

CANADA / JUDGMENT

Popove Estate (Re)

2025 BCSC 929

COURT

Supreme Court of British Columbia

DECIDED

20 May 2025

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2025 BCSC 929 Popove Estate (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Popove Estate (Re), 2025 BCSC 929 Date: 20250520 Docket: P20041 Registry: Kamloops In the Matter of the Estate of Rockey Allan Popove, deceased Before: The Honourable Justice B. Smith Reasons for Judgment re Costs Counsel for Genevieve Mead: K. Aneja Counsel for Ronald Popove: J.L. Marquette Appearing in person: A. Lafrerriere Place and Date of Hearing: Kamloops, B.C. February 7, 2025 Place and Date of Judgment: Kamloops, B.C. May 20, 2025

Introduction

- [1] This is an estate matter involving a dispute between sibling beneficiaries under the will of their deceased brother. On February 7, 2025, in oral reasons for judgment, I dismissed Audrey Lafrerriere's application for an order that the estate grant previously issued to her sister, Genevieve Mead, be revoked. The issue for determination now is whether the successful respondents should be awarded special costs because of alleged reprehensible conduct by the applicant.

Background

- [2] For ease of reference, I will refer to the persons involved in this dispute by their first names. In doing so, I mean no disrespect to them.
- [3] The family members are as follows: · Rockey Popove ("Rockey"), deceased; · Audrey Lafrerriere ("Audrey"), Rockey's sister, the applicant (respondent on costs application); · Genevieve Mead ("Genevieve"), Rockey's sister, respondent (applicant for special costs); · Ronald Popove ("Ronald"), Rockey's brother, respondent (applicant for special costs); · Stephanie Willett ("Stephanie"), Rockey's niece; · Natalie Willett ("Natalie"), Rockey's niece.
- [4] Audrey, Genevieve, Ronald, Stephanie and Natalie are all beneficiaries of Rockey's estate (the "Estate").

- [5] Audrey brought the underlying application in the context of a dispute between her and the other beneficiaries regarding the estate grant for the Estate which was issued to Genevieve. Simply put, Audrey asserted for various reasons that the estate grant should have been issued to her and not Genevieve.
- [6] Audrey was unrepresented by counsel for the application and remains unrepresented by counsel on the issue of costs. The three application respondents were Genevieve, Ronald and the Public Guardian and Trustee ("PGT"). Genevieve and Ronald were represented by counsel on the application and remain represented by counsel on the issue of costs. Genevieve's counsel for the application is not the counsel who is and remains the target of various allegations by Audrey.
- [7] The Estate consists of a property in Kamloops, some vehicles, and financial assets valued at approximately \$1,000,000. At the time of Rockey's death, the PGT was the committee of the Estate and Genevieve was Rockey's committee of the person.
- [8] Genevieve lived with Rockey from 1986 until his death and currently resides at the property in Kamloops.

Procedural History

- [9] Audrey's notice of application was filed on October 17, 2024. Her application material was deficient, in that the parts identifying the legal basis and the material to be relied upon simply indicated "Blank". Genevieve and Ronald filed responses opposing the application and the PGT took no position.
- [10] On December 18, 2024, Genevieve handed in the estate grant pending determination of the application.
- [11] On January 20, 2025, the application was before Associate Judge Keim and was adjourned to February 3, 2025.
- [12] On February 3, 2025, the application was before me in chambers. At that time, counsel for Genevieve and Ronald took the position that the application should be summarily dismissed for failure to comply with the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules], and as establishing no legal basis. Audrey applied to adjourn the application for one to two months. Genevieve and Ronald were opposed to any adjournment. I explained to Audrey that her application material was deficient, I told her where she might receive some legal assistance or advice, I gave her until February 5, 2025 to file additional material to respond to the deficiencies identified by counsel for Genevieve and Ronald, and I adjourned the application to February 7, 2025.
- [13] Audrey did not file any further application materials by February 5, 2025.

