KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 51**

Date: **2026 03 05**
File No.: KBG-ES-00041-2023
Judicial Centre: Estevan

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BETWEEN:

VIOLET HAZEL JACOB AND RUTH ROSE LINDA KRELL AS THE EXECUTRICES OF THE ESTATE OF WILLIAM FREDERICK KRELL

APPLICANTS

\- and -

JOHN KNOCH, WAYNE KNOCH, CARLA WIESBERG, DANIEL KNOCH, AND MARK KNOCH

RESPONDENTS

Counsel:

John C. Stewart	for the applicants
Lindsay A. Hart	for the respondents

JUDGMENT   BERGBUSCH J.
MARCH 5, 2026

I. OVERVIEW

[1] This decision concerns a life tenant's entitlement to royalties and other benefits from an oil and gas well brought into production after the testator's death. The deceased, William Frederick Krell, gave a life interest in a mineral parcel to his spouse Ruth Rose Linda Krell, and directed his trustees "to pay to her during her lifetime all royalty or other benefits being received by me at the time of my death" from that

mineral parcel. An oil and gas exploration and production company drilled a new well on that mineral parcel shortly before William died, on the mistaken assumption that its petroleum and natural gas lease with William was valid and subsisting. After William notified the company of its error, the new well was shut in until the parties could come to terms on a new lease. When William died, negotiations were still in progress. Following his death, the executors concluded a new petroleum and natural gas lease with the company, which resumed production and began paying royalties in 2018.

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[2] William's sister, Violet Hazel Jacob, and Ruth are co-executors of William's estate [Estate]. According to the executors' interpretation of William's Last Will and Testament [Will], Ruth is entitled to receive the royalties payable under the new lease during her lifetime, after which title to the mineral parcel and the right to further royalties will pass to the remainder beneficiaries. The respondents, who number among the remainder beneficiaries, contend that Ruth has committed an act of waste by authorizing production of the new well, thereby depleting a non-renewable resource to the remainder beneficiaries' detriment. They further assert that Ruth is not entitled to the royalties from production of the new well, which should be paid to or at a minimum preserved for the remainder beneficiaries.

[3] The dissident remainder beneficiaries also apply for an order removing the executors, alleging that the executors have failed to discharge their fiduciary duties to the remainder beneficiaries by entering into the new lease without lawful authority, by failing to follow the unambiguous wording of the Will, and by taking unreasonable positions that have delayed administration of the Estate.

[4] This decision addresses the following issues:

a. Did the testator intend the life tenant to receive royalties and other benefits resulting from new production on the mineral parcel?

b. Who is entitled to the payments made under the new lease?

c. Should Ruth Krell and Violet Jacob be removed as executors of the Estate?

[5] In this decision, I conclude that the disputed provision of the Will is unambiguous, considering the plain and ordinary meaning of the words used, read in concert with the entire Will and in light of the surrounding circumstances known to William when he made the Will. Ruth is not entitled to the royalties generated by the new well since William was not receiving them when he died. The remainder interest in the mineral parcel vested in the remainder beneficiaries at the time of William's death and they are entitled to all royalties and other benefits payable under the new lease. Subject to the executors and the remainder beneficiaries agreeing on an alternate way of distributing the royalties from the new lease, the payments under the new lease should be invested and the accumulated funds should be paid to the remainder beneficiaries when Ruth dies.

[6] William's choice of executors is not to be overridden lightly. Although Ruth and Violet did not have authority to enter into a new lease without the consent of the remainder beneficiaries or a court order, their decision to finalize a new lease with the oil company is understandable. They relied on professional advice in negotiating the lease and in interpreting the disputed provision of the Will. The respondents have not demonstrated that the executors lack honesty, reasonable fidelity, or capacity to fulfill their duties.

[7] At times in this decision I refer to parties by their first names. This is for ease of reading and I intend no disrespect in doing so.

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II. DISPUTED PROVISIONS OF THE WILL

[8] At the outset, it is useful to reproduce the disputed provisions of the Will. Primarily this dispute concerns the interpretation of paragraph (h) of the Will, although the executors also ask for the Court's direction regarding the possible application of paragraphs (k), (l), and (m). These provisions read:

> I GIVE, DEVISE AND BEQUEATH all my property of every nature and kind whatsoever and wheresoever situate, including any property over which I may have a general power of appointment, to my trustees upon the following trusts, namely:
>
> …
>
> (h) To hold during my wife's lifetime my estate and interest in and to the mineral parcel for the mines and minerals beneath the South East Quarter of Section 17, in Township 8, in Range 8, W2M and to pay to her during her lifetime all royalty or other benefits being received by me at the time of my death and upon her death to transfer the said interest to THOM WILLIAM SWANSON, each of my nieces and each of my nephews in equal shares, share and share alike;
>
> …
>
> (k) To deliver to THOM WILLIAM SWANSON, for his own use absolutely, Twenty (20%) percent of all the rest and residue of my estate whatsoever and wheresoever situate;
>
> (l) Should she survive me for a period of thirty (30) days from the date of my death, to deliver to my beloved wife, for her own use absolutely Twenty-five (25%) percent of all the rest and residue of my estate whatsoever and wheresoever situate;
>
> (m)To divide the remaining rest and residue of my estate whatsoever and wheresoever situate between my sister, VIOLET HAZEL JACOB should she survive me for a period of thirty (30) days from the date of my death, each of my nieces and each of my nephews, in equal shares, share and share alike.
>
> (Affidavit of Violet Jacob, Exhibit A)

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[9] I will return to these provisions later in these reasons.

III. SUMMARY OF APPLICATIONS

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[10] This Court proceeding was originally commenced by an originating application issued on May 29, 2023. That application was adjourned to August 10, 2023, and then struck by consent, with the issue of costs adjourned *sine die*. Nothing more will be said in this decision about this first originating application.

[11] A second originating application was filed on April 3, 2024. In the new originating application, the executors seek the opinion, advice, and direction of the Court respecting the management or administration of the Estate. They rely on ss. 46.4(1) of *The Administration of Estates Act*, SS 1998, c A-4.1, ss. 47(1) of *The Trustee Act, 2009*, SS 2009, c T-23.01, and Rule 3-49(1) of *The King's Bench Rules*.

[12] The application concerns the construction of paragraph (h) of the Will. The executors want the Court to determine who is entitled to receive the royalties and other benefits from certain mines and minerals. More particularly, they ask whether:

a. Ruth is entitled to receive the royalties and other benefits during her lifetime and whether, after her death, the royalties are to be paid to Thom William Swanson and the testator's 19 nieces and nephews, in equal shares, share and share alike; or

b. Retroactive to the testator's death, the royalties should be paid as part of the rest and residue of the Estate, pursuant to paragraphs (k), (l), and (m) of the Will; or

c. During Ruth's lifetime, the royalties are to be paid as part of the rest and residue of the Estate, pursuant to paragraphs (k), (l), and (m) of the Will and, after Ruth's death, to Thom and the testator's 19 nieces

and nephews, in equal shares, share and share alike; or

d. Retroactive to the testator's death, the royalties are to be paid to Thom and the testator's 19 nieces and nephews, in equal shares, share and share alike.

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[13] The persons named as respondents to the executors' application are five siblings, John Knoch, Wayne Knoch, Carla Weisberg, Daniel Knoch, and Mark Knoch, each of whom is a nephew or niece of the testator [Knoch Beneficiaries]. The Knoch Beneficiaries filed a separate originating application on May 17, 2024, seeking an order removing Ruth and Violet as executors of the Estate pursuant to ss. 14.1 and 17 of *The Administration of Estates Act* and s. 48 of *The Trustee Act, 2009*.

[14] The executors rely upon the following evidence:

a. Affidavit of John Joseph Billesberger sworn March 15, 2024.

b. Affidavit of Dmytro Ignatiuk sworn March 28, 2024.

c. Affidavit of Violet Hazel Jacob sworn April 1, 2024.

d. Reply Affidavit of Violet Hazel Jacob sworn July 11, 2024.

e. Reply Affidavit of William Thom Swanson sworn August 6, 2024.

[15] The respondents filed the following:

a. Affidavit of John Knoch sworn May 14, 2024.

b. Affidavit of Adam Stewart sworn May 13, 2024.

[16] During the hearing, I gave counsel for the Knoch Beneficiaries leave to file a Notice of Objection specifying their objections to the admissibility of portions of the executors' affidavits and leave to the executors' counsel to file a response. Notices

of Objection are normally used only in family law proceedings: see Family Practice Directive #3. However, both sides agreed that proceeding in this manner would permit the Court to rule on objections efficiently.

IV. SUMMARY OF FACTS

[17] William Krell died on June 1, 2016, at the age of 83. He was survived by his spouse Ruth, his son William Thomson Swanson [Thom], his sister Violet Jacob, and 19 nieces and nephews.

[18] William left a very substantial estate. According to the Statement of Property filed as part of the application for probate, he owned Part I assets having a total value of $8,774,786.25 and Part II assets, consisting of property held jointly with a right of survivorship (a joint bank account and a RRIF) valued at $94,469.26. The Estate included surface parcels consisting of 11 quarter sections of farmland, a home quarter, a half interest in another quarter of farmland, and two lots in the Town of Stoughton, Saskatchewan. In addition, the Estate also owned several mineral parcels, including the mines and minerals beneath the south east quarter of section 17, township 8, range 8, west of the second meridian [Mineral Parcel].

[19] William entered into a Petroleum and Natural Gas Lease and Grant [2004 Lease] with Bison Resources Ltd. dated August 1, 2004, related to the Mineral Parcel. William was paid bonus consideration of $16,000 and was entitled to be paid a gross royalty of 17½% of the leased substances produced, saved, and sold from a conventional vertical well or a horizontal well, based upon the current market value of crude oil, crude naphtha, and gas produced, with a reduced royalty of 15% if production fell below a certain threshold during a calendar month. Bison Resources Ltd. was required to give William seven days' written notice before commencing the drilling of a well. The 2004 Lease also included a provision whereby, after the primary term of 24 months, it would terminate with respect to all "spacing units" and all zones from which

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no production was being obtained. Other provisions of the 2004 Lease need not be reviewed for this decision.

