

CANADA / JUDGMENT

# Redmond Estate (Re)

2024 BCSC 1211

## COURT

Supreme Court of British Columbia

## DECIDED

22 July 2024

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2024 BCSC 1211 Redmond Estate (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Redmond Estate (Re), 2024 BCSC 1211 Date: 20240722 Docket: P192110 Registry: Vancouver In the Matter of the Estate of Donald Wharton Redmond, deceased Before: Associate Judge Hughes (as Registrar) Reasons for Decision The Executor and Counsel for the Estate: J.M. Lott Counsel for the Beneficiaries, B.C. Redmond and B.D. Redmond: S. Gomez (Appearing April 18, 2023) The Beneficiaries, appearing in person: B.C. Redmond B.D. Redmond Place and Dates of Hearing: Vancouver, B.C. March 3 and April 18, 2023 Place and Date of Judgment: Vancouver, B.C. July 22, 2024 Table of Contents Introduction.. 3 Background.. 4 Issues in dispute. 6 Out of pocket expenses. 7 City utility charge. 7 Swadden & Company invoice. 7 Cleaning and waste disposal 8 Charter boat cancellation fee. 9 Boundary Bay Cemetery niche. 10 Remains of the deceased. 10 Unrealized jewellery and personal items. 11 Executor's remuneration. 12 Legal Fees. 14 Costs. 17 Disposition.. 17

## Introduction

- [1] This matter came on before me on March 3, 2023 for a full day for the hearing of the passing of accounts, including approval of the executor's remuneration, by the executor of the will and trustee of the estate of the deceased. The passing of accounts arises from an order granted by Master Robertson on May 24, 2022 (the "Robertson Order"). That order had not been entered as at the date of the hearing, but all parties wished to proceed and I did so on the basis that the reference to the registrar was appropriately granted.
- [2] The Robertson Order was finally entered on May 15, 2024. It simply reads "The application is adjourned. There is to be a prehearing conference before the registrar's hearing is to take place."
- [3] Interpretation of the Robertson Order thus requires reference to the underlying notice of application filed May 3, 2024. That application sought approval of the executor's accounts for the period May 22, 2019 through May 2, 2022. Those accounts are set out in the P-40 Affidavit filed by the executor, John Murray Lott (the "executor") on May 3, 2022 (the "Accounts"). Approval of the accounts was opposed by two of the three beneficiaries. I interpret the Robertson Order to be an order directing a referral to the registrar pursuant to Supreme

Court Civil Rule 25-13(3)(b).

- [4] I reserved decision at the conclusion of the hearing on March 3, 2023. For reasons explained below under the heading Legal Fees, a second appearance became necessary. At the second appearance, on April 18, 2023, I adjourned the passing of accounts generally until two issues were resolved. I remained seized of the passing of the accounts subject to resolution of those issues, which were eventually resolved by court order dated March 15, 2024.
- [5] As the scope of the reference before me is limited by the Robertson Order to the passing of the executor's accounts for the period May 22, 2019 to May 2, 2022, no additional appearance or submissions were required, despite the passage of over a year since the last appearance before me.

## Background

- [6] Donald Wharton Redmond (the "deceased") died on May 22, 2019. He executed a will on May 6, 2019 (the "will"), in which he appointed his solicitor, John Murray Lott, as executor and trustee. The deceased and the executor also signed an agreement on May 6, 2019 (the "Compensation Agreement"), incorporated by reference in the will, which sets out the remuneration payable to the executor for administration of the estate. The will provides that the executor is entitled to charge "the usual professional fees and other charges for the professional services it provides in connection with probate of my Will and any codicil to it and the administration of my estate and trusts of my Will, in addition to any remuneration for acting as my executor and trustee of this Will".
- [7] The Compensation Agreement provides for an Estate Administration Fee in the amount of 2.0% on the first \$1,000,000 and 1.5% on the balance, chargeable based on the fair market value of the estate assets. The Compensation Agreement also authorizes the executor to charge for special services. The executor had submitted an account in the amount of \$5,000 plus taxes for such special services, but he has subsequently withdrawn that account, so it is no longer in issue.
- [8] The deceased was survived by his three sons, Bradley Donald Redmond, Stanley Bruce Redmond and Brentley Clarence Redmond. As the parties have done, I will refer to each of the sons as "Brad", "Bruce" and "Brent" respectively, with no disrespect intended. It was clear from the evidence and submissions that there has been a breakdown of communication resulting in significant distrust between the sons and the executor. Brad and Brent appear to be largely aligned against Bruce and the executor, whom they view as working together. Whether this distrust between the brothers pre-dated their father's death is unknown, although I venture to speculate that it was likely a reason for the father appointing his solicitor as executor, rather than one or more of his sons.

