

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Robertson v. Lauchlin Enterprises Inc.*,
2026 BCSC 1133

Date: 20260618
Docket: S240167
Registry: New Westminster

Between:

Janet Lea Robertson and Gordon Gerald Robertson

Petitioners

And

**Lauchlin Enterprises Inc., Carolynne Wilda Cassidy, Peter Lauchlin Robertson,
and The Estate of Evelyn Beatrice Robertson**

Respondents

Before: The Honourable Justice Gottardi

Reasons for Judgment on Costs

Counsel for the Petitioners:

D.H. Griffith

Counsel for the Respondents, Carolynne
Cassidy and The Estate of Evelyn Beatrice
Robertson:

M.W. Buhler, K.C.

Place and Date of Hearing:

Nanaimo, B.C.
March 25, 2026

Place and Date of Ruling given to Parties:

Nanaimo, B.C.
April 17, 2026

Written Submissions (re: Costs) from the
Petitioners:

May 15, 2026

Written Submissions (re: Costs) from the
Respondents:

May 29, 2026

Place and Date of Judgment (re: Costs):

New Westminster, B.C.
June 18, 2026

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Overview

[1] On March 25, 2026, I heard a petition pursuant to s. 324(1)(b) of the *Business Corporations Act*, S.B.C. 2002, c. 57, to order the liquidation and dissolution of Lauchlin Enterprises Inc. (“LEI”), a family-owned holding company, ostensibly established for tax and estate planning purposes.

[2] The petition concerned a dispute between four siblings who are shareholders of LEI. The parties are Janet Robertson, Gordon Robertson, Carolynne Wilda Cassidy, Peter Robertson, and the Estate of Evelyn Beatrice Robertson (the “Estate”). Carolynne is the executrix of the Estate. Evelyn Robertson was the late mother of Janet, Gordon, Carolynne, and Peter, who are siblings. To avoid confusion, I will refer to members of the Robertson family by their first names. In again doing so, I intend no disrespect.

[3] Two of the siblings, Janet and Gordon, were the petitioners (the “Petitioners”). This petition was opposed by the other two siblings, Carolynne and Peter, who are the respondents. The Petition was contested by Carolynne (the “Respondent”) in both her personal capacity as well as in her capacity as the executor and trustee of the Estate. At the time of the hearing of the petition, Carolynne was also the sole director of LEI.

[4] On April 17, 2026, I delivered my reasons for judgment on the petition orally in court, ordering the liquidation and dissolution of LEI, the effect of which was suspended for 120 days. I also provided that the parties could provide me with written submissions regarding costs, which were not to exceed five pages in length. The petitioners were to deliver their submissions on costs by May 18, 2026, and Carolynne was to deliver any reply submissions by June 1, 2026.

[5] I received written submissions from the Petitioners and the Respondent in accordance with my direction. These are my reasons on the costs application.

Position of the Parties

[6] The Petitioners seek an order that the Petition Respondent, Carolynne, be ordered to pay their costs of this proceeding, to be assessed at Scale “B”. The Petitioners also seek an order that these costs be paid by Carolynne personally, not by the Estate or by LEI itself. They point to a handful of authorities, which provide examples of situations where unsuccessful litigants in shareholder disputes to recover legal fees from the Corporation of the estate: *Yen v. Ghahramani*, 2023 BCCA 403; *Rasner v. Berger*, 2026 BCCA 166 [*Rasner BCCA*]; *Levi-Bandel v. McKeen*, 2011 BCSC 247; *Lizotte v. Arseneault, Bird, LeBlanc*, 2012 NBCA 89.

[7] The Respondent does not dispute that costs should be awarded to the petitioners as party and party costs to be assessed at Scale B. Nor does the Respondent dispute that costs should not be awarded against LEI, as LEI was never a petition respondent per Rule 16-1(1). The Respondent does argue that she should not be denied indemnification by the estate simply because she is both a trustee and a beneficiary of the estate. Carolynne maintains that absent a finding that she acted unreasonably in defending the litigation, she is entitled to be indemnified for reasonable legal costs incurred by virtue of her role as executor of the Estate.

Legal Framework**Liability for Costs**

[8] The general rule is that costs are awarded to the successful parties and are assessed as party and party costs in accordance with Appendix B and Rules 14-1(1) and 14-1(9): see *Koskoski v. Russell*, 2025 BCSC 2065 at para. 4.

[9] The concept of “substantial success” was discussed by Justice Choi in *Can-West Development Ltd. v. Parmar*, 2020 BCSC 439 [*Can-West*]. In particular, she noted that “[i]n determining substantial success, the court need not descend into a meticulous mathematical examination of the matters in dispute”, and that rather, the court ought to do the following in considering both substantial success and liability for costs:

1. Focus on the matters in dispute, which may or may not include issues mentioned explicitly in the pleadings;
2. Assess the weight or importance of these matters to the parties;
3. Globally determine which party substantially succeeded overall; and
4. Where one party achieved substantial success, consider whether there are reasons to “otherwise order”.

Scale of Costs

[10] Rule 14-1(1) provides that “[i]f costs are payable to a party under these *Supreme Court Civil Rules* or by order, those costs must be assessed as party and party costs in accordance with Appendix B” unless certain circumstances are met.

[11] The Petitioners acknowledge that the circumstances of the case at Bar do not justify departing from the normal practice under Rule 14-1(1), and as such Scale “B” costs should be awarded. The Respondent points out that in this proceeding, the unsuccessful parties are: (a) Carolynne personally; (b) Carolynne as executor of the Estate of Evelyn Beatrice Robertson; and (c) Peter Robertson.