[20] An oil and gas well was drilled in July 2006 [Old Well], on legal subdivisions 1 and 8 [LSD 1&8] of the Mineral Parcel (the eastern half of the parcel). The Old Well has been producing continuously since July 2006.

[21] The 2004 Lease was eventually assigned to Crescent Point Resources Partnership [Crescent Point] on July 2, 2009.

[22] Dmytro Ignatiuk, a practising lawyer from 1972 to May 13, 2013, attested that his office acted for William on all matters related to farming, negotiation for oil production, pipelines, legal disputes, and estate planning, among other things, from 1982 until William's death. He received instructions from William to prepare wills in 2005, 2007, 2011 and 2013. Mr. Ignatiuk says that he prepared the Will following William's instructions.

[23] According to David Hickie, a lawyer and trustee for Ignatiuk Law Offices, William executed the Will on March 16, 2013, and a copy was mailed to him on March 19, 2013. An executed original of the Will has not been located despite an extensive search.

[24] In February 2015, Crescent Point drilled a second well [New Well] on legal subdivisions 2 and 7 [LSD 2&7] of the Mineral Parcel (the western half of the property).

[25] In her affidavit sworn April 1, 2024, Violet attested that she visited William at the Estevan Hospital multiple times between February and April 2016. During these visits, William discussed the royalties for the New Well with her and showed her copies of relevant documentation. William told her that, from October to December 2015, he had received approximately $52,673.93 in royalty payments for the

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New Well. William had contacted Crescent Point to advise them that the lease had lapsed and, in response, Crescent Point temporarily shut in the New Well and submitted a new lease to William's lawyers at Ignatiuk Law Offices. In January 2016, he received a further royalty payment of approximately $488.93. According to Violet, William advised her that Crescent Point and he were negotiating a "fair price" for a new lease.

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[26] Much of the foregoing is corroborated by several documents attached to Violet's affidavit as exhibits. Production statements from Crescent Point for the New Well (designated by Crescent Point as CC:61415) show the volumes produced (primarily oil), the average price, and the gross royalty payable. The gross royalties were as follows:

Month	**Gross Royalty**
August 2015	$15,618.28
September 2015	$21,718.22
October 2015	$15,274.26
November 2015	$488.93
Total	$53,099.68

[27] William's lawyer sent Crescent Point a letter dated November 15, 2015, advising that the 2004 Lease had expired with respect to LSD 2&7 and the New Well was drilled without authorization. The letter enclosed a draft lease acceptable to William and requested Crescent Point's response.

[28] By email dated December 7, 2015, a senior landman with Crescent Point, Tyler Cheetham, advised William's lawyer that Crescent Point had drilled a "Bakken well In February on these two Lsds not realizing the rights had reverted back to Mr. Krell prior" (Exhibit M to the Affidavit of Violet Jacob) [errors in original]. The well had come into production in August 2015 and Crescent Point had sent a royalty cheque to William, after which William advised Crescent Point of its mistake. Mr. Cheetham further advised that the well was down and had experienced downhole failure with broken rods. Fixing the well would entail "substantial cost." Mr. Cheetham said that

Crescent Point would cut, cap, and cement the wellbore if the parties could not agree on a new lease, but this was not Crescent Point's preference as the well "looks to be decent." The email attached Crescent Point's offer to lease, which included a bonus of $12,000 and an 18% royalty (Exhibit C to the Reply Affidavit of Violet Jacob). By letter dated December 18, 2015, William's lawyer advised him that the offer was not reasonable and recommended against acceptance.

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[29] Further offers were exchanged between Crescent Point and William's legal counsel. On March 2, 2016, Crescent Point communicated that it had provided its final offer on February 17, 2016, and Crescent Point could not produce an economic well based off William's last proposal. Commenting on the parties' respective risks, Crescent Point noted that William would receive an "automatic royalty payment once the well is repaired and activated" (Exhibit D to the Reply Affidavit of Violet Jacob).

[30] On April 26, 2016, Violet and Mr. Ignatiuk were both visiting William in his nursing home. According to Violet, Mr. Ignatiuk told her that he was there to meet with William to review with him incorporation documents for Willowcrest Krell Legacy Inc. Violet attested William told her he intended to transfer his mineral rights to this corporation. Mr. Ignatiuk was also there to discuss the status of lease negotiations with Crescent Point and recommended to William that he ask for a larger settlement.

[31] William died before a new lease was finalized for the mines and minerals beneath LSD 2&7.

[32] After William died, Ruth and Violet could not locate an original of the 2013 Will. Consequently, they applied for letters probate in reliance on an unsigned copy. On October 25, 2016, Chicoine J. granted Letters Probate. The grant of probate remains in full force and effect until such time as the original Will is found and filed with the Court.

[33] John Billesberger, who acts for the Estate, received a telephone call in early May 2017 from Aron Streifel, a landman with Prairie Land & Investment Services Ltd. [Prairie Land] which represents Crescent Point. According to Mr. Billesberger, Mr. Streifel explained that Crescent Point had drilled the New Well and then shut it in once Crescent Point learned it did not have a valid lease. Mr. Streifel made an offer for a new petroleum and natural gas lease, including a bonus of $40,000, a one-year term, and a 19% royalty. After further negotiations, Crescent Point agreed to increase the bonus consideration to $50,000 and to amend the proposed lease.

[34] On November 9, 2017, Violet received a telephone call from Mr. Billesberger, who advised that Prairie Land wanted Ruth and her to sign a lease for the New Well. On November 13, 2017, Violet met with John Davidson, a representative of Prairie Land, at her home in Winnipeg, Manitoba. Violet's son Nathan and niece Shelly Hopkins, who are both beneficiaries of the Estate, were present at the meeting. Mr. Davidson discussed Crescent Point's latest lease proposal with Violet.

[35] Effective November 10, 2017, Ruth and Violet, as personal representatives of the Estate, entered into a Petroleum and Natural Gas Lease with Crescent Point respecting the mines and minerals within, upon or under LSD 2&7 [2017 Lease], which provided bonus consideration of $50,000 payable within 90 days and a royalty "in an amount equal to the current market value at the point of sale as and when produced of **Nineteen (19.00%) percent** of all the leased substances produced, saved and sold …" (Exhibit S to the Affidavit of Violet Jacob) [bold in original].

[36] Violet attested that she signed the 2017 Lease the day she met with Mr. Davidson. Ruth signed the lease on December 21, 2017.

[37] Mr. Billesberger wrote to the beneficiaries on November 20, 2017, advising them that they could expect to be contacted by Prairie Land. He summarized the background regarding the New Well and the outcome of the lease negotiations. He

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shared his view that the Will gives Ruth a life interest in the Mineral Parcel and is entitled to all royalties or benefits during her lifetime, with the interest to be transferred to Thom and each of William's nieces and nephews upon Ruth's death. He encouraged the beneficiaries to consent to the terms of the 2017 Lease. Mr. Billesberger attested that the only beneficiary to contact him with any concerns was John Knoch.

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[38] On various dates between November 29, 2017, and January 22, 2019, all beneficiaries except Wayne Knoch signed consents to the 2017 Lease.

[39] Prairie Land sent a trust cheque to Mr. Billesberger on February 5, 2018, for $50,000, representing payment of the bonus under the 2017 Lease.

[40] Production records show that the New Well resumed production in February 2018 (Exhibit I to the Affidavit of John Knoch).

[41] Following execution of the 2017 Lease, Ruth has received the bonus and all royalty payments from Crescent Point for production of the New Well. According to Violet, Thom and 14 of the nieces and nephews have advised her that they agree Ruth should receive all the royalties and other benefits from the New Well during her lifetime. However, Ruth and Violet, as executors, have been unable to come to an agreement with the Knoch Beneficiaries respecting the New Well. Violet claims that delays caused by the Knoch Beneficiaries' lack of cooperation on this issue and others pertaining to the Will and/or other mineral rights held in the Estate have prevented them from finalizing the administration of the Estate and have caused the Estate to incur significant costs.

[42] John Knoch is one of William's nephews and a beneficiary of the Estate. John attested he had a close relationship with his uncle William. On or about September 23, 2018, John received an email from his cousin, Trent Victor (another beneficiary), enclosing "a copy of the last page of William's most recent signed Will found in his

Stoughton Credit Union Safety Deposit Box, June 2016" (Exhibit F to the Affidavit of John Knoch). In his affidavit, John summarized inquiries he has made about an executed will found in William's safety deposit box. Violet told him that a will was found in the safety deposit box but she does not know where it is now. The significance of this evidence is not apparent since no one has contested the validity of the unsigned Will admitted to probate and the Knoch Beneficiaries' interest in the Estate depends on the validity of that Will.

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[43] In a reply affidavit, Violet provided more details of William's relationship with his nieces and nephews and summarized wills made by William predating the 2013 Will. None of this is germane and I will not review it further.

[44] John avers that the executors entered into the 2017 Lease without the concurrence of all persons beneficially interested in the Mineral Parcel. John received Mr. Billesberger's letter dated November 17, 2017, and he and his siblings, other than Wayne, executed consents to the lease based upon Mr. Billesberger's advice. He attested that he was unaware of the "circumstances surrounding Ruth's entitlement" or that Mr. Billesberger was, allegedly, acting for Ruth separate and apart from his role as Estate counsel. John's counsel received a letter from Mr. Billesberger dated September 19, 2022, related to outstanding issues regarding the Estate. Among other things, Mr. Billesberger recounted that Mr. Streifel had told him Crescent Point decided to get a new lease "out of the abundance of caution" (Exhibit M to the Affidavit of John Knoch). John disputes Mr. Billesberger's characterization and says Crescent Point needed the new lease because it did not have the right to drill the New Well.

[45] According to John, the executors have taken steps that have significantly delayed administration of the Estate. They wanted to transfer the Estate mineral interests to a corporation, WF Krell Legacy Inc. [WFKL], rather than directly to the beneficiaries. The Knoch Beneficiaries were opposed to becoming minority

shareholders in a corporation rather than owning and controlling their mineral interests directly. The Estate paid the incorporation costs of WFKL without the consent of all beneficiaries. Eventually, the executors agreed that the mineral interests bequeathed to the Knoch Beneficiaries would be transferred into a separate corporation controlled by them.

