

CANADA / JUDGMENT

Hoy v. Dickinson

2025 BCSC 1552

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Supreme Court of British Columbia

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2025 BCSC 1552 Hoy v. Dickinson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hoy v. Dickinson,

2025 BCSC 1552

Date: 20250812

Docket: S229427

Registry: Vancouver

Between:

Susan Irene Hoy

Plaintiff

And

David Lorne Dickinson, Personally and in his Capacity as Executor of the Estate of Beatrice Tolles Holland

Defendants

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Plaintiff:

M. McGarry

Counsel for Defendants:

M. Parent

Place and Date of Hearing:

Vancouver, B.C.

June 16 & July 25, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 12, 2025

Introduction

- [1] The plaintiff ("Ms. Hoy") applies for leave to commence / continue this action on behalf of the Estate of Beatrice Tolles Holland (the "Estate"). The proposed new form of the Amended Notice of Civil Claim is appended to the application. It is brought pursuant to s. 151 of the Wills and Estates Succession Act, S.B.C. 2009, c. 13 ("WESA").
- [2] The defendant Mr. Dickinson opposes the application. His opposition is based largely on uncertainty regarding the role and interest of a non-party, Shawn Krug, who he suggests appears to be prosecuting this action for his own benefit, rather than Ms. Hoy's. Mr. Krug has produced two different forms of power of attorney which indicate Ms. Hoy appointed him as her attorney.

Background

- [3] Beatrice Tolles Holland (the "Deceased") died on October 21, 2021, at age 88 years. She left a Last Will and Testament dated December 20, 2017 (the "Will"). She was pre-deceased by her husband, William Holland (died on September 28, 2012). They had two children, Ms. Hoy and David Holland ("David"). David also pre-deceased her, on May 2, 2020.
- [4] The Will names Mr. Dickinson as Executor and Trustee of the Deceased's Estate. It provides that the residue of her Estate is to be divided 75% to Ms. Hoy and 25% to David. Mr. Dickinson has not yet obtained a grant of probate for the Will.
- [5] Ms. Hoy alleges Mr. Dickinson acted as the Deceased's financial advisor and was managing her finances while she was alive. The proposed action on behalf of the Estate relates primarily to two properties which were formerly owned solely by the Deceased: 46025 and 46033 Clarke Drive in Chilliwack, BC. As part of a broader estate plan which was put into effect on or about December 20, 2017, the Deceased executed transfers of the two Clarke Drive properties into joint tenancies with Mr. Dickinson, for no consideration. The Deceased and Mr. Dickinson also signed a Declaration of Trust, which provided that he held his interest in these properties in trust for the Deceased during her lifetime, but he became beneficial owner when she died. Due to the right of survivorship he acquired in both properties, the Deceased's interest in them passed to Mr. Dickinson when she died, outside of her Estate. Ms. Hoy says these properties were the Deceased's most valuable assets and

the transfers represented a dramatic change to her mother's prior estate planning arrangements. The property transfer forms were executed on the same day that the Deceased executed the Will.

- [6] In this action, Ms. Hoy argues that beneficial ownership of the Clarke Drive properties did not pass to Mr. Dickinson and he holds them in trust for the Estate. She also says her mother had other financial assets for which Mr. Dickinson has not accounted. She says he owed the Deceased a fiduciary duty, because he was acting as her financial advisor and managing her finances while she was alive, and that he breached that duty. She alleges he procured the property transfers by exerting undue influence on the Deceased. Alternatively, she says the Deceased did not have the capacity required to transfer the properties at the time she purported to do so.
- [7] Mr. Dickinson is currently 80 years of age and retired. He formerly worked as a Financial Advisor with IG Wealth Management (1997-2016). In his response to this civil claim, he says that he and the Deceased had been friends since about 1964. He denies he ever provided her professional financial advice. He denies he ever stood in an advisory role to her. He denies he owed her a fiduciary duty. He says the Deceased was independently advised by a lawyer, Mr. MacLachlan, in relation to her 2017 estate planning, including the Will and Clarke Drive property transfers. He denies that he exerted undue influence on the Deceased, and says she had capacity to carry out all of the relevant estate planning steps.

