

PROBATE COURT OF NOVA SCOTIA

Citation: MacKay v MacKay Estate, 2013 NSSC 116

Date: 20130402

Docket: Probate file Bwt. 14515

Registry: Bridgewater

Between:

Richard W. MacKay

Appellant

- and -

Estate of Marion Phyllis MacKay, deceased
as represented by personal Representative, Mary Ann Eisner

Respondent

Editorial Notice

Addresses have been removed from this electronic version of the judgment.

Judge: The Honourable Justice C. Richard Coughlan

Heard: January 3, 2013 at Bridgewater, Nova Scotia

Written Decision: April 2, 2013.

Counsel: Michael K. Power, Q.C., for the Appellant
Franceen Romney, for the Respondent

[1] Marion Phyllis MacKay of Union Square, Lunenburg County, Nova Scotia died January 20, 2011. A Grant of Probate of her estate was issued January 31, 2011 by the Registrar of Probate (Registrar) to Mrs. MacKay's niece, Mary Ann Eisner. Richard W. MacKay (Richard) was Marion MacKay's nephew. Richard filed a claim against Marion MacKay's estate in the amount of \$46,800.00 for "maintenance, labour, housekeeping and care-giving services rendered to the deceased prior to her death at her request". The grounds upon which the claim is based were set out in the Notice of Claim as follows:

- (a) The Claimant states that in or about 1999 the deceased requested these services.
- (b) The Claimant states he provided these on the promise that "the place" would be his if he looked after her and helped to stay in her own home by performing the above services.
- (c) The Claimant states he continued to provide these services yearly and the type of services varied mainly according to the seasons of the year.
- (d) The Claimant states he provided on average 5 hours per week for fifty-two (52) weeks for the past twelve (12) years. At a rate of fifteen dollars (\$15.00) per hour he would be entitled to \$46,800 per year.

[2] A Notice of Contested Claim was filed by the Estate on April 21, 2011. Settlement of the estate was scheduled before the Registrar. By letter dated December 5, 2011, Richard filed a Notice of Objection to Accounts. The same day the Registrar informed Richard's counsel the claim would be adjudicated on the settlement of the estate. Richard requested an adjournment of the settlement and his claim be heard by a Judge of Probate. The adjournment was refused and Richard's claim was heard by the Registrar and by decision dated February 15, 2012 the Registrar dismissed the claim. In a decision dated March 27, 2012 the Registrar awarded costs to the Estate in the amount of \$3,500.00 plus H.S.T. Richard MacKay filed a Notice of Appeal of the Registrar's decision on March 13, 2012 in which the grounds of appeal are set out as follows:

1. The Registrar erred in the assessment of the evidence and the facts and in interpretation and the application of the law.
2. The Registrar erred in determining the appellant (claimant) was not entitled to compensation from the respondent.
3. The Registrar erred in law in determining there was never an agreement to pay the appellant (claimant).
4. The Registrar failed to deal with the issue of quantum meruit and unjust enrichment, in any event.
5. The Registrar further erred in not issuing under section 64(3)(a) the notice requested by the claimant in December 12, 2011, in any event.
6. The Registrar erred in not referring this matter to the Judge when asked to do so on February 2, 2012.
7. The appellant appeals from any order on costs against him, if any.

[3] An appeal from the Registrar's decision to a Judge of Probate is governed by section 93 of the *Probate Act*, S.N.S. 2000 c. 31 which provides:

Powers of court on appeal

93 (1) Any party aggrieved by an order or decision of the registrar, other than a grant, may in the prescribed manner, appeal from the order or decision of the registrar to the judge.

(2) On an appeal taken pursuant to subsection (1),

(a) the judge may hear such appeal and, where the judge thinks fit, any of the parties thereto may adduce the same evidence as that given before the registrar and, so that the judge may hear the same evidence and any further or other evidence, any further or other evidence and the judge may confirm, vary or set aside the order or decision appealed from, and may make any decree, order or decision which the registrar should have made;

(b) the judge may rescind, set aside, vary or affirm the order or decision appealed from or make any decision or order the registrar could have made;

(c) costs of the appeal are in the discretion of the court. 2000, c. 31, s. 93.

[4] In this matter I have reviewed the probate file, the transcript of the hearing before the Registrar, written submissions of counsel, heard additional evidence from some of the witnesses who testified before the Registrar and a new witness called by Richard MacKay, and the oral submissions of counsel.

