

CANADA / JUDGMENT

Haberla Estate (Re)

2025 BCSC 2144

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2144 Haberla Estate (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Haberla Estate (Re),

2025 BCSC 2144

Date: 20251030

Docket: P27051

Registry: New Westminster

In the Matter of the Estate of Gerhard Alfons Haberla, Deceased

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for M. Peters and C. Snow:

S. Denholm

Counsel for H. Haberla:

A. Mihailovic

Counsel for H. Wood:

P. Schmidt

Place and Date of Hearing:

New Westminster, B.C.

September 11, 2025

Place and Date of Judgment:

New Westminster, B.C.

October 30, 2025

Overview

- [1] Gerhard Alfons Haberla (the "Deceased") died on January 27, 2023, without a will. The applicants Mr. Michael Peters and Ms. Connie Snow, who are a nephew and niece of the Deceased, apply pursuant to section 132 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA], for an order appointing Mr. Peters as an interim administrator of the Deceased's estate (the "Estate"), for limited purposes and on conditions. In summary those are to: (i) investigate and call in assets of the Estate; (ii) pay the liabilities of the Estate; (iii) not distribute the Estate unless by consent of all interested persons or court order; and (iv) defend or bring any actions on behalf of the Estate.
- [2] The respondent Mr. Helmut Haberla, who is the only living sibling of the Deceased, consents to Mr. Peters being appointed as the interim administrator.
- [3] The respondent Ms. Helen Wood claims to have been in a marriage-like relationship with the Deceased at the time of his death and opposes the appointment of Mr. Peters as the interim administrator. Ms. Wood proposes that no interim administrator be appointed, and that instead the parties forthwith obtain a trial date on the sole issue of whether she was a spouse. Ms. Wood submits that a trial date can be obtained relatively soon, and the appointment of an administrator should be deferred until after the spousal issue has been decided.
- [4] For the reasons that follow, I appoint Mr. Peters as the interim administrator for limited purposes and on conditions.

Background and Procedural History

- [5] The following background is not in dispute on this application.
- [6] The Deceased died intestate, leaving assets with an approximate value of \$780,839.42. The exact current value of the Estate is unknown.
- [7] At the time of the Deceased's death, he was not married and did not have any children. He was predeceased by his parents. Ms. Wood claims that she was the spouse of the Deceased within the meaning of s. 2 of WESA. Her status as a spouse is in dispute. If Ms. Wood proves that she was a spouse, she will be the sole intestate heir of the Deceased pursuant to s. 20 of WESA. If Ms. Wood was not a spouse, Mr. Haberla, Mr. Peters, and Ms. Snow are the intestate heirs of the Deceased pursuant to s. 23 of WESA, and the Estate residue will devolve one half to Mr. Haberla, one quarter to Mr. Peters, and one quarter to Ms. Snow. There are no other possible intestate heirs.

