

CANADA / JUDGMENT

Rawlins v. Rawlins

2023 BCSC 466

COURT

Supreme Court of British Columbia

DECIDED

27 March 2023

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2023 BCSC 466 Rawlins v. Rawlins

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rawlins v. Rawlins,

2023 BCSC 466

Date: 20230327

Docket: S211918

Registry: New Westminster

Between:

Roy Douglas Rawlins

Plaintiff

And:

Charles James Rawlins, Executor of the Estate of

Marguerite Patricia Rawlins, Deceased,

Charles James Rawlins, in his personal capacity,

and Neil Edgar Rawlins

Defendants

Before: The Honourable Mr. Justice Riley

Reasons for Judgment

Counsel for Plaintiff:

P. W. Hansen

Counsel for Defendants:

C. J. Bow

Place and Date of Trial:

New Westminster, B.C.

September 6-9, 12-15, 2022

November 2, 7, 2022

Place and Date of Judgment:

New Westminster, B.C.

March 27, 2023

Overview

- [1] These are reasons for judgment following an 11-day trial in a wills variation action. The plaintiff Roy Douglas Rawlins is the son of the deceased. The defendants are the estate of the deceased Marguerite Rawlins, and the deceased's other two sons, Charles James Rawlins and Neil Edgar Rawlins. The estate consists of the deceased's home and investments, the combined total value of which is in excess of \$2.5 million. The deceased's will provided that if she survived her husband (which she did), her estate was to be divided equally between her three sons.
- [2] The plaintiff says the will failed to make proper allowance for him, in view of his legal claim against the estate based on unjust enrichment, and on his enhanced moral claim which he says should take precedence over the interests of his two brothers. The plaintiff cites three factors underlying these claims: (i) his role in contributing to and maintaining the deceased's home, (ii) his role in looking after both of his elderly parents in their final years, and (iii) his expectation of receiving the home and certain investments upon the passing of his parents, based on statements that his parents allegedly made to him, and to others in his presence.
- [3] The defendants say the will did not fail to make adequate provision for the plaintiff, so it should not be varied. They maintain that no basis has been shown for the Court to interfere with the testamentary autonomy of the deceased. The defendants also say the plaintiff's contribution to the deceased's home was minimal, particularly considering that the plaintiff was allowed to live there rent free for his entire life, while the other two sons worked, acquired their own homes, and supported themselves. The defendants acknowledge the plaintiff's involvement in caring for both parents, but they say the strength of the plaintiff's differential claim pales in comparison to the benefits the plaintiff has received from his parents over his entire adult life, and the benefits he has continued to receive from the

estate after his mother's passing. Finally, the defendants question the veracity of the plaintiff's evidence about the deceased's stated intention to leave the house and the bulk of the investments to the plaintiff.

Facts

The Parties and Their Personal Circumstances

- [4] Because all of the parties to this proceeding are from the same family, they are referred to by their first names in these reasons.
- [5] This case concerns the estate of the deceased Marguerite Patricia Rawlins ("Marguerite"), who was pre-deceased by her husband James Roy Rawlins ("Roy").
- [6] Roy died on 8 November 2016, at the age of 93, leaving a will dated 8 June 1977, under which his entire estate passed to Marguerite.
- [7] Marguerite died on 1 March 2018, at the age of 85. Her will, also dated 8 June 1977, provided that if she survived Roy, her entire estate was to be divided equally between the couple's three sons, Charles James Rawlins ("Charles"), Roy Douglas Rawlins ("Doug"), and Neil Edgar Rawlins ("Neil").
- [8] All three sons - Charles, Doug, and Neil - were born in the Lower Mainland and grew up with their parents in Burnaby, where they all lived in a home at 4370 Briarwood Crescent (the "Briarwood Property").
- [9] The oldest of the three sons, Charles, is the executor of Marguerite's estate and one of the defendants. Charles was born in 1956, making him 66 years old at the time of the trial. Charles finished high school in 1974 and then attended community college, graduating in 1976. Charles moved out of the Briarwood Property some time in the late 1970s. He later acquired his own home, with the help of a loan from his parents which he subsequently repaid. In 1977 or 1978, Charles acquired an ownership interest in Able Electronics, a company that produced and installed replacement components for televisions. Roy loaned Charles money to fund his investment in the business, and Charles later repaid the loan. Able Electronics ceased operating in 2014. In the meantime, Charles started a new business, Granston Construction, in 2005.
- [10] The middle son, Doug, is the plaintiff in the action. Doug was born in 1958, and was 64 years old at the time of the trial. Doug finished high school in 1978. Doug has lived his entire life at the Briarwood Property. From 1978 until 1991, he had a series of jobs as a warehouse worker, a tire installer, and a vehicle technician. In 1991, Doug's brother Charles hired him to handle shipping and receiving at Able Electronics. Doug worked at Able Electronics until 2014, when the business shut down. Doug was paid two months severance, but received no pension. At that point, Doug was in his mid 50s, and rather than getting a new job, he chose to stay at home to care for his elderly parents. He continued in that role until both parents passed away, Roy in 2016, and Marguerite in 2018.

- [11] The youngest son, Neil, is also a defendant in the action. Neil was born in 1962, and was 60 years old at the time of the trial. He finished high school in 1980. For a number of years thereafter, he moved in and out of the Briarwood Property. In 1985 or 1986, he obtained his mechanic's ticket at BCIT, and thereafter worked as a mechanic until 2006, when he upgraded his skills to become a heavy duty vehicle mechanic at Greyhound. Neil worked at Greyhound until it shut down in 2018. Since then, he has not returned to work. He receives a WCB pension due to physical and cognitive limitations arising from several serious workplace accidents. He has also had a number of more recent health challenges, including a hernia and a heart attack. In 2010, Neil bought a townhouse in Langley. In 2015, Neil moved out of his townhouse and back to the Briarwood Property, where he stayed with his parents and his brother Doug until 2017, at which point he returned to his townhouse.

Chronology of Key Events

- [12] On 6 June 1977, both Roy and Marguerite executed wills. The wills were more or less identical. They provided that the surviving spouse would inherit the other's entire estate, and then the surviving spouse's entire estate was to be divided equally between the couple's three children, Charles, Doug, and Neil.
- [13] As of 2010, Roy, Marguerite, and the middle son Doug were the only ones still living in the Briarwood Property, although as noted above Neil was also living there from 2015 to 2017.
- [14] On or about 7 September 2012, Marguerite had a fall in the family home. Doug and his father were home but not present with Marguerite when she fell. Doug found her lying on the floor. He did not know what to do. He called Neil, who was away from the Lower Mainland for the weekend. Neil said take her to the hospital, but Doug apparently did not do so right away. One or two days later, Marguerite was still in pain and her condition had not improved. On 9 September 2012, after Neil returned home from his trip, he and Doug took Marguerite to the hospital. She had a fractured lower left tibia. She was admitted to the hospital and remained in care for about ten months.
- [15] There is uncontroverted evidence that while Marguerite was in the hospital from the fall of 2012 into the late summer of 2013, Doug visited her every day, often multiple times per day. Doug was heavily involved in Marguerite's successful recovery and eventual release from the hospital. The other two sons visited occasionally, but not nearly as often as Doug did, nor were they meaningfully engaged in Marguerite's rehabilitation. I will discuss this evidence in more detail below. In the summer of 2013, Marguerite was released from the hospital and returned to live at the Briarwood Property with her husband Roy and their son Doug.

- [16] In 2014, Able Electronics closed and Doug was laid off. At that point, rather than searching for a new job, Doug chose to stay home to look after his elderly parents on a full time basis. Doug testified that Roy offered to pay him \$25,000 per year to care for himself and Marguerite, but Doug responded that he did not want the money. Doug's evidence about this is hearsay, but for reasons explained more fully below, I find it to be admissible under the state of mind exception.
- [17] On 19 April 2014, Roy signed a document giving Doug power of attorney over his CIBC bank account. The terms of the power of attorney stated expressly that as the designated attorney, Doug had authority to use the account funds "for the benefit of anyone, including [the] power of attorney". In his trial testimony, Doug gave evidence about what his father said to him at or around the time that this document was executed. This evidence is hearsay, and I will address its admissibility below.
- [18] By 2013, Roy was having trouble with his heart. He basically had a leaky tricuspid valve. On 7 July 2015, Doug and Roy met with Roy's cardiologist Dr. Sedlak in Vancouver. Having done his own research into Roy's condition, Doug advocated for Roy to have a special kind of non-invasive heart surgery that was not offered in Canada, but available upon referral at a hospital in Chicago. Based on Doug's advocacy, Dr. Sedlak approved funding for Roy to travel to Chicago to consult with Dr. McCarthy, who was in charge of the program. In November of 2015, Doug took his father Roy to see Dr. McCarthy in Chicago. Dr. McCarthy concluded that Roy was not a good candidate for the procedure, because of Roy's advanced age and other health concerns.
- [19] Doug testified that in advance of the trip to Chicago, he, Roy, and Marguerite prepared one page each of handwritten instructions regarding their estates. No such handwritten instructions were presented in evidence at trial. Doug's evidence about what Roy and Marguerite said to him at the time is hearsay, and I will deal with it in detail later in these reasons.
- [20] On 11 March 2016, Marguerite was admitted to the hospital for complications arising from the flu. The evidence reflects that Doug took Marguerite to the hospital because she was in a weakened state. On this occasion, Marguerite remained in the hospital for several months, before once again returning to the Briarwood Property to live with her husband Roy and her son Doug.
- [21] On 29 July 2016, both Roy and Marguerite signed documents giving Doug trading authority with respect to their Edward Jones investment accounts. The documents listed Doug's occupation as "caregiver", "self employed". The execution of these documents was witnessed by Roy and Marguerite's financial advisor, Ed Sernoski, who testified as a witness for the plaintiff. I will review the evidence of Doug and Mr. Sernoski about the circumstances surrounding the trading authorization documents, and certain statements allegedly made at that time by Roy and Marguerite, in more detail below.

- [22] On 8 November 2016, Roy passed away, at the age of 93. Doug testified that he had been out of the house to get groceries and came back to find his father unconscious in bed. Doug was very upset. He asked for Neil's help in trying to revive their father, but without success. Ambulance attendants arrived, examined Roy, and reported that he was dead and there was nothing to be done. Charles was also called and attended the house upon being advised of his father's death.
- [23] Shortly after Roy's death, the entire family met with the family lawyer Mr. Thompson. The meeting took place at the Briarwood Property. Marguerite, Charles, Doug, and Neil were all present. Doug provided Mr. Thompson with Roy's will, and also showed him Marguerite's will. Mr. Thompson took Roy's will away and arranged for its administration. Charles recalls taking digital photographs of both his father's will and his mother's will on his phone. Charles took responsibility for overseeing Roy's funeral arrangements.
- [24] On 16 November 2017, Marguerite fell in the kitchen at the Briarwood Property. Doug was in the home at the time, but not in the room when his mother fell. He entered to find her on the floor. After helping Marguerite to the bathroom, Doug could see that her hip was out of place. He phoned Charles for assistance. Charles told Doug to call an ambulance. There is some dispute in the evidence about how responsive Doug was to this suggestion, but in the end an ambulance was called. Marguerite was admitted to the hospital and diagnosed with a hip fracture. In the following weeks and months, there were multiple meetings involving Marguerite's care team and her three sons regarding Marguerite's care needs. Once again, Doug advocated for a plan where Marguerite could return to the family home. However, on this occasion his position did not prevail. Charles and Neil were of the view that Marguerite was in no condition to return home and that she had to go to a long-term care facility, in view of her limited mobility after the broken hip, and the onset of dementia. Charles began the process of applying for committee'ship over Marguerite's person and affairs, however in the end the care providers acted on the majority views of Charles and Neil, who were both supportive of Marguerite going into long-term care. In the result, Marguerite was put on a waiting list to go into long-term care.
- [25] On 8 February 2018, Marguerite was transferred from the hospital to a long-term care facility. This occurred without Doug's agreement, and he testified that he was given no notice of the move, although that assertion is disputed by Charles.
- [26] On 1 March 2018, Marguerite passed away, at the age of 85. Charles looked after the funeral arrangements. Doug refused to assist or cooperate in the arrangements, although he did attend the funeral.
- [27] Thereafter, Charles made repeated requests for Doug to produce Marguerite's will, which was amongst her papers under Doug's control at the Briarwood Property. Doug did not respond to these requests. Charles also tried to get Doug to cooperate in having the Briarwood Property appraised by a real estate agent so that it could be listed for sale as part of the liquidation of Marguerite's estate. Doug would not assist. Eventually, Charles got the

family lawyer Mr. Thompson involved, and applied for a grant of administration without a will annexed. On 22 November 2018, Charles was granted administration of Marguerite's estate, on the basis that she passed away without a will.

- [28] On 1 March 2019, Doug commenced the current action, seeking to challenge the administration of Marguerite's estate. The pleadings have since been amended to seek variation of Marguerite's will, which Doug provided after-the-fact as described in the following paragraph.
- [29] On 1 April 2019, the grant of administration of Marguerite's estate without a will was revoked. Doug had finally produced Marguerite's will, executed in 1977, located amongst Marguerite's papers in the Briarwood Property. Doug provided the will to his counsel, who then filed it with the Court.
- [30] On 10 December 2020, probate of Marguerite's will was granted to Charles, who had been named as the alternate executor, after Roy. Since then, Charles has brought three unsuccessful applications to sell the Briarwood Property as part of the winding up of Marguerite's estate. Doug successfully opposed each application, arguing that he has a claim to the entire house, either by way of a variation of the will, or under principles of unjust enrichment.
- [31] In the meantime, Doug has continued to live in the Briarwood Property. From the point that Charles gained control as executor of Marguerite's estate, Doug has been paying the utilities for the Briarwood Property out of his own pocket. He has not paid any form of rent to the estate, nor has he paid the property taxes.

Witness Credibility and Reliability

- [32] There are direct conflicts in the testimony of the three main witnesses in this proceeding, Doug, Charles, and Neil. Witness credibility is clearly in issue. Before addressing the evidence on the three central components of the plaintiff's case, namely (i) Doug's role in contributing to and maintaining the deceased's home, (ii) Doug's role in looking after both of his elderly parents in their final years, and (iii) Doug's expectation of receiving the home and certain investments upon the passing of his parents, I find it necessary to make some general observations about the credibility and reliability of each of these witnesses.

Credibility and Reliability of Doug's Testimony

- [33] I accept Doug's testimony that he cared for the wellbeing of both his father and his mother, and that from 2012 onward he was heavily involved in addressing their personal and medical needs. I find that Doug assumed an active role in advocating for the proper treatment of his mother's lower leg fracture in 2012, and that he oversaw and actively participated in her rehabilitation. Thereafter, Doug spent a considerable amount of his time caring for and looking after the daily needs of his parents, advocating for them, and managing their ongoing medical care. In the course of his testimony, Doug gave an extensive and detailed

account of the various medical conditions and treatment histories of both of his parents. Doug's evidence concerning his involvement in the medical care of Roy and Marguerite was supported by a large body of evidence from independent witnesses, including treatment providers (Mr. Morozov, Mr. Dejenov, Ms. Denny, and Dr. Sedlak), the son of another patient in the hospital ward where Marguerite was treated (Mr. Ferguson), and neighbors who witnessed Doug's interactions with his parents over a number of years (Ms. Reiter and Ms. Townley).

