

PROVINCE OF NOVA SCOTIA)
)
COUNTY OF HALIFAX)

IN THE COURT OF PROBATE

IN THE MATTER OF: **The Estate of Elmer Lemuel Barr** , late of
 Oakfield, in the Halifax Regional Municipality
 and Province of Nova Scotia

D E C I S I O N

Cite as: Barr Estate, Re, 2002 NSPB 1

HEARD: At Halifax, Nova Scotia, before Sharron M. Atton
 Registrar of Probate, for the County of Halifax, on
 May 15th , 2002

DECISION: June 11th, 2002

COUNSEL: R. Barry Ward, for the Applicant, Laurie Barr
 Victor J. Goldberg, for the Respondent, Constance Barr

An application by way of an Interlocutory Notice (Application Inter Parties) was filed by the applicant, Mr. Laurie Barr, on May 8th, 2002 for an Order pursuant to Civil Procedure Rule 52.03 to vary the Order issued by myself as Registrar of Probate which was issued the 14th day of March, 2002 by specifying a time for compliance by Constance Joyce Barr. The time for compliance is in reference to paragraph 4, Page 2 of the Order which states “**AND UPON HAVING READ** and relying upon the undertaking by Constance J. Barr in paragraph 29 of her said Affidavit stating “I am prepared to provide a full accounting of my actions under the Power of Attorney”, and finding both original Wills on file to be identical;”

The Order of March 14th, 2002 ordered the following:

- “1. The Court of Probate shall issue a Grant of Probate in Form 20;
2. The Grant of Probate shall be to both Laurie L. Barr and Constance J. Barr as executors as both are so designated and named in the Will;
3. The Grant of Probate shall issue as at January 29, 2002;
4. The remaining matters under the Application under Probate Rule 64(3) shall stand dismissed.
5. The costs of both Laurie E. Barr and Constance J. Barr shall be taxed as between solicitor and client and paid out of the Estate;
6. The costs of Constance J. Barr shall include the costs of Mr. William Sutherland, Q.C., in finding the Application for Grant of Probate sworn by Constance J. Barr on January 2, 2002.”

Civil Procedure Rule 52.03(2)(b) states as follows:

“The court may from time to time vary an order referred to in paragraph (1), by requiring any act to be done or abstained from,

(b) when the order does not specify any time, within such time as may be specified in the order.”

The applicant is asking this court to specify a time for compliance of Mrs. Constance J. Barr to provide a full accounting of her actions under the Power of Attorney.

The Order of March 14th, 2002 does not order Mrs. Barr to provide a full accounting of her actions under the Power of Attorney and I do not consider the undertaking set out in the Order of March 14th, 2002 to be contained within the operative part of the Order.

If an accounting by Mrs. Barr, under the Power of Attorney executed by her late husband, is being requested by the applicant, the Court of Probate has no jurisdiction to deal with this request as the proper forum for such an application is in the Supreme Court.

As stated at the conclusion of the hearing on May 15th, counsel may make written submissions as to costs.

June 11th, 2002

REGISTRAR OF PROBATE