 Avenue - Edmonton, AB.T6J 6W1 (As of November 21/00, Mr. Bain has been moved to # 804)
5. Elderly are administered psychotropic chemicals upon admission to long term care and Jim Bain was also immediately given considerable medication at the long term care facility. This was evident by the obvious side effects of excessive saliva and drooling. He had some swelling on his cheeks and tenderness and was only able to wear his dentures with difficulty. The medication also appeared to cause him to be drowsy and at times unable to verbally communicate his wishes.
6. Mr. Bain was ambulatory prior to being admitted to St. Josephs Auxiliary Hospital where he was almost continuously left in bed.
7. At the St. Josephs Auxiliary Hospital, he complained that the nursing staff would place his meal tray in his room, not giving him any assistance to find his utensils or inform him what was on the tray. Sometimes his tray was placed in his room and he was not even informed that it was there. He had great difficulty eating, having to eat with his hands, because he was blind. He was given no assistance. He often expressed great anger towards the staff concerning this matter.

. . . / 2



8. We had requested that Mr. Bain be provided a paid companion for several hours, at least three times a week in order to provide social and mental stimulation for him. Mr. Bain had hundreds of thousands of dollars. His trustee denied this request. Long term care does not provide mental stimulation for persons like Mr. Bain. They are often terribly lonely. Often they become unable to speak, virtually catatonic, because no one interacts with them.

9. This paid companion was also intended to provide additional personal care, in this instance, assist him to eat. Additional care does not appear to be available in such a facility. We have observed, that in far too many elder care facilities, when the elderly persons become totally dependent, their care is often less than custodial, particularly if they have no loved one or *significant other* to monitor their care. This appeared to be the situation with Mr. Bain.

10. On October 22/00 @ 6:30 PM, Sunday evening, we visited Mr. Bain and found him to be extremely thin and emaciated, he appeared to have lost a lot of weight. There were pink *toothet* mouth swabs on his bedside table which one only finds at the bedside of post surgical patients and terminally ill patients who are unable to eat or take fluids and therefore require mouth care.

That same evening, I fed him three dixie cups of ice cream and a muffin which he eagerly received. I later wondered why these oral swabs were there when in fact he appeared to be eating well.

11. We later learned that Mr. Bain had been gravely ill during the week of October 15/00 due to an infection which resulted from the ulcerated bedsore.

12. October 23/00, 10:45 AM, I had asked a person to attend to feed him because it strongly appeared that he was not being fed. She was disallowed to put his teeth in by staff who informed her that *he wasn't good any more*. They said that he was unable to swallow, however she fed him without any difficulty. She was treated rudely by staff. Many of the staff do not wear name tags.

13. On October 23/00 - 5:45 PM, I attended at Mr. Bain's room. Mr. Bain was in the hallway on a type of reclining bed.

This gravely ill, blind man, lying in the hall, presented a macabre sight. It was difficult to understand, why this man who looked like imminent death, would be put out in the main open hallway.

14. A staff person brought him into the room. When she left I examined his colostomy bag and found it to be totally flat and obviously empty. There also appeared to be no flatulence in the bag, it appeared clean. There was a taut gauze bandage which came from his back and extended across the top of the round opening of the colostomy bag. I assumed that he must have a decubitus ulcer on his back and it was therefore the gauze bandage was tightly placed across the colostomy opening.

15. There was a large gauze dressing on his left foot particularly across his ankle. His foot appeared markedly swollen and discolored. When I lifted Mr. Bain's foot in order to examine the dressing, he moaned in pain and therefore I



ceased to further examine this area. The sheet that he was on was dirty and there was a large area of dried blood on the sheet adjacent to the foot, approximately 5-6 inches in diameter which led me to believe that the area on his foot must be a very open, exposed, bloody area.

16. October 24/00 I attended at 3:15 PM. Mr. Bain was in the room on the semi-recliner, not on the bed. His left foot was unsupported and exhibits a severe *footdrop*.

Around his mouth was dirty, there was some remnant of yellowish liquid he must have imbibed which had dripped down his cheeks and onto his neck and onto a dirty towel, his face was unwashed, unwashed eyes. He was unshaven and unkempt, his gown was filthy. The soiled towel around his neck covered the night gown which was soiled from spilled liquid but had dried. His colostomy bag was totally flat and appeared totally empty. His left ulcerated foot is unsupported and exhibits a severe *footdrop* which probably cannot be reversed.

