

In the Supreme Court of British Columbia

Between

CANADIAN IMPERIAL BANK OF COMMERCE

Petitioner(s)

and

**Gerald Wayne Jack Daley, DECEASED
Victoria Nevens the EXECUTOR/ADMINISTRATOR/PERSONAL
REPRESENTATIVE of the estate of Gerald Wayne Jack Daley
JOHN DOE and JANE DOE**

Respondents(s)

NOTICE OF APPLICATION

Name(s) of applicant(s): Victoria Nevens the EXECUTOR/ADMINISTRATOR/PERSONAL REPRESENTATIVE of the estate of Gerald Wayne Jack Daley

On the application of the respondent Victoria Nevens the EXECUTOR/ADMINISTRATOR/PERSONAL REPRESENTATIVE of the estate of Gerald Wayne Jack Daley made without notice coming before me at the courthouse at **850 Burdett Avenue, Victoria British Columbia V8W 1B4** on _____ at _____ for the order(s) set out in Part 1 below.
[dd/mmm/yyyy] [time]

Part 1: ORDER(S) SOUGHT

I Victoria Nevens am in fear for my life. I am the lawful EXECUTOR/ADMINISTRATOR/PERSONAL REPRESENTATIVE of the estate of Gerald Wayne Jack Daley requesting the inherent jurisdiction of the court over and above the Rules to make orders to do justice between the parties.

1. An order sought by this application is for an urgent prohibitive injunction to prevent the petitioner from obtaining a Writ of Possession to execute a violent unlawful eviction of myself, Victoria N. causing irreparable harm. I, the applicant, am the tenant on the lands and premises as well as the personal representative of the estate of Gerald Wayne Jack Daley.

2. An order sought by this application is for an urgent mandatory injunction to force the petitioner CIBC to engage in private negotiations with me Victoria N. to resolve this dispute honestly and considerately in order to respect the rights available to me in the Last Will and Testament of Gerald Wayne Jack Daley.
3. An order sought by this application is for an urgent *quia timet* injunction due to the high degree of probability the harm to me, Victoria will in fact occur, be life-threatening and is imminent.

Part 2: FACTUAL BASIS

1. I Victoria Nevens am a woman with disabilities from decades of torture, violent assaults, slander, liable, acts of genocide, racism, hate crimes, injustice, inequality, discrimination and continual devastating loss which have resulted in a professional diagnosis of acute Post Traumatic Stress Injuries (PTSD). These damages adversely affect my health and seriously impair my ability to function normally if forced to work outside my residence. With these special needs further harm is imminent if I am continually compelled into unloving, cruel, toxic social situations with 'the public' which caused further serious traumatic injuries to my existing life-threatening wounds.
2. I Victoria Nevens am the personal representative of the estate of my spouse Gerald Wayne Jack Daley being harmed with unnecessary litigation by CIBC in this proceeding and its representative agents.
3. I Victoria Nevens do not consent to litigation proceedings against the estate of my spouse as it is my understanding from careful investigation of the evidence there is no liability owed to CIBC.
4. My spouse was recorded as "Jack Daley" on invoices and statements.
5. January 2003 Jack and I moved into our familial residence.
6. January 2013 Jack purchased Life Insurance on our loan/Mortgage.
7. January 27 2016 my spouse Jack purchased a constructive Trust called a Last Will and Testament leaving me controller/owner of all his property of every kind and wherever located. This trust gives me as surviving spouse the right to stay in our residence for the remainder of my life. Jack's Will eliminates any third party from beginning litigation against the estate as disputes must be handled privately.
8. May 11 2017 Jack suddenly passed contributing greatly to my Post Traumatic Stress Injuries.
9. August 2017 I was notified our mortgage was paid in full by Jack's Life Insurance policy.
10. For 16 months I understood there was no liability owed to CIBC by its silence.
11. September 2018 a demand letter for approx. forty (40) thousand dollars was sent to my residence.
12. September 2018 demand letter states there are automatic withdrawal payments that have been stopped. There is no proof of automatic withdrawals pertaining to this alleged liability on Jack's bank account before he passed or after.
13. November 2018 litigation representatives for CIBC transferred the title of the 'in trust' estate property from Jack's name into its name without notifying me.

