

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Matossian Estate v. Clark Estate*,  
2025 BCSC 2163

Date: 20251103  
Docket: S214877  
Registry: Vancouver

Between:

**Marcus von Albrecht in his capacity as Executor of the Estate of  
Dikran Matheos Matossian, deceased**

Plaintiff

And

**David Westall Clark in his capacity as Administrator of the Estate of  
Sharon Patricia Clark, deceased, and David Clark**

Defendants

Before: The Honourable Justice Laurie

## Reasons for Judgment

Counsel for the Plaintiff:

J.M. Richter

Counsel for the Defendant, David Westall  
Clark in his capacity as Administrator of the  
Estate of Sharon Patrick Clark, deceased:

K. Vimalasan  
H. Solomon

Counsel for the Defendant, David Clark:

J.W. Zaitsoff

Place and Date of Hearing:

Vancouver, B.C.  
July 8, 2025

Place and Date of Judgment:

Vancouver, B.C.  
November 3, 2025

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**BACKGROUND**

[1] Sharon Patricia Clark died on December 29, 2020 without a will. On June 8, 2022, her brother, the defendant David Westall Clark (the “Administrator”) was granted letters of administration with respect to Ms. Clark’s estate (the “Estate”).

[2] Dikran Matossian died on December 16, 2022. On April 6, 2023, the plaintiff Marcus von Albrecht was appointed executor and trustee of the estate of Mr. Matossian (the “Matossian Estate”).

[3] Ms. Clark and Mr. Matossian maintained a relationship for 38 years. On May 18, 2021, Mr. Matossian brought a claim that he was the spouse of Ms. Clark. After Mr. Matossian died, the plaintiff continued the claim on behalf of the Matossian Estate. The claim was contested by Mr. Clark in his personal capacity.

[4] On December 6, 2024, after a 13-day trial in July and August 2024, Justice Hoffman found that Ms. Clark and Mr. Matossian were in a committed, marriage-like relationship for at least two years up until Ms. Clark’s death and, therefore, they were spouses under s. 2(1)(b) of the *Wills, Estates and Succession Act*, S.B.C. 2009, c.13 [*WESA*] (the “Decision”).

[5] The consequence of the Decision is that the entire Estate passes to the Matossian Estate.

[6] The Estate consists of the sale proceeds in respect of Ms. Clark’s home in the approximate amount of \$2,000,000 (the “Proceeds”) and approximately \$1,000,000 in other funds (the “Funds”).

[7] The Proceeds are held in an interest-bearing trust account in the name of counsel for the Administrator. The Funds are in the possession of the Administrator.

[8] Starting in July 2024, Mr. Clark made numerous withdrawals totalling approximately \$300,000 from the Estate account to pay for his personal legal fees.

[9] On January 3, 2025, Mr. Clark, in his personal capacity, filed a notice of appeal in respect of the Decision. The appeal has not been heard at the time of the hearing of this application. If Mr. Clark is successful on the appeal, he would be the sole beneficiary of the Estate.

[10] On March 20, 2025, the Administrator's counsel advised plaintiff's counsel of the withdrawals.

[11] On March 21, 2025, Mr. Clark repaid the funds improperly taken from the Estate account.

### **THE APPLICATION AND POSITIONS OF THE PARTIES**

[12] In this application, the plaintiff primarily seeks the removal of the Administrator and the appointment of Mr. Von Albrecht as new administrator of the Estate.

[13] The plaintiff alleges that the Administrator has demonstrated a want of honesty by using the Estate funds for his personal legal fees. He emphasizes that the Administrator made significant withdrawals over a period of months and did not disclose this to the plaintiff even after the Decision was released.

[14] In addition, the plaintiff alleges that the Administrator failed to place the Funds in an interest-bearing account to the detriment of the Estate and its beneficiaries. In this connection, the plaintiff also submits that he intends to file a claim against Mr. Clark in respect of lost interest. He asserts that removal of the Administrator is necessary so that the new administrator can proceed with the claim. Further, it is submitted that removal is necessary to enable the plaintiff to access solicitor-client communications between the Administrator and counsel for the Estate.

[15] The plaintiff also seeks the following additional orders:

- a) for production and passing of accounts;

- b) to restrain Mr. Clark from encumbering or disposing Estate assets or monies;
- c) to transfer all assets of the Estate to the plaintiff; and
- d) a Mareva injunction and preservation order.

[16] The Administrator and David Clark in his personal capacity (collectively, the “defendants”) disagree that removal of the Administrator is required for the plaintiff to pursue a claim for interest or to obtain the Estate’s legal file. As I understand the defendants’ position, to the extent that leave may be required for the plaintiff to commence proceedings pursuant to s. 151 of the *WESA*, the defendants would be prepared to consent.