Involvement of Shawn Krug

- [8] As noted, Mr. Dickinson's opposition to the present application focuses in large part on the involvement of Mr. Krug following the Deceased's death. He does not recall when he first became aware of Mr. Krug, but knew he was an acquaintance of the Deceased, who occasionally helped her with household repairs. After the Deceased's death, Mr. Krug indicated that he expected to be named as executor of the Deceased's Estate. Mr. Dickinson informed Mr. Krug that he had been named as executor in the Will.
- [9] Mr. Dickinson says in or about November 2021, someone at Henderson's Funeral Home and Crematorium informed him that Mr. Krug had attended their premises and advised that he was in charge of the Deceased's Estate, not Mr. Dickinson. He also indicated that Ms. Hoy had given him power of attorney, but did not produce a copy at the time.
- [10] On November 18, 2021, Mr. Thornton, a lawyer acting for Mr. Dickinson, wrote to Mr. Harvey, who appears to have been acting for Ms. Hoy, providing a copy of the Will, a related Statutory Declaration and the Declaration of Trust relating to the Clarke Drive properties. He goes on to state:

I understand from my client that the Estate is worth approximately \$5,000.00 and he was in the process of transferring these monies to Susan Hoy.

If your client wishes to commence proceedings against my client, I have instructions to accept service.

[11] There are three affidavits sworn by Mr. Krug which were tendered in support of this application. In his affidavit #1 sworn October 3, 2024, he states that he and his wife were close friends with the Deceased for 24 years prior to her death. During this time, he would see the Deceased or speak to her on the phone or by email roughly 2-3 times per week. The Deceased introduced him to Mr. Dickinson in November 2012 as her friend and financial advisor, who was managing her finances and providing her financial advice. In early 2013, she told him that Mr. Dickinson had brought her to HSBC's Chilliwack branch and had been added to her bank and investment accounts as joint account holder so he could manage her finances. In late 2017, she told him that Mr. Dickinson had taken her to see her lawyer, Mr. Harvey, to advise her regarding estate planning and draft her will. Mr. Harvey had refused to proceed without the Deceased first completing a capacity test with her family doctor. She indicated that she went to her doctor for a capacity test but had failed it. Mr. Dickinson later took her to a second lawyer who did draft her Will.

[12] Attached to Mr. Krug's affidavit #1 as Exhibit "A" a copy of a power of attorney dated March 27, 2022. In it, Ms. Hoy appoints Mr. Krug to act as her attorney. It states that her attorney had authority to do anything on her behalf that she may lawfully do by an attorney. It also includes an attorney compensation clause:

Attorney Compensation

6. My Attorney will be compensated as follows:

- a. My Attorney will be reimbursed for all out of pocket expenses associated with the carrying out of my wishes; and
- b. 33.3%

[13] It is not clear what the 33.3% refers to. Clause 8 provides that the attorney is not allowed to personally gain from any transaction he may complete on her behalf. It appears that one of the pages of this document has been omitted.

[14] Mr. Dickinson says following the Deceased's death, he was renting one of the Clarke Drive properties to a tenant. The tenant informed him that on two occasions in September 2023, Mr. Krug had attended the property and asked to enter it. The tenant declined and reported the incidents to the RCMP. Also, in or about September 2023, an RCMP officer contacted Mr. Dickinson and indicated that Mr. Krug had contacted them regarding the tenant's occupation of the property. The officer asked Mr. Dickinson to furnish proof he was registered owner of the property.

