



The Law Society of Manitoba

INCORPORATED 1877 | INCORPORÉ EN 1877

WILLS AND ESTATES

Chapter 5

Estate Litigation

Precedents

May 2020

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1. Notice of Application

File No. PR 20-01-11011

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: The Estate of JOHN DOE, of the City of Winnipeg,
 in the Province of Manitoba, deceased.

BETWEEN:

ROBERT DOE,

applicant,

- and -

JANE ROE,

respondent.

APPLICATION UNDER: COURT OF QUEEN'S BENCH RULE 75.03(1)(c)

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN commenced by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge on Monday, April 2nd, 20__ at 10:00 a.m. at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, in Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED March 12, 20__.

Issued by: _____
Registrar

TO: JANE ROE
5 - 67th Street
Winnipeg, Manitoba
R2C 3D4

APPLICATION

1. The applicant makes application for:
 - (a) The opinion, advice and direction of the Court on issues affecting the Estate of John Doe;
 - (b) An Order pursuant to Queen's Bench Rule 75.03(1)(c) pronouncing against the validity of the testamentary document propounded for probate by the respondent's request for probate;
 - (c) An Order appointing the Public Guardian and Trustee of Manitoba or an independent third party as administrator of the Estate pending litigation on such terms as may be acceptable to the Public Guardian and Trustee or independent third party administrator and as this Honourable Court may determine appropriate and reasonable in the circumstances of this estate administration pending determination of the issues herein;
 - (d) An Order requiring the Respondent to provide the court with a full and complete accounting of her administration of the Estate or for any period in which the Respondent managed the assets of the Estate within a time period directed by this Honourable Court;
 - (e) Costs are hereby sought in favour of the Applicant, on a lawyer client basis, as against any party or parties, who may oppose this application jointly and severally; and
 - (f) Such further and other relief as counsel may advise and this court may permit.

2. The grounds for the application are:
 - (a) John Doe passed away on January 12, 2020 in the City of Winnipeg, Province of Manitoba leaving an alleged Last Will and Testament dated April 10, 2016;
 - (b) The Respondent filed a Request for Probate of the Last Will and Testament on February 1, 2020 and a Grant of Probate was issued by this Honourable Court to the Respondent on February 14, 2020;
 - (c) That the said Last Will and Testament is expressed to be conditional upon the occurrence of a specific event and that the said event did not occur and that the condition referred to therein was not satisfied;

- (d) That as a result of the failure and non-occurrence of the condition, the said document makes no disposition of any assets of the deceased and therefore, should not have been admitted to probate;
 - (e) That the said Last Will and Testament was not duly executed by the deceased;
 - (f) That the appointment of an administrator of the Estate pending litigation is required to preserve the assets of the Estate;
 - (g) The applicant pleads and relies upon the following:
 - i. *The Court of Queen's Bench Rules*, Rules 1.04(1), 14.05(2)(c), 38, 75.03(1)(c);
 - ii. *The Court of Queen's Bench Surrogate Practice Act*, CCSM c. C290, ss. 14, 17 and 55;
 - iii. *The Wills Act*, CCSM c. W150, s. 7; and
 - iv. *The Trustee Act*, CCSM c. T160, s. 9 and 87;
 - (h) The inherent jurisdiction of this Honourable Court; and
 - (i) Such further and other grounds as counsel may advise and this court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The affidavit of the applicant, ROBERT DOE, sworn March 12, 2020; and
 - (b) Such other material as counsel may advise and this court may permit.

DATED March 12th, 20__.

GREEN & BLACK
Barristers & Solicitors
123 - 45th Street
Winnipeg, Manitoba
R4C 5D6

Lawyer: Joan Green
Telephone: 555-1213
Fax No: 992-1000

2. Caveat (Form 75A)

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE ESTATE OF JOHN DOE, of the City of Winnipeg, in Manitoba, plumber, deceased.

LET NOTHING BE DONE (or let nothing further be done) in the Estate of JOHN DOE, of the City of Winnipeg, in the Province of Manitoba, plumber, deceased, without notice to ROBERT DOE, of the City of Winnipeg, in the Province of Manitoba.

ROBERT DOE is the lawful brother of the deceased.

This caveat is entered for the reason that the said deceased had not executed a valid testamentary document at the time of his death.

My address for service is:

c/o Law & Law
100 - 1st Street
Winnipeg, Manitoba
R1A 2B2

DATED the 1st day of February, 20__.

"ROBERT DOE"

Robert Doe

3. Affidavit to Accompany Caveat (Form 75A)

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE ESTATE OF JOHN DOE, of the City of Winnipeg, in Manitoba, plumber, deceased.

I, ROBERT DOE, of the City of Winnipeg, in the Province of Manitoba, make oath and say:

1. That I am the lawful brother of the late John Doe who died at the City of Winnipeg, in the Province of Manitoba, on or about the 15th day of November, 20__.
2. That the Caveat that is filed, or is about to be filed, by me in this matter is not entered for the purpose of delay nor to embarrass any person interested in the estate.

SWORN before me at the)
City of Winnipeg, in the)
Province of Manitoba,)
this 1st day of February, 20__.)
)

ROBERT DOE

"JOHN LAW"
A Barrister and Solicitor
in and for the Province of Manitoba

4. Notice to Caveator (Form 75B)

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE ESTATE OF JOHN DOE, of the City of Winnipeg, in Manitoba, plumber, deceased.

WHEREAS:

- (a) You have filed a caveat dated the 1st day of February, 20__ in which you have alleged that the said deceased at the time of his death had not executed a valid testamentary document;
- (b) Jane Roe, of the City of Winnipeg, in Manitoba, clerk, has, on the 12th day of February, 20__, applied for probate in the above estate.

NOTICE that unless you make a probate application pursuant to the caveat within 30 days after service of this notice, the registrar shall cancel the caveat.

Signed the 16th day of February, 20__.

"A. A. JONES"

Registrar

THIS COURT HEREBY ORDERS:

1. THAT the following parties are all those interested in upholding or disputing the validity of the will:

- (a) ROBERT DOE, the applicant;
- (b) MARTIN DOE, of the City of Winnipeg, in Manitoba, retired;
- (c) PETER DOE, of the City of Winnipeg, in Manitoba, pharmacist; and
- (d) JANE ROE, the respondent.

2. THAT the following persons shall disclose documents and be examined for discovery pursuant to the rules of this court:

- (a) ROBERT DOE;
- (b) MARTIN DOE;
- (c) PETER DOE; and
- (d) JANE ROE.