He appeared not to have been fed, (his colostomy bag was totally empty)  
He appeared totally neglected.

17. At 4:45 PM, I attempted to call the *Protection For Persons in Care Act* abuse line however they were closed for the day.

October 25/00, 8:22 AM, I was able to contact the *abuse line* to notify them of the above noted abuse and neglect and informed them it was an emergency.

October 25/00 T/C to Dr. PJ Klemka Ph. 461 3533, he did not return the call.

18. Mr. Bain had to be administered sedation 1/2 hour prior to having the dressing on his ulcerated foot changed so that he could tolerate the pain.

19. At no time, when Mr. Bain was so gravely ill, was there evidence of force fluids beside his bed table, there was no intake or output record. When he was *parked* in the hallway, there was no evidence of any fluid in proximity of his chair.

At no time was he given fluid by intravenous or clysis drip  
He was not sent to an active treatment hospital for care.

- His left foot was swollen. The severe, ulcerated pressure area on his swollen foot is the result of poor nutrition, poor circulation, failure to reposition, neglect. It is probable that the necrosis of the flesh will have caused the bones of his heel to be exposed.

- He exhibited severe *footdrop*, particularly his left foot which is the result of less than adequate nursing care by persons who apparently have little knowledge or understanding concerning the care of frail, elderly persons. They are untrained persons who apparently, have been given little or no instruction or supervision concerning safe, ethical nursing care.

- Since having been admitted to St. Josephs Auxiliary Hospital, Mr. Bain had been almost continuously left in bed even though he was ambulatory

when he arrived at the long term care facility.

He was seldom repositioned, in fact he should have been turned every two hours

- He was heavily medicated.
- It strongly appeared that he received less than custodial care.
- He appeared to be suffering from severe neglect.

*Elder Advocates of Alberta*

per:

Ruth Maria Adria

## Elder Advocates of Alberta

May 28, 2002

*Mr. William Byrne*  
*Deputy Minister of Community Development*  
Responsible for the Administration of the  
**PROTECTION FOR PERSONS IN CARE ACT**

VIA FAX 427 5362

Dear Mr. Deputy Minister:

**RE: Complaint to THE PROTECTION FOR PERSONS IN CARE**  
**ACT December 6, 2000 - JAMES Keith BAIN -Room #806 3rd Floor**  
**- St. Joseph's Auxiliary Hospital**

In reviewing our files, we again note that to date we have not received a response to the above noted five page complaint made to the *Protection For Persons in Care Act*.

We are attaching a copy of the said five page complaint and ask that it now be addressed. We have been asking your Office to address this complaint since since January 25, 2001.

We would be grateful to be in receipt of your response by the 15th of June 2002.

Yours most truly,

*Elder Advocates of Alberta*

per: 

Ruth Maria Adria

Attachment



VIA FAX 422 5954

Complaint to THE PROTECTION FOR PERSONS IN CARE ACT. December 6/00  
RE: JAMES Keith BAIN -Room #806 3rd Floor - St. Joseph's Auxiliary Hospital

The following is a supplement to the Complaint made to the *Protection For Persons in Care Act* abuse line on October 25/00 concerning the above named James Keith Bain.

1. Mr. Bain had to be administered sedation 1/2 hour prior to having the dressing on his ulcerated foot changed so that he could tolerate the pain.

The following was explained to us and Dr. Klemka:

The LPN came in the room and the doctor asked her to explain the condition of the ulcerated area.

She stated the following:

a. - Reddened (infected) area high up around the ankle which has not spread up the leg as yet (or there would have to be an amputation)

b. - There was an excoriated, necrotic area, and crust about 3 or 4 inches in diameter surrounded by redness.

c. - She said that the ball of flesh at the back of the foot was falling away and the bones were being exposed.

d. The LPN said in regard to pain management that she gives Mr. Bain Tylenol prior to changing his dressing.

The doctor did not seem to be aware of this or of the condition of the ulcerated area.

2. At no time, when Mr. Bain was so gravely ill, was there evidence of force fluids beside his bed table, there was no intake or output record.

When he was *parked* in the hallway, there was no evidence of any fluid in proximity of his chair.

At no time was he given fluid by intravenous or clysis drip, nor was he sent to an active treatment hospital for care.

3. His left foot was swollen. The severe, ulcerated pressure area on his swollen foot is the result of poor nutrition, poor circulation, failure to reposition, neglect. It is probable that the necrosis of the flesh will have caused the bones of his heel to be exposed.