- [34] However, although I accept Doug's testimony about his role in caring for his parents from 2012 onward, I have more difficulty accepting many other facets of his evidence. I would identify six specific aspects of Doug's testimony that reflect poorly on the credibility and reliability of his evidence as a whole.
- [35] First, I do not find Doug's evidence about his work at Able Electronics to be credible, in a number of respects. To begin with, I do not accept Doug's evidence that the only reason he took the job was because Roy wanted him to keep an eye on the business to make sure Roy's investment was secure. Doug worked in the shipping and receiving department of a business with eight to 10 employees. The idea that he would have been in a position to monitor the overall performance of the business from that position is absurd. Moreover, I do not accept Doug's evidence that he worked full time hours at less than minimum wage, worked overtime for free, and was never allowed a vacation or vacation pay. On all these points, I prefer the evidence of Charles, the owner of the business. Charles testified that he hired Doug at the instance of his father. Doug was paid a flat salary of \$1,500 per month less deductions. Doug worked part time, four to five hours per day. Doug's paycheque reflected 80 hours per pay period for payroll and accounting purposes only. Doug did not receive vacation pay because he was given paid time off in lieu of vacation. Charles's testimony on all of these points was unvarnished and matter-of-fact. His testimony made sense, and was unshaken in cross-examination. By comparison, Doug's testimony about the terms and conditions of his employment with Able Electronics was punctuated by implausibility, hyperbole, and generalizations.
- [36] Second, while Doug asserted in his testimony that he was primarily responsible for doing household maintenance, repairs, and renovations of the Briarwood Property, and that he always kept the house and surrounding property in good condition, there is a fair amount of reliable evidence to the contrary. I refer here to the evidence of Charles and Neil, supported by photographs taken by Neil. The evidence reflects that (i) Doug has stored at least two broken down vehicles on the property for years, (ii) Doug has yet to finish a renovation of the garage which he started in 2019, (iii) there is scaffolding erected around the garage that has not been removed since Doug set it up as part of the garage renovation, (iv) Doug has never gotten around to finishing a major renovation of the upstairs bathroom, which he started some time in 2013, and (v) there are visible signs of disrepair in the interior of the house.

- [37] Third, I did not find credible in the least Doug's evidence about the ICBC cheque issued to cover the damage to the garage at the Briarwood Property. To explain, Doug testified that a truck ran into the garage, and ICBC subsequently issued a cheque to "Roy Rawlins" to cover the repairs. Doug claims that this cheque was intended for him, but Charles improperly intercepted it and appropriated it into Marguerite's estate. I find Doug's position on this issue to be entirely disingenuous. The registered owners of the Briarwood Property were Roy and Marguerite. The cheque was issued in the name of Roy Rawlins, and Charles was entitled (indeed, obliged) to direct the funds into the estate of either Roy, or Marguerite as Roy's sole beneficiary. Doug would have appreciated this, and his complaint that Charles acted improperly in redirecting the cheque rings hollow. Further, Doug admitted that while he started the work on repairing the garage and incurred some out of pocket costs in doing so, he has never asked Charles to reimburse him from those costs. I find Doug's sense of outrage about this issue to be contrived, as part of an effort to bolster the equities of his position in the litigation.
- [38] Fourth, I do not accept Doug's evidence concerning Marguerite's cognitive capacity in the final years of her life. Although Doug acknowledged in cross-examination that Marguerite started to show signs of cognitive decline in 2012, he consistently minimized the state of her dementia in his testimony. When it was pointed out that in appointments with her family physician Dr. Wong, Marguerite could not remember what day of the week it was, Doug responded nonchalantly that she did not care what day it was. When questioned about why he "spoke for" his mother at appointments with Dr. Wong, Doug responded that Marguerite was capable of discussing her own medical issues and concerns, but she simply "preferred" to have Doug speak for her. When it was suggested that Marguerite was not capable of understanding or making decisions about her financial affairs, Doug responded that she could "sign cheques" and was "aware" of her finances, but that she was "not interested" and therefore left the details of her finances to Roy, and later to Doug. I find Doug's testimony regarding the state of his mother's cognition to be inconsistent with contemporaneous medical records, and with the evidence of Marguerite's family physician, Dr. Wong, who was called as a witness for the defendants. Dr. Wong testified that Marguerite had been his patient since 1996. Doug started attending medical appointments with Marguerite in 2014, and by 2015 he was doing most of the talking for his mother. Doug often answered questions directed toward Marguerite, speaking on her behalf. Dr. Wong noted a sharp decline in Marguerite's comprehension in 2014 and 2015. She had become less responsive or communicative. By 2016, Marguerite was unable to answer basic questions, could not identify the day of the week, or the year, and was unable to recall that her husband had passed away. Dr. Wong testified that he spent a fair amount of time discussing Marguerite's decline in memory and cognition with Doug, but that Doug was not receptive and offered excuses for his mother's poor recollection and comprehension. I accept Dr. Wong's evidence, which is objective and untainted by any bias or interest in the litigation. I conclude that Doug's trial testimony about his mother's mental state is not credible. Further, Doug's self-serving unwillingness to acknowledge the decline in his mother's cognition

reflects poorly upon his credibility more generally.

- [39] Fifth, Doug testified at length to a belief that after the passing of his mother, the Briarwood Property had been broken into and searched on multiple occasions. He claimed that papers had been removed from the house, that his vehicle had been accessed, moved without his consent, and possibly surveilled with a tracking device, and that someone had caused physical damage to the Briarwood Property. There was no reliable evidence to support any of these claims. Doug tendered photographs showing what he described as intentional damage to the interior of the house, but on my assessment these pictures show nothing more than simple wear and tear, such as cracks on the walls and ceiling. There is nothing in the photographs to support Doug's claim that the Briarwood Property has been broken into and that his papers had been accessed or stolen. I find Doug's claims to be completely unfounded. Even if one were to accept that Doug honestly believes these claims, at the very least his testimony on this issue reflects poorly on his reliability as a witness.
- [40] Sixth, I find Doug's evidence about the circumstances in which his mother was placed in long term care on or about 8 February 2018 to be misleading. Doug claimed that he did not approve the move, was given no knowledge of it, and only learned about it when he went to the hospital to visit Marguerite and saw that her space had been given to another patient. I find this testimony to be disingenuous and intended to cast a negative light on the opposing parties, Charles and Neil. Although Doug claims that he did not know his mother was going to be moved, I find it much more likely that he was aware that based on the views of Charles and Neil, Marguerite had been put on a waiting list for a long-term care home. The matter had been discussed at length in meetings involving Marguerite's treatment team and all three brothers, and in the end a decision was made to transfer Marguerite. Further, Doug's explanation that he never visited his mother at the long-term care facility because he was suffering from flu symptoms is not credible. Marguerite was in the long-term care home for more than three weeks before she passed away. I do not find it credible that Doug was suffering from flu symptoms that entire time. I find it much more likely that for at least part of the time in issue Doug chose not to visit his mother because he was angry that she had been placed in a care home against his wishes.

Credibility and Reliability of Neil's Testimony

- [41] I did not find Neil to be a credible or reliable witness. His trial testimony was inconsistent with his previously sworn affidavit and his examination for discovery evidence on a number of important points, as discussed below. In light of this, I am reluctant to place weight on any aspect of Neil's testimony on material points in respect of which there is no objective independent evidence.
- [42] In his trial testimony Neil said that he moved back to the Briarwood Property in 2012. However, in an earlier affidavit he claimed to have moved back to the Briarwood Property in June of 2015. Neil gave no satisfactory explanation for the material difference between these two accounts. He simply offered that he did not read the affidavit carefully before signing it.

I do accept that Neil has difficulty reading as a result of a workplace accident where he injured his head in 2013. I saw some indication at trial that Neil found it difficult to read or follow along with reading, but that does not explain the origins of the information in his affidavit about moving back home in 2015. The most likely explanation is that the information in the duly sworn and executed affidavit came from Neil himself. He now says the affidavit is false and says the Court should prefer his trial testimony. The inconsistency between the two accounts undermines Neil's credibility.

- [43] In the same affidavit, Neil averred that he paid his parents rent when he lived at the Briarwood Property from 2015 to 2017. In his trial testimony, Neil admitted that this was completely untrue. His explanation was once again that he did not read the affidavit carefully before signing it. Again, I do not consider that to be an adequate explanation for his giving admittedly untrue evidence in a sworn affidavit.
- [44] I do accept Neil's trial testimony that he contributed to the household expenses at Briarwood while living there in 2016 and 2017. This is born out by copies of records tendered during Neil's trial testimony. Neil also admitted that during this time frame, he was renting out his townhouse in Langley, although I expect that a large proportion of the rental proceeds were simply used to cover the mortgage and taxes for that property.
- [45] There were also significant discrepancies between Neil's position at trial and his testimony in examination for discovery. For example, at trial he claimed to be aware of certain care providers, including Dr. Sedlak and Mr. Morozov, whereas at his examination for discovery he said he had never heard the names of either of these people. And when asked in cross-examination at trial whether he had any trouble with the idea that Doug was the primary caregiver for his parents in their latter years, Neil responded "yes and no", but did not explain what he meant by that. Neil then admitted that at his examination for discovery he said he had no difficulty with Doug being the primary caregiver for his parents.
- [46] It appears that at least part of the reason for Neil's return to the Briarwood Property from 2015 to 2017 was so that he could act as sort of a backup to Doug in caring for their parents, although the arrangement did not work well. Neil seemed to acknowledge that, during the time he was living at the Briarwood Property from 2015 to 2017, he played a much less active role than Doug did in caring for his parents and attending to their daily needs. At one point in cross-examination, Neil testified that he would generally stand back and leave it to Doug to look after Roy and Marguerite's needs. Neil eventually moved out of the Briarwood Property for good in 2017. It is not really clear why he did so. He claimed in his trial testimony to be fearful of Doug, but in light of the inconsistencies in Neil's evidence, I cannot place much stock in his testimony on this point.
- [47] In his trial testimony, Neil presented a photograph showing Marguerite asleep in a chair at the kitchen table in the Briarwood Property. This photograph was presented in an apparent effort to show that Doug was neglectful and inattentive to Marguerite's needs. To the extent that it supports that inference, it also supports a parallel inference that Neil was equally

inattentive, at least up until the point that he decided to take the photograph for later strategic use, before actually remedying the situation. In cross-examination, Neil testified that his response to the situation was to call for Doug to wake up Marguerite and look after her. Given the broader concerns about Neil's credibility, I find that that photograph does not shed any light whatsoever on the material facts of the case.

Credibility and Reliability of Charles's Testimony

- [48] I found Charles to be a generally credible and reliable witness. He was able to recount a coherent, fact-based timeline of his background, the family history, and the events leading up to the current court proceeding.
- [49] Charles acknowledged that his parents helped him out financially by lending him money to fund his acquisition of an interest in Able Electronics, and to purchase his house. He testified that he repaid these loans and there is no suggestion to the contrary. Further, there is no evidence that Roy and Marguerite's willingness to loan money to Charles ever operated to the detriment of the other two sons.
- [50] I accept Charles's testimony regarding Doug's employment at Able Electronics. I made findings about that issue above and I will not repeat them.
- [51] Charles was cross-examined at length about his attitude toward Marguerite's treatment needs, but to little effect. Charles agreed there were two camps with regard to Marguerite's needs and how they could best be met. On the one hand, Charles and Neil were of the view that she might have to go into a long-term care facility. On the other hand, Doug was of the view that she should never be required to do that. In defence of his own position, Charles said he was generally in favour of deferring to experts regarding his mother's care. He was cognizant of his mother's own views but felt they had to be taken with some scepticism because of the onset of dementia. I find no reason to question the bona fides of Charles's reasoning.
- [52] In 2012, Charles initially felt that Marguerite should go into a home. However, after Marguerite's successful rehabilitation, Charles agreed that she could return home with supports from Fraser Health. By 2017 Charles was firmly of the view that it would be impossible for Marguerite to receive proper care at home, given her hip injury and advancing dementia. Charles did not fault Doug for believing in 2017 that Marguerite would be able to walk again and that she did not have to go into a care home. Charles did not agree, but did not fault Doug for his opinion.
- [53] Charles was somewhat reluctant to give Doug his due credit in caring for Roy and Marguerite in their final years. Charles would not accept that Doug was Marguerite's "main caregiver" from 2012 to 2016. He maintained that Roy was the principal caregiver for Marguerite, but conceded that Doug helped. I find that Charles did not have a full appreciation of how involved Doug was in the care of his parents, both in terms of addressing their day to day needs, and in terms of managing their many medical appointments, treatments,

prescriptions, and the like.

- [54] I accept Charles's testimony that when Roy died, Doug retrieved the paperwork, including copies of both Roy and Marguerite's wills, from Roy's room in the Briarwood Property and presented it to the lawyer, Mr. Thompson.
- [55] Charles agreed that in late 2017, he initiated committee proceedings with respect to Marguerite. He explained that his interest in doing so was in being able to break the family stalemate regarding Marguerite's care needs, not a desire to sell her home. Under further cross-examination, Charles maintained that his decision making was focused on Marguerite's care needs, not the status of her estate.
- [56] I also accept Charles's evidence about the events following Marguerite's death. I find that Charles initially applied for administration of the estate without a will because Doug would not produce the will. I accept Charles's evidence that he has not been "on" the Briarwood Property or inside the house since 2018, prior to Marguerite's death. Charles testified that he went "to" the property on at least one occasion to take photographs, but he did not go onto the property itself and did not go into the house. I further accept Charles's evidence that he instructed a real estate agent to contact Doug for the purposes of arranging an appraisal of the Briarwood Property, but that Doug would not cooperate.

Evidence Relating to the Key Aspects of the Plaintiff's Claim

- [57] The plaintiff's case for variation of Marguerite's will appears to rest on three planks or categories of evidence. First, there is the evidence about Doug's contributions toward the Briarwood Property. Second, there is Doug's role in looking after his parents during the final years of their lives. Third, there is the evidence of Doug's expectations regarding the Briarwood Property and the Edward Jones investments. The defendants say that in evaluating Doug's claims, the Court must also consider a fourth factor that weighs in the opposite direction, namely the benefits Doug received by living in the Briarwood Property - largely at the expense of his parents - throughout his adult life. I will address each of these points in turn.
- (1) Doug's Contributions to the Briarwood Property
- [58] Doug testified that he has lived at the Briarwood Property his entire life and that he worked around the house and on the grounds since before he was a teenager. In the context of a will variation claim based on unequal contributions toward the maintenance of estate property, I will not dwell on Doug's contribution in the form of household chores while he was a pre-teen or teenager. I expect that all three sons were required to do chores of various kinds while they were growing up, before they reached adulthood.
- [59] Doug testified that in his adult years, he continued to do regular repair and maintenance of the Briarwood Property. This included such things as cutting the lawn and trimming the hedges, painting the house every decade or so, restoring the gables, washing the exterior of

the house once per year, cleaning the gutters three times per year (which seems excessive), plumbing and sink repairs, and maintenance of the stove and washer and dryer. I accept that Doug has contributed and continues to contribute a reasonable amount of unskilled labour toward the maintenance of the family home throughout the 64 years that he has lived in it. However, Doug's contention that he has always kept the property in tip top shape must be taken with a grain of salt. Doug has been storing at least two inoperative vehicles in various states of disrepair on the property for many years, perhaps decades. The scaffolding that Doug erected around the exterior of the garage to perform repairs in 2019 appears to have become a permanent fixture. A bathroom renovation that Doug started in 2013 has never been completed. And in the course of his trial testimony, Neil referred to photographs showing that as of 2017 there were visible signs of disrepair in the interior of the house.