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[46] John takes issue with the Estate distributing royalties to Ruth without the consent of all beneficiaries. He says before he read Violet's affidavit he believed the royalties from the new lease were being held in trust until matters were resolved. He also claims the executors have withheld payment of undisputed royalties to the beneficiaries without explanation. John also questions the Estate's payment of legal fees to law firms that appear to be acting for the executors as beneficiaries, rather than for the Estate.

[47] Responding to John's complaints regarding the actions of the executors, Violet says that the Knoch Beneficiaries have fought the executors at every turn, from the auction held to sell William's property, to lease negotiations, corporation issues, and title issues. John Knoch registered "caveats" (i.e.., miscellaneous interests) against title to three mineral parcels. The Knoch Beneficiaries have also changed legal counsel multiple times, contributing to the delay.

[48] Further, WFKL was incorporated upon Mr. Billesberger's legal advice, since William did not finalize Willowcrest Krell Legacy Inc. before he died. According to Violet, Mr. Billesberger advised that incorporating was the most efficient way to share ownership of mines and minerals for the benefit of all beneficiaries. However, a letter from Mr. Billesberger dated November 17, 2017, raised several concerns about the executors' plan to hold the mines and minerals in a corporation and the potential for a court action. Mr. Billesberger also warned that the "court could remove the executors for failing to comply with the terms of the Will" (Exhibit E to the Reply Affidavit of

Violet Jacob).

[49] Violet also averred that, through Mr. Billesberger's office, the executors sent to the beneficiaries many updates, including statements of receipts and disbursements for the Estate that showed the payment to Ruth of royalties under the 2017 Lease. Royalty payments for two mineral parcels (NW and SW 17-8-8 W2M) have been distributed annually to Thom and the 19 nieces and nephews since March 20, 2018.

[50] The Knoch Beneficiaries also rely upon the Affidavit of Adam Stewart, a member of the Canada Association of Land and Energy Professionals and Vice-President, Mineral Land of Millenium Land Ltd. Mr. Stewart has general knowledge of petroleum and natural gas operations in Saskatchewan. In his affidavit, he provides general information regarding the life cycle of oil and natural gas wells. The life cycle of a well begins when the operator of the wellsite commences drilling, which usually takes a few days. Once the drilling rig is released and equipment is affixed to the wellhead, the well enters the active stage. A well is considered active for as long as it produces petroleum or natural gas. A typical petroleum producing well commences production at the maximum or near maximum daily production. Peak production usually continues for a short period of time and then output tapers off to a lower but relatively stable level. Production can be increased during the middle portion of a well's lifecycle through non-conventional extraction techniques. Since royalties are paid on actual production, a lessor can generally expect larger royalty payments in the early years of a well. Once a well has been exhausted, the wellhead is removed and the well is plugged. It is then considered abandoned.

V. ADMISSIBILITY OF EVIDENCE

[51] Rule 3-55 of *The King's Bench Rules* directs what evidence the Court may consider on actions commenced by originating application. It reads:

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Originating applicant evidence (other than judicial review)
3-55 When making a decision about an originating application, other than an originating application for judicial review, the Court may consider the following evidence only:

(a) affidavit evidence, including an affidavit by an expert;

(b) an admissible document that is an exhibit to an affidavit;

(c) anything permitted by any other rule or by an enactment;

(d) evidence taken in any other action, but only if the party proposing to submit the evidence gives every other party 5 days or more notice of that party's intention and obtains the Court's permission to submit the evidence;

(e) with the Court's permission, oral evidence, which if permitted must be given in the same manner as at trial.

[52] Rule 3-52 governs evidence filed by a respondent in response to an originating application and by an applicant in reply. As Rule 3-52(2)(b) indicates, any response affidavit or other evidence filed by the applicant must be limited to replying to the respondent's affidavit or other evidence.

[53] Turning to the requirements governing affidavits, Rule 13-30(1) provides that "an affidavit must be confined to facts that are within the personal knowledge of the person swearing or affirming the affidavit." On interlocutory applications, hearsay evidence is admissible, provided the affiant discloses the source of the information and affirms belief in its truth: Rules 13-30(2) and (3). Here, both originating applications request final relief and, accordingly, evidence sworn on information and belief is presumptively inadmissible.

[54] Subject to exceptions, the basic rule is that all relevant evidence is admissible. One of those exceptions is the rule against hearsay: *R v Khelawon*, 2006

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SCC 57 at para 34 [*Khelawon*]. Hearsay is an out-of-court factual statement adduced to prove the fact asserted. Hearsay is presumptively inadmissible because the trier of fact does not have the benefit of observing the declarant, the statement is not made under oath, and the statement is not to be tested by cross-examination: *Khelawon* at paras 35, 63.

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[55] An out-of-court statement is not hearsay if it is adduced to prove that it was made and its truth or falsity is of no consequence: *Subramaniam v Public Prosecutor*, [1956] 1 WLR 965 at p 969; *Dobrowolski v Dobrowolski*, 2020 MBCA 105 at para 49; *Regina v Baltzer*, 1974 CanLII 1668, 27 CCC (2d) 118 at p 143 (NSCA); *Pfizer Canada Inc. v Teva Canada Limited*, 2016 FCA 161 at paras 89-92.

[56] There are many common law exceptions to the hearsay rule, such as declarations against interest by non-parties and party admissions: *R v Schneider*, 2022 SCC 34 at paras 51-57 and 78 [*Schneider*]. Hearsay may also be admitted under the principled approach if it meets the criteria of reliability and necessity: *Schneider* at para 50; *R v Bradshaw*, 2017 SCC 35 at para 23 [*Bradshaw*]. Necessity may be satisfied if the declarant is unavailable: *Khelawon* at para 103. Reliability may be met if there are adequate substitutes to test the truth or accuracy of the statement (procedural reliability) or if circumstantial and evidentiary factors guarantee its inherent trustworthiness (substantive reliability). Corroborative evidence may show that the only likely explanation for the hearsay statement is the declarant’s truthfulness about or the accuracy of the statement: *Bradshaw* at para 44.

[57] Affidavit evidence must be relevant, must not contain speculation, argument, or conclusions and, generally, must not express opinions: *Yashcheshen v Teva Canada Ltd.*, 2022 SKCA 49 at para 76 [*Teva*]. Ryan-Froslie J.A. concisely explained the differences between these objections to affidavits in *Teva* at para 77:

> [77] A matter is speculative when it has no factual foundation; it is argumentative when it asserts how facts, or a disputed matter, should be resolved; and it is conclusionary when it suggests an outcome. Opinion evidence is evidence of what a witness thinks, believes, or infers as a result of a given set of facts.

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[58] Opinions are presumptively inadmissible. Affidavits should not contain opinion unless it is proffered by a qualified expert: *Teva* at para 78. However, affidavits may contain expressions of opinion with respect to matters of common experience: see *R v Graat*, 1982 CanLII 33, [1982] 2 SCR 819 at pp 837-838 (SCC); *Wait v Prince Albert (City of)*, 2003 SKQB 128 at para 5; *Cheekinew v Saskatchewan*, 2025 SKKB 161 at para 25.

[59] The Knoch Beneficiaries alleges that Exhibit “L” to the Affidavit of Violet Jacob should be struck because it refers to “without prejudice” discussions. Litigation settlement privilege was summarized in *Hollinger Inc. (Re)*, 2011 ONCA 579 at para 16:

> [16] It is well established that in order to foster the public policy favouring the settlement of litigation, the law will protect from disclosure communications made where (1) there is a litigious dispute; (2) the communication has been made "with the express or implied intention it would not be disclosed in a legal proceeding in the event negotiations failed"; and (3) the purpose of the communication is to attempt to effect a settlement
> …

See also *Manderscheid v Humboldt Smiles Dental Studios Inc.*, 2021 SKCA 42 at para 39.

[60] When a party objects to affidavit evidence, the chambers judge is required to identify any portions that are struck and the reasons for doing so: *S.G. v K.B*, 2021 SKCA 133 at para 22; *Wongstedt v Wongstedt*, 2017 SKCA 100 at paras 38-39; *Thomas v Input Capital Corp.*, 2020 SKCA 67 at para 32. My rulings and reasons in relation to the notice of objection are summarized in four tables attached to this decision as

Appendix "A". Where I do not refer to a specific paragraph or portion of a paragraph that the Knoch Beneficiaries have objected to, I have concluded that the impugned evidence is relevant and admissible. I have also commented about the admissibility of certain evidence at several points in these reasons.

VI. APPLICATION FOR OPINION, ADVICE OR DIRECTION

A. Jurisdiction of the Court

[61] In support of their application, the executors rely upon ss. 46.4(1) of *The Administration of Estates Act* and ss. 47(1) of *The Trustee Act, 2009*. These provisions are substantially the same and authorize an executor or trustee (as the case may be) to apply for the opinion, advice or direction of the Court on any question respecting the management or administration of an estate or a trust. Subsection 47(1) also permits a trustee to ask for the opinion, advice and direction of the Court on any question affecting the rights or interests of a person or class of persons claiming to be interested in the trust. The provisions read:

> **Application for direction**
> 46.4(1) An executor or administrator may make an application for the opinion, advice or direction of the court on any question respecting the management or administration of the estate.
>
> (*The Administration of Estates Act*)
>
> **Application to court for advice or direction**
> 47(1) A trustee may apply to court for the opinion, advice and direction of the court on any question respecting the management or administration of the trust, including any question affecting the rights or interests of a person or class of persons claiming to be interested in the trust.
>
> (*The Trustee Act, 2009*)

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[62] An application for directions under these sections is properly commenced by originating application pursuant to Rule 3-49 of *The King's Bench Rules*: *Geran v Geran Estate*, 2022 SKCA 143 at para 27 [*Geran*].

[63] The executors also rely upon the following paragraphs of Rule 3-49(1) in bringing this application:

> 3-49(1) An action may be started by originating application if the remedy claimed is:
>
> (a) the opinion or direction of the Court on a question affecting the rights of a person with respect to the administration of the estate of a deceased person or the execution of a trust;
>
> (b) an order directing executors, administrators or trustees to do or abstain from doing any particular act with respect to an estate or trust for which they are responsible;
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> …
>
> (d) the determination of rights that depend solely on the interpretation of:
>
> (i) a deed, will, contract or other instrument; or
>
> (ii) an enactment, order in council or municipal bylaw or resolution;
>
> (e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges; …

[64] In this case, the executors seek the Court's direction, advice, and opinion regarding the proper interpretation of paragraph (h) of the Will. Depending upon the Court's view of that provision, it may be necessary to interpret paragraphs (k), (l), and (m) to determine who is entitled to receive the royalties payable under the 2017 Lease. In addition, they seek the Court's direction regarding entitlement to royalties and other

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benefits related to the 2017 Lease and production of the New Well, which will depend upon the Court's interpretation of the Will.

