

# **SUPERIOR COURT**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-17-120205-227

DATE: October 6, 2025

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**PRESIDING: THE HONOURABLE BENOIT EMERY, J.S.C.**

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**LORRAINE HURST**  
and  
**JAMIE HURST**  
and  
**DAVID HURST**  
and  
**LAURA HURST**  
and  
**DEBORAH SEMINICK**  
and  
**JOEY HURST**  
and  
**CRYSTAL SEMINICK-HURST**  
Plaintiffs  
v.  
**GAIL HURST**  
and  
**MARC GUITÉ**  
Defendants

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JUDGMENT

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## **INTRODUCTION**

[1] The parties cannot agree on how to partition the succession of the late Shirley Hurst, who died in April 2019.

[2] The plaintiffs, who are all heirs, allege that the liquidators Gail Hurst and Marc Guité, the defendants, mismanaged the settlement of the succession. They even accuse them of concealing property. They blame them in particular for mingling the administered property with their own. They allege a total lack of transparency, generating significant extrajudicial fees to track all the disbursements made by the liquidators from both the succession's bank account and their own bank accounts.

## **CHAPTER 1 – The Parties**

[3] Shirley Hurst, hereinafter the deceased, passed away in April 2019.

[4] The deceased bequeathed all her property to her family members, who are all plaintiffs or defendants in this proceeding.

[5] The defendant Gail Hurst is the deceased's daughter. The deceased appointed Gail Hurst and Gail Hurst's son-in-law Marc Guité, the co-defendant, as liquidators of the succession.

[6] Shirley Delafontaine is Gail Hurst's daughter.

[7] The plaintiff Lorraine Hurst is the deceased's daughter-in-law. She was married to Randy Hurst, who passed away in 2014. He was the deceased's son.

[8] Deborah Seminick was also the deceased's daughter-in-law. She was the spouse of Lenny Hurst, who also passed away. Lenny Hurst was the deceased's son.

[9] Crystal Seminick-Hurst, Michael Langlois, and Joey Hurst are the children of Deborah Seminick and the late Lenny Hurst.

[10] Jamie Hurst, David Hurst, and Laura Hurst are the children of Lorraine Hurst and the late Randy Hurst.

[11] In her will of August 2014, the deceased designated her daughter Gail Hurst and her granddaughter's spouse as liquidators.

[12] In essence, with the exception of a few legacies by particular title, the deceased left her property in equal shares to each of her three children. In the event one of them predeceased her, that child's share would go to their children. That in fact applies to Randy Hurst and Lenny Hurst, who predeceased their mother, Shirley Hurst.

[13] Each of the plaintiffs is an heir in the deceased's will signed in August 2014.<sup>1</sup>

[14] Before Shirley Hurst's death, each of the three children borrowed an amount of money from their father, who predeceased his wife. These loans are referred to in the will.

## **CHAPTER 2 – The Facts**

[15] Because the will is at the heart of the dispute, it is important to reproduce the most relevant excerpts:

### **SECTION IV NOMINATION OF LIQUIDATOR**

I designate as liquidators of my succession my daughter, Gail Hurst and Marc Guité.

Should either one of them die, refuse to act, resign or become incapable of acting, it will not be necessary to replace them, the other will act as if he had been designated alone.

Any further appointments that may be required shall be made by my legatees by majority vote duly recorded in a notarial act in minute, or in default by the court, and such liquidator therefore appointed will be granted the same powers and duties as provided in the present will.

For the purpose of the present will, any liquidator acting alone or jointly with another liquidator shall be called "my liquidator".

### **SECTION V PAYMENT OF THE DEBTS**

My liquidator shall, without either the intervention or consent of any of my legatees or beneficiaries, pay out of the mass of the property of my estate all my debts, taxes, expenses of last illness, funeral expenses, expenses for the liquidation of my estate, any alimentary allowances and particular legacy, if any.

### **SECTION VI PARTICULAR LEGACIES**

- a) I bequeath by particular legacy to my daughter, Gail Hurst, all my jewelry.
- b) I bequeath by particular legacy to Shirley De Lafontaine and Marc Guité, my country house and garage situated at 204, 47 ième Rue Ouest, Venise-en-Québec, Province of Quebec, without any warranty whatsoever, including all contents and furnishings without any exclusions.

Should either one of my legatees die before me or at the same time as me, renounce to such legacy or be unable to accept said legacy, this legacy shall belong to the remaining legatee.

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<sup>1</sup> Exhibit P-1.

This legacy is granted specifically for the services Marc and Shirley have rendered to me during my lifetime and also, in order to fulfill my late husband's wish to transfer this property to them.

- c) I bequeath by particular legacy to Shirley De Lafontaine and Marc Guité, the right to inhabit my immovable property situated at 1450, Moreau Street, Montreal – LaSalle Borough, (in which they live at the date of these presents). It is to be noted that this property is a duplex and that this right is granted for a period of one (1) year following my death, in the express condition that they are still living there at the time of my death and by paying the same monthly rent that they have paid before my death to my estate.

My legatees shall be responsible for paying for minor maintenance repairs and also for their expenses including insurance for the movable effects and personal responsibility, electricity, telephone, cable, etc., during the period they wish to prevail themselves of this right of inhabitation. Should they choose to leave, they will be responsible of advising the liquidator in office of their intention to leave and the right conferred to them following this particular legacy shall be cancelled automatically.