- [14] The application record included affidavits from Audrey, Genevieve and Ronald as follows: · Audrey's affidavit # 1 made December 11, 2024; · Audrey's affidavit #2 made January 10, 2024; · Genevieve's affidavit #1 made May 31, 2024; · Genevieve's affidavit #2 made May 31, 2024; · Genevieve's affidavit # 3 made January 13, 2025, a responding affidavit to Audrey's affidavits #1 and #2; and · Ronald's affidavit #1 made January 13, 2025, also a responding affidavit.
- [15] On February 7, 2025, I heard the application, notwithstanding the existing deficiencies in the application material, because I concluded it was in the interests of justice to do so. In reaching that conclusion, I took into account that Audrey was unrepresented by counsel, and that counsel for the respondents were able to discern the factual and legal basis for the application.
- [16] In her submissions, Audrey, talked about her views of the history of the dispute between her and the other beneficiaries, complained about various lawyers involved in the matter, what she perceives to have been a lack of due process, and the operation of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13. She clearly felt aggrieved by the actions of Genevieve and Ronald, and their respective counsel.
- [17] After hearing submissions from counsel for Genevieve and Ronald, I issued oral reasons for judgment. I dismissed Audrey's application and ordered that the estate grant be returned to Genevieve. I adjourned generally Genevieve's application for an award of special costs on the understanding that the parties could bring the issue before me again. Legal Principles
- [18] Rule 14-1(1) of the Rules provides for an award of special costs.
- [19] Special costs may be awarded when a party has engaged in reprehensible conduct during the course of the litigation: *Garcia v. Crestbrook Forest Industries Ltd.*, (1994) 9 B.C.L.R. (3d) 242 (C.A.).
- [20] In *Mayer v. Osborne Contract Ltd.*, 2011 BCSC 914, the court identified a number of circumstances in which said special costs may be awarded. These include where a party maintains unfounded allegations of fraud or dishonesty. Positions of the Parties
- [21] Genevieve and Ronald seek awards of special costs payable by Audrey from her share of the Estate on various grounds, including that Audrey made unfounded allegations of fraud and dishonesty against them and their counsel. The PGT takes no position. Discussion
- [22] Audrey's allegations against Genevieve and Ronald, and their respective counsel, are unfounded.
- [23] In support of Genevieve's position, she relies on the following: · at paragraph 13 of Audrey's affidavit #1, she deposes that Genevieve's lawyer "[probably] influenced" Genevieve to serve her notice; · at paragraph 17 of Audrey's affidavit #1, she deposes that she sent an email to Genevieve's lawyer accusing her of coercing Genevieve; · at paragraph 20 of Audrey's affidavit #1, she deposes that Genevieve's lawyer filed the application for grant of administration on behalf of Genevieve "in an attempt to circumvent due process to stifle any

disputes"; · at paragraph 41 of Audrey's affidavit #1, she deposes that Genevieve's lawyer "threatened" her to pay solicitor-client costs. She further alleges "extortion", "fraud", violation of "due process" and "unethical behaviours" by Genevieve's lawyer; · at paragraph 45 of Audrey's affidavit #1, she deposes that "The estate grant was obtained by fraud"; · at paragraph 5 of Audrey's affidavit #2, she deposes that Genevieve's affidavit #1 is "deceptive" and "a fraud on the court"; · at paragraphs 18 and 34 of Audrey's affidavit #2, she alleges that the "lawyers" failed in their duty to ensure Genevieve was qualified to be the administrator of the Estate and that they should be "sanctioned"; · at paragraph 21 of Audrey's affidavit #2, she alleges that "the lawyers (beneficiaries) did not want me to file a submission for P2" to obtain the estate grant. · at paragraph 34 of Audrey's affidavit #2, she alleges that all parties were "obstructing probate by not adhering to due process and engaging in a conflict of interest" and should be "disinherited".