14. Summer of 2019 I repeatedly contacted CIBC customer care via email and phone to settle this matter privately to no avail.
15. I contacted CIBC's litigation agents consistently to settle this matter privately to no avail.
16. January 8 2020 I personally served CIBC Douglas Street with a Notice of Civil Claim for violating its corporate responsibilities, the United Nations Sustainable Development Goals and other international laws which are my right as a Canadian citizen in need of protection.
17. January 15 2020 during a hearing before a master I Victoria a tenant on the lands and premises was struck as party to the proceeding. Section 94 of *Residential Tenancy Act* provides no order of a court is enforceable against a tenant unless the tenant is joined as a party to a proceeding.
18. January 16 2020 I received personal notification my family's permanent residence was sold without right or our consent. Under threats of violent assault, duress, theft of my personal property and violations of my privacy I would be evicted in two weeks.
19. January 28 2020 I was granted another 30 days in my home by CIBC's solicitors before eviction.
20. February 3 2020 I had notarized a *Land (Spouse Protection) Act* application to transfer my family's lands and premises into my name in an attempt to stop the unlawful eviction from my residence. This package has not been submitted to Victoria Land Title office as the title of the property needs to be in a trust not in my personal name as instructed by my spouse's Will and other Acts.
21. February 18 2020 I contacted CIBC via email with a demand letter and invoice for \$117,400.00 for unpaid property management fees and reimbursements for property running costs.
22. February 20 2020 I filed a dispute with BC Residential Tenancy Branch File No. 110000568 to stop the unlawful eviction based on the petitioner's refusal to comply with the Act, other regulations, International law and my spouse's Last Will and Testament.
23. February 21 2020 at 12:26 pm I received a call from Talha ex. 5066 from CIBC client care. He said he was going to investigate helping me stay in my 'in trust' permanent residence. I was informed I would hear back this week. I am terrified and tormented this is an empty assurance.

Part 3: LEGAL BASIS

I Victoria Nevens am in fear for my life. I am the lawful EXECUTOR/ADMINISTRATOR/PERSONAL REPRESENTATIVE of the estate of Gerald Wayne Jack Daley requesting the inherent jurisdiction of the court over and above the Rules to make orders to do justice between the parties.

General Considerations for Interlocutory Injunctions and Irreparable Harm

[10] The Supreme Court of Canada in *R.J.R.-Macdonald Inc. v. Canada (A.G.)* [1994 CanLII 117 \(SCC\)](#), [1994] 1 S.C.R. 311; 54 C.P.R. (3d) 114 (S.C.C.) adopted the tri-partite test as set out by the House of Lords in *American Cyanide Co. v. Ethicon Ltd.* [1975] A.C. 396 that requires:

- 1. The applicant must demonstrate a *prima facie* case or serious question to be tried.**

I the applicant can demonstrate a *prima facie* case for this court to consider granting urgent interlocutory injunctions in order to protect my rights and save my life.

24. May 11 2017 in his Last Will and Testament paragraph 3, 4(a)(b) Jack's interest in our permanent residence (in his name which in reality contains my name whether visible or invisible) was gifted to me 'in trust' granting my right of survivorship, lawful and equitable title to our property of every kind and wherever located for the remainder of my life.
25. Gerald Wayne Jack Daley in his Last Will and Testament paragraph 3 and 4 (b) granted me by right a general release of liability from all future civil claims resulting from any charge he may have had as endorser, guarantor, surety, or otherwise for any liability of any person. This proclamation means no person/corporation can file a claim. A controversy of any alleged liability against my spouse's estate can only be dealt with privately, outside of court which is the reason I seek a mandatory injunction to force CIBC to undertake a positive action of private negotiations with me to settle this matter.
26. I the applicant possess to Common Law right of survivorship to the homestead being the personal representative and surviving spouse pursuant to the *Land (Spouse Protection) Act* 4 (2) Despite any testamentary disposition or rule of law and subject to the liability of the land comprising the homestead for foreclosure or the payment of debts, a personal representative holds the homestead in trust for an estate for the life of the surviving spouse. For legal confirmation see the *Trustee Act* Section 9(1)(c) and 71(3).
27. Pursuant to the Last Will and Testament of my spouse paragraph 3, 4 (a) and (b) upon the passing of my spouse, all property in (our) his name of every kind and wherever located was placed into a **private** Trust for the remainder of my life. This clause in his Will creates a constructive contract where I as personal representative have sole proprietary control of the familial residence & assets.
28. Under the *Family Law Act*, both spouses are responsible to one another for debts incurred during the relationship, but the act itself doesn't give any extra rights to creditors to go after a spouse of the debtor. This material fact is included in paragraph 4 (b) of the Last Will and Testament of G.W.J. Daley. This section of my spouse's Will is confirmed by my unalienable Common Law Rights written in **Leviticus 25:35-36** Now if your neighbour becomes destitute and cannot support themselves, you are to help them like a foreigner or temporary resident, so that they can continue to live among you. Do not take any interest or profit from the poor, but fear the Spirit of Truth, that these ones may live among you. **Deuteronomy 15:7** When you happen on someone who's in trouble or needs help don't look the other way pretending you don't see them. Don't keep a tight grip on your purse. No. Look at them, open your purse, lend whatever and as much as they need. Don't count the cost. Don't listen to that selfish voice saying, "It's almost the seventh year, the year of All-Debts-Are-Cancelled," and turn aside and leave your needy neighbour in the lurch, refusing to help them. They'll call the Almighty's attention to you and your blatant wickedness.
29. When my spouse created his Last Will and Testament paragraph 4 (b) provided a basic settlement agreement or legal release pertaining to any claim due to or due by the estate. This was written to protect the estate, myself his spouse and the other beneficiaries from litigation demanding by right any claim be settled privately to keep the assets from being plundered by any *person* or *the public*.
30. I have no evidence to provide to the court to prove CIBC tried to work with me to keep me in my 'in trust' permanent residence. CIBC did not respect my rights pursuant to the *Convention on the Elimination of All Forms of Discrimination against Women*. This agreement states the Charter of the

