

CANADA / JUDGMENT

Pangalia Estate

2021 BCSC 1070

COURT

Supreme Court of British Columbia

DECIDED

23 April 2021

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2021 BCSC 1070 Pangalia Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pangalia Estate,

2021 BCSC 1070

Date: 20210423

Docket: P170779

Registry: Vancouver

In the Matter of the Estate of Surinder Kaur Pangalia, Deceased

Before: The Honourable Madam Justice Matthews

(by video)

Oral Reasons for Judgment Re Application to Remove and Appoint a New Administrator of the Estate

Counsel for Balwinder Pangalia:

R.A. Kasting

(by video)

Counsel for Sukhdev Pangalia:

M.H. Awan

(appearing on January 15, 2021)

N. Narayan

(by video)

Counsel for Krishna Sharma:

J.W. Yuan

(by video)

Attendee appearing on his own behalf:

Sohan Pangalia

(by video)

Place and Date of Hearing:

Vancouver, B.C.

January 15 and April 13, 2021

Place and Date of Judgment:

Vancouver, B.C.

April 23, 2021

- [1] I delivered these reasons for judgment orally. I have edited them without changing the substance.

Overview

- [2] Surinder Kaur Pangalia died on November 16, 2016. She was survived by eight adult children: Balwinder Singh Pangalia, Iqbal Singh Pangalia, Sukhdev Singh Pangalia, Hardev Singh Pangalia, Dilbag Singh Pangalia, Sewa Singh Pangalia, Krishna Kaur Sharma, and Sohan Singh Pangalia. I will refer to the deceased's eight children collectively as the "beneficiaries" since I understand they are the only persons who stand to benefit from her estate. I will also refer to them as the "siblings" as the context demands.
- [3] Ms. Pangalia died without a will. Two of her sons, Balwinder Singh Pangalia and Sukhdev Singh Pangalia, were appointed as co-administrators. They each bring applications to have the other removed as an administrator and to have themselves appointed as the sole administrator of their mother's estate. Their siblings are divided into two camps, each camp supporting a different administrator.
- [4] Balwinder Pangalia applies to have Sukhdev Pangalia removed as an administrator on the basis that Sukhdev Pangalia is not acting in the best interests of the estate. Balwinder Pangalia's primary concern is that Sukhdev Pangalia has refused to sign authorizations with financial institutions to allow the co-administrators to discover and investigate the joint accounts held by their mother. Balwinder Pangalia believes that his mother held joint accounts with one or more of his siblings and that Sukhdev Pangalia is acting to ensure that the surviving joint account holders receive the funds in those accounts themselves rather than the funds being accounted for in their mother's estate. Balwinder Pangalia also alleges

that Sukhdev Pangalia has refused to take steps to administer the estate.

- [5] Sukhdev Pangalia submits that Balwinder Pangalia should be removed as an administrator because he has a conflict of interest. The alleged conflict is a \$50,000 debt that one of the camps alleges Balwinder Pangalia owed to his mother. Balwinder Pangalia asserts the debt was settled years before his mother's death but does not have documentary evidence of its satisfaction. Sukhdev Pangalia also claims other misconduct on Balwinder Pangalia's part, including violence towards some of the other siblings and dishonesty regarding his dealings with their estranged father.
- [6] Two of the other beneficiaries, Krishna Sharma and Sohan Pangalia, swore affidavits and made submissions on these applications. They both support removing Balwinder Pangalia as a co-administrator and having Sukhdev Pangalia remain as the sole administrator.
- [7] The issues before me are:
1. Should Sukhdev Pangalia be removed as an administrator based on his conduct or for having a conflict of interest?
 2. Should Balwinder Pangalia be removed as an administrator based on his conduct or for having a conflict of interest?
 3. Is the administration of the estate currently being frustrated and will it continue to be frustrated if both or either of the current administrators continues as administrator?
 4. If both the administrators are removed, should the court appoint a replacement administrator and if so, who?
 5. Should the court order disclosure of documents of joint accounts?
 6. Should the court permit the current administrators to recover costs and expenses?

Background

- [8] Within a few months of Ms. Pangalia's death, her children split into two camps. Iqbal Pangalia, with the support of his siblings Balwinder Pangalia, Dilbag Pangalia and Sewa Pangalia intended to apply for the administration of the estate. Sukhdev Pangalia, Krishna Sharma and Sohan Pangalia filed notices of dispute opposing Iqbal Pangalia's appointment. Hardev Pangalia took no position. Subsequently, the first camp agreed that Balwinder Pangalia would apply for letters administration in place of Iqbal Pangalia. No beneficiary objected to this, but because the original notices of dispute were still outstanding, the probate registry required Balwinder Pangalia to bring an application and speak to the appointment.

