CITATION: Schecter v. Sheres, 2026 ONSC 2602
COURT FILE NO.: CV-25-00378048-00ES
DATE: 20260501

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Michael Schecter in his capacity as executor and trustee of the Estate of Jechiel Scheres, also known as Harry Sheres

AND:

Reena Sheres in her capacity as executor and trustee of the Estate of Jechiel Schere, also known as Harry Sheres

BEFORE: J.T. Akbarali J.

COUNSEL: *Andrew Finkelstein*, for the applicant

Melanie Yach, for the respondent

HEARD: April 20, 2026

ENDORSEMENT

Overview

[1] The applicant, Michael Schecter, and the respondent, Reena Sheres, are the estate trustees of the estate of Jechiel ("Harry") Scheres. Mr. Schecter is the deceased's grandson, and the son of his daughter Paula Schecter. Ms. Sheres is the deceased's other daughter. The deceased had no other children.

[2] Because many of the interested parties to this application share the same last name, for clarity, I respectfully use first names in these reasons.

[3] This application raises three issues:

a. Whether Michael is entitled to disclosure of Harry's financial records dating back two years from his date of death;

b. Whether Paula is entitled to enter into a condominium in which Harry and Reena lived, and which has been bequeathed to Reena but is now unoccupied, for the purpose of inspecting chattels that Paula and Reena are to divide between themselves pursuant to Harry's primary and secondary wills; and

c. As a threshold matter, whether either or both of the questions above should be referred to Harry's accountant, Abe Zylberlicht, for determination pursuant to a clause in Harry's will, rather than left to the court for determination.

Background

[4] The parties disagree about the import of a clause in Harry's will that I refer to as the "Referral Clause." It reads as follows:

> If, at any time when there are two (2) Trustees acting hereunder and my Trustees are unable to agree respecting any matter involving the administration of my estate, the matter in dispute shall be referred to my accountant, ABE ZYBERLICHT, in Montreal, Quebec, whose decision shall be final and binding upon all persons concerned.

[5] In addition, the will contains a clause I refer to as the "Mediation Clause." It reads:

> It is my wish that any differences of opinion that may arise in my estate be resolved as early as possible and with a minimum of formality through the mediation process, and in that regard, it is my wish that such lawyer of MINDEN GROSS LLP, or any successor firm, who shall be selected by a majority vote of the partners of such firm entitled to vote as partners as evidenced by a statement signed by any two (2) persons professing to be partners of the firm, be appointed as mediator. I have every confidence that this wish shall be honoured.

[6] Michael's position on the application can be summarized as follows:

a. The Referral Clause applies with respect to administration issues only. It does not oust the inherent jurisdiction of the courts with respect to the scope of Michael and Reena's obligations and duties as estate trustees.

b. Here, the question of disclosure relates to the obligation that estate trustees identify all assets and liabilities of the estate. The disclosure is necessary for the estate trustees to do so.

c. Moreover, Reena admits that she took certain funds from the estate that were held in joint bank accounts between her and Harry following his death. She states that she did not appreciate that she could not do so and now understands those funds are held in trust for the estate. She has proposed that the funds be accounted for in the distribution of the estate. Michael states that it is not clear whether Reena made prior withdrawals from the joint account during Harry's lifetime to which she was not entitled. Michael also argues that Reena has access to the financial information in question; both estate trustees should have equal access to the same financial information. The court should order the disclosure.

d. The question of access to the condominium relates to the estate trustees' duties in s. 25 of Harry's primary and secondary wills, which provide that "[a]ny trustee who is interested financially or otherwise in the result of any exercise of a discretion or power vested in my Trustees may, if he or she thinks fit, leave the real exercise of such discretion to his or her co-Trustee(s), concurring therein merely as a formal party." Michael argues that Reena is excluding Paula from inspecting the items at the condominium because they are estranged, and that she is letting her personal feelings toward Paula get in the way of a fair and symmetrical process to divide the chattels in breach of her duty set out in s. 25 of the wills. The court should order that Paula have access to the condominium to inspect the chattels.

