IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hart Estate (Re),*
2025 BCSC 1584

Date: 20250818
Docket: P144037
Registry: Kelowna

In the Matter of the Estate of Derek Jason Hart, Deceased

The text of this judgment has been redacted for publication purposes at paragraphs [16] 1. and [46] on August 19, 2025

Before: The Honourable Justice Hewson

Reasons for Judgment

Counsel for the Applicant, Andrew Alexander Vink:	S.T. Rule
Place and Date of Hearing:	Kelowna, B.C. August 5, 2025
Place and Date of Judgment:	Kelowna, B.C. August 18, 2025

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Introduction

A. Nature of the Case

[1] Derek Jason Hart signed a will in the presence of two witnesses on May 12, 2021. At some time between then and his death on April 16, 2025, it appears that Mr. Hart made certain handwritten alterations to the will.

[2] The applicant, Andrew Alexander Vink, is the executor of the estate of Mr. Hart. As executor, Mr. Vink now seeks a determination of whether any or all of the alterations to the will represent the deliberate or fixed and final testamentary intentions of Derek Jason Hart.

B. Parties

[3] Derek Jason Hart was 71 years old, unmarried, without children, and survived by his mother and his three siblings. His mother is Tjitske Zwaantje Vink. The applicant Mr. Vink is his brother. Christine Fancie and Joyce Catherine Jagt are their sisters.

[4] Numerous other people are named as beneficiaries in the May 12, 2021 will, whose shares might be reduced or eliminated by the alterations. They are:

a) Kevin Duncan Donnelly;

b) Alan Pierre Espino Camba;

c) Robert Glenn Karl Seeger;

d) Stephen Robert Sine;

e) Dane Hamilton Kenneth Lachelt;

f) Terrence William Biggar;

g) Kevin Andrew Vink;

h) David James Fancie, and

i) Edwin Lester William Dayman.

[5] All interested parties received notice. Mr. Seeger and Mr. Sine attended the hearing but filed no response. Mr. Sine made submissions. No other parties participated.

C. General Outline

[6] After providing a brief background, I will review the applicable law and then deal with the two main issues raised on these facts, which are whether the documents are authentic and if so, whether the altered will represents Mr. Hart's fixed and final expression of intention with respect to the distribution of his estate.

Background

[7] Mr. Hart had previously made two wills: one professionally drafted in 2000 and another handwritten will, based on a kit form, in 2020.

[8] On May 12, 2021, Mr. Hart executed another will. It was written in his own handwriting. His signature was witnessed by Dawn Simpson and Kelly Simpson. Kelly Simpson is now deceased. Dawn Simpson says that when she saw the will in 2021 and witnessed Mr. Hart's signature, there were no words crossed out.

[9] On August 8, 2023, Mr. Hart repaid Andrew Vink $80,000 he had borrowed on May 12, 2021.

[10] In Christine Fancie's first affidavit, filed June 23, 2025, she states:

> 7. Last year in 2024, [Derek Jason Hart] told me that in his will, he was leaving his house and cash equally to Andrew, out sister Joyce Catherine Jagt and me. He also told me that I was the beneficiary of his tax-free savings account ("TFSA"), registered retirement savings plan ("RRSP") and life income fund ("LIF").

Mr. Hart subsequently named Christine Fancie as a beneficiary of these accounts.

[11] I was not provided with any evidence that Mr. Hart lacked mental capacity at any time before his death, nor that he had ongoing relationships with lawyers during the relevant period.

[12] At the time of his death, Mr. Hart's estate was valued at $548,085.12. The main assets consisted of the following:

- Real estate at 1260 Highway 33 E, Kelowna, BC: $475,000
- RBC deposit accounts: $28,458.80
- TD savings account: $1,979.50
- Centurion Asset Management REIT: $26,031.02
- Three vehicles: $9,550

[13] The applicant says that following Mr. Hart's death, he found the handwritten will on Mr. Hart's dining room table. Alongside that handwritten will was an undated handwritten to-do list, with a number of tasks, including "rewrite my will". Some of the tasks had a checkmark through them, while the others were crossed out. The words "rewrite my will" were circled. This handwritten will was the one Mr. Hart had signed in the presence of Dawn Simpson in 2021, but with a number of alterations. The alterations consist of words added to the will, and of words and names crossed out. All of the alterations are done by hand. Some alterations have Mr. Hart's initials beside them, and some alterations do not. The applicant recognized the alterations as being in Mr. Hart's handwriting.