- [60] With regard to the out-of-pocket costs associated with the maintenance of the Briarwood Property, I find it most likely that when Roy and Marguerite were still alive, any expenses incurred by Doug in relation to maintenance of the property were paid for out of the family's joint account, to which Doug did not contribute. I accept that after his parents passed away, Doug no longer had use of the joint bank account and had to cover the home maintenance expenses out of his own pocket. In this regard, Doug tendered receipts showing that from 2018 to 2020, he spent some \$690 on replacement appliance parts, paint, and other household materials. Dividing this up on a yearly basis, this comes out to somewhere between \$230 and \$350 per year. Even if one were to accept that Doug paid out of pocket for materials of this sort before his parents passed away - and it is not clear to me that he did, based on the way that the family finances were handled - the amount that Doug would have spent on household maintenance would not have been a significant financial burden on him considering that he lived rent free, paid no room and board, did not contribute to utilities, and had the lion's share of his meals cooked for him until his mother began to experience serious medical issues in 2012.
- [61] Doug also gave evidence about a number of renovation projects that he worked on at the Briarwood Property over the years.
- [62] Doug testified that he made a significant contribution toward the construction of a new garage on the Briarwood Property in around 1985. Doug's evidence was that he worked on this project with his father, Charles's father in law, and his cousin. Doug was responsible for, or at least worked on, the erection of a retaining wall, the installation of a drainage system including a manhole, drain, and drain tile, and digging a trench to run the phone line and electrical service from the street into the house.
- [63] Neil testified that he also played some part in the project, although the extent of his participation is disputed. Neil did confirm in his testimony that Doug did a fair amount of work on the garage project.

- [64] Charles disputed the extent of Doug's contribution, but for the most part Charles was not present when the work was done, so he was not really in a position to offer reliable evidence on this topic. I do accept Charles's evidence that his father Roy, in addition to being an electrician by trade, was a capable builder. This evidence, together with the fact that Roy was the owner of the Briarwood Property and the head of the family, indicates to me that Roy likely took the lead in the garage construction. Thus, I find that while Doug's contribution to the garage project was substantial, he was not the driving force behind the project.
- [65] I also infer that the vast majority of the capital devoted to the garage construction project would have come from Roy and Marguerite. Doug's financial contribution appears to have been limited to paying out-of-pocket for about \$150 to \$200 of filler dirt used in levelling the yard.
- [66] Doug also gave evidence about a number of other home renovation projects he worked on over the years, including changing the furnace from oil to gas, building an alcove in the dining room, replacing the back deck and covering it with vinyl flooring, replacing the kitchen and basement doors, and making changes to the lighting and associated wiring. Doug's testimony was that he worked on most if not all of these projects with or alongside his father Roy. As noted, Charles confirmed that Roy was a skilled electrician and a capable builder.
- [67] Doug further testified that he and Roy worked on a renovation of the kitchen in the main level of the Briarwood property. Doug said this renovation took place "quite a few years ago". It involved replacing the cabinets and the sink, and installing a new linoleum floor, although Doug indicated that at least some portion of the kitchen renovation work was performed by a contractor retained by Roy. This makes it difficult to ascertain the extent of Doug's contribution.
- [68] There is no evidence before the Court that the construction of the garage back in 1985, the kitchen renovation that took place "quite a few years ago", or the other renovation projects described by Doug had any significant bearing on the value of the Briarwood Property.
- [69] There is also evidence before the Court that in more recent years, Doug started a number of renovation projects that have never been completed.
- [70] After Marguerite's return from the hospital in 2013, Doug undertook a renovation of the upstairs bathroom in the Briarwood Property. His intention was to install new cabinets, a new sink, and a walk-in bathtub to accommodate his mother's mobility limitations. The evidence reflects that Doug started this project in 2013. Neil testified that throughout his time living at the Briarwood Property the bathroom door was off and was never replaced. There was a workable sink and toilet, but the tub had never been replaced. Doug acknowledged in cross-examination that he never finished this renovation. He replaced the bathroom cabinet, but the new sink and tub were never installed, and the bathroom door was removed and has never been replaced. Doug did not offer any explanation for why the

work was never completed.

[71] Doug also gave evidence about his efforts to repair the garage following an incident when a truck crashed into it. Doug testified that his plan was to restore the damage caused by the truck and to install new vinyl siding. He purchased the necessary materials and rented scaffolding. Doug tendered receipts for some \$1,298 in building supplies, although more than half of that is for scaffolding rentals from November of 2019 to December of 2020, at \$60.82 per month, until Doug purchased the scaffolding outright. Doug started the job but never completed it. The scaffolding was set up around the structure in 2019 and was still there at the time of the trial. Doug gave no credible explanation as to why he never finished the project. In his evidence in chief, he left the impression that he did not complete the work because Charles intercepted and retained the cheque that ICBC had sent to cover the repairs. However, I did not find Doug's evidence on that point to be credible, and Doug himself acknowledged that he has never actually asked Charles to reimburse him for the amounts he spent on the garage repair.

(2) Doug's Role in Providing Care for his Parents

[72] Doug testified at length about his involvement in caring for his parents in their final few years. Prior to 2012, both of his parents were in relatively good health and able to look after themselves. Doug admitted in cross-examination that up until this point time, when he was 54, his mother prepared most of the family meals.

[73] Doug testified that starting in 2012, Roy and Marguerite experienced more and more health challenges and physical limitations, as a result of which they became increasingly dependant on him in managing the household, in meeting their daily personal needs, and in overseeing their healthcare and medical treatments, some of which are described in more detail below. Doug testified that by the time he was laid off from Able Electronics in August of 2014, he chose not to look for another job outside of the house, in favour of staying home to look after his parents.

[74] In the course of his evidence in chief, Doug testified at length about the various medical challenges that each of his parents faced over the final few years of their lives, and the role that he played in seeking out appropriate specialists, taking them to medical appointments, and advocating for proper treatments and second opinions. I am not going to review all of the details. It is enough to say that in his trial testimony, Doug displayed an intimate familiarity with the medical histories of both parents from 2012 onward. I am satisfied that this is the case because he was closely involved in overseeing their medical care in the ways described above.

[75] In reviewing his father Roy's medical history, Doug was able to name and describe the treatments provided by Roy's cardiac specialists (Dr. Sedlak, Dr. Boone, and Dr. McCarthy), eye specialist (Dr. Finlay), ear specialist (Dr. Westerberg), and the internal specialist who treated Roy's stomach cancer (Dr. Gray). In reviewing his mother Marguerite's medical history, Doug recounted the names and roles of many health care professionals who

provided care for Marguerite over the years, with extensive involvement and coordination from Doug. Without descending into all of the details of Doug's role in Roy and Marguerite's healthcare, I will simply recount two examples, one involving Marguerite and the other involving Roy, that demonstrate the extent of Doug's effort and commitment.

- [76] The first example has to do with Doug's response to his mother's broken leg in 2012. Doug testified that after Marguerite was admitted to the hospital, he went to see her every day, often twice per day. When it was determined that Marguerite had suffered a fractured lower left tibia, the general consensus amongst her treatment providers was that at her advanced age, she would never walk again. Doug would not accept that. He testified that when it came to his mother's recovery, failure was not an option. Over a period of many months, Doug oversaw a rehabilitation plan involving a team of healthcare specialists consisting of a physiotherapist, a massage therapist, a chiropractor, and a nutritionist. Doug worked with the hospital administrator, Ms. Guscott, who handled all of the paperwork and arranged for the funding. Doug oversaw his mother's recovery by helping her do exercises in bed, purchasing and encouraging her to use a foot pedal machine, helping her with physiotherapy overseen by Mr. Dejanaov, and arranging and overseeing appointments with the massage therapist Mr. Morozov. With Doug's assistance, Marguerite progressed from being bed ridden, to walking a few steps at a time with parallel bars in the physiotherapy facility, to walking the hallways of the hospital under her own steam with the aid of a walker. After Marguerite's release from the hospital Doug drove her to regular appointments with the chiropractor, Dr. Hunter, from January of 2014 to November of 2014. Doug's evidence on all of this was confirmed by contemporaneous clinical records, viva voce testimony from Mr. Dejanov and Mr. Morozov, and admissions of fact with respect to Ms. Guscott.
- [77] The second example has to do with Doug's efforts to help his father to obtain proper treatment for his heart condition. In 2013, Roy started to show signs of heart trouble, including shortness of breath and fatigue. His doctors determined that he had a leaky tricuspid valve. Roy's treating specialists considered that he was too weak for conventional heart surgery. However, Doug persisted and learned about a less invasive procedure that was not offered in Canada but was available upon referral at a hospital in Chicago. On Doug's initiative, Dr. Sedlak approved funding for Roy to travel to Chicago to meet with the cardiologist in charge of the program. In November of 2015, Doug accompanied Roy on a trip to Chicago, where Roy met with the physician in charge of the program, Dr. McCarthy. Doug's testimony about all of this was confirmed by contemporaneous medical records, and by viva voce testimony from Roy's cardiologist, Dr. Sedlak. In the end, Roy was not approved for the procedure in Chicago, because of his advanced age and other ailments. However, this is nonetheless an example of Doug's commitment and resourcefulness in advocating for the best possible medical treatment for his parents.
- [78] Doug testified that from about 2013 or 2014 onward, he was primarily responsible for most of the household chores at the Briarwood Property, including doing the washing, cleaning, vacuuming, cooking, and paying the bills. He was also responsible for Marguerite's personal

care, including ensuring that she was bathed regularly, helping her get around the house, and changing her diapers after she became incontinent. With regard to Roy, the evidence indicates that he required less hands-on personal attention. While Roy was "slowing down" considerably, he was better able to look after his own personal needs than Marguerite. Doug also drove his parents to medical appointments and therapy sessions, filled their medical prescriptions, and oversaw their daily regimen of pills.

- [79] There is some evidence that for the period of time from 2015 until 2017 when Neil was living at the Briarwood Property, he assisted Doug in providing care for Roy and Marguerite. However, the evidence reflects that Neil played a secondary role to Doug. Indeed, I find that Neil's contribution to the care of Roy and Marguerite was minimal in comparison to Doug's. Neil more or less acknowledged this in his trial testimony.
- [80] Having said all of this, it is also necessary to point out that although Doug clearly cared for the well being of his parents, and although he was a forceful advocate for their healthcare needs, his approach did not always produce positive results. Doug's obstinance was sometimes counterproductive.
- [81] One example of this can be found in the trial testimony of Dr. Wong, Marguerite's family physician. Dr. Wong gave evidence that in 2013, Doug started accompanying Marguerite to her appointments. Doug often intervened and spoke on behalf of his mother. Dr. Wong had concerns about Marguerite's cognitive decline and discussed it with Doug, only to be met with obstinance or denial on Doug's part. Doug was either unable or unwilling to acknowledge his mother's cognitive difficulties.
- [82] Another example of how Doug's strongly held views did not necessarily produce the best healthcare outcome emerges from the events flowing from Marguerite's hip injury in 2017. After Marguerite was admitted to the hospital with a broken hip, the attending physician - Dr. Dunwoody - was concerned that Marguerite could have a potentially fatal blood clot, and wanted approval to operate immediately. Doug refused to give his consent. The doctor then called Charles, who gave consent on Marguerite's behalf, and the surgery proceeded. In his trial testimony, Doug acknowledged all of this, explaining that he refused to consent because he felt there was something "off" with Dr. Dunwoody, and he was trying to get a second opinion. Although I accept without hesitation that Doug cared for his mother's wellbeing, this was an instance where his obstinance and reluctance to accept expert medical advice may not have been in his mother's best interests.
- [83] I would sum all of this up in four points.
- [84] First, Doug was the principal caregiver for both of his parents in their final years.
- [85] Second, and more specifically with respect to Marguerite, from 2012 onward, she had serious mobility issues and required daily personal care from that point forward. Doug played that role. He continued to work outside of the home - part time - from 2012 to 2014, but when he was laid off from Able Electronics in August of 2014, he chose not to look for

another job. From that point onward Doug was his mother's principal care provider. He continued in that role until Marguerite went into the hospital for the last time on 16 November 2017.

[86] Third, with respect to Roy, as of 2014, he was 91 years old, and suffering from a serious heart condition and stomach cancer. He did not have the same mobility issues and personal care needs as his wife, but I find that he needed more or less constant support. Doug played that role from September of 2014 until Roy passed away on 8 November 2016.

[87] Fourth, while Doug was committed to his role as primary caregiver for Roy and Marguerite, and he generally had their best interests at heart, sometimes his mistrust of healthcare providers and refusal to take professional advice was counterproductive.

(3) Doug's Expectations Concerning the Estate

[88] The third plank underlying the plaintiff's claim is his asserted expectation of receiving the Briarwood Property and certain investments upon the passing of his parents, based on statements that his parents allegedly made to him, and to others in his presence. There would appear to be six different statements or groups of statements in issue, namely statements made: (i) on or around 19 April 2014, when Doug was given a power of attorney with respect to Roy's bank accounts, (ii) in or around September of 2014, after Able Electronics closed and Doug lost his job, (iii) in or around November 2015, before Doug and Roy departed for Chicago to consult with a heart specialist, (iv) on 29 July 2016, when Roy and Marguerite both signed authorizations for Doug to conduct transactions in respect of the couple's investments, (v) shortly before Roy's passing on 8 November 2016, and (vi) at some unspecified time, to a neighbor Ms. Townley.

[89] All of the statements in question were out-of-court statements made by Roy or Marguerite, with no opportunity for the opposing party to cross-examine the declarants, who are now deceased. This evidence engages concerns about the hearsay rule. In the course of the trial, I received submissions from the parties, and ruled that the statements allegedly made by Roy and Marguerite were prima facie admissible under the statement of intentions exception to the hearsay rule, with reasons to follow. Set out below are my reasons for reaching that conclusion.

[90] The admissibility of evidence with respect to a deceased will-maker's "reasons" for limiting a child's inheritance in the context of a will variation proceeding is dealt with under s. 62 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA]. More specifically, s. 62(1) provides that on an application to vary a will under s. 60, the court may accept any "evidence it considers proper respecting the will-maker's reasons, so far as may be determined" for, among other things, "not making adequate provision for the will-maker's spouse or children". Further, s. 62(2) states that, in assessing the weight given to such statements, the court must consider "all the circumstances from which an inference may reasonably be drawn about the accuracy or otherwise" of the statements in issue.