- [8] On October 12, 2023, Ms. Wood filed a submission for an estate grant. On November 1, 2023, Mr. Haberla filed a Notice of Dispute, effectively freezing her submission. On November 23, 2023, Mr. Haberla filed a submission for an estate grant. On December 7, 2023, Ms. Wood filed a Notice of Dispute. By previous orders, both Notices remain in effect until they are withdrawn or further order of this Court. An estate grant will not issue while the Notices are in effect, and as such, there is no personal representative with the legal authority to administer the Estate.
- [9] On March 18, 2024, Ms. Wood filed a petition in the New Westminster Registry under proceeding No. 252889, in which she seeks a declaration of spousal status (the "Spousal Petition"). On October 24, 2024, Ms. Wood filed a notice of civil claim in the New Westminster registry, under action No. 255760, in which she seeks, among other things, a declaration of spousal status (the "Spousal Action"). The parties concluded that the issue of Ms. Wood's spousal status could not be determined by affidavit evidence and required an action. No trial has been scheduled in the action, no documents have been exchanged, and no examinations for discovery have been scheduled. The parties to this application are the only parties to the two proceedings. The pleadings have not been perfected.
- [10] Following the Deceased's death, a property dispute arose between Mr. Haberla and Ms. Wood. Mr. Haberla and the Deceased were co-owners of a residential property in Burnaby, BC (the "Property"). On February 21, 2024, Mr. Haberla commenced a petition in the New Westminster Registry under proceeding No. 252645, seeking sale of the Property pursuant to the Partition of Property Act, R.S.B.C. 1996, c. 347 (the "Partition Petition"). Ms. Wood alleges that because of an oral agreement made in 2012 between Mr. Haberla and the Deceased, Mr. Haberla has no beneficial interest in the Property. Ms. Wood seeks a declaration that Mr. Haberla holds his registered interest in trust for the Estate. She also makes this allegation in the Spousal Action.
- [11] On April 2, 2024, Justice Blok granted the sale of the Property with Mr. Haberla and Ms. Wood having joint conduct of sale. On December 10, 2024, Justice Warren, then of this Court, approved the sale of the Property and ordered that upon Ms. Wood vacating the Property, Mr. Haberla may enter the Property and "collect all remaining personal items belonging to" the Estate and hold such personal items in storage until further order or consent of the parties (the "Sale Order").
- [12] On January 13, 2025, Justice Brundrett ordered that: (i) by March 20, 2025, Ms. Wood shall vacate the Property and remove all her personal property; and (ii) the net sale proceeds from the sale of the Property be divided, with 50% to be paid to Mr. Haberla and 50% to be held in trust with KSW Lawyers, pending court order or consent of the parties. Those proceeds, greater than \$500,000, remain in trust and are available for payment of taxes and other debts of the Estate if an interim administrator is appointed.

[13] Through counsel, Mr. Haberla alleges that Ms. Wood has taken the Deceased's vehicle, taken and possibly sold the Deceased's personal possessions, and taken the Deceased's bank and financial records. He alleges that by so doing Ms. Wood is in contempt of the Sale Order. Ms. Wood denies these allegations and disagrees with Mr. Haberla's interpretation of the Sale Order.

Legal Framework

[14] Section 130 of WESA lists the priority among applicants to administer an intestate estate. The portions relevant to the facts of this application are:

130 If a person dies without a will, the court may grant administration of the deceased person's estate to one or more of the following persons in the following order of priority:

- (a) the spouse of the deceased person or a person nominated by the spouse;
- (e) an intestate successor other than the spouse or child of the deceased person, having the consent of the intestate successors representing a majority in interest of the estate, including the intestate successor who applies for a grant of administration;
- (g) any other person the court considers appropriate to appoint, including, without limitation, and subject to the Public Guardian and Trustee's consent, the Public Guardian and Trustee.

[15] If Ms. Wood proves that she was the spouse of the Deceased, then pursuant to s. 130(a), she will have priority to be the administrator or to nominate a person to be administrator. If Ms. Wood was not the spouse of the Deceased, then pursuant to s. 130(e), Mr. Peters will have priority to be the administrator as he has the consent of Mr. Haberla and Ms. Snow.

[16] Section 132 of WESA authorizes the court to appoint an administrator of an estate in "special circumstances":

132 (1) Despite sections 130 and 131, the court may appoint as administrator of an estate any person the court considers appropriate if, because of special circumstances, the court considers it appropriate to do so.

(2) The appointment of an administrator under subsection (1) may be

- (a) conditional or unconditional, and
- (b) made for general, special or limited purposes.

[17] In *Raye v. Phillip Estate*, 2021 BCSC 387 at paras. 27-28, I summarized the principles applicable to appointing an administrator, and what might constitute special circumstances:

[27] In exercising its discretion to appoint an administrator, the court must consider the best interests of the estate and all persons interested in the estate. The court should appoint an administrator who is likely best able to convert the estate to the advantage of those who are interested in it: *Flores v. Mendez*, 2014 BCSC 951 at paras. 35-41. The support of the majority of beneficiaries is a significant factor in determining an appropriate administrator: *Godby*

Estate (Re), 2015 BCSC 1809 at para. 47. An administrator must act with "detachment and even handedness" and without animosity: *Ruffolo v. Juba-Ruffolo*, 2005 BCCA 26 at para. 15. An administrator should play a neutral role and not pick sides between beneficiaries and should be indifferent as to how the estate is to be divided: *Kolic Estate (Re)*, 2016 BCSC 1312 at paras. 25-26. An actual or perceived conflict of interest may cause a court to appoint a new executor or administrator: *Ching Estate (Re)*, 2016 BCSC 1111 at para. 22.

