

CANADA / JUDGMENT

Leibenzeder Estate v. MacIntyre

2025 BCSC 189

COURT

Supreme Court of British Columbia

DECIDED

6 February 2025

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2025 BCSC 189 Leibenzeder Estate v. MacIntyre

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Leibenzeder Estate v. MacIntyre,

2025 BCSC 189

Date: 20250206

Docket: S223350

Registry: Vancouver

Between:

Estate of Georg Johann Louis Leibenzeder

Plaintiff

And

Glenda Ann MacIntyre, Derrick Piett, Adios Services,

Tara Lea Rose Cowie and Tyler Charles Cowie

Defendants

Before: The Honourable Justice MacNaughton

Reasons for Judgment

Counsel for the Plaintiff:

S. Batkin

A. Moore

Counsel for the Defendants Glenda Ann MacIntyre and Derrick Piett:

E. Clavier

Place and Date of Hearing:

Vancouver, B.C.

December 6, 2024

Place and Date of Judgment:

Vancouver, B.C.

February 6, 2025

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Introduction

- [1] On September 5, 2016, Georg Johann Louis Leibenzeder died intestate. Mr. Leibenzeder is survived by his common-law spouse, Glenda Anne MacIntyre, and his two adult children, Alison Bailey and Ryan Leibenzeder (the "Children Beneficiaries").
- [2] On November 29, 2016, Ms. MacIntyre was appointed as the administrator of Mr. Leibenzeder's estate (the "Estate").
- [3] Completion of the administration of the Estate has been highly litigious. It resulted in two actions, a number of applications and court hearing dates, and several court orders.
- [4] On October 22, 2020, Ms. Bailey brought an action against the Estate and Ms. MacIntyre, the latter both personally and in her capacity as administrator (the "Beneficiary Action").
- [5] On January 7, 2022, in an application brought within the Beneficiary Action, Justice Horsman (then a member of this court) removed Ms. MacIntyre as the Administrator of the Estate and appointed Ms. Bailey in her stead. Justice Horsman also ordered Ms. MacIntyre to transfer the Estate's assets and records to Ms. Bailey (the "Removal Order"). Ms. MacIntyre later sought to set aside the Removal Order.
- [6] On April 22, 2022, the Estate filed this action against Ms. MacIntyre (the "Estate Action"). Ms. MacIntyre did not defend the Estate Action. On June 16, 2022, Master Robertson signed an order for default judgment against her (the "Default Judgment"). The Default Judgment ordered Ms. MacIntyre to pay:
 - a. damages of \$251,774 for misappropriation and conversion of \$191,774 paid by Ms. MacIntyre from the Estate's accounts to the defendant Adios Services ("Adios"), and \$60,000 paid by Ms. MacIntyre from the Estate's accounts to the defendant Derrick Piett ("Mr. Piett"); and
 - b. damages to be assessed for breaches of fiduciary duty, misappropriation, and conversion of Estate assets.

- [7] A default judgment in the amount of \$60,000 was also granted against the defendant Mr. Piett on December 2, 2022.
- [8] In my reasons indexed at *Leibenzeder Estate v. MacIntyre*, 2023 BCSC 1422, ("Earlier Reasons"), I dismissed Ms. MacIntyre's applications to set aside both the Removal Order and the Default Judgment. Those reasons should be read in conjunction with these reasons, which deal with the outstanding damage assessment for Ms. MacIntyre's breaches of fiduciary duty, misappropriation, and conversion of Estate assets.
- [9] An appeal of my Earlier Reasons was filed but has not progressed.

The Legal Basis for Assessing Damages on a Summary Basis

- [10] Rule 3-8(13) of the Supreme Court Civil Rules permits a plaintiff who has obtained default judgment to apply to have damages assessed without a trial and on a summary basis.
- [11] In determining whether a summary determination of damages is appropriate, the court should be satisfied that its judgment will not be patently unjust. A summary assessment of damages is generally not appropriate where "matters of opinion and judgment were deposed to and the obvious position of the deponent was one of self-interest": *School district no. 43 (Coquitlam) v. Gaudette*, [1996] B.C.J. No. 1398 at para. 6, 1996 CanLII 3265 (S.C.) [Gaudette]. In such cases, "the evidence should be given viva voce or an affidavit of an unbiased and independent expert should be provided to the court": *Gaudette* at para. 6.
- [12] In this case, that is not a concern because the Estate relies mostly on objective evidence and documents, as well as inferences from Ms. MacIntyre's non-disclosure and her decision not to challenge the damages application or to file any responsive materials.
- [13] I am satisfied that it would not be patently unjust to proceed summarily in this case. It is true that the damages the Estate seeks against Ms. MacIntyre are significant. However, in support of its claim, the Estate relies on objective documentary evidence that has been obtained during these proceedings. Ms. MacIntyre was given an opportunity to address all of that evidence and she elected not to do so. To the extent that there are evidentiary gaps in the Estate's information, those gaps are due to Ms. MacIntyre's breaches of her fiduciary duty as the administrator of the Estate and her continued and inexplicable breaches of court orders and agreements. Adverse inferences are appropriately made against Ms. MacIntyre where her failure to disclose Estate records leaves a gap in the evidence.
- [14] An executor or administrator of an estate is in a fiduciary relationship: *Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, 2012 SCC 71 at para. 115.
- [15] It is well-settled that an executor or administrator must act in good faith and for the best interests of all estate beneficiaries. In this role, Ms. MacIntyre was required to eschew personal profit or gain from the Estate's property and to account for all property under her purview.

- [16] A personal representative must exercise authority to account to beneficiaries, creditors and others to whom, at law, they have a duty to account: Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA], s. 142(2)(b). Since a personal representative is defined as including an administrator with or without will annexed, this duty applies to Ms. MacIntyre: Interpretation Act, R.S.B.C. 1996, c. 238, s. 29. In addition to the duty to account, s. 99(1) of the Trustee Act, R.S.B.C. 1996, c. 464, requires an executor or administrator to pass accounts within two years from the date of the grant of probate.
- [17] Damages for breach of a fiduciary duty are restitutionary. A plaintiff is "entitled to be put in as good as a position as [they] would have been in had the breach not occurred": *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377 at 440, 1994 CanLII 70.
- [18] Adverse inferences may be drawn from a fiduciary's failure to produce or disclose relevant records which they had an obligation to keep. In *Sarzynick v. Skwarchuk*, 2021 BCSC 443, the plaintiff alleged that her brother had misused his authority under an enduring power of attorney to deplete their mother's assets before her death. Despite numerous court orders requiring him to do so, the brother refused to disclose documents, including a copy of the mother's will, the power of attorney, and bank records. Justice Morellato summarized the law on drawing an adverse inference from non-disclosure as follows:
- [190] The imposition of an adverse inference arising from a party's failure to produce evidence is an exercise of judicial discretion: *Rimmer v. Langley*, 2007 BCCA 350 at para. 30, citing *Helm v. Pattie* (1998), 52 B.C.L.R. (3d) 81 (C.A.); *Insurance Corporation of British Columbia v. Mehat*, 2018 BCCA 242 at para. 101; *Kaye v. Troico Home Solutions & Manufacturing Inc.*, 2018 BCSC 208 at para. 41. However, as the Ontario Court of Appeal aptly noted in *Parris v. Laidley*, 2012 ONCA 755 at para. 2, an adverse inference "should not be drawn unless it is warranted in all the circumstances." Adverse inferences may be drawn where a party fails to produce relevant documents that they were required to produce, or should have produced: *Naramalta Development Corporation v. Therapy General Partner Ltd.*, 2012 BCSC 191 at paras. 89-93; *Walek v. Guardian Storage Inc.*, 2010 BCSC 365 at paras. 46-57. Moreover, the failure of a fiduciary to produce or disclose relevant records they were under a legal obligation to keep, can be grounds to infer that such records would not support their testimony: *Kolic*, at para. 75.
- [19] In *Sarzynick*, Morellato J. drew a number of adverse inferences against the brother as a result of his non-disclosure, including inferring that he had misappropriated proceeds from the sale of his mother's property.
- [20] I accept that in this case, Ms. MacIntyre bears the onus of establishing that she has appropriately used Estate funds. Her failure to comply with the terms of the Removal Order and the Default Judgment, as well as her failure to deliver the Estate's assets and records to Ms. Bailey (who replaced her as administrator) must, in all the circumstances, lead to adverse inferences.

The Damages

[21] The Estate seeks the following damages:

Head of Damages

Quantum

Legal fees paid to McQuarrie Hunter LLP ("McQuarrie")

\$67,739.41

Legal fees paid to Legacy Tax + Trust Lawyers ("Legacy")

\$10,000.00

A dividend paid by a company in which Mr. Leibenzeder was a shareholder and that was not paid into the Estate accounts (The "Hazelmere Dividend")

\$184,513.00

Estate cheques signed by Ms. MacIntyre's father

\$1,434.29

Storage Locker fees paid for storage of non-Estate property

\$32,121.14

Miscellaneous other improper payments

\$3,143.57

Desjardins Visa payments paid on behalf of Ms. MacIntyre

\$36,110.69

Total

\$335,062.10

[22] In addition, the Estate seeks punitive damages against Ms. MacIntyre and interest pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79.

[23] With respect to the claim for punitive damages, the Estate submits that in the exceptional circumstances of this case, punitive damages are warranted on two bases:

- 1) First, Ms. MacIntyre's conduct as a fiduciary was malicious, oppressive, and high-handed, amounting to a marked departure from the ordinary standards of decent behaviour.

