

Affidavit of

DONALD H. BRODER

Sworn before me this 14 day

of DEC A.D., 2010

A Commissioner for Oaths in and for Alberta

NEUSBA WONG
JUDICIAL SERVICES FOR THE
Province of Alberta
My Commission expires March 31, 2011

Opening Statements

This is Exhibit

referred to in the
Affidavit of

Sworn before me this day

of A.D. 20

A Commissioner for Oaths in and for Alberta

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Introduction: The Defendants Don Broder, and Craig Broder

Don Broder is the eldest living sibling of the deceased Edmund Broder, and I Craig Broder the eldest sibling of Don Broder, and Grandchild of Edmund & Hazel Broder.

Hazel Broder predeceased Edmund Broder in 1967, with a Will, Doris Bibaud, and Luella Adam "has since deceased" were executors, and to the best of our knowledge executed Hazel Broder's Will.

Produce a copy of the Will.

At this time Ed Broder acquired all personal, household, and worldly possessions that were attained during their married life together, except for the specifics in Hazel Broder's Will.

Edmund Broder died December 26, 1968, in Edmonton AB. Don Broder was present to assist with and help every day from the date of December 4, 1968, for which Don Broder arrived at the family home from out of town employment to find his father Edmund with serious medical concerns, escorted him to the hospital, and attended the hospital daily until December 26, 1968, on which day he passed away.

During the early morning of December 26, 1968 Don Broder received a call from the hospital suggesting he gather the family, as Edmund Broder was not expected to live. Don called immediate family members, some whom had traveled to Grande Prairie for Christmas, suggesting that they should return to Edmonton as quickly as possible, and expressed that he could not believe these younger siblings had left there Fathers bedside without concern for him, to go celebrate Christmas in Grande Prairie with Margaret and her family. The son Richard Broder could not be located. And Don Broder had to notified George Broder twice before they finally arrived at 4:00 pm who was to notify Earl Broder.

During the time Don Broder was at the hospital with his Father, Edmund Broder gave Don Broder instructions as the eldest sibling to divide up his belongings "as he sees fit."

In April of 1969 the immediate siblings gathered at the family home, to deal with Edmund Broder's personal belongings. The family agreed Don and George Broder would work together to divide up some of the belongings that day. Seven piles of personal belonging were put together and numbers allocated, a draw was done and each of the seven siblings took an appropriate pile. It was agreed that the rest of the belongings would be held back temporarily, and a value for the Deer Head would be found by way of advertising in a sporting magazine. As for the rest of the belongings values could be determined without advertising, but the unique Deer Head could not. An ad was placed and a few offers of \$250.00 to \$300.00 were received.

In 1973 Don Broder called on George Broder to tell him he was taking the deer head to Calgary where he resided, to show it and see if there was anyway of getting another value. Don went to the family home to take possession of the deer head, and to his surprise George met him in front of the house, and suggested that the rest of the family was contacted and thought it was not a good idea. Don Broder went home to Calgary without the deer head, and two weeks later returned, "April of 1973" to the family home, and at this time and without consent of his siblings took possession, as it became knowledge to Don Broder, and obvious that other siblings were removing and taking possession of Edmund Broder personal belongings at random. Don Broder arrived and removed the deer head surreptitiously and without the consent of his brothers and sisters. Don Broder's solicitor wrote a letter to George Broder claiming the deer head as his own, and sent by registered mail. No agreement was ever discussed or executed "that Don Broder was to hold the deer head for the benefit of all". If an agreement was made in 1969 at the families first meeting to hold back some of Edmund Broder personal belongings to determine their value, then this agreement was breached by all the siblings at different times between April 1969 and 1973 as siblings randomly removed and claimed Edmund Broder's personal belongings.

From 1973 to 1997 excess of 24 years Don Broder maintained exclusive possession of the deer head, and when questioned by his siblings, expressed sole ownership by stating, **"possession was nine tenths of the law"**, Don Broder paid for all direct and indirect related cost for its preservation, and restoration. When inquiries were made by others "Fish & Wildlife" to Don Broder's brother George Broder and other siblings as to who to contact with regard to displaying the deer head, direction was given to "call Don" an acceptance by Don Broder's siblings and an awareness that Don Broder has expressed ownership, and maintained sole custody of the deer head and would make all decisions as to whether he was willing to accept and bare all related direct and indirect expenses for the costs of the showing. Numerous showing were agreed to and paid for by Don Broder, without any interference by his siblings from 1973 until 1997, and in Feb. 1991 at a showing in Edmonton "Big Buck Classic" invitations were extended to family members that the deer head would be in Edmonton for the weekend, and for all interested to come down to the Golden Garter and see the deer head. Provision was also made at Craig Broders home early in the day the deer head was to leave for its owners residence in Sundre, AB. for a family member to have a photographic session. Only a few immediate family members, their children and spouses attended and showed any interest at all. Two siblings attended one being Earl Broder, and George Broder, and an invitation was given to Earl Broder by the show producer for him to attend the awards ceremony and evening banquet, where Earl Broder witnessed recognition presented verbally to the owner of the deer head, Don Broder, thanking him for incurring the expenses, and bringing his deer head to the show.