B. Positions of the Parties

1. The Executors

[65] The parties are at odds over the principles guiding the interpretation of the Will, although they cite many of the same authorities. The executors submit that, where a will is unambiguous, courts will generally focus on the words to ascertain testamentary intention without reference to other information. Where the will is ambiguous, courts employ the "armchair rule" to ascertain the testator's intention, by putting themselves in the testator's position when he or she made the will. The executors also rely upon *Re: Estate of Constance Evelyn Stevenson*, 2022 ONSC 6416, which suggests that evidence of surrounding circumstances should always be considered when a will is being interpreted. The Court can also apply rules of construction to the interpretation of a will. In this case, the executors rely upon the presumption of rationality, which holds that a testator did not intend capricious, arbitrary, unjust, or irrational consequences to flow from a disposition. The executors also refer to the presumption of disinheritance, which holds that courts will prefer a construction that benefits the testator's immediate heirs or next of kin over one that favours more distant relatives.

[66] The executors contend that, on a plain reading of paragraph (h) of the Will, Ruth is entitled to receive the royalties from the New Well for the rest of her life. Upon her death, royalties from that well will be paid to Thom and the niece and nephew beneficiaries in equal shares, share and share alike. They call this the "status quo outcome." The executors submit that the New Well was producing, and production was only suspended because of a "clerical error" by Crescent Point. The executors say that royalties from the New Well fit within the words used in paragraph (h). The

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presumptions favour this interpretation, since William loved his wife and it would be irrational for her to be disinherited, and she was his next of kin and should not be disinherited in favour of more distant relatives. Finally, applying the "armchair rule," the testator's intention was to benefit Ruth during her lifetime.

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[67] However, if the Court does not accept that the "status quo outcome" is the correct interpretation of the Will, the executors submit the only reasonable alternative is that the royalties from the New Well should be paid as part of the rest and residue of the Estate in accordance with paragraphs (k), (l), and (m) of the Will. They call this the "enduring residue outcome." They contend that, if the testator's gift to Ruth of royalties from the New Well fails, then the gift of those royalties to the remainder beneficiaries also fails. Alternately, they say that the royalties from the New Well should be paid as part of the rest and residue of the Estate during Ruth's lifetime, and thereafter to Thom and the nieces and nephews, in equal shares pursuant to paragraph (h) of the Will. They call this the "temporary residue outcome."

2. The Knoch Beneficiaries

[68] The Knoch Beneficiaries submit the cardinal principle of interpreting testamentary dispositions is to focus upon the natural and ordinary meaning of the words used. To the extent that the executors rely upon hearsay and statements related to surrounding circumstances, these should be given no weight. As the Will is unambiguous, the Court does not need to use the armchair rule or to review the surrounding circumstances to interpret the testator's intentions.

[69] According to the Knoch Beneficiaries, the only correct way to interpret paragraph (h) of the Will is that Ruth is entitled to a very specific royalty stream for the duration of her life. When the Will was drafted, William was receiving royalties from the Old Well, not the New Well. Ruth's life estate in the Mineral Parcel is limited in

scope to those royalties and other benefits being received by William at the time of his death. Since it is presumed that every word or phrase used by the testator was intended to have meaning, the Court cannot ignore the words, "being received by me at the time of my death." Ruth's entitlement is limited to the royalties and other benefits from operation of the Old Well.

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[70] The Knoch Beneficiaries submit that only the remainder beneficiaries are entitled to the royalties from the New Well. The executors are obliged to preserve the capital property of the life estate for the benefit of the remainder beneficiaries. The executors did not have authority to enter into the 2017 Lease, although the Knoch Beneficiaries are not seeking to vitiate the 2017 Lease for lack of consent. However, the executors committed an act of waste by executing the 2017 Lease and then directing Crescent Point to pay the royalties to Ruth rather than to the remainder beneficiaries. The royalties should either be distributed to the remainder beneficiaries now, pursuant to the rule in *Saunders v Vautier*, [1835-42] All ER Rep 58, or they should be placed in an approved investment for distribution to the remainder beneficiaries once the life estate terminates.

C. Applicable Principles of Interpretation

[71] The object of interpreting a will is to ascertain the subjective testamentary intention of the testator. The Court must examine the will in its entirety, not just the disputed provisions. Words used are given their ordinary, natural, and grammatical meaning. If any technical words are used, they are to be given their technical meaning, unless the testator intended otherwise. These basic principles have been restated many times. An oft-cited formulation is found in *In re Tyhurst, Deceased*, 1932 CanLII 12, [1932] SCR 713 at p 716 (SCC) [*Tyhurst*]:

> In construing a will the duty of the court is to ascertain the intention of the testator, which intention is to be collected from the whole will taken together. Every word is to be given its

> natural and ordinary meaning and, if technical words are used, they are to be construed in their technical sense, unless from a consideration of the whole will it is evident that the testator intended otherwise.

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[72] Where the words used in the testamentary document are ambiguous, evidence of the surrounding circumstances known to the testator when he or she made the will is admissible and relevant. In *Tyhurst* at p 719, Lamont J. explained the approach to be followed if the language of the will is ambiguous. In that event, the Court is also to consider the surrounding circumstances known to the testator when the will was made:

> In construing the language of the testator where it is ambiguous, we are entitled to consider not only the provisions of the will, but also the circumstances surrounding and known to the testator at the time when he made the will, and adopt the meaning most intelligible and reasonable as being his intention. …

[73] A question that arises frequently is whether the Court is always to consider the surrounding circumstances known to the testator at the time that he or she made the will, or only when the testator's intention cannot be determined from the plain meaning of the words used.

[74] In most circumstances, words used in a will are clear on their face and the testator's intention can be understood without referring to any extrinsic information. The absence of ambiguity means no further insight is needed into the testator's intention: *Gilchrist v Gilchrist*, 2023 SKKB 187 at paras 12 and 16 [*Gilchrist*].

[75] The Court can admit evidence of the circumstances in which the will was made to illuminate the testator's intention. The Court considers the meaning of the words used in the will, informed by what the testator knew when he or she made the will. This is referred to as "sitting in the testator's armchair." This was well-expressed in the following passage from *Perrin v Morgan,* [1943] All ER 187 at p 197 (HL)

[*Perrin*], cited with approval in *Jessop Estate, Re*, 1987 CanLII 4864 at para 8, 55 Sask R 18 (SKCA):

> … I take it to be a cardinal rule of construction that a will should be so construed as to give effect to the intention of the testator, such intention being gathered from the language of the will read in the light of the circumstances in which the will was made. In order to understand the language employed the court is entitled, to use a familiar expression, to sit in the testator's armchair. When seated there, however, the court is not entitled to make a fresh will for the testator merely because it strongly suspects that the testator did not mean what he has plainly said. …
>
> [Emphasis added]

[76] It is often said that it is only necessary to resort to the "armchair rule" when the language of the will is ambiguous: *Gilchrist* at para 16; *Tyhurst* at p 719; *Mladen Estate v McGuire*, 2007 CanLII 10904 at para 22, 39 ETR (3d) 298 (ONSC).

[77] Other decisions hold that, when the Court is construing a will, it should consider from the outset any evidence tendered of the surrounding circumstances. In *Haidl v Sacher*, 1979 CanLII 2289, 106 DLR (3d) 360 (SKCA) [*Haidl*], Bayda J.A. (as he then was) considered whether the "ordinary meaning" rule of construction should be applied without considering evidence of the surrounding circumstances except where the will was ambiguous. After an extensive review of English and Canadian authorities, he concluded that such evidence should be admitted at the start. This approach was "most likely to elicit the testator's intention" which was "the real and only purpose of the whole exercise": *Haidl* at para 21.

[78] The Manitoba Court of Appeal considered this issue in *Zindler v The Salvation Army*, 2015 MBCA 33 [*Zindler*]. Beard J.A. referred to the modern approach to contractual interpretation, discussed in *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 at para 47 [*Sattva*], which requires that the words of a written contract be considered in light of the factual matrix or surrounding circumstances

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known to the parties when the contract was made. Beard J.A. then addressed how this approach applies to the interpretation of a will as follows:

> [8] How does this apply to the interpretation of a will? As will be seen later in these reasons, the modern approach to the interpretation of a will is to determine the subjective intention of the maker of the will. This is done by looking at the words used in the context of the circumstances known to the maker at the time of signing the document, whether or not the words are ambiguous, to assist in determining the maker's intention. …

[79] Beard J.A. referred to numerous authorities, including *Haidl*, for the proposition that "evidence of surrounding circumstances should be taken into account in all cases before a court reaches any final determination of the meaning of words": *Zindler* at para 14, citing J. MacKenzie, *Feeney's Canadian Law of Wills*, 4th ed (LexisNexis, 2000) (updated 2015) at s 10.54. Support for this approach is also found in *Ross v Canada Trust Company*, 2021 ONCA 161 [*Ross*], where Brown J.A. observed at para. 41 that more recently "courts are treating the 'armchair rule' as an over-arching framework within which a judge applies the various tools for will construction at his or her disposal." This question was also raised, but not answered, in *Hipkins v McDonald*, 2025 SKCA 34 at para 48.

[80] I agree with the approach to interpreting wills set out in *Haidl* and more recently in *Zindler* and *Ross*. To repurpose what was said in *Sattva* at para 47, ascertaining testamentary intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning. Evidence of the surrounding circumstances known to the testator can assist the Court in determining what the testator intended to convey by the words used in the Will. I will proceed on this basis.