- 2) Second, compensatory damages are insufficient to accomplish the objectives of retribution, deterrence, and denunciation. The reasons for this include the fact that more than 50 percent of any damages that Ms. MacIntyre pays to the Estate will, effectively, go back into her pocket because, as Mr. Leibenzeder's surviving spouse on an intestacy, she is entitled to a \$150,000 preferential share and 50 percent of the residue of the Estate.

Ms. MacIntyre's Non-Appearance

- [24] I was appointed to complete the remaining steps with respect to the outstanding application for damages (the "Damages Assessment").
- [25] The parties appeared before me on March 15 and April 25, 2024 for judicial management conferences. At that time, Ms. MacIntyre and Mr. Piett were represented by Eric Clavier.
- [26] On April 25, 2024, I ordered that a one-day hearing be set for the Damages Assessment, peremptory on Ms. MacIntyre and Mr. Piett, and set a schedule for the delivery of the application and responsive materials. I also ordered that, upon the resolution of the Damages Assessment, a reference to the registrar should be held to pass Ms. Bailey's accounts as administrator for the period from January 7, 2022, to the present. This is to take place concurrently with the assessment of special costs referred to the registrar in my Earlier Reasons and on March 15, 2024.
- [27] The Damages Assessment was eventually set for December 6, 2024.
- [28] The parties agreed to extend the schedule I set for delivery of the materials. Despite the extension, Ms. MacIntyre and Mr. Piett did not file any responsive materials.
- [29] On December 6, 2024, Mr. Clavier appeared and advised that he had not received instructions from his clients. He sought an adjournment of the Damages Assessment for the purpose of seeking instructions.
- [30] As the matter was peremptory to his clients, and in light of a pattern of non-compliance with orders and agreements as well as previous non-appearances on dates set by the Court, as discussed later in these reasons, I did not grant an adjournment. Mr. Clavier asked to be, and was released from, attending the remainder of hearing.

The Background Facts

- [31] The following facts are either:
- a) taken from the notice of civil claim filed by the Estate against Ms. MacIntyre and deemed admitted because Ms. MacIntyre did not respond to the claim;
 - b) found by me or other presiders in earlier reasons in this action or the Beneficiary Action; and/or
 - c) established by Ms. Bailey's affidavit evidence and the documents filed on this application.

Probate of the Estate

- [32] As set out, Mr. Leibenzeder died intestate on September 5, 2016. Ms. MacIntyre was appointed administrator on November 29, 2016.
- [33] Pursuant to s. 21 of the WESA, as Mr. Leibenzeder's former spouse, Ms. MacIntyre is the primary beneficiary of the Estate. She will receive a preferential share equalling \$150,000, all of Mr. Leibenzeder's household furnishings, and one half of the residue of the Estate. The Children Beneficiaries are each entitled to one quarter of the residue of the Estate.
- [34] In September 2016, Ms. MacIntyre engaged McQuarrie to represent the Estate.
- [35] According to the Affidavit of Assets and Liabilities sworn by Ms. MacIntyre on November 25, 2016, the assets and liabilities of the Estate were:
- (a) four real properties with a total assessed value net of mortgages of \$1,260,210; and
 - (b) personal property valued at \$199,785, including \$170,881.97 in cash and term deposits, including:
 - i. a Toronto Dominion ("TD") account with \$786.45;
 - ii. a Sunshine Coast Credit Union ("SCCU") business chequing account (the "SCCU Account") with \$8,089.98;
 - iii. a Vancouver City Savings Credit Union ("Vancity") chequing account with \$11,655.86 (the "Vancity Savings Account");
 - iv. two term deposits at Vancity totaling approximately \$131,000; and
 - v. Coast Capital Savings Credit Union ("Coast Capital") chequing and savings accounts totaling approximately \$18,000.

Misadministration of the Estate

- [36] From April 20, 2017 to December 7, 2018, while represented by Kim Floeck, a McQuarrie partner, Ms. MacIntyre sold the Estate real properties for the aggregate sum of \$4,724,600. The Children Beneficiaries were not advised about the sales or asked to consent to or provide a release for them.
- [37] Until the real properties were sold, Ms. MacIntyre collected, authorized, and allowed others to collect rent from the properties and laundry revenue from the RV Park (the "Collected Monies"). Such others included the defendants Tara Lea Rose Cowie, Ms. MacIntyre's daughter; and her husband, Tyler Charles Cowie (collectively, the "Cowie").
- [38] Despite requests, Ms. MacIntyre has not provided information about the Collected Monies and the Estate has been unable to reconcile them with the limited bank records provided by Ms. MacIntyre. The Estate pleads, and Ms. MacIntyre is deemed to have admitted, that she failed to deposit the Collected Monies into the Estate accounts, and both failed to account

for and misappropriated same. Nevertheless, the Estate is not pursuing the Cowies for the Collected Monies because the cost of doing so would likely be more than the amounts in issue.

- [39] Between November 29, 2016, and October 2020, Ms. MacIntyre was asked to provide information about the Estate and to pass her accounts. She made repeated, unfulfilled promises to do so. She also represented that she was completing the Estate's tax filings, which she never did.
- [40] On June 29, 2018, Ms. MacIntyre advised Ms. Bailey through Ms. Floek that once the final Estate property was sold, which she hoped to be soon, the Estate could file a final estate return and Ms. MacIntyre could "turn her mind" to presenting the Estate accounts to the Children Beneficiaries and distributing the personal/household items.
- [41] The final real property, the RV Park, was sold on December 7, 2018. However, Ms. MacIntyre never filed the Estate's final tax return that year, or in any other years. The only tax return she filed was the date of death return in 2017, which was later discovered to have been only a preliminary return.
- [42] On February 2, 2019, Ms. MacIntyre advised the Children Beneficiaries of the Estate's cash position. She wrote that she was awaiting updates from the accountants, lawyers, and appraisers, following which she would provide the Children Beneficiaries with updates every other week, a budget for the remaining costs, the resulting residual value of the Estate, and a proposed schedule of distributions. She referred to the Estate being "brought to a closing".
- [43] On March 1, 2019, Ms. MacIntyre, again, promised the Children Beneficiaries that she would present the Estate accounts by the end of that month in what she referred to as a similar but less formal manner than that required by s. 1 of the Trustee Act (essentially in the format prescribed in Form P40 under Rule 15-13(6) of the Rules). She advised that the assets, with a few exceptions, had been settled and she did not expect any delays in completion of the Estate. She wrote:

The principle [sic] delay moving forward will predictably be the waiting period for CRA to provide a clearance certificate for the [E]state. We have been working with the [E]state accountants to minimize this period as much as possible, while diligently completing minor outstanding housekeeping items, which are unlikely to cause any delay to the completion of the [E]state.

- [44] On September 28, 2019, Azool Jaffer-Jeraj, counsel retained by Ms. Bailey, asked Ms. MacIntyre for a "budget of remaining costs as well as the resulting residual value of the Estate and schedule of distribution" as earlier promised. Ms. MacIntyre and her lawyer did not respond to Mr. Jaffer-Jeraj's communication.

- [45] On November 5, 2019, Ms. MacIntyre advised of the Estate's updated cash position. The Estate's cash had been reduced by \$257,883 over the nine months. That is \$17,883 more than the \$240,000 Ms. MacIntyre had distributed to the beneficiaries during the same period. Ms. MacIntyre did not provide an explanation for the difference. She advised that she intended to provide an accounting before the end of the year. She did not.
- [46] On May 15, 2020, Mr. Jaffer-Jeraj repeated his request for the status of the Estate and for the information Ms. MacIntyre had first promised in February 2019, over a year earlier. She did not respond.
- [47] On June 17 and 23, 2020, Ms. MacIntyre acknowledged her duty to pass her accounts and promised more details "in the weeks ahead". She said that she was working daily on the accounts and promised to provide regular updates.
- [48] Mr. Jaffer-Jeraj followed up on June 29 and July 29, 2020, asking for information about the steps already taken, and those remaining to be taken, for the passing of Ms. MacIntyre's accounts. He also asked when the Estate would be complete. Ms. MacIntyre did not respond.
- [49] On September 2, 2020, Ms. MacIntyre was served with a notice to pass accounts for the period from September 5, 2016 to September 5, 2020. On September 16, and again on October 5, 2020, Ms. MacIntyre promised to provide a detailed response. She did not do so.

The Beneficiary Action

- [50] On October 22, 2020, as a result of Ms. MacIntyre's continued failure to provide information about the Estate or to pass her accounts, as well as concerns about a possible dissipation of Estate assets, Ms. Bailey commenced the Beneficiary Action. Ms. Bailey sought the removal of Ms. MacIntyre as the administrator and an order requiring her to pass her accounts.
- [51] Ms. MacIntyre did not file a response to the Beneficiary Action. On January 4, 2021, at a case planning conference, Justice Kent ordered her to do so by January 29, 2021. Ms. Bailey did not seek a default judgment at that time.
- [52] On January 6, 2021, Ms. MacIntyre retained Ken Vimalasan, a partner at Legacy. On January 29, 2021, the deadline set by Justice Kent, Mr. Vimalasan filed a pro forma response to the Beneficiary Action on Ms. MacIntyre's behalf in both of her capacities. The response did not set out an alternative version of facts or plead a legal defence.
- [53] Despite retaining Legacy to act for her in the Beneficiary Action, Ms. MacIntyre took no further steps to pass her accounts and did not respond to various requests that she do so. As a result of the inaction, on June 3, 2021, Ms. Bailey applied to have Ms. MacIntyre removed as administrator and for an order that she pass her accounts.
- [54] On June 17, 2021, Ms. MacIntyre filed an application response. It was supported by a June 16, 2021 affidavit, and an affidavit from Mr. Vimalasan's assistant. Attached to the latter was a Provisional Statement of Accounts and a Summary of Realized Assets up to April 16, 2021

(collectively, the "Provisional Accounts"). Ms. MacIntyre and her counsel's assistant did not depose that the Provisional Accounts were accurate and complete or provide any supporting documents. Thus, while some information was provided about what happened to the Estate assets, the accuracy of the information was not attested to.