- [9] Master Muir heard the application on January 31, 2018. Balwinder Pangalia appeared through counsel. Krishna Sharma and Sukhdev Pangalia appeared and spoke to the matter through counsel, and Sohan Pangalia appeared on his own behalf. After hearing submissions, Master Muir ordered that both Balwinder Pangalia and Sukhdev Pangalia be appointed co-administrators.
- [10] In September 2018, Balwinder Pangalia applied for the advice and direction of the court based on his assertion that Sukhdev Pangalia refused to cooperate in the administration of the estate. One of the issues that Balwinder Pangalia sought to address was the need to obtain information from financial institutions about bank accounts held by his mother at those institutions. He alleged that Sukhdev Pangalia refused to co-sign authorizations for the release of the information. Prior to the parties appearing in court to speak to the application, Sukhdev Pangalia agreed to execute the authorizations, and so Balwinder Pangalia's application was adjourned.
- [11] However, Sukhdev Pangalia returned the signed authorization with a handwritten notation saying, "[t]his authorization is only in respect of information/records concerning accounts solely held by Surinder Kaur Pangalia, NOT those held jointly by her and others". As a result, Balwinder Pangalia filed an amended notice of application seeking to remove Sukhdev Pangalia as co-administrator. The amended notice of application also sought to order the sale of Ms. Pangalia's residence of which she was the registered one-third owner with her children Dilbag Pangalia and Sewa Pangalia. That application was set to be heard on November 19, 2018.
- [12] The issue of the ownership of the house was a contentious issue among the siblings. I heard submissions that some of them understood that their mother intended for certain children to receive a share of the house while the other children would receive money. There were strong views about this among the siblings.
- [13] Sukhdev Pangalia deposed that he mediated a solution to this conflict. Balwinder Pangalia disputed this and deposed that the beneficiaries were involved in several hours of heated negotiations in the courthouse about the sale of the house and how the proceeds would be distributed. Krishna Sharma and Sohan Pangalia's account of these negotiations in their submissions is more consistent with Balwinder Pangalia's version that it was a multiparty negotiation rather than a solution mediated by Sukhdev Pangalia.
- [14] As a result of these negotiations, the parties agreed on a consent order before Madam Justice Adair on November 20, 2018. Balwinder Pangalia's application to have Sukhdev Pangalia removed as a co-administrator was adjourned generally.

- [15] Ms. Pangalia's residence was sold. On January 17, 2019, Balwinder Pangalia brought an application for an order approving the sale of the home and the division of the proceeds among the beneficiaries under the terms of the consent order. Mr. Justice Grauer granted the order, which included the provision that 25% of the proceeds of the sale of the residence would be held in trust by Balwinder Pangalia's solicitor.
- [16] The November 20, 2018 consent order also included terms about the deceased's ashes and other funeral arrangements. The evidence before me indicates that this also generated a significant amount of discord among the siblings. The differences in opinion on that matter appear to have continued to fester and to play into some of the siblings' support for Sukhdev Pangalia over Balwinder Pangalia.
- [17] According to Balwinder Pangalia, there has been no progress made in the administration of the estate since the sale of the house. He cites the inability of the siblings to get along as well as Sukhdev Pangalia's continued refusal to allow him to investigate the joint bank accounts held by the deceased and determine whether the funds in those accounts are part of her estate.
- [18] Balwinder Pangalia deposed that he proposed that a neutral third party be appointed as administrator of the estate to break the deadlock. He deposed that Sukhdev Pangalia, Krishna Sharma and Sohan Pangalia were not prepared to agree to a neutral administrator. However, his application before me does not seek the appointment of a neutral administrator.

Legal Principles

- [19] Both parties agree that s. 158 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13, is the basis for the court's jurisdiction to remove an administrator of an estate. It reads as follows:

Application to remove or pass over personal representative

- 158 (1) In this section, "pass over" means to grant probate or administration to a person who has less priority than another person to become a personal representative.
- (2) A person having an interest in an estate may apply to the court to remove or pass over a person otherwise entitled to be or to become a personal representative.
- (3) Subject to the terms of a will, if any, and to subsection (3.1), the court, by order, may remove or pass over a person otherwise entitled to be or to become a personal representative if the court considers that the personal representative or person entitled to become the personal representative should not continue in office or be granted probate or administration, including, without limitation, if the personal representative or person entitled to become the personal representative, as the case may be,

- (a) refuses to accept the office of or to act as personal representative without renouncing the office,
 - (b) is incapable of managing his or her own affairs,
 - (c) purports to resign from the office of personal representative,
 - (d) being a corporation, is dissolved or is in liquidation other than a voluntary dissolution or liquidation for the purpose of amalgamation or reorganization,
 - (e) has been convicted of an offence involving dishonesty, (e.1) is an undischarged bankrupt,
 - (f) is
 - (i) unable to make the decisions necessary to discharge the office of personal representative,
 - (ii) not responsive, or
 - (iii) otherwise unwilling or unable to or unreasonably refuses to carry out the duties of a personal representative,
- to an extent that the conduct of the personal representative hampers the efficient administration of the estate, or

(g) a person granted power over financial affairs under the Patients Property Act.