- [28] In *Woodward v. Weinstein*, 2020 BCSC 1667, a case decided under the former Estate Administration Act, R.S.B.C. 1996, c. 122, the Court discussed what might constitute "special circumstances" that would cause a court to not choose from the legislated list of people who could be appointed as administrator:
- [91] Assuming that special circumstances must pertain to the estate itself or to administration of the estate, it seems logical that many, if not most, of the recognized grounds for removing or passing over a named executor will have a lesser analogue that might constitute special circumstances. Thus, for example, a listed person might be passed over because of a competing personal interest, even though the interest might not be sharp or direct enough to constitute a conflict of interest for the purpose of removing a named executor.
- [92] I accept that significant evidence of animus toward a beneficiary could potentially amount to special circumstances, as might evidence that the listed person is unable, unwilling or reasonably unlikely to put the estate's best interests first.
- [18] In *Re Siebert Estate*, 2025 BCSC 617 [Siebert] at para. 83, the Court provided further examples of special circumstances:
- [83] The special circumstances to justify an appointment under s. 132 must pertain to the estate or its administration: *Raye v. Phillip Estate*, 2021 BCSC 387 at paras. 27–28. Special circumstances may include: a) steps need to be taken to preserve estate assets and deal with ongoing legal matters; b) concerns that repairs to a building might be required; c) rent to be collected and paid into an estate bank account; d) to ensure insurance is maintained on a building; and e) to pay monthly expenses for vehicles or persons: *El-Adams Estate (Re)*, 2022 BCSC 75 at paras. 33–37.
- [19] Merely being a potential beneficiary does not preclude a candidate from being appointed as interim administrator, nor does the existence of some amount of "interpersonal tension or strife" between them and other involved parties: *Re Haynes Estate*, 2021 BCSC 669 at para. 29.

Issues

[20] The issues are:

Issue 1: Should the Court defer appointment of an interim administrator?

Issue 2: If not, do special circumstances exist, and who should be appointed?

Issue 1: Should the Court defer appointment of an interim administrator?

[21] The applicants and Mr. Haberla submit there is a need for an interim administrator to be appointed now. The Estate has outstanding liabilities, including unpaid taxes. Since 2023, penalties and interest on the Estate's debts have continued to accrue. There are uncollected assets, including pension benefits, possible death benefits, cash, and investment accounts. An interim administrator is required to investigate and collect the Estate's assets and pay taxes and other Estate debts. These are tasks that require a representative with the legal authority to act on behalf of the Estate.

[22] The applicants and Mr. Haberla have identified the following issues, which require attention now, and none of which can be done without a legal representative being appointed:

- a) Income Tax Filings. The Deceased did not file an income tax return in the year of his death;
- b) BC Speculation and Vacancy Tax. The Deceased did not file a 2023 BC Speculation and Vacancy Tax declaration regarding his interest in the Property, and no such declaration has been filed since. Consequently, the Estate owes outstanding tax of nearly \$40,000 as of early 2025;
- c) Unpaid Utility Bills. This is only about \$830, but interest is accruing at a rate of 19.56% per annum;
- d) Calling In Estate Assets. The Deceased held multiple cash and investment accounts with balances totalling approximately \$59,432.39 at the time of his death;
- e) Locating the Estate Vehicle and transferring ownership to the Estate. At the time of his death, the Deceased owned a 2002 Ford Ranger. Ms. Wood has not disclosed its location;
- f) Collecting Death Benefits. The Deceased was a member of a pension plan with the Marine Workers and Boilermakers Industrial Union; and
- g) Collecting and preserving the Deceased's Personal Items. The current location of the Deceased's personal items is unknown. There is a dispute between Ms. Wood and the respondents as to whether she has taken them in contravention of the Sale Order.