[5] Richard MacKay testified he was close to Marion MacKay and her husband Laurie MacKay. They were his favourite aunt and uncle. He was brought up next door to their house. Marion and Laurie MacKay lived in Richard's grandparent's house. As Richard was growing up Marion and Laurie told him the place was going to be his after they were finished with it. In the years 1999 to 2011, Richard was living in Union Square about six to seven kilometres from Marion MacKay's residence. After Laurie MacKay, who suffered from dementia, moved to a nursing home Richard did anything Marion MacKay needed. Richard stated when Laurie MacKay started having trouble with dementia Marion MacKay told Richard she was not going to let Laurie sell any more land because it belonged to Richard. When Richard brought Marion home from the time she spent at Mary Ann Eisner's mother's home, when Marion had trouble with her furnace, Marion MacKay told Richard, "Now, this place is going to be yours, so you're going to have to help me more, you know, all the time now." Richard testified he never requested payment because the place was going to be his. He did not have any discussions with Marion MacKay that he would be paid.

[6] Included in the work Richard did for Marion MacKay were painting her house in approximately 2004. He mowed her grass. Marion had about a half acre to mow. It would take Richard two to three hours. He mowed the grass about once a week. Richard stated his uncle Eric Dorey did a little bit of the mowing. Eric died a year before Marion died.

[7] During the last few years of her life Marion could not defrost her refrigerator and Richard did it. Marion had a problem with mice which made a mess. Richard trapped the mice and cleared out Marion's basement at least once. Marion also had a problem with squirrels - Richard helped her. In the fall, Richard cleaned up Marion's yard, trimmed bushes and took her garbage out. Richard fed birds for Marion. Richard cleaned Marion's wood stove twice a year -

in the fall and spring. The cleaning involved dismantling, sweeping the chimney, cleaning the stove inside and out and putting it back together.

[8] Since before Laurie died, Marion wanted Richard to give her a telephone call every night as she was lonely and Richard called her almost every night for fourteen years. The calls lasted about half an hour.

[9] During the last few years of her life, Marion had Richard order oil for her furnace - usually every month. Richard took Marion shopping and to her medical appointments. Richard looked after maintenance of Marion's lawn mower, changed the oil and kept the blade sharp and took the lawn mower for repairs several times.

[10] After Laurie was no longer at home, Richard made sure the wood supply was properly stored in the shed. As Marion got older and was scared of falling on ice in the winter, Richard kept the wood box filled. Richard also split the kindling needed to start the fire.

[11] Marion's lawn mower was stored under the barn and the post supporting the floor was gradually sinking into the ground. Richard and his partner Don Saxton jacked the barn up and put three new posts under it to stabilize the floor. Mr. Saxton often helped Richard doing jobs for Marion.

[12] Richard stated he chauffeured Marion around quite a bit. Marion did not like driving in winter. Richard took her car to be safety inspected in December and also on occasion to have the car repaired. He took Marion grocery shopping and to medical appointments. The last couple of years of Marion's life Richard did all of Marion's shopping. Marion did not want to bother Mary Ann Eisner who was busy.

[13] Richard and Don Saxton shovelled snow for Marion. In the winter Richard would shovel snow for Marion three or four days a week. At first Richard and Don shovelled the whole driveway and paths. Later Richard's brother Larry MacKay plowed the driveway for Marion. Richard shovelled out Marion's mailbox.

[14] Richard also cleaned Marion's windows and painted her ceilings. During the last year before Marion MacKay died Richard brought Marion meals three or four times a week. Richard felt responsible for her as he expected to receive the house.

[15] Although he did not keep records Richard estimated he probably spent around five hours a week taking care of Marion MacKay. In his occupation as a painter he was paid fifteen dollars an hour and considers that is the amount he should receive for his work for Marion MacKay. In his testimony before the Registrar he said he did the tasks for Marion because he was supposed to get the house stating:

“A. I wouldn't, you, I wouldn't have done it for Marion. I had, I had no reason to do it for Marion and Laurie, because my father, he, he passed away from kidney disease in 1986, and they were hateful to my mother. I had no reason other than the fact that I was supposed to be getting the house, you know, for looking after Marion, that I did it, really. It certainly wasn't because she was friend...My mother and her didn't talk for years. They lived right next door to one another they didn't talk for years. Laurie, when he was suffering from dementia, he'd mow things down that my mother had planted, and they were just mean to her, period, you know. I, I never understood why. But I had no reason to be, go out of my way to be nice to them. Not just to do it for nothing, that's for sure.”