My succession shall be responsible for paying for all other expenses including taxes, major repairs, insurance, heating, etc.

## **SECTION VII** **RESIDUARY UNIVERSAL LEGACIES**

I bequeath to my the residue of all my property, movable and immovable, including the proceeds of life insurance policies on my life for which no beneficiary has been designated, as follows:

- a) One third (1/3) to my daughter, Gail Hurst. Should she predecease me or decease at the same time as me, renounce to such legacy or be unable to accept said legacy, her share shall devolve to her daughter, my granddaughter, Shirley De Lafontaine, by representation. This legacy is subject to section VIII hereafter.
- b) One third (1/3) to my son, Lenny Hurst. Should he predecease me or decease at the same time as me, renounce to such legacy or be unable to accept said legacy, his share shall devolve to his wife, Debbie Seminick and the children of the first degree that they will have had together, in equal shares among them. Should either one of them predecease me or decease at the same time as me, renounce to such legacy or be legally incapable of inheriting, with or without issue, their share shall accrue to his colegatees, without representation. This legacy is subject to section VIII hereafter.
- c) One third (1/3), which constitutes my son, Randy Hurst's share, to my son's wife, Lorraine Hughs and the children of the first degree that they have had together, in equal shares among them. Should either one of them predecease me or decease at the same time as me, renounce to such legacy or be legally incapable of inheriting, with or without issue, their share shall accrue to their colegatees, without representation. This legacy is subject to section VIII hereafter.

**SECTION VIII**  
**LOANS MADE TO MY CHILDREN OF THE FIRST DEGREE**  
**DURING MY LIFETIME**

I ask that the balance owing on all cash loans that I have made in favor of my children of the first degree during my lifetime be returned to my succession at the time of my death. For instance, the balance owing on a loan made in favor of my child of the first degree, shall be deducted from the one third (1/3) of my succession that they receive, following Section VII hereinabove. If the share of the succession is not enough to cover the balance owing on a loan, my liquidator shall have to come to an agreement with said legatee on a payment schedule.

These loans and payments made by my children are indicated in a ledger and its location is known by my daughter, Gail Hurst.

[16] The content and value of the property vary from one inventory to another. At this stage, it is worth noting that the property is valued at approximately one million dollars.

[17] The inventory of the deceased's property includes a duplex in Ville LaSalle, a cottage that was left to Gail Hurst's daughter by legacy by particular title, and land in Carignan valued at only \$300. The remainder consists of various investments and a little cash found in the deceased's safe.

[18] As of June 10, 2025, the succession's bank account balance was \$343,318.

[19] In the weeks following the death, Gail Hurst hired her own investment advisor. They had an initial meeting in the spring of 2019. He informed her that, as liquidator, she could not distribute any amounts until she had received authorization from the provincial and federal revenue agencies to distribute the succession's property. Otherwise, she could be held personally liable for the amounts claimed by both revenue agencies.

[20] He recommended that Gail Hurst have the duplex valued by a chartered appraiser, which was done.

[21] Then, with the help of her advisor, the liquidator Gail Hurst took the necessary steps to obtain the death certificate and the results of a will search with the Chambre des notaires and the Barreau du Québec. In 2019, the delays to accomplish these steps were long. It was not until August 2019 that she obtained the documents needed to begin her work as liquidator.

[22] Gail Hurst admitted that between the date of death and the date on which the succession's bank account was opened in October 2019, she made some mistakes, which she later corrected.

[23] It should be noted in passing that Gail Hurst is 71 years old. She worked as a receptionist until 2008. Throughout her testimony, Gail Hurst mentioned that she was not educated, having failed to obtain even a high school diploma. The same is true for her co-liquidator, Marc Guité, who, it should be said, did very little in the liquidation.

[24] At trial, he said he knew the deceased had wanted to name him co-liquidator, but that he had tried to dissuade her as he is not well-educated and has no knowledge of successions. He said that the deceased was insistent because she had great trust in him. In practice, it was Gail Hurst who handled every step of the liquidation.

[25] Prior to her death, Shirley Hurst had signed a general power of attorney authorizing her daughter Gail to act on her behalf to assist her with managing her affairs, including paying her bills.

[26] Gail Hurst immediately acknowledged that in the days following the death, she continued to use the general power of attorney to withdraw money from the deceased's account. It was only several weeks later that the bank was informed of Shirley Hurst's death and that her bank account was frozen.

[27] Gail Hurst justified her actions by claiming that she could not open the succession's bank account until she received the death certificate and the results of the will searches with the Chambre des notaires and the Barreau du Québec. She argued that it was necessary to pay Shirley Hurst's outstanding bills at the time of her death. Moreover, she said she was unaware that she could not continue to use the general power of attorney after the death of her mother, Shirley Hurst.

[28] The principal asset of the succession is the duplex in Ville LaSalle, which was occupied by the deceased until her death. Gail Hurst mandated the chartered appraisal firm Raymond Joyal, which filed its report on October 10, 2019.<sup>2</sup> This report valued the property at \$560,000 as at the date of death in April 2019.

[29] The financial advisor summoned the heirs to a meeting held on December 16, 2019. At trial, he stated that he read the will. He gave each of the heirs a \$1,000 bill in cash that had been in the deceased's safe.

[30] Meanwhile, Gail Hurst was able to open the succession's account in October 2019. At trial, she admitted that she could have acted more quickly since she had obtained the death certificate and the result of the will searches in August 2019.