3. THAT the issues to be tried are as follows:

- (a) JANE ROE affirms and the said ROBERT DOE, MARTIN DOE and PETER DOE deny the validity of the alleged will propounded for probate and dated April 10, 2016;
- (b) JANE ROE affirms and the said ROBERT DOE, MARTIN DOE and PETER DOE deny that the alleged will was duly executed by the deceased, JOHN DOE;
- (c) The said ROBERT DOE, MARTIN DOE and PETER DOE allege, and the same JANE ROE denies that the alleged will is conditional upon the occurrence of an event which did not occur, the said ROBERT DOE, MARTIN DOE and PETER DOE admitting that the alleged will propounded and dated the 5th day of May, 20__ is in the handwriting of the deceased, JOHN DOE, whose mental capacity to make a will is also admitted.

4. THAT the parties hereto shall make discovery of documents as provided for in the Court of Queen's Bench Rule 30 including, without limitation, the delivery of affidavits of documents after the close of pleadings and that the parties be subject to examination for discovery as provided in Queen's Bench Rule 31;

5. THAT the parties hereto are entitled to the benefit of documentary discovery, examination of discovery and pre-trial procedures without prejudice to the right of any parties to avail themselves of any civil procedures contemplated by the Court of Queen's Bench Rules;

6. THAT any party may apply to Court for further directions as required;
7. THAT the parties hereto shall each bear their respective costs with respect to this motion and granting of this Order.

October 15th, 2020

"A. P. BENCH"

Judge

Approved as to Form:

John Law
Solicitor for Jane Roe

Approved as to Form:

GREEN & BLACK
Solicitors for Robert Doe, Martin Doe
and Peter Doe

6. Notice of Application re: Validity of Will, Interim Appointment of the Public Guardian and Trustee as Administrator, and for Directions

File No. PR 20-01-12345

THE QUEEN'S BENCH WINNIPEG CENTRE

IN THE MATTER OF: The Estate of EMILY EDWARDS, of the City of Winnipeg,
in the Province of Manitoba, deceased.

BETWEEN:

ABIGAIL ADAMS and BARBARA BROWN,

applicants,

- and -

CONRAD CARLSON and DONNA DAVIS,

respondents.

APPLICATION UNDER COURT OF QUEEN'S BENCH RULE 75.03(1)(c)

NOTICE OF APPLICATION

TO RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following pages.

THIS APPLICATION will come on for a hearing before a judge, on Monday, November 25th, 20__, at 10:00 o'clock in the forenoon, at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

November 4th, 20__

Issued by: _____
Registrar

TO: CONRAD CARLSON
123 Any Street
Winnipeg, Manitoba
R2J 3X3

AND TO: DONNA DAVIS
456 White Avenue
Winnipeg, Manitoba
R5X 2Z7

AND TO: THE PUBLIC GUARDIAN AND TRUSTEE
155 Carlton Street, Suite 500
Winnipeg, Manitoba
R3C 5R9

APPLICATION

1. The applicants make an application for:
 - (a) The opinion, advice and direction of the Court on issues affecting the Estate of Emily Edwards, deceased;
 - (b) An Order pursuant to *Queen's Bench Rule* 75.03(1)(c) pronouncing against the validity of the testamentary document propounded for Probate by the respondents' Request for Probate dated September 28th, 20__;
 - (c) An Order pursuant to section 17 of *The Court of Queen's Bench Surrogate Court Practice Act*, pending resolution of this matter, appointing the Public Trustee Guardian and Trustee as administrator of the estate of Emily Edwards, deceased on such terms as may be acceptable to the Public Guardian and Trustee and as this Honourable Court may determine appropriate and reasonable in the circumstances;
 - (d) Costs are hereby sought in favour of the Applicant, on a lawyer client basis, as against any party or parties, who may oppose this application jointly and severally; and
 - (e) Such further and other relief as counsel may advise and this Honourable Court may permit.

2. The grounds for the application are:
 - (a) Emily Edwards passed away on February 12, 2020 in the City of Winnipeg, Province of Manitoba leaving an alleged Last Will and Testament dated May 10, 2016;
 - (b) That the maker of the document, Emily Edwards, deceased, was without testamentary capacity at the time the document was made;
 - (c) Further, and in the alternative, that Emily Edwards, deceased, was subject to the undue influence of the respondents, or either of them, or others, at the time of making the document;
 - (d) Further, and in the alternative, that Emily Edwards, deceased, made the document on the basis of a mistake or mistakes of fact;

- (e) The applicant pleads and relies upon the following:
 - i. *The Court of Queen's Bench Rules*, Rules 1.04(1), 14.05(2)(c), 38, 74.02(12), 75;
 - ii. *The Court of Queen's Bench Surrogate Practice Act*, CCSM c. C290, ss. 17, 24 and 40;
 - iii. *The Trustee Act*, CCSM c. T160, s. 9 and 87;
 - (f) Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The Consent of the Public Guardian and Trustee, to be filed;
 - (b) The Affidavit of the applicant Abigail Adams, to be filed;
 - (c) The Affidavit of the applicant Barbara Brown, to be filed;
 - (d) Such further and other material as counsel may advise and this Honourable Court may permit.

November 7th, 20__

ABC LAW CO.
Barristers and Attorneys-at-Law
3600 - 360 Main Street
Winnipeg, Manitoba
R3Y 6H7
FRANKLIN FORBES
Lawyers for the applicants
(File No. 6666/99)
Phone No. (204) 222-3535
Fax No. (204) 666-3535

7. Consent Order Granting Interim Appointment of Public Guardian and Trustee as Administrator

File No. PR __-01-12345

THE QUEEN'S BENCH WINNIPEG CENTRE

THE HONOURABLE)
) Tuesday, the 15th day of December, 20__.
MR. JUSTICE BLACK)

IN THE MATTER OF: The Estate of EMILY EDWARDS, of the City of Winnipeg,
in the Province of Manitoba, deceased.

BETWEEN:

ABIGAIL ADAMS and BARBARA BROWN,

applicants,

- and -

CONRAD CARLSON and DONNA DAVIS,

respondents.

APPLICATION UNDER COURT OF QUEEN'S BENCH RULE 75.03(1)(c)

CONSENT ORDER

THIS APPLICATION, made by applicants for an order appointing an administrator of the Estate pending litigation, was heard this day, at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Application, the Consent of the Public Trustee dated November 1, 20__, the Affidavit of Gwen Gates sworn November 7, 20__, the Affidavit of Abigail Adams, sworn November 16, 20__, and the Affidavit of Barbara Brown, sworn November 16, 20__;

ON NOTING the consents of the applicants and the respondents by the endorsement of their respective legal counsel hereon;

ON HEARING the submissions of counsel of the applicants and the respondents;

THIS COURT HEREBY ORDERS:

1. THAT the Public Guardian and Trustee of Manitoba be and is hereby appointed as Interim Administrator of the Estate of Emily Edwards, deceased, pending litigation;

2. THAT the Public Guardian and Trustee shall be entitled to charge all standard administration fees and reasonable legal fees to the Estate, as set out in the Fee Schedule of the Public Guardian Trustee approved by Treasury;
3. THAT the Public Guardian and Trustee shall acquire no liability for events preceding its appointment. The Public Guardian Trustee shall not be responsible to investigate, seek an accounting or make any claim or commence any action or seek any relief or redress against any person for any financial transaction and any other matters whatsoever which occurred prior to the Public Guardian and Trustee's appointment;
4. THAT the Public Guardian and Trustee shall not be required to participate in any litigation or adjudicate issues in dispute between Abigail Adams, Barbara Brown, Conrad Carlson or Donna Davis and is not required to take any position with respect to such issues;
5. THAT the Public Guardian and Trustee shall be at liberty to apply for such further Order or directions as may reasonably be required;
6. THAT this Order shall remain in full force and effect, until further Order of this Court.