4. He exhibited severe *footdrop*, particularly his left foot which is the result of less than adequate nursing care by persons who apparently have little knowledge or understanding concerning the care of frail, elderly persons. They are untrained persons who apparently, have been given little or no instruction or supervision concerning safe, ethical nursing care.

5. Since having been admitted to St. Josephs Auxiliary Hospital, Mr. Bain had been almost continuously left in bed even though he was ambulatory when he arrived at the long term care facility.

He was seldom repositioned, in fact he should have been turned every two hours

6. He was heavily medicated. It strongly appears that he received less than custodial care. He appeared to be suffering from severe neglect.

7. After he was fed, food remained in his mouth because he was too heavily medicated to stay awake to swallow. Lynn Olenek RN, *Director of Nursing Care and Pastoral Care* attended with person, tall blonde, whom we believed to be the *Protection For persons in Care Abuse Act (PPCA)* Investigator, Marjorie Schmidt RN. October 26/00 10:35AM This person did not introduce herself. After Lynn Olenek inquired who I was, they both immediately left the room.

8. October 26/00 11:55 AM I was called to office of Marilyn Snow, Lynn Olenek also in attendance.

October 27/00 I fed him dinner, Mr. Bain said that he wished to "*put his affairs in order*". I responded that for now he should rest, eat, drink and get stronger.

9. As noted in our file, we and another person had been feeding him some meals. Unfortunately, no one can be present three times a day. Any food which was offered him, he eagerly accepted. For example, October 29/00, Sunday, 930AM, I fed him hospital breakfast which consisted of porridge, two glasses of thickened juice and coffee that was not thickened, I then fed him a large bowl of porridge, banana and coffee which I had brought from home which he enthusiastically ate. He appeared very hungry.

October 28/00 I fed him, he asked me if he could die from an ulcer. He stated, "*I want to give somebody something*".

October 29/00 9:20 AM Sunday Morning, fed Mr. Bain.. That morning small amount of material could be felt at the very opening of the colostomy bag, however no flatus.

10 Often Mr. Bain was so drugged, he could not stay awake between mouthfuls. This was particularly the situation on November 12th and 13th/00. November 13/00, 8:30 PM, he indicated that he wished to eat the porridge and ice cream that I was offering him, but he could not eat, because he would fall asleep between mouthfuls, he appeared heavily medicated, therefore it was dangerous to feed him

11 November 3/00, approximately 11:00 AM, Dr. Klemka and another physician debrided the heel (the accompanying physician cut away the necrotic flesh with a pair of scissors). There is a necrotic area and crust. The ball of flesh, at the back of the ankle, (the heel) will probably necrose and fall away. We went to visit Mr. Bain immediately after the debridement, he appeared totally unconscious, he could not be roused.

12. November 8/00 @ 8:45 PM, I visited Mr. Bain. He could not be roused. His color was waxy white, he appeared gravely ill.



13. Family from Scotland and England, made phone calls to St. Josephs and asked to speak to Mr. Bain. One staff person told them that there was no phone in the room of Mr. Bain and they could not hang the phone on the bed. On one occasion they were informed that he did not wish to speak to them.

14. November 12, 00 9:30 AM Person who was feeding him was intercepted by ward supervisor who said that Mr. Bain could not have tea. Then said that Mr. Bain does not want to eat anymore and took away the tray. Another staff person in the room said that Mr. Bain took fluids well, water, and said that she gave him water but could not go against the ward supervisor.

15. November 12, 00 8:30 PM. I attempted to feed him ice cream but could not because he fell asleep between mouthfuls. His colostomy bag was totally empty.

16 November 14, 2000 Mr. Bain asked the person who had come to feed him, to feed him. Shortly after, she was told by the ward supervisor, Debbie Papanikolaou RN BSc, that from now on she would no longer be allowed to feed Mr. Bain and that Debbie would feed him. Debbie said that the staff would feed him for "five or six days". She was also informed her that she could not remain in the room during the feeding. Jim stated that he was hungry.

17 November 15, 9:00 AM. Mr. Bain stated that, "I don't get too much food lately". When asked if he wanted me to visit, he answered, "Why not?"