(3.1) A creditor may make an application for an order under subsection (3) (e) or (e.1) only if the creditor has a claim for more than a prescribed amount.

(4) An order of the court removing a personal representative does not remove that person as a trustee.

[20] In *Dirnberger Estate*, 2016 BCSC 439, at paragraph 11, citing *Conroy v. Stokes*, [1952] 4 D.L.R. 124 (B.C.C.A.), the court set out four factors to be considered on an application for removal of an executor or administrator:

1. endangerment of trust property;
2. want of honesty;
3. want of the proper capacity to execute the duties; and
4. want of reasonable fidelity.

[21] In *Edwards Estate (Re)*, 2019 BCSC 858, I considered s. 158 of the Wills, Estates and Succession Act on an application to remove the executor of an estate. I granted the application because the executor was not able to deal civilly with his sister and he demonstrated tendencies to treat her unfairly that amounted to lack of fidelity sufficient to remove him as an executor. I found that his removal was also justified by his failure to take steps to deal with the estate's assets in accordance with his duties as an executor, particularly much of his time and effort was spent fighting with his sister rather than

fulfilling his duties as an executor. These considerations apply equally to administrators as executors.

- [22] In *Hall v. Hall* (1983), 45 B.C.L.R. 154 (S.C.), Madam Justice Proudfoot held that conflict of interest and a conflict of duty demonstrate want of fidelity. Where there is an actual conflict of interest, the assets of the estate may well be endangered or impaired and in such circumstances, removal of the administrator is necessary to safeguard the integrity of the estate.

Removal of Sukhdev Pangalia.

Refusal to Investigate Accounts

- [23] The focus of Balwinder Pangalia's application to remove Sukhdev Pangalia as co-administrator is Sukhdev Pangalia's refusal to authorize the investigation of joint accounts held by their deceased mother.
- [24] Sukhdev Pangalia explains that he did not sign the authorizations because of his understanding that the joint account holders were entitled to the contents of the account under the rule of survivorship. He deposed that "[i]t was my understanding and I confirmed with the bank that the joint accounts go to the survivor by operation of the rule of survivorship." However, he has not identified the name of the person or persons who confirmed his understanding with him. As such, this evidence is not admissible and his explanation has no grounding in the evidence.
- [25] Sukhdev Pangalia also asserts that his refusal to sign the authorization should not be a ground to remove him as a co-administrator because after applying in November 2018 to have Sukhdev Pangalia removed, Balwinder Pangalia did not pursue the application. Sukhdev Pangalia takes this position notwithstanding the consent order obtained before Adair J. and the order approving the sale of the home obtained before Grauer J.
- [26] At the time he sought to investigate the joint accounts, Balwinder Pangalia did not know whether his mother had joint accounts with any of his siblings, although he suspected that she did. He deposed that he believes that Sukhdev Pangalia's refusal to authorize an investigation of accounts held jointly by his mother and his other siblings is an attempt to ensure that such funds are distributed to those siblings by way of survivorship rather than through the estate. This is a reasonable inference to draw from Sukhdev Pangalia's continued refusal to authorize such an investigation. Indeed, Krishna Sharma's counsel advised the court that his client did have a joint account with the deceased.
- [27] Sukhdev Pangalia's counsel explained that Sukhdev Pangalia was not represented by counsel for a significant period and so did not understand the governing law. In *Pecore v. Pecore*, 2007 SCC 17, the Supreme Court of Canada decided that when an ageing parent puts funds in trust, there is a rebuttable presumption that the adult child is holding the property in trust for the ageing parent to facilitate the free and efficient management of that parents' affairs

(at paras. 36-41). Counsel for Sukhdev Pangalia advised me that Sukhdev Pangalia realizes that his position was wrong, and he is prepared to authorize the investigation of the accounts.

[28] Despite this concession, Sukhdev Pangalia blames Balwinder Pangalia for this application. His rationale is that if Balwinder Pangalia had pursued his application to remove him earlier, he would have received the appropriate legal advice earlier and this impasse would not have arisen.

[29] I do not accept this submission. Sukhdev Pangalia appeared on this application with the position that his mother's assets held jointly in bank accounts go to the survivor of that joint account and not to the estate. Neither his application response nor his evidence reflects what his counsel said his position now is. Counsel only made that concession after pointed questioning from the court.