November , 20__

Judge

APPROVED AS TO FORM AND CONTENT:
Henderson & Associates

Per: _____
Harry Henderson
Lawyers for the respondents

APPROVED AS TO FORM AND CONTENT:
ABC Law Co.

Per: _____
Franklin Forbes
Lawyers for the applicants

APPROVED AS TO FORM AND CONTENT:
The Public Guardian and Trustee of Manitoba

Per: _____

8. Order for Proof in Solemn Form and Directions

File No. PR-__-01-12345

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE)
) Tuesday, the 25th day of May, 20__.
MR. JUSTICE BROWN)

IN THE MATTER OF: The Estate of EMILY EDWARDS, of the City of Winnipeg,
in the Province of Manitoba, deceased.

BETWEEN:

ABIGAIL ADAMS and BARBARA BROWN, applicants,
- and -

CONRAD CARLSON and DONNA DAVIS, respondents.

APPLICATION UNDER COURT OF QUEEN'S BENCH RULE 75.03(1)(c)

ORDER

THIS APPLICATION, made by the applicants, was heard this day, at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Application, the Consent of the Public Trustee dated November 1, 20__, the Affidavit of Gwen Gates sworn November 7, 20__, the Affidavit of Abigail Adams, sworn November 16, 20__, the Affidavit of Barbara Brown, sworn November 16, 20__, the application brief of the applicants filed April 10, 20__, and the application brief of the Respondent filed April 20, 20__;

ON HEARING the submissions of counsel of the applicants and the respondents;

THIS COURT HEREBY ORDERS:

1. THAT the respondents shall be required to prove in solemn form the testamentary document propounded by the Request for Probate dated September 2nd, 20__;
2. THAT the proceeding for proof in solemn form shall be commenced by the respondents by way of Notice of Application in which the respondents herein shall be described as "applicants," and the applicants herein shall be described as "respondents";
3. THAT the Notice of Application shall be filed and served within 30 days after this Order is entered;
4. THAT the Notice of Application shall be served upon the following additional persons and entities: Isabel Irish, Jack Johnson, University of Manitoba Ukrainian Endowment Fund, Manitoba Heart and Stroke Foundation, Canadian Cancer Foundation, forthwith after it is filed;
5. THAT following service of the Notice of Application on the parties hereto, pleadings shall be filed and served in accordance with the Queen's Bench Rules;
6. THAT any party may apply to Court for further directions as required;
7. THAT costs of this motion shall be in the cause.

May 25, 20__

APPROVED AS TO FORM:
Henderson & Associates

Per: _____
Harry Henderson
Lawyers for the respondents

9. Notice of Application

File No. PR-__-01-22345

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: The Estate of EMILY EDWARDS, of the City of Winnipeg,
in the Province of Manitoba, deceased.

BETWEEN:

CONRAD CARLSON and DONNA DAVIS,

applicants,

- and -

ABIGAIL ADAMS and BARBARA BROWN,

respondents.

APPLICATION UNDER COURT OF QUEEN'S BENCH RULE 75.03(1)(c)

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing before a judge, on Wednesday, the 16th day of July, 20__, at 10:00 a.m., at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

June 15, 20__

Issued by _____
Deputy Registrar

TO: Abigail Adams
c/o ABC Law Co.
Barristers and Attorneys-at-Law
3600-360 Main Street
Winnipeg MB R3Y 6H7

AND TO: Barbara Brown
c/o ABC Law Co.
Barristers and Attorneys-at-Law
3600-360 Main Street
Winnipeg MB R3Y 6H7

AND TO: Isabel Irish
123 Water Avenue
Winnipeg MB R1A 1A8

AND TO: Jack Johnson
456 Black Street
Winnipeg MB R2K 3R7

AND TO: University of Manitoba
Ukrainian Endowment Fund
Fort Garry Campus
Winnipeg MB R3T 2N5

AND TO: Manitoba Heart and Stroke Foundation
301-352 Donald Street
Winnipeg MB R3B 2H8

AND TO: Canadian Cancer Foundation
200 Neptune Street
Winnipeg MB R3C 2B7

APPLICATION

1. The applicants make application for:
 - a) An order for a grant of probate to the applicants in the Estate of Emily Edwards pursuant to the will and testament of the late Emily Edwards, dated June 3, 20__;
 - b) Costs are hereby sought in favour of the applicants, on a lawyer client basis, as against any party or parties, who may oppose this application jointly and severally; and
 - c) Such further and other relief as counsel may advise and this Honourable Court may permit.

2. The grounds for the application are:
 - a) Emily Edwards died a widow at the City of Winnipeg, in the Province of Manitoba on February 12, 2020;
 - b) That the late Emily Edwards, at the time of making the document dated May 10, 2016, intended that the document be her last will and testament;
 - c) That at the time of making the document dated May 10, 2016, the late Emily Edwards had the requisite testamentary capacity to make her last will and testament;
 - d) That at the time of making the document dated May 10, 2016 the late Emily Edwards knew and approved of the contents of the document as her last will and testament;
 - e) That the document dated May 10, 2016, is in the due form of a will pursuant to *The Wills Act* C.C.S.M. c. W150;
 - f) That the document dated May 10, 2016, was duly executed by the late Emily Edwards pursuant to the requirements of *The Wills Act* C.C.S.M. c. W150;
 - g) The applicants plead and rely upon the following:
 - i) *The Wills Act* C.C.S.M. c. W150;
 - ii) *Queen's Bench Rule* 14.05(2)(c)(i) and (iv) and 75.03(1)(a); and
 - h) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:
- a) The will of the late Emily Edwards dated May 10, 2016 and the attached affidavit of execution of the will, sworn May 10, 2016;
 - b) The request for probate of the will of Emily Edwards, dated March 28, 2020;
 - c) The affidavit of Conrad Carlson, to be filed;
 - d) The affidavit of Donna Davis, to be filed;
 - e) The order of this Honourable Court signed May 25, 20__, in Queen's Bench File No. PR20-01-12345; and
 - f) Such further and other material as counsel may advise and this Honourable Court may permit.

