

CITATION: Hernandez v. Hernandez, 2026 ONSC 1136
COURT FILE NO.: CV-25-00035335-00ES (Windsor)
DATE: 20260223

**SUPERIOR COURT OF JUSTICE – ONTARIO
IN THE ESTATE OF ANNA HERNANDEZ (also known as Anna Florence Hernandez),
deceased, who died on March 1, 2020**

RE: THE ESTATE OF ANNA HERNANDEZ, also known as Anna Florence
Hernandez, Applicant

-and-

CHERI ANN HERNANDEZ, Respondent

BEFORE: Justice Spencer Nicholson

COUNSEL: A. Landry for the Applicant

N. Jomaa for the Respondent

HEARD: January 27, 2026

DECISION ON MOTION

NICHOLSON J.:

[1] This is a case that has so spiralled out of control that the parties have lost sight of the big picture. As this Decision will demonstrate, sometimes a party can be “right” and still lose.

[2] Anna Hernandez died on March 1, 2020, survived by her six children. Originally, three of her children, one of whom was the Respondent Cheri Ann Hernandez, were co-estate trustees for the estate.

[3] The litigation between Ms. Hernandez and her siblings pre-dates their mother’s death. There is a Ruling on Motion of Hebner J. dated January 15, 2021. It is clear from that decision that Ms. Hernandez and her siblings have been embroiled in litigation for years in relation to their mother. The litigation goes back to 2017.

[4] Following their mother’s death, there was, predictably, discord amongst the Estate Trustees. By order of Carey J. dated February 15, 2022, the three siblings were removed as estate trustees and a lawyer, Mr. Sebastien Schmoranz, was appointed Estate Trustee. I note that the order was made on consent of all parties.

[5] It was an express term of Carey J.’s order that Mr. Schmoranz would receive compensation for his services out of the assets of the estate. That remuneration specifically included an hourly

rate together with disbursements incurred in the course of performing his duties, plus HST, to a maximum of \$4,000 plus disbursements and HST.

[6] Ms. Hernandez takes issue with the manner in which Mr. Schmoranz has administered her mother's estate. She criticized the pace at which the estate was administered. She criticized the estate software that Mr. Schmoranz chose to employ. From a review of the material, it is clear that her complaints commenced almost as soon as he was appointed.

[7] Ms. Hernandez sought a "complete accounting of the estate administration" in March of 2023.

[8] In September of 2023, each of the beneficiaries received an interim distribution from the estate. Ms. Hernandez complains that Mr. Schmoranz required the beneficiaries to sign a final Release before the final distribution would be made. She did not agree to this condition. Accordingly, the requirement for a final Release was removed and the interim distribution occurred.

[9] The final distribution was to be made in July of 2025. On July 31, 2025, a number of the beneficiaries, including Ms. Hernandez, met Mr. Schmoranz in person in the boardroom at his law office. Another beneficiary participated virtually. Ms. Hernandez raised several concerns that she had with the accounting prior to the meeting. The morning of the meeting, on July 31, 2025 by email, she noted, ironically as it turns out, that she had made an error in her calculations but she "did not want to quibble over such a small amount".

[10] At the meeting, Ms. Hernandez indicated that there were disbursements that were being charged that were not allowable by the Law Society of Ontario. According to Ms. Hernandez, Mr. Schmoranz indicated that these were permissible pursuant to the order appointing him. He also insisted upon final Releases being signed and indicated that those beneficiaries who would not sign the release would have their shares paid into court. At least two of the other beneficiaries signed the Release provided. Ms. Hernandez would not sign the release without editing it as she did not agree with releasing the Estate Trustee from "any claim, actions, accounts and demands whatsoever". She made an edit to the Release and signed that copy.

[11] I note, given the language in Carey J.'s order that I disagree with Ms. Hernandez' position that Mr. Schmoranz could not charge for disbursements unless they were authorized by the Law Society. The language of the order is clear and does not limit the disbursements as she asserted. In short, I find that she was wrong about the disbursements.

[12] According to Mr. Schmoranz, the disbursements with which Ms. Hernandez had issues were a software charge of \$198 and a paralegal fee of \$16, which would have been divided six ways amongst the beneficiaries, or \$35.67 each. Clearly, this was not a large sum of money.

[13] The July 31st meeting quickly disintegrated, by all accounts.

[14] Ms. Hernandez claims that Mr. Schmoranz raised his voice and began shouting that no one would get their money. Ms. Hernandez announced that she was leaving, and as she did so, she “snatched” the Release that she had edited. She claims that Mr. Schmoranz came quickly around the desk, positioned his body directly in her path. She indicated that she was frightened.