[15] In Mr. Krug's affidavit #2 made November 19, 2024, he says he inadvertently attached an outdated power of attorney to his previous affidavit. He attaches as Exhibit "A" a Limited Power of Attorney dated April 11, 2024. In it, Ms. Hoy appoints Mr. Krug as her attorney. It

provides that her attorney may make decisions on her behalf in relation to the ongoing litigation pertaining to the Deceased's Estate. There is no attorney compensation clause in this document. It was executed before a lawyer with Ms. Hoy's current counsel's firm. He attaches as Exhibit "C" a copy of an email exchange he had with the Deceased dated May 29, 2014, in which she refers to Mr. Dickinson keeping track of her finances. The relevant portion is:

There are times I think PC's going to die and then soon after everything seems to be working fine. Thought you were going to tell me how much and give choices of what/which/etc. Think I can pre-pay you with David's approval - he's keeping track of my finances [its what he does for work] but he's so anxious for me to get new PC pretty sure he'd approve.

[bolding added]

[16] She goes on to ask Mr. Krug to email Mr. Dickinson regarding what computer he wants to purchase, the cost and provided Mr. Dickinson's email address.

Estate Planning and Medical Files

[17] On October 29, 2024, Mr. Krug, in his capacity as attorney to Ms. Hoy, filed an application for production of various non-party documents, including from Patten Thornton (the law firm responsible for the Deceased's 2017 estate planning), Baker Newby LLP (a law firm which the Deceased consulted regarding estate planning in 2015-2016), Dr. Insanally (the Deceased's family physician) and Royal Bank of Canada. Mr. Dickinson opposed the application. On November 27, 2024, I granted an order that the documents be produced. Ms. Hoy has exhibited copies of the documents produced in support of this application.

[18] The Baker Newby records indicate that starting in and around 2015, the Deceased consulted lawyers with that firm about estate planning. The file notes include entries dated in 2015 and 2016 which indicate the lawyer involved expressed concerns about the Deceased's capacity and possible undue influence from Mr. Dickinson. Counsel asked the Deceased obtain a doctor's opinion regarding her capacity. This was not subsequently provided and the matter did not progress any further. There is an internal file memorandum dated June 17, 2016, which states:

If [the Deceased] does contact you to proceed with her estate planning, I do recommend that you really check her capacity. I handled her husband's estate and although she had capacity at the time, she was in poor health. In addition, there is a guy named David Lorne Dickinson who is a financial planner and consultant. He is married and has suddenly since her husband passed away taken an interest to [the Deceased's] estate and affairs. Further, [the Deceased] advised at some point that she was in a relationship with him. My concern is undue influence and so you should just be aware of that.

[The Deceased] has two children, her son lives with her. It does not sound like she has a good relationship with either of them so, overall this is a difficult estate planning file.

- [19] The Deceased subsequently went to Mr. MacLachlan of Patton Thornton for estate planning services. On December 20, 2017:
- a) The Deceased executed the Will before Mr. MacLachlan and a second witness, Ms. Macken;
 - b) The Deceased executed a Statutory Declaration before Mr. MacLachlan which provided an explanation for why the Deceased was providing a limited bequest to her son David;
 - c) The Deceased executed two Form A transfers before Mr. MacLachlan, transferring the two Clarke Drive properties to herself and Mr. Dickinson as joint tenants. The market value of the properties is stated as being \$705,000 and \$345,000 respectively. Consideration for the transfers is "\$1.00 and other good and valuable consideration"; and
 - d) The Deceased and Mr. Dickinson both executed a Declaration of Trust before Mr. MacLachlan, stating that Mr. Dickinson's interest in the two Clarke Drive properties was held by him as bare trustee during the Deceased's lifetime, and that upon her death, he would own the properties as beneficial owner.
- [20] Mr. MacLachlan did not register the two Form A transfers with the Land Title Office until July 24, 2018.
- [21] Ms. Hoy argues there is no indication in Mr. MacLachlan's file that he assessed the Deceased's capacity or screened for possible undue influence before executing the Will and property transfers.
- [22] Ms. Hoy also argues the Royal Bank of Canada account records produced indicate that between November 2018 and the date of her death, the Deceased issued multiple cheques per month to Mr. Dickinson, involving multiple thousands of dollars.
- [23] Ms. Hoy also points to the medical records which have been produced to date. She says they show the Deceased had been diagnosed with dementia at some point, albeit the date of diagnosis is uncertain, chronic obstructive pulmonary disease ("COPD") in 2016, memory issues, stage 4 chronic kidney disease and asthma. In a letter dated November 15, 2024, her family doctor, Dr. Insanally, states that he recalled administering a MoCA test to the Deceased, which is a test of cognitive dysfunction, which she had failed. He does indicate when he administered the test. The Deceased's Death Certificate indicates that her cause of death was dementia, general debility, COPD and HTN (hypertension).