e. Neither the disclosure nor the access question is appropriate to be determined summarily by an accountant. The Referral Clause does not intend to refer questions regarding executor duties to Mr. Zyberlicht.

f. When the Referral Clause and the Mediation Clause are read together, it is apparent that all "differences of opinion that may arise" in Harry's estate cannot be subject to the Referral Clause. The Mediation Clause makes it clear that the scope of issues to be referred pursuant to the Referral Clause are narrower than the issues that may arise. Here, the issues involve the scope of the executors' duties and obligations and are not within the narrow parameters of those to be referred pursuant to the Referral Clause.

[7] Reena's position can be summarized as follows:

a. The Referral Clause is mandatory and relates to disputes between executors. The Mediation Clause expresses Harry's wish and relates to general disputes, for example, those involving beneficiaries. In this case, the disputes between Reena and Michael are disputes between estate trustees and the wills mandate that they be referred to Mr. Zyberlicht.

b. In any event, there is no justification for disclosure of two years' worth of pre-death financial records. The obligation to identify and collect the deceased's assets relates to the assets of the estate at the time of death. There is no question that Harry was capable of managing his financial affairs, and did manage his financial affairs, up to the time of his death. Among other things, about a week before his death, a financial transaction closed a part of which involved Harry gifting Paula $200,000 and agreeing to pay her legal fees. There is no need to pry into Harry's financial affairs for a two-year period before his death; he was entitled to manage his funds as he saw fit.

c. Moreover, Michael has examined Harry's 2022 and terminal tax returns and satisfied himself that all dispositions recorded in those returns were accounted for. He made inquiries of banks seeking particulars as to Harry's assets and nothing of

concern was identified. One additional, dormant, bank account was identified. To the extent Harry may have assets in Switzerland and Israel, Reena does not oppose making enquiries to find them.

d. Reena has acknowledged that she holds the balance of the joint accounts in trust for the estate. With Michael's knowledge and consent, she paid almost $60,000 of estate expenses out of the monies she holds in trust. She acknowledges she holds an additional $159,794.99 in trust and has proposed it be taken into account on the distribution of the residue of the estate, as she is a residuary beneficiary. Michael has not demanded that she pay the monies into an estate bank account.

e. Furthermore, Reena produced copies of the joint accounts for the period January 1, 2022 and December 31, 2023. Some of those account statements were also available to Paula, who was also a joint account holder in some of the accounts. They do not show anything of concern.

f. With respect to the condominium access, Paula acknowledged that she does not require access to the condominium, but rather an opportunity to inspect the chattels that are to be divided. Reena does not want Paula to have access to the condo; they have been estranged for 15 years, and many of Reena's personal things are in the condo, where she lived with Harry for 15 years. The inspection that Paula seeks can be done through other methods, including moving the chattels to a storage locker for inspection, or preparing a photographic inventory. She offered that Paula could have all of the chattels with the exception of particular enumerated items that she proposed could be divided based on value.

[8] I consider the issues on this application, beginning with the impact of the Referral Clause.

The Referral Clause

[9] I do not accept either Michael's or Reena's argument about how the Referral Clause works, or how it interacts with the Mediation Clause.

[10] It is plain on its face that the Referral Clause is mandatory and applies to disputes about the administration of the estate between co-estate trustees. The Mediation Clause deals with disputes more broadly. It applies to disputes between estate trustees that are not about the administration of the estate; it also applies to disputes with beneficiaries or others. The Mediation Clause is not binding, but an expression of Harry's wish.

[11] In my view, the inclusion of the Referral Clause and the Mediation Clause in the wills reflect Harry's concern (which turns out to have been warranted) that the estrangement between Reena and Paula might infect the administration of the estate, and that other issues might arise in the distribution of the estate. Harry was trying to keep costs and conflict to a minimum. Unfortunately, despite his efforts, the parties are engaged in litigation anyway.