I was asked to leave Mr. Bain's room by the same Ward Supervisor. I was not allowed to feed him. Presently we are not being allowed to visit him nor are any of His friends allowed to access him. Mr. Bain told me that he was getting very little to eat and that he was hungry. He also told the ward supervisor, when asked if he wanted me to visit, "Why not?" (This was taped)

18. November 16, 00 @ 9:30 PM. Mr. Bain appeared gravely ill and according to the Protection For Persons in Care Act directive, we called an ambulance to have him moved to a hospital. TAB ( ) Marilyn Snow RN, Chief Executive Officer and Lyn Olenek RN, Director of Care and the Physician, Dr. Klemka, (by phone), refused to allow him to be moved. The ambulance stayed on site for an hour.

Ms. Snow and Olenek called the police, two police cars arrived and a number of police. Some immediately left when they saw who we were and what the issue was. We left the hospital.

That same evening, the obvious neglect of Mr. Bain was called to the attention of Ms. Marilyn Snow RN by uncovering and exposing the bedsore. She stated that she was aware of everthing. The conversation was



recorded.

19. November 17, 2000 A guard in the doorway of Mr. Bain's room disallowed friends and advocates entrance to his room.

20. November 17/00, Counsel for the Office of the Public Guardian, and Counsel for the Office of the Public Trustee testified to the surrogate court that Mr. Bain is in a facility receiving adequate, ethical care. They opposed our guardianship, stated that he does not require a guardian.

During the hearing, Justice Belzil expressed shock that we had called an ambulance to the facility. TAB ( )

21. November 19, 00 Two persons went to visit. Guard was at the door, (philipino female). One of the visitors was able to see Mr. Bain before the door was closed. Mr. Bain was observed to have extreme gasping, his head would move up from the bed with the effort. It was reported to us that his head moved about 1/2 meter up from the bed.

22. November 20, 00, A person phoned St. Josephs Auxiliary Hospital and was told that Mr. Bain was doing poorly and that he was not responding.

23. November 20, 00 A person attempted to visit Mr. Bain and was not only disallowed to visit but was strongly told to leave the building.

24. November 20, 00 we faxed a letter, received from Doris Bain, Scotland, sister of Mr. Bain, to Office of Minister of Justice which requested an independent assessment of Mr. Bain and possible transfer to another facility.

25 November 21/00 8:00 AM, we attended at the Office of the Minister of Justice, The Honourable Mr David Hancock. Phone, (780) 427 2339. Most of interview was with his executive assistant, Sharon (Theuerkopf).

We hand delivered the letter of Ms. Doris Bain, dated November 20/00, which stated that he have an independent assessment and if necessary be transferred to a more appropriate facility.

26 November 21/00 3:00 PM, a priest who is known at this Catholic facility, was disallowed to visit Mr. Bain. We were told that he was disallowed access by the ward supervisor, Debbie Papanikolaou RN BSc.

27. I was served by *process server* that I was not to trespass upon St. Josephs Auxiliary Hospital Property at 10707 - 29 Avenue, effective immediately, November 21/00, pursuant to the *Petty Trespass Act* or be apprehended without warrant. This was signed by the Chief Executive Officer, Marilyn Snow RN.

I had not attended at the facility after the evening of November 16/00.

27. November 22/00 Mr. Bain died @ 1.00 PM.

This man was not terminally ill. As soon as he was being fed once a day or once every other day or sometimes every third day, he rallied, he took on strength. He was aware of his circumstances. He inquired if he could die of a bed sore.

We allege that:

Mr. Bain was intentionally not provided adequate nutrition or hydration to sustain life.

Mr. Bain had a severe *footdrop*, particularly his left foot which is the result of less than adequate nursing care. He also had positional deformities of the legs.

Mr. Bain suffered an advanced bed sore (pressure sore) which resulted in a severe infection.

His family advocated to have him moved to an active treatment facility, their wishes were disregarded.

Mr. Bain was intentionally not provided adequate medical attention.

Mr. Bain was neglected emotionally neglected..

Mr. Bain was intentionally restricted from appropriate social contact.

Mr. Bain was being chemically restrained so that he could not defend himself.

Mr. Bain was intentionally administered medication for an inappropriate purpose.

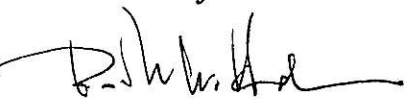
Mr. Bain was denied spiritual comfort at time of dying.

Mr Bain was not allowed to put his affairs in order.

His human rights were totally violated.