[14] The cover of the document shows a date of Wednesday, May 12, 2021. Under the date, there is a notation in handwriting that says "- some changes made in April, 2024."

[15] The handwritten alterations that <u>are marked</u> with Mr. Hart's initials consist of:

1. In paragraph 3, the crossing out of the words:

> a) See next page “Interest Only Family Loan Agreement” regarding $80,000 loan from Andrew Vink to myself so that I could purchase my property.

and the addition of the words:

> This loan was paid in full.

with Derek Jason Hart’s initials beside those changes;

2. In paragraph 4 a):

- the addition of the word “next” between the words “on” and “Page” with Derek Jason Hart’s initials beside the line;
- the crossing out of the words “Robert Seeger.” and the addition of the words “my estate’s cash” with Derek Jason Hart’s initials beside it;
- the crossing out of the words “Music video tapes and CDs to Terry Biggar” with Derek Jason Hart’s initials beside it;

3. On the following page, which starts with the words, “4(a) continued:”

- the crossing out of the words “David Fancie” and the addition of the words “Andrew Vink” with Derek Jason’s Hart’s initials beside it;

4. In paragraph 4 b):

- the crossing out of the words “$50,000 to”, in the phrase “$50,000 to Andrew Vink”;
- the crossing out of the words “50,000 to Kevin Vink”;
- the crossing out of the words “50,000 to”, in the phrase “50,000 to Chris Fancie”; and
- the crossing out of the words “50,000 to”, in the phrase $50,000 to Joyce Jagt”,

with one large curly bracket to the right of all four alterations, along with the words “split evenly 3 way” and Derek Jason Hart’s initials below that phrase.

5. Also within paragraph 4 b):

- the crossing out of the words

  20,000 to Lester Dayman
  10,000 to Kevin Donnelly
  50,000 to Robert Seeger

with Derek Jason Hart’s initials beside each alteration.

[16] The alterations that <u>are not marked</u> with Mr. Hart’s initials are:

1. In paragraph 4 a):

- the crossing out of the words “Kevin Donnelly” and the addition of the words and numbers “Pierre Camba [redacted]”;
- the crossing out of the words “Electronic Stereo equipment to Terry Biggar”; and
- the crossing out of the words “Vinyl record collection to Terry Biggar”.

2. In paragraph 4 b):

- the crossing out of the words “50,000 to David Fancie”; and
- the crossing out of the words "100,000 to Stephen Sine”.

[17] Attached to these reasons for judgment, marked as Schedule “A”, is a copy of Derek Jason Hart’s handwritten will (which was marked as Exhibit “A” to the third affidavit of Andrew Alexander Vink, filed June 23, 2025). The addition of yellow and green highlighting has been done by the Court; yellow highlighting to indicate what appear to be alterations with initials, and green highlighting to indicate what appear to be alterations without initials.

Issues

[18] There are two issues raised on the facts of this case. They are:

a) Is the document containing the alterations authentic?

b) If so, does the altered will represent Mr. Hart's deliberate or fixed and final testamentary intentions?

Overview of Applicable Law

[19] Section 37 of the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 [*WESA*] provides for the formal requirements of making a valid will:

> **How to make a valid will**
>
> 37 (1) To be valid, a will must be
>
> (a) in writing,
>
> (b) signed at its end by the will-maker, or the signature at the end must be acknowledged by the will-maker as the will-maker's signature, in the presence of 2 or more witnesses present at the same time, and
>
> (c) signed by 2 or more of the witnesses in the presence of the will-maker.
>
> (2) A will that does not comply with subsection (1) is invalid unless
>
> (a) the court orders it to be effective as a will under section 58 [court order curing deficiencies],
>
> (b) it is a will recognized as valid under section 80 [validity of wills made in accordance with other laws], or
>
> (c) it is valid under another provision of this Act.
>
> (3) The requirement under subsection (1) (a) that a will be in writing is satisfied if the will is in electronic form.
>
> (4) An electronic will is a will for all purposes of this Act and any other enactment.

[20] A non-compliant will, or an alteration to a will, may be given effect pursuant to s. 58 of *WESA*:

> **Court order curing deficiencies**
>
> 58 (1) In this section, "record" includes data that
>
> (a) is recorded or stored electronically,
>
> (b) can be read by a person, and
>
> (c) is capable of reproduction in a visible form.