Issues with the Provisional Accounts

[55] Among other things, the Provisional Accounts brought to light the following concerns for the Children Beneficiaries:

- a) The market value of the Estate assets was reported to be \$1,685,258.72, a reduction of \$758,178,46 from the cash position of the Estate reported by Ms. MacIntyre as of November 5, 2019. Interim distributions during the same time had only been \$680,000.
- b) The Vancity Savings Account had been replaced with a Chequing Plus Account (the "Estate Vancity Chequing Account") and a Plan 24 Savings Account (the "Estate Vancity Savings Account").
- c) The Coast Capital and TD accounts were not reported and were assumed to have been closed.
- d) The Deceased's pick-up truck and fifth wheel trailer, respectively valued at \$6,000 and \$9,000 as at the date of death, were reported to have been sold for \$1,600 and \$4,000. This represented less than half of their reported values.
- e) Ms. MacIntyre made 110 payments totaling \$191,774 to an unknown entity, Adios, for unexplained services apparently related to the Estate's real properties.
- f) On February 13, 2021, Ms. MacIntyre paid \$60,000 from the Estate to Mr. Piett. No description or explanation for this payment was provided.
- g) Ms. MacIntyre paid \$47,243.05 from the Estate to her Desjardins Visa account (the "Desjardins Visa"), although no credit card in the name of the Estate was reported. As was later discovered, this amount was higher than what she originally reported.
- h) Between June 2017 and December 2018, the Estate received monthly interest, recorded as "Westminster Interest on Investment", totaling \$24,520.68. This interest was no longer recorded as of January, 2019, although the Provisional Accounts did not report that the investment had been liquidated or provide any other details about it.
- i) Ms. MacIntyre paid \$50,089.39 from the Estate to McQuarrie, including a payment of \$39,015.20 on April 5, 2018, which was described simply as "pay inv 625637" (the "McQuarrie \$39k Invoice").
- j) Ms. MacIntyre paid a \$10,000 retainer from the Estate to Legacy on January 11, 2021.

- k) Ms. MacIntyre retained Vohora LLP, an accounting firm, but only three payments to it totaling \$3,780 were listed. This amount was surprising low if, as Ms. MacIntyre assured the Children Beneficiaries, she had retained accountants to work on the passing of accounts and the Estate tax filings.
 - l) It was proposed that Ms. MacIntyre earn an administration fee of \$243,843.46, and that a holdback of \$750,000 would be retained for "final income tax, accounting and legal costs, and remuneration". This appeared to be a significant holdback without explanation.
 - m) In her June 16, 2021 affidavit, Ms. MacIntyre:
 - i. asserted that she had "consulted with professionals and hired Derrick Pielt to oversee work on the ground". She did not explain how this justified the \$60,000 payment from the Estate to him; and
 - ii. did not explain who or what Adios was, and why the Estate paid it almost \$200,000. To date neither the Estate or the Children Beneficiaries have received any information about who or what Adios was or what the Estate paid it to do.
- [56] On June 22, 2021, Ms. Bailey's application to have Ms. MacIntyre removed as the administrator was resolved by way of a consent order signed by Associate Judge Dick (formerly titled Master Dick) (the "June 2021 Order"). In part, the June 2021 Order required Ms. MacIntyre to provide to Ms. Bailey, by July 30, 2021, copies of the statements of adjustments and orders to pay for each real property sale, the Adios invoices, and her Desjardins Visa statements for the accounting period up to April 2021.
- [57] Ms. MacIntyre did not fully comply with the June 2021 Order. Of concern was the fact that the Adios invoices she produced listed an out-of-service phone number and an unconnected address. Adios itself had an inactive website and a Facebook page that had not been updated since 2016. Further, the invoices did not outline the services provided, included GST but no GST number, and no GST appeared to have been paid. Some of the invoices referred to progress payments and materials, suggesting a written contract, but no contract was ever produced.
- [58] On August 13, 2021, Ms. MacIntyre provided, among other things, a copy of the McQuarrie \$39k Invoice in a substantially redacted form. The invoice was for work undertaken between September 16, 2016, to March 28, 2018. Text visible under the redactions indicated that the invoice included work for Ms. MacIntyre personally, such as advising her on her rights as a beneficiary to the spousal home.
- [59] On July 29, 2021, Mr. Vimalasan filed an October 8, 2021 appointment for passing of accounts to which he attached the Provisional Accounts up to April 2021, unsworn and unverified. Despite demands, Ms. MacIntyre did not file, as required by R. 25-13(2)-(6) of the Rules, an Affidavit in Support of Application to Pass Accounts (Form P38) and the Statement of Account Affidavit (Form P40).

- [60] On August 5, 2021, Mr. Vimalasan advised Ms. MacIntyre that he could no longer act for her because she had failed to provide him with instructions. On August 17, he filed and served a notice of intention to withdraw as counsel. On August 18 and 24, Ms. MacIntyre and counsel for Ms. Bailey objected to Mr. Vimalasan's withdrawal.
- [61] Ms. MacIntyre and Legacy have a dispute over outstanding fees. In an affidavit filed with respect to that dispute, Mr. Vimalasan deposed:
13. Between February 18, 2021, and June 3, 2021, [Rachel] Breeze and I followed up with Ms. Macintyre [sic] regularly and with increasing urgency to request the documents and information we needed to prepare her accounts as administrator (the "Estate Accounts") in court form.
 80. A significant amount of the fees incurred were incurred between June 3 and June 17, 2021, owing to urgency as a result of Ms. Macintyre's [sic] failure to provide us with completed accounts and supporting documents in a timely manner. Ultimately, she advised us that she would be unable to do so, leaving us with only a few days to prepare the accounts.
- [62] In the same dispute, Rachel Breeze deposed:
8. From early-February 2021 to June 7, 2021, Ms. Macintyre [sic] repeatedly advised us that she would produce completed accounts and convert those accounts into court form. Ms. Macintyre [sic] (or Mr. Piett on her behalf) reported her progress to us, or advised that she would provide the accounts or other information requested, on the following occasions:
 - a. February 10, 22 and 25, 2021;
 - b. March 2, 4, 5, 8, 9, 19 and 29, 2021;
 - c. April 23, 28, 29, 30, 2021;
 - d. May 5 and 11, 2021; and
 - e. June 7, 2021.
 9. During this time, Ms. Macintyre [sic] provided some information relevant to the Estate accounts, but also indicated repeatedly that these documents did not contain all of the relevant transactions or contained inconsistencies which she intended to address, or that she expected to provide Estate accounts in the court prescribed P40 form in the near future.
 10. On June 7, 2021, Ms. Macintyre [sic] produced a transaction list (the "Transaction List").
 11. Although the Transaction List contained much of the information required to produce Estate accounts, in my view the Transaction List by itself did not constitute an adequate accounting. It did not include assets as at the date of death or as at the end date of the accounting and there was no attempt to reconcile the transactions with the assets on hand. It did not include significant pieces of information that are produced in the court form P40.

[63] At the October 8, 2021 hearing before Master Vos, counsel for Ms. Bailey requested, and Ms. MacIntyre agreed to provide, by November 5, 2021, further information and documents concerning the Estate, including documents concerning payments to Mr. Piett and Adios (the "October Agreement"). In particular, Ms. MacIntyre agreed to provide previously requested documents, including:

- a) copies of statements for all estate bank accounts from September 15, 2016, to date;
- b) an unredacted copy of the McQuarrie \$39k Invoice;
- c) a copy of the invoice for a \$12,108.15 payment reported in the Provisional Accounts (described as "Pay 9119-9127 Legal fees (Inv 09715)"), also a McQuarrie invoice;
- d) copies of all filed income tax returns and notices of assessment from the date of death to present (personal and trust);
- e) copies of all invoices and cancelled cheques in relation to the Statement of Capital Transactions from September 5, 2016, to date;
- f) copies of all invoices and cancelled cheques in relation to the Statement of Income Transactions from September 5, 2016, to date;
- g) an updated Statement of Capital Transactions from March 11, 2021, to date; and
- h) an updated Statement of Income Transactions from April 1, 2021, to date.

[64] In breach of both the October Agreement and Ms. MacIntyre's duties as administrator, no further documents were provided. The July 2021 Provisional Accounts are the only documents Ms. MacIntyre ever provided.

Removal Application

[65] Given Ms. MacIntyre's continued breach of the Consent Order and the October Agreement, on December 7, 2021, Ms. Bailey served Ms. MacIntyre with an application seeking:

- a) Ms. MacIntyre's removal as the administrator;
- b) a transfer of all Estate funds and assets to Mr. Jaffer-Jeraj in trust;
- c) a passing of accounts; and
- d) an order restraining Ms. MacIntyre from further dealing with Estate assets.

[66] Ms. MacIntyre did not respond to Ms. Bailey's application or file any evidence in response.

[67] Ms. Bailey's application was heard by Justice Baker on December 17, 2021, together with Mr. Vimalesan's application to withdraw as counsel. Mr. Vimalesan explained that he was unable to obtain instructions from Ms. MacIntyre and could no longer continue as her counsel. As there were no objections, Baker J. granted his application to withdraw.