[16] Richard acknowledged in the last years of Marion MacKay's life after she fell and broke her hip and was on oxygen, Mary Ann Eisner started helping Marion by paying her bills, picking up her medication and taking Marion to the odd doctor's appointment.

[17] Richard did not receive any money from Marion MacKay. Marion MacKay gave him a Christmas gift but he did not get a Christmas gift the last few years of Marion MacKay's life.

[18] Donald Saxton has lived with Richard MacKay for 37 years. Mr. Saxton knew Marion MacKay and her husband Laurie MacKay. Mr. Saxton and Richard moved to Lunenburg County in 1981. Mr. Saxton heard Laurie MacKay, twenty

or more years ago, tell Richard when Laurie and his wife were finished with the place it would be handed to Richard. Mr. Saxton never heard Marion MacKay say anything about Richard getting the place. For the last 30 years Mr. Saxton and Richard did everything and anything Marion needed done. Marion MacKay requested Richard do things around her place. The work Richard did, with Mr. Saxton's assistance on occasion, included fall yard clean up and getting the stove ready for winter.

[19] In the winter, they shovelled snow. At first they shovelled the whole driveway by hand. Later, Richard's brother Larry MacKay plowed the driveway. In addition to the driveway Richard and Mr. Saxton shovelled around Marion's house steps and mail box, pathways to where the wood was stored and to the oil tank. After Laurie MacKay moved to a nursing home Richard looked after the wood for Marion MacKay. In season Richard mowed the lawn weekly. They painted around Marion MacKay's residence.

[20] Marion MacKay could take care of herself until the last few years. In her later years Richard did a fair amount of grocery shopping and other errands for Marion. Richard also prepared meals for Marion MacKay.

[21] In his testimony before the Registrar, Mr. Saxton stated he never heard Marion MacKay say Richard would be paid for the work he did for her. In his testimony at the appeal Mr. Saxton said Marion MacKay would offer to pay them (Richard and Mr. Saxton) but they never took it. They did not want it.

[22] Larry MacKay, Richard MacKay's brother, testified. In the early 90's Larry MacKay wanted to buy a small piece of land from Laurie and Marion MacKay and they refused to sell the land stating they did not want to sell any more land as whatever was left was Richard's and they were saving the land for him. After Laurie MacKay's death, Larry approached Marion to purchase the same property and Marion told him the same thing. Larry knew if Richard got the property he could purchase the property from Richard.

[23] When Laurie MacKay was alive and able, he looked after his property most of the time. If he needed help Richard would be the one who would help. Richard MacKay did work around Marion MacKay's property. Richard shovelled the driveway until Larry MacKay got his farm tractor in 2003. Then Larry plowed

Marion's driveway with his tractor. Marion paid Larry for the plowing. Richard still shovelled to the woodhouse and barn. Whenever the house needed painting, Richard and Mr. Saxton did it. Richard mowed the lawn, cleared the flue and raked the lawn. Richard and Mr. Saxton would stack wood in the woodhouse.

[24] Louise Veinot who lived a ten minute walk from Marion MacKay's residence testified since Marion was housebound, a period about two or three years prior to her death, she would visit Marion once a week or once every two weeks. Ms. Veinot saw Richard MacKay mowing, trimming bushes and clearing off the doorstep. Marion told Ms. Veinot that Richard called her. Ms. Veinot also visited Marion before she was housebound. She would see Richard as she drove by Marion's residence.

[25] Mary Ann Eisner testified Marion MacKay was in good shape between 1999 and 2007. She was self sufficient until March or April 2009. Marion removed snow from her doorstep until around 2007. Marion took her car for its safety inspection until 2006. Prior to moving to a nursing home, Laurie MacKay was doing the work around the property. In 1999 Laurie had a snow blower. During the time Laurie MacKay was in the nursing home Marion did everything around the house. Up until she required oxygen, Marion went to Bridgewater two or three times a week. Prior to getting ill in 2007 Marion MacKay got her own groceries, after that, every week on Saturday or Sunday Mary Ann took her to purchase groceries.