United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Article 13 States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit; see Common Law Deuteronomy 15:7 Deuteronomy 15:8

2. The applicant must establish that they will suffer irreparable harm which cannot be adequately compensated in damages.

31. I am a woman with disabilities holding a professional diagnosis of Post Traumatic Stress Injury (PTSD). If I am forced into homelessness and lose my personal and family property, there is no doubt I will suffer irreparable harm. I will not be able to replace these assets which hold great sentimental value. I could never be adequately compensated in damages because these are priceless assets holding memories of my family. These possessions are my lifeline.
32. I the applicant have right to be provided a safe, controlled, familiar environment due to permanent injuries to have an ability to financially provide for myself. If I am forced from my residence, I will not have an opportunity to utilize the premises to own and operate two public service trades greatly contributing to my well being and the betterment & relief of those who need these services.
33. I Victoria am terrified, in fear for my life and have been for months by reason I will be injured by the imminent commission of this wrongful eviction this week on February 28. If forced out of my residence the irreparable harm which cannot be adequately compensated in damages is the reason I, Victoria plead for an urgent *quia timet* injunction to take pre-emptive steps to avoid the loss of my own life and ability to make a living eliminating my burden on society. As a competent, reliable, right minded Woman in need of protection I would like an opportunity to contribute to the community not be a hardship. If I am forced to be a burden on society, I lose my dignity and have no reason to live.

3. The balance of convenience favours the granting of the injunction.

34. The balance of convenience in this matter favours the applicant, a grieving widow and woman with permanent disabilities in need of protection. This court has a responsibility to maintain the status quo of the applicant who has lived in this location for seventeen (17) years; a sufficient period of time establishing a connection to the spousal home and adequate connection with the community. There is no inconvenience to the other parties as the sale provides no guarantee of closing written in the contract to extinguish liability for the bank and others.
35. The balance of convenience to favour the granting of the interlocutory injunction I, Victoria plead with this court for an urgent mandatory ruling to take pre-emptive steps to avoid the loss of my own life in hopes to force CIBC to undertake the positive step of negotiating with me privately to settle the allegation of liability owed by the estate of which I am protector and defender.
36. The balance of convenience to favour the granting of the interlocutory injunction are the instructions in my spouse's Last Will and Testament page 2 para 4(a) which is found in the *Land (Spouse Protection) Act 4 (2)* which states I the personal representative hold our homestead in trust

for the estate for the life of the surviving spouse. Paragraph 4(a) of Jack's Will is found in the *Trustee Act* **Inheritance if person holds in trust**

71 (3) For the purpose of this section, the personal representative of the deceased is deemed in law to be the heir and assign within the meaning of all trusts and powers.

37. The balance of convenience to favour the granting of the interlocutory injunction are the directions in my spouse's Last Will and Testament page 2 paragraph 4(b) which are confirmed to be legally binding on CIBC in the *Trustee Act* **Power to compound**

9 (1) An executor or administrator, or 2 or more trustees acting together, or a sole acting trustee if by any instrument creating the trust a sole trustee is authorized to execute the trusts and powers, may, if and as he or she or they think fit, accept

(c) compromise, compound, abandon, submit to arbitration or otherwise settle a debt, account, claim or other thing relating

to the will-maker's or intestate's estate or to the trust.