[31] The liquidator Gail Hurst was authorized to distribute the succession's property by the Canada Revenue Agency on January 27, 2023,<sup>3</sup> and Revenu Québec on May 1, 2023.<sup>4</sup> As we will see in greater detail, the liquidator Gail Hurst entered into several

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<sup>2</sup> Exhibit P-3.

<sup>3</sup> Exhibit D-49.

<sup>4</sup> Exhibit D-44.

significant transactions that benefitted all the heirs, including herself, well before obtaining that authorization.

[32] The main transactions occurred in February and April 2020. The liquidator Gail Hurst said she was being harassed by the heirs to receive the money. Against her financial advisor's advice and before being authorized by both revenue agencies, the liquidator Gail Hurst distributed \$20,000 to each of the heirs.

[33] On April 30, 2020, the liquidator Gail Hurst purchased the duplex for \$373,333, which, according to her, took into account its \$560,000 market value less one-third of her portion of the succession's property. She admitted at trial that the sale price should have been \$560,000. By acquiring it for \$373,333, she was distributing her share of the succession well in advance. All the heirs now complain about it. However, they all signed the Deed of transfer.<sup>5</sup> Since there is no lesion between persons of full age, they are in no position to complain.

[34] Not only was the price to transfer the duplex \$373,333, but Gail Hurst disbursed just \$276,475. She paid the balance of \$96,858 two years later, on June 3, 2022.<sup>6</sup>

[35] Moreover, the Deed of transfer dated April 30, 2020,<sup>7</sup> states that the proceeds from the sale were remitted to each of the heirs, which is not the case. Again, the heirs are in no position to complain since they all signed the Deed of transfer for the Ville LaSalle duplex.

[36] On September 1, 2021, the two liquidators received a demand letter from counsel for the other heirs, that is, the plaintiffs. This demand letter crystallized the debate. This proceeding was brought in 2022.

### **CHAPTER 3 – Positions of the parties**

#### **(a) Plaintiffs' position**

[37] The plaintiffs argue that Gail Hurst is deemed to have renounced her share in the succession under the terms of article 651 CCQ, which stipulates:

A successor who, in bad faith, has abstracted or concealed property of the succession or failed to include property in the inventory is deemed to have renounced the succession notwithstanding any prior acceptance.

[38] The plaintiffs submit that a series of irregularities occurred that are tantamount to concealing property in bad faith within the meaning of article 651 CCQ.

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<sup>5</sup> Exhibit P-4.

<sup>6</sup> Exhibit P-9.

<sup>7</sup> Exhibit P-4.

[39] The plaintiffs allege that the liquidator Gail Hurst demonstrated a blatant lack of transparency, which precipitated the judicialization of the matter, forcing the plaintiffs to disburse significant amounts in legal fees.

[40] The plaintiffs contend that the liquidator Gail Hurst did not act with prudence and diligence, in violation of the first paragraph of article 1309 CCQ. Similarly, she is faulted for failing to act honestly and faithfully, in violation of the second paragraph of article 1309 CCQ.

[41] The plaintiffs also allege that she exercised her powers as liquidator in her own interest, in violation of article 1310 CCQ.

[42] Even though they signed the Deed of transfer dated April 30, 2020, for the transfer of ownership of the Ville LaSalle duplex, the plaintiffs claim that the liquidator Gail Hurst did not sufficiently inform them that she was purchasing the property using her share in the succession, while all the other heirs had each received only \$20,000 as of February 2020.

[43] According to the plaintiffs, the Deed of transfer for the Ville LaSalle duplex should have indicated a sale price of \$560,000 rather than \$373,333. Moreover, Gail Hurst did not even pay \$373,333 but \$276,475, which is \$96,000 less. In addition, the notarial act states that the heirs received the proceeds from the sale, which is inaccurate. Even today, they have received nothing except the amount of \$20,000 each, paid in February 2020.

[44] Gail Hurst took two years to repay the \$96,858 balance to the succession. This amount of \$96,858, and the \$276,475, should have been paid directly to the heirs. The Court notes, however, that it was only in January and May 2023 that Revenu Québec and the Canada Revenue Agency issued their authorization certificates.

[45] The plaintiffs also allege that Gail Hurst acquired the duplex for \$560,000 less one-third, representing her share in the succession, based on the Raymond Joyal assessment,<sup>8</sup> which indicated a market value of \$560,000 on the date of the deceased's death, whereas this no longer represented the market value at the time of the transfer on April 30, 2020, a little over a year after the death. According to the plaintiffs, the duplex was worth more than \$560,000 at the time of Gail Hurst's purchase in April 2020. It therefore represents a shortfall for the succession and ultimately for the heirs. However, the Court notes that the plaintiffs submitted no expert report on the market value of the duplex as at April 30, 2020.

[46] Despite the plaintiffs signing the Deed of transfer dated April 30, 2020, they allege that the liquidator Gail Hurst displayed a complete lack of transparency. The plaintiffs point out that, on that date, they were still without a copy of the will, although they

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<sup>8</sup> Exhibit P-3.

acknowledge that Gail Hurst's financial advisor read it to them during the meeting held on December 16, 2019.

[47] The plaintiffs argue that the liquidator Gail Hurst had a conflict of interest,<sup>9</sup> particularly in purchasing the duplex for \$373,333, thereby appropriating her share in the succession. The plaintiffs argue that the liquidator Gail Hurst's actions made it so that six years after Shirley Hurst's death, the amounts have not yet been fully distributed to the heirs, except with respect to the liquidator and heir Gail Hurst.