[68] Mr. Jaffer-Jeraj outlined the background to the removal application and finished with a summary of what had happened to date with respect to Ms. MacIntyre's administration of the Estate:

there is a pattern of asking for adjournments or more time, and three years after the last property has been dealt Ms. MacIntyre has had more than enough time to deal with matters, along the way at some stage I understand there could be up to [\$]700,000 owing to the CRA. She -- though she's hired and paid many accountants along the way, I'm not sure why five years later, or at least three years after the last property was sold, CRA has still not been dealt with. And my client is very worried about the interest and penalties that are going to be owing to the CRA and there's just no end in sight. Everything has essentially been dealt with except taxes and distribution, and why it's taking this long makes no sense.

[69] Ms. MacIntyre started to address the Court and asked if Mr. Piett, one of the other defendants in the Estate Action, could do so on her behalf. Mr. Piett submitted that "there's probably no one who knows more intimately the details of which have been spoken of here today". Mr. Jaffer-Jeraj objected to Mr. Piett making submissions, in part because Ms. MacIntyre had not provided information about the funds that had been paid to him out of the Estate. Mr. Piett responded that his involvement in the Estate was such that he intended to apply to become a party. The basis for this suggestion was unclear.

[70] When Baker J. did not permit Mr. Piett to make submissions, Ms. MacIntyre sought an adjournment to seek counsel. Her application was denied. Justice Baker said:

So you are saying that you need new counsel, even though you've known since August and September and October and November and December that your lawyer was withdrawing. You have had this application for two weeks but you haven't filed a response to it, and there are a lot of orders that are being sought in this application that I admit would prejudice you potentially.

[71] Due to the limited time then available, Baker J. allowed Mr. Jaffer-Jeraj to proceed with the urgent matters, including the removal of Ms. MacIntyre as the administrator, the transfer of the Estate funds to him in trust, the provision of Estate information, and the provision of a Canada Revenue Agency authorization. Justice Baker rejected Ms. MacIntyre's submission that doing so was a grave injustice. She confirmed that Ms. Bailey's application would proceed on a limited basis.

[72] As Mr. Jaffer-Jeraj started his submissions, Ms. MacIntyre said that she could not hear him, although she had not had an issue hearing him to that point. She said she would hang up and call back in. She did not call back and could not be reached, despite attempts to do so.

[73] On December 18, 2021, Ms. MacIntyre attended at Vancity and withdrew \$1,400,000 from the Estate account via 10 separate bank drafts.

[74] The removal application was reset for a full day on January 7, 2022, peremptory to Ms. MacIntyre. Mr. Jaffer-Jeraj took out the order.

- [75] On December 23, 2021, he sent a letter to Ms. MacIntyre serving a copy of the order and advising her of the new date and that it was peremptory to her.
- [76] Ms. MacIntyre did not file any materials or attend the January 7, 2022 hearing. In her absence, Horsman J. granted the Removal Order. She specifically noted Ms. MacIntyre's repeated and wilfully obstructive failure to produce Estate information. In her oral reasons, she said:
- [18] [A]n order removing and replacing Ms. MacIntyre is clearly necessary in this case. She has persistently failed to comply with the plaintiff's repeated requests for the production of relevant estate information, not to mention court orders compelling production. She has deliberately failed to act in a manner consistent with her obligations, which includes fiduciary obligations, as the administrator of the estate. The plaintiff has been forced into expensive court proceedings in an effort, which has been unsuccessful to date, to obtain a basic accounting of the estate assets. Ms. MacIntyre has obstructed such efforts in a manner that can only be characterized as wilful. As matters stand, the plaintiff cannot even determine the status of the estate's tax liabilities, including potential penalties and interest.
- [23] The plaintiff also seeks her costs of this application from the defendant as special costs. In my view, such an order is appropriate. This application was only necessitated by Ms. MacIntyre's persistent and deliberate failure to engage in the issues raised by the application, including her ongoing failure to provide the estate information requested by the plaintiff and, at least in relation to Master Dick's order, ordered by the court. The defendant put the plaintiff to the cost of two court appearances and failed to appear at all on the date that was peremptorily set by the court. In my view, the defendant's conduct is reprehensible within the meaning of the relevant authorities, and thus the plaintiff is entitled to her costs of this application as special costs.
- [77] In my Earlier Reasons, I noted that in Ms. MacIntyre's application to set aside the Removal Order, she did not assert that Horsman J. made any factual or legal errors, or that the outcome of the hearing would have been any different had she responded or attended to make submissions. She argued on a procedural basis but not on a substantive basis: Earlier Reasons at para. 71.

Ms. MacIntyre Breached the Removal Order

- [78] Despite being represented by David Hunter, her then counsel, Ms. MacIntyre breached the removal order by failing to:
- a) deliver Estate funds;
 - b) respond to requests for Estate documents and information;
 - c) provide a signed authorization for the CRA to release tax information;
 - d) deliver Estate records and accounts; and

- e) deliver the keys to, and provide the location of, the storage lockers.
- [79] As the administrator, Ms. Bailey obtained bank statements for the Estate Vancity Savings Account. Those statements, together with earlier information provided by Ms. MacIntyre, showed that:
- a) on December 17 and 18, 2021, Ms. MacIntyre emptied the Estate Vancity Savings Account by purchasing 10 official cheques (bank drafts) totaling \$1,400,000 in two amount categories:
 - i. \$150,000 payable to Ms. MacIntyre (her preferential share), and
 - ii. \$1,250,000 payable to the Estate;
 - b) on December 18, 2021, and January 4 and 10, 2022, Ms. MacIntyre paid \$4,600 to her Desjardins Visa;
 - c) Ms. MacIntyre's father, Donald MacIntyre, issued and signed cheques drawn on the Estate Account totalling \$1,434.29; and
 - d) on February 9, 2017, Ms. MacIntyre sent a wire for \$1,420 to an unknown recipient, a transaction that was not reported in the Provisional Accounts.

The Default Judgment

- [80] Based on Ms. MacIntyre's misconduct as the administrator and her refusal to comply with the Removal Order, the Estate commenced the Estate Action on April 22, 2022.
- [81] On April 29, 2022, the Estate applied for a Mareva injunction against Ms. MacIntyre. Justice Riley granted the order on May 4, 2022 (the "Mareva Order").
- [82] The Estate Action and the Mareva Order were served on Ms. MacIntyre's counsel, Mr. Hunter, who advised the Estate that, on January 10, 2022, Ms. MacIntyre used Estate funds to purchase an official cheque for \$22,000.
- [83] On May 18, 2022, Mr. Hunter returned the \$1,422,000 that Ms. MacIntyre had withdrawn from the Estate to the Estate's counsel. While it was open to the Estate to seek damages for the interest it lost on those funds, the Estate has decided not to pursue this claim for cost-benefit reasons. Nevertheless, the Estate relies on this misconduct in its claim for punitive damages in this Damage Assessment.
- [84] Between May 11 and June 1, 2022, the Estate's counsel repeatedly wrote to Mr. Hunter regarding Ms. MacIntyre's ongoing breaches of the Removal Order, asking him to convince her to cooperate. Mr. Hunter did not respond, and Ms. MacIntyre did not take any steps required under the Removal Order.
- [85] Because of Ms. MacIntyre's failure to respond to the Estate Action, Default Judgment was granted against her on June 16, 2022, and later corrected on July 5, 2022.
- [86] The relevant parts of the Default Judgment provide:

1. In default of filing a response, Judgment and relief as sought against the defendant, Glenda Anne Macintyre ("Macintyre"), in Part 2 of the notice of civil claim filed herein, is granted as follows:
 - (a) tracing and disgorgement of all funds, profits, proceeds, and income received by Macintyre from or belonging to the Estate;
 - (c) Macintyre reimburse the Estate for the legal fees paid to McQuarrie Hunter LLP ("McQuarrie") and Legacy Tax + Trust Lawyers ("Legacy") for the legal services provided to the Estate, including in defending BCSC Action S2010645 [the Beneficiary Action], Vancouver Registry, that would not have been necessary but for Macintyre's breaches of her fiduciary, common law, and statutory duties to the Estate;
2. The amounts referred to in 1(a) and (c) above be summarily assessed upon a further application.
3. The plaintiff shall have Judgment against Macintyre in the following amounts:
 - (a) damages to be assessed for breach of fiduciary[,], common law, and statutory duties to the Estate;
 - (c) damages to be assessed for the following misappropriation and conversion of Estate assets:
 - (i) the funds paid by Macintyre from the Estate's accounts to her personal credit card;
 - (ii) the funds paid by Macintyre from the Estate's accounts for legal services provided by McQuarrie and Legacy to Macintyre personally;
 - (iii) the funds paid from the Estate's accounts under cheques issued or signed by Macintyre's father;
 - (iv) the rent and laundry revenue collected from the Estate's real properties that were not deposited [into] the Estate's accounts; and
 - (v) other amounts with respect to other [Estate] assets as may be established upon assessment;
 - (d) punitive and aggravated damages to be assessed; and
 - (e) interest pursuant to the Court Order Interest Act.
- [87] The Estate garnished Ms. MacIntyre's accounts for approximately \$65,000. On July 15, 2022, as it became apparent that the garnished funds would be paid out of court, Ms. MacIntyre and Mr. Piett retained Eric Clavier, of Fasken, who filed a notice of objection to the payment out of court.