> (2) On application, the court may make an order under subsection (3) if the court determines that a record, document or writing or marking on a will or document represents
>
> (a) the testamentary intentions of a deceased person,
>
> (b) the intention of a deceased person to revoke, alter or revive a will or testamentary disposition of the deceased person, or
>
> (c) the intention of a deceased person to revoke, alter or revive a testamentary disposition contained in a document other than a will.
>
> (3) Even though the making, revocation, alteration or revival of a will does not comply with this Act, the court may, as the circumstances require, order that a record or document or writing or marking on a will or document be fully effective as though it had been made
>
> (a) as the will or part of the will of the deceased person,
>
> (b) as a revocation, alteration or revival of a will of the deceased person, or
>
> (c) as the testamentary intention of the deceased person.
>
> (4) If an alteration to a will makes a word or provision illegible and the court is satisfied that the alteration was not made in accordance with this Act, the court may reinstate the original word or provision if there is evidence to establish what the original word or provision was.

[21] Section 58 came into effect as part of the reform of British Columbia succession law on March 31, 2014. The principles in interpreting this provision were set out in one of the early cases, *Estate of Young*, 2015 BCSC 182, which is quoted with approval by the Court of Appeal in *Hadley Estate (Re)*, 2017 BCCA 311, at para. 36:

> [36] As discussed in *Estate of Young*, s. 58 is very similar to Manitoba's curative provision and thus the leading appellate authority on its meaning is *George v. Daily*. *George* and several other Manitoba authorities are reviewed in *Estate of Young*, which review need not be repeated. Their import is summarized at paras. 34–37:
>
> > [34] As is apparent from the foregoing, a determination of whether to exercise the court's curative power with respect to a non-compliant document is inevitably and intensely fact-sensitive. Two principal issues for consideration emerge from the post-1995 Manitoba authorities. The first in an obvious threshold issue: is the document authentic? The second, and core, issue is whether the non-compliant document represents the deceased's testamentary intentions, as that concept was explained in *George*.
> >
> > [35] In *George* the court confirmed that testamentary intention means much more than the expression of how a person would like his or her property to be disposed of after death. The key question is whether the document records a deliberate or fixed and final expression of intention as to the disposal of the deceased's property on death. A deliberate or

> fixed and final intention is not the equivalent of an irrevocable intention, given that a will, by its nature, is revocable until the death of its maker. Rather, the intention must be fixed and final at the material time, which will vary depending on the circumstances.
>
> [36] The burden of proof that a non-compliant document embodies the deceased's testamentary intentions is a balance of probabilities. A wide range of factors may be relevant to establishing their existence in a particular case. Although context specific, these factors may include the presence of the deceased's signature, the deceased's handwriting, witness signatures, revocation of previous wills, funeral arrangements, specific bequests and the title of the document: *Sawatzky* at para. 21; *Kuszak* at para. 7; *Martineau* at para. 21.
>
> [37] While imperfect or even non-compliance with formal testamentary requirements may be overcome by application of a sufficiently broad curative provision, the further a document departs from the formal requirements the harder it may be for the court to find it embodies the deceased's testamentary intention: *George* at para. 81.

[22] In deciding whether to give effect to a document under s. 58, the court may admit extrinsic evidence, including evidence of intention.

[23] The ordinary rules of evidence apply to the admission of extrinsic evidence. The evidence must be both relevant and not subject to an exclusionary rule: *Hadley Estate (Re)*, at paras. 38 and 39.

[24] Evidence of what Mr. Hart told others of his intentions may be admissible both under the state of mind exception to the hearsay rule or through the application of the principled approach of necessity and reliability: *Jakonen Estate (Re)*, 2022 BCSC 2261 at para. 8.

[25] The decision in *Jakonen Estate (Re)* contains a useful summary of some of the factors the courts have considered in determining whether a non-compliant document reflects the deceased's testamentary intentions, at paras. 44 and 45:

> [44] While the analysis is necessarily context specific, there are a number of factors that the courts have considered in other cases that are relevant to the analysis of the documents and records in issue here. These include:
>
> a) Was the document or record made by the Deceased or by a third party? A document made by the Deceased is more likely to be given effect than a document made by a third party, including a lawyer's draft: *George v. Daily* (1997), 143 D.L.R. (4th) 273 (Man. C.A.).