[15] Mr. Schmoranz deposes that he advised Ms. Hernandez that she could not edit the Release and that if she were not going to follow his instructions, she would be asked to leave the office. He also told her that if she refused to leave the office, he would contact the police to have her formally trespassed from the premises. He deposes that she refused to leave the office and he instructed his law clerk to call the police. Ms. Hernandez then left.

[16] The police did become involved. Mr. Schmoranz contacted the police and reported that Ms. Hernandez had trespassed. She subsequently had him charged with assault and forcible confinement. I understand that those charges were dropped.

[17] Two of the beneficiaries have provided affidavits supporting Mr. Schmoranz’ version of events. I do note that these are the two siblings that had been named as co-trustees with Ms. Hernandez, so I am not confident of their independence.

[18] David Hernandez describes that Ms. Hernandez was argumentative and abusive with Mr. Schmoranz asserting that she knew the law more than he did. Norman Hernandez confirms that Ms. Hernandez raised questions about two charges, one for \$198 and the other for \$16. Both David and Norman confirm that they would like to have had the estate administration completed but that Ms. Hernandez’ refusal to sign the Release prevented this from occurring.

[19] In any event, I do not intend to unravel what occurred during the meeting. Those events do not flatter any of the participants. Having said that, the actions that are attributed to Ms. Hernandez are consistent with her criticisms made in her affidavit about the way Mr. Schmoranz was administering the estate. Correspondence from Ms. Hernandez is included in the application material. For example, in an email dated September 5, 2023, Ms. Hernandez complains about having to incur \$13.56 to send a fax to the CRA and demands reimbursement. She does appear happy to “quibble”.

[20] It is important to understand that the residue of the estate to be divided was \$27,211.33, such that Ms. Hernandez and her siblings’ remaining shares to be distributed were in the amount of \$4,535.22.

[21] To be fair, Ms. Hernandez has other criticisms about unnecessary costs charged against the Estate. For example, she is of the view that certain Sun Life shares could have been transferred without any costs being incurred by the Estate. However, Mr. Schmoranz proceeded in a different fashion, causing a commission of \$561.53 to be unnecessarily incurred. Again, I note that this \$561.53 would be divided amongst the six beneficiaries.

[22] What follows is, in my view, an entirely unnecessary escalation, waste of the parties' resources and court's time. I reiterate that the disbursements in issue was \$224 and the shares to be distributed were \$4,535.22.

[23] Mr. Schmoranz, as Estate Trustee, retained counsel and commenced this application for an order permitting him to pay the other beneficiaries their respective shares of the estate. He also sought an order to pay Ms. Hernandez' share into court, given that she would not sign the release. He sought costs of the application be paid from Ms. Hernandez' share, or that the costs of the application be paid from the estate prior to any distributions being made.

[24] Ms. Hernandez retained counsel and filed a Notice of Appearance. She sought disclosure of all of Mr. Schmoranz' dealings with the estate. That disclosure was all completed by October of 2025. According to the Applicant, Ms. Hernandez raised every miniscule issue she could about how the estate was administered by Mr. Schmoranz.

[25] Each side has prepared an Application Record/Responding Record and Mr. Schmoranz has filed a Supplementary Record. Each side has done a factum. Remarkably, cross-examinations were conducted on the eve of the hearing date. Respectfully, this is not rationale behaviour.

[26] The foolishness of this litigation is made clear by the respective costs outlines filed with the material. The Applicant has incurred costs of \$27,056.01 on a full indemnity basis. The Respondent has incurred equal legal fees, with her total legal fees amounting to \$27,993.45. The legal fees clearly dwarf the dispute. Clearly this fight should not have occurred.

[27] By the time the matter was argued, the Applicant advised that the only remaining issue was, in fact, legal costs. However, the Respondent raised a jurisdictional issue, taking the position that the Estate Trustee's application was improperly commenced under Rule 75.06. It is Ms. Hernandez' position that Mr. Schmoranz was required to pass accounts in order to resolve the matter and has not done so.

[28] Accordingly, counsel for Ms. Hernandez disagreed that this motion was simply about costs, arguing that I lacked jurisdiction to order Ms. Hernandez' share to be paid into court at all.

The Jurisdiction Issue and the Parties Conduct in the Application:

[29] I begin by noting that the *Rules of Civil Procedure* are to be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits (Rule 1.04). The Court is also mandated to make orders and give directions that are proportionate to the importance and complexity of the issues.

[30] Ms. Hernandez' position completely ignores those important principles.

[31] Rule 75.06 allows any person with a financial interest in an estate to apply for directions as to the procedure for bringing any matter before the court. In *Larmon v. Munro*, 2021 ONSC 1921, Smith J. described that the purpose of a Motion for Directions is procedural in nature. He quoted from Strathy J. in *Abrams v. Abrams*, [2008] O.J. No. 5205, where it was noted that the

rule permits the court to design a procedural regime that will suit the nature of the dispute and that will, in the words of Rule 1.04, promote “the just, most expeditious and least expensive determination” of the proceeding.