- [88] On July 19, 2022, Mr. Clavier advised that he was authorized to accept service, on behalf of Ms. MacIntyre and Mr. Piett, of all materials filed in these proceedings. On the same day, the Estate's counsel served Mr. Clavier with all materials filed to that date and wrote seeking Ms. MacIntyre's cooperation and compliance with the Removal Order and the Default Judgment. Mr. Clavier did not respond.
- [89] The Estate's counsel followed up on July 27 and 28, August 2 and 16, and September 19 and 23, 2022. Mr. Clavier did not respond and did not address any of the issues raised. Ms. MacIntyre took no steps to comply with the Removal Order or the Default Judgment, nor did she apply to set either aside.
- [90] I accept, on all of the evidence, that Ms. Bailey's efforts to obtain information about the Estate and to administer it--with a view to winding it up and distributing the net proceeds to the beneficiaries--have been obstructed by Ms. MacIntyre's breaches of the Removal Order and the Default Judgment and her failure to provide information and documents regarding the Estate.

Admissions as a Result of the Failure to Defend the Estate Action

- [91] Upon a default judgment, a defendant is deemed to have admitted the facts pleaded in the notice of civil claim, including those facts relevant to a defendant's liability: *E. Sands and Associates Inc. v. Dextras*, 2009 BCCA 430 at paras. 14-15.
- [92] At para. 53 of the notice of civil claim, the Estate alleged that Ms. MacIntyre breached the following fiduciary and other duties. As a result of Ms. MacIntyre's default in pleading, the following breaches are deemed to be admitted:
- (a) failing to act honestly and in good faith in the best interest of the Estate;
 - (b) misappropriating or converting Estate assets, including:
 - (i) \$150,000 in two official cheques purchased by Macintyre on December 17 and 18, 2021, payable to herself;
 - (ii) \$1,250,000 in eight official cheques purchased by Macintyre on December 17 and 18, 2021, purportedly payable to the Estate;
 - (iii) \$191,774 paid to Adios;
 - (iv) \$60,000 paid to Piett;
 - (v) the Estate funds paid by Macintyre to her personal credit card;
 - (vi) the Estate funds paid by Macintyre for legal services provided by McQuarrie and Legacy to her personally;
 - (vii) the Estate funds paid from the Estate Vancity Chequing Account under cheques issued or signed for by Macintyre's father;

- (viii) the rent and laundry revenue collected from the Estate's Real Properties that was not deposited into an Estate account; and
- (ix) other assets, the particulars of which are known by MacIntyre, but are not known to the Estate at this time ;
- (c) breaching the June 2021 Order;
- (d) breaching the Removal Order, including by:
- (i) failing to deliver all Estate funds from all accounts to be held in trust by Bailey's counsel;
- (ii) failing to respond to any requests for documents and information;
- (iii) failing to provide a signed authorization, authorizing the Canada Revenue Agency to release all tax information relating to [Mr. Leibenzeder] and the Estate to Bailey's counsel;
- (iv) failing to deliver all records and accounts with respect to all transactions with respect to the Estate to Bailey's counsel; and
- (v) failing to deliver the keys to and location of the storage locker(s) ; and
- (e) failing to pass accounts.

Damages

[93] I will now address each head of damages claimed by the Estate against Ms. MacIntyre.

Legal Fees

McQuarrie - \$67,739.41

- [94] McQuarrie acted for Ms. MacIntyre from September 2016 onward. Ms. Floeck prepared and filed Ms. MacIntyre's probate application, dealt with the sales of the Estate's real properties, and made interim distributions to the beneficiaries.
- [95] Presumably, on Ms. MacIntyre's instructions, Ms. Floeck provided very limited information in response to Ms. Bailey's requests. Indeed, Ms. Bailey only found out that the Estate's real properties were sold from the Land Title Office records.
- [96] The last communication from Ms. Floeck was on December 18, 2018. However, until Ms. MacIntyre retained Legacy in January 2021, Ms. Bailey and Mr. Jaffer-Jeraj continued to write to Ms. Floeck, who never advised that she no longer acted for Ms. MacIntyre.
- [97] The Provisional Accounts and the Estate's bank records establish that a total of \$67,360.49 was paid from the Estate to McQuarrie between May 29, 2017 to March 10, 2021. A subsequent payment in the amount of \$378.92 was paid online on September 15, 2021 bringing the total amount paid to \$67,739.41.

- [98] Of particular importance is a payment to McQuarrie in the amount of \$39,015.20 on July 16, 2018, which I have referred to as the McQuarrie 39K Invoice. On June 22, 2021, Mr. Jaffer-Jeraj asked Ms. MacIntyre to provide a copy of the McQuarrie 39K Invoice.
- [99] On August 13, 2021, Ms. MacIntyre provided a redacted copy of this Invoice which, as set out above, was substantially redacted. However, text visible under the redactions indicated that this invoice included work for Ms. MacIntyre personally, such as advising her on her rights to the spousal home as a beneficiary of the Estate.
- [100] Pursuant to the October Agreement, Ms. MacIntyre agreed to provide an unredacted copy of the McQuarrie 39k Invoice, as well as the McQuarrie invoice for \$12,108.15 paid on May 29, 2017. She failed to provide these invoices and other required documents. These invoices are not privileged because they were provided to the Estate and paid from Estate funds.
- [101] Pursuant to the Removal Order and the Default Judgment, Ms. MacIntyre was required to deliver all Estate records to Ms. Bailey, the new administrator, including copies of McQuarrie's and Legacy's invoices. She failed to do so.
- [102] On April 21, 2022, counsel for the Estate further wrote to McQuarrie regarding the Removal Order, a copy of which was enclosed. The letter asked for, among other things, the following information and documents:
- (3) copies of all accounts rendered to the Estate, including detailed prebills. We note that Ms. Macintyre had previously provided us with a copy of your invoice dated March 28, 2018, for \$39,015.20 (enclosed), which appears to have been redacted with respect to work that was performed for Ms. Macintyre in her personal capacity, rather than as the Administrator of the Estate. As the entire invoice was paid by the Estate, we need to be able to ascertain what portion of the amount paid is for work for the Estate, and what portion is for work for Ms. Macintyre personally;
 - (4) a copy of your trust ledger for the Estate; and
 - (5) an electronic copy of your file as it pertains to the Estate, including the Estate's real estate transactions, subject to any claim of privilege. If any privilege, we ask that you provide us with particulars over your claim, for example, that privilege is asserted with respect to services provided to Ms. Macintyre personally.
- [103] Although the Removal Order was enclosed with the April 21 letter, on April 27, 2022, Dan Moseley, a partner at McQuarrie, requested a copy of the Removal Order. A copy was provided later that day. Mr. Moseley did not respond further to the requests for information and documents.
- [104] The Mareva Order made on May 4, 2022, included the following term which was intended to allow the Estate to obtain information from service providers:

15A Any person or other legal entity with notice of this Order (the "Recipient") must provide to the Estate:

- a. information about any and all known assets of or held in the name of the Estate; and
- b. if the Recipient has been or is currently engaged for or by the Estate, said Recipient must provide its complete, unredacted records and files regarding the services it performed for or in respect of the Estate, subject to a claim of privilege.

[105] On May 5, 2022, counsel for the Estate again wrote to Mr. Moseley, this time also pursuant to s. 15A of the Mareva Order, requesting the same Estate documents. Receiving no response, counsel for the Estate followed up on May 13 and 27, 2022.

[106] On May 27, 2022, Mr. Moseley expressed a concern that the Mareva Order "does not carve out an exception to privilege". Later that day, counsel for the Estate confirmed that s. 15A of the Mareva Order is expressly "subject to a claim of privilege" with respect to professionals' files. On June 2 and 8, 2022, counsel for the Estate again followed up with Mr. Moseley.

[107] On June 14, 2022, Jacy J. Wingson, K.C., McQuarrie's managing partner, advised that Ms. MacIntyre had asserted privilege over McQuarrie's file, writing as follows:

We write in response to your letter of May 5, 2022 attaching the Order of Justice Riley made on May 4, 2022 and further to our correspondence since that time.

We have since heard from Glenda Macintyre raising issues regarding solicitor-client privilege.

From review of our file to date, we enclose documents relevant to the Estate, not subject to solicitor-privilege, in keeping with the Order of Justice Riley.

[108] Sixteen documents were provided that were not subject to Privilege:

- a) statements of Mr. Leibenzeder's accounts at Prospera, SCCU, Vancity, and Coast Capital as at the date of his death;
- b) submission for, and grant of, Probate;
- c) T5 statements of investment income from Westminster Credit Union for 2017 and 2018; and
- d) land title forms and several letters regarding the sale of the RV Park.

[109] On June 15 and 21, 2022, counsel for the Estate asked Mr. Moseley to identify documents over which Ms. MacIntyre claimed privilege. On June 21, 2022, Mr. Moseley responded with a simple "Yes".

[110] The Estate has not received anything further from McQuarrie's files, including the firm's invoices, either from Ms. MacIntyre or the firm itself.

[111] After Ms. MacIntyre retained Mr. Clavier, counsel for the Estate served him with all materials filed to that date and wrote to him seeking Ms. MacIntyre's compliance with the Removal Order and the Default Judgment, including with respect to her refusal to provide McQuarrie's files. The letter read, in part:

When you have a chance to review the pleadings and get instructions, I suggest that we have a call to discuss next steps, hopefully with a view to minimizing the Estate's costs, which Ms. Macintyre is responsible for, and which are secured by her share of the Estate.

From the Estate's perspective, the following matters and next steps are of particular importance:

3. The Estate has sought the transfer of the Estate's files from Legacy and McQuarrie. Legacy has provided its complete file, subject to assertion of litigation privilege. McQuarrie, however, has provided virtually no documents due to Ms. Macintyre's assertion of privilege over the entire file. This is very problematic, both for the Administration of the Estate - as McQuarrie had assisted Ms. MacIntyre with the administration of the Estate until 2019, and for our future application for damages to be assessed, specifically, sections 1(c) and 3(c)(ii). The Estate is entitled to McQuarrie's file and we intend to bring an application for disclosure of same.