> b) Where was the document or record found? If the Deceased left the document or record in a prominent place where it was likely to be found, or with other testamentary documents, the document or record is more likely to be given effect: *Skopyk Estate*, 2017 BCSC 2335 at para. 22
>
> c) Is the document or record signed, or is there any other compliance of the formal requirements for a valid will? The greater the degree of compliance with the formal requirements, particularly if the document is signed, the greater the likelihood that the document or record will be given effect: *Estate of Young*, 2015 BCSC 182 at para. 39
>
> d) Is there a title on the document or record? If a document or record is given the title "will" or "codicil" or a similar notation, it is more likely to be given effect: *Smith Estate (Re)*, 2016 BCSC 350 at para. 23.
>
> e) Is the language of the document or record dispositive, and does it have an air of finality? If so, it is more likely to be given effect: *Smith Estate* at para. 23.
>
> f) Does the document or record provide for a rational distribution? If so, it is more likely to be given effect: *Skopyk Estate* at para. 27
>
> g) Is the document or record consistent with other evidence of the Deceased's intentions? If so, it is more likely to be given effect: *Estate of Young* at para. 38
>
> [45] None of these factors in isolation is determinative; for example, in *Skopyk Estate*, the Court gave effect to a document that was neither signed nor dated but was found in a prominent place on the deceased's bulletin board and provided for a rational distribution of the deceased's estate.

[26] Relatively few cases consider whether to give effect to alterations to an otherwise valid and compliant will, rather than whether to give effect to the will as a whole. One example of the treatment of alterations is in the decision in *Levesque Estate (Re)*, 2019 BCSC 927. In that decision, the Court considered whether to give effect to the will-maker's act in applying white-out to a reference to a gift in her will. Mr. Justice Gomery found that the will-maker intended to remove the beneficiary from her will, and gave effect to the change. Mr. Justice Gomery explained why he reached this conclusion at paragraph 33:

> [33] Carefully dabbing white-out over the provision in question was undoubtedly a considered and deliberate act on the part of the Deceased. She was applying the white-out to the original Will. It was not a casual act. The only reasonable inference is that her intention was to remove the provision from the Will.

[27] In the decision in *Jamt Estate (Re)*, 2021 BCSC 788, Mr. Justice Coval considered two handwritten alterations made to a valid, compliant will. The first alteration consisted of the obscuration of one person's name with a black felt marker, and another person's name handwritten below along with an address and phone number. The alteration was initialed by the deceased in the right margin. The second alteration was the obscuration of the executor's city of residence, and a different address handwritten above.

[28] Mr. Justice Coval referred to the decision in *Levesque Estate (Re)*, and held that the complete blacking out of the text and insertion of handwritten changes and corrections indicated that these were not casual or tentative markings, but intended as deliberate or fixed and final revisions. He found that this conclusion was supported by the fact that the deceased had put his initials in the margin next to the first alteration.

[29] In *Koehler Estate (Re)*, 2025 BCSC 1110, Mr. Justice Veenstra considered handwritten alterations to an otherwise valid will. The original will named a Mr. Mercier as one of the executors, and a Ms. Figgess as a second executor. There were two handwritten alterations. The alterations had the effect of removing Mr. Mercier as executor and leaving Ms. Figgess the remaining executor, and of removing Mr. Mercier as a beneficiary and directing instead that the gifts that were to go to him go to Ms. Figgess instead. Those gifts consisted of a one-third interest in the residue of the estate, as well as a specific gift of a piece of art.

[30] Mr. Justice Veenstra found that there was a rational distribution of the estate, and that the alterations were consistent with other evidence of the deceased's intention at the material time.

Issue One: Is the document containing the alterations authentic?

[31] This issue can be dealt with quickly. I was not provided with any evidence to raise any concern that the document is not authentic. No one has sought to cross-examine any of the affiants.

[32] On the evidence before me, including the evidence in the affidavit of Dawn Simpson and the affidavit of Andrew Alexander Vink, I find that the document attached as Exhibit "A" to Mr. Vink's affidavit filed June 23, 2025 is what it is purported to be, which is a copy of the will signed by Mr. Hart in the presence of Dawn Simpson on May 12, 2021 with alterations made by Mr. Hart in his own handwriting at some later date.

Issue Two: Does the altered will represent Mr. Hart's deliberate, fixed and final testamentary intentions?

