

Form 1 (Rule 8-1(1))

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

AUG 25 2010



No. S104766  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**MICHAEL MORRISSEAU, CHRISTIAN MORRISSEAU, EUGENE  
MORRISSEAU, VICTORIA KAKEKAGUMICK, DAVID MORRISSEAU,  
PIERRE ROY MORRISSEAU and LISA ANNE MORRISSEAU**

PLAINTIFFS

AND:

**GABOR MICHAEL VADAS, in his capacity as executor of the will and trustee of  
the estate of NORVAL HENRY MORRISSEAU, deceased and GABOR MICHAEL  
VADAS in his personal capacity**

DEFENDANT

**NOTICE OF CIVIL CLAIM**

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

#### TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

#### CLAIM OF THE PLAINTIFFS

##### **Part 1: STATEMENT OF FACTS**

1. The Plaintiff Michael Morrisseau is an adult child of Norval Henry Morrisseau, deceased (the "Testator") who died on December 4, 2007 leaving a purported last will and testament dated July 16, 1999 (the "Alleged Will"). This Plaintiff resides in Keewaywin, Ontario.
2. The Plaintiff Christian Morrisseau is an adult child of the Testator. This Plaintiff resides in Keewaywin, Ontario.
3. The Plaintiff Eugene Morrisseau is an adult child of the Testator. This Plaintiff resides in Thunder Bay, Ontario.
4. The Plaintiff Victoria Kakekagumick is an adult child of the Testator. This Plaintiff resides in Keewaywin, Ontario.
5. The Plaintiff David Morrisseau is an adult child of the Testator. This Plaintiff resides in Toronto, Ontario.
6. The Plaintiff Pierre Roy Morrisseau is an adult child of the Testator. This Plaintiff resides in Keewaywin, Ontario.
7. The Plaintiff Lisa Anne Morrisseau is an adult child of the Testator. This Plaintiff resides in Keewaywin, Ontario.
8. The Defendant Gabor Michael Vadas ("Vadas") is the executor named in the Alleged Will. He resides in Nanaimo, British Columbia.

9. To the best of the Plaintiffs' knowledge, a Grant of Probate of the Alleged Will has not yet been issued.

10. By the terms of the Alleged Will, after payment of all just debts and funeral and testamentary expenses, the Testator's estate devolves entirely to Vadas.

### **The Will Is Invalid**

11. The Alleged Will was executed under suspicious circumstances, the particulars of which are as follows:

- (a) the Testator did not have independent legal advice with respect to the Alleged Will;
- (b) the Testator's name is misspelled throughout the Alleged Will;
- (c) At the time the Alleged Will was executed, the Testator was suffering from advanced Parkinson's disease and was physically, mentally and emotionally frail;
- (d) At the time the Alleged Will was executed, the Testator was dependant on Vadas for all aspects of his day to day existence and had very little contact with anyone other than Vadas.

12. The Testator did not know and approve of the contents of the Alleged Will.

13. The Testator lacked testamentary capacity at the time the Alleged Will was made.

14. The Testator was subject to the undue influence of Vadas, the particulars of which are known to the Defendant and which include:

- (a) Vadas deliberately isolated the Testator from his family;
- (b) Vadas dominated and controlled every aspect of the Testator's life, including his health, finances, business and personal relationships;
- (c) Vadas profited handsomely from the sale of the Testator's artwork while the Testator lived in virtual poverty; and
- (d) Vadas was often verbally abusive with the Testator and the Testator was intimidated by him.

### **Wills Variation Act**

15. The Plaintiffs are all in circumstances of financial need.

16. The Testator had a moral obligation to provide for the Plaintiffs in all of the circumstances.

17. The Will does not make adequate provision for the proper maintenance and support of the Plaintiffs.

## **Part 2: RELIEF SOUGHT**

- (a) a Declaration that the Alleged Will is invalid and that the Testator's estate passes on an intestacy;
- (b) in the alternative, a declaration pursuant to the *Wills Variation Act* RSBC 1996 that the Alleged Will does not make adequate, just and equitable provision for the Plaintiffs;
- (c) an order that such provision as the Court may deem adequate, just and equitable in the circumstances be made out of the Testator's estate;
- (d) such further and other relief as to this honourable Court may seem just; and
- (e) costs of this action.

## **Part 3: LEGAL BASIS**

1. The legal basis of the claim is that the Alleged Will is invalid on the basis of lack of testamentary capacity, lack of knowledge and approval and undue influence.

2. In the alternative, the legal basis for the Plaintiff's claim is found in s. 2 of the *Wills Variation Act*, R.S.B.C. 1996, c. 490 (the "Act"), which provides in part that if a testator dies leaving a will that does not, in the court's opinion, make adequate provision for the proper maintenance and support of a child of the testator, the court may, in its discretion, in an action by or on behalf a child, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the testator's estate for the children.

2. The Plaintiffs are children of the Testator and are entitled to apply to the court for an order varying the Alleged Will.

3. There are no valid or rational reasons for disinheriting the Plaintiffs.

3. The Testator had a moral obligation to provide for the Plaintiffs in the Alleged Will and there were no circumstances which would negate this moral obligation.

4. In the result, the Alleged Will does not make adequate provision for the proper maintenance and support of the Plaintiffs.

Plaintiff's address for service:

Legacy Tax + Trust Lawyers  
510 - 609 Granville Street  
Vancouver, BC V7Y 1G5  
Attention: Amy D. Francis

Fax number address for service: 604-683-6953

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC V6Z 2E1

Dated: August 24, 2010.



Amy D. Francis

☐ plaintiff ☒ lawyer for plaintiffs

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
  - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
  - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

#### APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The Plaintiffs seek an order varying a will.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

*[Check one box below for the case type that best describes this case.]*

- ☐ a motor vehicle accident
- ☐ personal injury, other than one arising from a motor vehicle accident
- ☐ a dispute about real property (real estate)
- ☐ a dispute about personal property
- ☐ the lending of money
- ☐ the provision of goods or services or other general commercial matters
- ☐ an employment relationship
- ☒ a dispute about a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

**Part 3:**

*[If an enactment is being relied on, specify. Do not list more than 3 enactments.]*

*Wills Variation Act, R.S.B.C. 1996, c. 490*