- [91] In this particular case, s. 62 would allow for the admission and consideration of out-of-court statements made by Marguerite as to her reasons for not providing more generously for Doug in her will. However, this provision does not really assist the plaintiff in his reliance on the six groups of statements in issue, for several reasons.
- [92] First, the out-of-court statements in issue are not statements about the "reasons" why Marguerite did not make adequate provision for Doug in her will, but rather, statements relied upon by Doug to prove an expectation of receiving a greater share of the estate. It is not entirely clear to me that such assertions qualify as statements respecting the will-maker's reasons for making or not making "adequate provision" as contemplated in s. 62(1).
- [93] Second, and perhaps more importantly, s. 62 only applies to evidence respecting the "will-maker's reasons". In this case, the "will-maker" is Doug's mother Marguerite. This provision does not assist Doug in seeking to rely on statements allegedly made by his father Roy, respecting Roy's wishes as to his own estate. Thus, s. 62 would only apply to Roy's statements if (a) Marguerite adopted them as her own, or (b) the statements were about Marguerite's intentions or reasons, which of course would be double hearsay. To be clear, there is case law under what is now s. 62 of WESA holding that the provision is not limited to statements made by the testator him or herself. See, for example, *Kelly v. Baker* (1996), 82 B.C.A.C. 150 at para. 32-33. However, the point is that to be admissible under s. 62, the statements must relate to the testator's reasons for making or not making provision for a particular individual in the testator's will. In this particular case, Roy's statements about his own intentions or wishes with regard to Doug's inheritance are, at best, indirect evidence of Marguerite's intentions or reasons respecting her will.
- [94] The plaintiff argued that the evidence with respect to the out-of-court statements made by both Roy and Marguerite should be considered under either the state of mind exception, or the principled exception to the hearsay rule.
- [95] With regard to the state of mind exception to the hearsay rule, plaintiff's counsel cited *R. v. P. (R.)* (1990), 58 C.C.C. (3d) 334 (Ont. H.C.). Defendant's counsel cited a number of additional cases, namely *R. v. Smith*, [1992] 2 S.C.R. 915, *R. v. Evans*, 2002 BCSC 1674 at para. 35, and *Pasko v. Pasko*, 2002 BCSC 435. This case law establishes that there is an exception to the hearsay rule allowing for admission of a deceased declarant's utterances as to his or her intention or state of mind at the time of the declaration, to prove the declarant's intent or state of mind, but not for the truth of any underlying factual assertions.
- [96] With regard to the principled exception, counsel for the plaintiff cited *Modonese v. Delac Estate*, 2011 BCSC 82, *aff'd* 2011 BCCA 501, and *Harshenin v. Khadikin*, 2015 BCSC 1213. In the latter case, Justice Dardi cited *R. v. Khelawon*, 2006 SCC 57 at para. 2, setting out the "twin criteria" of necessity and reliability. Necessity is clearly made out in a case such as this, where the declarants are deceased. With regard to the reliability criterion, the question is whether the impugned statements meet the standard of "threshold reliability", on the basis that their contents are considered trustworthy "because of the way in which [they] came

about", or "if circumstances permit the ultimate trier of fact to sufficiently assess [their] worth". More recently, the concept of threshold reliability was reviewed and summarized in *R. v. Bradshaw*, 2017 SCC 35 at para. 26-32.

- [97] Counsel for the defendant also relied on *Anderson v. Anderson*, 2010 BCSC 911, in which Justice Dardi explained that in some cases the most controversial question will be whether the statement in issue was made in the first place. Quite apart from the admissibility and use of an out-of-court statement under a hearsay exception, the trier of fact must be satisfied on a balance of probabilities that the statement was in fact made: *Anderson* at para. 58; *R. v. Evans*, [1993] 3 S.C.R. 653 at p. 667-668. In *Evans*, Justice Sopinka described this exercise as an inquiry into the "authenticity" of the out-of-court statement. By its nature, this inquiry requires a consideration of the truthfulness and reliability of the witness testimony through which the impugned statement is adduced into evidence: *Anderson* at para. 58, citing *Creutz v. Winther Estate*, 2007 BCSC 1463 and *Halfpenny v. Holien* (1997), 37 B.C.L.R. (3d) 186 (S.C.).
- [98] Based on the submissions of the parties during the trial, I concluded that the plaintiff's evidence about statements made by Roy and Marguerite were prima facie admissible under the state of mind exception. Having found the statements prima facie admissible on that basis, it was unnecessary to consider the principled exception to the hearsay rule.
- [99] I should add that my mid-trial ruling was necessarily subject to several caveats.
- [100] First, the out-of-court statements of Roy and Marguerite are only admissible within the limits of the state of mind exception to the hearsay rule. In other words, only contemporaneous statements made by Roy and Marguerite about their present state of mind are admissible. Out of court statements that contain underlying factual assertions are inadmissible to prove those factual assertions.
- [101] Second, because I made the ruling in the middle of the trial, before hearing all of the evidence, I was unable at the time to engage in any analysis of the truthfulness and reliability of the witness testimony through which the hearsay statements were tendered into evidence. This goes to the point made by Justice Dardi in *Anderson*, namely that in some cases the issue will not be whether the out-of-court statement is admissible under an exception to the hearsay rule, but whether the statement was made at all. This question could only be addressed at the end of the case, after hearing all of the evidence, because the answer depends on the credibility and reliability of the witness testimony assessed in the context of the evidence as a whole.
- [102] Having delineated the contours of admissibility and use of the out-of-court statements attributed to Roy and Marguerite, I will next discuss the specific statements or groups of statements relied upon by the plaintiff.

Statements Made on or Around the time when Doug was Given a Power of Attorney with respect to Roy's CIBC Accounts

- [103] There is undisputed evidence that on 19 April 2014, Roy signed a "General Power of Attorney" document with respect to his CIBC bank accounts. The document appointed Doug as Roy's attorney, to act on Roy's behalf in carrying out banking transactions in relation to all of Roy's CIBC accounts. Further, the standard term requiring the attorney to act solely and exclusively for the client's benefit was crossed out, and replaced with handwriting stating, "My attorney may use my property for the benefit of anyone, including my attorney". This alteration was initialled by Roy. The document was signed by Roy, whose signature was witnessed by a representative of the bank. The document was also signed by Doug, indicating his acceptance of the appointment as Roy's attorney. Doug's identity was verified with both a driver's license and a CIBC Visa card in his name, photocopies of which are appended to the power of attorney document.
- [104] The CIBC power of attorney document was tendered in evidence without objection and is admissible under the document agreement between the parties, as a business record. The evidence that is in dispute is Doug's viva voce testimony about what Roy said at or around the time that the power of attorney document was signed. Doug's testimony was that Roy said, "consider this your money", or words to that effect. This is an out-of-court statement made by a deceased declarant who is unavailable for cross-examination. It is presumptively inadmissible, but I ruled it prima facie admissible under the statement of intention exception to the hearsay rule. However, that is not the end of the matter. What remains to be considered is whether the statement was in fact made in the first place, and if it was made, what ultimate weight or value can be placed on it.
- [105] In considering the issue of whether the statement in issue was in fact made, I am guided by Anderson and the cases cited therein. The analysis turns almost entirely on the credibility and reliability of Doug's viva voce testimony, as there were no other witnesses to the statement in question.
- [106] Doug's testimony that Roy told him to "consider this your money" is at least somewhat consistent with the handwritten notation on the power of attorney document itself, authorizing Doug, as attorney, to use the money in Roy's CIBC account for the benefit of anyone, including Doug. Despite this, there are many reasons to question the truthfulness and reliability of Doug's evidence on this point.
- [107] On the truthfulness front, Doug's testimony is entirely self serving, and he has an obvious self interest in the proceedings. He is interested financially in the outcome, and in the course of his testimony he displayed obvious bitterness and animus toward the defendants, his two brothers. Moreover, I find it hard to understand why, if Roy told Doug to consider the CIBC funds "his", Doug's current claim does not include these funds, which passed to Marguerite under Roy's will when he died. Despite Doug's claim to have been told that he should consider the CIBC funds "his", his current claim only includes the Briarwood Property and the Edward Jones investments.

- [108] I also have more general and overriding concerns about the credibility and reliability of Doug's trial testimony. These concerns cause me to approach Doug's evidence about this particular statement with considerable scepticism. Throughout his testimony, Doug was prone to make categorical, sweeping statements of questionable credence and reliability. Viewed in this light, I have no confidence in the truthfulness or the accuracy of Doug's assertion that his father told him to consider the money in the CIBC accounts as his own.
- [109] One must be careful not to equate granting a power of attorney including unlimited authority to handle certain property with the act of gifting the property itself. The CIBC accounts remained in Roy's name, and under his will they were to pass first to Marguerite upon Roy's demise. Even if Roy said something to Doug about the CIBC accounts at the time that he signed the power of attorney, I have no confidence that he in fact said "consider this money yours". Roy could easily have said something slightly different, like, "handle the money how you see fit", which Doug then recounted in his testimony in a more categorical and self-serving way.
- [110] Weighing up all of this evidence, I am not satisfied on a balance of probabilities that Roy actually made the statement in issue.
- [111] I should add that even if I was satisfied that Roy actually made the statement in issue, that is, "consider this money yours", I would not attach any weight to it in any event. The statement is hearsay, and although I found it prima facie admissible under the state of mind exception, it is still necessary to consider how much weight to give to it as the trier of fact. The hearsay dangers here are substantial. Since Roy is not available for cross-examination, it is hard to know whether Roy was sincere when he told Doug to "consider this money yours", and what exactly Roy meant or intended, in the context of signing a power of attorney document that gave Doug the power to undertake transactions, including the power to effect transactions for his own benefit, while at the same time not making Doug an actual joint owner of the accounts themselves.

Statements Made in or around September of 2014, after Doug Lost his Job at Able Electronics

- [112] Doug testified that when Charles sold Able Electronics, he was fired or laid off and received no pension. Doug testified that Roy made various statements to him in the wake of this event. The statements recounted by Doug fall into two sub-categories. First, Doug recounted statements from Roy expressing disappointment at Charles for failing to provide Doug with a pension. Second, Doug recounted statements by Roy offering to pay him a salary for looking after Roy and Marguerite, rather than looking for a new job. I will recount the details of each sub-category in turn.
- [113] Throughout his testimony, Doug returned over and over again to what he claims Roy said to him after he was laid off from Able Electronics, with no pension. In particular, Doug testified that Roy made the following statements in this regard:

- (a) Roy said he was "not happy" about how Doug was treated when he was let go from Able Electronics. From the context, I would interpret the reference to how Doug was "treated" to be a reference to the actions of Charles in laying off Doug.
 - (b) Roy said "we wasted our time dealing with Charlie" and "we should never have been involved with him at all". From the context, I interpret the term "we" to refer to Roy and Doug.
 - (c) Roy said he wanted Doug to have the Edward Jones investments. Roy said these would be Doug's "retirement plan".
 - (d) Roy said he wanted Doug to "keep the house", which from the context I would consider to be a reference to the Briarwood Property.
- [114] The sole source of evidence with respect to all of these statements is Doug's trial testimony. This evidence is self-serving and reflective of Doug's attitude of continuing bitterness toward his brother Charles. Given the concerns I have with the credibility and reliability of Doug's trial testimony, I cannot accept that these statements were actually made by Roy, as opposed to being mere projections of Doug's own feelings toward Charles.
- [115] Doug also gave testimony about an offer to pay him \$25,000 per year to look after his parents. In particular, Doug testified in chief that after he lost his job with Able Electronics, Roy offered him \$25,000 per year to be a full-time caregiver for himself and Marguerite. In cross-examination, Doug testified that Roy initially made the offer while he was still working at Able Electronics, and then later repeated the offer after Doug lost his job. Both times, Doug declined the offer, indicating that he did not need to be paid to look after his parents.
- [116] I must be sceptical of Doug's viva voce testimony on this point, given the self-serving nature of this evidence, and the many concerns I have with the credibility and reliability of Doug's trial testimony.
- [117] However, there is some objective evidence to support Doug's testimony on this point. In particular, on 29 July 2016, both Roy and Marguerite executed "Trading Authorization" forms with respect to their Edward Jones investment funds. These documents authorized Doug to give instructions and conduct transactions in relation to the Edward Jones funds. Under the heading "Personal Information About the Individual Who will have Trading Authorization", the forms identify Doug's occupation as "Caretaker", and list his employer as "Self-Employed". Further, one of the two forms lists the employer's address as "Home Address, Burnaby, BC", while the other form simply lists "Burnaby, BC". The Trading Authorization forms were dated and signed by Roy and Marguerite respectively, and witnessed by their financial advisor, Ed Sernoski, who testified as a witness for the plaintiff as described in more detail below.
- [118] The description of Doug's occupation in the Edward Jones Trading Authorization forms signed on 29 July 2016 can be contrasted with the description of his occupation in the CIBC power of attorney document signed on 19 April 2014. The CIBC document, which was

executed while Doug still worked at Able Electronics, described Doug's occupation as "Warehouse Manager", which is consistent with his position at Able Electronics. This suggests that the change in Doug's occupation in the Edward Jones authorization forms was intentional, and reflective of Doug's change in status from a warehouse worker to a self-employed caregiver.

- [119] I find that the Edward Jones authorization documents support and reinforce Doug's viva voce testimony that after he was laid off from Able Electronics, Roy offered to pay him \$25,000 per year to be a full-time caretaker for Roy and Marguerite. I note as well, the overwhelming evidence that by October of 2014, Doug had become the primary caregiver for both of his elderly parents. Roy's proposal also makes logical sense for a person in Roy's position at the time. Roy and Marguerite were both elderly and, I find, clearly interested in staying in and being cared for in their home. In this context, it would have made good financial sense for Roy and Marguerite to pay Doug a salary of \$25,000 per year, rather than hiring an outside worker at an equal or greater cost, or alternatively going into private care at likely an even higher cost.
- [120] On all the evidence I have just reviewed, I accept Doug's testimony that after he was let go from Able Electronics, Roy offered to pay him a salary of \$25,000 per year to be a full time, in-home caregiver for Roy and Marguerite. I further accept that Doug declined the offer of a \$25,000 salary. This evidence affords some support for Doug's claim to a reasonable expectation of an entitlement to disproportionate share of Marguerite's estate. Doug testified that his reason for declining was altruistic, namely that he did not feel he needed to be paid to look after his elderly parents. However, I infer that Doug's response also made some financial sense from the perspective of someone who was expecting to eventually receive a substantial inheritance from his parents' estate. Taking \$25,000 per year while his parents were still alive would only have reduced the value of the estate that he would receive later.
- [121] In assessing the weight attached to this evidence, one cannot overlook that there is no direct evidence that Marguerite joined in Roy's offer to pay Doug a salary of \$25,000 per year. This is relevant because the ultimate issue is Doug's alleged expectation of receiving an inheritance from Marguerite's estate, not Roy's estate. The reasonableness of Doug's expectation may be informed by the fact that the salary was proposed by Roy, not Marguerite. However, it is also relevant that Marguerite stood to benefit from the arrangement, both materially and financially, by having Doug act as her full-time caregiver in the family home, rather than having to hire a third-party caregiver, or having to go into a private facility at potentially significant expense to her estate.

Statements Made in or Around November 2015, before Doug and Roy Travelled to Chicago to Consult with a Heart Specialist

- [122] Doug testified that before he and Roy went to Chicago in November of 2015 to consult with Dr. McCarthy, Roy, Marguerite, and Doug each prepared "new wills". In particular, Doug testified that:
- (a) Roy and Marguerite both said they wanted their wills changed.
 - (b) Roy asked Marguerite and Doug to each "put notes together" for their wills.
 - (c) They "both" wanted Doug to have the house, the Edward Jones investments, and the CIBC bank accounts. They wanted Neil to have the balance of the estate.
 - (d) Roy put "something in writing" for both Marguerite and himself. It was on lined paper. There was one page for each of them. Roy had a page, Marguerite had a page, and Doug had a page. Doug was present in the kitchen as Roy wrote up the documents. Roy said, "this is what I want to be in the new wills".
 - (e) Doug said he prepared a will too, in case something happened to him on the trip.
- [123] Doug went on to testify that back in 2014, Roy had an issue with his sister's will, as a result of which he consulted a lawyer, Sandy Thompson. Doug, Neil, and Charles got Mr. Thompson involved to "fight the will". Doug testified that he talked to Mr. Thompson at his father's urging about "the new wills", but Mr. Thompson said he did not have time to assist.
- [124] Based on a notice to admit filed by the defendants, the following are admitted facts with respect to Mr. Thompson's dealings with the Rawlins family: (a) Mr. Thompson is a lawyer who practices in the area of wills and estates, (b) he met with Roy and Marguerite on several occasions, (c) he was never asked by either Roy or Marguerite to change their wills, (d) he never had any discussions with Roy or Marguerite about their estates or end of life planning, and (d) Mr. Thompson is unaware of any occasion when anyone from the Rawlins family contacted his office to make an appointment to discuss changing a will, although he acknowledges that he is not aware of every call that comes in to his office.
- [125] The assertions attributed to Roy and Marguerite are out-of-court statements made by deceased declarants, who are obviously not available for cross-examination. They are presumptively inadmissible under the hearsay rule, but in my mid-trial ruling I found them to be prima facie admissible under the statement of intention exception.
- [126] The first step in considering the evidentiary value of these statements is to determine whether they were made in the first place. The only evidence about these statements comes from Doug's viva voce testimony. I have many concerns about the credibility and reliability of Doug's testimony in general. I also have specific concerns about the credibility of Doug's testimony with respect to the events that preceded Doug and Roy's trip to Chicago. Doug testified that at Roy's request, he and Marguerite each prepared notes to be used in creating the new wills. However, Doug also testified that he saw Roy write out one page each for himself and Marguerite. The testimony on these two points is not entirely consistent. On the one hand, Doug says he and Marguerite were asked to prepare their own handwritten

notes, while on the other hand Doug says it was his father who actually wrote out one page of notes for each of them.