June 15, 20__

Harry Henderson
HENDERSON & ASSOCIATES
Barristers and Solicitors
123-410 Portage Avenue
Winnipeg, Manitoba
R3H 3R8
Telephone: 555-0155
Lawyers for the applicants

THE GROUNDS FOR THE MOTION ARE as follows:

1. That the parties consent to the order;
2. That the determination of the application depends, in part, on contested factual matters more suited to proof through oral evidence at trial; and
3. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Abigail Adams sworn November 16th, 20__;
2. Affidavit of Barbara Brown sworn November 16th, 20__;
3. Affidavit of Gwen Gates sworn November 7th, 20__;
4. Affidavit of Leonard Lawson sworn April 26, 20__;
5. Order of this Honourable Court_ pronounced May 25th, 20__;
6. Consent of the parties, filed; and
7. Such further and other materials as counsel may advise and this Honourable Court may permit.

July 5, 20__

ABC LAW CO.
Barristers and Attorneys-at-Law
3600 - 360 Main Street
Winnipeg, Manitoba R3Y 6H7
Phone No. (204) 222-3535
Fax No. (204) 666-3535
Franklin Forbes
Lawyers for the respondents
(File No. 6666/99)

TO: HENDERSON & ASSOCIATES
Harry Henderson
Lawyers for the applicants

11. Order Directing Hearing of Application by way of Trial

File No. PR-__-01-22345

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE)
)
MADAM JUSTICE GREEN) Wednesday, the 16th day of July, 2020

IN THE MATTER OF: The Estate of EMILY EDWARDS, of the City of Winnipeg,
in the Province of Manitoba, deceased.

BETWEEN:
CONRAD CARLSON and DONNA DAVIS, applicants,
- and -
ABIGAIL ADAMS and BARBARA BROWN, respondents.

APPLICATION UNDER COURT OF QUEEN'S BENCH RULE 75.03(1)(c)

ORDER

THIS MOTION, made by the respondents, was heard this day, at the Law Courts, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion dated July 5th, 20__, the Affidavit of Abigail Adams sworn November 16th, 20__, the Affidavit Barbara Brown sworn November 16th, 1999, the Affidavit of Gwen Gates sworn November 7th, 20__ and the Affidavit of Leonard Lawson sworn April 26th, 20__;

ON NOTING the Order of this Honourable Court pronounced May 25th, 20__ and the consents of the respondents and the applicants;

ON HEARING the submissions of counsel for the respondents and the applicants;

THIS COURT HEREBY ORDERS:

1. THAT the Notice of Application of the applicants Conrad Carlson and Donna Davis shall be determined by way of trial;
2. THAT the proceeding for proof in solemn form shall be commenced by the applicants by way of Statement of Claim in which the applicants herein shall be described as "plaintiffs," and the respondents herein shall be described as "defendants";
3. THAT the Statement of Claim shall be filed and served within 30 days after this Order is entered;
4. THAT following service of the Statement of Claim on the parties hereto, pleadings shall be filed and served in accordance with the Queen's Bench Rules;
5. THAT the parties hereto shall make discovery of documents as provided for in the Court of Queen's Bench Rule 30 including, without limitation, the delivery of affidavits of documents after the close of pleadings and that the parties be subject to examination for discovery as provided in Queen's Bench Rule 31;
6. THAT the parties hereto are entitled to the benefit of documentary discovery, examination of discovery and pre-trial procedures without prejudice to the right of any parties to avail themselves of any civil procedures contemplated by the Court of Queen's Bench Rules;
7. THAT any party may apply to Court for further directions as required;
8. THAT costs of this motion shall be in the cause.

July 16, 20__

3. That there exists between Kris Knowles and one or more of the parties to this proceeding a question of law or fact in common with a question in issue in the proceeding, namely, the validity of the said Last Will and Testament of Emily Edwards;
4. The proposed intervention will not unduly delay or prejudice the determination of the rights of the parties.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Kris Knowles, sworn October 7, 20__; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

October 21, 20__

MARTINS, MARSH
Barristers & Solicitors
333 - 444 St. Mary Avenue
Winnipeg, Manitoba
R3R 2S3
NICOLAS NICKLEBY, Q.C.
Phone: 667-2345

TO: HENDERSON & ASSOCIATES
Barristers & Solicitors
123 - 410 Portage Avenue
Winnipeg, Manitoba
R3H 3R8
HARRY HENDERSON
Lawyers for the applicants

AND TO: ABC LAW CO.
Barristers & Solicitors
3600 - 360 Main Street
Winnipeg, Manitoba
R3Y 6H7
FRANKLIN FORBES
Lawyers for the respondents

13. Order on Motion for Leave to Intervene

File No. PR-__-01-22345

**THE QUEEN’S BENCH
WINNIPEG CENTRE**

THE HONOURABLE)
) Tuesday, the 25th day of November, 20__.
MR. JUSTICE BROWN)

IN THE MATTER OF: The Estate of EMILY EDWARDS, of the City of Winnipeg,
in the Province of Manitoba, deceased.

BETWEEN:
CONRAD CARLSON and DONNA DAVIS, Plaintiffs,
- and -
ABIGAIL ADAMS and BARBARA BROWN, Defendants.

APPLICATION UNDER COURT OF QUEEN’S BENCH RULE 75.03(1)(c)

ORDER

THIS MOTION made by Kris Knowles, of the City of Victoria, in British Columbia, for leave to intervene as an added party pursuant to *Queen’s Bench Rule* 13.01(1), was heard on November 15, 20__, at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Affidavit of Kris Knowles sworn October 7, 20____; and

ON HEARING the submissions of counsel for Kris Knowles, and counsel for the respondents, Abigail Adams and Barbara Brown;

THIS COURT HREBY ORDERS:

- 1. THAT leave be and is hereby granted to Kris Knowles to intervene in this action as an added party;

2. THAT Kris Knowles's status will be that of a plaintiff at the forthcoming trial of issues referred to in the Order of this Honourable Court pronounced on July 16, 20__;
3. THAT Kris Knowles serve an affidavit of documents within 30 days of the date of this Order;
4. THAT Kris Knowles make himself available for examination for discovery in accordance with the Rules of Court and in a timely fashion so as not to interfere with the scheduled trial dates.

January 11, 20__

APPROVED AS TO FORM:
Henderson & Associates

Per: _____
Harry Henderson
Solicitors for the applicants

APPROVED AS TO FORM:
ABC Law Co.

Per: _____
Franklin Forbes
Solicitors for the respondents

14. Judgment Following Trial of Issue Originally Commenced by Notice of Application

File No. PR -__-01-22345

THE QUEEN'S BENCH WINNIPEG CENTRE

THE HONOURABLE)
) Tuesday, the 25th day of April, 20__.
MR. JUSTICE BROWN)

IN THE MATTER OF: The Estate of EMILY EDWARDS, of the City of Winnipeg,
in the Province of Manitoba, deceased.