[48] The plaintiffs point out that they had to retain counsel to send a demand letter on September 1, 2021, and that they finally received communication of several documents 18 months after Shirley Hurst's death. It was therefore only on November 21, 2021,<sup>10</sup> that counsel for the defence sent the following documents:

- Results of the will search with the Chambre des notaires and the Barreau du Québec;<sup>11</sup>
- Succession's bank account statements with CIBC;<sup>12</sup>
- Bank account statements with Scotia Bank;<sup>13</sup>
- Bank account statements with Laurentian Bank;<sup>14</sup>
- Other bank account statements with Laurentian Bank;<sup>15</sup>
- Tax account;<sup>16</sup>
- Provincial income tax return;<sup>17</sup>
- Federal income tax return;<sup>18</sup>
- Partial inventory;<sup>19</sup>
- RDPRM certificate;<sup>20</sup>
- List of property in the duplex;<sup>21</sup>
- Itemized list of expenses;<sup>22</sup>
- SunLife insurance policy;<sup>23</sup>

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<sup>9</sup> Article 1310 CCQ.

<sup>10</sup> Exhibit P-8.

<sup>11</sup> Exhibit P-8A.

<sup>12</sup> Exhibit P-8B.

<sup>13</sup> Exhibit P-8C.

<sup>14</sup> Exhibit P-8D.

<sup>15</sup> Exhibit P-8E.

<sup>16</sup> Exhibit P-8F.

<sup>17</sup> Exhibit P-8G.

<sup>18</sup> Exhibit P-8H.

<sup>19</sup> Exhibit P-8I.

<sup>20</sup> Exhibit P-8J.

<sup>21</sup> Exhibit P-8K.

<sup>22</sup> Exhibit P-8L.

<sup>23</sup> Exhibit P-8M.

[49] The plaintiffs argue that the two units of the duplex located at 1448 and 1450 Moreau Street in Ville LaSalle should have generated income for the succession between the date of Shirley Hurst's death and the date of the transfer on April 30, 2020.

[50] Moreover, the plaintiffs claim that Gail Hurst appropriated \$112,000 for herself shortly after Shirley Hurst's death. The liquidator Gail Hurst recognized this fact but added that the money was repaid to the succession account, acknowledging that only \$8,121 is missing. She stated that this balance was used to administer the succession's property.

[51] The plaintiffs also argue that the liquidator Gail Hurst had the succession pay the \$4,048 transfer duties when she purchased the duplex on April 30, 2020, when she should have been the one to pay them. The same is true of the notary fees and municipal tax adjustments.

[52] The plaintiffs acknowledge that loans were granted by the deceased or her husband before her.<sup>24</sup> Thus, the late Lenny Hurst received \$97,982, and the late Randy Hurst received \$195,000.

[53] The plaintiffs argue that these amounts are no longer owed because they are prescribed. They submit that repayments on these loans stopped long ago without the deceased ever claiming any amount from them. They note that the succession of Lenny Hurst was liquidated in March 2019, while the succession of the late Randy Hurst was liquidated in November 2014.

[54] They argue that these amounts do not constitute debts of the deceased's succession.

[55] The plaintiffs argue that the three inventories prepared by the professionals mandated by the liquidator Gail Hurst are incorrect. These are:

- (1) Inventory prepared by Gail Hurst's financial advisor, James McCread, in 2019;<sup>25</sup>
- (2) Inventory prepared by the firm MNP on June 10, 2022;<sup>26</sup>
- (3) Inventory prepared by the notary Édith Chaput on May 18, 2023.<sup>27</sup>

[56] Thus, the value of the succession varies depending on whether or not its loans are considered claims against the families of the late Lenny Hurst and the late Randy Hurst.

[57] The plaintiffs blame the liquidator Gail Hurst for having the succession pay for renovation work on the duplex, knowing that she was going to purchase it in April 2020.

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<sup>24</sup> See, in particular, paragraph 91 of the amended originating application dated May 14, 2025.

<sup>25</sup> Exhibit D-1.

<sup>26</sup> Exhibit P-10.

<sup>27</sup> Exhibit P-11.

**(b) Defendants' position**

[58] At the outset, the liquidator Gail Hurst submitted that she had handled the liquidation of the succession alone, because her co-liquidator was unable to do so. In fact, he had told the deceased that he could not act as co-liquidator since he did not have the required knowledge or health to do so.

[59] The liquidator Gail Hurst recognizes that several mistakes were made. However, she categorically denies having acted in bad faith. She stated on more than one occasion during the trial that she was not well-educated. She does not even have a high school diploma.

[60] The liquidator Gail Hurst submits that a few weeks after Shirley Hurst's death, she went to her sister-in-law Lorraine's home. They discussed the content of the will. She had the will with her, but her sister-in-law did not ask for a copy.

[61] Next, with the death certificate and will search result in hand, the liquidator Gail Hurst opened the succession's bank account on October 15, 2019.<sup>28</sup>

[62] Following her financial advisor's recommendation, she called upon the services of a firm of chartered appraisers to valuate her mother's duplex. She stated that she received the valuation report on October 30, 2019.<sup>29</sup> According to the chartered appraiser, the property had a market value of \$560,000 on the date of her mother's death.