[30] Sukhdev Pangalia's conduct concerning the joint accounts demonstrates an unwillingness to properly investigate and therefore deal with the assets of the estate in accordance with his duty as a co-administrator. I conclude that he has done so because he seeks to favour Krishna Sharma and other beneficiaries over the estate as a whole concerning the funds held in the joint accounts. In this regard, his conduct demonstrates a failure to act with fidelity.

The Failure to Fulfill Duties

[31] Balwinder Pangalia also asserts that for several months after he and Sukhdev Pangalia were appointed administrators, his counsel attempted to communicate with Sukhdev Pangalia to arrange for a meeting to deal with the assets and the estate matters, including to authorize the investigation of the joint account.

[32] Balwinder Pangalia's previous counsel swore an affidavit regarding several attempts made to request a meeting or move forward with the administration of the estate. The only response from Sukhdev Pangalia's counsel during that timeframe was an email apologizing for his delay in responding and advising that he had asked his client to gather the requested information. Sukhdev Pangalia's counsel at that time was different from counsel on this application.

[33] Balwinder Pangalia's previous counsel deposed that unsuccessful attempts were made to meet during the week of March 26, 2018 and that between March 2018 and August 24, 2018, he continued to write to Sukhdev Pangalia's counsel, but received no response.

[34] Thereafter, Balwinder Pangalia applied to remove Sukhdev Pangalia as an administrator. It was at that point that Sukhdev Pangalia agreed to sign the authorizations, albeit with the limiting handwritten notation described above.

- [35] Balwinder Pangalia then renewed his notice of application to remove Sukhdev Pangalia as an administrator. He also sought orders pertaining to the sale of the family home, as he was unable to do so on his own and did not have the cooperation of Sukhdev Pangalia. That notice of application spurred the negotiations already described, culminating in the consent order by Adair J., which adjourned the portion of the application seeking the removal of Sukhdev Pangalia as a co-administrator.
- [36] Sukhdev Pangalia deposed that he requested several meetings with Balwinder Pangalia and the other beneficiaries to deal with outstanding issues of the estate and attempted to convince his co-administrator to exchange lists of issues that needed to be addressed. Sukhdev Pangalia also deposed that he mediated the resolution of the disputes that resulted in a consent order.
- [37] As noted, there is a great degree of discord among the siblings regarding the funeral arrangements and religious ceremonial events to appropriately commemorate their mother's passing. The evidence on this application does not permit me to determine who might be right or wrong in this contentious dispute.
- [38] I do not accept that the terms of the consent order were reached primarily as a result of Sukhdev Pangalia's efforts. The evidence before me indicates that it was a protracted, contentious, and volatile set of negotiations.
- [39] The conflicting accounts of the two co-administrators' attempts to arrange meetings and otherwise cooperate are difficult to resolve on affidavit evidence without cross-examination of the affiants. Nevertheless, I do not doubt that Sukhdev Pangalia's refusal to investigate the joint accounts constitutes a failure on his part to appropriately deal with the administration of the estate. Balwinder Pangalia understandably perceived this as an attempt to thwart the identification of all of the assets of the estate.
- [40] I conclude that Sukhdev Pangalia has acted in a manner that has frustrated the investigation and identification of the assets of the estate, all in the attempt to benefit some beneficiaries at the expense of the others. This behaviour has endangered estate property. As such, he must be removed as a co-administrator.

Removal of Balwinder Pangalia

The Debt

- [41] Ms. Pangalia purchased her most recent house in approximately 2004. Prior to that, she owned a house with Balwinder Pangalia in Burnaby. Balwinder Pangalia acknowledged that he purchased his mother's interest in the Burnaby property. As part of that purchase, he agreed in writing to pay her an additional \$50,000 when he sold the Burnaby house. The Burnaby house was sold in 2006. At that time, Balwinder Pangalia deposed that he reached an alternative agreement with his mother to renovate her new house instead of paying her the \$50,000. He deposed that he did so and that his mother was satisfied with the work he

had done such that the debt was set off against the renovations. Balwinder Pangalia deposed that neither the original \$50,000 debt nor the satisfaction of it was recorded in writing. However, the evidence includes a memorandum of agreement purported to be signed by Balwinder Pangalia acknowledging this debt. In addition, Balwinder Pangalia received a letter on May 12, 2006, that appears to be signed by Ms. Pangalia in which she, through counsel, demanded payment of the \$50,000 following the sale of the Burnaby property. The letter threatened legal action in the event she was not paid. Sukhdev Pangalia and some of the other beneficiaries believe the debt is still outstanding.

- [42] Whether this debt still exists or was discharged cannot be resolved on this application. Nevertheless, given the evidence of the debt, the demand letter, and the lack of documentation about its satisfaction, it is an issue that must be addressed and investigated in the administration of Ms. Pangalia's estate. As such, Balwinder Pangalia has a conflict of interest as both administrator and an alleged debtor who refuses to acknowledge or address the existence of the debt.