As I said to Mr. Hunter, I really hope that Ms. Macintyre, with the assistance of experienced counsel, will realize that the only way forward is cooperating with the Administrator and thus minimizing costs for the Estate and, necessarily, to herself.

[112] The Estate did not bring an application for disclosure of McQuarrie's file due to the costs involved in doing so. The Estate submits, and I agree, that damages should be assessed for \$67,360.49, the entire amount paid from the Estate to McQuarrie, as damages pursuant to one or more of s. 1(c), 3(a), 3(c)(ii), and 3(c)(v) of the Default Judgment.

[113] I reach this conclusion because Ms. Floeck either refused, or declined, to provide information about the Estate to Ms. Bailey. The only rational basis for her to do this was that she was acting on Ms. MacIntyre's instructions or was unable to obtain them. Nevertheless, the Estate expended funds pursuing Ms. MacIntyre's cooperation.

[114] The McQuarrie 39k Invoice indicates that McQuarrie performed work for Ms. MacIntyre personally, which she paid for from the Estate. This work included advising her on her rights as a beneficiary to the spousal home. Without an explanation and breakdown of the fees that were truly Estate-related and those which were personal to Ms. MacIntyre, the Estate should not be left to speculate as to what was appropriately paid from Estate funds.

[115] Ms. MacIntyre failed to cooperate, in breach of the October Agreement, the Removal Order, and the Default Judgment, all of which required that she provide materials to Ms. Bailey. To the extent that Ms. MacIntyre asserted privilege over her McQuarrie file, she was in error. She could not assert privilege over the file's contents if the firm's legal fees were paid by the Estate.

- [116] Although McQuarrie had acted for both the Estate and Hazelmere Contracting Ltd. ("Hazelmere"), a company owned by Mr. Leibenzeder, it did not report the shares of Hazelmere and the Hazelmere Dividend in the Estate's Statement of Assets and Liabilities. I will discuss this issue later in these reasons.
- [117] For these reasons, I conclude that everything the Estate paid to McQuarrie should be assessed as damages against Ms. MacIntyre. To the extent that this order includes legitimate work done by McQuarrie on behalf of the Estate, Ms. MacIntyre is entirely to blame for the Estate's and the Court's inability to properly allocate those fees.

Legacy - \$10,000

- [118] As explained earlier in these reasons, on January 6, 2021, Ms. MacIntyre retained Legacy to represent her in the Beneficiary Action. On January 11, 2021, Ms. MacIntyre paid Legacy a \$10,000 retainer from the Estate.
- [119] According to Mr. Vimalesan, and as set out in an affidavit he filed in an assessment of Legacy's costs, the scope of his retainer was to assist Ms. MacIntyre in responding to a notice of civil claim, preparing an accounting, and communicating with beneficiaries.
- [120] On January 29, 2021, Mr. Vimalesan filed a pro forma response to civil claim in the Beneficiary Action on behalf of Ms. MacIntyre in her personal capacity and as administrator.
- [121] Legacy and Mr. Vimalesan represented Ms. MacIntyre until August 5, 2021, by which time Ms. MacIntyre had stopped providing instructions to Legacy and following its advice. Mr. Vimalesan served a notice of intention to withdraw. Ms. MacIntyre and Mr. Jaffer-Jeraj both objected, which required Mr. Vimalesan to apply to get off the record. His application was granted by Baker J. on December 17, 2021.
- [122] Ms. MacIntyre refused to pay Legacy's accounts. On May 2, 2022, Legacy filed an appointment to tax its accounts.
- [123] As a condition of obtaining Legacy's file pursuant to the Mareva Order, counsel for the Estate agreed to allow Legacy to apply the \$10,000 retainer to its outstanding fees.
- [124] The Estate argues, and I agree, that use of Legacy's retainer was made necessary as a direct consequence Ms. MacIntyre's misadministration of the Estate and breaches of her duties. But for Ms. MacIntyre's misconduct, she would never have been sued.
- [125] As set out in Mr. Vimalesan's affidavit, Legacy withdrew because Ms. MacIntyre refused to cooperate by providing him with information and documents. Ultimately, Ms. MacIntyre's conduct caused Horsman J. to remove her as administrator and award special costs against her.

[126] I accept that in all the circumstances, the \$10,000 paid by the Estate to Legacy should be assessed as damages against Ms. MacIntyre pursuant to one or more of ss. 1(c), 3(a), 3(c)(ii), and 3(c)(v) of the Default Judgment.

Hazelmere Dividend - \$184,513

[127] On May 5, 2022, counsel for the Estate wrote to Vohora LLP ("Vohora"), an accounting firm, requesting information concerning the Estate pursuant to s. 15A of the Mareva Order.

[128] On or about May 5, 2022, counsel for the Estate spoke to Jeremy Pierce, an accounting partner at Vohora who dealt with the Estate. From this conversation, counsel learned that Vohora had completed some filings for Hazelmere and the Estate.

[129] On May 9, 2022, Mr. Pierce advised counsel for the Estate that Vohora had filed a preliminary date of death tax return for the Estate. However, it had not filed a final return because Ms. MacIntyre failed to provide it with the information required to do so. Mr. Pierce provided a copy of a list sent to Ms. MacIntyre on September 10, 2021, which outlined the outstanding items required to "effectively finish the estate". Included in this list were outstanding filings for Hazelmere with respect to a \$184,513 dividend declared in 2016 (the "Hazelmere Dividend"):

Outstanding Items:

Hazelmere

1. File the 2016 T5 slip for the \$184,513 dividend payable to the Estate of George Leibenzeder. This will be reported on a rights or things tax return for George allowing access to a new set of tax brackets.
2. File 2017-2020 Corporate Tax Returns for Hazelmere. This company should be dissolved and then we can file the final dissolution tax return.

[130] Later that day, counsel for the Estate asked Mr. Pierce to provide the following documents for Hazelmere:

- a. 2016 corporate tax return as filed; and
- b. Information about the 2016 dividend that you may have in your file, including a director's resolution authorizing it, a copy of the cheque, and information about the payee of the dividend.

[131] On May 17, 2022, Mr. Pierce provided counsel for the Estate with a copy of Vohora's file concerning the Estate and Hazelmere, which included the following documents:

- a) Hazelmere's financial statements for the year ending August 31, 2016, which showed that a dividend of \$184,513 was declared;
- b) a T5 tax slip issued by Hazelmere to Mr. Leibenzeder reporting the Hazelmere Dividend; and

- c) a letter from Mr. Pierce to Michael Kendler, a partner at McQuarrie, reporting that the Hazelmere Dividend was paid on September 30, 2016, i.e. after the date of death:

The enclosed information has been provided to assist in updating Hazelmere Contracting Ltd.'s minute book.

Summary of key information

Fiscal year end: August 31, 2016

Financial statements dated: May 17, 2017

Dividends declared on: August 31, 2016

Dividends paid on: September 30, 2016

Audit waiver: Yes

Our appointment: Accountants (not auditor)

Our engagement: Compilation

- [132] The letter to McQuarrie indicated that Mr. Leibenzeder held 10 Class A shares in Hazelmere. The dividend declared on August 31, 2016, and paid on September 30, 2016, was \$18,451.30 per share for a total dividend of \$184,513.
- [133] On June 8, 2022, counsel for the Estate wrote to Mr. Moseley and Mr. Kendler, referring to the Mareva injunction and asking for information and records regarding Hazelmere.
- [134] Counsel for the Estate followed up on July 4, 2022, noting the concern that the Hazelmere Dividend had not been reported by the Estate in the Affidavit of Assets and Liabilities or in the McQuarrie Trust Ledger. Counsel asked for the file and the company minute books as the shares were an Estate asset.
- [135] Later that day, Mr. Kendler responded to advise that, according to an unsigned director's resolution--a copy of which he did not provide--the Hazelmere Dividend was paid prior to Mr. Leibenzeder's death on August 31, 2016, and thus never formed part of the funds that McQuarrie held in trust. Mr. Kendler was incorrect. The dividend was, in fact, paid after Mr. Leibenzeder died.
- [136] Still later that day, counsel for the Estate wrote to Mr. Pierce, asking him to clarify what happened with the Hazelmere Dividend. Mr. Pierce responded that day and explained that the decision to pay out the Hazelmere Dividend was made jointly through discussions with Ms. MacIntyre and Ms. Floeck. It was paid out, but not reported to the CRA. Mr. Pierce wrote:

With respect to the dividend - I am not sure why Macquarrie [sic] Hunter doesn't have any record of a dividend resolution but to provide some background on it:

For years George [sic] was using funds he had built up in the company to construct the various properties in Surrey. We were carrying these on the company's books as properties under development with the eventual plan to transfer Boot Hill [RV park] into the company and to transfer these capitalized costs out. Unfortunately George [sic] passed away before this could be completed. As a result when George passed away the main asset the company had was this amount. So we were left with two options:

1. Pay out a dividend and bring the company's value down to nil; or
2. Leave company's value at \$184,513 and have George report the deemed disposal on his date of death return. A disposal that couldn't be sheltered by the capital gains deduction because the company was no longer active. What the estate would then have to do is wind-up Hazelmere within a year which would spark a deemed dividend to the estate of \$184,513 and a capital loss of the same amount. The estate would then have had to make a request for the loss to be carried back to George's date of death return to offset the gain (which has to be done in the first year of the estate).