- [24] I find there is no evidence that Genevieve or Ronald, or their respective counsel, have engaged in any of the behaviour complained of, in particular fraud or dishonesty.
- [25] Although Genevieve and Ronald are both targets of Audrey's various allegations of fraud or dishonesty, based on the above affidavit excerpts, I find it is Genevieve's counsel who is Audrey's main target. I find there is absolutely no evidentiary or other basis to conclude that she has at any time during her involvement in this matter conducted herself other than completely in accordance with the law and her professional obligations.
- [26] I agree with Genevieve's submission that Audrey's general conduct towards her counsel has been inappropriate, unprofessional and rude. For example, there is an email in the application material from Audrey to Genevieve's lawyer in response to it being brought to her attention that the Estate would be seeking special costs if Genevieve had to make an application to cancel Audrey's notice of dispute in which Audrey states: "Fuck you. I [do not] like being threatened. Make sure this gets in your discovery documents".
- [27] In *Morecorp Holdings Ltd. v. Island Tug & Barge Ltd.*, 2009 BCSC 1692 at para. 37, Justice Pitfield said:
- [37] A litigant who represents himself rather than appearing by counsel, whether by choice or of necessity, must strive to separate his interests and emotions as a litigant from his obligations to opposing parties and counsel. However difficult the task may be, the self-represented litigant must treat other litigants and their counsel, if any, in the professional manner in which opposing counsel are expected to treat each other. While Mr. Morris's conduct was not advanced as a separate argument in favour of a special costs order, the defendants might appropriately have done so.
- [28] I agree with Pitfield J.'s comments.

- [29] While in many cases criticisms of opposing counsel might fairly simply be characterized as inappropriate, unprofessional and rude, Audrey's allegations against Genevieve's counsel are much more serious, being of criminal conduct which, if true, could expose Genevieve's counsel to criminal prosecution and sanction by the Law Society of British Columbia.
- [30] Audrey is no stranger to the court system in British Columbia. She knew about the seriousness of making unfounded allegations, but chose to do so anyway. Yet even now, after Genevieve and Ronald have applied for an award of special costs, Audrey apparently remains committed to maintaining her unfounded allegations. In her brief written submission concerning costs, she wrongly asserts Genevieve's counsel has engaged in reprehensible conduct, which she claims was "to deflect any criticism for her unprofessional conduct". Audrey asserts that Genevieve's lawyer knew of Audrey's application for the estate grant and "should have told the court", that she knew that Genevieve "was not qualified to be administrator" and "had a serious conflict of interest". She refers to now having to "ask the RCMP to investigate the perjury contained in the affidavits" sworn by Genevieve and Ronald.
- [31] I find that Audrey engaged in reprehensible conduct in making her unfounded allegations of fraud and dishonesty to begin with. I find it is aggravating that she continues to engage in that conduct. I find her conduct warrants sanction, for three reasons.
- [32] First Audrey's conduct is antithetical to the object of the Rules, which is to secure the just, speedy and inexpensive determination of every proceeding on its merits: Rule 1-3. Unfounded allegations of fraud and dishonesty are unjust to the targets of the allegations, and have the potential to lead to injustice, not only for the targets, but also in the determination of the litigation; while delay and increased expense invariably also result, as counsel find themselves unable to respond without potentially being in a conflict of interest, and clients have the expense of retaining new counsel. Allegations of fraud and dishonesty are serious and potentially very damaging to those accused of deception: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9 at para. 26.
- [33] Second, Audrey's conduct is corrosive of the solicitor-client relationship between Genevieve and her counsel, as well as of the solicitor-client relationships between Genevieve's counsel and Genevieve's counsel's other clients, who may learn that their counsel is alleged to have acted fraudulently or dishonestly in another matter for someone else. A successful relationship between a client and their counsel depends on the client having full confidence and trust in the counsel's undivided loyalty and dedication to the case: *C.S. v. C.B.*, 2021 BCSC 879 at para. 7; *Schuetze v. Pyper*, 2022 BCSC 455 at para. 15, *aff'd* 2023 BCCA 334 at para. 50. Unfounded allegations of fraud and dishonesty are a distraction for counsel in that they impugn their integrity.

[34] Finally, Audrey's conduct is deserving of sanction. The main purpose of special costs is to censure litigation misconduct: *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329 at para. 53. As the British Columbia Court of Appeal said in *Gichuru v. Smith*, 2014 BCCA 414 at para. 80: A lawyer relies on his reputation for integrity. While not every accusation against a lawyer will lead to special costs, when a lawyer's reputation is falsely assailed, the Court's reproof should be felt.

Conclusion

[35] In conclusion, I find Audrey has engaged in reprehensible conduct deserving of sanction through an award of special costs.

[36] I award Genevieve and Ronald special costs, payable by Audrey from Audrey's share of the Estate. The awards apply to preparation for and attendance at the hearings on February 3 and 7, 2025, as well as the application for an award of special costs. "B. Smith J." B. SMITH J.

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