BETWEEN:

CONRAD CARLSON, DONNA DAVIS and KRIS KNOWLES,

Plaintiffs,

- and -

ABIGAIL ADAMS, and BARBARA BROWN,

Defendants.

APPLICATION UNDER COURT OF QUEEN'S BENCH RULE 75.03(1)(c)

JUDGMENT

THE ISSUE directed by the Order of this Honourable Court pronounced _____, was tried on February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16 and 17, 20__, in the presence of counsel for the plaintiffs, Conrad Carlson, Donna Davis and Kris Knowles, and counsel for the defendants, Abigail Adams and Barbara Brown.

ON READING the Request for Probate of the Will of Emily Edwards dated September 28th, 20__, the Will of Emily Edwards dated June 3rd, 20__, the Caveat of Abigail Adams and Barbara Brown dated September 27th, 20__, the Notice of Application of Abigail Adams and Barbara Brown, dated November 7th, 20__, the Consent Order of the Honourable Mr. Justice _____ dated December 15th, 20__, the Order of the Honourable Mr. Justice _____ dated May 25th, 20__, the Notice of Application of the Executors, Conrad Carlson and Donna Davis, dated June 15th, 20__, and the Order of the Honourable Madam Justice _____ dated July 16th, 20__; and

ON HEARING the evidence and submissions of counsel for the parties;

THIS COURT DECLARES AND ADJUDGES:

1. THAT the testamentary document dated May 10, 2016 and purporting to be the Last Will and Testament of Emily Edwards, late of the City of Winnipeg, in Manitoba, Widow, Deceased, referred to in the Request for Probate of the plaintiffs, Conrad Carlson and Donna Davis, is the Last Will and Testament of the said Emily Edwards, deceased;
2. THAT Probate of the said Will be granted to the executors therein named;
3. THAT the Consent Order of this Honourable Court pronounced _____, appointing the Public Guardian and Trustee as the administrator of the Estate pending litigation be and is hereby rescinded;
4. THAT the parties may speak to costs.

March ____, 20__

APPROVED AS TO FORM:

Martins, Marsh

Per: _____

Nicolas Nickleby, Q.C.,
Solicitors for the defendant, Kris Knowles

APPROVED AS TO FORM:

Henderson & Associates

Per: _____

Harry Henderson,
Solicitors for the plaintiffs, Conrad Carlson and Donna Davis

APPROVED AS TO FORM:

ABC Law Co.

Per: _____

Franklin Forbes
Solicitors for the defendants, Abigail Adams and Barbara Brown

15. Order Giving Directions

File No. PR

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE)
) Thursday, the 7th day of October, 20__.
MR. JUSTICE BLUE)

IN THE MATTER OF: The Estate of EMILY EDWARDS, of the City of Winnipeg, in the
Province of Manitoba, deceased.

BETWEEN:

CONRAD CARLSON, DONNA DAVIS and KRIS KNOWLES,

applicants,

- and -

ABIGAIL ADAMS, and BARBARA BROWN,

respondents.

APPLICATION UNDER COURT OF QUEEN'S BENCH RULE 75.03(1)(c)

ORDER GIVING DIRECTIONS

THIS APPLICATION, made by the Applicant for advice and directions concerning the manner in which this Application is to proceed, and THIS MOTION to add as parties JOHN DOE, JANE ROE, THE GOVERNING COUNCIL OF THE SALVATION ARMY IN CANADA and KNOWLES CENTRE INC. were heard this day, at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, in the Province of Manitoba.

ON READING the Pleadings herein, the Affidavit of Conrad Carlson sworn October __, 20__, the Consent of Barbara Brown dated _____, the Affidavits of Service of Robert Brown sworn August 3rd and September 22, 20__, and of George Green sworn October 5, 20__, and the Acknowledgement and Consent of Jane Roe dated October 1, 20__;

ON NOTING that John Doe, Jane Roe, The Governing Council of the Salvation Army in Canada and Knowles Centre Inc., did not appear at the hearing of this application despite being duly served;

ON HEARING the submissions of counsel for the Applicants, and the Respondents;

THIS COURT HEREBY ORDERS:

1. THAT JOHN DOE, JANE ROE, THE GOVERNING COUNCIL OF THE SALVATION ARMY IN CANADA and KNOWLES CENTRE INC. be added as parties (Respondents) in this action.
2. THAT all the parties herein are interested in upholding or disputing the validity of an alleged testamentary paper identified as the Last Will and Testament of EMILY EDWARDS, signed May 10, 2016.
3. THIS COURT ORDERS that the issues to be tried herein are as follows:
 - (a) Conrad Carlson, Donna Davis and Kris Knowles affirm, and Abigail Adams and Barbara Brown deny, due execution of the alleged will;
 - (b) Conrad Carlson, Donna Davis and Kris Knowles affirm, and Abigail Adams and Barbara Brown deny that the Deceased, EMILY EDWARDS, had testamentary capacity at the time of the execution of the said will;
 - (c) Conrad Carlson, Donna Davis and Kris Knowles deny, and Abigail Adams and Barbara Brown affirm that the making of the alleged will was procured by fraud and undue influence.
4. THAT with respect to the issue of whether the Testator had testamentary capacity at the time of execution of the will, the burden of proof lies upon the applicants, Conrad Carlson, Donna Davis and Kris Knowles;
5. THAT with respect to the issue of whether the alleged will was procured by fraud and undue influence, the burden of proof lies upon the respondents, Abigail Adams and Barbara Brown;
6. THAT this application shall proceed by way of a Statement of Claim with the Applicants as Plaintiffs and the Respondents as Defendants;
7. THAT parties are entitled to the benefit of documentary discovery, examinations for discovery and pre-trial procedures, without prejudice to the right of any of the parties to avail themselves of any civil procedures contemplated by the Queen's Bench rules;
8. THAT in the event of any examination of the Applicants, Conrad Carlson, Donna Davis and Kris Knowles, at the request of the examining counsel, the Applicants not being examined shall be excluded from the examination room;

9. THAT additional requests for advice and direction may be made by any of the parties to the within application by way of motion to a judge of this honourable court.

November 23, 20__ _____

APPROVED AS TO FORM AND CONTENT:

APPROVED AS TO FORM:

Martins, Marsh

Per: _____

Nicolas Nickleby, Q.C.

Solicitors for the defendant, Kris Knowles

APPROVED AS TO FORM:

Henderson & Associates

Per: _____

Harry Henderson

Solicitors for the plaintiffs, Conrad Carlson and Donna Davis

APPROVED AS TO FORM:

ABC Law Co.

Per: _____

Franklin Forbes

Solicitors for the defendants, Abigail Adams and Barbara Brown

16. Notice of Application re: Problems Concerning Administration of Estate

File No. PR

THE QUEEN'S BENCH WINNIPEG CENTRE

IN THE MATTER OF: The Estate of MARY HALL, of the City of Winnipeg,
in the Province of Manitoba, deceased.