[63] The liquidator Gail Hurst submits that a meeting of all the heirs was organized for December 16, 2019, at the financial advisor's office. She claims that he read the will and gave an overview of the distribution of the succession. She therefore claims to have acted with complete transparency. In her view, as of December 16, 2019, every heir was aware of the ins and outs of the succession. The financial advisor informed the heirs that no distribution can be made before authorization from Revenu Quebec and the Canada Revenue Agency had been received.

[64] She asserts that all the heirs knew she wanted to buy her mother's duplex. She points out that they all in fact signed the Deed of transfer dated April 30, 2020.

[65] She argues that as early as April 2020, an initial tax return for the succession was submitted to the tax authorities by a chartered accountant. She later found out that this tax return was riddled with mistakes.

[66] In the meantime, she claims to have received many calls from the heirs, who were eager to receive money. To appease them, the liquidator Gail Hurst agreed to issue seven checks of \$20,000, one for each of the heirs, totaling \$140,000, even though the tax authorities had yet to issue a certificate authorizing distribution. It was at the heirs'

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<sup>28</sup> Exhibit P-8B.

<sup>29</sup> Exhibit P-3.

insistence that she distributed the amount of \$140,000. In fact, her financial advisor had tried to dissuade her from doing so.

[67] She submits that, unfortunately and despite all her efforts, the heirs decided to judicialize the liquidation by retaining counsel who sent a demand letter on September 1, 2021, before the tax authorities had authorized the distribution.

[68] The liquidator Gail Hurst claims that every time she was asked for documents, she provided them immediately. It was in response to the demand letter dated September 1, 2021, that counsel for the defence sent a series of documents, as appears from the letter dated November 21, 2021, to which the Court has already referred.

[69] These proceedings were brought a few months later, when she was not even authorized to distribute the succession's property.

[70] Counsel for the defence acknowledges that administrators should not mingle administered property with their own (art. 1313 CCQ). Counsel acknowledged that there was some mingling between Gail Hurst's personal property and that of the succession. That was the case with the \$112,000 from the CIBC guaranteed investment certificate, which was cashed by the liquidator Gail Hurst in the days following the deceased's death. The liquidator Gail Hurst submits that her mother had asked her to use this amount for the renovations, which began in February 2019, a little over two months before the deceased's death. The process to cash the \$112,000 was undertaken well before the death and was finalized three days after the death, which explains the transfer dated April 11, 2019.

[71] The liquidator Gail Hurst points out that she held a general power of attorney with the CIBC, given by her mother.<sup>30</sup> CIBC made the transfer in Gail Hurst's name rather than Shirley Hurst, likely due to the general power of attorney. Legally, she was unaware that she could no longer use the general power of attorney after her mother's death. The liquidator Gail Hurst explained that her mother's bills, including the credit card statements, still had to be paid despite her being unable to open a bank account for the succession before obtaining the death certificate. For a few months, she therefore continued to make transactions in her mother's bank account, despite her mother's death.

[72] This also explains why the government was depositing pension checks into her mother's account. However, she stated that all amounts paid by the government after her mother's death were all refunded.

[73] She repaid the succession \$100,000 of the \$112,000 on December 13, 2019,<sup>31</sup> and a further amount on January 20, 2020.

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<sup>30</sup> Exhibit D-71.

<sup>31</sup> Exhibit P-8B.

[74] The liquidator Gail Hurst explained that the balance was used to pay for certain expenses, including funeral costs.

[75] The liquidator Gail Hurst acknowledges having used the succession's funds to pay the duplex's municipal taxes of \$4,167.51 and \$3,995.90.

[76] When she found out from her counsel that the taxes had to be paid by her personally, she reimbursed that amount to the succession.

[77] In fact, she claims that she corrected the situation every time a professional told her that she had erroneously paid certain expenses from the succession's account. She has therefore reimbursed the succession for electricity, telephone, and cable bills for the country house in Venise-en-Québec that her daughter Shirley De Lafontaine inherited.

[78] Regarding the purchase of the duplex for \$373,333, she mistakenly believed that she could deduct her share of the succession from the amount of \$560,000. She argues that the heirs all signed the Deed of transfer dated April 30, 2020, as appears from that Deed. Thus, if there was an error, it was endorsed by all the heirs. Moreover, after noting the error, the amounts were all reimbursed to the succession.

[79] She points out in passing that as of March 2020, the pandemic significantly slowed down the steps required to liquidate the succession.

[80] As for the plaintiffs' allegation that they received the will only in the fall of 2021, the liquidator Gail Hurst points out that she went to Lorraine Hurst's home in September 2019, with the will, to discuss its ins and outs. She claims to have answered all the questions asked by her sister-in-law, who did not ask for a copy of the will. Had she wanted to conceal the liquidation process, why would she have gone with the will to her sister-in-law's home in September 2019?

[81] The liquidator Gail Hurst asserts that she speaks perfect French and English with no accent (which the Court was able to observe during the trial) and that the notary was francophone. She requested that the notary draft the Deed of transfer in English, however, as not all of the heirs speak French, particularly those living in Ontario. She thus argues that the heirs cannot claim they did not understand the Deed of transfer prepared by the notary, which they all signed.

[82] The liquidator Gail Hurst asked professionals to prepare the inventory. Unfortunately, they were not always effective. She argues that she cannot be held liable for this. She relied entirely on the professionals she consulted.

[83] She argues that she is not educated and does not have a high school diploma. It is therefore asking a great deal of her to liquidate a succession valued at approximately one million dollars.

