

CANADA / JUDGMENT

Yurkiw Estate

2025 BCSC 1948

COURT

Supreme Court of British Columbia

DECIDED

8 September 2025

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2025 BCSC 1948 Yurkiw Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Yurkiw Estate,

2025 BCSC 1948

Date: 20250908

Docket: P213610

Registry: Vancouver

Re: Estate of David Thomas George Yurkiw, Deceased

Before: The Honourable Justice Morley

Oral Reasons for Judgment

(In Chambers)

Counsel for Benjamin Yurkiw:

D. Magnus

(by videoconference)

Counsel for Heritage Trust:

K. Vimalasan

(by videoconference)

Appearing on Own Behalf:

B. Clark

(by videoconference)

Place and Date of Hearing:

Vancouver, B.C.

September 8, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 8, 2025

- [1] THE COURT: I am going to give reasons now. This is obviously without a chance to edit, so if there is a request for a written version of what I am about to say, I may edit that. The result will not change, nor will the basis for it.

The Issue

- [2] This request for directions from Bethany Clark, who is one of the two beneficiaries of the estate and who is representing herself, arises out of orders I made on November 21, 2024 (the "November Order") and May 20, 2025 (the "May Order").
- [3] In the November Order, I held that trust documents must presumptively be disclosed to both beneficiaries, as their property, and thus regardless of relevance to a specific litigation issue. An exception arises for documents with respect to which the trustee can assert solicitor-client against the beneficiaries, but that must be established by the trustee. The presumption is disclosure.
- [4] In the May Order, I clarified the scope of the "entire file" of trust documents. This comprises all physical and electronic records in the possession or control of the trustee that contain information about the trust, unless those records are transitory, as defined in a reasonable records retention policy or are subject to some categorical exception to disclosure.
- [5] At the hearing for the May Order, Ms. Clark raised a concern that there might be things in some trust documents in which she had a strong privacy interest. An example she pointed to would be the full number of her bank accounts. There has been a contentious relationship between the siblings in this hearing, and so Ms. Clark had an obvious and legitimate concern about sharing private details with her brother.
- [6] I took this concern into account in the form of the order. It seemed to me that there could be a category of trust documents for which the privacy interests of one or more beneficiaries as against the other would justify non-disclosure or redaction. Para. 4 of the May Order therefore provided that, in addition to redactions of solicitor-client privilege that could be maintained against the beneficiaries, the trustee, Heritage Trust Company Inc., was authorized to redact documents to exclude information where there is a legitimate privacy interest provided that:

- i) The redactions are symmetrical. In other words, if private information in a certain category concerning Ms. Clark is not provided to Mr. Yurkiw, similar information concerning Mr. Yurkiw should not be provided to Ms. Clark;
 - ii) There is a reasonable privacy interest in the personal information that is being redacted; and
 - iii) The redacted personal information is not necessary for the beneficiaries to get an accounting.
- [7] This hearing arises because Ms. Clark took the position with the trustee that the presumption should be against disclosure. She raised a specific concern with respect to her emails to the trustee. She is seeking a direction from me to the effect that no statement of hers should be produced unless they specifically relate to an item in an accounting.
- [8] My understanding is the trustee has prepared documents with redactions, but not on the basis sought by Ms. Clark. Rather, the trustee has proceeded on the basis of looking for things specifically like full bank account information, with a presumption that if a record is a trust document, it will be disclosed.

Disclosure is the Presumption and the Trustee Makes Judgment Calls

- [9] I agree with the approach that the trustee is taking, and therefore will not give the direction Ms. Clark is seeking.
- [10] Trust documents are trust property. Trust property ultimately belongs to the beneficiaries, and therefore there has to be a basis for a trustee not to permit the beneficiary the use of the property. It follows, therefore, that the presumption is disclosure to the beneficiaries. There are exceptions to that presumption, based in the fiduciary role of the trustee, but that is the presumption.
- [11] It therefore does not have to be shown that the documents are specifically relevant to something for it to be disclosed. Rather, there would have to be a reason not to provide it to the beneficiaries for it not to be disclosed, and those reasons would have to be grounded in the fiduciary role of the trustee.
- [12] A corollary of this principle is that the trustee is the one who has to make the judgment calls, and the trustee is entitled to deference from the court in making those judgment calls, so long as the trustee is balancing the interests of the beneficiaries.
- [13] In this case, Ms. Clark has a concern about privacy; Mr. Yurkiw has a concern about obtaining sufficient disclosure. A trustee has an obligation to be even-handed within the operation of the discretion, but that does not mean they have to do things specifically as one of the beneficiaries would like or even as the court might decide to do. It is the trustee who has the fiduciary role. Therefore, the trustee has a wide ambit of discretion to make those kinds of determinations.
- [14] These principles follow from this discussion:

- a) If a record is a trust document, the presumption is that it will be disclosed to the beneficiaries.
 - b) One exception to this presumption is where the trustee, acting in good faith and on the basis of the principle of even handedness, determines that the privacy interests of a beneficiary outweighs the interests of the other beneficiary or beneficiaries in obtaining the record. The redactions or non-disclosures must be symmetrical, there must be a reasonable privacy interest, and the information withheld must not be information that is necessary to obtain an accounting. I am not going to provide more language around this exception because I do not think that would be helpful. However, I think it is worth repeating that I used the word "and", so these are conjunctive requirements. In other words, all three of the requirements must be met in the judgment of the trustee in order for the information not to be -- the trust document not to be provided or referred to be redacted. It is not sufficient if just one of those is met.
 - c) The decision as to what to withhold is the trustee's decision to make. The trustee has both the obligation and the right to make its own judgment calls in terms of whether the exception applies. For example, the trustee has to make the call about whether there is a reasonable privacy interest when personal information is being redacted or whether the redacted personal information is necessary for the beneficiary to get an accounting. Those are things that the trustee, not the court, decides on at first instance.
 - d) The trustee can be challenged in court on a decision to disclose or withhold, but only if it failed to meet its fiduciary duty. This is a very high standard. It does not apply if there are judgment calls that might have been decided differently. It does apply if one beneficiary can show a bias towards the other beneficiary (a failure of "even handedness") or a very unreasonable decision. But it does not apply even to errors of judgment, so long as they are in good faith and not outside the realm of what anyone could reasonably think.
- [15] The principle that the court should not easily interfere with judgment calls of a trustee is particularly important here because obviously there is a delay and expense whenever such judgment calls are challenged and this is, after all, not a very huge estate. So I urge the parties, while they certainly can put their perspective to the trustee, to respect the trustee's judgment calls. The trustee has to make the calls in the context of a default in favour of disclosure and the need to be even-handed in assessing privacy interests.
- [16] Before I try to provide the final version of the direction I am going to give, I will note that there is obviously a spectrum of privacy. There are things that we all would rather not have other people know and yet have to disclose in litigation. If someone is involved in the administration of a trust with someone else, there will inevitably be some things that we might have a privacy interest in some loose sense, but it would not be so significant that the record should not be disclosed to the other beneficiary.

[17] Now, things like bank accounts, the actual number of bank accounts, that kind of information is on one extreme where it should be redacted. It is difficult to see why the other beneficiary would have a legitimate interest in it and the impact is potentially quite severe. But then there are many other things, including communications with the trustee about how the estate ought to be administered, that while I certainly understand Ms. Clark's perspective that that is private and she does not want to share with Mr. Yurkiw, and I certainly understand her concern that it not be misused, the fact of the matter is there are two beneficiaries involved in an administration of an estate, and they are entitled, both of them, Ms. Clark and Mr. Yurkiw, to the documents with limited exceptions.

[18] So I am going to make the following directions:

I am going to direct that the interpretation of whether a document fits within para. 4 of my order of May 20, 2025, is within the discretion of the Heritage Trust Company Inc. as trustee, that discretion to be exercised reasonably and consistently with Heritage Trust Company's fiduciary duties to the beneficiaries. It is not to be interfered with unless shown to be unreasonable or a breach of trust.

I am going to make a direction that para. 4 should be interpreted on the basis that documents that fit within the definition of trust documents are presumed to be disclosable to both beneficiaries, unless there is a basis to not disclose or redact them.

The trustee need not provide reasons for redactions or non-redactions.

The costs of this application will be payable for all parties out of the estate, on a full indemnity basis.

[19] CNSL K. VIMALESAN: The cost of the further review from this point on to be paid from the estate as well?

[20] THE COURT: That is just an ordinary administration cost. I do not want to make an order about that right here because, you know, maybe that comes up later in a review. But yes, if it is a cost of administering the estate, then presumptively the trustee can recover the reasonable costs of doing that. I am certainly not ordering or directing otherwise.

"J. G. Morley, J."

The Honourable Justice Morley

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