BETWEEN:

ROBERTA DOE,

applicant,

- and -

JANE ROE,

respondent.

APPLICATION UNDER QUEEN'S BENCH RULE 14.05(2)(c) and THE COURT OF QUEEN'S BENCH
SURROGATE PRACTICE AT SECTION 44

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge, on Wednesday, March 31, 20__, at 10:00 a.m., at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service,

in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March , 20__

Issued by _____
Deputy Registrar

TO: Robin Edwin Hall
c/o AB Lawyer
AB & Associates
Barristers and Solicitors
789 Any Place
Winnipeg, Manitoba R3R 2J2
Lawyers for the Respondent

APPLICATION

1. The applicant makes application for an order:
 - a) directing the respondent, JANE ROE (the "*Administrator*") to provide the applicant with an accounting of all of the personal property of the deceased, MARY HALL ("*Ms Hall*");
 - b) directing the Administrator to deliver up to the applicant all of Ms Hall's personal property;
 - c) directing the Administrator to retrieve and deliver up to the applicant all of Ms Hall's personal property that he has disposed of to third parties;
 - d) removing the respondent as Administrator of Ms Hall's estate;
 - e) costs payable by the respondent personally on a solicitor and own client basis from June 29, 20__ to the date of the within hearing; and
 - f) such further and other order as counsel may request and this Honourable Court may allow.

2. The grounds for the application are:
 - a) Ms Hall's Will provided that all of her personal property was left to the applicant, Ms Hall's only child, ROBERTA DOE ("*Ms Doe*");
 - b) the respondent, as Administrator of the within estate, has:
 - i) wrongfully disposed of certain of the personal property in question by delivering it to his relatives;
 - ii) wrongfully refused to deliver all of Ms Hall's personal belongings to Ms Doe;
 - iii) wrongfully refused Ms Doe access to Ms Hall's to retrieve the aforementioned personal belongings;
 - iv) unduly delayed in his handling of Ms Hall's estate; and
 - v) proven himself incapable of properly administering Ms Hall's estate.

- c) the cost award is sought against the respondent personally given his neglectful handling of the entire estate, his wrongful disposition of property to his relatives, and his continued willful and unreasonable refusal to deliver up Ms Hall's personal property to Ms Doe despite repeated efforts on the part of Ms Doe and / or her counsel to settle affairs reasonably and responsibly;
- d) such further and other grounds as counsel may advise and this Honourable Court may allow.

3. The following documentary evidence will be used at the hearing of the application:

- a) the Affidavit of Ms Doe dated March 23, 20__; and
- b) such other material as counsel may advise and this Honourable Court may permit.

March , 20__

HENDERSON & ASSOCIATES
Barristers & Solicitors
123 - 410 Portage Avenue
Winnipeg, Manitoba
R3H 3R8
HARRY HENDERSON
Lawyers for the applicants

17. Amended Notice of Application re: Problems Concerning Administration of Estate and Interpretation of Will

File No.

**THE QUEEN’S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: The Estate of MARY HALL, of the City of Winnipeg,
in the Province of Manitoba, deceased.

BETWEEN:

ROBERTA DOE,

- and -

JANE ROE,

applicant,

respondent.

APPLICATION UNDER QUEEN’S BENCH RULE 14.05(2)(c) and THE COURT OF QUEEN’S BENCH SURROGATE PRACTICE AT SECTION 44

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge, on Wednesday, March 31, 20__, at 10:00 a.m., at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant’s lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May , 20__

Issued by _____
Deputy Registrar

TO: Robin Edwin Hall
c/o AB Lawyer
AB & Associates
Barristers and Solicitors
789 Any Place
Winnipeg, Manitoba R3R 2J2
Lawyers for the Respondent

APPLICATION

1. The applicant makes application for an order:
 - a) directing the respondent, JANE ROE (the "*Administrator*") to provide the applicant with an accounting of all of the personal property of the deceased, MARY HALL ("*Ms Hall*");
 - b) directing the Administrator to deliver up to the applicant all of Ms Hall's personal property;
 - c) directing the Administrator to retrieve and deliver up to the applicant all of Ms Hall's personal property that he has disposed of to third parties;
 - d) removing the respondent as Administrator of Ms Hall's estate;
 - e) costs payable by the respondent personally on a solicitor and own client basis from June 29, 20__ to the date of the within hearing;
 - f) interpreting the will of Ms Hall; and
 - g) such further and other order as counsel may request and this Honourable Court may allow.

2. The grounds for the application are:
 - a) Ms Hall's Will provided that all of her personal property was left to the applicant, Ms Hall's only child, ROBERTA DOE ("*Ms Melnd*");
 - b) the respondent, as Administrator of the within estate, has:
 - i) wrongfully disposed of certain of the personal property in question by delivering it to his relatives;
 - ii) wrongfully refused to deliver all of Ms Hall's personal belongings to Ms Doe;
 - iii) wrongfully refused Ms Doe access to Ms Hall's to retrieve the aforementioned personal belongings;
 - iv) unduly delayed in his handling of Ms Hall's estate; and
 - v) proven himself incapable of properly administering Ms Hall's estate.

- c) the cost award is sought against the respondent personally given his neglectful handling of the entire estate, his wrongful disposition of property to his relatives, and his continued willful and unreasonable refusal to deliver up Ms Hall's personal property to Ms Doe despite repeated efforts on the part of Ms Doe and / or her counsel to settle affairs reasonably and responsibly;
 - d) Ms Hall's will provided that all of her belongings were to go to Ms Doe. The applicant says Ms Hall's use of the word "belongings" was intended to devise all of Ms Hall's property, including her interest in her parents' estate to Ms Doe; and
 - e) such further and other grounds as counsel may advise and this Honourable Court may allow.
3. The following documentary evidence will be used at the hearing of the application:
- a) the Affidavit of Ms Doe dated March 23, 20__; and
 - b) such other material as counsel may advise and this Honourable Court may permit.

May , 20__

HENDERSON & ASSOCIATES
Barristers & Solicitors
123 - 410 Portage Avenue
Winnipeg, Manitoba
R3H 3R8
HARRY HENDERSON
Lawyers for the applicants

18. Order re: Problems Concerning Administration of Estate

File No.

**THE QUEEN’S BENCH
WINNIPEG CENTRE**

THE HONOURABLE)
MR. JUSTICE ORANGE) Tuesday, the 19th day of July, 20__

IN THE MATTER OF: The Estate of MARY HALL, of the City of Winnipeg,
in the Province of Manitoba, deceased.

BETWEEN:

ROBERTA DOE,

- and -

JANE ROE,

applicant,

respondent.