- [127] Perhaps most importantly, the three pages of handwritten notes that Doug says were created (one each for Roy, Marguerite, and Doug) were never produced and marked in evidence at trial. The evidence as a whole establishes that Roy had access to and control over Roy and Marguerite's documents, at the Briarwood Property. Recall the evidence that Doug ultimately produced Marguerite's original will dated 8 June 1977, presumably from Marguerite's papers inside the Briarwood Property. I infer that he only did so at the last minute, after Charles had applied for and been granted administration of Marguerite's estate without a will.
- [128] Moreover, there was no reference whatsoever to the alleged handwritten notes during the 29 July 2016 meeting where Roy told Doug to "go see the lawyer" about preparing new wills, as discussed in more detail below. If such notes existed, I find it highly unlikely and, on my assessment of the evidence, unbelievable that Roy would not have mentioned them or produced them to show Doug and Mr. Sernoski during the meeting in which he allegedly gave instructions to Doug to go see the lawyer about the new wills.
- [129] Against this backdrop, I do not accept Doug's testimony that Roy prepared pages of notes for both himself and Marguerite with the intention of creating "new wills", prior to the trip to Chicago in November of 2015. Nor do I accept Doug's evidence that Roy and Marguerite said at the time that they wanted Doug to inherit the Briarwood Property, the Edward Jones investments, and the CIBC bank accounts. These statements are inherently self-serving, and not supported by any independent evidence.
- [130] Having concluded that the statements Doug claims his parents made prior to the Chicago trip were never made, I do not need to embark on any detailed consideration of the ultimate weight that might be attached to them. I will simply observe that even if I found that these statements were made, I would not place any weight whatsoever on them, in the absence of the handwritten notes that Doug claims his father created during the relevant discussion.

Statements Made on 29 July 2016, when Roy and Marguerite Signed Trading Authorizations in relation to the Edward Jones Investments

- [131] The evidence with respect to these statements consists of (a) viva voce testimony from Doug, (b) viva voce testimony from the family's financial advisor Ed Sernoski, and (c) the Trading Authorization documents themselves.
- [132] I begin my review of the evidence with the Trading Authorization documents, which set the stage for the viva voce testimony. As noted above, the plaintiff tendered into evidence two Edward Jones Trading Authorization documents, one executed by Roy and the other executed by Marguerite. Both were dated 29 July 2016. Their content is more or less identical, although they are not exact duplicates. They were filled out by hand, and the

information on both authorizations is more or less the same, with the exception that the client in one case was Roy and in the other case was Marguerite. Each document designated Doug to be an agent with authority to buy, sell, and trade investments in the Edward Jones accounts. Doug's identity was verified by his driver's license. Roy's Trading Authorization was signed by Roy and Doug, and witnessed by Mr. Sernoski. Marguerite's Trading Authorization was signed by Marguerite and Doug, and witnessed by Mr. Sernoski.

- [133] Doug's viva voce testimony was that these trading authorization documents were signed by himself, Roy, and Marguerite, during a meeting at the Briarwood Property. All of the signatures were witnessed by Mr. Sernoski, who confirmed the same in his testimony at trial.
- [134] In his testimony in chief, Doug recounted that in the course of the 29 July 2016 meeting, his parents made the following statements, in the presence of both Doug and Mr. Sernoski:
- (a) Roy did not want the house sold. Roy made comments about how the neighborhood was changing and he did not like it.
 - (b) Roy wanted Doug to "live in" the house. Roy wanted Doug to "have" the house.
 - (c) Roy was "disgusted with" Charles for laying Doug off from Able Electronics without a pension. Roy said he "made a big mistake helping Charlie as much as he did".
 - (d) Roy told Doug to call up Sandy Thompson, a lawyer whom Roy had retained in the past to act for him in some dispute regarding the estate of Roy's sister. Roy said, "I want two new wills done up", with "you [Doug] in control of everything".
 - (e) Marguerite "agreed", and wanted two new wills made out, with Doug in "complete control"; Charles was not to be "in the will at all"; Charles was to have "no authority" in the will.
- [135] In cross-examination, Doug gave the following additional evidence about who said what during the meeting:
- (a) Roy, Doug, and Mr. Sernoski were in the meeting, and Marguerite was "in the kitchen".
 - (b) When it was suggested that Marguerite did not have any input into what was said, Doug disagreed. He testified that Marguerite "was listening" and "heard what was going on".
 - (c) When it was suggested that Marguerite never expressed her views about what should happen, Doug responded that Marguerite "told me later what her views were".
 - (d) When it was suggested that Marguerite never expressed her views to Mr. Sernoski, Doug responded that she "had papers to sign so she talked to him". Doug added, "I heard it", "I was in the living room", and "she was in the kitchen".
 - (e) When asked who was leading the meeting, Roy or Doug, Doug responded that "we were both the same".

- (f) When it was suggested that Roy was the one who decided to give Doug trading authorization over the Edward Jones investments, and that Marguerite did not have the capacity to give instructions, Doug replied that Marguerite was "not interested", it was "not her thing", and Marguerite had "my dad and me to look after her investments".
 - (g) When asked how Marguerite signed the forms, Doug responded that Mr. Sernoski went into the kitchen and talked to her and she signed.
- [136] In re-examination, Doug added that in the course of the meeting, Mr. Sernoski spoke with all three of them, Roy, Doug, and Marguerite. I interpret this evidence to mean that at various times during the meeting, Mr. Sernoski spoke with Roy, Doug, and Marguerite, although he did not necessarily speak with all three of them at the same time.
- [137] Doug also testified that he called Sandy Thompson's office and spoke with a paralegal named Courtney Brock with regard to the wills, but never took any further steps to meet with Mr. Thompson or arrange for any changes to Roy and Marguerite's wills.
- [138] Recall the admissions of fact with respect to Mr. Thompson, namely that Mr. Thompson: (a) met with Roy and Marguerite on several occasions, but never had any discussions without about their wills, (b) was never asked by Roy or Marguerite to change their wills, and (c) was unaware of any occasion when anyone from the Rawlins family contacted his office to make an appointment to discuss changing a will, although Mr. Thompson acknowledged that he is not aware of every call that comes in to his office. Finally, it is an admitted fact that Courtney Brock was Mr. Thompson's paralegal.
- [139] In his testimony, Mr. Sernoski confirmed that Roy, Marguerite, and Doug each signed the trading authorizations in Mr. Sernoski's presence at the Briarwood Property on 26 July 2016. Mr. Sernoski testified that Marguerite and Roy wanted to bring Doug into the accounts so that if they needed help, Doug could make decisions on transactions. The trading authorization forms gave Doug the power to make trades on the Edward Jones accounts. I take this to be Mr. Sernoski's description of the effect of the Trading Authorizations, not evidence about any particular statements or declarations made by Roy or Marguerite during the meeting.
- [140] Mr. Sernoski testified that:
- (a) Roy spoke about the house and what should happen with it. Mr. Sernoski did not have any conversation with Marguerite about the house.
 - (b) Roy said he wanted the house to "stay with the family". The neighborhood was changing, and he did not like it. He knew the market had gone way up, and if the house was sold, then "they" would "never get back in".
 - (c) Roy was quite concerned about Marguerite. He wanted her to stay in the house. He wanted the house to remain "in the family" and not be sold.

- (d) Roy talked about "the will". He wanted the will changed so that Doug would get the house. Mr. Sernoski confirmed that Roy said this several times, including during the meeting at the house on 29 July 2016 when they signed the Trading Authorization forms.
 - (e) Roy told Doug, "you've got to get this changed", "go to down to the lawyer and talk to him", and "set up a meeting".
 - (f) When asked where in the house these discussions took place, Mr. Sernoski replied that he set up all of his papers "on the coffee table". Mr. Sernoski testified that Marguerite "would have been in the room", but "she did not participate that much".
 - (g) Mr. Sernoski confirmed that with respect to decisions on Roy and Marguerite's joint accounts, he took instructions from Roy.
 - (h) Marguerite had "limited communication" with Mr. Sernoski. She was "at the meeting", but "her communication was limited".
 - (i) Mr. Sernoski did not conduct any kind of competency assessment of Marguerite before she signed the Trading Authorization.
 - (j) Neither Roy nor Marguerite ever asked Mr. Sernoski to refer them to a lawyer.
- [141] Mr. Sernoski confirmed that all of the Edward Jones investments were set up to go to Marguerite if she survived Roy. After Roy passed away, there was never any change to the paperwork.
- [142] All of the out-of-court statements I have just reviewed are hearsay and presumptively inadmissible, but in the course of the trial I ruled that they were prima facie admissible under the state of mind exception to the hearsay rule. What remains to be considered is whether I am satisfied that the statements were in fact made, and what evidentiary value or weight should be attached to them.
- [143] Owing to concerns about the credibility and reliability of Doug's trial testimony, I am once again reluctant to accept any of his viva voce evidence as to oral statements allegedly made by his parents, without confirmatory evidence.
- [144] I find Mr. Sernoski to be a credible and reliable witness. He has no vested interest in these proceedings, and therefore no reason to mis-state or shade his evidence to favour one side or the other. I accept those portions of Doug's testimony that line up with Mr. Sernoski's evidence, but no more.
- [145] I therefore find that at the 29 July 2016 meeting, Roy said he wanted the house to stay in the family, he wanted Doug to get the house when he and Marguerite passed away, and he wanted both his will and Marguerite's will to be changed to this effect. I do not accept Doug's testimony that Roy said anything about wasting his time with Charles, or being disappointed with Charles for firing Doug from Able Electronics.

- [146] Nor do I accept Doug's evidence in chief that Marguerite "agreed with Roy", that she wanted new wills made out, and that she wanted to remove Charles from the wills. Doug more or less conceded in cross-examination that Marguerite was not actively involved in the conversation. Doug appeared to concede that Marguerite did not actually say anything at all during the meeting. Indeed, his testimony taken together with that of Mr. Sernoski indicates that Roy, Doug, and Mr. Sernoski had a conversation in the living room, while Marguerite sat in the kitchen. Doug also suggested that Marguerite was "not really interested", and that he and Roy looked after Marguerite's financial interests for her.
- [147] There is one other curious aspect of the evidence concerning the 29 July 2016 meeting. While the entire purpose of the meeting was for Roy and Marguerite to authorize Doug to conduct transactions in relation to the Edward Jones accounts, neither Doug nor Mr. Sernoski testified that Roy (or Marguerite) said anything about Doug inheriting the entirety of the Edward Jones investments, to the exclusion of Charles and Neil. Rather, Roy's comments seemed to be focused on the house. And for her part, Marguerite did not say anything of substance at the meeting.
- [148] Having concluded that certain statements attributed to Roy were in fact made on 29 July 2016, the final step in the analysis is to consider the weight to be assigned to this evidence. Considering all the evidence together, it does appear that Roy was quite sincere in his effort to involve Doug in the handling of the family's property and investments. This was the very reason why Roy signed the CIBC power of attorney document, and Roy (and Marguerite) signed the Edward Jones Trading Authorization forms.
- [149] The more controversial issues are, first, ascertaining Roy's true wishes or intentions with respect to Doug's inheritance, and second and perhaps more importantly, ascertaining Marguerite's wishes in this regard. Any conclusion on these points would, in turn, shed some light on the reasonableness of Doug's inheritance expectations.
- [150] I find it noteworthy that in recounting both Roy and Marguerite's alleged statements about changing their wills, Doug used a number of phrases that are more consistent with Doug becoming the executor of the wills, rather than Doug becoming the sole beneficiary. According to Doug, Roy said he wanted two new wills done up "with you [Doug] in control of everything". Similarly, Doug alleges that Marguerite said the new wills should provide for Doug to be in "complete control"; Charles was not to be "in the will at all"; Charles was to have "no authority" in the will. Based on my analysis above I was not satisfied that Marguerite in fact made this statement, but the point is that in recounting his recollection of what his parents said about changing the wills, Doug repeatedly conflated "control" - which might reasonably be interpreted to be a reference to executorship - with inheritance.
- [151] To be fair, Mr. Sernoski's evidence was that Roy said on several occasions he wanted the wills changed so that Doug would "keep the house", that he wanted the house to "stay in the family", and if it was sold, "they" would never get back in to the market. All of this is consistent with an intention on Roy's part for Doug to inherit the Briarwood Property after

both he and Marguerite passed away. However, it is not at all clear what this would mean for the balance of the estate, or the inheritance of Charles and Neil. It could well be that Roy's sole preoccupation in suggesting changes to the wills was making arrangements so that the Briarwood Property would "stay in the family". To accomplish this, the wills might have been changed to provide that Doug inherited the house, with Charles and Neil inheriting a greater portion of the balance of the estate. Or Roy might have been contemplating leaving a "life estate" in the Briarwood Property to Doug, with the property going to one or both surviving brothers upon Doug's demise. Or it could be that Roy had not thought all the way through the issue to reach a clear decision or intention with regard to the final inheritance structure in the "new" wills.

- [152] Taking all of this into account, in the end, I am only able to reach two definitive conclusions with respect to Roy's wishes or intentions. First, I find that Roy wished to have the wills changed in some way. Second, I find that Roy wanted the wills to provide that Doug would somehow get to keep the Briarwood Property, so that it would stay "in the family" as long as possible.
- [153] I move next to a consideration of Marguerite's intentions. Here, as I have said above, I am not satisfied that Marguerite actually made any utterances or declarations of intent in the course of the 29 July 2016 meeting. I do not accept Doug's evidence that Marguerite's stated wishes were "exactly the same" as Roy's. I find, based on the whole of the evidence, that Marguerite was not engaged in the dialogue with Roy, Doug, and Mr. Sernoski. I find that Marguerite expressed no clear views about what should become of her estate.
- [154] This is significant because the ultimate issue in this case is whether Marguerite's original will, dated 8 June 1977, failed to make adequate provision for Doug. One of the factors relevant to that enquiry is what were Doug's reasonable expectations. Insofar as his mother's will is concerned, it is not clear that Marguerite shared Roy's views about how the estate should be divided or what Doug's inheritance should be.

Statements Made Shortly Before Roy's Passing on 8 November 2016

- [155] Doug also testified about statements allegedly made by Roy (and Marguerite) shortly before Roy's death. Specifically, Doug testified that:
- (a) The "last thing" Roy said to Doug was, "I wasted my time helping Charlie and so did you Doug".
 - (b) Roy said he wished he "hadn't helped Charlie out so much", because "the only person who ever gained from it was Charlie".
 - (c) Marguerite "agreed" with Roy. They were "both there at the same time when he said it".
- [156] These statements are presumptively inadmissible hearsay, but I found them to be prima facie admissible under the statement of intention exception to the hearsay rule.