Communication with their Father

- [43] Sukhdev Pangalia, Krishna Sharma, and Sohan Pangalia also accuse Balwinder Pangalia of inappropriate dealings so far as their father is concerned.
- [44] All of the siblings who made submissions on these applications agree that their father abandoned them and their mother shortly after the family moved from India to Canada. At some point, the father returned to India, where he now lives. It is unclear from the evidence whether the parents were divorced. Balwinder Pangalia says he does not know whether they were divorced. Krishna Sharma deposed that they were not divorced. Sohan Pangalia asserts that they were divorced, and all of the siblings knew it.
- [45] Balwinder Pangalia deposed that because he did not know whether his parents had divorced, he felt he needed to communicate with his father and ensure that his father was not going to make a claim to administer the estate or to be a beneficiary of the estate. He contacted his father and advised him that Ms. Pangalia had died. He deposed that his father signed a consent and renunciation document, which is attached to Balwinder Pangalia's affidavit. It contains the signature of "Malkiat Singh" and it is dated April 17, 2017. The signatory states that he is the husband of the deceased, renounces his right and title to administer the estate and consents that administration of the estate be granted to Balwinder Singh Pangalia.
- [46] The evidence includes that another document purportedly signed by Malkiat Singh dated July 5, 2017. That document states that Malkiat Singh separated from Surinder Kaur Pangalia "on or about 1978". The signatory renounced his "rights and title to administration of the estate of the deceased and consent[ed] to the administration of the estate of the deceased being granted to Sukhdev Pangalia".

- [47] In addition, there is a notarized affidavit of Malkiat Singh in which he stated that he was married to Surinder Kaur Pangalia, is the father of the eight children, abandoned her and the eight children in or about 1978 when he and Ms. Pangalia ceased living as husband and wife, had little contact with her, and never provided financial support after that time. Sohan Pangalia submitted that this affidavit is evidence that the parents divorced. However, the affidavit does not say that.
- [48] In the affidavit, Malkiat Singh deposed that he signed the consent and renunciation in favour of Balwinder Pangalia on the understanding that all of his children would get an equal share of the estate of the deceased. He says that he did not understand that he was signing a document that favoured Balwinder Pangalia over his other children and that he did not know that the consent and renunciation reflected an untrue fact that he was still married to Ms. Pangalia. The underlying premises to this affidavit are that he unwittingly signed a document favouring Balwinder Pangalia over his other children, but he intended that his children benefit equally from his estranged wife's estate. There is no evidence to support the underlying premises, i.e., the renunciation he signed in favour of Balwinder neither states a preference for Balwinder nor states that the estate should be divided in any particular way.
- [49] Sukhdev Pangalia asserted, at paragraph 18 of his affidavit, that Balwinder Pangalia acted inappropriately by obtaining this consent and renunciation from their father and threatened the others to go along with him or else their father would assert a claim. There is no evidence that their father has or intends to claim an interest in their mother's estate.
- [50] There is a transcript of a telephone conversation between Sukhdev Pangalia and Balwinder Pangalia. Sukhdev Pangalia recording this telephone conversation. There is no evidence that Balwinder Pangalia consented to the call being recorded. Nor is there any evidence on which I can be assured that it is a true transcript of the recording. In any event, the transcript does not support the suggestion that Balwinder Pangalia attempted to have his father sign documents that would result in him having a greater interest in the deceased's estate than his siblings, or that he threatened a claim would be made by their father if the siblings did not accede to Balwinder Pangalia's wishes.
- [51] Accordingly, there is no evidence of misconduct on the part of Balwinder Pangalia concerning their father.

Other Concerns

- [52] Krishna Sharma and Sohan Pangalia assert that Balwinder Pangalia's historical animosity towards them is such that they do not trust him to be fair and impartial in his administration of the estate.

- [53] Krishna Sharma asserts that she was threatened by Balwinder Pangalia. She reported these threats to the police, following which Balwinder Pangalia agreed to not communicate with her directly.
- [54] Sohan Pangalia, the youngest sibling, deposed that Balwinder Pangalia and some of his older siblings blamed him for his parents' separation. As a result, he does not believe that Balwinder Pangalia can administer the estate fairly. He further deposed that Balwinder Pangalia has threatened him with violence and death.
- [55] I cannot, on this evidence, make findings as to whether these events occurred as described, but it is clear that there is unresolved animosity and mistrust between the siblings.