[23] Ms. Wood submits that the Estate is relatively modest and paying the costs of a professional or non-professional administrator, including disbursements and the administrator's legal fees, would consume a not insignificant portion of the Estate. If Ms. Wood is the spouse and sole heir, those would be her funds. Ms. Wood is motivated to settle and resolve this Estate as soon as possible. Ms. Wood submits that an interim administrator should not be appointed at this time. Rather, she proposes to move this matter forward by the parties setting a 5-day trial date in the New Westminster, Vancouver, or Abbotsford registry in the Spousal Action as soon as possible to determine the sole issue of her spousal status. She submits that dates could be available in 2026. Once a decision is made:

- a) if she is the spouse, Ms. Wood would be the administrator with liberty to pursue any other relief; or
 - b) if she is not the spouse, Mr. Peters or Mr. Haberla would be the administrator, as Ms. Wood would not be a beneficiary, and they could pursue any relief.
- [24] In my view, an interim administrator needs to be appointed now. The Deceased died nearly three years ago. It is in the best interests of the Estate and all the beneficiaries, whoever they may ultimately be, that the Estate is called in and its debts and other obligations addressed. The delay in having an administrator appointed is causing harm to the Estate. For example, the Speculation and Vacancy Tax has been assessed and has caused an issue in providing clear title for the sale of the Property. Further, there is a risk of penalties against the Estate for failing to file income taxes. There has also been no application for payment of pension benefits, which the Deceased is thought to have had.
- [25] I do not accede to Ms. Wood's suggestion that the appointment of an administrator should be delayed until the spousal status issue has been resolved. Little has taken place on the action. Realistically, it will likely be closer to a year before the spousal status issue is resolved by trial. The pleadings must be perfected, the spousal issue must be severed, and discovery procedures take place before this can proceed to trial. Ms. Wood is 81 years old and of limited means. I appreciate that it has likely been difficult for her to proceed quickly forward on the spousal issue, but interim administration of the Estate cannot wait.

Issue 2: Are there special circumstances and who should be appointed?

- [26] The applicants acknowledge that Mr. Peters is not neutral in the litigation; he is a potential beneficiary of the Estate. Mr. Peters has filed an affidavit in the Spousal Petition, in which he affirms that he does not believe that Ms. Wood was the Deceased's spouse at the time of death.
- [27] While a neutral administrator would be preferred, Mr. Peters submits that he should be appointed. Among the litigants, his interest in the Estate is the most remote. Ms. Wood and Mr. Haberla are directly opposed to each other in their respective probate applications and Notices of Dispute, they were opposed in the Property Petition, and Mr. Haberla alleges that Ms. Wood has taken the Deceased's vehicle and personal items in contempt of the Sale Order. In contrast, Mr. Peters, while he is not neutral, does not have any interpersonal animosity towards Ms. Wood or Mr. Haberla, he was not a party to the Property Petition, and he has not filed a Notice of Dispute.
- [28] Mr. Peters has not seen Ms. Wood since the Deceased died. Mr. Peters states he is not an undischarged bankrupt, has never been convicted of a criminal offence, and that he will administer the Estate with an even hand between all claimants, and equally provide them with information about the Estate.