[81] I will now discuss what evidence of surrounding circumstances the Court may consider. In this context, surrounding circumstances refers to indirect extrinsic

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evidence of what the testator knew, such as "the character and occupation of the testator; the amount, extent and condition of his property; the number, identity, and general relationship to the testator of the immediate family and other relatives; the persons who comprised his circle of friends, and any other natural objects of his bounty": *Haidl* at para 7. It ordinarily does not include direct extrinsic evidence of the testator's intent, such as the instructions the testator gave to his lawyer to prepare the will: *Pladsen Estate, Re*, 1990 CanLII 7574 at para 5, 84 Sask R 35 (SKSU); *Cowderoy v Sorkos Estate*, 2012 ONSC 1921 at paras 44-45. For a comprehensive discussion of this point, see *The Estate of Fedyk v Karmarznuk*, 2025 SKKB 50 at paras 18-45.

[82] Apart from the armchair rule, I will mention briefly other principles of construction that may apply in the present case. There is a presumption that every word used by the testator was intended to have meaning: *Ellingson v Ellingson Estate*, 2017 SKQB 14 at para 22. There is a presumption of rationality: the Court will not give effect to an unjust or absurd construction if an alternate reasonable construction is possible: J. MacKenzie, I.M. Hull & S. Popovic-Montag, *Feeney's Canadian Law of Wills*, 4th ed (LexisNexis, 2024) (updated 2024) at s 10.71 [*Feeney's*]. There is also a presumption of disinheritance: where the will is capable of two constructions, one favouring the testator's heirs or next of kin and the other favouring more distant relatives, the interpretation favouring the closer relatives will be preferred: *Feeney's* at s 10.80. In addition, every will is to be construed, respecting the real and personal property comprised in it, as speaking and taking effect as if it had been executed immediately before the testator's death, unless a contrary intention is shown: *The Wills Act, 1996*, SS 1996, c W-14.1 at s 24.

[83] Finally, to reiterate the point made at the start of this analysis, the object of this exercise is to determine what the testator's intention was, when he or she made the will, based upon the words used. As the passage cited earlier from *Perrin* states, "the court is not entitled to make a fresh will for the testator merely because it strongly

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suspects that the testator did not mean what he has plainly said." (p. 197) The Court's mission is not to rewrite the will nor to divine what the testator would have done if he or she had considered eventualities not addressed by the will: *Gilchrist* at paras 23-25.

D. Appropriateness of Summary Determination

[84] Before I provide my interpretation of the disputed provision, I will discuss whether the applications are suitable for summary determination.

[85] Evidence of the surrounding circumstances known to William when he made the Will is admissible. Evidence of the real and personal property forming part of William's estate is admissible. Evidence of negotiations with Crescent Point that resulted in the 2017 Lease is also admissible. This evidence is also largely uncontroverted and much of it is found in exhibits to the affidavits filed by the parties. Credibility and reliability of the evidence adduced on these matters is not in issue.

[86] As discussed earlier, my admissibility rulings in response to the Knoch Beneficiaries' objections are set out in Appendix "A." Evidence of William's instructions to the solicitors who drafted his Will is not admissible because it is not probative of his expressed intentions found in the Will. Speculation about what William's intentions would have been if he had turned his mind to particular circumstances is inadmissible. I have considered some hearsay, consisting of Violet's account of statements William made to her about the New Well and various individuals' dealings with Crescent Point, because it provides context and is corroborated by contemporaneous records. Mr. Ignatiuk's evidence of William's testamentary intentions, Mr. Billesberger's opinion regarding paragraph (h), and opinions expressed by representatives of Crescent Point to Violet about the Will are inadmissible. Thom's opinions about what his father wanted Ruth to inherit are inadmissible.

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[87] When I consider only the admissible evidence, I conclude that the material facts are not in dispute. There is no need for cross-examination on affidavits or the trial of an issue. In short, the executors' and the Knoch Beneficiaries' applications can be decided summarily, in keeping with the goal of resolving claims in a timely, cost-effective, and proportionate way. None of the parties suggested otherwise.

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E. Interpretation of the Will

[88] I will now turn to the Will. William Krell made the Will on about March 16, 2013. While an executed copy of the Will has not been located, the parties do not dispute that the unsigned copy admitted to probate is William's Last Will and Testament.

[89] William named Ruth and Violet co-executors and trustees of his Will. He appointed John Knoch the alternate executor to Ruth and Nathan Jacob, Violet's son, as her alternate.

[90] After giving all his property to his trustees "upon the following trusts," William then directed in paragraphs (a) to (m) how the trustees were to dispose of his Estate. The Will directs the trustees to pay William's just debts and funeral and testamentary expenses. William gave Violet $20,000 and Ruth $200,000. William gave the trustees discretion to divide his personal possessions among Ruth and other family members. William gave a quarter of farmland (SE 3-8-9 W2M) to his nephew, Douglas Jon Diemert, and $20,000 to an educational institution to invest and to use the earnings for an annual scholarship. He directed the trustees to transfer to Thom his entire estate and interest in two mineral parcels, the "North Half of Section 25, in Township 7, in Range 9, W2M, and all benefits being received by me at the time of my death": paragraph (g).

[91] Next is the disputed paragraph, which directs the trustees as follows:

> (h) To hold during my wife's lifetime my estate and interest in and to the mineral parcel for the mines and minerals beneath the South East Quarter of Section 17, in Township 8, in Range 8, W2M and to pay to her during her lifetime all royalty or other benefits being received by me at the time of my death and upon her death to transfer the said interest to THOM WILLIAM SWANSON, each of my nieces and each of my nephews in equal shares, share and share alike;
>
> [Emphasis added]
>
> (Affidavit of Violet Jacob, Exhibit A)

[92] He also gave to Thom, each of his nieces and each of his nephews his entire estate and interest in two mineral parcels, SW and NW 17-8-8 W2M, in equal shares, share and share alike. He gave six charities $5,000 each. William then gave Thom 20% of the rest and residue of his estate and Ruth 25%, if she survived him for a period of 30 days. Finally, the balance of the rest and residue of William's estate was to be divided among Violet, if she survived him for a period of 30 days, and William's nieces and nephews in equal shares, share and share alike.

[93] William directed that, if any beneficiary should predecease him or die within 30 days of his death leaving issue, the share of that person would be held by his trustees in trust for the children of such person, in equal shares, share and share alike. He stated his wish that the family farm be maintained as a unit and directed that his nephew, Douglas John Diemert, have the right of first refusal to purchase all farmland and machinery not specifically bequeathed, granting the same right to any other niece or nephew if Douglas declined to exercise it. He also gave Ruth the right to occupy the farm residence and yard situated on SE 17-8-8 W2M (the home quarter) for as long as she wished to live there rent free, but being responsible for all utilities and household expenses, with the trustees to pay for insurance, taxes, and necessary repairs. The Will provides additional incidental authority and directions to the trustees and contains other

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provisions that I will not review here.

[94] Based upon the detailed directions William gave to his executors and trustees, it can fairly be said that William gave considerable thought to the legacy he was leaving and how he might benefit his spouse, his son, his sister, his many nieces and nephews, and numerous charitable causes. Some mineral parcels went to Thom immediately, others to Thom and the nieces and nephews. Ruth was given the right to live in the residence on the home quarter and a life interest in the mines and minerals beneath the home quarter (*i.e.*, the Mineral Parcel). The Will was drafted by a solicitor on William's instructions.

[95] On March 16, 2013, when he made the Will, William was about 80 years old. He had a son, Thom, who was about 34 years old. He had been married to Ruth since December 15, 1990. He had a sister, Violet, and 19 nieces and nephews. One of his nephews, Douglas, appears to have been actively involved in farming the land owned by William.

[96] In March 2013, William owned assets which I presume from the value of his Estate were worth about $8.5 million. This included 12 quarters of farmland, including the home quarter; a 1/6 interest in two mineral parcels and three additional mineral parcels; large term deposits; and substantial farm machinery and equipment.

[97] Referring to Ruth throughout the Will as his "beloved wife," William provided for her maintenance and welfare in his Will in several ways: by a gift of $200,000; by giving her a life interest in the Mineral Parcel, directing that she receive during her lifetime all "royalty or other benefits" being received by him at the time of his death; by giving her 25% of the rest and residue of his Estate; and by giving her the right to occupy the farm residence and yard during her lifetime. When he made the Will, William knew that he had a lease with Crescent Point respecting the Mineral Parcel, with a producing oil and gas well located on LSD 1&8 (*i.e.*, the Old Well). The well

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had entered production in July 2006 and had had continuous production up to March 2013. He had also received advice in April 2008 that Crescent Point no longer had the right under the lease to develop the minerals under LSD 2&7 (Exhibit I to the Affidavit of Violet Jacob).

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[98] Of course, when William made the Will he could not have anticipated that Crescent Point would drill the New Well in LSD 2&7 two years later or that he would have protracted lease negotiations with Crescent Point that would be unresolved at his death.

[99] William intended to provide generously for his son Thom, including by giving him 20% of the rest and residue of his Estate. He also intended for his sister Violet and his 19 nieces and nephews to share the remaining 55% of the rest and residue of his Estate. The two mineral parcels given directly to Thom and the 19 nieces and nephews also had producing wells. William obviously intended that many of his surviving relatives would share the benefits of his mineral wealth.

[100] I have considered the meaning of paragraph (h) of the Will, having regard for the plain meaning of the words used in that provision but also reading them in the context of the Will as a whole. Every word used by William in paragraph (h) is presumed to have meaning. I have also considered the extrinsic evidence of the circumstances known to William when he made his Will, just summarized. I have concluded that paragraph (h) is clear and unambiguous and is capable of only one interpretation. In relation to the Mineral Parcel, Ruth was entitled to receive the royalties and other benefits William was receiving at the time of his death, which consisted of payments from Crescent Point under the 2004 Lease for production of the Old Well.

[101] William's intention when he made the Will in 2013 was to give Ruth a limited life interest in the Mineral Parcel, so that she would be paid the royalties and

other benefits he was receiving when he died. If he had intended to give her an unqualified life interest, he would not have limited her entitlement to receiving only the royalties and other benefits he was receiving at the time of his death.

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[102] The life interest granted to Ruth in the Will applies to any royalties or other benefits being received by William as of the date of his death. It was not limited only to royalties payable to him as of the date the Will was made: see *Therres v Therres*, 2006 SKCA 15 at paras 10-11, 23. This is in keeping with the presumption that the Will speaks and takes effect as if it had been executed immediately before William's death. If William had been receiving royalties from production of the New Well at the time of his death, Ruth would have been entitled to receive those royalties in addition to the royalties from production of the Old Well. But such was not the case.