[84] With respect to the lack of transparency, she referred to the filing of two affidavits, one dated April 11, 2022, and the other dated May 10, 2022, with exhibits D-1 to D-13.

[85] She believes she acted diligently and swiftly in the liquidation of the estate. She points out that within about one year of her mother's death, she managed to obtain a copy of the death certificate, perform the will searches, prepare a preliminary inventory for the succession and the projected distribution with the help of her advisor, gather together all the heirs, and liquidate the succession's immovables, with the exception of a plot of land worth about \$300 in Carignan. These immovables are the cottage in Venise-en-Québec and the duplex in Ville LaSalle. But these efforts were slowed by the mistakes of her various advisors.

[86] She submits that the judicialization of the case, starting with the demand letter dated September 1, 2021, stopped the liquidation process in its tracks.

[87] Nevertheless, wanting to demonstrate her good faith and in a bid to appease the heirs, in February 2020, the liquidator Gail Hurst distributed \$140,000, that is, seven cheques of \$20,000 each, even before Revenu Quebec and the Canada Revenue Agency had authorized the distribution. In fact, she notes that the plaintiffs are certainly not complaining about the \$140,000 that was distributed without the authorization of the tax authorities.

[88] This \$140,000 distribution resulted in Randy Hurst's family, consisting of Lorraine, Jamie, Laura, and David Hurst, receiving a total amount of \$80,000, while Lenny Hurst's family, that is, Deborah, Crystal, and Joey, received \$60,000.

[89] The judicialization of this case has frozen the liquidation because the plaintiffs argue that the loans originally granted by the parents cannot be set up against them. The heirs argue that the recovery of these loans is prescribed despite the will's wording.

[90] The liquidator Gail Hurst argues that although it was a difficult and laborious process, she always strove to follow the recommendations and information she received from the various professionals.

[91] As for the renovations, the liquidator Gail Hurst points out that they had been requested by her mother before her death. She claims that these are not the renovations she herself had planned in anticipation of buying the duplex a year later.

[92] The liquidator Gail Hurst vigorously denies the plaintiffs' allegations that her daughter Shirley De Lafontaine must personally repay the succession for a loan of \$23,364. She cites as evidence the general ledger,<sup>32</sup> which clearly indicates that this debt was repaid in full on August 1, 2012.

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<sup>32</sup> Exhibit D-7.

[93] That being said, the liquidator Gail Hurst mentions that she herself must repay a loan of \$350,000 to the bank.

[94] While repeating that she has repaid all amounts owed to the succession, she emphasized that all transactions can easily be traced by examining the exhibits filed in support of this matter. She argues that most of these amounts had been repaid before the demand letter dated September 1, 2021, was sent.

[95] These amounts were never squandered or used for personal purposes. None of the amounts were hidden in any way whatsoever. All the property was included from the moment the first inventory was prepared by the financial advisor in the fall of 2019. It was later included in the other inventories prepared by different professionals, even if there were mistakes in other respects.

[96] Finally, the liquidator Gail Hurst argues that she never acted in bad faith in the context of legal proceedings.

#### **CHAPTER 4 – Discussion**

[97] From the outset, the plaintiffs argue article 651 CCQ:

A successor who, in bad faith, has abstracted or concealed property of the succession or failed to include property in the inventory is deemed to have renounced the succession notwithstanding any prior acceptance.

[98] Thus, according to case law, the plaintiffs had the burden of proving fraudulent intent on the part of the liquidators Gail Hurst and Marc Guité.

[99] First, the Court sets aside any liability with respect to Marc Guité. The evidence has firmly demonstrated that he did not have the required abilities to liquidate the succession, such that, for all intents and purposes, he did not act in any meaningful way to liquidate the succession. He had in fact informed Shirley Hurst of this while she was still living. The deceased nevertheless designated him because she had great trust in him.

[100] All the gestures were taken by defendant Gail Hurst in her capacity as liquidator.

[101] To demonstrate fraud, the plaintiffs refer first to the \$112,000 that was cashed three days after Shirley Hurst's death.

[102] Two reasons lead the Court to conclude that this is not fraud. First, this \$112,000 was included in all the inventories prepared by professionals mandated by the liquidator Gail Hurst. In particular, this amount was included in the very first inventory prepared in the fall of 2019 by Gail Hurst's financial advisor. This amount has always been included as the property of the succession. The heirs were able to see this when they examined

the first inventory they were given during the meeting of December 16, 2019. Admittedly, on that date, they did not know that this amount had been transferred to Gail Hurst's personal account.

[103] Second, this amount was repaid to the succession account within weeks of it being opened.

[104] Ultimately, this amount was never hidden, and it ended up in the succession account a few weeks after the meeting of December 16, 2019, with Gail Hurst's financial advisor.<sup>33</sup>

[105] The liquidator Gail Hurst acted in good faith, unaware that a general power of attorney cannot continue to be used after the mandator's death. Two months before her death, Shirley Hurst had asked her daughter to withdraw this amount to pay for the renovations, which in fact began in February 2019.

[106] As soon as her financial advisor told her that she needed to put this amount back in the succession's bank account, she promptly did so.

[107] Thus, she never hid or used that amount of \$112,000 for her own purposes.

[108] Admittedly, there appears to be an \$8,000 shortfall, which the liquidator Gail Hurst believes was used to reimburse certain funeral expenses. She acknowledges, however, that she does not have invoices to support her position. The burden of proof rested with the plaintiffs, who failed to show that the liquidator Gail Hurst used this \$8,000 for her own purposes.