- [9] The primary estate assets were property located at 5457 5B Avenue, Delta, BC (the "Residence"), having a 2019 assessed value of \$1,072,700, and an investment portfolio totalling just under \$900,000. The Residence was encumbered by two TD Canada Trust lines of credit. The first secured a loan to Brent and had a balance owing of under \$8,000 at the date of death. The second line of credit, which had a balance of just over \$300,000 at the date of death, was obtained by the deceased for Brent's business, C & B Machine Shop Ltd.
- [10] The Will provides that Brent may live in the Residence, if owned by the deceased at the date of his death, until June 30, 2021, and that on or after June 30, 2021 the Residence was to be sold and form part of the residue of the estate. During his occupancy of the Residence, Brent was to pay "ongoing costs and expenses in connection with the Residence, including general maintenance and an approximate rent to the estate in the amount of \$1,600 per month, being 2/3 of market rent, as a charge against his share of the estate." All property taxes, utility taxes, insurance, and capital costs in connection with improvement of the Residence, were to be borne by the estate.
- [11] The residue was to be divided equally between the three sons, subject to a provision that the following sums were to be deducted from Brent's share of the estate:
- a) The sum of \$40,000; and
  - b) Any balance owing on a line of credit under a specific TD Canada Trust account.
- [12] A grant of probate was issued to the executor on August 30, 2019.
- [13] A pre-hearing conference was held before Master Nielsen on July 19, 2022, at which time he ordered that the beneficiaries were to advise the executor as to the issues in dispute and any further particulars or documents requested by August 2, 2022, that the executor was to provide an affidavit of justification, and that any affidavits to be referred to were to be exchanged not later than one month in advance of the passing of accounts hearing.
- [14] A second pre-hearing conference was held before Registrar Gaily on January 10, 2023. Although that order has not been entered, it appears that she made substantially the same orders as Master Nielsen, with new deadlines. Any affidavits to be referred to at the passing of accounts hearing were to be exchanged by February 10, 2023. The executor provided, in addition to his P-38 and P-40 affidavits, three affidavits of justification, including two from his paralegal. No affidavits were provided by any of the beneficiaries.
- [15] Bruce approved the executor's accounts prior to the hearing and did not attend. Brad and Brent attended the hearing and cross-examined the executor on his affidavits. Both Brad and Brent made submissions, but declined the opportunity to give evidence themselves. Issues in dispute
- [16] After the lunch break on the day of the hearing, Brad and Brent agreed that the issues in dispute had been narrowed to the following, which I will review:

- a) Out of pocket expenses
  - i. City utility charge against Brent's share; ii. Invoice from Swadden & Company; iii. Charges for cleaning and waste disposal in relation to the Residence; iv. Charter boat cancellation fee;
  - v. Charge from Boundary Bay Cemetery for niche;
- b) What to do with the cremated remains of the deceased;
- c) Attributing value to various pieces of jewellery that were not realized; and
- d) Whether the executor has appropriately calculated the executor's remuneration as provided for in the Compensation Agreement. Out of pocket expenses

[17] As stated by Registrar Nielsen (as he then was) in *Reagh Estate (Re)*, 2021 BCSC 1807:

[25] An executor is entitled to be reimbursed out of the estate for all out-of-pocket expenses properly and reasonably incurred in the administration of the estate: *Jackson v. King*, 2003 BCSC 328 at para. 12. The threshold is low, so long as they were properly incurred and not improperly incurred, they are to be reimbursed: *Royal Trust Corporation of Canada v. Clarke* (1989), 35 BCLR (2d) 82 at pp. 86-87. The general principle of indemnification is also encapsulated in section 95 of the *Trustee Act*, R.S.B.C. 1996, c. 464, which provides that a trustee may reimburse themselves, or pay, or discharge out of the trust, all expenses incurred in the execution of the trust or trust powers. City utility charge

[18] The executor inadvertently charged the 2021 City of Delta utility tax bill, in the amount of \$645.70, against Brent's share of the estate, contrary to the provision in the will. During the course of the hearing before me, the executor agreed that this was an error. The amount of \$645.70 paid to the City of Delta on August 30, 2021, should be borne by the estate rather than being deducted from Brent's share. Swadden & Company invoice

[19] The executor's evidence was that, starting in January of 2021, he attempted to work with Brent to plan for the orderly clearing, cleaning, listing, sale and vacancy of the Residence. The executor's evidence is that Brent refused every effort that the executor made. The executor developed a reasonable apprehension that Brent may not vacate the Residence by June 30, 2021, and that he may need to take legal action to have Brent removed.