*Elder Advocates of Alberta*

per:



Ruth Maria Adria

Photographs and other documentation are available on request.

CC.Honourable Minister of Justice and Attorney General, Mr. David Hancock QC  
Honourable Minister of Health, Mr. Gary Mar.



Office of the  
Deputy Minister

7th floor, Standard Life Centre  
10405 Jasper Avenue  
Edmonton, Alberta  
Canada T5J 4R7

Telephone 780/427-2921  
Fax 780/427-5362

AR8081C

June 11, 2002

Ms. Ruth M. Adria  
Elder Advocates of Alberta  
Box # 45028  
Edmonton, AB T6H 3T3

Dear Ms. Adria:

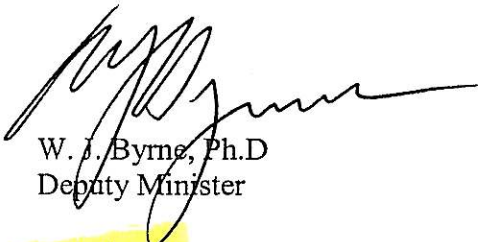
Thank you for your May 28, 2002, faxed letter concerning Protection for Persons in Care file #1813, dated October 25, 2000, involving Mr. James Bain, deceased resident of St. Joseph's Auxiliary Hospital, Edmonton.

This file, again, has been thoroughly reviewed, and it appears that the five-page summary of your activities with St. Joseph's Auxiliary Hospital and the late Mr. Bain, which you attached to this letter, was never received by Protection for Persons in Care. The summary does not indicate which day it was faxed.

However, in December 2000 and in March 2002 you had sent a similar four-page faxed letter to Protection for Persons in Care. The four-page fax was the same as the one received further to your October 25, 2000, report to the reporting line. My response to your March 2002 letter, which had the previous four-page summary attached, is provided for your records.

I am satisfied that all of the allegations pertaining to Mr. Bain's care in your latest five-page summary have been investigated and that you were sent a report of the decision in relation to these allegations. No further investigation will occur and the file is considered closed. The matter related to your relationship with the facility does not come under the jurisdiction of the *Protection for Persons in Care Act*. I hope this clarifies this for you.

Yours truly,



W. J. Byrne, Ph.D  
Deputy Minister

Attachment



VIA FAX 422 5954

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1. I represent *Elder Advocates of Alberta*. We advocate for the frail, dependent elderly.
2. I have known Mr. James Keith Bain since May of 1999 at which time the Office of Ms. Anne McLellan, the Honourable Federal Minister of Justice, referred the matter of the concerns of Mr. Bain to the *Elder Advocates of Alberta*. Mr. Bain has an elderly sister in Scotland and a brother in England, but no relatives in Canada.
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DEC 03 00 12:23

ceased to further examine this area. The sheet that he was on was dirty and there was a large area of dried blood on the sheet adjacent to the foot, approximately 5-6 inches in diameter which led me to believe that the area on his foot must be a very open, exposed, bloody area.

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October 25/ 00, 8:22 AM, I was able to contact the *abuse line* to notify them of the above noted abuse and neglect and informed them it was an emergency.

October 25/00 T/C to Dr. PJ Klemka Ph. 461 3533, he did not return the call.

18. Mr. Bain had to be administered sedation 1/2 hour prior to having the dressing on his ulcerated foot changed so that he could tolerate the pain.

19. At no time, when Mr. Bain was so gravely ill, was there evidence of force fluids beside his bed table, there was no intake or output record. When he was *parked* in the hallway, there was no evidence of any fluid in proximity of his chair.

At no time was he given fluid by intravenous or clysis drip  
He was not sent to an active treatment hospital for care.

- His left foot was swollen. The severe, ulcerated pressure area on his swollen foot is the result of poor nutrition, poor circulation, failure to reposition, neglect. It is probable that the necrosis of the flesh will have caused the bones of his heel to be exposed.

- He exhibited severe *footdrop*, particularly his left foot which is the result of less than adequate nursing care by persons who apparently have little knowledge or understanding concerning the care of frail, elderly persons. They are untrained persons who apparently, have been given little or no instruction or supervision concerning safe, ethical nursing care.

- Since having been admitted to St. Josephs Auxiliary Hospital, Mr. Bain had been almost continuously left in bed even though he was ambulatory



when he arrived at the long term care facility.

He was seldom repositioned, in fact he should have been turned every two hours

- He was heavily medicated.
- It strongly appeared that he received less than custodial care.
- He appeared to be suffering from severe neglect.