[12] The question for me is thus whether the issues raised by this application – the disclosure, and the access to the condominium – are a matter involving the administration of Harry's estate. If so, they are caught by the Referral Clause and must be referred to Mr. Zyberlicht.

The Condominium

[13] I begin with the question of access to the condominium. While Michael may be correct that the manner in which the inspection of the chattels occurs may involve an exercise of discretion and thus engage s. 25 of Harry's wills, those sections are not mandatory. They do not require an estate trustee to leave the real exercise of discretion to the co-trustee, but rather only if they see fit to do so. Reena has not breached her duties as estate trustee with respect to the division of the property to be shared between her and Paula. She acknowledges the chattels must be divided. The mechanism for the inspection is a logistical question; it does not give rise to a conflict between Reena's and Paula's interests.

[14] I find that how Paula gets to inspect the chattels is a question that involves the administration of the estate. The dispute must be referred to Mr. Zyberlicht for determination under the Referral Clause.

Disclosure

[15] The question about disclosure is more complex. Disclosure is often necessary due to a will challenge, or a challenge to a testator's competence, but that is not the case here. No one is challenging Harry's wills. No one alleges Harry was not competent to manage his financial affairs during his lifetime.

[16] If disclosure is sought due to reasonable concerns about Reena having appropriated Harry's funds during her lifetime such that she would owe a debt to the estate, the disclosure could relate to the estate trustees' duties to identify and gather up the assets of the estate at Harry's death. Such concerns could also raise questions about whether Reena is in a conflict of interest *vis a vis* Harry's estate as both debtor and estate trustee. I agree that questions about whether the estate trustees have met or breached their duties are not a matter involving the administration of the estate, but a matter involving the due execution of the estate trustees' fiduciary obligations.

[17] In *Munro v. Thomas*, 2021 ONSC 3320, a case on which both parties rely, the court addressed a request by beneficiaries of an estate for production of pre-death financial records of a testator going back six years prior to his passing. Gibson J. noted, at paras. 21-22, that r. 74.17 specifically sets out the assets an estate trustee must account for in a proper accounting for an estate, including a statement of assets at the date of death. There is no requirement for an executor to account for assets falling outside of the estate that were passed *inter vivos*.

[18] Gordon J. concluded, at para. 37, that there are reasonable limits to the extent of an order that should be made for assistance pursuant to r. 74.15(1). The order is discretionary and should not be made an instrument of potential abuse of a party arising from the hostility, suspicion, or paranoia of another party. Having regard to the facts in that case, which included evidence of (i) the testator's ongoing capacity at all times relevant to the application; and (ii) the length of time

between the impugned disposition of a cottage and the testator's death, Gordon J. found that the evidentiary basis was insufficient to justify the extent of the relief requested.

[19] *Munro* was considered by this court in *Schutz Estate*, 2023 ONSC 3959 where the applicant argued that it stood for the principle that there is no requirement for an executor to account for assets falling outside the estate. *Schutz* was also heard by Gordon J., who cautioned that the context of *Munro* had to be considered, recalling that *Munro* was an application by a beneficiary for an order for production of six years of pre-death financial records in which the court found that the estate trustee had administered and accounted for the estate in a full and complete manner, and that the applicant's allegations were unsupported by the evidence.

[20] In *Schutz Estate*, by contrast, Gordon J. noted that the estate trustee had provided little explanation for the whereabouts of proceeds of sale of $600,000 received three months before the testator's death. Gordon J. found that the estate trustee was in a conflict of interest relative to that issue. Gordon J. noted that s. 49(2) of the *Estates Act* provides that a judge on a passing of accounts has jurisdiction to enter into and make full inquiry and accounting of the property that the deceased was possessed of or entitled to, while s. 49(3) gives a judge the power to inquire into any complaint or claim of misconduct, neglect, or default on the part of the executor occasioning loss to the estate.

[21] The question is the scope of disclosure required to ensure the estate trustees can accurately ascertain (i) the property the deceased was possessed of at the date of his death; and (ii) the assets the deceased was entitled to as at the date of death. The latter enquiry necessarily involves some latitude to enquire into the deceased's financial affairs in the time leading up to his death. As the case law I have reviewed indicates, the time period of enquiry that is reasonable depends on the circumstances.