[109] The plaintiffs refer to Gail Hurst's purchase of the duplex on April 30, 2020, as the second alleged fraud.

[110] In this respect, the Court points out that Gail Hurst purchased the duplex for \$373,333. Believing in good faith that she could purchase the building at the market value in effect at the time of death, the liquidator Gail Hurst instructed a chartered appraisal firm to value the duplex as at April 8, 2019. The property was assessed at \$560,000.

[111] Yet again, in good faith, Gail Hurst thought she could buy the property for \$373,333, which is \$560,000 less one third of her share in the succession. All the heirs were fully aware of this transaction price of \$373,333 because they signed the Deed of transfer dated April 30, 2020. In fact, this notarial act indicates that the heirs received this amount of \$373,333, which was not the case. Again, they knowingly signed this notarial act, which, moreover, was written in English at the liquidator Gail Hurst's request. There was no fraud. If the heirs had any questions, they could have asked the officiating notary.

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<sup>33</sup> Exhibit P-8B.

The Court reiterates that there is no lesion between persons of full age in the absence of fraud.

[112] However, it is true that not only should the sale have been made for \$560,000 but the liquidator Gail Hurst should have, at the very least, paid that amount into the succession's account. The evidence revealed, however, that she paid only \$276,245, representing a shortfall of \$96,000. The liquidator Gail Hurst should have told the heirs about this.

[113] That being said, it is still surprising that the Deed of sale indicates that \$373,333 was paid to the heirs when that is not the case. Clearly, they did not ask themselves any questions.

[114] The plaintiffs argue that this \$96,000 shortfall constitutes concealment. The Court is of the opinion that it is difficult to conclude there was fraud as to this amount of \$96,000 when it was reimbursed in full into the succession's account.

[115] The plaintiffs also characterize as fraud the fact that the liquidator Gail Hurst did not rent out 1448-1450 Moreau in Ville LaSalle between the end of the renovation work and Gail Hurst's purchase of the duplex. In fact, it was 1448 Moreau that could have been rented. As for 1450 Moreau, it is occupied by Gail Hurst's daughter and her spouse, Marc Guité. Their rent, however, has not always been at fair market value. The Court will therefore award the amount of \$7,400 claimed by the plaintiffs in this respect. However, the Court does not characterize the shortfall as a fraud.

[116] The plaintiffs also submit as fraud the fact that the transfer duties for the duplex, following the transaction of April 30, 2020, were paid by the succession. However, this amount was repaid to the succession's bank account.

[117] In light of the evidence, the Court is of the opinion that the aforementioned errors were committed in good faith.

[118] From the evidence, the Court accepts that the liquidator Gail Hurst is a person who, by her own admission, is not well-educated. She does not even have a high school diploma. Liquidating a succession valued at about \$1 million was a daunting task for Gail Hurst. Moreover, she was poorly advised by the professionals she mandated. Thus, the three inventories prepared by three professionals were incorrect, at least in part. The Court does not see how it could hold the liquidator Gail Hurst liable for this. As soon as one or the other of these professionals indicated that she had to repay an amount to the succession's account, she did so. All the property has always been included in the inventories, even those with mistakes.

[119] Next, the plaintiffs then argue that the succession cannot set up against them the loans granted to Lenny Hurst and Randy Hurst by Arthur Hurst and Shirley Hurst since these claims are prescribed.

[120] This argument might have been defensible if it had not been for Shirley Hurst's will<sup>34</sup> dated August 24, 2014.

[121] The will contains a clause dedicated specifically to the loans granted by Arthur Hurst and Shirley Hurst. It is Section VIII of the will, which stipulates:

**SECTION VIII**  
**LOANS MADE TO MY CHILDREN OF THE FIRST DEGREE**  
**DURING MY LIFETIME**

I ask that the balance owing on all cash loans that I have made in favor of my children of the first degree during my lifetime be returned to my succession at the time of my death. For instance, the balance owing on a loan made in favor of my child of the first degree, shall deducted from the one third (1/3) of my succession that they receive, following Section VII hereinabove. If the share of the succession is not enough to cover the balance owing on a loan, my liquidator shall have to come to an agreement with said legatee on a payment schedule.

These loans and payments made by my children are indicated in a ledger and its location is known by my daughter, Gail Hurst.

[122] Thus, the heirs are not facing the succession's claim for repayment of loans. This is rather a condition of the legacies in the deceased's will. Consequently, to be eligible as heirs, they must repay the loans granted to them by their parents. It is not therefore about recovering a claim that is subject to prescription but about fulfilling a condition to receive the legacy. The heirs will be able to receive their money less the amounts owed to the deceased.

[123] The problem regarding Gail Hurst is her total lack of transparency, which precipitated the judicialization of the case when counsel for the plaintiffs sent a demand letter on September 1, 2021.

[124] Counsel for the plaintiffs must have put significant efforts into obtaining copies and analyzing all the bank statements from Laurentian Bank, Scotiabank, and CIBC. The trial even lasted six days to trace and analyze all the money transfers for transactions in the bank statements of the three banks mentioned above.

[125] Ultimately, it appears that Gail Hurst did not appropriate funds from the succession for herself but rather, mingled the administered property with her own, in breach of article

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<sup>34</sup> Exhibit P-1.