[32] Smith J. then noted the types of order that is available under Rule 75.06, which are listed in subrule 75.06(3). In his view, the payment of expenses, fulfillment of duties and delivery of assets were not intended to be dealt with under Rule 75.06.

[33] Furthermore, Ms. Hernandez argues that Mr. Schmoranz, as Estate Trustee, cannot compel a beneficiary to sign a Release in order to receive a distribution. She relies upon *Brighter v. Brighter Estate* (1998), 74 O.T.C. 329 (Gen. Div.). To be clear, the court did not say that the Estate Trustee could not present a Release. To the contrary, the entire pertinent quote from *Brighter*, is:

“... The executor has no right to hold any portion of the distributable assets hostage in order to extort from a beneficiary an approval or release of the executor’s performance of duties as trustee, or the executor’s compensation or fee. *It is quite proper for executor (or trustee, to use the current expression) to accompany payment with a release which the beneficiary is requested to execute.* But it is quite another matter for the trustee to require execution of the release before making payment; that is manifestly improper.

[34] In *Williams v. Crate*, 2023 ONSC 4470, it was described at para. 86 that the Estate Trustee could either apply for a passing of accounts or ask the beneficiaries to approve their administration and provide for their informal discharge directly.

[35] Accordingly, the Respondent asks the court to dismiss this Application and order that Mr. Schmoranz pay the Respondent’s costs of “this unnecessary proceeding personally” on a full indemnity basis. The Respondent blames Mr. Schmoranz’ “unreasonable conduct” for causing this application.

[36] Based on the cases cited, I believe that the Respondent’s argument about Rule 75.06 is technically correct and that in the unfortunate circumstances in which Mr. Schmoranz found himself, he was required to bring an application to pass accounts.

[37] The difficulty that I have with the Respondent’s argument is its timing. This “jurisdictional” issue regarding rule 75.06 does not appear to have been raised until the eve of the original return date of December 16, 2025.

[38] I have reviewed all of the correspondence between counsel for the parties.

[39] This application was commenced on August 25, 2025.

[40] Counsel for the Respondent was retained on September 11, 2025, although he was completing another trial. He wrote to counsel for the Applicant on September 22, 2025 indicating that Ms. Hernandez sought an accounting of the estate and if she were satisfied, would sign a standard release. Counsel for the Applicant agreed to the disclosure but wanted to address the unnecessary costs incurred by Mr. Schmoranz (or the estate). The parties agreed to adjourn the

application, produce/review the requested disclosure and address the costs if necessary in the future. The requested documents were forwarded on September 26, 2025 in a brief. Some of those documents had been previously produced.

[41] Counsel for the Respondent sought further documents on October 8, 2025. These documents were provided on or around the same date.

[42] Counsel for the Respondent identified a further deficiency and asked for further information on October 14, 2025. In that letter, counsel for the Respondent stated, “Notwithstanding this outstanding production, my client is prepared to resolve the substantive issues of this Application to allow for the final distribution of the estate”. He offered that the only issue that would be determined by the court would be costs of the application.

[43] However, despite this correspondence, Ms. Hernandez then discovered the \$561.53 fee that was charged as commission for the share transaction. Her counsel wrote on October 16, 2025 describing this as a “significant discrepancy”. I disagree with the use of the word “significant”. Ms. Hernandez requested the full and complete trade confirmation statement from Edwards Jones for this transaction. This information was provided on October 17, 2025.

[44] At no time in all of that correspondence did counsel for Ms. Hernandez raise any concerns about the manner in which the application was commenced or that it had not been instituted as a passing of accounts.

[45] Most notably, it appeared that all substantive issues were resolved. As noted, the Applicant commenced the argument by stating that the only issue was costs. However, the Respondent insisted upon cross-examining Mr. Schmoranz on December 10, 2025 which I assume was to demonstrate that Ms. Hernandez was “right” about the way the estate was administered.

Disposition:

[46] I am not going to grant the substantive relief sought by the Applicant. I agree that Rule 75.06 was not the correct rule to move under for this substantive relief.

[47] However, I disagree entirely with the position of the Respondent on the issue of costs, or how she has handled herself with respect to the *de minimis* amounts in issue. In my view, Ms. Hernandez’ behaviour is entirely to blame for the legal fees that have been incurred, over what amounts to \$198 for software and \$16 for a paralegal, fees which were properly claimed by the Estate Trustee under Carey J.’s Order. Even if she had a concern about the \$561.53, she did not know about that commission until mid-October so that fee is not why she refused to conclude the estate. Even if it was, that sum was also *de minimis* to require that all of these costs be incurred.