History of Proceedings

- [24] On November 24, 2022, Ms. Hoy filed her notice of civil claim. At the time, she was represented by Mr. Lightbody of the firm Lakes, Whyte LLP. On February 3, 2023, Mr. Lightbody passed away.
- [25] On May 17, 2023, Mr. Dickinson filed his response to civil claim.

- [26] On August 2, 2023, a reply to response to civil claim was filed by "Shawn Krug, Susan Irene Hoy". It does not appear to have been drafted by a lawyer. At the end of the document, in handwriting, is "Filing for Party, Shawn Krug" followed by Mr. Krug's signature.
- [27] On September 6, 2023, a notice of intention to act in person was filed for Ms. Hoy. The signature line is drafted for Ms. Hoy, but bears Mr. Krug's signature and the date April 12, 2023. The new address for service is c/o Mr. Krug, 47160 Yale Road, Chilliwack, BC. An email address for service is krugs@telus.net.
- [28] On April 17, 2024, Ms. Hoy's new (current) counsel, Mr. Regev of MLT Aikins LLP, wrote to Mr. Dickinson's counsel asking he confirm Mr. Dickinson was not willing to transfer the two Clarke Drive properties and other items identified in para. 14 of the notice of civil claim to the Estate. Based on the positions taken in his response to civil claim, counsel assumed he was unwilling to do so.
- [29] On October 29, 2024, Mr. Krug in his capacity as attorney to Ms. Hoy filed the application for production of non-party documents.
- [30] On November 13, 2024, Mr. Regev filed a notice of appointment or change of lawyer confirming he had been appointed to act for Ms. Hoy.
- [31] On April 7, 2025, Ms. Hoy's counsel followed up on the April 17, 2024 demand, and asked that Mr. Dickinson confirm he would not commence or continue proceedings in the name of the Estate for the relief sought in this action. On April 9, 2025, Mr. Dickinson's counsel confirmed he opposes the relief sought in the action and that his position was as set out in his response to civil claim.
- [32] On May 14, 2025, Ms. Hoy filed the present application. As noted, tendered in support of the application were the three affidavits sworn by Mr. Krug and one from a legal assistant with MLT Aikins. There was no affidavit evidence from Ms. Hoy. The hearing was adjourned to allow Ms. Hoy to tender additional evidence regarding her relationship and arrangement with Mr. Krug. The focus was whether she had a good faith reason for wanting to bring the proposed action on behalf of the Estate and whether Mr. Krug's involvement as her attorney impacted the good faith analysis.

Ms. Hoy's Explanation for the Powers of Attorney

- [33] In Ms. Hoy's affidavit sworn June 19, 2025, she states that she is 66 years of age. She has not had an easy life and has encountered many personal and health challenges. She has been on social assistance for much of her adult life, receives only Old Age Security benefits and receives no financial support from family. She says she has experienced housing insecurity, current has no fixed address and is staying in a shelter located in the Fraser Valley.
- [34] She has known Mr. Krug for about 30 years. She was childhood friends with his wife and her older sister. He and his wife were close family friends to the Deceased. She confirms she gave Mr. Krug power of attorney via the March 27, 2022 document. She found that form on

the internet; it was not professionally drafted. After learning that concerns had been raised about it, she subsequently executed the April 11, 2024 limited power of attorney, saying she believed it better expressed her intentions and expectations concerning the authority she wanted Mr. Krug to have with respect to assisting her with her mother's estate matters.