[22] As Myers J. noted in *Seepa v. Seepa*, 2017 ONSC 5368, at para. 28, one can assume that a testator would not happily expose his or her legal and medical files to a relative he has chosen to exclude from his largesse. Similarly, one can assume that in naming an estate trustee, a testator would not assume that the estate trustee would have the freedom to nose about his affairs for many years before his death, especially when there is no suggestion that he was vulnerable or incapacitated.

[23] However, in naming an estate trustee, one can also assume that the testator reposed trust in the estate trustee and was prepared for them to have access to the testator's financial information in order to discharge the estate trustee's duty to identify and gather up the assets of the deceased – both those of which he was possessed, and those to which he was entitled.

[24] The question of the proper scope of pre-death production must here consider the reasonableness of the concerns about whether Reena engaged in self-dealing in Harry's assets during his lifetime, as well as the typical need to ascertain if, in addition to the assets of which Harry was possessed, there were assets to which he was entitled at his death (including but not limited to any amounts Reena may have owed him if she accessed his funds). It must also consider the likelihood that Harry was entitled to other assets at the date of his death apart from any debts Reena might owe him.

[25] The latter of these enquiries is straightforward. As I explain below, the evidence indicates that Harry had capacity to manage his property. He was engaged in sophisticated financial transactions almost up to the day of his death. He had professional advisors. If he were entitled to assets apart from a debt from Reena, those would be relatively easily identifiable. In my view, six months of pre-death financial records plus the inquiries that can be made of Harry's financial advisors is sufficient pre-death production for the estate trustees to discharge this obligation.

[26] The bigger question is the scope of production of pre-death financial records to enable the estate trustees to determine whether Harry was entitled to repayment of funds from Reena. Given the conflict that Reena faces as both a potential debtor and an estate trustee, this obligation falls on Michael, to the extent that the concerns about Reena having taken funds from Harry is reasonable. What does the evidence say about Michael's concerns?

[27] The evidence in the record about Harry's ability to manage his own finances, and his active management of his own finances (albeit with some assistance from Reena) up to the end of his life is compelling. An accountant, Jeffrey Miller, gave evidence in this application. Harry was Mr. Miller's client for decades. Mr. Miller provided tax and accounting advice to Harry in connection with a private corporation in which Harry, together with Reena and Paula, had an ownership interest. In 2023, Harry sought to wind up the corporation and enlisted Mr. Miller to assist. Mr. Miller deposes that he took all his instructions from Harry and had no concerns about Harry's capacity to instruct him. Based on a position taken by Paula's lawyer, Harry agreed to modify the transaction to provide an additional payment of $200,000 to Paula to equalize for the fact that Reena had taken a modest salary from the company over the years when Paula had not. Harry also agreed to pay Paula's legal fees. The reorganization closed on December 23, 2023. Harry died a week later, on December 30, 2023.

[28] As I have noted, no one has challenged Harry's capacity to manage his financial affairs during his lifetime.

[29] Reena's evidence is that she did not manage Harry's financial affairs but sometimes acted as a conduit for him with advisors or the bank. She deposes that she did not review his account statements and did not keep any information he asked her to handle for him.

[30] Michael argues that Reena was more involved with the management of Harry's finances during his lifetime than she admits. Everyone agrees that Harry did not use a computer during the last years of his life. Yet he met with his advisors virtually and conducted banking transactions online, with Reena's assistance. Mr. Miller agreed Reena was present every time he spoke to Harry via phone or videoconference as of about 2019. He also confirmed that Reena assisted Harry with electronic signatures on documents.

[31] Mr. Zyberlicht, when asked in 2024 about proceeds from an investment account Harry held at RBC DS, indicated that he imagined the proceeds were in a bank account or GIC, but that "Reena would know for sure."