[20] In anticipation of such action, and not having the requisite expertise himself, the executor retained the services of another law firm, Swadden & Company. Swadden & Company rendered an invoice on July 6, 2021 for services rendered between June 1 and July 5, 2021. That invoice is attached as Exhibit B to the 9th Affidavit of John Murray Lott, dated February 6, 2023. It is a very modest invoice, for 4.1 hours at \$300 per hour, for a total amount of \$1,377.60 including taxes. The invoice includes charges for reviewing evidence and drafting a notice of application and affidavit in support.

- [21] Brent's submissions included that he always intended to move out on time, and that he told the executor on numerous occasions that he had no intention to overstay. However, Brent provided no evidence in this regard.
- [22] It was clear that there was a significant breakdown in communications between Brent and the executor. This extended past the move-out date, when Brent did not inform the executor that he had vacated the property, return the keys, or provide a forwarding address.
- [23] The executor had an obligation to administer the estate in accordance with the testator's instructions, for the benefit of all three beneficiaries, which included selling the Residence on or after June 30, 2021.
- [24] Based on all of the evidence provided, including evidence of animosity and lack of cooperation between the beneficiaries and the executor, I am satisfied that the executor's apprehension that Brent may not vacate the property on time was reasonable, and that he was justified in seeking legal advice in advance so that he could proceed expeditiously if needed. The Swadden & Company invoice is allowed, but since Brent did vacate on time, it is to be paid out of the estate as a whole and not solely from Brent's share. Cleaning and waste disposal
- [25] After Brent moved out, the executor hired a cleaner to clean the interior and a contractor to remove garbage from the exterior of the Residence. Undated photographs of the exterior were in evidence, but there were no interior photographs.
- [26] The invoice from the cleaner indicated 21 hours of work at \$35 per hour over the course of July 6 through 8, 2021, for a total of \$735. There is a handwritten note accompanying the invoice commenting on the state of the house, but this is not evidence that the court can consider. The executor proposes that half of this charge be deducted from Brent's share.
- [27] The exterior garbage removal was performed by a handyman who does business as Sunrise Painting. The beneficiaries took issue with garbage removal being performed by a painter, and the fact that Bruce's name was on the invoice. Nothing turns on these issues. The total charge for garbage removal was \$538.81.
- [28] Both of these are reasonable and very modest charges for cleaning up a house that has been occupied by the same family for decades, and ought to be borne by the estate. These were necessary expenses in readying the Residence for sale. Charter boat cancellation fee
- [29] The deceased apparently wished to have his cremated remains spread on the ocean. After making a number of unsuccessful attempts to coordinate arrangements with the beneficiaries, the executor took matters in his own hands and chartered a boat from White Rock Sea Tours for September 25, 2021. The executor emailed the beneficiaries, advising them of the arrangements, on September 17, 2021. On the evening of September 24, 2021, Brent asked the executor to postpone the scattering. The executor says that Brent's reason had to do with emotional hardship; Brent says (although he did not give evidence) that it had to do with concerns related to COVID-19.