*Elder Advocates of Alberta*

per:

Ruth Maria Adria

# Elder Advocates of Alberta

June 25, 2002

**Mr. William Byrne**  
**Deputy Minister of Community Development**  
Responsible for the Administration of the  
**PROTECTION FOR PERSONS IN CARE ACT**

VIA FAX 427 5362

Dear Mr. Byrne:

**RE: Complaint to THE PROTECTION FOR PERSONS IN CARE ACT**  
**December 6, 2000 - JAMES Keith BAIN -Room #806 3rd Floor - St.**  
**Joseph's Auxiliary Hospital**

You have disregarded our correspondence of March 07, 2002 and March 26, 2002.

We find it disturbing that a man of your stature would treat us and our concerns with such disregard and even disdain.

Mr. Byrne, **don't get old** or you or your loved ones may become caught in the web which you are helping to spin.

We are attaching a copy of the said five page complaint and a copy of the facsimile printout referring to the faxed complaint.

Yours most truly,

*Elder Advocates of Alberta*

per: 

Ruth Maria Adria

Six pages of attachment

VIA FAX 422 5954

Complaint to THE PROTECTION FOR PERSONS IN CARE ACT, December 6/00  
RE: JAMES Keith BAIN -Room #806 3rd Floor - St. Joseph's Auxiliary Hospital

The following is a supplement to the Complaint made to the *Protection For Persons in Care Act* abuse line on October 25/00 concerning the above named James Keith Bain.

1. Mr. Bain had to be administered sedation 1/2 hour prior to having the dressing on his ulcerated foot changed so that he could tolerate the pain.

The following was explained to us and Dr. Klemka:

The LPN came in the room and the doctor asked her to explain the condition of the ulcerated area.

She stated the following:

a. - Reddened (infected) area high up around the ankle which has not spread up the leg as yet (or there would have to be an amputation)

b. - There was an excoriated, necrotic area, and crust about 3 or 4 inches in diameter surrounded by redness.

c. - She said that the ball of flesh at the back of the foot was falling away and the bones were being exposed.

d. The LPN said in regard to pain management that she gives Mr. Bain Tylenol prior to changing his dressing.

The doctor did not seem to be aware of this or of the condition of the ulcerated area.

2. At no time, when Mr. Bain was so gravely ill, was there evidence of force fluids beside his bed table, there was no intake or output record.

When he was *parked* in the hallway, there was no evidence of any fluid in proximity of his chair.

At no time was he given fluid by intravenous or clysis drip, nor was he sent to an active treatment hospital for care.

3. His left foot was swollen. The severe, ulcerated pressure area on his swollen foot is the result of poor nutrition, poor circulation, failure to reposition, neglect. It is probable that the necrosis of the flesh will have caused the bones of his heel to be exposed.

4. He exhibited severe *footdrop*, particularly his left foot which is the result of less than adequate nursing care by persons who apparently have little knowledge or understanding concerning the care of frail, elderly persons. They are untrained persons who apparently, have been given little or no instruction or supervision concerning safe, ethical nursing care.

5. Since having been admitted to St. Josephs Auxiliary Hospital, Mr. Bain had been almost continuously left in bed even though he was ambulatory when he arrived at the long term care facility.



He was seldom repositioned, in fact he should have been turned every two hours

6. He was heavily medicated. It strongly appears that he received less than custodial care. He appeared to be suffering from severe neglect.

7. After he was fed, food remained in his mouth because he was too heavily medicated to stay awake to swallow. Lynn Olenek RN, *Director of Nursing Care and Pastoral Care* attended with person, tall blonde, whom we believed to be the *Protection For persons in Care Abuse Act (PPCA)* Investigator, Marjorie Schmidt RN. October 26/00 10:35AM This person did not introduce herself. After Lynn Olenek inquired who I was, they both immediately left the room.

8. October 26/00 11:55 AM I was called to office of Marilyn Snow, Lynn Olenek also in attendance.

October 27/00 I fed him dinner, Mr. Bain said that he wished to "*put his affairs in order*". I responded that for now he should rest, eat, drink and get stronger.

9. As noted in our file, we and another person had been feeding him some meals. Unfortunately, no one can be present three times a day. Any food which was offered him, he eagerly accepted. For example, October 29/00, Sunday, 930AM, I fed him hospital breakfast which consisted of porridge, two glasses of thickened juice and coffee that was not thickened, I then fed him a large bowl of porridge, banana and coffee which I had brought from home which he enthusiastically ate. He appeared very hungry.