- [35] She says she granted him power of attorney because she does not want to deal with the stress of the litigation and handle the steps required on her own. There are numerous practical barriers to her pushing the action forward on her own. She confirms Mr. Krug is not benefitting financially through his role as her attorney, she is not paying him for acting as her attorney and he does not have a financial interest in the outcome of the action.

Applicable Law

- [36] Section 151(1) of WESA allows a "specified person" to seek leave of the court to commence proceedings in the name of the specified person and on behalf of the estate of the deceased person:

- a) To recover property or to enforce a right, duty or obligation owed to the deceased person that could be recovered or enforced by the personal representative, or
- b) To obtain damages for breach of a right, duty or obligation owed to the deceased person.

- [37] In the section, "specified person" means "a beneficiary, an intestate successor or a person who may commence a proceeding claiming the benefit of Division 6 [Variation of Wills] of Part 4 [Wills]": see s. 151(0.1).

- [38] Section 151(3) provides that leave may be granted if:

- (a) the court determines the specified person seeking leave
 - (i) has made reasonable efforts to cause the personal representative to commence or defend the proceeding,
 - (ii) has given notice of the application for leave to
 - (A) the personal representative,
 - (B) any other specified persons, and
 - (C) any additional person the court directs that notice is to be given, and
 - (iii) is acting in good faith, and
- (b) it appears to the court that it is necessary or expedient for the protection of the estate or the interests of a specified person for the proceeding to be brought or defended.

- [39] The leading authority regarding how s. 151 is applied and interpreted is *Hoggan v. Silvey*, 2022 BCCA 176 ["Hoggan"]. The factors were subsequently summarized in *Chung v. Chung*, 2022 BCSC 1396 ["Chung"] at para. 49:

49 The Court summarized the applicable factors of s. 151 of WESA at para. 58 of Hoggan. I agree with the applicants that the Court's summary can be fairly restated as follows. Leave may be granted if the court determines that the party seeking leave:

- a) has standing as a "specified person";
- b) has made reasonable efforts to cause the personal representative, or executor, to commence or defend the action;
- c) has given the necessary notice;
- d) is acting in good faith in bringing the action; and
- e) has an arguable case, the pursuit of which:
 - i. may be necessary to protect the interests of the estate; or
 - ii. may be expedient to protect the interests of the estate; or
 - iii. may be necessary to protect the interests of the specified person; or
 - iv. may be expedient to protect the interests of the specified person.

[40] In *Chung* at paras. 38-39, the court noted that an application to maintain a proceeding on behalf of the estate may be brought after it has already been commenced by a "specified person" in their personal capacity. The plaintiff can provide a proposed amended notice of civil claim adding the estate as a plaintiff with their application for leave:

38 Thus, the only meaning of s. 151(1.1) that I am able to discern is that it permits a specified person to bring an application for leave within an already commenced action described in the amended s. 151(1); i.e. within a claim in which a declaration of resulting trust is sought. That is what is sought in *Belinda and May's NOCC*. However, s. 151(1.1) does not negate the need for *Belinda and May* to obtain leave to pursue the claim on behalf of the estate: they still require leave to bring an action in their own names and in the name of *Raymond's* estate. As leave is required, the plaintiffs would not be permitted to take any further steps until, and if, such leave was granted.

39 It seems to me that the appropriate approach contemplated by s. 151(1.1) would be to file a NOCC in which the specified persons are named as plaintiffs and to clearly indicate in the relief sought section that the plaintiffs are seeking leave under s. 151(1) of WESA. It would be inappropriate for a lawyer or a self-represented litigant to file the NOCC on behalf of the specified persons and the estate because they would be acting on behalf of a party (i.e. the estate) without that party's authorization to do so. There are obvious ethical concerns with doing so in addition to the possibility of exposing the estate to costs when not authorized to act on its behalf. As *May and Belinda* have done here, the plaintiffs can provide a proposed amended NOCC naming the estate as a plaintiff in their application for leave. As stated earlier, no further steps would be permitted to be taken by the specified persons until, and if, such leave was granted.