- [30] In any event, the charter boat was cancelled on short notice. The executor had pre-paid the charter fee in full, and received a refund of \$375.00 for the short notice cancellation. The executor also incurred charges for delivering the deceased's remains to the boat captain and subsequently retrieving them. The total out-of-pocket expenses that the executor incurred for the cancelled charter boat excursion was \$566.58, to which the two beneficiaries object.
- [31] It is the executor's responsibility to control the disposition of the deceased's remains. His evidence is that he kept the remains in his office for a lengthy period of time, during which he attempted to make arrangements that were agreeable to all three of the deceased's sons. It had been over two years since the date of death, and the deceased's remains had not been put to rest. The executor acted in good faith in trying to comply with the wishes of the deceased by arranging the scattering of the ashes.
- [32] Although the executor could have given more notice to the beneficiaries, I find that the charter boat fee and associated costs were a reasonable expense of the estate and are allowed. Boundary Bay Cemetery niche
- [33] After the charter boat arrangements were cancelled, the executor no longer wished to keep the deceased's remains in his office. He purchased a niche at Boundary Bay Cemetery in which the remains were interred. The total cost was \$3,761.63, including the cemetery's charges for the interment. I find that this is a reasonable expense of the estate and is allowed.
- [34] The executor gave evidence that part of this fee is a deposit, which will be refunded if and when the remains are permanently removed from the niche. If and when the niche is no longer required and the deposit is refunded, it will form part of the estate and be divided equally among the three beneficiaries. Remains of the deceased
- [35] The beneficiaries have still not agreed on what should be done with their deceased's father's remains. Brad and Brent object to the remains staying in the niche.
- [36] Brad, as the oldest son, insists that the remains should be entrusted to his care as provided in the Cremation, Internment and Funeral Services Act, S.B.C. 2004, c. 35 [CIFSA]. Section 5 of the CIFSA specifies that the right of a person to control the disposition of the human remains or cremated remains vests in, and devolves on, certain individuals in order of priority. Brad, as the deceased's oldest child, would rank in highest priority of the deceased's family members. However, the person having first priority, pursuant to the CIFSA, is the personal representative named in the will of the deceased. That person, the executor, has done what he could and has placed the remains in the Boundary Bay Cemetery niche.
- [37] Section 5(4) of the CIFSA provides that "A person claiming that he or she should be given the sole right to control the disposition of the human remains or cremated remains may apply to the Supreme Court for an order regarding that right." Brad's request appears to be in the spirit of this section of the Act. However, as I told him at the hearing, he has not made a formal application and Bruce has not been given any notice.

- [38] In any event, making such an order is not within the scope of the passing of an executor's accounts, and is not within the jurisdiction of a registrar of the court. Resolution of this issue is a matter that cannot be resolved in this hearing. Unrealized jewellery and personal items
- [39] There were a number of articles of jewellery and other personal items, including the deceased's wallet and contents thereof, that were not provided to the executor. There are allegations that each of the beneficiaries has retained some of the disputed items without accounting for them.
- [40] On April 12, 2022, the executor sent a letter to all of the beneficiaries, listing personal items belonging to the deceased that were unaccounted for. The executor asked for those items to be provided to his office for appraisal in order to complete the estate accounting. The letter includes the following concluding statement: As we have stated repeatedly, we will not be undertaking legal action to force the delivery, valuation or change of possession of any of these items. If you wish to take any action in this regard you should retain counsel and get advice about your rights. Please note we have not received any personal items and if we don't receive any by Friday, April 22nd, 2022, we will not be including personal items in the estate accounting that will be reviewed by the court.
- [41] The executor gave evidence that no items were delivered to his office. There was also no evidence of legal action taken by any of the beneficiaries with respect to the items. At the hearing before me, Brent and Brad asked me to attribute a value to some of the items that they allege are in Bruce's possession, and to adjust the distribution of the residue accordingly. I confirm, as I said at the hearing, that the court is unable to do so in the absence of any evidence of value or evidence that the items are in Bruce's possession.
- Executor's remuneration
- [42] The amount of the executor's remuneration is set out in the Compensation Agreement. Brad and Brent agree that the executor is entitled to the remuneration set out in the Compensation Agreement, but have concerns about the executor's calculations.
- [43] The executor is entitled to an estate administration fee based on the realized or deemed value of the estate assets. Pursuant to the Compensation Agreement, any assets that are unrealized at the end of the first year of the estate administration are deemed to be realized at the fair market value at that date, and the estate administration fee is then charged.
- [44] The Residence remained unrealized at the end of the first year. The 2019 assessed value was \$1,072,700. The Residence sold for \$1,175,000 on August 31, 2021. In the absence of any evidence of value as at August 30, 2020 (one year from the date that probate was issued), I will use the median figure between the 2019 assessed value and the August 31, 2021 sale price as the market value as at August 30, 2020. That figure is \$1,123,850.
- [45] The remaining estate assets comprise liquid assets held in financial institutions, and a vehicle with an agreed value.