October 28/00 I fed him, he asked me if he could die from an ulcer. He stated, "*I want to give somebody something*".

October 29/00 9:20 AM Sunday Morning, fed Mr. Bain.. That morning small amount of material could be felt at the very opening of the colostomy bag, however no flatus.

10 Often Mr. Bain was so drugged, he could not stay awake between mouthfuls. This was particularly the situation on November 12th and 13th/00. November 13/00, 8:30 PM, he indicated that he wished to eat the porridge and ice cream that I was offering him, but he could not eat, because he would fall asleep between mouthfuls, he appeared heavily medicated, therefore it was dangerous to feed him

11 November 3/00, approximately 11:00 AM, Dr. Klemka and another physician debrided the heel (the accompanying physician cut away the necrotic flesh with a pair of scissors). There is a necrotic area and crust. The ball of flesh, at the back of the ankle, (the heel) will probably necrose and fall away. We went to visit Mr. Bain immediately after the debridement, he appeared totally unconscious, he could not be roused.

12. November 8/00 @ 8:45 PM, I visited Mr. Bain. He could not be roused. His color was waxy white, he appeared gravely ill.

13. Family from Scotland and England, made phone calls to St. Josephs and asked to speak to Mr. Bain. One staff person told them that there was no phone in the room of Mr. Bain and they could not hang the phone on the bed. On one occasion they were informed that he did not wish to speak to them.

14. November 12, 00 9:30 AM Person who was feeding him was intercepted by ward supervisor who said that Mr. Bain could not have tea. Then said that Mr. Bain does not want to eat anymore and took away the tray. Another staff person in the room said that Mr. Bain took fluids well, water, and said that she gave him water but could not go against the ward supervisor.

15. November 12, 00 8:30 PM. I attempted to feed him ice cream but could not because he fell asleep between mouthfuls. His colostomy bag was totally empty.

16 November 14, 2000 Mr. Bain asked the person who had come to feed him, to feed him. Shortly after, she was told by the ward supervisor, Debbie Papanikolaou RN BSc, that from now on she would no longer be allowed to feed Mr. Bain and that Debbie would feed him. Debbie said that the staff would feed him for "five or six days". She was also informed her that she could not remain in the room during the feeding. Jim stated that he was hungry.

17 November 15, 9:00 AM. Mr. Bain stated that, "I don't get too much food lately".  
When asked if he wanted me to visit, he answered, "Why not?"

I was asked to leave Mr. Bain's room by the same Ward Supervisor. I was not allowed to feed him. Presently we are not being allowed to visit him nor are any of His friends allowed to access him. Mr. Bain told me that he was getting very little to eat and that he was hungry. He also told the ward supervisor, when asked if he wanted me to visit, "Why not?" (This was taped)

18. November 16, 00 @ 9:30 PM. Mr. Bain appeared gravely ill and according to the Protection For Persons in Care Act directive, we called an ambulance to have him moved to a hospital. TAB ( )  
Marilyn Snow RN, Chief Executive Officer and Lyn Olenek RN, Director of Care and the Physician, Dr. Klemka, (by phone), refused to allow him to be moved. The ambulance stayed on site for an hour.

Ms. Snow and Olenek called the police, two police cars arrived and a number of police. Some immediately left when they saw who we were and what the issue was. We left the hospital.

That same evening, the obvious neglect of Mr. Bain was called to the attention of Ms. Marilyn Snow RN by uncovering and exposing the bedsore. She stated that she was aware of everthing. The conversation was



recorded.

19. November 17, 2000 A guard in the doorway of Mr. Bain's room disallowed friends and advocates entrance to his room.

20. November 17/00, Counsel for the Office of the Public Guardian, and Counsel for the Office of the Public Trustee testified to the surrogate court that Mr. Bain is in a facility receiving adequate, ethical care. They opposed our guardianship, stated that he does not require a guardian.

During the hearing, Justice Belzil expressed shock that we had called an ambulance to the facility. TAB ( )

21. November 19, 00 Two persons went to visit. Guard was at the door, (philipino female). One of the visitors was able to see Mr. Bain before the door was closed. Mr. Bain was observed to have extreme gasping, his head would move up from the bed with the effort. It was reported to us that his head moved about 1/2 meter up from the bed.