Analysis

[41] I now turn to consider the factors identified in Hoggan.

A - Does Ms. Hoy Have Standing as a Specified Person?

[42] Ms. Hoy is the sole surviving beneficiary named in the Deceased's Will, which has not yet been admitted for probate. She is also an intestate successor of the Deceased's Estate. She clearly has standing as a "specified person", as that term is defined in s. 151(0.1) of WESA.

[43] Mr. Dickinson argues that Mr. Krug appears to be the person who is actually prosecuting this action, not Ms. Hoy, and he is not a specified person. Mr. Krug's involvement at present, and his proposed role going forward, is based on him being Ms. Hoy's attorney. The Estate's proposed claim against Mr. Dickinson does not include any claim by or on behalf of Mr. Krug in his personal capacity. I will address Mr. Dickinson's remaining concerns about Mr. Krug's role under item D below, which considers whether Ms. Hoy is acting in good faith.

B - Has Ms. Hoy Made Reasonable Efforts to Cause the Executor to Commence the Proceedings?

[44] Ms. Hoy made written demands that Mr. Dickinson transfer the two Clarke Drive properties to the Estate or failing that, that Mr. Dickinson confirm he would not commence or continue proceedings in the name of the Estate for the relief sought in this action. Mr. Dickinson has expressly declined to do either. I am satisfied that Ms. Hoy has made reasonable efforts to cause Mr. Dickinson to commence the proposed proceedings in the name of the Estate.

C - Has Ms. Hoy Met the Notice Requirements?

[45] Ms. Hoy says she has complied with the notice requirements under s. 151 of WESA. She is the sole beneficiary under the Deceased's Will, assuming it is eventually admitted to probate. She is also the sole intestate successor. She has also given notice to Mr. Dickinson, both personally in his capacity as Executor named in the Will. I am satisfied that the notice requirements have been met.

D - Is Ms. Hoy Acting in Good Faith?

[46] Ms. Hoy says she is acting in good faith. She is the sole beneficiary of the Estate under the Will and the sole surviving intestate successor. She relies on Chung at para. 57, where the court indicated that a specified person who is genuinely in pursuit of the objects under s. 151(3)(b) of protecting the estate or the interests of a specified person, even if they are doing so out of their own self-interest, is doing so in good faith:

57 In *Jiang v. Piccolo*, 2020 BCSC 1584 at para. 69, Justice Verhoeven discussed the requirement of good faith in the context of a leave application under s. 151 of WESA. Justice Verhoeven concluded that the requirement of good faith is to be considered in light of the other aspects of s. 151; and in particular the question of whether it appears to the court that commencing the proceeding is necessary or expedient for the protection of the interests of the estate or a specified person under s. 151(3)(b). Consequently, he concluded that a specified person who is genuinely in

pursuit of those objects, even if doing so out of their own self interest, is doing so in good faith. In my view, this is consistent with the Court of Appeal's decision in Hoggan, regarding the disjunctive use of "or" in s. 151(3)(b).