- [29] Some time ago, Mr. Haberla proposed that Solus Trust, a professional trustee, administer the Estate. Ms. Wood refused. If appointed, the minimum fee for an Estate this size, will be \$30,000, plus additional fees. In contrast, Mr. Peters is willing to administer the Estate for a fee of 2.5% of the current value of the Estate and reimbursement of his out-of-pocket trustee expenses, with no additional fees. The applicants and Mr. Haberla would prefer that Mr. Peters be appointed rather than a professional trustee because of the increased costs of a professional trustee.
- [30] The applicants submit that depending upon the outcome of the litigation, either Ms. Wood or one of the applicants will have priority to receive an estate grant. Until that litigation is decided, neither Mr. Haberla nor Ms. Wood is capable of being impartial in the role of interim administrator. The applicants seek an order of limited administration for Mr. Peters to deal with the above matters, until such time as the litigation between the parties is decided or settled.
- [31] Mr. Haberla consents to Mr. Peters being appointed the interim administrator. He points out the issues that have arisen in the Property Petition. Mr. Haberla alleges that Ms. Wood has not accounted for nor returned the Deceased's property, which Mr. Haberla states was at the Property when the Deceased died, but has since been removed. Mr. Haberla states that Ms. Wood is in breach of the Sale Order.
- [32] Ms. Wood submits that there are no special circumstances which would justify appointing an interim administrator, and the onus is on the applicants to prove otherwise. Alternatively, if there are special circumstances, the Court should decline to exercise its discretion to appoint Mr. Peters. Given that the requirement of special circumstances is tied to the usual test for removing or passing over a named executor, Ms. Wood submits the same test should apply to appointing one: Woodward at para. 91; Siebert at para. 83.
- [33] Ms. Wood submits that if it is found that she was the spouse of the Deceased, then she is the sole beneficiary, and her interests as the sole beneficiary should govern any appointment of an administrator. Ms. Wood submits that Mr. Peters is not neutral, and that he has already made up his mind about her spousal status and any relief that may entail. While Ms. Wood acknowledges that there was no animosity between her and Mr. Peters during the Deceased's lifetime, Mr. Peters has aligned his position with Mr. Haberla - for whom there is significant animosity - following the Deceased's death. She states this has led to animosity between Mr. Peters and Ms. Wood.
- [34] Ms. Wood points to Mr. Peters' affidavit filed on August 9, 2024, in the Partition Petition, which was commissioned by counsel for Mr. Haberla. Ms. Wood submits that Mr. Peters implies that she took advantage of the Deceased for her own benefit, including refusing to leave the Property while the Deceased was alive, and she refused to allow Mr. Peters to speak to the Deceased at the hospital. Ms. Wood denies having done any of this. In addition, Ms. Wood submits that Mr. Peters has a vested interest in the outcome of the litigation; it financially benefits Mr. Peters if there is no spousal relationship.

- [35] Finally, Ms. Wood submits that she cannot say with absolute certainty that Mr. Peters has a criminal record or that he has been charged with, or convicted of, a criminal offence. However, she suggests that in 1994 he may have been charged with impaired driving causing death, and if so, she submits that it is inappropriate for him to be put into a position of trust. She refers to an undated newspaper clipping stating that Mr. Peters was charged. In summary, Ms. Wood submits that there ought to be serious and significant concerns about his ability to administer the Estate with detachment and even handedness. Appointing Mr. Peters would not move the parties towards settlement.
- [36] Ms. Wood addresses in her affidavit the allegations of: (i) taking financial documents of the Estate; (ii) taking or selling jewelry, tools and electronics of the Estate; and (iii) taking the truck from the Property. She does not deny all these allegations but denies she is in breach of the Sale Order. Ms. Wood states that the truck is in "safe storage" but does not disclose where. Ms. Wood submits that Mr. Haberla's interpretation of the Sale Order is incorrect. Ms. Wood states that, following the Deceased's death, she paid for a number of expenses, including utilities, repairs and maintenance of the Property.
- [37] In my view, there are special circumstances present. They are the same as the reasons that appointment of an interim administrator cannot wait. The lack of an administrator is detrimentally affecting the Estate and its potential beneficiaries. Someone needs to call in the Estate and pay expenses. The issue of whether Ms. Wood was a spouse is unlikely to be resolved for some time. Even if the parties sever the issue of whether Ms. Wood is a spouse, and hear it separately, the pleadings are not perfected, and discovery has not yet taken place. The Estate is not a party to the Spousal Action or the Property Petition and needs to be. Someone must act for the Estate.
- [38] The practical difficulty is that it is either Ms. Wood on the one hand, or the applicants and Mr. Haberla on the other, will eventually become the beneficiaries of the Estate. There is no middle possibility. Each has an interest in the Spousal Action and the Property Petition. Until the issue of Ms. Wood's spousal status is decided, the conflict between Ms. Wood and Mr. Haberla is too great to appoint either of them administrator. Counsel for Ms. Wood and Mr. Haberla acknowledge this.
- [39] The choice is between Mr. Peters, a professional trustee such as Solus Trust, or a third neutral person, perhaps a different family member, who might be willing to administer the Estate. Mr. Peters has an interest in the litigation, but he is the least interested of all the potential beneficiaries. I do not conclude that Mr. Peters opposing Ms. Wood's spousal status demonstrates personal animosity towards her. Ms. Wood states that at one point, Mr. Peters accompanied Mr. Haberla to the Property, and it was uncomfortable for her. The person accompanying Mr. Haberla was his son, Brett Haberla and not Mr. Peters. I conclude from this that there has been very little contact, if any, between Ms. Wood and Mr. Peters, as she did not recognize that this was not Mr. Peters. Mr. Peters stated he has not been convicted of an offence, and Ms. Wood has not proven otherwise. If he was convicted, it is a serious matter, but I also consider that it was 30 years ago and does not involve an allegation of fraud