[17] In the defendants’ submission, the only real issue in the present application relates to the improper taking of monies and failure to place the Funds in an interest-bearing account. They submit that the former was a “mistake” that has been rectified through the return of the monies taken, and the latter issue is properly addressed through accounting. Further, the defendants submit that the Estate is at a stand-still awaiting the appeal and the only thing to be done after the appeal is distribution of funds. They assert that removal of the Administrator at this stage would be disruptive if the appeal is successful.

[18] The defendants submit that want of honesty is not made out in these circumstances and the plaintiff has not demonstrated a clear case of necessity for removal of the Administrator.

[19] With respect to the additional orders, the Administrator consents to the production and passing of accounts sought in the plaintiff’s notice of application filed May 1, 2025. In addition, the Administrator consents to transferring all the funds of the Estate in his possession, less a reasonable amount for ongoing expenses, to counsel for the Administrator to hold in trust on certain conditions.

**THE GOVERNING LAW AND LEGAL PRINCIPLES**

[20] An executor may be removed and replaced under ss. 158 and 159 of the *WESA*. A trustee may be removed and replaced under ss. 30 and/or 31 of the *Trustee Act*, R.S.B.C. 1996, c.464 [*TA*]. The tests for removal of an executor and of a trustee are effectively the same. The *WESA* and the *TA* do not vary the bases upon which the court has inherent jurisdiction to remove or replace an executor or trustee: *Carpenter Estate (Re)*, 2024 BCSC 745 at para. 48.

[21] A testator has the right to choose their executor(s). Consequently, courts are generally reluctant to interfere with a testator's choice of executor and there must be real—not speculative—reasons to displace it: *Parkinson Estate (Re)*, 2025 BCSC 152 at para. 20.

[22] The main consideration in removing an executor or trustee is the collective welfare of the beneficiaries: *Conroy v. Stokes*, [1952] 4 D.L.R. 124, 1952 CanLII 227 (B.C.C.A.) at 126–127. Beyond this broad principle, there are no hard rules regarding the circumstances in which a personal representative or trustee must be removed: *Klassen v. Cornies*, 2023 BCCA 420 at paras. 100–101. The outcome of each application for the removal of an executor or trustee will depend on its own unique facts: *Ching Estate (Re)*, 2016 BCSC 1111 at para. 27 [*Ching*].

[23] As set out in *Parker v. Thompson (Trustee)*, 2014 BCSC 1916 at paras. 37 and 40, the court's decision to remove an executor should be guided by a consideration of the following factors:

- a) The court will not lightly interfere with the testator's choice of estate trustee and clear evidence of necessity is required;
- b) Removal of an executor should only occur “on the clearest evidence that there is no other course to follow”;
- c) The court's main consideration is the welfare of the beneficiaries; and

- d) The estate's trustee's acts or omissions must be of such a nature as to endanger the administration of the estate.

See also: *Rawji Estate (Re)*, 2023 BCSC 1652 at para. 34 [*Rawji*].

[24] Not every actual or perceived conflict should lead to disqualification of a trustee or executor: *Conroy* at 126–127; *Burke v. Burke*, 2019 BCSC 383 at para. 43. The standard is not whether the executor has “functioned perfectly or ideally”: *Radford v. Wilkins*, 2008 CanLII 45548 (O.N.S.C.), 43 E.T.R. (3d) 74 at para. 120; *Bringeland Estate (Re)*, 2024 BCSC 1546 at para. 26.

[25] This Court has recognized that where an executor or trustee's role conflicts with their personal interest, this often warrants their removal or passing over. This is frequently the case where there is a potential or real claim by the estate against the executor in their personal capacity: *Ching; Jury v. Rogodzinski*, 2021 BCSC 2441 at para. 52; *Thomasson Estate (Re)*, 2011 BCSC 481; *Rawji* at para. 62. Nevertheless, this situation does not automatically result in an executor being removed or passed over: *Burke* at para. 43; *Re Blitz Estate*, 2000 BCSC 1596. The actual or potential conflict of interest must rise to the level of a “disqualifying conflict of interest”: *Oates v. Baker Estate*, 1993 CanLII 1921 (B.C.S.C.), [1993] B.C.J. No. 1293; *Bringeland* at paras. 61–64.

[26] An administrator must act with detachment, even-handedness, and without animosity: *Rawji* at para. 36, citing *Berlinguette Estate (Re)*, 2022 BCSC 1098 at paras. 19, 28–30; *Ruffolo v. Juba-Ruffolo*, 2005 BCCA 26 at para. 15. Significant evidence of animus toward a beneficiary can support a finding that an executor is unable, unwilling, or reasonably unlikely to put the estate's best interests first: *Woodward v. Weinstein*, 2020 BCSC 1667 at para. 92.