- [47] The Deceased transferred assets which constitute the vast majority of the value of her Estate to Mr. Dickinson in suspicious circumstances and while she was at an advanced age, widowed and subject to significant health issues. If the claim is successful, the size of the Estate would increase substantially and benefit Ms. Hoy as beneficiary.
- [48] Mr. Dickson argues that Mr. Krug appears to be the person who is prosecuting the action, not Ms. Hoy. At the initial hearing, he complained that Mr. Krug had taken several steps in the proceedings under his own name, without any reference to the basis for his authority to act on Ms. Hoy's behalf. The 2022 Power of Attorney does not include language delegating to him specific power to commence and prosecute an action on Ms. Hoy's behalf. It also states that he would be compensated for out of pocket expenses and 33.3%. He complains that Mr. Krug failed to disclose in his affidavits the circumstances surrounding execution of that power of attorney. The 2024 Limited Power of Attorney does specify that Mr. Krug can make decisions on Ms. Hoy's behalf regarding the litigation pertaining to the Deceased's Estate, however, there is no explanation of why Mr. Krug's participation in decision making was necessary to protect the interests of the Estate or the interests of specified persons.
- [49] As noted, the hearing of this application was adjourned to allow Ms. Hoy did tender additional evidence. She swore an affidavit confirming she had appointed Mr. Krug as her attorney and explaining why she desired his assistance with conducting the action. She provides some personal background which helps provide context for her decision to involve him.
- [50] At the continuation of the hearing, Mr. Dickinson's counsel expressed dissatisfaction with the overall explanation, including the failure to explain what the reference to attorney compensation of 33.3% referred to. He asked to that he be permitted to cross-examine Mr. Krug and Ms. Hoy on their affidavits before the court decides this application. He did not file a formal application for leave to cross-examine. Ms. Hoy's position was that she had adequately addressed the relevant concerns about creation of the two powers of attorney and Mr. Krug's role as her attorney. She has confirmed that Mr. Krug is not receiving compensation for acting as her attorney and that he has no financial interest in the outcome of the proposed / continued action.
- [51] I agree that Ms. Hoy has adequately addressed relevant concerns regarding Mr. Krug's role and involvement as her attorney. In my view, a detailed examination of the 2022 Power of Attorney and the circumstances under which it was granted is not necessary or particularly relevant to the issues raised in this application. Ms. Hoy has provided some explanation for Mr. Krug's previous involvement, she has explained why the 2022 and 2024 documents were created. She confirms that, at this point at least, Mr. Krug does not have a financial interest in the outcome of the proposed claim. Her explanation for why she desires his ongoing

assistance appears reasonable, given her personal circumstances.

[52] I take comfort from the fact that Ms. Hoy has obtained new counsel who presumably has and will continue to advise her as the claim progresses. I do not consider it to be necessary or appropriate to inquire further Ms. Hoy's relationship and communications with her own legal counsel and her chosen attorney for purposes of this application. Those matters are presumably subject to solicitor-client privilege.

E - Has Ms. Hoy Raised an Arguable Case?

[53] The threshold for establishing that there is an arguable case is not high: Hoggan at para. 42:

42 There is no quarrel over the question of whether a petitioner applying under s. 151 of WESA has to establish an arguable case in order to obtain leave. That factor is present in most, if not all, leave applications. While it is sometimes worded differently, such as "has a reasonable prospect of success" or "not bound to fail", the test itself does not have a high threshold.

[54] Ms. Hoy says she has established that the Estate has an arguable claim against Mr. Dickinson based on breach of fiduciary duty, resulting trust, undue influence and the Deceases lacking the capacity necessary to transfer the Clarke Drive properties at the material time. She addressed the elements required to make out those claims in her application materials. These were not addressed in any detail by Mr. Dickinson in his response.

[55] Mr. Dickinson has filed a response to civil claim denying the various claims that Ms. Hoy made against him in her original notice of civil claim. The proposed amended notice of civil claim is essentially identical, save for the addition of the Estate as a second plaintiff.

[56] Mr. Dickinson did not argue that Ms. Hoy had failed to raise an arguable case against him. His objection focused on Mr. Krug's past and future role, the two power of attorney documents and the inadequacy of the evidence addressing those issues.

[57] I am satisfied that Ms. Hoy has raised an arguable case.

F - Is the Action Necessary or Expedient for the Protection of the Interests of the Specified Person?

[58] I am satisfied that the action is both necessary and expedient for the protection of a specified person, Ms. Hoy.

Conclusion

[59] Ms. Hoy's application is granted. If either party requires directions regarding conduct of the action, they have liberty to apply. I am not seized of any such application.

[60] Ms. Hoy is entitled to costs of this application from Mr. Dickinson in his personal capacity, payable at the conclusion of the action.

"Associate Judge Bilawich"

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