or similar trust issues. Ms. Wood argues that if Mr. Peters has been untruthful in his affidavit, then Mr. Peters should not be appointed. I acknowledge that would be a consideration, but at this point, the allegation is unproven by Ms. Wood and denied by Mr. Peters.

- [40] Solus Trust has provided a fee schedule for administering the Estate, which would cost a minimum of \$30,000. None of the parties wish to incur that expense. Although Mr. Haberla proposed Solus Trust to Ms. Wood some time ago, and she refused, he would prefer to have Mr. Peters be interim administrator because of the cost. No other neutral third party, such as a family member, has been identified as willing to take on the task.
- [41] It is important to keep in mind that what is proposed is an interim administrator with limited powers to call in the Estate and pay expenses, and only until the issue of whether Ms. Wood was a spouse is decided. In my view, that attenuates some of the concerns regarding potential conflicts, because restriction and conditions can be placed on the administrator.
- [42] Considering all the circumstances, and that the administration of the Estate should not be delayed further, I conclude that it is appropriate to appoint Mr. Peters as the interim administrator. However, I am restricting the powers he may exercise and putting conditions on the appointment. In my view, this is the appointment that is in the best interests of the Estate and all persons interested in it. Mr. Peters is the person best able to convert the Estate to the advantage of those who are interested in it. He has the support of the majority of the potential beneficiaries, but only if Ms. Wood was not a spouse. Although Mr. Peters is interested as a potential beneficiary, and takes a position contrary to Ms. Wood's claim of being a spouse, Ms. Wood has not shown he has a personal animus toward her.
- [43] I appoint Mr. Peters as the interim administrator for the following limited purposes and under the following conditions, until further order of the Court. As interim administrator, Mr. Peters:
- a) may call in, collect, sell, and preserve all assets of the Estate;
 - b) may access all account records for the Deceased's accounts and investments at financial institutions;
 - c) may use the Estate's assets as follows:
 - i. for the payment of any taxes, expenses, and obligations owed by the Estate in respect of the Estate's assets as they arise or fall due;
 - ii. for the preservation and maintenance of any personal property which may be assets of the Estate; and

- iii. to invest in trust for the Estate in investments authorized under s.15 of the Trustee Act, R.S.B.C. 1996, c. 464, which investments may be liquidated in the administrator's discretion for use in accordance with the terms of this paragraph c), as may be necessary from time to time;
- d) may bring, continue, or settle any litigation on behalf of the Estate;
- e) may not distribute the Estate, or any portion of it, without prior written consent of all the respondents on this application, or court order;
- f) is entitled to an administration fee of up to 2.5% of the gross value of the Estate, payable upon the final distribution of the Estate, either after being approved by all interested beneficiaries or by court order;
- g) has leave to apply for further orders as necessary regarding the administration of the Estate; and
- h) is required to account to the respondents annually from the date of appointment, until discharged from the office of administrator with the consent of all interested beneficiaries or further order of the Court.
- [44] I do not order in advance that Mr. Peters is entitled to 2.5% of the Estate as a fee. That may turn out to be reasonable, but the court cannot predict what will happen in the future. For example, if the parties were to resolve all issues at a mediation in the near future, the fee may not be reasonable.

Costs

- [45] In his notice of application, Mr. Peters sought his costs of the application out of the Estate as special costs. However, the parties did not speak to costs. In the circumstances, I decline to decide costs at this time. If the parties do not agree on costs or to defer the issue until the determination of the spousal issue, and wish to speak costs before then, they may make arrangements through Court Scheduling.

"Norell J."

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