36. This court with a *parens patriae* obligation pursuant to the law of equitable remedy must exercise a form of guardianship regarding widows who are members of your community in need of protection. As a widow and the personal representative of my spouse's estate I must assert this court enforce the rights and interest of Jack's Last Will and Testament in conjunction with the *Acts* it utilizes to perform Jack's (my spouse Jack was my protector for over twenty years, his intention was to be my shield after he passed) and the public's duty of care for its vulnerable citizens.

Prowse, J.A. discussed the scope of the *parens patriae* jurisdiction and quoted from the decision of *E.(Mrs.) v. Eve*, [1986 CanLII 36 \(SCC\)](#), [1986] 2 S.C.R. 388 (S.C.C.). Mr. Justice La Forest stated at 426:

The *parens patriae* jurisdiction is, as I have said, founded on necessity, namely, the need to act for the protection of those who cannot care for themselves. The courts have frequently stated that it is to be exercised in the "best interest" of the protected person, or again, for his or her "benefit" or "welfare".

The situations under which it can be exercised are legion; the jurisdiction cannot be defined in that sense. As Lord MacDermott put it in *J. v. C.*, [1970] A.C. 668, at p. 703, the authorities are not consistent and there are many twists and turns, but they have inexorably "moved towards a broader discretion, under the impact of changing social conditions and the weight of opinion . . ." In other words, the categories under which the jurisdiction can be exercised are never closed.

37. I Victoria N. rely on my unalienable rights under the *International Convention on the Elimination of All Forms of Racial Discrimination* which include but are not limited to Article 5 (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by

government officials or by any individual group or institution; (d) (ix) The right to freedom of peaceful assembly and association.

38. Being forced from my residence destroying me is an act of genocide. I Victoria rely on the ***Crimes Against Humanity and War Crimes Act Article 6 genocide*** means acts committed with intent to destroy, in whole or in part, a national, ethnical, racial group **(a)** murdering members of the group; **(b)** causing serious bodily or mental harm to members of the group; **(c)** deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

39. The right to adequate housing, along with many other economic and social rights, is protected in the *International Covenant on Economic, Social and Cultural Rights*, specifically Article 11 which details the right to an adequate standard of living and the continuous improvement of living conditions. The right to adequate housing is protected in other international treaties, such as the *Convention on the Rights of Persons with Disabilities (Article 9 and 28)* and the *Convention on the Elimination of All Forms of Discrimination against Women (Article 14 and 15)*.

40. The Office of the United Nations High Commissioner for Human Rights understands the right to adequate housing. The following information is found in Fact Sheet No. 21. www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf International human rights law recognizes everyone's right to an adequate standard of living, including adequate housing. The United Nations Committee on Economic, Social and Cultural Rights has underlined the right to adequate housing should not be interpreted narrowly. Rather, it should be seen as the right to live somewhere in security, peace and dignity. The characteristics of the right to adequate housing are clarified mainly in the Committee's general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions.

- The right to adequate housing contains freedoms. These freedoms include:

- ~**Protection against forced evictions and the arbitrary destruction and demolition of one's home;**

- ~**The right to be free from arbitrary interference with one's home, privacy and family; and**

- ~**The right to choose one's residence, to determine where to live and to freedom of movement.**

Protection against forced evictions. Protection against forced evictions is a key element of the right to adequate housing and is closely linked to security of tenure. **Forced evictions are defined as the "permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."**

Forced evictions tend to be violent and disproportionately affect the poor, who often suffer further human rights violations as a result. In many instances, forced evictions compound the problem they were ostensibly aimed at solving. Regardless of their cause, **forced evictions may be considered a gross violation of human rights and a prima facie violation of the right to adequate housing.**

If eviction may be justifiable, because the tenant persistently fails to pay rent or damages the property without reasonable cause, the State must ensure that it is carried out in a lawful, reasonable and proportional manner, and in accordance with international law. Effective legal recourses and remedies should be available to those who are evicted, including adequate compensation for any

real or personal property affected by the eviction. **Evictions should not result in individuals becoming homeless or vulnerable to further human rights violations.**

In general, international human rights law requires Governments to explore all feasible alternatives before carrying out any eviction, so as to avoid, or at least minimize, the need to use force. When evictions are carried out as a last resort, those affected must be afforded effective procedural guarantees, which may have a deterrent effect on planned evictions.

Part 4: MATERIAL TO BE RELIED ON

Affidavit #5 of the Honorable Victoria Nevens, made 24/Feb/2020.

The applicant(s) estimate(s) that the application will take 1 hours 55 minutes

This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

Date: 24/Feb/2020

.....
Signature of
 filing Woman lawyer for filing person(s)

.....
Victoria Nevens

To Be Completed by the Registry

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING: [Specify the application type(s) included in this application.]

Application Type: Interlocutory Injunctions