- [157] However, based on my assessment of the entirety of the evidence at the conclusion of the case, I am not satisfied that these statements were in fact made. The only evidence of these statements comes from Doug's viva voce testimony. In addition to the general concerns about the credibility and reliability of Doug's testimony as a whole, I have more specific concerns about the credibility of Doug's evidence concerning these particular assertions.
- [158] Doug testified that this was "the last thing" Roy said to him. Doug did not give any details about where the conversation took place, or who was present, or what sparked Roy to make these statements. Still, from the context in which Doug related this event, the implication was it was some kind of dying declaration or final reflection by Roy on the dynamics of the family. However, Doug testified that Roy passed away unexpectedly while Doug was out of the house getting groceries, and Doug came home to find him deceased in bed. I find these two aspects of Doug's evidence to be internally inconsistent.
- [159] I also find Doug's testimony that Marguerite expressed agreement with Roy's statements to be contrived, and simply presented as an add on to Doug's initial account of "the last thing" his father said to him before he died.

Statements Made to a Neighbour at some Unspecified Time

- [160] Ms. Townley was a long-time neighbor to the Rawlins family. She gave evidence about an incident in which she went over to the Briarwood Property to see a new television that Doug had purchased for the family. Doug, Roy, Marguerite, and Ms. Townley were present at the time. Doug was setting up the television. In this context, Ms. Townley described the following statements made in her presence:
- (a) "They" said everything is going to be "his" anyway. From the context, I interpret the term "they" to be a reference to Roy and Marguerite, and I interpret the term "his" to be a reference to Doug.
 - (b) When asked who specifically said this, Ms. Townley replied that it was Marguerite.
 - (c) When asked whether Marguerite or Roy ever talked to Ms. Townley about what was going to happen with their house after they passed, Ms. Townley replied "sort of, yes, well, Doug will get everything anyway". Ms. Townley added that she "did not make a point of remembering it all".
- [161] The statements attributed to Marguerite and Roy by Ms. Townley are presumptively inadmissible hearsay, but in my mid-trial ruling I found them prima facie admissible under the state of mind exception.

- [162] When it comes to assessing whether these statements were in fact made, I have been given no reason to question Ms. Townley's credibility. I do have concerns about the reliability of Ms. Townley's account, owing to the slightly different ways in which she described what was said. However, in the end I am satisfied that while visiting the Rawlins residence, Ms. Townley overheard Marguerite make a comment to the effect that "everything is going to be Doug's anyway".
- [163] I turn to a consideration of the weight of this evidence. There are considerable hearsay dangers associated with this out-of-court declaration.
- [164] Since there is no evidence about the time when this statement was made, it is not possible to discern Marguerite's cognitive capacity at the time, which clearly worsened over the years. Although there is no expert evidence in the record, Marguerite's family physician Dr. Wong gave evidence from which one can conclude that Marguerite's cognitive capacity was deteriorating over time.
- [165] Since Marguerite is not available for cross-examination, it is not possible to assess whether she was being sincere when she made this statement to Ms. Townley, in front of Doug. I wonder whether she would have been prepared to make the same statement - that everything would be Doug's some day - in the presence of her other two sons, Charles and Neil.
- [166] Finally, it is difficult to assess what Marguerite meant by saying, "everything is going to be Doug's anyway". It is not clear whether Marguerite was referring to the contents of the house, the house itself, or her entire estate. It is also not clear whether, in saying "everything is going to be Doug's anyway", Marguerite was expressly thinking about excluding her other two sons, Charles and Neil, from any inheritance.
- (4) Benefits Doug Received by Living in the Briarwood Property, Largely at the Expense of His Parents, for His Entire Life
- [167] The defendants cited a fourth factor that weighs against Doug's claim to the Briarwood Property and the Edward Jones investments, namely the benefits Doug received by living in the family home, almost entirely at the expense of his parents, throughout his adult life. The defendants say that any claim Doug may have to a greater share in Marguerite's estate pales in comparison to the benefits he received in being completely dependant upon his parents for his entire life. Meanwhile Charles and Neil both moved out of the family home, started careers, bought houses, and basically supported themselves.
- [168] With respect to day-to-day expenses, Doug tendered handwritten lists covering a period from about 2008 to 2012, in which Roy kept track of amounts that Doug owed Roy for his personal expenses, and amounts that Roy owed Doug for covering Roy and Marguerite's expenses. For example, Roy and Marguerite covered the insurance for the family vehicle, but it cost extra to have Doug as an insured driver, so Doug paid the difference. Or if Doug incurred an expense for long distance phone calls, Roy wrote it on his list as an amount that

Doug owed to Roy. Conversely, if Doug paid for household or family expenses like cable bills out of his own funds, this would be written on the list as an amount that Roy owed to Doug. Doug agreed in cross-examination that Roy kept track of what he owed Doug, and vice versa, "down to the penny". Doug's recollection was that Roy continued to make such lists after 2012, but he "stopped keeping" the records. Once they settled up, Roy "got rid" of the lists.

[169] This was the extent of Doug's financial contribution toward the household. Doug testified in chief that he never paid rent, explaining that his parents felt he was going "above and beyond", and that if anyone should be paying, they should be paying him. I would consider Doug's evidence on this point to be his own opinion as to what his parents thought.

[170] It is also clear from Doug's evidence both in chief and in cross-examination that he never paid any portion of the property taxes or house insurance for the Briarwood Property, and was never personally responsible for any portion of the household utilities like electricity, phone, or cable. In later years, Doug assumed responsibility for actually paying these bills on behalf of his parents, but the funds came out of the "joint" family account to which Doug did not contribute anything. This continued to be the case until after both of his parents passed away, and his brother Charles took control of Marguerite's estate. Since then, some time in 2019, Doug has paid the household utilities and insurance for the Briarwood Property out of his own pocket, which only makes sense because he has been the only one living in the house. However, even after Marguerite's passing, Doug has not made any payment toward the property taxes.

[171] In cross-examination, Doug acknowledged or agreed to the following:

- (a) He is in good health, has had no major illnesses, and no physical or mental disabilities that would prevent him from working.
- (b) He has not worked outside of the home since he was laid off from Able Electronics in 2014.
- (c) His mother went into long-term care in early 2018 and he has not had to care for anyone since that time. Nevertheless, he has not gotten a job.
- (d) He has experience and marketable skills in automobile maintenance and repair, welding, carpentry, landscaping, and maintenance and handyman work. Doug explained that he was depressed after his parents died, but admits that he has never been told by a doctor that he is unfit to work.
- (e) He has his own bank account and his own savings, although he did not say how much he has saved.
- (f) Until 2012, when he was 54 years old, his mother cooked most of his meals for him. He added that he paid for his share of the food, and once per week he would order take out food for himself, Roy, and Marguerite at his own expense.

- (g) Until 2012, his parents were self-sufficient, and he did not have to look after them or meet their personal care needs.

Estate Assets and Their Value

- [172] The statement of assets, liabilities, and distribution indicates that Marguerite's estate consisted of: (1) real property, namely the Briarwood Property, with a value (based on the 2018 tax assessment) of \$1,341,200; and (2) personal property consisting of: (i) Edward Jones investments worth \$636,172.40, and (ii) bank accounts and other investments worth \$571,468.24, for a total of \$1,207,640.64. The gross value of the estate, prior to any deductions for estate administration, and legal fees, was therefore \$2,548,840.64, as of 22 November 2018.
- [173] The case law indicates that in determining the size of the estate, the appropriate valuation date is the date of the testator's death: *Doucette v. McInnes*, 2009 BCCA 393 at para. 77. (Although *Doucette* was decided under the Wills Variation Act, R.B.C. 1996, c. 490, which was later repealed and replaced by WESA, I have no reason to believe the approach to valuation date has changed.) In any event, for the sake of completeness I observe that it is common ground between the parties that the gross value of the estate has increased since Marguerite's death. The 2022 tax-assessed value of the Briarwood Property was \$1,767,400, and the most recent banking information puts the value of the investments and bank accounts at \$1,538,729.

Analysis

- [174] The plaintiff seeks variation of Marguerite's will under s. 60 of WESA, which provides that if a will "does not, in the court's opinion, make adequate provision for the proper maintenance and support of the will-maker's spouse or children", the court may make an order "that it thinks adequate, just and equitable in the circumstances" for provision of the spouse or children "out of the will-maker's estate".
- [175] A great deal of guidance regarding the proper approach to a wills variation proceeding can be taken from the leading case of *Tataryn v. Tataryn Estate*, [1994] 2 S.C.R. 807. That case involved an application under the statutory predecessor to s. 60 of WESA. The testator was survived by his spouse and two adult sons. The will left the entire estate to one of the sons, subject to a life estate in the family residence for the benefit of the spouse, effectively disinheriting the second son. The spouse and the son who had been disinherited sought to vary the will, arguing that it failed to make "adequate provision" for their maintenance and support within the meaning of the legislation. In a unanimous judgment written by Justice McLachlin, as she then was, the Court varied the will to effectively provide that the spouse was to receive the former family home and a life estate in a second property, with the two sons each receiving an immediate award, and two thirds and one third respectively of the estate's residuary: *Tataryn* at p. 825.

- [176] In deciding the case, Justice McLachlin laid to rest a longstanding debate about the proper scope of the court's legislated authority to vary a will based on failure to make "adequate provision" for the maintenance and support of the testator's spouse or children. Justice McLachlin explained that the two interests at stake under the statute were, first, the legislative goal of ensuring "adequate, just, and equitable" treatment of spouses and children, and second, the protection of testamentary autonomy: *Tataryn* at p. 815. The testator's freedom to dispose of his or her property ought not to be interfered with lightly: *Tataryn* at p. 824. However, the legislation also mandated that courts can be called on to vary a will where the testator fails to make adequate provision for his or her spouse or children. The concept of what constitutes "adequate, just, and equitable" provision for spouses and children must be interpreted in light of "current societal norms", with the two operative norms being the testator's legal duty and moral duty toward the spouse and children: *Tataryn* at p. 820-821.
- [177] The first consideration must be whether the will properly accounts for the legal duties owed to the spouse and children during the testator's lifetime: *Tataryn* at p. 821. If the will fails to properly account for these legal duties, then the court would be obliged to vary the will accordingly. The relevant legal obligations of the testator would include spousal support and spousal property rights, and support obligations toward dependent children: *Tataryn* at p. 821-822. The testator's legal obligations may also extend, in some cases, to unjust enrichment claims of adult, non-dependent children who have made contributions to the estate: *Tataryn* at p. 822.
- [178] The Court should next turn to an assessment of the testator's moral duties toward spouse and children: *Tataryn* at p. 822. Moral obligations are found in society's reasonable expectations of what a judicious spouse or parent would do in the circumstances, by reference to "contemporary community standards": *Tataryn* at para. 821. Where the estate is large enough to permit, all moral claims on the estate should be met: *Tataryn* at p. 823. Where the estate is found to have competing duties or obligations, legal duties must take precedence over moral ones, after which the court must assess the strength of the other claims and assign proper priority to each: *Tataryn* at p. 823. Any moral duties must be assessed in light of the testator's wishes as reflected in the will: *Tataryn* at p. 822; see also *WESA* s. 62.
- [179] In many cases, there will be a wide range of acceptable options in dividing the estate in a manner that is just and equitable. Provided that the testator has chosen an option within this range, the court will not interfere: *Tataryn* at p. 823-824. It is only where the will fails to properly meet the testator's legal and moral duties toward spouse and children that the court will "make an order which achieves the justice the testator failed to achieve": *Tataryn* at p. 824.
- [180] Testamentary autonomy is thus important, but is by no means unlimited. The legislature has conferred a "wide discretion" upon the court to ensure that proper provision has been made for the support and maintenance of the testator's spouse and children. The testator

has the right to provide for the "ordered administration and distribution of his estate in the best interests of the persons and institutions closest to him", subject only to situations where the will fails to make "adequate, just, and equitable" provision for a spouse or children: Tataryn at p. 824.

- [181] The parties cited a number of other wills variation cases, including *Wilcox v. Wilcox*, 2000 BCCA 491, *Doucette v. Clark*, 2007 BCSC 1021 (varied on other grounds, *Doucette v. McInnes*, 2009 BCCA 393), *McBride v. Voth*, 2010 BCSC 443. It should be noted that all of these cases were decided under the statutory predecessor to WESA. Each case basically involved a fact-specific application of the principles discussed in *Tataryn*.
- [182] In *Wilcox*, the plaintiff was one of the deceased mother's four adult children. The plaintiff and the deceased were joint owners of the family home, and lived there together for many years up until the deceased's passing. The plaintiff contributed financially toward the property, and also provided personal care for the deceased in her final years. Prior to her demise the deceased severed the joint tenancy and left a will that effectively disinherited the plaintiff, in favour of the other three children. On a wills variation action, the trial judge found that the plaintiff had an unjust enrichment claim giving rise to a constructive trust, and varied the will to provide that the plaintiff was to receive the entire estate: *Wilcox* at para. 8-9. The Court of Appeal upheld that decision: *Wilcox* at para. 51.
- [183] The Court found that the variation was justified in light of the deceased's legal and moral obligations. With regard to the deceased's legal obligations, the Court agreed with the trial judge that the estate had been unjustly enriched by the plaintiff's financial contributions, but did not accept the trial judge's conclusion that there had been unjust enrichment with respect to the personal services rendered to the deceased, because there was no evidence that the plaintiff suffered any loss, limitation of employment, or loss of financial opportunity as a result of rendering the services: *Wilcox* at para. 45. With regard to the deceased's moral obligations, all four children had moral claims, but the plaintiff's claim was superior because she lived together with the deceased in the jointly owned family home, while the other three children lived separate, independent lives: *Wilcox* at para. 49. Moreover, the plaintiff had a reasonable expectation of inheritance based on her belief that the property was held in joint tenancy, which had been severed without her knowledge: *Wilcox* at para. 27-28. The other children also had moral claims against the estate, but these had to be tempered by the "relatively modest size of the estate and the fact that the major asset of the estate had been [the plaintiff's] home for over 30 years": *Wilcox* at para. 50.
- [184] In *Doucette*, the deceased was survived by her four adult children. In her will, the deceased left (a) gifts of \$5,000 each to two of the children, (b) the family home (worth \$420,000) to the third child, and (c) the residue of the estate (worth \$424,000) to the fourth child. The two children who had been substantially disinherited brought a wills variation action. At para. 21 to 28 of the decision, the trial judge provided a thorough summary of the applicable legal principles governing wills variation proceedings. The subsequent analysis focused on the competing moral claims of the four adult children, and the concept of

estrangement as a rationale for substantial disinheritance. The trial judge reasoned that where the testator has disinherited an adult child based on estrangement, or has treated some children more favourably than others in the will, the court may look to the quality of the relationships to determine whether there is some valid reason for the disinheritance or unequal treatment: *Doucette* (BCSC) at para. 26. On the basis of such an analysis of the particular relationships in issue, the trial judge varied the will for the children to receive 35%, 25%, 25%, and 15% of the value of the estate respectively: *Doucette* (BCSC) at para. 29.