[103] In the circumstances, Ruth was entitled to receive the royalties and other benefits payable by Crescent Point pursuant to the 2004 Lease for production of the Old Well, nothing more, as that is what William was receiving at the time of his death. Crescent Point was not producing, saving, and selling natural gas and petroleum from the New Well on June 1, 2016. Further, Crescent Point did not have a valid and subsisting lease regarding LSD 2&7. This was not a mere clerical error and William did not treat it as such. Crescent Point conceded that the lease had expired regarding that half of the Mineral Parcel. Crescent Point did not want a new lease with William out of an abundance of caution but because it had no right to drill the New Well and put it into production. Crescent Point had even stated that it would render the New Well unusable if the parties could not agree.

[104] These inconvenient facts cannot be glossed over by describing the 2017 Lease, executed effective November 10, 2017, as the "Renegotiated Lease," to use the executors' term. The fact that the New Well was drilled in 2015 and briefly brought into production for four months in 2015 does not mean it can be regarded as

"producing" on June 1, 2016. The New Well was shut in by Crescent Point in November 2015 and production did not resume until February 2018, after the 2017 Lease was concluded. While Thom attempted to dispute that the Well was "shut-in" (Reply Affidavit of William Thomson Swanson at para. 9, which has been struck as argument), Mr. Billesberger used that very term at para. 2 of his affidavit in recounting a statement made to him by Mr. Streifel, who represented Crescent Point. Regardless, no royalties were paid or payable by Crescent Point for production from the New Well from the beginning of 2016 until early 2018, including when William died on June 1, 2016.

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[105] As William's intention expressed in paragraph (h) is clear, there is no basis to apply the presumptions relied upon by the executors. In any event, I would have found it difficult to apply the presumption against irrationality. It is not obviously unjust or absurd that Ruth does not receive the royalties from production of the New Well, given that she received other substantial bequests in the Will.

[106] Finally, the Court cannot speculate about what William would have wanted if he had asked himself in May 2013 whether Ruth should receive the royalties from any new drilling activity and production that might occur on the Mineral Parcel either during his lifetime or after his death but before Ruth's. The task of the Court is to ascertain the testator's actual intention, not hypothesize as to what he would have intended if he had turned his mind to a speculative and unanticipated circumstance: *Gilchrist* at para 25.

[107] Accordingly, the answer to the first question posed by the executors is the following: during her lifetime, Ruth is entitled to receive the royalties and other benefits resulting from production of the Old Well but not from the New Well. After her death, all royalties from the Mineral Rights are to be paid to Thom and the testator's 19 nieces and nephews, in equal shares, share and share alike.

F. Disposition of Royalties and Other Benefits from the New Well

[108] The executors asked for the Court's opinion, advice, and direction on the proper disposition of the royalties from the New Well if those royalties are not payable to Ruth as part of her life interest. As possible alternatives, the executors asked whether:

a. Retroactive to William's death, royalties from the production of the New Well should be paid as part of the rest and residue of the Estate, pursuant to paragraphs (k), (l), and (m) of the Will;

b. During Ruth's lifetime, royalties from the New Well are to be paid as part of the rest and residue of the Estate, pursuant to paragraphs (k), (l), and (m) of the Will and, after Ruth's death, ongoing royalties from the New Well should be paid to Thom and the testator's 19 nieces and nephews; or

c. Retroactive to the testator's death, royalties from the New Well should be paid to Thom and the testator's 19 nieces and nephews.

[109] For reference, I reproduce again paras. (k), (l), and (m) of the Will:

> I GIVE, DEVISE AND BEQUEATH all my property of every nature and kind whatsoever and wheresoever situate, including any property over which I may have a general power of appointment, to my trustees upon the following trusts, namely:
>
> …
>
> (k) To deliver to THOM WILLIAM SWANSON, for his own use absolutely, Twenty (20%) percent of all the rest and residue of my estate whatsoever and wheresoever situate;
>
> (l) Should she survive me for a period of thirty (30) days from the date of my death, to deliver to my beloved wife, for her own use absolutely Twenty-five (25%) percent of all the rest and residue of my estate whatsoever and wheresoever situate;

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> (m)To divide the remaining rest and residue of my estate whatsoever and wheresoever situate between my sister, VIOLET HAZEL JACOB should she survive me for a period of thirty (30) days from the date of my death, each of my nieces and each of my nephews, in equal shares, share and share alike.
>
> (Affidavit of Violet Jacob, Exhibit A)

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[110] Following payment of expenses, distribution of specific gifts, and so on, the rest and residue of the Estate is divided among Thom (20%), Ruth (25%), and equally among Violet and each of William's nieces and nephews (55%). The executors submit that royalties from the production of the New Well fall into the rest and residue of the Estate and should be paid out to the residuary beneficiaries according to the scheme of distribution determined by the testator. Alternately, they suggest that the royalties should be paid as part of the rest and residue of the Estate during Ruth's lifetime and then paid to the remainder beneficiaries in accordance with paragraph (h) of the Will.

[111] The executors cite no statute or case law in support of their position, but rely on their submission that, if Ruth is not entitled to the royalties and other benefits from the New Well, then the remainder beneficiaries cannot be entitled to them either. This submission misunderstands the rights of the remainder beneficiaries in the Mineral Parcel.

[112] A good starting point is a decision of the House of Lords in *Campbell v Wardlaw* (1883), 8 App Cas 641(HL) [*Campbell*]. The facts and outcome of that case were summarized in *Hayduk v Waterton/Flechuk v Waterton*, 1968 CanLII 92, [1968] SCR 871 at p 885 (SCC) as follows:

> … In that case, a testator had directed his trustees to pay to his wife "the whole annual produce and rents of the residue and remainder of my means and estate, heritable and moveable, during all the days and years of her life". Before his death, coal

> and iron mines had been leased by the testator. After his death, the trustees leased others. The issue was as to the widow's right to receive the rents from these latter leases, there being no question as to her right to receive the rents from the leases made prior to the testator's death. It was held that she was not entitled to the rents from the later leases.

The general principle was that the holder of a life interest was not permitted to destroy the "corpus" or capital of the estate. As life tenant, the widow was entitled to the rents arising from working the mines opened before her husband's death. However, unless the testator had expressly stated a contrary intention, she was not entitled to the rents derivable from opening new mines.

[113] *Campbell* was followed in *Moffat Estate (Re)*, 1955 CanLII 193, 16 WWR (ns) 314 (SKQB) [*Moffat Estate*], which involved a scenario strikingly similar to the present one. The testator gave a life interest in three quarters of farmland to his surviving spouse, "to have the use, occupation and enjoyment thereof during the term of her natural life," with their son H to receive one of the quarter sections upon her remarriage or at her demise and their son G to receive the remaining half section at the same time. The surviving spouse and H were co-executors of the will. They entered into a petroleum and natural gas lease with an oil company covering the half section that would eventually pass to G, and a second lease covering the remaining quarter. Oil wells were drilled and put into production, and royalties were being paid to the estate. Applying *Campbell* to the facts, McKercher J. held that the minerals belonged to the remainder beneficiaries:

> [13] Applying the above law to the facts of this case, the minerals or oil in the north-west quarter of sec. 35 belong to Herbert Alfred Moffat, the remainderman, and the minerals on the east half of sec. 35 belong to the remainderman Graeme Francis Moffat, since the oil wells were opened after the death of the testator.

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[114] The life tenant and the remainder beneficiaries had all agreed that the minerals would be leased but did not agree on how receipts and income from the leases would be divided among them. McKercher J. found that the receipts from the two leases should be accumulated and invested, the income from the investments should be paid to the surviving spouse for life, and on her death the accumulated funds should be paid to the sons in accordance with their respective remainder interests. A similar arrangement was approved by the House of Lords in *Campbell*.

[115] The general principle in *Campbell* and in *Moffat Estate* is applicable to the present facts: Ruth, the life tenant, is not entitled to receive the royalties generated from the New Well, since the oil is a capital asset and the proceeds are a capital receipt: see *Finnell v Schumacher Estate (C.A.)*, 1990 CanLII 6766 at para 14, 74 OR (2d) 583 (ONCA). However, I have concluded that Ruth is not entitled to the investment income from the royalty fund, contrary to the result in those cases. I will explain.

[116] First, unlike the facts in *Moffat Estate*, here the executors and remainder beneficiaries did not all agree to the lease; rather, the executors entered into the 2017 Lease and then presented it after the fact to the remainder beneficiaries.

[117] Second, the New Well is not analogous to the coal and iron mines opened before the testator's death in *Campbell*. Crescent Point drilled the New Well under the mistaken assumption that it had a valid lease, but this was by all appearances an act of trespass. Both Crescent Point and William acted as though there was no lease for the mineral rights under LSD 2&7. The New Well was not put into lawful production until the executors reached agreement with Crescent Point on the 2017 Lease.

[118] Third, and more to the point, the life interest granted to Ruth was more limited than the interests granted in *Campbell* and *Moffat Estate*; it entitles Ruth only to receive the royalties and other benefits that William was receiving at his death. Investing the royalties from the New Well and paying Ruth the income therefrom would

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not be in keeping with William's testamentary intention.

[119] An important consideration is when the remainder interest in the Mineral Parcel vests. There is a presumption of early vesting, meaning that a testamentary gift is presumed to vest on the death of a testator unless a contrary intention is clearly expressed in the will: *Lewis v Jack*, 2026 BCCA 18 at para 30; *Hartley Estate, Re*, 1986 CanLII 3125 at para 16, 54 Sask R 14 (SKCA); *Lasby Estate, Re*, 1984 CanLII 2449 at para 10, 37 Sask R 193 (SKQB) [*Lasby Estate*].