[48] It is clear to me from all of her correspondence to Mr. Schmoranz’ office, that Ms. Hernandez, despite having been removed as Estate Trustee, was not content to step back from that role. Instead, she sought to control the administration of the estate. Mr. Schmoranz was in an unenviable position.

[49] Mr. Schmoranz was appointed as Estate Trustee by the Court, for a capped fee of \$4,000.00. One of the rationales for estate trustees being fully compensated by the estate to perform their role is recognition that without such full indemnity, it would be difficult to find persons willing to take on the important role of administering an estate (see: *Neuberger v. York*, 2016 ONCA 303). As has been made clear in this case, it is a thankless job.

[50] I do not find that Mr. Schmoranz insisted that Ms. Hernandez sign a release in order to receive her distribution. Rather, he indicated that if she would not sign off on the distribution, he would move to have her share paid into court while the issue was resolved so that the other beneficiaries could receive their share.

[51] It is trite law that in estates litigation in Ontario, the costs rules in civil litigation apply, unless the court finds that one or more relevant public policy considerations dictate that costs should be paid out of the assets of the estate (see: *McDougald Estate v. Gooderham*, 2005 CanLII 21091 (ON CA), and *Neuberger, supra*).

[52] In *Brown v. Rigsby*, 2016 ONCA 521, Pepall J.A. summarized the applicable costs principles that apply to an estate trustee's recovery of legal costs from the estate as follows (at para. 14):

- (a) An estate trustee is entitled to indemnification from the estate for all reasonably incurred legal costs;
- (b) If an estate trustee acts unreasonably or in his or her own self-interest, he or she is not entitled to indemnification from the estate; and
- (c) If an estate trustee recovers a portion of his or her costs from another person or party, he or she is entitled to indemnification from the estate for the remaining reasonably incurred costs.

[53] At no time do I find that Mr. Schmoranz was acting in his own best interests in bringing this application. He was, in my view, correct about the disbursements. He simply chose the wrong manner in which to bring this issue before the court.

[54] However, costs are in the discretion of the Court under s. 131 of the *Courts of Justice Act*. It is an extremely broad discretion.

[55] Rule 57.01(2) provides that the court may award costs against a successful party in a proper case.

[56] This is just such a case.

[57] Ms. Hernandez had the benefit of the accounting that would have occurred had this proceeding been constituted as a Passing of Accounts. She did not raise the jurisdictional issue until the eve of this motion. She required Mr. Schmoranz, who I reiterate was acting as a court appointed Estate Trustee for the very reason that she and her brothers could not cooperate to administer the estate, to commence legal proceedings over a handful of dollars.

[58] Even the cross-examination of Mr. Schmoranz was conducted on December 10, 2025 when the parties had seemingly resolved all of the substantive issues except for costs.

[59] Her conduct in this litigation was entirely unreasonable. One of the express purposes of costs awards is to discourage unreasonable conduct in litigation.

[60] It would not be fair to award costs to be payable as against the Estate. At least four of the other beneficiaries were content to receive their share. Only Ms. Hernandez “quibbled” (and wrongfully in my opinion) over one sixth of \$214 (or \$35.67). This conduct was entirely consistent with her approach to Mr. Schmoranz’ appointment as Estate Trustee judging by her correspondence to their office.

[61] In my view, to award costs in favour of Ms. Hernandez, even having found that she was technically correct about Rule 75.06, would reward her unreasonable behaviour throughout the administration of her mother’s estate.

[62] Accordingly, I dismiss the Application, but fix costs in the amount of \$27,000.00 payable by the Respondent, Cheri Anne Hernandez, personally, to the Estate Trustee, Sebastien Schmoranz. This is on a full indemnity basis both given Mr. Schmoranz’ role as court appointed Estate Trustee, and as a result of Ms. Hernandez’ unreasonable conduct.

[63] Ms. Hernandez cannot complain about the quantum, having sought the equivalent amount of costs payable personally by Mr. Schmoranz.

[64] As I agree that I cannot make an order with respect to having Ms. Hernandez’ share paid into court, the collection of the costs award will have to be done in another fashion. Furthermore, I recognize that if Ms. Hernandez insists upon being unreasonable, she can require the Estate Trustee to go through the exercise of passing his accounts. Obviously, this could also have costs consequences, but I leave that to another day, if necessary.

“Justice Spencer Nicholson”

Justice Spencer Nicholson

Date: February 23, 2026

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ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

THE ESTATE OF ANNA HERNANDEZ, also
known as Anna Florence Hernandez

APPLICANT

- and -

CHERI ANN HERNANDEZ

RESPONDENT

DECISION ON MOTION

NICHOLSON J.

Released: February 23, 2026