Removal of Administrators

- [56] In *Levi-Bandel v. McKeen*, 2011 BCSC 247, Mr. Justice Butler, then of this court, held that where the administration of an estate has "been brought to a standstill by the inability of co-executrixes to carry out their duties, it is imperative that the court act to resolve the stalemate for the benefit of the beneficiaries." I have concluded that the administration of this estate cannot move forward because the two administrators are intractably opposed to one another over most things that have to do with their late mother and her estate, as are the two camps of the family. In my view, this administration of this estate will not conclude and the assets of the estate will be consumed by the costs of this warfare unless both administrators are removed and a neutral administrator appointed.
- [57] In addition, I conclude that Sukhdev Pangalia has misconducted himself as administrator by refusing to authorize the production of the documents about joint accounts and in doing so has put the presumed assets of the estate in jeopardy. I also find that he failed to fulfill his duties in this regard and by failing to cooperate with his co-administrator to move the administration forward. I order that Sukhdev Pangalia be removed as an administrator.
- [58] I conclude that Balwinder Pangalia's position about the alleged \$50,000 debt puts him in a conflict of interest. His failure to recognize that and his insistence that the debt be regarded as satisfied is misconduct that has the potential to endanger an asset of the estate. I order that Balwinder Pangalia be removed as an administrator.

Appointment of a Neutral Administrator

- [59] Even though both Balwinder Pangalia and Sukhdev Pangalia suggested a neutral administrator of the estate at different times, neither sought to do so at this time.
- [60] At the first hearing of this application, Balwinder Pangalia took the position that the assets of the estate cannot bear the appointment of a neutral administrator, especially given the legal fees expended to date. Moreover, he did not believe that any trust company would take on the administration of the estate given its value. Sukhdev Pangalia would not endorse a proposal for the appointment of a neutral administrator. Similarly, Krishna Sharma and

Sohan Pangalia were only prepared to support Sukhdev Pangalia as the administrator of the estate.

[61] The administration of the estate has ground to a standstill not only because of the actions of the co-administrators but also because of the widespread rancour and discord among the siblings. Given the long-standing feuds between the two camps of siblings, I am of the view that no member of this family can move this estate administration to a conclusion without continuing litigation, which would only further dissipate the assets of the estate. I conclude that despite the expense, the only means to move the administration of the estate to its conclusion is to appoint a neutral administrator.

[62] Section 159 of the Wills, Estates and Succession Act both requires and empowers the court to appoint a replacement when it removes a personal representative unless certain circumstances apply:

Appointment of substitute personal representative

159 (1) If the court discharges or removes a personal representative, the court

- (a) must appoint another person who consents to act as the substitute personal representative, unless
 - (i) the administration of the estate is complete, or
 - (ii) the court does not consider a new appointment necessary, and
- (b) may, if the personal representative has resigned or is removed as a trustee, concurrently appoint the person referred to in paragraph (a) as trustee under the Trustee Act in place of the trustee being discharged or removed.
- (2) The court may require a substitute personal representative under subsection (1) to provide security if security is required by the Supreme Court Civil Rules.
- (3) A substitute personal representative appointed under subsection (1)
 - (a) has the same authority that the former personal representative had in respect of the estate,
 - (b) must perform the same duties and is subject to the same obligations as were imposed by law on the former personal representative, and
 - (c) on application without notice, is entitled to receive a grant of probate or administration, as the case may be, without the return of the previous grant if the court is satisfied that the return of the previous grant would be impossible or impractical.
- (4) A grant of probate or administration to a former personal representative is revoked on the appointment of a substitute personal representative.

- [63] The exceptions in s. 159(1)(a) do not apply here. The appointment of a replacement is necessary since I am ordering the removal of the two existing administrators of the estate and the estate has not reached its conclusion. Moreover, reading s. 159 in a broader context confirms that the Wills, Estates and Succession Act does not contemplate a scenario where the existing administrators of the estate are removed, and a replacement is not appointed at the same time: see Wills, Estates and Succession Act ss. 102, 135, 136, 159(4), and 160(2).
- [64] Accordingly, while these reasons were under reserve, I directed the co-administrators to propose a suitable administrator or administrators for my consideration and to appear before me at a continuation of the hearing to make further submissions on a replacement administrator.
- [65] Balwinder Pangalia proposes his brother Iqbal Pangalia be appointed administrator. Balwinder Pangalia, Sewa Pangalia, and Dilbag Pangalia support the appointment of Iqbal Pangalia as administrator.
- [66] Sukhdev Pangalia proposes his brother Sohan Pangalia or his sister Krishna Sharma.
- [67] In addition to evidence of disagreement among the siblings at the first hearing, the evidence at the second hearing included affidavits deposing to grievances, serious allegations of impropriety and distrust among the siblings. No sibling could be appointed who would receive the trust of more than three of his or her siblings. I conclude this stalemate will continue, the estate's assets will be dissipated, and the estate administration will not progress if one of the siblings is appointed an administrator.
- [68] Balwinder Pangalia's alternate proposal is Dean Spyropoulos, the principal of a public accounting firm, Dean Spyropoulos & Company Inc. Mr. Spyropoulos has worked in various positions in the accounting and finance field since 1990. He has been involved in the administration of four estates over the last five years. Mr. Spyropoulos does not have a professional accounting designation. His practice is not subject to oversight by a professional regulatory body. He has acted as an accountant for Iqbal Pangalia, Iqbal Pangalia's wife, one of Iqbal Pangalia's companies, and Sewa Pangalia. Iqbal Pangalia and Sewa Pangalia have historically been in the same camp.
- [69] Mr. Spyropoulos deposed that he is aware that joint accounts need to be investigated. He did not depose anything about the alleged \$50,000 debt. I infer that Balwinder Pangalia has told him that the joint accounts are an outstanding issue, but has not told him that the \$50,000 debt is an outstanding issue.
- [70] Mr. Spyropoulos stated he would charge \$100 per hour and would expect to be paid quarterly. To accommodate this, Balwinder Pangalia sought an order that if Dean Spyropoulos is appointed, the court should permit Mr. Spyropoulos to pay himself from the estate quarterly and pass his accounts once at the end.