A. Nature of the Issue

[33] The nature of the issue, and the approach to it, was described by our Court of Appeal at para. 40 of *Hadley Estate (Re)*. Madam Justice Dickson, writing for the Court, explains:

> [40] Sitting as a court of probate, the court's task on a s. 58 inquiry is to determine, on a balance of probabilities, whether a non-compliant document embodies the deceased's testamentary intentions at whatever time is material. The task is inherently challenging because the person best able to speak to these intentions – the deceased – is not available to testify. In addition, by their nature, the sorts of documents being assessed will likely not have been created with legal assistance. Given this context and subject to the ordinary rules of evidence, the court will benefit from learning as much as possible about all that could illuminate the deceased's state of mind, understanding and intention regarding the document. Accordingly, extrinsic evidence of testamentary intent is admissible on the inquiry: *Langseth Estate v. Gardiner* (1990), 75 D.L.R. (4th) 25 at 33 (Man. C.A.); *Yaremkewich Estate (Re)* at para. 32; *George*. As is apparent from the case authorities, this may well include extrinsic evidence of events that occurred before, when and after the document was created: see, for example, [citations omitted].

B. Positions of the Parties

[34] On behalf of the applicant executor, Mr. Rule made even-handed and thorough submissions. He highlighted the evidence which tended to establish that the alterations represented Mr. Hart's intentions at the material time, and also pointed out evidence which tended to throw his intention into question.

[35] Stephen Sine and Robert Seeger both attended the hearing. Mr. Sine submitted that the alterations that were accompanied by Mr. Hart's initials should be accepted as

reflections of his testamentary intentions at the time that he made them, because the initials reflected a deliberate act. Mr. Seeger made no real submission.

C. Analysis

[36] I find it useful to combine the relevant factors into three groups. The three groups are the admissible extrinsic evidence about the alterations; the form of the alterations; and an assessment of the effect of the alterations and the rationality or reasonableness of the distribution that would result from them.

1. Extrinsic Evidence

[37] The most important piece of extrinsic evidence is the evidence of Christine Fancie to the effect that Mr. Hart told her during a telephone call in 2024 that he intended to leave her his registered accounts and divide the residue of his estate equally between his three siblings. This hearsay statement is admissible under the principled exception to the rule against hearsay, because it is necessary and sufficiently reliable. It is necessary because Mr. Hart is obviously unavailable to testify. It is sufficiently reliable because the accuracy of Ms. Fancie's evidence is supported by the fact that Mr. Hart did, in fact, name her as the beneficiary of the three registered accounts. The weight to be given to the hearsay statement is tempered by the fact that Ms. Fancie stands to benefit from it.

[38] A second piece of extrinsic evidence is the to-do list found on the dining room table next to the will. The to-do list, written in Mr. Hart's handwriting, supports an inference that Mr. Hart was engaged in amending his will. However, it sheds no light on whether the task of rewriting the will had been completed, or whether it was a work in progress.

[39] A third piece of extrinsic evidence relates to Mr. Hart's past practices with respect to the preparation of wills. Many years ago, in 2000, he had had a will prepared professionally. More recently, his practice had been to rely on the forms provided in commercially available will kits. At and around the time that the 2021 will was signed and up to the time of his death, Mr. Hart did not appear to have had a relationship with

any legal professionals upon whom he could have relied to prepare the will. These facts all permit an inference that he was comfortable with informal expressions of his testamentary intentions.

2. Form of the Alterations

[40] Section 37 of the *WESA* sets out the formal requirements of a valid will. The alterations on the face of the will in this matter fell far short. However, they can be examined to determine whether they provide inferences with respect to Mr. Hart's intentions at the time that he made them.

[41] The alterations consisted of words that were crossed out with a blue ink pen, and of words that were added in the same manner. Significantly, some of the alterations were accompanied by Mr. Hart's initials in the margin of the page. Other alterations were not. I find that the selective application of his initials to some specific alterations, and not to others, raises a strong inference that Mr. Hart was initialing those alterations which were expressions of his firm and final testamentary intentions. This conclusion is supported by the similar conclusions about the significance of initials in the cases of *Levesque Estate (Re)* and *Jamt Estate (Re)*.

[42] On the cover of the will, Mr. Hart added the words "- some changes made in April, 2024." That language suggests strongly that the changes made were final, and not notes made on a draft will for further consideration.