APPLICATION UNDER QUEEN’S BENCH RULE 14.05(2)(c) and THE COURT OF QUEEN’S BENCH
SURROGATE PRACTICE AT SECTION 44

ORDER

THIS APPLICATION, made by the applicant, ROBERTA DOE for an accounting, an Order removing the respondent JANE ROE as Administrator, interpretation of the Will of Mary Hall and delivery up of certain personalty of Mary Hall, was heard this day, at Winnipeg, Manitoba.

ON READING the Affidavits of Roberta Doe, sworn March 23, 20__ and April 23, 20__, the Affidavit of Jane Roe sworn April 6, 20__, the transcripts of cross-examination on those Affidavits; and

ON HEARING the submissions of counsel.

THIS COURT HEREBY ORDERS:

- 1. THAT the respondent Jane Roe forthwith deliver to the applicant Roberta Doe the items listed in paragraph 11 and 12 on Pages 5 and 6 of the applicant’s Supplementary Motions Brief, as amended. Specifically, the following items shall be delivered to Roberta Doe forthwith:

- a. two photo albums;
 - b. a picture of Christ located in the master bedroom;
 - c. Ms. Hall's sewing machine and miscellaneous sewing accessories and books;
 - d. Ms. Hall's computer, stand and desk;
 - e. a number of dolls, including dolls in the image of Ms. Doe;
 - f. Doll Cradle of Ms. Doe;
 - g. Ms. Hall's clothing;
 - h. Ms. Hall's cookbooks and books;
 - i. Ms. Hall's automobile or the value thereof;
 - j. Ms. Hall's dining room suite;
 - k. the white dresser with round mirror in the spare bedroom;
 - l. the wash basin stand in the spare bedroom;
 - m. the clippings of Ms. Hall's plants; and
 - n. the white dresser in the spare bedroom.
2. THAT the application to remove Jane Roe as administrator of the Estate of Mary Hall and the issue of costs are adjourned sine die.

Date: _____

APPROVED AS TO FORM AND CONTENT:
AB & ASSOCIATES

AB Lawyer, solicitor for the respondent

APPROVED AS TO FORM AND CONTENT:
HENDERSON & ASSOCIATES

Harry Henderson, solicitor for the applicant

19. Order re: Problems Concerning Administration of Estate and Interpretation of Will

File No.

**THE QUEEN’S BENCH
WINNIPEG CENTRE**

THE HONOURABLE)
) This 19th day of July, 20__
MR. JUSTICE)

IN THE MATTER OF: The Estate of MARY HALL, of the City of Winnipeg, in the Province of Manitoba, deceased.

BETWEEN:

ROBERTA DOE, applicant,

- and -

JANE ROE, respondent.

APPLICATION UNDER QUEEN’S BENCH RULE 14.05(2)(c) and THE COURT OF QUEEN’S BENCH SURROGATE PRACTICE AT SECTION 44

ORDER

THIS APPLICATION, made by the Applicant, ROBERTA DOE for an interpretation of the Will of Mary Hall was heard on July 16, 20__ at Winnipeg, Manitoba.

ON READING the Affidavits of Roberta Doe sworn March 23, 20__ and April 23, 20__, the Affidavit of Jane Roe sworn April 6, 20__, the transcripts of cross-examination an those Affidavits, the written arguments of both parties; and

ON HEARING the submissions of counsel:

THIS COURT HEREBY:

- 1. DECLARES that the word “belongings” contained in the second paragraph of Ms. Hall’s affidavit means all of her personal property disposable by Will at the date of her death.

2. ORDERS that the parties may speak to the issue of costs.

DATED: October 5, 20__

APPROVED AS TO FORM AND CONTENT:
AB & ASSOCIATES

AB Lawyer, solicitor for the respondent

APPROVED AS TO FORM AND CONTENT:
HENDERSON & ASSOCIATES

Harry Henderson, solicitor for the applicant

20. Notice of Application for Advice and Direction for Distribution of Residue of Estate

File No. PR __-01-40119

THE QUEEN'S BENCH WINNIPEG CENTRE

IN THE MATTER OF: The Estate of Edward John Ryshak, Deceased

BETWEEN:

ELAINE MAGARELL and MONTY MAGARELL,
as Executors of the Estate of Edward John Rysak,

applicants,

- and -

SAINT ALPHONSUS CHURCH, HEART AND STROKE FOUNDATION OF MANITOBA INC.,
CEREBRAL PALSY ASSOCIATION OF MANITOBA INC., SOCIETY OF MANITOBANS WITH
DISABILITIES INC., MANITOBA CANCER TREATMENT RESEARCH FOUNDATION, ST.
MATTHEW'S-MARYLAND COMMUNITY MINISTRY, THE UNITED CHURCH OF CANADA ,
WINNIPEG PRESBYTERY,

Respondents.

APPLICATION UNDER: *The Trustee Act*, CCSM c. T160

NOTICE OF APPLICATION

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge on Wednesday, December 18th, 20__ at 10:00 a.m., at 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the Court

office where the Application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

November 29, 20__

Issued by: _____
Registrar

TO: Saint Alphonsus Church
300 Donalda Avenue
Winnipeg, Manitoba R2K 1G7

AND TO: Heart and Stroke Foundation of Manitoba Inc.
301-352 Donald Street
Winnipeg, Manitoba R33 2H8

AND TO: Cerebral Palsy Association of Manitoba Inc.
825 Sherbrook Street
Winnipeg, Manitoba R3A 1M5

AND TO: Society for Manitobans with Disabilities Inc.
825 Sherbrook Street
Winnipeg, Manitoba R3A 1M5

AND TO: Manitoba Cancer Treatment and Research Foundation
100 Olivia Street
Winnipeg, Manitoba R3Z 0V9

AND TO: St. Matthew's-Maryland Community Ministry
365 McGee Street
Winnipeg, Manitoba R3G 3M5

AND TO: The United Church of Canada, Winnipeg Presbytery
206-490 Hargrave Street
Winnipeg, Manitoba R3A 0X7

APPLICATION

1. The applicants make application for:
 - (a) advice and direction from the Court with respect to the distribution of the residue of the Estate of Edward John Ryshak;
 - (b) an order authorizing the personal representatives of the Estate of Edward John Ryshak to pay the costs of this action from the funds hold in trust for the Estate;
 - (c) such further and other relief as counsel may advise and this Honourable Court may permit.

2. The grounds for this application are:
 - (a) the Last Will and Testament of Edward John Ryshak named Maryland United Church as a residuary beneficiary;
 - (b) the Maryland United Church congregation has disbanded and payment cannot be made to that entity;
 - (c) the personal representatives desire to distribute the residue of the Estate and require advice and direction from the Court confirming which entities are entitled to share in the distribution of the residue of the Estate;
 - (d) under Section 84 of *The Trustee Act* the personal representatives may apply to the Court for the opinion, advice, or direction of the Court on any question respecting the administration of trust property; and
 - (e) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:
 - (a) the Affidavit of Elaine Magarell, to be filed;
 - (b) the Affidavit of Monty Magarell, to be filed; and
 - (c) such further and other material as counsel may advise and this Honourable Court shall permit.