- [46] For the purpose of calculating the executor's remuneration, the estate assets are as follows:
- | Item number from P-40 affidavit | Description of asset                                            | Valuation date                                               | Value                     |
|---------------------------------|-----------------------------------------------------------------|--------------------------------------------------------------|---------------------------|
| A1                              | 5457 5B Avenue, Delta, BC (the Residence)                       | August 30, 2020 (end of first year of estate administration) | \$1,123,850.00            |
| A2                              | 2007 Cadillac vehicle                                           | May 22, 2019 (date of death)                                 | \$6,625.00 (agreed value) |
| A3                              | Canaccord Genuity Wealth Management cash account no. 20M-549A-1 | May 22, 2019 (date of death)                                 | \$459,382.27              |
| A4                              | Canaccord Genuity Wealth Management RRIF account no. 20M-549T-1 | May 22, 2019 (date of death)                                 | \$116,330.77              |
| A5                              | Canaccord Genuity Wealth Management TFSA account no. 20M-549V-1 | May 22, 2019 (date of death)                                 | \$68,889.80               |
| A6                              | Envision Financial Membership no. 2600 Shares Account           | May 22, 2019 (date of death)                                 | \$107.20                  |
| A7                              | Envision Financial Membership no. 2600 chequing Account         | May 22, 2019 (date of death)                                 | \$21.67                   |
| A8                              | Envision Financial Membership no. 2600 savings Account          | May 22, 2019 (date of death)                                 | \$395.29                  |
| A9                              | Envision Financial Membership no. 2600 GIC Account              | May 22, 2019 (date of death)                                 | \$52,682.35               |
| A10                             | Bank of Montreal investment account no. 17508781                | May 22, 2019 (date of death)                                 | \$89,488.44               |
| A11                             | TD Canada Trust high interest savings account no. 503195        | May 22, 2019 (date of death)                                 | \$41,042.21               |
| Total asset values              |                                                                 |                                                              | \$1,958,815.00            |
- [47] Pursuant to the Compensation Agreement, the estate administration fee is: 2% of \$1,000,000 = \$ 20,000.00 1.5% of \$958,815 = \$ 14,382.23 Total executor's fee: \$ 34,382.23
- [48] As the executor is a lawyer, GST is also payable on the estate administration fee, in the amount of \$1,719.11. The total amount payable by the estate for the executor's fees and GST is therefore \$36,101.34. From this total is deducted \$35,734.26 already paid to date, leaving a balance owing of \$367.08. Legal Fees
- [49] The executor has rendered separate invoices from his law firm, Delta Law Office, for various estate expenses (such as funeral expenses), for professional fees and disbursements, and for executor's fees. Some of the charges listed as professional disbursements (such as mail forwarding) are properly chargeable as estate expenses. However, it is difficult to parse these out given how the accounts have been rendered.
- [50] Clause II.3 of the will provides as follows: My Trustee is entitled to charge the usual professional fees and other charges for the professional services it provides in connection with the probate of my Will and any codicil to it and the administration of my estate and trusts of my Will, in addition to any remuneration for acting as my executor and trustee of this Will, as provided for in the Compensation Agreement signed on the date I signed this Will, and I DECLARE that the terms of the Compensation Agreement shall be valid and binding in all respects to fix the compensation payable to my Trustee as though the Compensation Agreement was expressly embodied in my Will.
- [51] The following accounts have been issued by the executor's law firm, Delta Law Office, for professional services with respect to the application for probate and administration of this estate:
- | Item number from P-40 Affidavit | Date of invoice    | Amount (including fees, disbursements and taxes) |
|---------------------------------|--------------------|--------------------------------------------------|
| C18                             | September 24, 2019 | \$3,864.90                                       |
| C30                             | January 17, 2020   | \$971.96                                         |
| C64                             | January 29, 2021   | \$661.71                                         |
| C82                             | September 13, 2021 | \$198.83                                         |
| C83                             | September 13, 2021 | \$5,073.35                                       |

Total \$10,770.75 None of the above relate to executor's fees or professional services with respect to the conveyance of the Residence.