3. Effect of the Alterations

[43] The alterations increase his siblings' estate shares while reducing or eliminating gifts to extended family and friends. While distributing assets primarily to immediate family is rational, the original broader distribution was also rational when made in 2021. Unlike other cases, the alteration's effect does not clearly indicate whether the alterations represent final intentions.

D. Conclusion on Issue Two

[44] Mr. Hart's choice to initial some of his alterations, but not others, is very likely to have had some meaning. Given that the burden of proof is a balance of probabilities, I

am satisfied that the evidence permits me to conclude to that standard that the alterations next to which Mr. Hart deliberately placed his initials probably represent his fixed and final testamentary intentions at the time that he made the alterations. His choice not to place his initials next to other alterations leaves me unable to find that those alterations represent his fixed and final intentions.

[45] Accordingly, pursuant to s. 58 (3) of the *WESA*, I order that the following alterations on the will are fully effective as though those changes were made in compliance with the requirements of s. 54 of the *WESA*:

a) In paragraph 3, the crossing out of the words “a) See next page “Interest Only Family Loan Agreement” regarding $80,000 loan from Andrew Vink to myself so that I could purchase my property.” and the addition of the words “This loan was paid in full.” with Derek Jason Hart’s initials beside it;

b) In paragraph 4 a), the addition of the word “next” between the words “on” and “Page” with Derek Jason Hart’s initials beside the line;

c) In paragraph 4 a), the crossing out of the words “Robert Seeger.” and the addition of the words “my estate’s cash” with Derek Jason Hart’s initials beside it;

d) In paragraph 4 a), the crossing out of the words “Music video tapes and CDs to Terry Biggar” with Derek Jason Hart’s initials beside it;

e) In paragraph “4a) continued:”, with respect to “Grampa Mulder’s wedding ring”, the crossing out of the words “David Fancie” and the addition of the words “Andrew Vink” with Derek Jason Hart’s initials beside it;

f) In paragraph 4 b), the crossing out of the words “$50,000 to” in the phrase “$50,000 to Andrew Vink”;

g) In paragraph 4 b), the crossing out of the words “50,000 to Kevin Vink”;

h) In paragraph 4 b), the crossing out of the words “50,000 to” in the phrase "50,000 to Chris Fancie”;

i) In paragraph 4 b), the crossing out of the words “50,000 to” in the phrase "50,000 to Joyce Jagt”;

j) In paragraph 4 b), the addition of a curly bracket and the words “split evenly 3 way” with Derek Jason Hart’s initials below that phrase;

k) In paragraph 4 b), the crossing out of the words "20,000 to Lester Dayman” with Derek Jason Hart’s initials beside it;

l) In paragraph 4 b), the crossing out of the words "10,000 to Kevin Donnelly” with Derek Jason Hart’s initials beside it; and

m) In paragraph 4 b), the crossing out of the words "50,000 to Robert Seeger” with Derek Jason Hart’s initials beside it.

[46] Mr. Hart had crossed out the words “Kevin Donnelly” and added the words and numbers “Pierre Camba [redacted]”. He had also crossed at the words “Electronic Stereo equipment to Terry Biggar” and “Vinyl Record collection to Terry Biggar”. Those alterations were not initialed, and will not be given effect.

[47] Finally, Mr. Hart had also crossed out the words “50,000 to David Fancie” and “100,000 to Stephen Sine”. He did not initial those alterations. Those alterations are not effective. The estate will pay $50,000 to David Fancie, and $100,000 to Stephen Sine. The balance of the cash in Mr. Hart’s estate will be paid in three equal shares to Andrew Vink, Christine Fancie and Joyce Jagt.

Probate

[48] The Court orders that a grant of probate be issued to Andrew Alexander Vink of the will dated May 12, 2021 as amended in April, 2024.

Costs

[49] As the Court of Appeal pointed out in *Hadley Estate (Re)*, in estate litigation courts commonly award special costs payable out of the estate to all parties. Where an issue in an estate must be litigated, all interested parties must be joined and all are entitled to be heard. In such circumstances, no party, and especially not the executor, should be burdened with expenses even if litigation does not conclude in their favour. In this case, the contested issue arises from the alterations made by Mr. Hart himself. Accordingly, special costs from his estate will be paid to the applicant executor, Andrew Vink.

Final Remarks

[50] The Court is grateful to Mr. Rule for his assistance, including his submissions and the written materials in which case citations were hyperlinked to copies of the cases cited.

"Hewson J."

Schedule “A”

[Schedule “A” has been redacted]