[27] That said, pre-existing hostility between an executor and one or more of the beneficiaries does not necessarily disqualify the executor from performing his or her duties, so long as the executor is capable of setting aside that hostility with a view to the interests of all the beneficiaries: *Ali v. Walters Estate*, 2018 BCSC 1032 at

paras. 104–106; *Rawji* at para. 32. Mere friction between the trustee and one or more of the beneficiaries is usually insufficient to justify removal of the trustee: *Miles v. Vince*, 2014 BCCA 289 at para. 84. The question is whether the animosity hampers the proper administration of the estate: *Rawji* at paras. 35–37; *Newton Trust (Re)*, 2013 BCSC 1718 at paras. 21–23.

[28] An executor may also be removed due to jeopardizing estate assets: *Rawji* at para. 63. A primary role of the executor and trustee is to preserve and protect the assets of the estate for distribution. The failure to do so can support removal as an executor: *Rawji* at paras. 63–70. This can encompass making imprudent investments as well as an executor treating estate funds as personal assets: *Miles* at paras. 66–79, 87–88; *Burkett v. Burkett Estate*, 2018 BCSC 320 at paras. 241–252.

## **DISCUSSION**

[29] I am satisfied that removal of the Administrator is warranted in this case due to a want of honesty, lack of reasonable fidelity, and want of capacity to perform the duties of an administrator.

[30] In his affidavit dated June 12, 2025, Mr. Clark acknowledged that Estate funds should not have been spent on his personal legal fees. Although he characterized his actions as a “mistake”, he did not provide any information or details surrounding how the mistake occurred, or how and when he came to realize it.

[31] On the record, although it appears that counsel for the Administrator had advised Mr. Clark at some point that his personal legal fees are not proper estate expenses, the record is unclear as to when this took place and what were the surrounding circumstances.

[32] As the plaintiff highlighted, the withdrawals of funds from the account of the Estate involved significant amounts (in the tens of thousands of dollars) made over a significant period of time. Further, they were not disclosed to the plaintiff even after the plaintiff was successful at the trial.

[33] In these circumstances, I put little weight on Mr. Clark’s bare assertion that his improper use of Estate funds was a mere “mistake”. To the extent that this characterization was meant to imply pure inadvertence, I do not accept it.

[34] Importantly, based on the evidence, there is little recognition by the Administrator of the seriousness of his misconduct and breach of trust. In these circumstances, the Court could not be satisfied that the misappropriation of funds was a “one-off”, particularly in the context of a potential future claim against Mr. Clark in his personal capacity for lost interest, for which he would likely incur additional legal fees.

[35] Further, although Mr. Clark has repaid the misappropriated funds, it appears that the payment did not include interest.

[36] I also understand that the Administrator has not prudently invested the Funds in an interest-bearing account.

[37] In considering the relevant factors in *Parker*, this is not a situation where removal of the Administrator would interfere with the testator’s choice of estate trustee, as Ms. Clark died intestate. The evidence supporting removal, in my view, is clear and compelling. The circumstances as discussed above demonstrate a want of honesty and a lack of reasonable fidelity. In addition, I am satisfied that there is a want of proper capacity to execute the duties of an administrator of the Estate. In my view, the Administrator’s misconduct and his failure to take full responsibility rise to the level of endangering the administration of the Estate. Finally, although there is an outstanding appeal, the interests of the beneficiaries must be protected.

**CONCLUSION**

[38] In conclusion, I grant the following orders sought in Part 1, paras. 1 to 6 of the Notice of Application:

- a) David Westall Clark in his capacity as Administrator of the Estate of Sharon Patricia Clark, deceased, is removed as personal representative and trustee.
- b) Marcus von Albrecht is appointed the administrator of the Estate, without bond.
- c) On or before November 30, 2025, David Westall Clark in his capacity as Administrator of the Estate shall produce his accounts from December 29, 2022 to the present.
- d) In the event the parties are unable to agree on an informal passing of accounts, David Westall Clark in his capacity as Administrator of the Estate shall pass his accounts before a Registrar of the Supreme Court of British Columbia for the period from December 29, 2022 to the present, on a without prejudice basis to a claim against him for lost interest on trust monies.
- e) David Westall Clark is prohibited from encumbering or disposing of any further estate assets or monies or releasing any monies being held in trust for the Estate, absent written agreement of counsel for the plaintiff or court order.
- f) David Westall Clark shall transfer all assets of the Estate to Marcus von Albrecht in his capacity as executor of the Matossian Estate, care of Richter Trial Lawyers in trust.

[39] With respect to the plaintiff's application for a Mareva injunction and preservation order, I am not persuaded that it is just and equitable to grant these orders at this time, and I dismiss this portion of the application. The plaintiff is at liberty to re-apply with additional evidence, if it becomes necessary.

**COSTS**

[40] The parties agreed to defer the issue of costs until after the release of this judgment. If the parties are unable to agree on costs, they may schedule a hearing before me to make submissions on this issue.

“Laurie J.”