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2005 CarswellOnt 62

Brown Estate (Trustee of) v. Chin

THE BANK OF NOVA SCOTIA TRUST COMPANY in their capacity as the Estate Trustee
without a Will of the Estate of Robert Guy Brown, deceased (MOVING PARTY) and
PETER CHIN, PATRICIA BROWN, BRENDA NICHOLS, GLEN BROWN, SUSANNE VIDITO for and
on behalf of a minor, THE CHILDREN'S LAWYER AND BONNIE BROWN (RESPONDENTS),
COURT FILE NO. 03-2466

BRENDA LYNN NICHOLS (APPLICANT) and THE BANK OF NOVA SCOTIA, ESTATE TRUSTEE FOR
THE ESTATE OF ROBERT GUY BROWN, NICOLE BROWN, GLEN BROWN and SUSANNE VIDITO
(RESPONDENTS), COURT FILE NO. FL741-04

Ontario Superior Court of Justice

Howden J.

Judgment: January 10, 2005

Docket: 03-2466, FL 741-04

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Proceedings: additional reasons to *Brown Estate v. Chin* ([2004](#)), [2004 CarswellOnt 4547](#) (Ont. S.C.J.)

Counsel: Kimberly **Whaley** for Bank of Nova Scotia

Carolyn Tonin for Peter Chin, Patricia Brown

P. Ann Lalonde for Nicole Brown

Martin J. Prost for Brenda Lynn Nichols

Bonnie Brown for herself

Glen Brown for himself

Subject: Estates and Trusts; Civil Practice and Procedure

Estates and trusts --- Estates -- Miscellaneous issues

Costs of proceedings -- Deceased died intestate leaving his daughter as sole heir -- Claimant applied for return of

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personal property and preservation order, and sale of tractor -- Estate trustee brought motion for advice and directions -- Trustee was directed to pay \$60,000 into court for support of child -- Preservation order was granted - - Trustee had 30 days to determine whether any property should be returned to claimant after which she could renew motion -- Issue arose with respect to costs -- Certain parties had no basis to claim costs on motion -- Proceeding in Family Court pending motion for directions was unnecessary and increased all parties' costs -- Any interest of certain respondents in directional order was addressed by trustee's draft order, or dealt with directly by court -- Claims to proceed in Family Court and to sell tractor before trial were not successful -- Trustee was entitled to its costs on full indemnity basis -- Quantum of defending Family Court claim was not reasonable, and amount was to be reduced to \$5,500.00 including disbursements.

Cases considered by *Howden J.*:

Josephs Estate, Re ([1993](#)), [17 C.P.C. \(3d\) 36](#), [14 O.R. \(3d\) 628](#), [50 E.T.R. 216](#), [1993 CarswellOnt 403](#) (Ont. Gen. Div.) -- referred to

ADDITIONAL REASONS to judgment reported at *Brown Estate v. Chin* ([2004](#)), [2004 CarswellOnt 4547](#), [15 E.T.R. \(3d\) 60](#) (Ont. S.C.J.), with respect to costs.

***Howden J.*:**

1 The ruling dealt with by me did not require the claimant to institute proceedings in Family Court (knowing that the Trustee would bring a motion for directions including the jurisdictional and other issues of concern to her) and to force that proceeding to a case conference at a time when the claimant had been advised through her lawyer that the Trustee's counsel was not available. Urgency was claimed; but there was no basis for that claim whatsoever. The claimant had brought no proceedings in respect of these claims during the deceased's lifetime in the years subsequent to their separation. This was done in an attempt to obtain an advantage, and if it was not sharp practice, it is not a practice that can be countenanced by this court. Despite the initiative taken by the Trustee's counsel to raise the issue of resolution and of a procedure to deal with the matters in dispute, the claimant's counsel displayed little or no interest in those initiatives until later in October by which time most of the unnecessary work prior to this motion being brought on for hearing had been done.

2 As to the respondent Peter Chin, while as a respondent he was entitled to be present, neither he nor Patricia Brown were required to take a position supporting the claimant on her issue. Though Mr. Chin's material spoke of some claim that he asserts for costs while he dealt with this estate without lawful authorization, no such claim was before me, yet he now asks for costs. Whether he has met fully the terms of the prior order of MacKinnon J. and of my order remains uncertain, and if he has not done so yet, he should attend to them forthwith.

3 In my view, neither the claimant Brenda Nichols nor the respondents Peter Chin and Patricia Brown have any basis to claim costs on this motion. Ms. Nichols' proceeding in Family Court pending the motion for directions was unnecessary and increased all parties' costs. Any interest of the respondents Peter Chin and Patricia Brown in the directional order was addressed by Mr. Prost or the Trustee's draft order, or it was dealt with directly by the court. Ms. Nichols' claims to proceed in Family Court and to sell a tractor before trial, which she did nothing to protect against seizure, were not successful for good and obvious reasons, in my view.

4 The Trustee is entitled to its costs on a full indemnity basis. *Josephs Estate, Re* ([1993](#)), [14 O.R. \(3d\) 628](#) (Ont. Gen. Div.) I have reviewed the draft bill of costs. The quantum of defending the Family Court claim is not reasonable on the material before me and I find that amount to be \$5,500.00 including disbursements. The Trustee's draft bill of costs will be reduced by \$6,138.46. As to the remainder of the amount claimed, no particulars of the bill were opposed by any of the parties, and that includes counsel for the Children's Lawyer. I trust that none of the amounts claimed in the bill of costs will form part of a later bill of costs for the same period.

5 In the result, Brenda Nichols will pay to the Trustee of the Estate of Robert Guy Brown the sum of \$5,500.00 within sixty days hereof. As reduced by that amount, the Trustee's costs are otherwise allowed as claimed (Tab N, Costs Submissions).

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6 No costs are awarded to the respondents Peter Chin and Patricia Brown.

Order accordingly.

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