November 29th, 20__

XYZ Lawyers & Associates
10 Bay Street
Winnipeg, Manitoba
R3R 6Z6
QRS Solicitor/943-3232
File No. 7777

21. Order re: Distribution of Residue of Estate

File No. PR __-01-40119

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE)
) This 19th day of July, 20__
MR. JUSTICE)

IN THE MATTER OF: The Estate of Edward John Ryshak, Deceased

BETWEEN:

ELAINE MAGARELL and MONTY MAGARELL,
as Executors of the Estate of Edward John Rysak,

applicants,

- and -

SAINT ALPHONSUS CHURCH, HEART AND STROKE FOUNDATION OF MANITOBA INC.,
CEREBRAL PALSY ASSOCIATION OF MANITOBA INC., SOCIETY OF MANITOBANS WITH
DISABILITIES INC., MANITOBA CANCER TREATMENT RESEARCH FOUNDATION, ST.
MATTHEW'S-MARYLAND COMMUNITY MINISTRY, THE UNITED CHURCH OF CANADA ,
WINNIPEG PRESBYTERY,

respondents.

APPLICATION UNDER: *The Trustee Act, CCSM, c. T160*

ORDER

THIS APPLICATION, for advice and direction, was heard this day, at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Application; the Affidavit of Elaine Magarell sworn November 26, 20__; the Affidavit of Monty Magarell sworn November 26, 20__; and the Consents of the residuary beneficiaries of the will, filed;

ON HEARING the submissions of counsel:

THIS COURT HEREBY ORDERS:

1. THAT he residuary bequest made to MARYLAND UNITED CHURCH in the Last Will and Testament of the late Edward John Ryshak, deceased, be paid to the UNITED CHURCH OF CANADA WINNIPEG PRESBYTERY, to be held in trust for the ST. MATTHEWS-MARYLAND COMMUNITY MINISTRY;
2. THAT the Applicants' costs of this action in the sum of \$1,800.00, exclusive of GST and disbursements be paid by the estate; and
3. THAT all other parties to bear their own costs.

Dated: April 30, 20__

22. Notice of Application Under *The Infants' Estates Act*

File No.

**THE QUEEN'S BENCH (FAMILY DIVISION)
WINNIPEG CENTRE**

BETWEEN:

JOHN SCOTT,

applicant,

- and -

BILLY SCOTT, an Infant,
and THE PUBLIC GUARDIAN and TRUSTEE of MANITOBA,

respondents.

APPLICATION UNDER *The Infants' Estates Act*, CCSM c. 125

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge of the Queen's Bench family division on Wednesday, the 26th day of February, 20__ at 10:00 a.m. at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it in the court office where the motion is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL to appear at the hearing, an order may be given in your absence and without further notice to you.

February 24, 20__

Issued by _____
Registrar

TO: Billy Scott
130 Corbett Drive
Winnipeg, Manitoba
R2Y 1V2

AND TO: The Public Guardian and Trustee of Manitoba
14th Floor - 405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6

APPLICATION

1. The applicant makes application for:
 - a) an Order granting the Applicant guardianship of the Estate of Billy Scott born the 23rd day of February, 2010;
 - b) an Order for transfer of the Estate of Billy Scott from the Public Trustee to John Scott as guardian of the Estate of Billy Scott; and
 - c) such further and other relief as counsel may advise and this Honourable Court may permit.

2. The grounds for the application are:
 - a) The applicant, John Scott, is the biological father and guardian of the respondent Billy Scott;
 - b) The respondent, Billy Scott, is a minority and currently 10 years of age;
 - c) The respondent, Billy Scott, was a residual beneficiary of the Estate of Charles Scott and inherited funds from that Estate, which funds were paid to the Public Guardian and Trustee to hold until Billy Scott turns the age of majority;
 - d) The applicant, John Scott, as the respondent's father and guardian consents to acting as the sole guardian of the Estate of Billy Scott;
 - e) The applicant pleads and relies upon, *The Infants' Estates Act*, CCSM c. I35;
 - f) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:
 - a) the Affidavit of John Scott; and
 - b) such further and other material as this Honourable Court may allow.

February 24, 20__

XYZ Lawyers & Associates
10 Bay Street
Winnipeg, Manitoba
R3R 6Z6
QRS Solicitor/943-3232
File No. 7777

23. Order Under *The Infants' Estates Act*

File No.

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE)
)
MR. JUSTICE BLUE) Tuesday, the 26th day of February, 20__

BETWEEN:

JOHN SCOTT, applicant,

- and -

BILLY SCOTT, an Infant,
and THE PUBLIC GUARDIAN and TRUSTEE of MANITOBA, respondents.

APPLICATION UNDER *The Infants' Estates Act*, CCSM c. 125

ORDER

THIS APPLICATION, made by the Applicant JOHN SCOTT for guardianship, was heard this day, at the Law Courts Building, Broadway and Kennedy Street, in the City of Winnipeg, in the Province of Manitoba.

ON READING the Affidavit of John Scott sworn February 12, 20__, and the Affidavit of Jerry Johnson sworn February 24, 20__; and

ON HEARING the submissions of counsel for the Applicant and the Public Guardian and Trustee of Manitoba;

THIS COURT HEREBY ORDERS:

1. THAT the Applicant JOHN SCOTT is hereby appointed Guardian of the Estate of Billy Scott;

2. THAT the Estate of Billy Scott currently in the hands of the Public Guardian and Trustee of Manitoba be transferred from the Public Guardian and Trustee of Manitoba to John Scott as Guardian of the Estate of Billy Scott;
3. THAT the Guardian shall file with the court a personal Bond in the name of the Registrar of the Court in the amount of \$68,731.00 without surety;
4. THAT the Guardian shall make a true and just accounting before the Master and thereafter make a like accounting no later than the 60th day following every anniversary date of the signing of this Order, and the Master is authorized by this Order to fix the costs of the passing of the accounts, the compensation, if any, to be paid to the Guardian and the legal fees, if any, to be paid to the lawyer acting on behalf of the Guardian, and for such purposes the accounts are by this Order referred to the Master;
5. THAT the security filed with the court pursuant to this Order shall, upon approval of the accounts at the final passing of the accounts, be returned to the Guardian and may be cancelled by the Guardian;
6. THAT the costs of and incidental to this application be fixed in the sum of \$350.00, plus disbursements and that they be paid by the Guardian out of the Estate of Billy Scott;
7. THAT upon payment of the trust monies to John Scott as Guardian of the Estate of Billy Scott, the Public Guardian and Trustee of Manitoba is completely and fully released and discharged as Trustee of the funds and has no further obligation or duty with respect to these monies, nor the application thereof.

February 26th, 20__
