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Docket: PR 26-01-41711
(Winnipeg Centre)
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Cited as: 2026 MBKB 141

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

ANGELA MARIA EMMS,	)	Janet I. Jardine
	)	for the applicant
applicant,	)	
- and -	)	
	)	Kevin T. Williams, K.C.
MICHAEL DONALD FUTROS AND	)	Amanda Verhaeghe
TAPPER CUDDY LLP,	)	for the respondents
	)	
respondents.	)	Judgment Delivered:
	)	October 19, 2026

TOEWS J.

INTRODUCTION

[1] The applicant Angela Maria Emms (hereinafter referred to as the "applicant") has commenced an application seeking various declarations and orders in respect of the respondent Michael Douglas Futros (hereinafter referred to as the "executor") and his handling of the estate of Mary Sophie Futros (hereinafter referred to as the "deceased"). The applicant also seeks to have Tapper Cuddy LLP and in particular Amanda Verhaeghe (hereinafter referred to as "Ms. Verhaeghe") removed as counsel for the executor of the estate.

[2] The applicant alleges that the executor has breached the fiduciary duty owed by him to the applicant. The applicant is one of the primary beneficiaries of the estate of the deceased. The applicant seeks an order appointing the Public Guardian and Trustee of Manitoba as administrator with will annexed. She seeks an accounting of all assets of the estate and an order that either or both respondents personally pay or otherwise compensate the estate for any losses or damages sustained by the estate as a result of the manner in which they have handled the estate. The applicant also seeks an order that the executor and Tapper Cuddy LLP is not entitled to any executor's fees or other compensation whatsoever from the estate.

[3] I note the executor is acting in this capacity on an unpaid basis and has the support of all of the beneficiaries of the estate, save and except the applicant. He is a sibling of the deceased and is not a beneficiary under the terms of the deceased's will. No grant of probate has been issued in respect of the deceased's will nor have any funds been dispersed by the executor to the beneficiaries named in the will.

[4] The hearing in respect of this application took place before me on October 1, 2026, and did not deal with a separate proceeding (CI 24-01- 48868) also involving the parties. That litigation concerns the validity of a power of attorney (referred to herein as the "POA litigation"). The only issues before me on October 1, 2026, were the applicant's request for orders and declarations related to the removal of the executor and Tapper Cuddy LLP.

POSITION OF THE APPLICANT

[5] The applicant takes the position that the respondents have failed to properly administer the estate of the deceased by failing to establish an estate bank account

outside of the trust account maintained by Tapper Cuddy LLP. She states that the executor and Tapper Cuddy LLP have refused to administer the property of the estate faithfully according to law or to exercise their discretion in a manner so as to comply with their fiduciary obligations to the beneficiaries. She maintains that the executor is blinded by animosity towards her as a beneficiary.

[6] The applicant also argues that just as the executor owes a duty to act in the best interests of the beneficiaries and not to become an adversary towards a beneficiary in the administration of the estate, so do the executor's lawyers and representatives. The applicant states in her affidavit that there are a number of allegations against Ms. Verhaeghe and another member of Tapper Cuddy LLP that raise legitimate concerns on the part of the applicant as to the ability of Tapper Cuddy LLP to act in her best interests and not treat her as an adversary in administering the estate.

[7] The applicant argues that the executor is unable to answer these allegations against Ms. Verhaeghe and Tapper Cuddy LLP due to the provisions of the King's Bench Rules which preclude him from giving evidence on the basis of information and belief regarding contentious matters. Accordingly, she states that this will necessitate the giving of evidence by a member of Tapper Cuddy LLP. She argues that for them to continue as counsel to the executor would violate the Law Society of Manitoba Code of Professional Conduct prohibiting lawyers from acting as both witness and counsel in a legal proceeding.

[8] The applicant maintains that because the respondents are imperious, belligerent and evasive in their handling of the estate and their communications with the beneficiary,

costs on the basis of solicitor and his own client should be awarded against the respondents.

[9] In the Reply Motion Brief of the applicant, the applicant details the evidence relied upon which form the basis of the allegations of inappropriate conduct on the part of the respondents. At tab B of that document (KB filing #30 in the application file), the applicant sets out what she argues is inappropriate involvement by legal counsel, Mr. Kevin Williams, from the firm Taylor McCaffrey LLP in the course of the executor being examined on his affidavit. The allegations include improperly "answering on behalf of Michael Futros", "objecting to questions", "giving undertakings" and "Futros asking Williams questions re his evidence".

[10] The applicant states in her material that counsel from Tapper Cuddy LLP will be required to give contentious evidence in this matter which includes *inter alia* statements by the executor in his affidavit concerning:

a) Ms. Verhaeghe telling him that "new counsel should not require much time to get fully up to speed";
b) Why the court apparently rejected the Probate request;
c) Why there was a rush to file probate at a time when she was unable to meet filing deadlines in the POA litigation;
d) Why counsel from Tapper Cuddy LLP gave the executor advice to use the law firm's trust account as the estate account;
e) Mr. Tim Taylor's expertise as a counsel doing estate work; and

f) Evidence of the earnestness of counsel's efforts and the necessity and relevance of steps taken by the executor.