Through discussions with Glenda and her attorney (I can't recall her name but can get it if need be. She was an estate lawyer with Macquarrie [sic] Hunter [presumably Ms. Floek]), it was decided to pay out the dividend and to report it on a rights or things return in order to gain access to a new set of tax brackets. Whether the estate went down this road or it went with the deemed gain, the overall tax implications were the same, but going this way was much less complicated.

I gather Glenda should have reported either the value of the shares or the dividend receivable on the probate documents and I cannot comment on why she did not.

Now to add to the story - due to communications with Glenda breaking down the Right or Things return was never prepared. I actually had just sent an email to Robyn right before receiving this one [from] you on a proposed solution to deal with the unreported dividend, which is to report it on the first estate tax return rather than trying to file a rights or things return now.

[137] On July 5, 2022, Mr. Kendler provided Hazelmere's electronic minute book. It included an unsigned director's resolution, purportedly passed by Ms. MacIntyre on May 18, 2017, declaring the Hazelmere Dividend payable on August 31, 2016.

[138] On July 19, 2022, counsel for the Estate raised the issue of the Hazelmere Dividend with Mr. Clavier writing, in relevant part:

2. While Ms. MacIntyre took possession of the deceased's company, Hazelmere Contracting Ltd., became its sole shareholder and director, and had a dividend of over \$180,000 declared as of August 31, 2016 (prior to the date of death), and paid on September 30, 2016 (after the date of death), neither the ownership of this company, nor the dividend, were reported by Ms. MacIntyre in the affidavit of assets and liabilities and in the provisional accounts. This raises very significant concerns. The shares of this company have now been transmitted to the Estate, and the Administrator has become its sole director, and the Estate is looking into this matter.

- [139] Mr. Clavier did not respond. In her affidavit sworn December 14, 2022, and filed in support of her applications to set aside the Removal Order and the Default Judgment, Ms. MacIntyre did not mention Hazelmere or the Hazelmere Dividend.
- [140] At the hearing before me on May 2, 2023, Ms. MacIntyre attempted to file a further affidavit sworn that same date. I declined to admit the affidavit on the basis that it did not contain any information that was unavailable to Ms. MacIntyre in December 2022 when she brought her application, and that its filing was in breach of a case management order.
- [141] Nevertheless, the Estate wants to rely on it in support of this assessment of damages. I agree that it is appropriate for that purpose as it is the only explanation ever provided by Ms. MacIntyre about Hazelmere. Specifically, she deposed that the Hazelmere Dividend was arranged by Ms. Floeck and Mr. Pierce, and claims that it was used to pay a portion of the Estate's outstanding taxes of \$240,754.08 in July 2017:
21. In response to the issue of the \$180,000 dividend, as set out at paragraph 42 of Bailey's Affidavit, my understanding was that this dividend was arranged by Kim Floeck at McQuarrie Hunter and Jeremy Pierce at Vohora Accounting, and the funds were paid to the CRA as a down payment on the capital gains on the estate properties, as assessed at the date of death, excluding the principle residence. The payment to CRA was made on July 6, 2017 and is set out in my accounting attached as Exhibit "O" to Bailey's Affidavit #1. As far as I understand, I already paid \$240,754.08 to CRA for the Estate taxes, so Mr. Pierce's statements to Mr. Batkin that the taxes had not been filed or paid (set out at paragraphs 67 and 71 of Bailey's Affidavit #3) are incorrect. Mr. Pierce was the one who advised me to pay the taxes in 2017 and ought to have known they were paid.
- [142] In Exhibit B to her second affidavit, Ms. MacIntyre attached a number of emails with Mr. Pierce, including an email dated March 3, 2017. This email confirms that the Hazelmere Dividend was paid. Mr. Pierce wrote:

Rights or things return

This is the second personal tax return that we can [file] for George [sic] to report any income earned before date of death but not [paid] until after. Hazelmere will have declared a dividend equal to its [retained] earnings of \$195k on August 31st, but did not pay it until after George's [sic] date of death. Accordingly [we] can add this to his Rights or Things return and save a fair bit in [personal] taxes.

- [143] The Estate acknowledges that Ms. MacIntyre paid \$240,754.08 in taxes to the CRA. That payment is reflected in the Provisional Accounts. However, the Provisional Accounts do not reflect the receipt of the Hazelmere Dividend or the use to which it was put. The Hazelmere Dividend is also not recorded in the McQuarrie Trust Ledger or in any Estate bank account statement. The Estate has no idea where it went.

[144] The Hazelmere Dividend was obliquely referred to in some of the transaction tables prepared by Ms. MacIntyre, which are in Legacy's file. According to counsel for the Estate, those references are:

- i. On June 10, 2021, Ms. MacIntyre sent Ms. Breeze a "most current spreadsheet", which included references to a \$170,000 Hazelmere dividend, purportedly received on July 6, 2017;
- ii. On June 16, 2021, Ms. MacIntyre sent Ms. Breeze a spreadsheet titled "1480 - J's master v1.4range", which includes the following entry: "Hazelmere Shareholder Dividend not income dir minutes capital liability red (Shareholder Dividend approx. amount actual tbd) Account: CHQ #". The spreadsheet reflected a \$170,000 credit.

[145] Ms. Bailey and her counsel have examined all the accounts, and there is no evidence that the Hazelmere Dividend ever came into the Estate accounts.

[146] On the evidence it is clear that:

- (a) a Hazelmere Dividend of \$184,513 was paid to Ms. MacIntyre;
- (b) it was not reported by Ms. MacIntyre as an Estate asset;
- (c) it remains unaccounted for; and
- (d) Ms. MacIntyre, in breach of court orders, has failed and refused to provide records that would shed further light on what happened to the Hazelmere Dividend.

[147] Had Ms. MacIntyre responded to these damages submissions, she could have explained what happened to the Hazelmere Dividend, but she failed to file any responsive materials. I conclude that if she could demonstrate what she did with the dividend, she would have done so. She was required to disclose the records and she did not. The only reasonable inference to be drawn from her lack of disclosure is that the money never made it into the Estate. I draw an adverse inference against Ms. MacIntyre with respect to the Hazelmere Dividend and conclude that it was never paid into, or for the benefit of, the Estate.

[148] Accordingly, I assess damages in the amount of \$184,513 against Ms. MacIntyre.

Cheques Signed by Ms. MacIntyre's Father - \$1,434.29

[149] As set out above, Ms. MacIntyre's father issued and signed three cheques drawn on the Estate Vancity Chequing Account totaling \$1,434.29, without any authority to do so. The cheques are as follows:

- a) #76, dated October 20, 2017, payable to the Legion in the amount of \$29.89;
- b) #77, dated October 23, 2017, payable to CanVetPub.com in the amount of \$94.40; and
- c) #78, dated October 24, 2017, payable to ICBC in the amount of \$1,310.

[150] In her second affidavit, at para. 22, Ms. MacIntyre acknowledges that it was improper for her father to have signed the cheques. She claims that she immediately asked him to repay the charges, and he did so. However, she has not provided any evidence that the monies were actually repaid. The \$94.40 cheque is reflected in the Provisional Accounts, but with a query about whether it was reimbursed.

[151] On the evidence, I assess damages in the amount of \$1,434.29 against Ms. MacIntyre.

Storage Lockers - \$32,121.14

[152] According to the Desjardins Visa statements that Ms. MacIntyre provided for the period from September 2017 to October 2021, she charged \$29,162.32 to the Desjardins Visa for the rental of storage lockers that she claimed contained Estate assets. These amounts were reimbursed to her because her visa bill was paid from the Estate. Ms. MacIntyre does not dispute this amount.

[153] The Provisional Account also shows that Ms. MacIntyre paid \$852.67 from the Estate funds for what appear to be Storage Locker expenses.

[154] I conclude that it is reasonable to draw an inference that Ms. MacIntyre continued to charge Storage Locker expenses to the Desjardins Visa until January 2022, during which time she also continued to pay the Desjardins Visa from the Estate funds. Based on the monthly fees, those charges would amount to a further \$2,106.15. The Desjardin Visa Statements were not provided after January 2022.

[155] In breach of the Removal Order, and later the Default Judgment, Ms. MacIntyre did not provide the Estate with the location of or the keys to the storage lockers.

[156] Ms. Bailey eventually located the storage lockers. Upon gaining access, she discovered that they contained Ms. MacIntyre's household furnishings and trash rather than Estate assets.

[157] On June 1, 2022, the Estate's counsel advised Mr. Hunter that, inter alia, the contents of the lockers were not Estate assets and the Estate should not have been incurring the cost of renting them. There is no evidence to suggest a contrary conclusion.

[158] I agree with the Estate's counsel that damages against Ms. MacIntyre should be assessed in the amount of \$32,121.14 for the sum of the rental amounts paid.

Miscellaneous Improper Payments - \$3,143.57

[159] The Provisional Accounts and the Estate's bank statements show several payments, which, on their face, do not appear to be proper Estate expenses. No explanation or source documents have been provided by Ms. MacIntyre for these payments, which are as follows:

Line

Date

Description

Amount

D528

6 Sep 2018

Point of sale STAPLES 176

\$78.54

D529

6 Sep 2018

Point of sale STAPLES 176

\$80.74

D530

6 Sep 2018

Point of sale STAPLES 176

\$ 85.02

D536

28 Sep 2018

Cheque cleared Cheque 166 - Leswick Computers

\$168.35

D576

12 Dec 2018

Cheque cleared Cheque 207 - Kit Kilner Backhoe Repair Inv 35228, 130611

\$843.60

D588

17 Jan 2019

e-Transfer debit Ref

20190117125240662589 - Reimburse Administrator

\$ 1,348.12

D604

19 Apr 2019

Cheque cleared Cheque 235 - Rubin Mangosing Powerwash & Clean RV

\$500.00

16-Dec-21

Cheque to notary public from Vancity account (day before hrg)

\$39.20

Total

\$3,143.57

[160] In the absence of any explanation from Ms. MacIntyre as to the basis on which these amounts are for the benefit of the Estate, I assess damages in the amount of \$3,143.57 against Ms. MacIntyre.