- [71] Sukhdev Pangalia's non-family member proposal is Jonjit Singh, a lawyer who practices with Jonjit Singh Law Corporation. Mr. Singh is in good standing with the Law Society and has no disciplinary history. Mr. Singh advised counsel for Mr. Pangalia that he has over two years of experience with estate matters. Mr. Singh has no social or current business relationship with any of the siblings, but he describes Sukhdev Pangalia as an acquaintance and explained that in 2014 he was the editor of Sukhdev Pangalia's magazine. Mr. Singh was called to the bar in 2015. He proposed a fee of \$5,000 to \$10,000 for acting as an administrator, subject to revision.
- [72] Both Mr. Spyropoulos and Mr. Singh have the education and training appropriate to be an administrator. Mr. Singh has the advantage of having fewer ties and no recent ties to any of the beneficiaries. Unlike Mr. Spyropoulos, his revenue stream does not include professional fees from any of them. In addition, his practice is overseen by a regulatory body that could become engaged if he acts in a manner that is not even-handed.
- [73] With regard to fees, I view Mr. Spyropoulos' estimate as just that, an estimate provided at the request of those who put him forward. It is not an agreement that he is to be paid in that range "subject to revision". His remuneration will be subject to the passing of accounts in the ordinary course.
- [74] I also consider it appropriate, given the mistrust among the siblings, to set terms of appointment of an administrator intended to mandate that all beneficiaries receive the same information from the administrator so that they can be reassured that they have equal information.
- [75] I appoint Jonjit Singh administrator and grant him probate of the estate. He shall communicate with the beneficiaries jointly. Suitable means of communication are mail or email, with each of the beneficiaries copied on the correspondence. Other suitable means include conference call or Zoom call or the like with all beneficiaries present. If Mr. Jonjit Singh receives information from any beneficiary, he shall as soon as is practical, advise the others of the information received. For example, the information he receives about joint accounts shall be provided to each beneficiary. His remuneration will be subject to the usual procedure for passing accounts.

Joint Accounts

- [76] Balwinder Pangalia sought alternative orders for directions from the court. After he became aware that I would be ordering the removal of both administrators, he particularized that part of his application to include an order that each beneficiary is to produce to the new administrator and him, all documents in their possession and control about any joint accounts held by or that they held with their mother.

- [77] Ms. Sharma opposed the order. She asserts that she intends to rebut the presumption that the joint account she held with her mother was held by her in trust for her mother. She asserts that if the order is made, the funds held in the joint account or accounts she held with her mother will be disclosed to Balwinder Pangalia. She asserts that the value of the account is not relevant to rebut the presumption and so the order sought will inappropriately provide information to Balwinder Pangalia to which he is not entitled.
- [78] I do not accept Ms. Sharma's argument that the balance of the account is irrelevant to rebutting the presumption. In *Pecore*, the Court addressed the type of evidence the court should consider on this issue and identified a wide range of evidence, *Pecore* at paras. 56-70. The Court held that the magnitude of the assets jointly held, relative to the deceased's total assets was relevant in the determination of the deceased's intention (para. 73).
- [79] I conclude that the balance in the joint accounts at any particular time is not irrelevant to the determination of the deceased's intention as to the disposition of the funds in the joint accounts. I order that any beneficiary who is in possession or control of documents about joint accounts held by the deceased with any person disclose such documents to the new administrator. The new administrator shall deal with them in accordance with his duties and his determination of what information is appropriate to convey to the beneficiaries. I do not order that such documents be directly disclosed to Balwinder Pangalia, as he is no longer an administrator. He shall be treated by the new administrator in the same manner as the other beneficiaries.