1313 CCQ. As for how transparent her actions were, she did not act with prudence and diligence within the meaning of article 1309 CCQ.

[126] Before transferring the amount of \$112,000, four days after Shirley Hurst's death, Gail Hurst should have informed the heirs and obtained their consent, even if that amount was eventually returned to the succession.

[127] The liquidator Gail Hurst should also have disclosed that when she purchased the duplex on April 30, 2020, she paid only \$276,475, which represented a shortfall of about \$96,000 with respect to the sale price stated in the Deed of transfer dated April 30, 2020. Again, that amount was eventually repaid to the succession. Even if there was no misappropriation per se because all the money eventually found its way back into the succession's account, it remains that the covert transactions raised suspicions, precipitating the judicialization of the case and leading to numerous steps being taken to obtain and analyze all the bank statements and transactions.

[128] Gail Hurst's actions constitute a fault that caused the plaintiffs to suffer damage. The evidence at trial revealed that the plaintiffs paid over \$100,000 in extrajudicial fees. Considering this fault, the Court finds that Gail Hurst must pay damages, which the Court assesses at \$50,000.

## **CHAPTER 5 – Exegesis of the final disposition**

[129] In short, the Court concludes that the final distribution must be carried out by taking less, considering the \$35,000 loan that Gail Hurst must repay to the succession, the \$54,180 that the family of the late Lenny Hurst must repay to the succession, and the \$195,000 that the family of Randy Hurst must repay to the succession. As previously stated herein, this is a condition to be fulfilled for the heirs to obtain their legacy, as stipulated in Section VIII of Shirley Hurst's will dated August 26, 2014.<sup>35</sup>

[130] Gail Hurst must pay the plaintiffs \$7,400 for unpaid rent based on its market value for the period from the end of the renovations at 1448 and 1450 Moreau in Ville LaSalle to April 30, 2020, which is when Gail Hurst purchased the duplex.

[131] For the reasons provided in this judgment, the Court finds that Gail Hurst is not deemed to have renounced her rights in the succession because the plaintiffs failed to discharge their burden of proving that the right set out in article 651 CCQ applies here.

[132] The plaintiffs also failed to meet their burden of proving that Gail Hurst acted in bad faith in exercising her right to take part in legal proceedings. Even though her actions complicated the analysis of this case, she did not act in bad faith.

[133] The distribution will have to take into consideration that the heirs already received \$20,000 each in February 2020, plus \$1,000 each, representing the money found in

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<sup>35</sup> Exhibit P-1.

Shirley Hurst's safe. The distribution will also have to take into consideration the distribution that Gail Hurst made to herself by paying only \$373,333 when she purchased the duplex on April 30, 2020.

[134] All parties in demand and defence must personally pay their own costs and professional fees pertaining to this action without the possibility to be reimbursed by the estate.

[135] The defendant Gail Hurst must pay the plaintiffs damages of \$50,000 because of the blatant lack of transparency in her actions to liquidate the succession of Shirley Hurst.

[136] The distribution must be carried out based on the figures in the inventory prepared by Wendy Neil, filed as Exhibit P-10.

[137] The liquidators will have to render a final account to all the plaintiffs within 45 days of the date of this judgment. The Court accepts the evidence that, as at June 10, 2025, the amount in the succession's bank account was \$343,318, based on Wendy Neil's testimony.

[138] Other than the damages of \$50,000 granted to plaintiffs, the Court is of the opinion that the plaintiffs have failed to discharge their burden of proving that they suffered various trouble and inconvenience.

[139] The Court also finds that no rights protected by the *Charter of human rights and freedoms* were violated, such that the application for punitive damages must be dismissed.

## **CONCLUSIONS**

[140] **FOR THESE REASONS, THE COURT:**

[141] **DECLARES** that the liquidators Gail Hurst and Marc Guité, in their capacity as liquidators of the succession of Shirley Hurst, will have to distribute the deceased's property according to the terms and conditions set out in the notarized will dated August 26, 2014, taking into account an initial distribution of \$21,000 to each of the plaintiffs and the fact that Gail Hurst appropriated a distribution for herself of her one-third share of the succession by paying only \$373,333 when purchasing the duplex on April 30, 2020, representing two-thirds of the property's value of \$560,000;

[142] **CONDEMNS** the defendants Gail Hurst and Marc Guité personally to pay the plaintiffs \$7,400 for failing to rent 1448 and 1450 Moreau in Ville LaSalle at fair market value;

[143] **CONDEMNS** the defendant Gail Hurst personally to pay the plaintiffs \$50,000 in damages for her blatant lack of transparency, in violation of article 1309 CCQ;

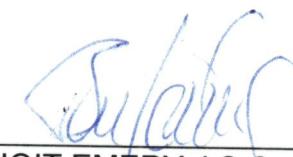
[144] **DECLARES** that all parties in demand and defence will have to personally assume payment of their own costs and extrajudicial fees regarding this action without the possibility to be reimbursed by the estate.

[145] **DISMISSES** the plaintiffs' claim for damages for various trouble and inconvenience;

[146] **DISMISSES** the plaintiffs' claim for punitive damages;

[147] **DECLARES** that the defendant Gail Hurst is not presumed to have renounced her share in the succession within the meaning of article 651 CCQ;

[148] **THE WHOLE**, without costs.



BENOIT EMERY J.S.C.

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Counsel for the defendants

Dates of hearing: June 18 to 23, 2025