[32] Michael also notes that Reena's handwriting appears on documents relating to Harry's taxes and financial records, including on cheques she filled out but that were signed by Harry. In one instance, Reena agreed she had signed a cheque for Harry to Canada Revenue Agency.

[33] Moreover, Reena has acknowledged making two withdrawals from the joint accounts she held with Harry after his death and subsequently receiving the proceeds of those accounts, transferred by the bank to her on her instructions. She explains that she thought she was free to deal with the funds through the right of survivorship, and she only understood later that she held the funds she withdrew and the funds from the transfer in trust for the estate. She does not claim that they were a gift to her. The funds must either be taken into account when determining Reena's share of the residue of the estate or repaid to the estate (less estate costs that were paid from those funds); Reena rightly acknowledges this.

[34] However, the fact that Reena did not understand that the funds held in the joint accounts were funds held in trust for the estate after Harry died raises the possibility that she did not understand that the funds held in the joint accounts were held in trust for Harry during his lifetime.

[35] Michael originally sought production of Harry's financial records going back to 2009, around the time when Harry's wife died, and Reena came to live with Harry. Though he has narrowed his disclosure request now to the two years prior to Harry's death, the breadth of the original request suggests that he is looking to audit Harry's finances, and how Reena may have benefitted from Harry's funds during Harry's lifetime. That is not the role of an estate trustee when the deceased was capable. An estate trustee has neither the obligation nor the right to conduct a forensic audit of a capable deceased's financial affairs over a period of over a decade prior to death in the absence of compelling circumstances suggesting such an audit is warranted.

[36] Harry had professional advisors and was engaged in sophisticated transactions almost up to the date of his death. He was clearly actively involved in his financial affairs.

[37] There is no evidence among the documents produced that Reena withdrew any funds from the joint accounts for her benefit during Harry's lifetime. However, Reena has only selectively produced the joint account statements for the two-year period before Harry's death. As Michael notes, if she has come to the view that Michael is entitled to some financial disclosure in the two-year period before Harry's death, why is he not entitled to all of it?

[38] There is some evidence of withdrawals from the account held jointly by Harry, Reena and Paula on the day before and the several weeks after Harry's death. Michael himself notes that he anticipates that "many of these transactions might reflect payments of proper expenses of the Estate." With respect to the $12,000 withdrawal Reena made from one of the joint accounts on the day before Harry's death, Reena explained that the withdrawal was made with Paula's agreement because they expected Harry's accounts would be frozen following his death.

[39] From the joint account statements produced, Michael has identified six bank drafts or cheques withdrawing monies in 2022 and 2023. He states he is not aware of the purpose of the transactions but admits that he anticipates that "these funds were directed to another one of my grandfather's investment accounts or were used to pay my grandfather's expenses." He states he

is seeking details to trace any remaining cash into the estate to ensure the funds are properly accounted for. This may be true, but his real concern is that these funds were taken by Reena.

[40] In my view, there is enough in the record to establish that a limited investigation of Harry's pre-death finances is appropriate. I direct the following:

a. Michael, acting on his own, shall be entitled to obtain from the financial institutions where Harry had accounts held solely in his name all account statements for a period dating to six months' before Harry's death.

b. Michael, acting on his own, shall be entitled to obtain from the financial institutions where Harry had accounts held jointly with Reena, or with Reena and others, all account statements for a period dating to two years before Harry's death.

c. Michael shall provide Reena with copies of any documents he receives. The costs of obtaining the documents shall be borne by the estate.

[41] If the joint account statements reveal material withdrawals of funds in the two-year period in respect of which I have ordered production, the parties should cooperate to trace those funds to ensure that they have been captured in the estate's assets or accounted for.

[42] This limited examination should be sufficient for the estate trustees to identify assets of which Harry was possessed or to which he was entitled, and, if Reena has not engaged in self-dealing, should be sufficient to quiet Michael's suspicions. Hopefully it will put the parties in a position to put aside their mutual distrust and proceed to administer the estate with a minimum of cost, delay, and conflict, as Harry clearly wished.