[26] In 2001 Marion purchased an oil furnace. After that wood was only used in the wood stove. Marion purchased a cord of wood a year. It was delivered cut and split. Ms. Eisner asked her on several occasions "Would you like me or my husband or my son to come help you to put that wood in?" Marion responded, "No. I do it a couple arm loads a day. It gives me something to do."

[27] In 2007 Marion was put on oxygen and the wood stove could no longer be used. No wood was purchased after 2007.

[28] Ms. Eisner observed Eric Dorey mowing Marion MacKay's lawn. In recent years walkways to the woodshed were not shovelled as Marion was not using wood. No maintenance was carried out on the outbuildings. Larry MacKay plowed the driveway.

[29] After Marion started using oxygen she was mobile - there was a line on the oxygen which allowed her to be mobile throughout her house. To go outside Marion removed her mask and got her mail and paper out of her mailbox every day until she broke her hip.

[30] In 2009 Marion fell and broke her hip. Eric Dorey called Ms. Eisner. Ms. Eisner called an ambulance. Mr. Dorey said he would stay with Marion until the ambulance arrived and then lock the house. Ms. Eisner arranged for home care for after Marion's release from hospital. Ms. Eisner also arranged for Lifeline - a service which provides an alarm in the event a person falls. The home care and alarm company dealt with Ms. Eisner.

[31] For the last two years Marion was in the house Ms. Eisner stopped in on her way to work and took the newspaper in to Marion. The home care worker helped Marion wash her hair and get in and out of the bath but otherwise, Marion took care of her own personal hygiene.

[32] Ms. Eisner received two notes from the home care service stating the path to the house and doorstep were not shovelled so Ms. Eisner shovelled the path to the house and doorstep on Tuesdays, if required, to ensure the home care workers had access. Ms. Eisner also shovelled the area around the mailbox as she received a notice from Canada Post stating the mail would not be delivered because the mailbox was not shovelled.

[33] Marion MacKay offered to pay Ms. Eisner when Ms. Eisner took her to the doctor or other errands. Every second or third time Ms. Eisner would take ten, fifteen or twenty dollars depending on the number of trips.

[34] The last time Marion left her home Richard MacKay visited Marion and was concerned about Marion's condition. Richard called Ms. Eisner and informed her. After lunch Ms. Eisner received another call from Richard and was told Marion needed to go to the hospital or see a doctor. Marion wanted to speak to Ms. Eisner. Ms. Eisner went to Marion's home and then took her to the hospital while Richard locked the house.

[35] It is Ms. Eisner's understanding Marion had arranged automatic oil delivery. The caller identification feature on Marion's telephone had been broken for some time.

[36] Section 45 of the *Evidence Act*, R.S.N.S. 1989 c. 154 provides:

45 On the trial of any action, matter or proceeding in any court, the parties thereto, and the persons in whose behalf any such action, matter or proceeding is brought or instituted, or opposed, or defended, and the husbands and wives of such parties and persons, shall, except as hereinafter provided, be competent and compellable to give evidence, according to the practice of the court, on behalf of either or any of the parties to the action, matter or proceeding, provided that in any action or proceeding in any court, by or against the heirs, executors, administrators or assigns of a deceased person, an opposite or interested party to the action shall not obtain a verdict, judgment, award or decision therein on his own testimony, or that of his wife, or of both of them, with respect to any dealing, transaction or agreement with the deceased, or with respect to any act, statement, acknowledgement or admission of the deceased, unless such testimony is corroborated by other material evidence. R.S., c. 154, s. 45.

[37] Therefore any dealing, transaction or agreement with Marion MacKay by Richard MacKay or any act, statement, acknowledgement or admission of Marion MacKay must be corroborated by material evidence other than Richard MacKay's testimony.

[38] The type of evidence required to satisfy the requirement of corroboration has long been established. In giving the court's judgment in *Thompson v. Coulter* (1903), 34 S.C.R. 261 Killam J. stated:

. . . "In my opinion this enactment demands corroborative evidence of a material character supporting the case to be proved by such "opposite or interested party" in order to entitle him to a "verdict, judgment or decision." Unless it supports that case, it cannot properly be said to "corroborate." A mere scintilla is not sufficient. At the same time the corroborating evidence need not be sufficient in itself to establish the case.

The direct testimony of a second witness is unnecessary; the corroboration may be afforded by circumstances. *McDonald v. McDonald*.