- [185] The trial decision in *Doucette* was subsequently varied on appeal. The Court of Appeal found that the trial judge erred in concluding that certain GIC investments were subject to a resulting trust in favour of the estate. The Court reasoned that, "With the GICs removed from the estate, the percentages established by the trial judge no longer reflect what he considered to be fair in the circumstances", and varied the result accordingly: *Doucette* (BCCA) at para. 82-86. However, the Court did not accede to any of the other grounds of appeal relating to the trial judge's assessment of the evidence, the testator's intentions, and the testator's obligation to make provision for each of her children.
- [186] In *McBride*, the deceased died leaving three adult children. Upon reaching adulthood, two of the three children moved away from the family home and lived independent lives. The third child moved out briefly, but then moved back into the family home where she and the deceased lived together for many years, prior to the deceased's passing. This child contributed toward the household expenses, but did not pay rent. She provided personal care for the deceased as the deceased grew ill in the final year or so of her life. The principal estate asset was the family home. The deceased left a will in which the family home was to be held in trust for the benefit of the third child, so long as she lived in it and paid the taxes, after which the estate was to be divided equally between all three children. The first two children brought a wills variation action. Against this backdrop, Justice Ballance varied the will and ordered that the estate be apportioned 40%, 30%, and 25% as between the three children: *McBride* at para. 179.
- [187] After a thorough review of the legal principles emerging from the Supreme Court of Canada's decision in *Tataryn*, Justice Ballance went on to consider both the legal duties and moral duties owed by the deceased to her three adult children: *McBride* at para. 128-142. With regard to legal duties, Justice Ballance carefully considered the defendant's attempt to uphold the will by reliance on unjust enrichment, but ultimately determined that the unjust enrichment claim failed at the third stage of the analysis, finding no "injustice" because the defendant and the deceased were in a "mutually beneficial financial arrangement", wherein the defendant "elected" to remain in the family home as a product of "her own personal preference, unrelated to her mother's emotional or physical needs": *McBride* at para. 166. In considering the competing moral claims against the estate, Justice Ballance noted the importance of testamentary autonomy in the deceased's choice to create a life-long trust in favour of the defendant, but found that the testator's rationale for doing so was not compelling enough to justify the indefinite delay of any inheritance to the other two

children, one of whom was in significant and immediate financial need: McBride at para. 176. The postponement of their inheritance, and the uncertainty it would create, loomed large in determining whether the will failed to make adequate provision for the plaintiffs: McBride at para. 178. It was a case where inheritance delayed was very nearly the same as inheritance denied.

- [188] As can be seen, many of the cases involving adult children involve consideration of unjust enrichment claims. This is not surprising given reference in *Tataryn* to unjust enrichment as a potential source of legal duty owed by the testator to adult, independent children who have made contributions toward the estate during the testator's lifetime. And even where a child is unable to make out the elements of an unjust enrichment claim sufficient to establish a compelling legal claim, the child's contributions toward the estate might still be enough to enhance the child's moral claim upon the estate.
- [189] The parties cited a number of cases dealing with unjust enrichment claims, many arising in the context of wills and estates litigation. In both *Clarkson v. McCrossen*, (1995), 3 B.C.L.R. (3d) 80 (C.A.) and *Blake v. Wells Estate*, 2007 BCCA 617, the plaintiffs were not spouses or children within the meaning of the wills variation legislation, and thus had to rely on the doctrine of unjust enrichment as a means of asserting their claims against the deceased's estate. In *Antrobus v. Antrobus*, 2010 BCCA 356, the plaintiff was a child who brought an unjust enrichment action against her parents, as a pre-emptive means of challenging a trust in favour of the other children that was allegedly designed to defeat the plaintiff's anticipated claim against the estate of the parents.
- [190] For the purposes of clarity, I would summarize the essential elements of a claim for unjust enrichment as follows: (i) an enrichment of one party, (ii) a corresponding deprivation of the other party, and (iii) an absence of juristic reason for the transfer of wealth between the one and the other: *Pettikus v. Becker*, [1980] 2 S.C.R. 834 at p. 852; *Peter v. Beblow*, [1993] 1 S.C.R. 980 at p. 987. The first two stages of the analysis contemplate a "straightforward economic approach", thus requiring a value neutral determination based on evidence of the services or benefits conferred by the one party upon the other: *Peter* at p. 990. The third stage of the analysis calls for a measure of judgment in which the various interests at stake must be considered: *Peter* at p. 990-91. The initial burden is on the moving party to establish an absence of any "juristic reason" within any of the traditionally recognized "categories" of contractual, common law, or statutory duties that could explain the transfer of wealth. If that burden is met, then a "de facto burden" rests on the opposing party to show that there is some objectively justifiable reason for the transfer of wealth between the parties, having regard to such matters as the reasonable expectations of the parties, and public policy considerations: *Kerr v. Baranow*, 2011 SCC 10 at para. 43, applying *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 44-46. In the end, the court must be satisfied not merely that there has been an enrichment and a corresponding deprivation, but that the enrichment was "unjust": *Peter* at p. 994.

- [191] A successful unjust enrichment claim may result in either a "personal restitutionary award" (in other words, a monetary award), or a "restitutionary proprietary award" (in other words, a constructive trust): Kerr at para. 46-53. In most cases, a monetary award will suffice: Kerr at para. 47. A remedial constructive trust can be ordered where (i) a monetary award will be an insufficient remedy for the enrichment, and (ii) there is a causal connection between the claiming party's contributions and the acquisition, preservation, maintenance, or improvement of a subject property: Kerr at para. 50-52.
- [192] Applying the relevant legal principles to the facts in the case at bar, the question is whether Marguerite's will, under which her estate was to be divided equally between her three adult, independent sons, failed to make "adequate provision" for the maintenance and support of the plaintiff, her son Doug.
- [193] Doug says the will fails to make adequate provision for him, given his mother's legal duty to recognize his contribution to her estate under the doctrine of unjust enrichment, and his mother's heightened moral obligations toward him, in contrast to the obligations owed to her other two sons, Charles and Neil. Doug's unjust enrichment claim rests upon (a) his material contributions to the Briarwood Property, and (b) his personal care of both elderly parents in their final years. Doug's heightened moral claim is said to arise from these two factors, considered together with (c) his reasonable expectation of inheriting the Briarwood Property and the Edward Jones investments, based on statements made principally by his father, in his mother's presence.
- (1) Assessing the Estate's Legal Obligations toward Doug: Unjust Enrichment
- [194] On the first element of unjust enrichment, I find that (a) Marguerite's estate received a material benefit from the personal care services that Doug provided to each of his parents in their final years, but that (b) the estate did not receive any benefit from Doug's alleged contributions toward the Briarwood Property. I will briefly explain my conclusion on each of these points, in reverse order.
- [195] With regard to the Briarwood Property, the evidence does not satisfy me that Doug's alleged contributions involved any appreciable material benefit to Marguerite's estate. Doug paid nothing toward the acquisition of the Briarwood Property, which was owned outright by his parents, with no mortgage or outstanding debt. Nor did Doug contribute in any meaningful way to the financial costs associated with maintaining the property, by paying the property taxes or home insurance. (Doug started paying the insurance in 2019 or 2020, well after his parents passed away). Although Doug assisted in several home improvement projects over the course of the 64 years that he has lived at the property, the evidence generally reflects his role was to assist his father by providing labour. The most substantial renovation was the garage construction undertaken in the mid 1980s. Doug's role was limited to assisting his father, along with a number of other relatives or family members, in providing labour for the garage construction. Doug did not contribute financially toward the project, with the exception of paying something approximating \$150 for gravel or filler dirt. The other

improvements, renovations, and repairs that Doug described in his evidence were relatively minor, and again I find that Doug's contribution was principally in the form of assistance rendered to his father. The property maintenance work performed by Doug was, on my view of the evidence, no more than the kind of routine upkeep that most property residents would be prepared to undertake in order to sustain a pleasant and habitable living space. The most that can be said is that Doug contributed toward the maintenance of the property where he lived, rent free. There is no evidence that any of Doug's work on the Briarwood Property materially increased its value.

- [196] With regard to Doug's personal care of his parents, the evidence satisfies me that this involved the conferral of a material benefit upon Marguerite's estate. The evidence establishes that Doug was the primary caregiver for both of his parents during their final years. There are certainly cases where personal services of this sort performed by an adult parent have been found to have a legally recognizable economic value. Clarkson is one example. In this particular case, Marguerite had her first serious medical challenge when she fell and broke her lower leg in 2012. The evidence reflects that Marguerite's health care team recommended that she go into long-term care, but Doug insisted that this was not necessary, and through his initiative, she was able to leave the hospital and return home, where Doug became her principal caregiver. From that point forward, Marguerite was in need of considerable care and attention, which was largely provided by Doug.
- [197] For his part, Roy began to "slow down" physically in the last few years of his life. Although Roy did not require as much attention and physical assistance as Marguerite, the fact is that he had multiple medical issues for which he required support, and Doug assumed primary responsibility for this. Furthermore, Doug's role as primary caregiver for Marguerite helped to reduce the burden that Roy would otherwise have faced in assisting his wife.
- [198] I have no difficulty concluding that the services Doug provided were of financial value to Marguerite's estate. If Doug had not been available to provide personal care services for his parents, they would have been paid for privately out of what ultimately became estate funds. There is also the evidence that after Doug was laid off from Able Electronics in 2014, Roy offered to pay him a salary of \$25,000 per year to look after both of his parents. Doug declined the salary, but this evidence still speaks to the financial value of the services he provided. It would have made good financial sense for Roy and Marguerite to pay Doug \$25,000 per year to look after their personal care needs. Although I have no evidence as to the cost of a personal care attendant, I consider it likely that it would have cost Roy and Marguerite considerably more than \$25,000 per year to employ a professional personal care attendant to meet both of their needs.
- [199] Moving on to the second element of unjust enrichment, the evidence satisfies me that the personal care services that Doug rendered to his parents in their final years involved a deprivation to Doug. Although Doug testified that he did not need to be paid anything to care for his parents, and that he was prepared to do so because he loved them, this does not preclude a finding that his provision of such services represented a deprivation on the

reasoning in Kerr at para. 36-39, which advocates a straightforward, value-neutral determination based on evidence of the services or benefits conferred by the one party upon the other. The services Doug provided clearly had economic value, and he received no remuneration for them. This constitutes a deprivation for the purposes of the second step in the unjust enrichment analysis.

- [200] To the extent that it is necessary to distinguish this case from Wilcox, I do so on the basis that in Wilcox there was no evidence of forbearance or financial sacrifice on the part of the plaintiff. The same cannot be said in this case. When Doug lost his job in 2014, he was only 54 years old and had marketable skills, but he did not seek out another job, choosing instead to stay home so he could look after his aging parents. Doug played that role from September of 2014 until Marguerite was hospitalized for the final time in November of 2017.
- [201] That brings me to the third stage of the unjust enrichment analysis. On the evidence in this case, I conclude that there was no juristic reason for Doug's enrichment of Marguerite's estate in the form of personal care services provided to both Marguerite and Roy in their final years. Doug had no contractual, common law, or statutory duty to provide personal care services for his elderly parents. And although he testified that he was happy to do so without pay, I do not consider Doug's provision of care services to Marguerite and Roy to have been a "gift". Doug had a subjective expectation that his efforts would eventually be recognized by way of an enhanced inheritance.
- [202] This case is distinguishable from McBride, in which Justice Ballance found that the daughter asserting unjust enrichment effectively made her own lifestyle choice to remain in the family home and care for the mother. McBride is distinguishable for three reasons. First, the level of personal care Doug provided was qualitatively different from the level of care provided by the daughter in McBride. For a period of slightly more than three years in total, Doug supplied what was very nearly full-time care for two elderly parents, both of whom had multiple serious medical conditions. By contrast, the daughter in McBride cared for her mother, part time, for approximately one year before her passing. Second, the daughter in McBride continued to work full time even after her mother became ill, although she did cut back on hours. By contrast, in the case at bar Doug did not work outside the family home in the final three years of his mother's life. Third and finally, the daughter in McBride was unaware of her mother's intent to leave her a life-long trust interest in the family home, hence, there was no element of expectation. This can be contrasted with the case at bar, in which Doug had an expectation of receiving some recognition of his contribution toward the estate by means of an enhanced inheritance, and there was at least some independent evidence (in the form of statements from his father Roy) lending support to Doug's view.

[203] I conclude that Marguerite's estate had a legal duty toward Doug, in the form of an unjust enrichment claim, based on Doug's provision of personal care to both Marguerite and Roy during the final years of their lives. I will table any discussion of remedy for the unjust enrichment until later in the wills variation analysis.

(2) Assessing the Estate's Moral Obligations toward Doug

[204] It is next necessary to consider Doug's claim of an enhanced moral claim on Marguerite's estate. The claim that Marguerite's estate had a heightened moral obligation to provide for Doug's needs and maintenance rests on three planks: (a) Doug's contributions to the Briarwood Property, (b) the personal care that Doug provided to his parents in their final years, and (c) Doug's expectations, resting on statements attributed to Roy and Marguerite about what he could expect by way of an inheritance. Although some of these points mirror those relied upon in his unjust enrichment claim, I will consider all of them again for the sake of completeness.

(2)(a) Doug's Contributions to the Briarwood Property

[205] I do not find Doug's contributions to the Briarwood Property to be significant consideration in his favour. To begin with, the mere fact that Doug has lived at the Briarwood Property for his entire life does not, of itself, intensify his moral claim upon the estate, above and beyond the claims of his two adult brothers. Doug made his own choice not to move out of the family home, while his brothers chose to move out, establish their own households, and live independently. There is no evidence that Roy and Marguerite pressured Doug to remain, or did anything to prevent him from leaving and establishing his own home.

[206] Doug's financial contribution toward the household was minimal. He did not pay rent, or any kind of room and board, or contribute to the household utilities such as gas, electricity, cable bills, or basic phone service, although he did have to pay for his own long-distance calls. For many years, Doug's father kept a running total of expenses between himself and Doug, down to the penny. Doug had to pay for extra expenses he incurred on his own behalf, but by the same token Doug also received credit for many expenses he incurred on behalf of the family.

[207] The fact that Doug assumed at least partial responsibility for landscaping and property maintenance at the Briarwood Property should not be regarded as any kind of special contribution toward the property or toward the estate of his parents. He lived at home and performed what amounted to household chores. This effectively represented Doug's share of the household responsibilities for the many years that he lived in the house while his parents were still self-sufficient. Up to the age of 54, Doug had most of his meals made for him. He lived in the house and had the benefit of all the household utilities. He also kept vehicles on the property. The work that Doug did on the Briarwood Property was, on my view of the evidence, no more than that which any long-term resident would be prepared to contribute in order to sustain a pleasant and habitable living space.

(2)(b) Doug's Personal Care for his Parents During their Final Years

[208] I do accept that Doug made a significant contribution to Marguerite's estate in the form of personal care for both Roy and Marguerite in their final years. I find that the level of care Doug provided was substantial. I find Doug's efforts in this regard to be markedly greater than the level of day to day care contributed by his brothers. Neil lived at home from 2015 to 2017, but took on only a minor, minimal role in caring for his parents. Charles had his own life, and his own family, and did not contribute anything toward the day to day care of his parents. Nonetheless, having found above that Doug's provision of personal care services to Marguerite and Roy supports Doug's unjust enrichment claim against the estate, I would not consider this factor alone to be a separate, independent basis for an intensified moral claim on Doug's part.

(2)(c) Doug's Expectation of Receiving a Larger Share of the Estate

[209] This brings me to the third plank of Doug's claim, namely his expectation of receiving a larger share of the estate than his two adult brothers. In particular, Doug maintained throughout his testimony that he expected to inherit the Briarwood Property in its entirety, along with the Edward Jones investments. When considering the whole of Doug's trial testimony, I find Doug's expectations to be partly the product of his own profound sense of entitlement, and partly a product of hopes or beliefs springing from the actions and words of his parents, principally his father.

[210] With regard to Doug's sense of entitlement, throughout his testimony, Doug's attitude was that he should have an absolute right to stay in the Briarwood Property, and to keep the bulk of the estate's financial investments. On my assessment of his evidence, Doug's posture of entitlement rested in part on the fact that he had lived at the Briarwood Property for his entire life, with his parents, while his brothers chose to move out and live independent lives. However, viewed through the lens of contemporary societal values, there is no reason to regard the choice to stay at home and live with one's parents as something that would necessarily enhance one's moral claim to the family estate, above and beyond the claims of other adult children who made different choices. On the one hand, Doug's choice to stay home and live communally with his parents had the benefit of allowing him to maintain a close family bond. On the other hand, Doug's choice to effectively remain dependant on his parents for housing throughout his entire life came at the cost of his own financial independence. In making the lifestyle choices that he did, Doug deprived himself of any impetus to grow his own nest egg. His brothers, by contrast, moved out of the family home, acquired their own houses, and were largely if not entirely financially independent.