[43] If the disclosure raises reasonable concerns, and the parties cannot agree on the scope of further disclosure required, nothing in these reasons prevents Michael from seeking an order for further disclosure from the court.

Costs

[44] At the hearing of this application, I suggested to the parties that they upload costs submissions, their bills of costs, and any offers to settle, clearly marked so I would not review them before reaching a determination on the merits. I proposed that after I had written my reasons on the merits, I would review the costs material and decide costs. The parties were agreeable. That is the approach I have followed.

[45] In *Neuberger Estate v. York*, 2016 ONCA 303, at paras. 24-25, Gillese J.A. noted that the historical approach to costs in estates litigation has been displaced in favour of one in which the costs rules in civil litigation apply unless the court finds that one or more of the relevant public policy considerations dictate that costs, or some portion thereof, should be paid out of the estate. Those policy considerations include where the difficulties or ambiguities that give rise to the litigation are caused, in whole or in part, by the testator, and the need to ensure that estates are properly administered.

[46] In *Muscat v. Muscat Estate*, 2025 ONCA 518, at para. 19, the Court of Appeal described the modern approach to fixing costs in estate litigation, which "seeks to ensure estates are not depleted through the costs of unnecessary litigation and the assets of an estate are not treated 'as a kind of ATM bank machine from which withdrawals automatically flow to fund their litigation.'"

[47] The three main purposes of modern costs rules are to indemnify successful litigants for the costs of litigation, to encourage settlement, and to discourage and sanction inappropriate behaviour by litigants: *Fong v. Chan* (1999), 46 O.R. (3d) 330, at para. 22.

[48] Subject to the provisions of an act or the rules of this court, costs are in the discretion of the court, pursuant to s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The court exercises its discretion considering the factors enumerated in r. 57.01 of the *Rules of Civil Procedure*, R.R.O. Reg. 194, including the principle of indemnity, the reasonable expectations of the unsuccessful party, and the complexity and importance of the issues. Overall, costs must be fair and reasonable: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (Ont. C.A.), at para. 38. A costs award should reflect what the court views as a fair and reasonable contribution by the unsuccessful party to the successful party rather than any exact measure of the actual costs to the successful litigant: *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161 (Ont. C.A.), at para. 4.

[49] If wholly successful, Michael seeks his full indemnity costs of $140,349.56 on the application, of which he seeks partial indemnity costs from Reena in the amount of $85,603.71 and the balance of $54,745.85 from the estate. If partially successful, he proposes that 2/3 of the costs be allocated to the production issue and the balance to the condo issue.

[50] Reena seeks substantial indemnity costs of $122,445.86. She argues that if the application is dismissed, Michael's reasonable partial indemnity costs should be paid from Paula's distributive share of the estate, because Michael brought the application at Paula's behest (according to Reena). She also argues that the balance of Michael's reasonable costs should be paid from the estate, and Reena would bear her own costs. If there is divided success, she argues that she should bear her own legal costs and Michael's reasonable full indemnity legal costs should be paid out of Paula's distributive share of the estate.

[51] In my view, this is not a case where policy considerations justify any payment of costs from the estate. Harry did his utmost to try to avoid the potential for conflict. The parties should have been able to resolve these issues. They each took intransigent positions on some issues. They are the ones responsible for the costs of those decisions.

[52] There is divided success on this application. Michael got some disclosure, but much less than he sought.

[53] Reena's position that the condominium access question should be referred to Mr. Zyberlicht prevailed, and she succeeded in limiting the production Michael sought, but she was not wholly successful on the production issue.

[54] Reena made some offers relating to the condominium issue, including that the issue be referred to Mr. Zyberlicht, and proposals as to the division of property between her and Paula. The last offer was revoked, but these remain offers I can consider under r. 49.13.

[55] In the totality of the circumstances, including the divided success, the fact that this application should not have been necessary, and the fact that each party took intransigent positions, I conclude that each party shall bear their own costs of these proceedings.

J.T. Akbarali J.

Date: May 1, 2026