The expressions used by the learned judges of the Court of Appeal in *In re Finch* appear to me applicable under this statute. Jessel, M.R., there said,

as I understand, corroboration is some testimony proving a material point in the testimony (sic) which is to be corroborated. It must not be testimony corroborating something else — something not material.

And Lindley L.J., said,

evidence which is consistent with two views does not seem to me to be corroborative (sic) of either.” ...

[39] In his first four grounds Richard MacKay submits the Registrar of Probate erred in her assessment of the evidence and in reaching the conclusion there was no agreement to pay him and that he was not entitled to compensation from the estate for the services he provided to Marion MacKay. Richard MacKay also submits the Registrar erred in her interpretation and application of the law and should have dealt with the issues of quantum meruit and unjust enrichment.

[40] After reviewing the evidence, the Registrar did not accept Richard MacKay’s evidence and found he was not a creditor or unpaid claimant.

[41] In an appeal from the Registrar I must consider the evidence before the Registrar and any additional evidence to determine whether to confirm, vary or set aside the decision appealed.

[42] Richard MacKay bases his claim against Marion MacKay’s estate on her promise that in return for looking after Marion MacKay and providing services around her home Marion MacKay would devise her real property to him. As the real property was devised to others, Richard MacKay’s claim is based on unjust enrichment and quantum meruit.

[43] Considering the evidence as a whole I find although he exaggerated the work he did for Marion MacKay, Richard MacKay did chores around Marion MacKay’s home and that Marion MacKay offered to pay Richard MacKay and Donald Saxton for the work they did. Mr. Saxton testified as follows:

“Q. Was there ever any offer of payment from either Laurie or Marion MacKay?”

A. Oh, she would offer. She would offer to pay us but we never took anything for it.

Q. Right. And why was that?

A. We didn't want anything for doing it. We didn't mind doing these things for her.

Q. Right. And with respect to Richard being paid were you aware of whether she offered him to be paid for the things that he did?

A. Well, she might have offered, you know, she might have offered to pay him too but he never accepted payment for anything.”

[44] Such an offer is consistent with the evidence of Mary Ann Eisner and Larry MacKay that Marion MacKay offered to pay them for work or services they provided her.

[45] I also find Mary Ann Eisner was the person looking after Marion MacKay during the last years of her life. When there was a problem with Marion's health, Eric Dorey called Ms. Eisner. Home care for Marion was arranged by Ms. Eisner. When issues arose the home care and alarm providers called Ms. Eisner. Richard acknowledged after Marion fell and broke her hip and was on oxygen Ms. Eisner helped Marion. Ms. Eisner was Marion's attorney. The day Marion left her home for the last time Richard called Ms. Eisner as Marion wished him to do so. It is clear Mary Ann Eisner was the person taking care of Marion MacKay in the last years of her life.

[46] As did the Registrar, I had problems with Richard MacKay's evidence. At times during his evidence, Richard said Marion MacKay and Laurie MacKay were his favourite aunt and uncle. They treated him like their own child. He was very close to them. but, then Richard stated he had no reason other than he was getting

the house to help Marion. It certainly was not because she was a friend - Marion and Laurie were not kind to his mother after his father died in 1986.

[47] It is also inconsistent that Marion would tell Richard, as he alleges, this place is going to be yours so you will have to help me more all the time now. Yet Mary Ann Eisner was the person taking care of Marion during the last years of her life.

[48] Donald Saxton did not hear Marion MacKay ever say Richard MacKay was to get her property after she died. Mr. Saxton testified in answer to the question as to who was present when Laurie MacKay said Richard would get the property, “Well, Richard and I and him, and I believe Marion could have been, was probably there too.” I do not accept that Marion MacKay told Richard he would receive her real property after she died in return for providing services to her.

[49] In order to establish a claim for unjust enrichment a claimant must establish three elements, an enrichment to the defendant, a corresponding deprivation to the claimant and the absence of a juristic reason for the enrichment.

[50] In this proceeding, Richard MacKay provided services to Marion MacKay . I am not satisfied as to the extent of those services, as I found Richard MacKay exaggerated what he did. Nevertheless, there would be a corresponding deprivation to Richard MacKay of the time and effort to provide the work and services to Marion MacKay. The question remains: was there a juristic reason for Richard MacKay’s actions?