[120] This presumption applies where distribution of an estate is postponed, unless the gift is contingent on a condition personal to the beneficiary. Where the postponement is to permit the enjoyment of the prior life interest and not for reasons personal to the remainder beneficiaries, a gift of the remainder interest vests on the death of the testator, not on the death of the tenant for life: *Browne v Moody*, 1936 CanLII 119, [1936] 3 WWR 59 (UKJCPC) [*Browne*]; see also *Kohlman Estate*, 2018 SKQB 133 at para 29. In *Browne*, the testator granted to her son a life interest in a fund, with the income to go to him during his life; on his death, the fund would be divided among others. The Privy Council observed that the death of the son would in the course of nature occur sooner or later and the direction to divide the capital among the named beneficiaries upon the son's death did not depend on any condition personal to them, such as their attaining the age of majority. Accordingly, the mere postponement of distribution to the remainder beneficiaries did not preclude vesting of the capital in them.

[121] Finally, the presumption of early vesting applies whether the remainder is given to a named beneficiary or to a class: *In re Hooper/Coles v Blakely*, 1955 CanLII 12, [1955] SCR 508 at p 513 (SCC); *Lasby Estate* at paras 32-33; *Hart (Re)*, 1979 CanLII 2246 at para 25, [1979] 2 WWR 413 (SKQB).

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[122] Like the situations in *Browne* and *Lasby Estate*, William's intention in postponing the gift to the remainder beneficiaries was to permit Ruth to receive certain royalties from the Mineral Parcel during her lifetime. No conditions personal to the remainder beneficiaries attach to the gift of the Mineral Parcel to them. I conclude that the remainder interest in the Mineral Parcel vested in Thom and William's nieces and nephews, in equal shares, share and share alike, on William's death.

[123] The executors submit that the interpretation I have accepted for paragraph (h) means that the gift to Ruth has failed and that, in turn, means that William's gift of royalties and other benefits from the New Well to the remainder beneficiaries has also failed. They say the only logical conclusion is that the royalties from the New Well are part of the rest and residue of the Estate. I do not agree. This ignores the presumption of early vesting. No proprietary rights associated with the Mineral Parcel are unspoken for. William granted Ruth a limited interest in the Mineral Parcel, but he did not qualify the remainder interest that will go to the remainder beneficiaries on Ruth's death. Their entitlement to the remainder interest vested when William died and they are entitled to all attributes of the Mineral Parcel when the life estate terminates.

[124] I will now provide my opinion, advice, and direction regarding the bonus consideration and royalties paid and payable by Crescent Point under the 2017 Lease for production of the New Well. For the reasons already expressed in this decision, Ruth is not entitled to those amounts under the Will.

[125] William's testamentary intention was that the trustees would, during Ruth's lifetime, hold his estate and interest in the Mineral Parcel, and transfer this interest to the remainder beneficiaries (Thom and the 19 nieces and nephews) upon Ruth's death. William intended the remainder beneficiaries to enjoy their interest in the Mineral Parcel after Ruth's death. The direction most in keeping with this intention is

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that the executors must invest all royalties and other benefits (including the bonus consideration) paid by Crescent Point for production of the New Well, with the accumulated capital and income to be distributed to the remainder beneficiaries upon termination of the life estate. Unlike the outcome in *Campbell* and *Moffat Estate*, Ruth is not entitled to the income from the fund because her life interest is more limited.

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[126] The Knoch Beneficiaries would prefer to have the bonus and royalties from the New Well paid out to the remainder beneficiaries now. However, I am unable to see how the Court can fashion an order based upon the rule in *Saunders v Vautier*, as they suggest. The rule allows beneficiaries from a trust to depart from the settlor's original intentions provided they are of full legal capacity and are together entitled to all the rights of beneficial ownership in the trust property: *Buschau v Rogers Communications Inc*., 2006 SCC 28 at para 21. I see two problems. First, the remainder beneficiaries are not entitled to the whole beneficial interest in the Mineral Parcel, so long as Ruth is living and entitled to receive royalties from the Old Well. Second, agreement of all remainder beneficiaries is required before the Court will order the executors to transfer the Mineral Parcel to them. The Knoch Beneficiaries represent a minority of this group of beneficiaries.

[127] Accordingly, the executors must invest the bonus consideration, the royalties, and any other benefits from the New Well, so that this fund and the income earned thereon can be distributed to the remainder beneficiaries upon Ruth's death. I will remain seized of this matter to provide further directions as required to give effect to this ruling.

[128] Of course, nothing prevents the executors and the remainder beneficiaries from agreeing to some alternate arrangement if they are able. Moreover, nothing precludes the remainder beneficiaries, or any of them, from deciding that they will not seek reimbursement from Ruth of part or all the amounts she has received from Crescent

Point on account of the New Well.

VII. APPLICATION TO REMOVE EXECUTORS

A. Positions of the Parties

[129] The Knoch Beneficiaries apply for an order removing the executors and appointing John Knoch in their stead. They raise the following concerns:

a. the executors have not explained why they cannot locate the will they removed from his safety deposit box, and caused Letters Probate to be issued based upon an unsigned copy of the Will;

b. administration of the Estate was stalled for eight years by the executors' insistence that all beneficiaries agree to take shares in a corporation rather than receive their bequests personally, a position they relented on in 2023;

c. the executors entered into the 2017 Lease with Crescent Point without the beneficiaries' informed consent, and the executors are in a conflict of interest; and

d. the executors have made decisions that prejudice the remainder beneficiaries, by failing to follow the clear wording of paragraph (h) of the Will, permitting the production of finite mineral resources, and insisting that Ruth received the benefits of that production.

[130] For these reasons, the Knoch Beneficiaries submit, the executors are in a conflict of interest and are failing to act in good faith. They submit John Knoch should be appointed to replace them as alternate executor.

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[131] In reply to the application to remove them as executors, the executors deny that they have shown a want of reasonable fidelity or lack of good faith. They rely upon *Geran*, contending that the Court should not lightly interfere with the testator's choice of executors. The executors submit that they are the elderly surviving spouse and elderly sole surviving sister of the testator; they have followed the advice of legal counsel, accountants, and Crescent Point; they have not hidden anything from the beneficiaries; they are not professionals; they have not taken an executor's fee; they have the support of all beneficiaries other than the Knoch Beneficiaries; they have been advised by the drafters of the Will that William's intention was for Ruth to benefit; and they would not have needed to seek the Court's opinion but for an ambiguous clause. They also submit that their administration of the Estate is essentially complete and can be hastily concluded.

B. Applicable Law

[132] Section 14.1 of *The Administration of Estates Act* authorizes the Court to remove the executor of an estate on the application of a person having an interest in the estate, if the Court is satisfied that the executor refuses to administer or settle the estate or has failed to administer the estate in a reasonable and prudent manner. The provision lists other grounds that do not apply here. The Court must also be satisfied that removal of the executor would be in the best interests of the persons interested in the estate. If the Court removes an executor under this section, the Court may grant letters probate or letters of administration with will annexed to another person in accordance with *The Administration of Estates Act*.

[133] Section 17 authorizes the Court to appoint any person that the judge considers appropriate to be the administrator of the estate where *inter alia* a person dies leaving a will without having appointed an executor who is "willing and competent to take probate" (ss. 17(1)(a)(ii)) or where, "by reason of the insolvency of the estate or

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other special circumstances, it appears to the judge to be necessary or convenient to appoint as administrator, of all or part of the property of the deceased, some person other than the person who, by law, is entitled to a grant of letters of administration." (ss. 17(1)(b)).

[134] Sections 14.1 and 17 of *The Administration of Estates Act* both empower the Court to appoint an alternate personal representative of an estate. In *Sinclair v Sinclair*, 2013 SKCA 123 at paras 31-32 [*Sinclair*], the Court of Appeal concluded that s. 17 gives the Court a broad power to appoint any person the Court thinks fit as administrator by reason of the insolvency of the estate or in "other special circumstances." This wide discretion allows the Court to deal with situations where the parties themselves cannot resolve the issues in dispute.

[135] Section 48 of *The Trustee Act, 2009*, is similar. This provision permits the beneficiary of a trust to apply to the Court for an order respecting a trustee if the trustee refused or failed to discharge a duty imposed on him or her or to consider in good faith whether to exercise any power conferred on him or her. If the Court is satisfied that the trustee did one of those things, the Court may order the trustee to satisfy the Court that the trustee will give good faith consideration to exercising the power conferred on him or her, discharge the duty imposed on the trustee, or remove the trustee.

[136] The Court also has inherent jurisdiction to remove an executor: *Sinclair* at para 33.

[137] The principle that the Court should not be too quick to remove an executor has been affirmed on many occasions. Richards J.A. (as he then was) put it this way in *Figley v Figley*, 2012 SKCA 36 at para 46:

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> [46] The authorities indicate that a court should not act too readily to remove an executor. As Wimmer J. said in *Surminsky (Litigation Guardian of) v. Ulmer Estate*, 2000 SKQB 209, "To override a testator's choice of an executor is a sensitive exercise not to be lightly undertaken." See also: *Mitchell Estate, Re,* [2006 SKQB 267] *supra* at para. 10. …

See also *Sinclair* at para 35; *Geran* at para 59; *Graves v Nagy*, 2024 SKCA 17 at para 47 [*Graves*].

[138] Some judges have held that this power should not generally be exercised in summary proceedings unless the material facts are not in dispute: see, for example, *Popoff v Actus Management Ltd.*, 1985 CanLII 2816, [1985] 5 WWR 660 (SKQB); *Frizzell v Bonneau*, 2012 SKQB 358 at para 81.

[139] The Court's overriding duty is to ensure that the estate will be properly administered and the primary focus is the best interests of the beneficiaries: *Leier v Probe*, 2021 SKQB 41 at para 16. Not every mistake or neglect of duty will justify removing an executor but acts or omissions that endanger the trust property or demonstrate a lack of honesty, reasonable fidelity, or capacity to fulfill the requisite duties will justify doing so: *Sinclair* at para 33, citing *Letterstedt v Broers*, [1881-85] All ER Rep 882 (PC). See also *Watson v Chelak*, 2025 SKKB 30 at paras 44-51.

C. Analysis

[140] The Knoch Beneficiaries have not met the threshold required for the Court to override William's choice of executors. While the executors have made mistakes in their dealings with Crescent Point and their disposition of payments related to the New Well, their conduct does not demonstrate a lack of honesty, reasonable fidelity, or capacity to fulfill their duties. I will review each complaint made by the Knoch Beneficiaries.