Responsibility for Costs

[12] Focussing then on the question of whether there should be an order that costs be paid by Carolynne personally and not by the Estate, I turn to the authorities.

[13] The petitioners rely on *Rasner v. Berger*, 2026 BCCA 166 in support of their request that only Carolynne personally pay costs. In that case, Ms. Rasner, as executor, sued a beneficiary to try to bring property owned by the defendant beneficiary to the estate. The lawsuit was unsuccessful. Justice Francis, in deciding the application for leave, noted that the trial judge’s cost award was the result of a fact specific exercise of discretion informed by the particular circumstances of the case before her, including that:

- a) Ms. Rasner commenced litigation after the entire estate had been distributed, including the distribution of significant annuities to herself (leaving no funds to pay a cost award);
- b) the litigation was commenced almost ten years after the deceased died; and

- c) Ms. Rasner was the only person who stood to benefit from the litigation.

[14] The same cannot be said here, and as such, *Rasner* does not well assist the Petitioners. The case at bar is not a case where Carolynne as executor commenced a proceeding and then lost. Further, Ms. Rasner, on the facts of that case, was the only person whose interests were advanced by her litigation decisions. In the case at bar, if Carolynne had been successful all shareholders of LEI, including the Estate, would have avoided incurring the not insignificant costs of a liquidation.

[15] The Respondent argues that Carolynne as executor did not act unreasonably in defending the litigation. I agree. It is well-established that liquidation of a corporation is a remedy of last resort, and a discretionary one at that. As pointed out by the Respondent, the Petitioners acknowledge that, “while the case was hard fought, the parties and their counsel conducted themselves properly during the litigation...” I also agree with the respondent that her submissions in defence of the petition were reasonable and raised issues that were appropriate for me to consider in exercising my discretion.

[16] The petitioners also rely on *Levi-Bandel v. McKeen*, 2011 BCSC 247, a case in which one co-executor, Levi-Bandel, sought an order removing the other co-executor, McKeen. The beneficiaries of the estate consented to the order. Only McKeen opposed the application.

[17] In the result, the court removed McKeen as executor. The court held that McKeen was acting for herself, not the estate, in opposing the application to remove her as co-trustee. The court denied McKeen’s request to have the estate indemnify her for her costs of defending the application but also denied the applicant’s request to have McKeen personally pay the costs of the application.

[18] The facts in *Levi-Bandel* are quite different from the case at Bar. In *Levi-Bandel* it was relatively easy to see that McKeen’s self-interest in remaining a trustee was opposed by the other co-trustee as well as the other beneficiaries. Such is not the case here. Carolynne was joined by Peter in relation to their decision to

defend the action. Additionally, the other shareholders, while not parties to the litigation, had not aligned themselves with either side in this dispute.

[19] The Respondent relies on *Geffen v. Goodman Estate*, [1991] 2 S.C.R. 353, in support of the proposition that trustees (including executors) are to be indemnified for their costs in bringing or defending actions on behalf of the estate unless the trustees were acting unreasonably or in substance for their own benefit and not the benefit of the estate: see also *Kordyban v. Kordyban*, 2004 BCSC 184 at para. 18; Mark S. Weintraub, K.C. and Amy A. Mortimore, K.C., *British Columbia Estate Litigation*, 2nd ed (Toronto: LexisNexis Canada, 2025), § 910 (p. 299).

[20] In *Geffen*, Wilson J. reasoned that while defending the action may have been in the trustee's benefit, it was also in the interests of his fellow beneficiaries:

74 The courts have long held that trustees are entitled to be indemnified for all costs, including legal costs, which they have reasonably incurred. Reasonable expenses include the costs of an action reasonably defended: see *Re Dingman* (1915), 35 O.L.R. 51. In *Re Dallaway*, [1982] 3 All E.R. 118, Sir Robert Megarry V.C. stated the rule thus at p. 122:

In so far as such person [trustee] does not recover his costs from any other person, he is entitled to take his costs out of the fund held by him unless the court otherwise orders; and the court can otherwise order only on the ground that he has acted unreasonably, or in substance for his own benefit, rather than for the benefit of the fund.

...

76 Nor can there be any serious question that the appellants in defending the action were acting, not for their own benefit, but for the good of the trust. For William Geffen, of course, defending the action promoted both his personal interest as well as that of his fellow beneficiaries. While we have not been referred to a case in which trustees seeking indemnification from a trust were also beneficiaries of the trust, I do not consider the co-existing interest of trustee and beneficiary a valid basis for denying costs. [emphasis added]

[21] There is no basis to suggest that Carolynne's decision to defend this petition was unreasonable. In fact, the Petitioners in their written submissions do not articulate how, or on what basis, the decision to defend was, in fact, unreasonable. They simply assert, in a conclusory way, that as a trustee and a beneficiary, Carolynne should not be indemnified. I find there is no basis to assert that

Carolynne's decision to defend the petition was in service of her personal interests alone.

[22] As a result, on the evidentiary record before me, I am not persuaded that it is appropriate for me to rule that Carolynne must pay the Petitioners costs in her personal capacity.

[23] I make the following order:

1. The petitioners are awarded their party and party costs of the proceeding to be assessed at Scale B, to be paid by the petition respondents.

"Gottardi J."