[51] The approach to be followed in the juristic analysis was set out in *Garland v. Consumers’ Gas Co.* 2004 SCC 25 where Iacobucci, J. stated at paragraphs 44 - 46:

44 ... “in my view, the proper approach to the juristic reason analysis is in two parts. First, the plaintiff must show that no juristic reason from an established category exists to deny recovery. By closing the list of categories that the plaintiff must canvass in order to show an absence of juristic reason, Smith’s objection to the Canadian formulation of the test that it required proof of a negative is answered. The established categories that can constitute juristic reasons include a contract (*Pettkus*, supra), a disposition of law (*Pettkus*, supra), a donative intent (*Peter*, supra), and other valid common law, equitable or statutory obligations (*Peter*, supra). If there is no juristic

reason from an established category, then the plaintiff has made out a prima facie case under the juristic reason component of the analysis.

45 The prima facie case is rebuttable, however, where the defendant can show that there is another reason to deny recovery ...

46 As part of the defendant's attempt to rebut, courts should have regard to two factors: the reasonable expectations of the parties, and public policy considerations. It may be that when these factors are considered, the court will find that a new category of juristic reason is established. In other cases, a consideration of these factors will suggest that there was a juristic reason in the particular circumstances of a case which does not give rise to a new category of juristic reason that should be applied in other factual circumstances. In a third group of cases, a consideration of these factors will yield a determination that there was no juristic reason for the enrichment. In the latter cases, recovery should be allowed. The point here is that this area is an evolving one and that further cases will add additional refinements and developments.

[52] Marion MacKay was Richard MacKay's aunt, she was married to his uncle Laurie MacKay. There was an established juristic reason for Richard to provide assistance to his aunt Marion MacKay - a donative intent. On the facts it was not in the reasonable expectation of Richard MacKay or Marion MacKay that Richard MacKay would be paid for the services he performed for Marion MacKay. There are also no public policy reasons to support an unjust enrichment claim. Richard MacKay does not have a claim against the estate on the basis of unjust enrichment.

[53] The test for a quantum meruit claim was set out by Ilesley, C.J.N.S. in giving the majority judgment in *Re Burgess* [1965-69] 4 N.S.R. 361 (NSSC in Banco) at page 372 as follows:

. . . "If it had been proved that she went there on a promise by the deceased that she would be remunerated by the deceased's will, this would indicate that her services were not rendered gratuitously, and the deceased not having made a will, the respondent would have a good *quantum meruit* claim for the value of the services for which the deceased in that way promised to remunerate her. See *McGugan v. Smith* (1892), 21 S.C.R. 263, and *Degelman v. Guaranty Trust Co. and Constantineau*, [1954] 3 D.L.R. 785, [1954] S.C.R. 725. But such a promise would have to be corroborated before the respondent could recover. . . ."

and at page 377:

In *Murdoch v. West et al.* (1893), 25 N.S.R. 172 at p. 175, Graham, E.J., in a dissenting judgment, quoted with apparent approval the following passage from the judgment of Armour, C.J., in *Walker v. Boughner* (1889), 18 O.R. 448 at p. 457:

The rule, however, seems to be that where a party renders services to another in the expectation of a legacy and in sole reliance on the testator's generosity, without any contract, express or implied, that compensation shall be provided for him by will, and the party for whom such services are rendered dies without making such provision no action lies, but where, from the circumstances of the case, it is manifest that it was understood by both parties that compensation should be made by will and none is made, an action lies to recover the value of such services.

The majority judgment of this Court in *Murdoch v. West et al.* was reversed by the Supreme Court of Canada ((1895), 24 S.C.R. 305), and I think the quotation from the judgment of Armour, C.J., is a correct statement of the law as it is at the present time...."

[54] It has not been established that Marion MacKay understood Richard MacKay expected remuneration for the services he provided to Marion MacKay. The evidentiary basis for a claim of quantum meruit has not been established.

[55] As a result of the findings I made, the issue of corroboration does not arise.

[56] The appeal is dismissed and I confirm the Registrar's decision of February 15, 2012.

[57] Mr. MacKay appealed any order of costs made against him. In fact, his Notice of Appeal was filed March 13, 2012 although the Registrar's decision on costs is dated March 27, 2012.

[58] In her decision, the Registrar awarded costs to the Estate of Marion Phyllis MacKay in the amount of \$3,500.00 plus H.S.T. At the hearing of the appeal counsel did not address the issue of costs before the Registrar. Therefore, I will hear the parties as to costs at the hearing before the Registrar as well as costs of the appeal.

Coughlan, J.