[11] In addition, the applicant states in her material that the executor made various admissions on being cross examined on his affidavit in respect of the lack of his firsthand knowledge.

POSITION OF THE RESPONDENTS

[12] It is the position of the respondents that neither the executor or Tapper Cuddy LLP should be removed. They state:

a) Neither Ms. Verhaeghe or Mr. Taylor need to give evidence in respect the matters raised by the applicant;

b) The executor is entitled to be represented by counsel of choice and should not be put to the expense of hiring new counsel;

c) There is no conflict as being alleged by the applicant on the part of Tapper Cuddy LLP and the firm or its legal partners should not be disqualified from acting for the executor.

[13] The respondents state that Ms. Verhaeghe, as litigation counsel for the respondents, or Mr. Taylor, as counsel to the executor, are not acting as both lawyer and witness in this matter. Neither have sworn or filed any of the affidavits that will be relied upon at the hearing of this application. In addition, the applicant has not exercised her right under the Rules to examine either one of them prior to the hearing (see KB Rule 39.02), and the time to do so expired at the commencement of cross-examinations on the affidavits filed.

[14] In respect of the concern raised by the applicant about the respondents' material that relies on information and belief or hearsay, the respondents state that unless a fact is obviously contentious, the party opposing the admissibility of hearsay evidence must establish that it is contentious through either cross-examination on the affidavit or filing responding affidavit material. Further, if a person swears or testifies as to what they were told, those statements are not hearsay to the extent that they are not going to the truth of the contents of what they were told.

[15] The respondents argue that the material objected to by the applicant is either not contentious, it is irrelevant to the issues that the court must determine, or it relates to the executor's state of mind when making certain decisions relating to the estate and is not offered as to the truth of the statements being made. Accordingly, the concerns raised by the applicant in respect of the impugned material are not justified.

ANALYSIS AND DECISION

[16] In reviewing the evidence, it is my conclusion that there is no basis to justify the removal of either the executor of the estate or his counsel.

[17] It is well established that counsel cannot be both lawyer and witness in a particular proceeding where counsel is expected to be a material witness at a hearing. However, my review of the material leads me to the conclusion there is no evidentiary concern here giving rise to this predicament. I agree with the position of the respondent that the applicant's concerns about the impugned paragraphs in the respondents' evidence come down to an evidentiary argument about what may or may not be admissible or what weight should be given to the evidence. On the basis of my review of the evidence here,

it is not a situation where the court will be placed in the untenable position of having to assess the credibility of counsel who has given evidence.

[18] Owing to the actions of the applicant, the executor has been unable to take any substantive steps to have the will probated or to disperse the assets in accordance with the deceased's wishes. Furthermore, the applicant admits that she does not take issue with the validity of the will or any of the bequests purportedly granted pursuant to its concerns. No substantive concerns have been raised by the applicant in respect of the will's form or substance.

[19] All of the other beneficiaries agree that the executor should continue in this role, including the one other beneficiary who like the applicant stands to receive a sizeable portion of the deceased's property. In my opinion the evidence does not establish any concern that this particular executor may breach the obligations he is required to fulfill in carrying out those responsibilities. At the conclusion of carrying out those responsibilities the executor can be required to account for the decisions he has made and the distribution of the estate's assets.

[20] I disagree with the applicant's characterization of the evidence that the manner in which the respondents have behaved towards the applicant in the POA litigation and in this litigation justify their removal.

[21] In particular, with respect to the respondents' apparent position that the executor and his legal counsel are unable to carry out their responsibilities because they have or may take a position adverse to the interests of the applicant, I find that argument to be without merit. If that in fact is the applicant's position, she is mistaken. It is not the

executor's duty to carry out the wishes of the applicant without regard to the terms of the will or the law. Nor is it the role of the court to interfere in the appropriate exercise of the discretion granted to the executor under the terms of the will. The executor and his legal counsel are to act reasonably and with an even hand in carrying out their responsibilities. It is in that context that they owe all beneficiaries a duty to act in their best interests. There is no reason to believe on the basis of the evidence here that they will not do so.

[22] It is my opinion that the application raises no substantive concerns regarding the continued appointment of this executor or the legal counsel he has retained. Therefore, the application is dismissed.

[23] While I am not prepared to state, as the respondents have alleged, that this application is simply a tactical maneuver to have the executor and his counsel removed, I am of the opinion that this application does nothing to advance the proper administration of the deceased's estate. Accordingly, it is my order that the respondents shall have their costs in any event of the cause on the basis of the appropriate tariff to be paid out of the applicant's portion of the assets of the estate and not out of the assets of the estate generally. In my opinion an award of solicitor and his own client costs is not warranted.

_____ J.