Desjardins Visa Expenses - \$36,110.69

[161] Attached as Schedule to the Estate's notice of application is a list of 64 entries taken from the Provisional Accounts and the Estate's bank statements. These documents show that payments totalling \$69,195.76 were charged to Ms. MacIntyre's Desjardins Visa for the period between October 25, 2016 to January 18, 2022.

[162] The Estate has not been provided with receipts or invoices by which to verify that these payments reflect proper and reasonable Estate expenses.

[163] However, in her second affidavit, Ms. MacIntyre provides an explanation, without supporting documents, for charges totalling \$1,807.60. She attests:

4. In response to paragraph 62(c) of Bailey's Affidavit #3, the credit card referred to as my "personal credit card" was a credit card that I specifically obtained for estate expenses. I have never charged personal expenses to the estate card. The charges that Ms. Bailey identifies as personal include a charge for the memorial service for her father, which Ms. Bailey has incorrectly identified as a charge for my personal golf membership fee [\$1,545.12]. Furthermore, as an additional example, charges for food identified by Ms. Bailey as personal [\$37.99, \$105.47, \$21.06, \$38.40, \$16.54] were for sandwich fixings and modest accompaniments purchased for the memorial. The purchases I made at Michael's, which Ms. Bailey also takes issue with, were for a guest book and decorations for the memorial [\$46.39, \$13.17].

[164] Ms. MacIntyre's claim that she obtained the Desjardins Visa for Estate expenses cannot be true because she provided statements for this credit card dating back to June 2016, months prior to Mr. Leibenzeder's death.

[165] In the absence of any clear explanation for these credit card charges, entirely due to Ms. MacIntyre's failure to respond to this application, there is no evidence on which I can conclude that these were legitimate Estate expenses. Accordingly, I award damages in the amount of \$36,110.69. In arriving at that figure, I have deducted the Storage Locker Expenses that were charged to the Desjardins Visa because they are dealt with as a separate damage claim above.

Punitive Damages

Applicable Legal Test

[166] Punitive damages are not compensatory. They are intended to punish a defendant for "malicious, oppressive and high-handed" misconduct that represents a "marked departure from ordinary standards of decent behaviour": *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 36.

[167] As Justice Goepel explained in *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189 at para. 77, citing *Whiten* at para. 69, the three objectives of punitive damages are retribution, deterrence, and denunciation. Punitive damages are only to be awarded in exceptional circumstances when compensatory damages would not adequately achieve these objectives.

[168] In *Whiten* at para. 94, the Court set out several principles to be considered in making an award of punitive damages. In summary, these principles include that:

- a) punitive damages are the exception rather than the rule, and are imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
- b) punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;
- c) punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount awarded is no greater than necessary to rationally accomplish their purpose;
- d) the purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;
- e) when awarded, punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant for the misconduct in question; and

- f) moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[169] In *Whiten* at para. 113, the Court set out the factors that determine the level of a defendant's blameworthiness. These factors include:

- a) whether the misconduct was planned and deliberate;
- b) the defendant's intent and motive;
- c) whether the defendant persisted in the outrageous conduct over a lengthy period of time;
- d) whether the defendant concealed or attempted to cover up their misconduct;
- e) the defendant's awareness that what they were doing was wrong;
- f) whether the defendant profited from their misconduct; and
- g) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff.

Application of the Legal Test

[170] Applying those factors to this case, I find that Ms. MacIntyre's conduct was planned and deliberate. She was given a number of opportunities to participate in the proceedings and to provide the Estate and the Children Beneficiaries with records and documents that might have explained what was going on with the Estate. Despite repeated promises to provide documents, and in breach of court orders requiring her to do so, the Estate is still left with an incomplete documentary record with respect to Ms. MacIntyre's actions as its administrator.

[171] Ms. MacIntyre's conduct, in breach of her fiduciary duty, began shortly after Mr. Leibenzeder's death and continued throughout the two actions that were commenced against her in her personal capacity and in her capacity as administrator. She has consistently failed to participate in the proceedings, made promises to the Children Beneficiaries and their counsel that she did not keep, and ignored court orders. As a result, the administration of the Estate was more complex and costlier, and has taken much longer than it should have. She has failed to instruct counsel up to and including on this application.

[172] Although there is no evidence that Ms. MacIntyre actively covered up her misconduct, the effect of her non-disclosure has been to conceal many of her activities as administrator. Most concerning is her withdrawal of more than \$1.4 million from the Estate accounts when it became clear that she was likely to be removed as the administrator.

- [173] Ms. MacIntyre knew that she was engaged in misadministration of the Estate. Denunciation of her behaviour was clear in the reasons of Horsman J., Robertson A.J., and in my Earlier Reasons.
- [174] Ms. MacIntyre profited from her misconduct. The whereabouts of the Hazelmere Dividend remains unknown. She personally benefited from legal advice and the storage of her personal belongings in facilities, both paid for by the Estate. She also indirectly benefited from allowing her family members to collect rents and laundry revenue from the Estate's RV Park.
- [175] Finally, the interest violated by Ms. MacIntyre was a deeply personal one. As a fiduciary and an ex-spouse, she was entrusted with care of the Children Beneficiary's best interests. Her breaches of fiduciary duty have resulted in costs to the Estate and have delayed the Children Beneficiaries' receipt of their share of the Estate.

Quantum of Punitive Damages

- [176] The quantum of punitive damages should be proportionate to the degree of misconduct in light of its nature, the harm it caused, the plaintiff's vulnerability, and any advantage it wrongfully gained the defendant. Awards of significant amounts have been made against defendants who abuse the court's process or breach fiduciary duties. The more reprehensible the conduct, the higher the award: *Mulligan v. Stephenson*, 2016 BCSC 1941 at para. 140.
- [177] The Estate has provided me with several cases in which punitive damage awards of \$100,000 or more have been made against a fiduciary. For example, in *Walling v. Walling*, 2012 ONSC 6580, an award of \$100,000 was made against an executor who mismanaged and squandered the estate in breach of his fiduciary duty to his nephews, the beneficiaries. The defendant also breached numerous court orders requiring him to comply with the terms of the will and to pay costs.
- [178] In *Zhang v. Zhang*, 2022 BCSC 2156, an award of \$100,000 was made against a fiduciary who secretly traded shares held in trust for a beneficiary and failed to account to the beneficiary for the proceeds of sale.
- [179] In *6071376 Canada Inc. v. 3966305 Canada Inc.*, 2019 ONSC 3947, an award of \$200,000 was made against a defendant who induced a group of investors to invest in the purchase of a property, then secretly sold it without their knowledge. The court found that the defendant lied to the plaintiffs and covered up the sale for more than six years.
- [180] Ms. MacIntyre's conduct in this case has been exceptional and inexplicable. As the primary beneficiary of the Estate, any damages that she is required to pay to the Estate will effectively benefit her as a result of her preferential share. Her misconduct as a fiduciary was malicious, oppressive, and high-handed, and her failure to participate in this application is yet a further demonstration of her contempt for court processes.

- [181] In its submissions, the Estate says that in the exceptional circumstances of this case, to meet the objectives of retribution, deterrence, and denunciation, punitive damages should be awarded at 50 percent of the \$251,774 in special damages awarded to the Estate in this damage assessment. In the alternative, the Estate submits that punitive damages of \$150,000 should be awarded.
- [182] I accept that in all the circumstances of this case, a punitive damage award is appropriate. However, in my view, there is no logical basis on which to link the assessment of punitive damages to the special damages I have awarded in favour of the Estate.
- [183] Nonetheless, I am of the view that Ms. MacIntyre should not benefit from the punitive damages award. I therefore order that Ms. MacIntyre is to pay a punitive damage award of \$150,000 to the Children Beneficiaries out of her share of the Estate when it is eventually distributed. In arriving at this amount, I have considered that Ms. MacIntyre will benefit from the specific damages award that I have made in favour of the Estate.

Conclusion

[184] In summary, I assess damages against Ms. MacIntyre in favor of the Estate as follows:

- a) \$335,062.10 in special damages, comprised of:
 - i. \$67,739.41 for the total sum of legal fees Ms. MacIntyre paid to McQuarrie out of the Estate;
 - ii. \$10,000 for the retainer Ms. MacIntyre paid to Legacy from the Estate and which was applied to outstanding legal fees due to her refusal to pay Legacy's accounts;
 - iii. \$184,513 for the Hazelmere Dividend, which Ms. MacIntyre failed to report as an Estate asset and which remains unaccounted for;
 - iv. \$1,434.29 for the total sum of the cheques Ms. MacIntyre's father drew on the Estate's Vancity Chequing Account with her authorization;
 - v. \$32,121.14 for the total amount of rental fees Ms. MacIntyre paid out of the Estate to store her own belongings;
 - vi. \$3,143.57 in miscellaneous improper payments; and
 - vii. \$36,110.69 for the total amount of non-Estate related charges to Ms. MacIntyre's Desjardins Visa less the storage rental fees.
- b) \$150,000 in punitive damages.

"MacNaughton J."

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