

**PROBATE COURT OF NOVA SCOTIA**  
**Citation:** *Prevost v. Prevost Estate*, 2015 NSSC 10

**Date:** 20150113  
**Docket:**, Hfx No. 352823  
**Registry:** Halifax

**Between:**

Joslyn Prevost

*Applicant*

v.

The Estate of Claude Prevost

*Respondent*

**Judge:** The Honourable Justice Michael J. Wood

**Heard:** November 5, 2014, in Halifax, Nova Scotia

**Counsel:** Matthew J. M. Gibbon, for the Applicant  
James K. Harper, for the Respondent

**By the Court:**

[1] Joslyn Prevost is the personal representative of the Estate of Eric Prevost which, in turn, is a beneficiary of the Estate of Claude Delbert Prevost.

[2] Claude Delbert Prevost died on August 24, 1996. On May 2, 2006 his will was probated and Tyrone Bradley Prevost appointed personal representative.

[3] In February 2013 Joslyn Prevost filed a Notice of Application seeking an accounting and disclosure of documents by the estate. The application which was scheduled to be heard on March 26, 2013 was adjourned by consent. The letter requesting adjournment sent by counsel for Ms. Prevost indicated that the estate had commenced the process of disclosure of documents to the beneficiaries.

[4] On June 10, 2014 Ms. Prevost filed another Notice of Application seeking an accounting from the estate. On July 17, 2014 Mr. James K. Harper, Proctor for the estate, filed a Notice of Objection on behalf of the personal representative. The grounds for the objection were as follows:

1. The estate of Eric Prevost, was paid \$35,000.00 of which the applicant being a beneficiary would have received her share of the inheritance;
2. When all of the remaining estate properties have been sold the applicant will share equally in the final distribution with all the other beneficiaries;
3. When all of the remaining properties have been sold the estate accountant Howard Jacks will prepare final accounts;
4. The applicant will have the opportunity along with all other beneficiaries to review the final accounts before signing a release.

[5] By agreement of the parties the hearing of the application was scheduled for October 23, 2014. On October 16, 2014 Mr. Harper wrote to the court requesting an adjournment of the hearing because the personal representative, Mr. Prevost, was scheduled for a medical procedure on October 22. The matter was adjourned to November 5, 2014.

[6] On October 20, 2014 an affidavit of the personal representative was filed. It provided a history of the administration of the estate and indicated that Mr. Prevost had always taken the position he would voluntarily disclose information to Ms.

Prevost. The explanation for his opposition to the request for an accounting is found in paragraph 11 of his affidavit which states:

My reason for filing an objection to a hearing on this accounting matter is the time spent by the Proctor and the Accountant in preparation of documentation. Also, time spent at the hearing which translates in added costs for the Estate. Further, the Accountant was in the process of preparing current financial documentation and the Applicant did not want to wait for completion.

[7] On November 3, 2014 Mr. Harper filed a brief which said the estate had never objected to giving an accounting to Ms. Prevost. The estate's position on the application is found in the following paragraphs from the brief:

8. The Estate has no objection with giving an accounting to the Applicant. The Estate asks the Court for direction regarding the following CPR. The Estate suggest (sic) to the court that maybe case management pursuant to S.26.02 of the Civil Procedure Rules maybe (sic) a remedy for consideration. In accordance with S.102 of the Probate Act, if the provision is not made in the Act or Probate Rules with respect to practice, Civil Procedure Rules apply.
9. Pursuant to S.69(1) the personal representative asks the Courts for extension of time to give the court an accounting of the administration of the estate due to the fact that this estate has been ongoing since May 2<sup>nd</sup>, 2006. Seeking a general extension is not for the purpose of delaying the process of disclosing estate accounting to the Application.
10. The Estate agrees to prepare an accounting for the Applicant.
11. The issue of costs remain to be dealt with.

[8] The hearing took place on November 5, 2014. Mr. Harper, on behalf of the estate, said his client had never objected to providing an accounting but needed time to do so. He said that January 31, 2015 would be sufficient to allow the estate to provide this information to the Court and the beneficiaries. The Court issued an order requiring the interim accounting by January 31, 2015 and specified the information which it ought to contain. The only issue which remained outstanding was the question of costs.

[9] Mr. Gibbon, on behalf of Ms. Prevost, says her solicitor-client account for the application totals \$7,4049.51 inclusive of HST and disbursements. In addition, he says his client incurred a cost of \$189.75 to change her travel arrangements as a

result of the late request for an adjournment of the October 23 hearing. The position of Ms. Prevost is that she should be paid her solicitor-client costs and the additional travel expenses by the personal representative and that he should not be entitled to have any portion of his costs paid by the estate. Mr. Gibbon submits the application was totally unnecessary and therefore all associated costs should be borne by Mr. Prevost personally.

[10] Mr. Harper, on behalf of Mr. Prevost, also says this was an unnecessary application since his client had always been prepared to provide disclosure of financial records to the applicant. Rather than initiate legal proceedings he says Ms. Prevost should have waited for the information to be provided. Mr. Harper argues that Ms. Prevost should bear her own costs for the unnecessary application and Mr. Prevost should be reimbursed for his legal expenses in the amount of \$4,000.00 plus HST.