Cost of the Current Administrators

- [80] Balwinder Pangalia sought an order to pay his solicitor's legal fees out of the funds held in trust from the sale of the deceased's home. However, at the return of the application, his counsel advised the court that he was no longer seeking such an order on the basis that *Braich Estate*, 2017 BCSC 1140, provides a process through which these fees should be sought and paid by having the administrator pass his accounts and claim reasonable legal fees.
- [81] Balwinder Pangalia also sought an order directing the registrar to assess the accounts of the removed administrators pursuant to Rule 25-13(3)(b) of the Supreme Court Civil Rules and that the registrar be directed to certify them pursuant to Rule 18-1(2) so that the parties are not required to have another application before the court to obtain certification based on the registrar's recommendation.
- [82] Sukhdev Pangalia did not seek such an order. Sohan Pangalia submitted that neither administrator should be permitted to claim expenses from the estate for any action taken to date. He advised the Court that he understood that Sukhdev Pangalia did not intend to seek remuneration or recover expenses. He submitted that he has been representing himself, while some of the beneficiaries, including the two administrators, have had lawyers. He is of the view that it is unfair for those who retained lawyers to be reimbursed for those expenses

from the estate and thereby reduce the assets of the estate.

- [83] In *Levi-Bandel*, Mr. Justice Butler addressed the costs of a removed administrator. He explained the general rule that administrators are entitled to be indemnified against all reasonable costs and expenses they incur as trustees, citing *Royal Trust Corp. of Can. v. Clarke* (1989), 35 B.C.L.R. (2d) 82 (C.A.) at 86-87. Mr. Justice Butler noted that an exception to that rule is where costs are improperly incurred. He also explained that if a trustee incurs legal fees defending himself rather than the trust, there is no automatic entitlement to indemnification, citing *Fenwick v. Zimmerman*, [2008] O.J. No. 3200 (S.C.J.). In *Levi-Bandel*, Butler J. held that the removed administrator was not entitled to be indemnified for costs of the petition proceeding by which she was removed as she was defending herself not the estate in that proceeding and because the improper conduct that was the basis for her removal had delayed the administration of the estate.
- [84] I conclude the same result should follow here. Balwinder Pangalia and Sukhdev Pangalia unsuccessfully defended themselves, and their misconduct was the factual basis for their removal. I order that neither may recover their costs of these cross-applications from the estate. I order that they each bear their own costs of these applications.
- [85] However, they are entitled to be indemnified for costs properly incurred in the administration of the estate. I order the assessment of any accounts for which they seek indemnification to be referred to the registrar to determine whether the account was properly incurred in the administration of the estate and that the account is reasonable. I reiterate that they may not claim any amount connected with these applications. Nor may they claim any act connected with the conduct that I have found to be improper. I found that Sukhdev Pangalia's conduct concerning joint accounts that his mother held to be improper. I found that Balwinder Pangalia's conduct concerning an alleged \$50,000 debt to be improper. I did not make findings either way, concerning the allegation that Sukhdev Pangalia generally failed to cooperate or delay in advancing the administration of the estate other than concerning the joint account. I did not make findings either way concerning whether Balwinder Pangalia's conduct regarding their father was improper or whether he engaged in threatening or otherwise improper conduct concerning the beneficiary and the administration of the estate. I leave those matters to be considered by the registrar as he deems appropriate.
- [86] This order does not compel either former administrator to pass any part of their account for which they do not seek reimbursement. For any part of their accounts for which they do seek reimbursement, they shall pass their accounts before the registrar in one hearing so that the expense of the hearing not be duplicated. It will probably be appropriate that there be a prehearing conference before the registrar, but I leave that to him.
- [87] The registrar shall certify the result of the assessment pursuant to Rule 18-1(2).

Conclusion

- [88] Both applications are allowed in part to the extent that I order that Balwinder Singh Pangalia and Sukhdev Singh Pangalia be removed as co-administrators of the estate of Surinder Kaur Pangalia.
- [89] I order that Jonjit Singh be appointed administrator in the place of the co-administrators whom I have ordered be removed and be granted probate. The terms of his appointment are that his remuneration shall be through the usual procedure of passing accounts, and he must communicate with all beneficiaries jointly and ensure that any information he receives from any beneficiaries is communicated to the others.
- [90] I order that any beneficiary who is in possession or control documents about joint accounts held by the deceased with any person disclose such documents to Jonjit Singh.
- [91] I order that neither Balwinder Pangalia nor Sukhdev Pangalia may recover his costs of these applications from the estate, and they each shall bear their own costs of these applications. With regard to any accounts for administering the estate for which either of them seeks remuneration, I order the assessment be referred to the registrar to determine whether the account was properly incurred in the administration of the estate, that the account is reasonable and that the account is not related to the conduct I have found to be improper. I direct the registrar to certify the result of the assessment pursuant to Rule 18-1(2).

"Matthews J."

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