- [52] The account rendered on June 20, 2019 in the amount of \$1,839.11, in relation to the preparation and execution of the deceased's will and representation agreement, is not included in the above list as it is properly a debt of the estate.
- [53] Brad and Brent objected to the executor charging both executor's fees and professional legal fees in respect of the administration of the estate, although they did not articulate a clear legal basis for their objection.
- [54] Neither a lawyer who is a personal representative nor their law firm can be paid for the usual legal services rendered in the administration of the estate unless a charging clause in the will authorizes such payment (Re Sullivan Estate, 1954 CanLII 495 (BC SC)), or unless all beneficiaries consent. The clause quoted in paragraph 50 above is a charging clause.
- [55] However, if the lawyer-personal representative was one of the attesting witnesses to the will, the charging clause is vitiated. The charging clause is considered a legacy and as such is void by operation of s. 43(1)(a) of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA], unless the court orders otherwise pursuant to s. 43(4). The court may order otherwise if it is found that the testator intended to make the gift (Re Le Gallais Estate, 2017 BCSC 1699).
- [56] The will was witnessed by Mr. Lott and another individual named Graham Buchanan, who appears to have been employed by Delta Law Office. The fact of Mr. Lott having witnessed the will did not come to my attention during the hearing.
- [57] I sent a memorandum to the parties dated March 29, 2023, directing a further appearance before me for the purpose of making submissions regarding the validity of the charging clause in light of s. 43(1)(a) of WESA. At that appearance on April 18, 2023, all parties appeared to agree that the issue of the validity of the charging clause could be rectified by a declaration from the court pursuant to s. 43(4) of WESA. However, I was unable to resolve the validity of the charging clause since a registrar does not have jurisdiction to make such a declaration.
- [58] An additional issue arose in advance of the April 18, 2023 hearing. Mr. Lott provided written submissions and an affidavit sworn April 10, 2023. In that affidavit, he gave evidence as to the circumstances surrounding the execution of the will, and the fact that he signed the will as an attesting witness after Mr. Redmond's death. This affidavit conflicted with an earlier affidavit sworn by Mr. Lott on July 16, 2019 in support of his application for probate. In that earlier affidavit, Mr. Lott deposed in para. 9: I believe that the will complies with the requirements of Division 1 of Part 4 of the Wills, Estates and Succession Act and I am not aware of any issues that would call into question the validity or contents of the will.

- [59] The circumstances of the execution of the will raised issues that called into question the validity and contents of the will. Accordingly, I advised the parties at the April hearing that I was unable to proceed with the passing of the executor's accounts until the will was cured and the validity of the charging clause was determined. I adjourned the passing of accounts generally, and remained seized in the event that the other issues were resolved.
- [60] On March 15, 2024, Justice Wilkinson declared that the Will was fully effective as a testamentary instrument and that the charging clause was not void. She also ordered that the estate and the appearing respondents (Brent and Brad) were entitled to special costs of that application to be paid by Mr. Lott personally.
- [61] Accordingly, the accounts listed in paragraph 51 above are properly payable by the estate.  
Costs
- [62] Rule 25-13(7) provides that unless otherwise ordered on an application, any costs payable pursuant to an application for the passing of accounts or fixing of a personal representative's remuneration must be assessed as special costs. If costs are to be paid from the estate, the court may direct out of what portion of the estate or property the costs are to be paid (Rule 14-1(16)).
- [63] In the notice of application heard before Master Robertson, the executor sought an order that costs of this assessment be paid as special costs by those beneficiaries who are opposed, being Brad and Brent. While the court had jurisdiction to make such an order (Rule 14-1(16)), Master Robertson did not do so.
- [64] The executor's costs of this reference are therefore payable as special costs from the estate as a whole.

## Disposition

- [65] The Accounts are passed as presented with the following exceptions:
- a) The amount paid to the City of Delta on account of the city utility taxes is to be a charge against the estate as a whole, rather than against Brent's share;
  - b) The Swadden & Company invoice is allowed as an expense of the estate as a whole, and not to be charged against Brent's share;
  - c) The entire expense for cleaning the Residence is allowed and is to be borne by the estate as a whole, and not to be charged against Brent's share;
  - d) The executor's remuneration is reduced to a total of \$36,101.34, inclusive of GST. From this amount is deducted the sum of \$35,734.26 that has already been paid, leaving a balance of \$367.08 owing to the executor;
  - e) The sum of \$10,770.75 paid to Delta Law Office for professional fees, disbursements and taxes in relation to the administration of the estate is allowed.

- [66] A certificate in form P39 may be submitted for my signature.
- [67] Although outside the scope of this reference, I note that the special costs ordered to be paid to the estate by Mr. Lott personally must be agreed upon or assessed. Once determined, they are an asset of the estate.
- [68] The executor's costs of this reference are payable from the estate as a whole, as special costs. I am not seized of that costs assessment. "Associate Judge Hughes"
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