[211] I question whether Doug's choice to stay in the family home for his entire adult life, with all that it entailed both good and bad, necessarily places him in a morally superior position to that of his brothers when it comes to assessing their respective claims on Marguerite's estate. Recall that Marguerite's will provided that if she outlived Roy, her entire estate was to be divided upon her surviving adult children. To be fair, the will was written in 1977 when

the children were in their late teens and early 20s. However, equal division was clearly Marguerite's starting point. She wanted all of her children to share equally in her estate. By the early 2010s, Marguerite was in her 60s. Charles and Neil had moved out and reached financial independence, while Doug remained in the family home and was working part time for his brother Charles. None of these developments sparked Marguerite to make any change to the structure of her will. It was not as if, by that time, Marguerite made a manifest choice to favour Doug in the will, based on Doug's choice to remain in the family home, while the other children lived more independent lives. Indeed, Marguerite never changed her will. Her abiding testamentary intent was for her estate be divided equally between her three children.

- [212] I turn, next, to a consideration of the statements and actions of Doug's parents, and what effect these had upon Doug's expectations of inheritance.
- [213] I will deal firstly with the actions of Doug's parents in giving him power of attorney over the CIBC account, and trading authority with respect to the Edward Jones investments. These actions show that both Roy and Marguerite trusted Doug with the household finances, and further that they both placed growing confidence in his ability to manage their financial affairs. However, I would distinguish between the willingness of Roy and Marguerite to trust and rely on Doug by giving him signing authority over their accounts, and the intention to make Doug the sole or principal beneficiary of the family estate, to the exclusion of the other two adult children.
- [214] Apart from Doug's unsupported viva voce testimony (which I do not accept), there is no evidence of estrangement between Roy and Marguerite on the one hand, and Neil and Charles on the other. There is no doubt that Doug grew to resent and even dislike both Neil and Charles, but there is no admissible evidence that Roy or Marguerite bore any ill will toward either of them. Charles and Neil each testified that they had positive relationships with both parents, and there is uncontested evidence that even in later years the family continued to gather together for important occasions like Christmas.
- [215] I turn finally to the statements attributed to Roy and Marguerite, said to be relevant to Doug's expectations of inheritance. After a thorough analysis of all the evidence about those statements, my conclusion is that only two such statements were proven to have been made, namely (i) Roy's statement - made in the presence of Doug and Mr. Sernoski - to the effect that Doug should inherit the family home, and directing or encouraging Doug to go and see the lawyer to "change the wills", and (ii) Marguerite's statement - made in the presence of Doug and Ms. Townley - to the effect that "Doug is going to get everything anyway", or words to that effect. I will address the significance those statements in reverse order, keeping in mind that in the end it is necessary to consider the cumulative effect of this evidence.

- [216] I would not consider Marguerite's utterance to a neighbor that "Doug is going to get everything anyway" to have much value at all in establishing that Doug had a reasonable expectation of inheriting both the Briarwood Property and the Edward Jones investments. Ms. Townley did not say when the statement was made, so it is impossible to get any real sense of Marguerite's mental capacity at the time she made it. Moreover, the statement is hearsay, and the defendants had no opportunity to cross-examine Marguerite on what she meant by it. She might have meant that Doug would receive all of the contents of the house. Or she might have meant the house. Nor is it clear whether, in making this statement, Marguerite had the intent that Doug would receive "everything" to the exclusion of her brothers. I would not regard Marguerite's casual utterance to a neighbour to be reflective of a considered intention to completely disinherit her two other children.
- [217] With regard to Roy's statement that Doug was to receive "the house" and that he should go and see the lawyer to "get the wills changes". I will treat this as a single statement with two operative components, those being the intent that Doug should "get the house", and the instruction for Doug to see the lawyer to "get the wills changed". I have three levels of concern about the statement. The first two are hearsay concerns and the third has to do with who made the statement.
- [218] First, since the statement is hearsay and Roy was not available for cross-examination, it is impossible to know whether Roy was being sincere when he uttered it. On the one hand, Roy might have genuinely been of the view that Doug should inherit the Briarwood Property, to the exclusion of his brothers. On the other hand, it might have been that Roy simply made the utterance as a matter of bluster or as a challenge or dare to Doug, knowing or suspecting that Doug would never act on it or that the will would never be changed. There is no evidence that Roy ever contacted Mr. Thompson or any other lawyer to change the will. He clearly had the wherewithal to schedule or participate in meetings with Mr. Sernoski, and yet there is no evidence that Roy went to any effort to arrange a similar kind of meeting with Mr. Thompson or any other lawyer. Nor did Roy ever ask Mr. Sernoski himself to help him find a lawyer or to arrange for a lawyer to change his will.
- [219] Second, once again, since the statement was hearsay and Roy was not available for cross-examination, even if Roy was being sincere it is impossible to discern precisely what he meant or intended when he said Doug should "get the house" or words to that effect. It is possible that he meant for Doug to inherit the house, to the exclusion of his brothers. Or it is possible that he meant for Doug to inherit the house, with his other two sons to receive a greater share of the residue of the estate. Or it is possible that he meant for Doug to receive a life estate in the house, so that it would "stay in the family", without actually giving it to Doug to the exclusion of the other children. Certainly, if Roy left the house to Doug and then Doug passed away with no other children, there would have been no way to guarantee that it would "stay in the family". Above and beyond all this, it is not possible to know whether, in making the statement that he did, Roy intended that whatever manner in which Doug was to receive the house would be to the exclusion of the interests of Roy's other two

sons. Apart from Doug's own self-serving, unsupported statements, there is no evidence that Roy intended to actually disinherit Neil or Charles, and there is no independent evidence of estrangement.

[220] Third, and perhaps most importantly, the statement in issue was made by Roy, not Marguerite. There is no admissible, credible, and reliable evidence that Marguerite understood what Roy meant, and agreed with it. The evidence establishes that while Marguerite was present for the 29 July 2016 meeting, she was sitting in an adjacent room and played no active part in the conversation. Even if Roy were of the view that Doug should inherit the Briarwood Property in its entirety, to the exclusion of his brothers, there is no evidence that Marguerite held a similar view. There is no reliable evidence to show that Marguerite ever modified or revisited her original testamentary intention that her estate was to be divided equally amongst her surviving children.

[221] I am left with the following conclusions. While Doug maintains an expectation of inheriting the Briarwood Property and the Edward Jones investments to the exclusion of his brothers, that expectation is largely the product of Doug's subjectively-held beliefs and sense of entitlement. I accept that Roy in fact stated that Doug should get the house and should make an appointment with a lawyer to change the wills, however the objective meaning to be drawn from Roy's statement is not entirely clear. Finally, when it comes to the disposition of Marguerite's estate, there is no independent, reliable evidence that Doug was given any reason to expect that he would receive a greater share of the estate than either of his two brothers.

(2)(d) Doug's Rent Free Occupancy of the Briarwood Property

[222] The defendants urge the Court to consider a final, countervailing factor which they say undermines the strength of Doug's moral claim upon the estate, namely the fact that Doug was able to live at the Briarwood Property for his entire life, without having to incur any housing costs. Prior to the passing of his parents, Doug did not even contribute to basic household utilities. Doug worked outside the home until he was in his mid 50s, and was able to accumulate his own savings, although he did not say how much he actually saved.

[223] Doug has continued to live in the Briarwood Property, with little in the way of housing costs, in the five years since Marguerite's death. For at least a portion of this time, he has had to pay for household utilities, which only makes sense, since he is the only one living in the Briarwood Property. However, Doug has never paid any form of occupational rent to the estate, nor has he made any contribution toward the property taxes. Charles has had to arrange for payment of the property taxes through the estate. This means that since Marguerite passed away in early 2018, her estate has basically underwritten Doug's housing costs.

(3) Weighing Up Doug's Legal and Moral Claims

- [224] Doug's argument that the will fails to make proper provision for him must be considered in context. Marguerite's will provides that her estate is to be divided equally between her three adult children. Thus, this is not a case where the testator effectively disinherited or substantially reduced the inheritance to one child in favour of the others. It is, rather, a case where one adult child, Doug, seeks to vary a will that provides for equal distribution of the estate to favour him, to the exclusion of the other two adult children.
- [225] Furthermore, this is not a case where the estate does not have the means to meet all of its legal and moral obligations. Given the size of the estate, each of Marguerite's adult children stand to receive a substantial inheritance. As Justice McLachlin explained in *Tataryn* at p. 823, when it comes to the assessment of moral claims by independent adult children, "if the size of the estate permits and in the absence of circumstances that negate such an obligation, some provision should be made for such children" [underlining added]. Marguerite's will does in fact make "some provision" for Doug, though it happens to be in equal measure to the provision made for his two brothers. Under the will, Doug's one-third share of the estate has a value (before accounting for fees and legal costs) of more than \$800,000. This is a conservative figure, based on the value of the estate as set out in the statement of assets, liabilities, and distribution dated 22 November 2018. Doug is a 64 year old man with marketable skills, no significant physical or mental limitations, no major health concerns, and no dependants.
- [226] The issue is what distribution of estate assets is "adequate, just, and equitable", in light of "current social norms". As Justice McLachlin stated in *Tataryn* at p. 824, "[i]n many cases, there will be a number of ways of dividing the assets which are adequate, just and equitable", and "[o]nly where the testator has chosen an option which falls below his or her obligations as defined by reference to legal and moral norms, should the court make an order which achieves the justice the testator failed to achieve".
- [227] In *McBride* at para. 134, Justice Ballance explained that "equal treatment among independent adult children is prima facie fair from a moral duty standpoint". Under Marguerite's will, each of her three adult children are treated equally.
- [228] In the particular circumstances of this case, the analysis comes down to whether Doug's legal and moral claims upon the estate are weighty enough to justify a variation of the will in his favour, to the detriment of the interests of his two brothers. Taking into account all of the factors I have reviewed above, my conclusion is that apart from the unjust enrichment claim arising from the provision of personal care services to both parents in their final years, the balance of Doug's claims carry little weight. Doug's contribution toward the Briarwood Property was, on my assessment of the evidence, negligible. Doug's expectation that he was to receive the Edward Jones investments is not supported by any independent evidence. Doug's expectation of receiving the entire Briarwood Property is supported only by his father's hearsay statement, which is of questionable evidentiary value, and must be assessed in circumstances where his father predeceased his mother and there is no evidence that his mother held any such view. Finally, the strength of Doug's moral claim is

diminished by the countervailing point that Doug was able to live in the Briarwood Property for his entire life, in circumstances where his housing costs were effectively underwritten by his parents. My conclusion is that, apart from the unjust enrichment claim, Doug has failed to establish that Marguerite's will fails to make adequate provision for him.

(4) Accounting for Doug's Unjust Enrichment Claim

- [229] What remains to be considered is the unjust enrichment claim. While satisfied that the claim is made out, I find that the requirements for a remedial constructive trust are not met, with respect to either the estate as a whole, or the Briarwood Property more specifically. A monetary award will suffice to remedy the unjust enrichment. Moreover, I find that the personal care services Doug provided to his parents did not involve any direct or material contribution to either the Briarwood Property or the Edward Jones investments.
- [230] With regard to the quantum of the monetary award, I find that this is an appropriate case for a value received approach. In assessing the value of Doug's personal care services to his parents, I start with the evidence of Roy's offer - made in or around September of 2014 - to pay Doug a salary of \$25,000 to look after himself and Marguerite. This works out to \$13 per hour. Although I have no evidence about the rate of remuneration for personal care attendants in British Columbia from 2014 through to 2017, I consider it highly improbable that a personal care attendant would accept a pay rate of any less than \$13 per hour for the in-home care of two elderly people with significant medical challenges. I should note as well that while Roy's offer was made in or around the time that Doug lost his job in August of 2014, by that point in time Doug had already been providing a significant level of personal care to his mother for more or less two years, ever since Marguerite broke her lower leg in September of 2012.
- [231] Based on all everything I have just reviewed, I would award \$40,000 for the period from September of 2012 to September of 2014 (during which Doug was engaged in caring for his mother as she recovered from her broken lower leg, while working part time at Able Electronics), plus \$25,000 per year for the period from September of 2014 through to November 2017 (when Marguerite was admitted to the hospital for the last time).
- [232] The total is \$115,000. In arriving at this figure, I gave careful consideration to whether it should be reduced on account of the fact that during the time period in issue, Doug continued to live rent-free in the Briarwood Property, such that his housing costs continued to be underwritten by his parents. However, I consider it more likely than not that the salary of \$25,000 per year which Roy offered to pay Doug was meant to be a net salary, taking into account Doug's status as an occupant of the Briarwood Property. In other words, I would interpret Roy's offer was to effectively treat Doug as a live-in caregiver, with a salary of \$25,000 per year, in addition to room and board. In my view, this figure makes sense in terms of the value of the personal care services that Doug provided to his parents, and Doug's history of living in the Briarwood Property.

- [233] However, I do consider it necessary to take into account the benefit to Doug associated with his continued occupation of the Briarwood Property in the five years since Marguerite's passing. There are, in my view, two components to this issue, namely (i) the fact that Doug has been living in the property rent free, and (ii) the fact that the estate has assumed some of the carrying costs for the property over the five years since Marguerite's passing.
- [234] Dealing first with the fact that Doug has been living rent free in the Briarwood Property, I have already taken this benefit to Doug into account as a countervailing factor in my assessment of the strength of his moral claim against the estate. And since this is merely a continuation of an arrangement that existed prior to Marguerite's passing, I do not consider that the estate has suffered any deprivation in not receiving rent, when no rent has ever been collected from Doug. Further, even if there was a deprivation to the estate, I would not consider this to be unjust, given Doug's history of residing in the Briarwood Property, rent free. My conclusion is that in these unique circumstances Doug should not be obliged to pay or otherwise account for occupational rent to the estate.
- [235] However, Doug has also been living in the Briarwood Property while some of the carrying costs of the property - most notably the property taxes - have been borne by the estate. At the very least, Doug should be responsible for these carrying costs over the five years that he has been living in the property after his mother's passing. This, in my view, is a necessary corollary of the value received approach to Doug's unjust enrichment claim. Accordingly, I would reduce the monetary award by two thirds of the total of all property taxes for the Briarwood Property paid or payable by the estate in the tax years 2018 through 2022 inclusive.
- [236] In the result, I would vary Marguerite's will by making an order that Doug is to receive a gift of \$115,000, less two-thirds of all property taxes paid or payable by the estate in respect of the Briarwood Property over the years 2018 through 2022 inclusive. The balance of the estate is to be divided equally between Marguerite's three children, Charles, Doug, and Neil, per the terms of Marguerite's will.

(5) Costs

- [237] If the parties are unable to agree on costs, they can file supplementary submissions. The plaintiff may file a submission of no more than five pages plus any supporting materials within 21 days of the release of the judgment. The defendants may file a responding submission of no more than five pages plus any supporting materials with 14 days of receipt of the plaintiff's submission. The plaintiff may file a reply submission of no more than two pages, plus any supporting materials within seven days of receipt of the submissions of the defendants. If either party takes the view that submissions on costs cannot effectively be dealt with in writing, that party may, within the time limits set out above, submit a request to schedule a further appearance for oral submissions on costs.

"Riley J."

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