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[141] First, the Knoch Beneficiaries raise concerns about the executors' failure to produce an original will, intimating that the executors accessed William's safety deposit box, removed a signed will, and have subsequently refused to produce a copy of the signed will despite repeated requests. In their application for letter probate, the executors tendered an affidavit from Mr. Hickie, a lawyer who acts as trustee for Ignatiuk Law Offices. He was unable to locate an original of the Will but attested that William executed it on March 16, 2013, and a copy was mailed to him. In his affidavit filed on the present applications, Mr. Ignatiuk explained that he acted for William for many years and drafted multiple wills for him, including the Will. The Knoch Beneficiaries do not question the validity of the unsigned Will admitted to probate. It would not be in their interest to do so since William's preceding will from 2011 left no bequests to his nieces and nephews. This allegation is without substance and is apparently made simply to cast the executors in a bad light.

[142] Second, the Knoch Beneficiaries object to the length of time it has taken the executors to administer the Estate. They complain about delay caused by the executors' proposal to transfer the mineral interests owned by the Estate to WFKL with the beneficiaries to receive shares in that corporation. In response, the executors say the Knoch Beneficiaries have been difficult to deal with. The executors thought they were carrying out William's plan to transfer his mineral interests to a business corporation, communicated by him in the months before he died. The Knoch Beneficiaries did not wish to be minority shareholders of WFKL. They had no legal obligation to accede to this proposal. The executors' effort was well-intentioned if misguided. In any event, a resolution was reached whereby the Knoch Beneficiaries' proportionate share in the mineral interests were transferred to a corporation controlled by them, while the balance was transferred to WFKL.

[143] Violet tendered evidence demonstrating that the executors have provided updates and statements of account to the beneficiaries and have made interim

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distributions to them. She averred that the Estate administration is almost complete. While the Estate could have been administered with greater alacrity, I am not persuaded that the amount of time the executors have taken is disqualifying in the circumstances.

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[144] Third, the Knoch Beneficiaries fault the executors for entering into the 2017 Lease with Crescent Point without their informed consent, in violation of ss. 50.8(1)(c) of *The Administration of Estates Act*. Subsection 50.8(1)(c) provides that executors may, subject to a provision of the will affecting the property, lease, grant a *profit à prendre*, or otherwise deal with or dispose of mines and minerals with the approval of the Court or the concurrence of the adult person beneficially interested in the property. Here, Violet executed the 2017 Lease before any of the remainder beneficiaries had signed consents. When Ruth signed the agreement, some beneficiaries had signed consent forms but many had not. One of the Knoch Beneficiaries, Wayne, has never signed a consent.

[145] The Knoch Beneficiaries say that their consent was not informed because they did not have sufficient information about the lease and they did not understand that the bonus consideration and royalties would be paid to Ruth. I am not prepared to decide this point on the basis of untested affidavit evidence, but it is not necessary that I do so in order to rule on the application to remove the executors.

[146] Setting aside the issue of informed consent, I agree with the Knoch Beneficiaries that the executors did not comply with ss. 50.8(1)(c) of *The Administration of Estates Act*. They were required to seek a court order or obtain the consent of all interested beneficiaries before entering into the 2017 Lease. However, the Knoch Beneficiaries do not argue that the 2017 Lease was improvident or seek to have it set aside. Crescent Point ultimately agreed to bonus consideration and royalty rates more generous than those in the 2004 Lease or in Crescent Point's opening offer in 2015. Throughout, the executors relied upon the professional advice of Mr.

Billesberger, whose law practice has included a focus on oil and gas leases. Notwithstanding the executors' noncompliance with ss. 50.8(1)(c), I am not persuaded this is a sufficient reason to remove them as executors.

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[147] Fourth, and relatedly, the Knoch Beneficiaries complain that the executors have wrongfully permitted the extraction of finite resources, thereby committing an act of voluntary waste of their remainder interest. Crescent Point drilled and activated the New Well without authority, before William's death. In its subsequent negotiations with William, Crescent Point threatened to cap and cement the wellbore if the parties could not agree on a new lease. I do not believe that the Knoch Beneficiaries wanted the New Well to be decommissioned nor are they really opposed to the extraction of oil and gas from the New Well. Their concern is that they have not received the royalties.

[148] This brings me to the Knoch Beneficiaries' fifth complaint, concerning Ruth's alleged conflict of interest and the executors' alleged insistence that she is to receive the royalties and other benefits from the New Well during her lifetime. Earlier in this decision I concluded that Ruth is not entitled to any of the payments under the 2017 Lease, including the bonus consideration or the royalties from production.

[149] The evidence shows the executors relied upon the opinions of the solicitor who drafted the Will and the Estate's lawyer regarding the construction of paragraph (h). It was reasonable for the executors to rely upon professional advice. Most of the remainder beneficiaries also appear to have accepted this legal advice. The executors cannot be faulted for relying on legal advice that turned out to be incorrect.

[150] From the evidence filed, it is not clear when the Knoch Beneficiaries called into question the executors' interpretation of paragraph (h) of the Will. However, when it became clear that the provision was disputed, the executors should have held the funds received from Crescent Point in trust until the dispute was resolved.

Eventually, the executors did seek the opinion, advice, and direction of the Court, which shows a sincere intention to fulfill their duties.

[151] Looking at all the circumstances, the Knoch Beneficiaries have not demonstrated that the executors have not or will not fulfill their fiduciary obligations to the Estate honestly, faithfully, and capably. As Barrington-Foote J.A. concluded in *Graves* at para 47, overriding a testator's choice of executor is "a sensitive exercise not to be undertaken lightly." The Court has no reason to believe that the executors will not comply with the opinion, advice, and directions provided in this decision.

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VIII. CONCLUSION

[152] For the foregoing reasons, I conclude that:

a. The testator's intention in paragraph (h) of the Will was that his surviving spouse Ruth would be paid the royalties and other benefits that he was receiving from production of the Old Well at the time of his death, and not royalties or other benefits resulting from new resource extraction from that Mineral Parcel occurring after his death;

b. Unless the executors and all remainder beneficiaries otherwise agree, the bonus consideration, royalties, and any other benefits paid by Crescent Point pursuant to the 2017 Lease are to be invested by the executors, with the accumulated funds and income earned thereon to be paid to the remainder beneficiaries when Ruth's life interest in the Mineral Parcel terminates;

c. The application to remove Violet and Ruth as executors is dismissed.

[153] If further directions are required to implement my decision that the funds paid and payable by Crescent Point are to be held in trust and invested, the parties have leave to apply on 14 days' notice. I will remain seized for the purposes of such application.

[154] In their submissions, the parties suggested that I should defer ruling on costs. If the parties cannot agree on how costs of these applications should be resolved, counsel can request the Local Registrar to set up a conference call with me to deal with this issue.

J.
P.T. BERGBUSCH

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APPENDIX "A"

Ruling on Notice of Objection

Affidavit of Violet Hazel Jacob dated April 1, 2024

Paragraph	Objection	Ruling	Reason
2	Hearsay	Struck.	Hearsay.
5, second sentence and quote	Misstatement	Not struck.	The slight deviation from the actual wording of the Will is immaterial.
9, second and third sentences and subparagraphs (a) – (d)	Hearsay	Not struck, except for subparagraph (d).	Necessary (William is deceased) and reliable (corroborated by contemporaneous admissible records). Subparagraph (d) is not corroborated.
12, last sentence	Argument	Not struck.	Statement of fact not argument.
13, second sentence, subparagraphs (a) – (b), third, fourth and fifth sentences	Hearsay	Not struck.	Statements of Mr. Ignatiuk admissible for non-hearsay purposes – to provide context for William's statements and later evidence regarding negotiations with Crescent Point. Statements of William are necessary and reliable.
18	Hearsay, Opinion, Irrelevant	Struck.	Hearsay, Opinion, Irrelevant.
21	Hearsay, Opinion, Irrelevant	Struck.	Opinion, Irrelevant.
23	Hearsay, Speculation	Struck.	Hearsay, Speculation.

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26	Argument, Opinion	Not struck.	Statements of fact.

Affidavit of Dmytro Ignatiuk dated March 28, 2024

Paragraph	**Objection**	**Ruling**	**Reason**
4, second sentence	Opinion	Struck.	Hearsay, Irrelevant.
5	Opinion	Struck.	Hearsay, Irrelevant.

Affidavit of John Joseph Billesberger dated March 15, 2024

Paragraph	**Objection**	**Ruling**	**Reason**
5	Unqualified opinion	Last sentence struck.	Opinion.

Reply Affidavit of Violet Hazel Jacob dated July 11, 2024

Paragraph	**Objection**	**Ruling**	**Reason**
13(d), second sentence	Hearsay	Struck.	Hearsay, Irrelevant.
19, third sentence	Hearsay	Struck.	Hearsay, Opinion
25, third sentence	Hearsay	Struck.	Hearsay, Speculation, Argument.
31	Irrelevant	Not struck.	Relevant to allegation that executors have not administered the Estate promptly.
34(a), third sentence and Exhibit “L”	Without Prejudice Communication	Struck.	Privileged.
35, first sentence	Hearsay	Struck.	Hearsay.

Reply Affidavit of William Thomson Swanson dated August 6, 2024

Paragraph	**Objection**	**Ruling**	**Reason**
5, second and third sentences	Argument	Not struck.	Statements of fact.

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7	Argument	Struck.	Argument, Opinion.
8, second, third, fourth sentences	Speculation, Argument, Hearsay	Except for first sentence, entire paragraph struck.	Argument, Opinion, Hearsay.
9	Argument	Struck.	Argument, Opinion.
10, last sentence	Argument	Struck.	Argument, Speculation, Opinion, Irrelevant.
11, fifth and sixth sentences	Argument	Struck.	Argument.
12	Hearsay	Struck.	Hearsay.
13, subparagraph (c) and last sentence	Hearsay, Argument, Speculation	Struck.	Hearsay (13(c)), Argument, Speculation (last sentence)
14, second sentence	Argument	Struck.	Argument, Hearsay.
15	Argument	Struck.	Argument, Irrelevant.
16	Argument	Struck.	Argument, Not Proper Reply.
17	Argument	Struck.	Argument, Not Proper Reply.
18	Argument	Struck.	Argument.
19, first sentence	Hearsay	Struck.	Hearsay.
20, second sentence	Hearsay	Struck.	Hearsay.

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