22. November 20, 00, A person phoned St. Josephs Auxiliary Hospital and was told that Mr. Bain was doing poorly and that he was not responding.

23. November 20, 00 A person attempted to visit Mr. Bain and was not only disallowed to visit but was strongly told to leave the building.

24. November 20, 00 we faxed a letter, received from Doris Bain, Scotland, sister of Mr. Bain, to Office of Minister of Justice which requested an independent assessment of Mr. Bain and possible transfer to another facility.

25 November 21/00 8:00 AM, we attended at the Office of the Minister of Justice, The Honourable Mr David Hancock. Phone, (780) 427 2339. Most of interview was with his executive assistant, Sharon (Theuerkopf).

We hand delivered the letter of Ms. Doris Bain, dated November 20/00, which stated that he have an independent assessment and if necessary be transferred to a more appropriate facility.

26 November 21/00 3:00 PM, a priest who is known at this Catholic facility, was disallowed to visit Mr. Bain. We were told that he was disallowed access by the ward supervisor, Debbie Papanikolaou RN BSc.

27. I was served by *process server* that I was not to trespass upon St. Josephs Auxiliary Hospital Property at 10707 - 29 Avenue, effective immediately, November 21/00, pursuant to the *Petty Trespass Act* or be apprehended without warrant. This was signed by the Chief Executive Officer, Marilyn Snow RN.



**I had not attended at the facility after the evening of November 16/00.**

**27. November 22/00 Mr. Bain died @ 1.00 PM.**

**This man was not terminally ill. As soon as he was being fed once a day or once every other day or sometimes every third day, he rallied, he took on strength. He was aware of his circumstances. He inquired if he could die of a bed sore.**

**We allege that:**

**Mr. Bain was intentionally not provided adequate nutrition or hydration to sustain life.**

**Mr. Bain had a severe *footdrop*, particularly his left foot which is the result of less than adequate nursing care. He also had positional deformities of the legs.**

**Mr. Bain suffered an advanced bed sore (pressure sore) which resulted in a severe infection.**

**His family advocated to have him moved to an active treatment facility, their wishes were disregarded.**

**Mr. Bain was intentionally not provided adequate medical attention.**

**Mr. Bain was neglected emotionally neglected..**

**Mr. Bain was intentionally restricted from appropriate social contact.**

**Mr. Bain was being chemically restrained so that he could not defend himself.**

**Mr. Bain was intentionally administered medication for an inappropriate purpose.**

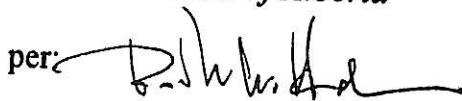
**Mr. Bain was denied spiritual comfort at time of dying.**

**Mr Bain was not allowed to put his affairs in order.**

**His human rights were totally violated.**

***Elder Advocates of Alberta***

**per:**



**Ruth Maria Adria**

**Photographs and other documentation are available on request.**

**CC.Honourable Minister of Justice and Attorney General, Mr. David Hancock QC  
Honourable Minister of Health, Mr. Gary Mar.**

\*\*\*\*\* JOURNAL REPORT \*\*\* DEC. 19'00 21:06 \*\*\*\*\*

NO.	TELEPHONE NUMBER	TX/RX PAGE START	TIME	NAME	
001	780 422 5954	S 04	12:24 00H02'58"		I
DEC. 05'00					
001	780 422 5954	R 06	11:43 00H04'06"		R
DEC. 08'00					
001		R 07	10:05 00H05'20"		R
002	7804272716	R 13	10:21 00H08'43"		G
003		R 04	10:41 00H03'25"		G
004	7804272716	R 01	10:47 00H00'55"		G
005		P 05	11:14 00H04'14"		G
006		R 20	13:08 00H14'38"		G
DEC. 11'00					
001		R 00	17:01 00H00'30"		RE
002		P 01	17:09 00H03'07"		G3

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\*\*\*\*\* JOURNAL REPORT \*\*\* DEC. 19'00 21:06 \*\*\*\*\*

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002	01224635333	S 01	22:43 00H00'41"		N
DEC. 17'00					
001	780 427 5362	S 02	18:55 00H01'12"		RESU
002	4226621	S 02	18:56 00H01'11"		G3 OK
003	9233759	S 02	22:25 00H01'31"		G3 OK
DEC. 18'00					
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DEC. 19'00					
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