[11] Section 92 of the *Probate Act* deals with costs in contested matters and provides as follows:

**Costs in contested matters**

92 (1) In any contested matter, the court may order the costs of and incidental thereto to be paid by the party against whom the decision is given or out of the estate and if such party is a personal representative order that the costs be paid by the personal representative personally or out of the estate of the deceased.

(2) An order made pursuant to subsection (1) may be reviewed by the Nova Scotia Court of Appeal or any judge thereof in chambers, upon notice given in the prescribed manner and form by the party aggrieved to the opposite party, and such order may be made thereon as the Court or the judge considers just and proper.

(3) An order for the costs of an application may be made personally against a personal representative where the application is made as the result of the personal representative failing to carry out any duty imposed on the personal representative by this Act.

(4) An order for costs in an application may be made personally against a personal representative who has made the application where the application is frivolous or vexatious. 2000, c. 31, s. 92.

[12] In addition, the Civil Procedure Rules set out the usual considerations to be applied in determining the cost consequences of legal proceedings.

[13] The starting point is to determine which party was successful on the application. It is clear to me that Ms. Prevost obtained the order for an accounting which she was seeking. In fact, Mr. Harper at the hearing essentially conceded that such an order should be granted provided the personal representative was given sufficient time to do so.

[14] I agree with the submissions of both counsel that the application was unnecessary. One would normally expect that a personal representative and beneficiaries would cooperate in the exchange of financial information and that a formal accounting could be avoided. In some cases this will not be possible and that is obviously the situation here. Where an estate has been open for this length of time it is not unreasonable for a beneficiary to request an accounting if the informal disclosure of financial information is not satisfactory to them.

[15] It may have been reasonable for Mr. Prevost to assume the information being given to Ms. Prevost was satisfactory in the absence of any formal objection from her. Once she filed her application for an accounting in June 2014 that assumption was no longer valid. Mr. Prevost's response was to object to the application on the basis that it was premature. Ultimately Mr. Harper conceded that an accounting should be ordered, however that was not apparent until his brief was filed on November 3, 2014. If he had taken that position in August 2014 most of this proceeding would not have been necessary.

[16] I do not see a basis on which Ms. Prevost should be paid her full solicitor-client account. The conduct of Mr. Prevost was not the type of behaviour which would attract a solicitor-client award of costs. Under Tariff C of the *Civil Procedure Rules* a hearing of a half day or less would normally result in costs in the range of \$750.00 to \$1,000.00. In this case the late adjournment request necessitated an appearance on October 23 to set a new hearing date and establish a timetable for briefs which would have added to the overall expense of the proceeding. The Tariff also provides that a judge may apply a factor of 2, 3 or 4 if the application is determinative of the entire matter at issue in the proceeding. The factors to consider are the complexity, the importance of the issues and the effort involved in preparing for and conducting the application. In my view it is appropriate to consider applying a multiplier to the Tariff costs because the sole issue in the proceeding was the production of an accounting and that has been resolved.

[17] I would award Ms. Prevost costs of \$500.00 for the October 23 appearance and \$1,000.00 for the November 5 appearance. I would apply a multiplier of 2 because the matter was not complex and did not require an unusual amount of time to prepare. As a result the costs total \$3,000.00. In addition Ms. Prevost is entitled to disbursements of \$64.40 for filing, \$354.06 for service and \$108.05 for registered mail postage. She is also entitled to the cost of the increased travel arrangements due to the late adjournment in the amount of \$189.75. The total costs payable to Ms. Prevost, including disbursements, is 3,716.26.

[18] Mr. Gibbon argued that Mr. Prevost was in breach of the duty to provide an accounting within 18 months set out in s.69(1) of the *Probate Act* and as a result he should be personally liable for payment of Ms. Prevost's costs. Mr. Harper argued that the administration of the estate is ongoing with real estate that has yet to be sold and therefore an accounting within 18 months was not possible.

[19] Section 92(3) of the *Probate Act* says that a personal order of costs may be made against a personal representative where the application is the result of their failure to carry out any duty imposed by the *Probate Act*. After listening to submissions of counsel I do not believe that Mr. Prevost was in breach of any legal duty imposed by the legislation. The 18 month period in s.69(1) can be extended and in many estates will not be practical. I have very little evidence concerning the administration of this estate and therefore I am not in a position to come to any conclusion with respect to Mr. Prevost's conduct in that regard. I am satisfied that in this situation Ms. Prevost's costs should be paid by the estate and not the personal representative.

[20] As I previously noted I believe the entire application could have been avoided if Mr. Prevost had acknowledged at an early date that an accounting should be ordered. By taking the position that he did in opposing the application he incurred costs which were unnecessary. If the estate is required to pay the personal representative's legal expenses this will diminish the amount to be distributed to the beneficiaries. I would therefore order that the costs incurred by the Proctor, Mr. Harper, in opposing this application be paid by Mr. Prevost personally and not form part of the Proctor's fees payable by the estate.