Then in 1997 Craig Broder with the consent of his Father Don Broder approached The Edmonton Sportsman Show to see if they would pay for an attraction at the show in March of 1997. The show producer clarified they were not for profit, and would not offer any money, during discussion a free booth was offered, but parking, and other expenses were not. The show producer explained all profits made went to such things as equipment for search and rescue, and other causes. It was decided by Don Broder that he would show the deer head for free to help raise monies for these causes, by being used as a drawing card, and try to acquire some related and unrelated merchandise for sale to offset expenses. The official sponsor of The Edmonton Boat & Sportsman Show, The Edmonton Sun called Craig Broder to ask if a brief interview and photo session was possible, and a time was scheduled. Don Broder was scheduled to arrive from Sundre but the deer head had been brought up in advance in case the weather turned for the worse and driving condition did not allow for Don Broder's travel just before the show date. Another call was placed to immediate family members to invite them to come down and see the deer head, and a free pass was given to Earl Broder's son Cal Broder to share with others in the family.

The Edmonton Sun printed a story and photo's about the deer head just prior to the show, and at such time other immediate family members hired a Lawyer to serve upon Craig Broder a letter making demand that the deer head be returned to George Broder immediately following the show. Craig Broder accepted service but was in no position to return the deer head to George Broder because his father Don Broder had possession.

Then in July of 1997 a Statement of Claim was issued by George Broder, Earl Broder, Richard Broder, Doris Bibaud, Luella Adam, Margaret Mcphee and served upon Don Broder and Craig Broder making demand for:

- Relevelin of the deer head,
- An accounting of monies
- And a declaration of joint ownership

Don Broder made the decision to defend based on law, that his brother George Broder had no legal or equitable right to ask for the return of any of Ed Broder personal belongings, and this was nothing more than Don Broder's siblings trying to extort his personal property. All of the plaintiffs have no legal or equitable right to the deer head, and Don Broder because of his discussion with his siblings at different times that he claimed ownership of the deer head and had expressed on numerous occasions since 1973 "possession was nine tenths of the law" which commenced the start of a limitation period. Statues of limitation, and laches was suggested as a very strong defence, if and when Don Broder had to defend at the application for Administration at The Surrogate Court.

You do not commence an action against innocent people, without following proper procedure to justify such an action, and at no time did the appointment of administrators ever be formally executed until sometime in the year 2001.

Surrogate Court Rules are for this purpose and the solicitor for the Plaintiffs, should have made an application to appoint administrators in 1997 at the Surrogate Courts, before making any demands, and then and only then with the successful appointment would be in a position to make demand for the return of all assets of Edmund Broder, that at no time would other siblings have that right, and only the properly, and legally appointed administrator could possibly achieve the right of administration. And all siblings would be in a position to defend on limitation period, laches, or legal arguments due to the length of time that has passed "24 years from Edmund Broder time of death" at this application.

It was challenged and an application was prepared asking for dismissal based on Alberta Court Rule 129, that the Plaintiffs have "no standing" and as such were given time to create standing.

- See the Application and Order Granted by Master W. J. Quinn granted April 27, 2001

Standing is not something that should be given time to be created, either it exists or it does not, Master W. J. Quinn eluded to dismissal in the event administrators were not appointed in the near future, and the Statement of Claim was allowed to stand based on events that would supersede the application.

An Appeal was scheduled on Master W. J. Quinn's order, in front of Justice C. P. Clarke. The application was that Master W. J. Quinn was accurate in determining the Plaintiffs had "no standing" and as such have no legal or equitable right to Edmund Broder's "deceased" belongings, and the only entity that would have such a right would be the Estate, for which administrators were not appointed at this date of application, but erred in allowing the plaintiffs time to create standing.

Justice C. P. Clarke during our appeal erred in ordering the Administrators to be added to the Statement of Claim without a formal application by the Plaintiff, and opportunity for a defence by the Defendants "in excess of 4 years after the statement of claim had been served". This procedure prejudiced the defence of Don Broder and Craig Broder, because it placed a complete new plaintiff on the face of the Statement of Claim that was not considered when the initial defence was thought out and considered. Also with the understanding and the belief that the limitation period to amend the already amended statement of claim had lapsed. Substantial costs were incurred by the Defendants from the Statement of Claim service date in 1997 to this date of September 18, 2001, Justice C. P. Clarke stated costs were to be determined by the trial Judge and awarded to the defendants.

- See the Appeal of the Application and Order of Justice C. P. Clarke granted September 18, 2001.

An Appeal was made to The Alberta Court of Appeal on Justice C. P. Clarke's order and the claim was suggested to have standing by Justice J. EL. Cote, C. M. Conrad, P. T. Costigan, quoted **"as slight as it may be the plaintiffs are alleging that there might have been an agreement"**

During the course of applications by the Defendants the Plaintiffs solicitor proceeded to appoint and have formally appointed at the Surrogate Courts administrators, Doris Bibaud, and George Broder, without the proper service to Don Broder, completely without his knowledge and before Master W. J. Quinn's order was formally executed by both parties solicitors. Don Broder received by registered mail the notice to appoint administrators document and date of the Surrogate Court hearing after it had already been heard, and at no time was given an opportunity to a defence, and this would have been the time to challenge limitation periods, laches, and conflict of interest not only by the appointed family administrator, but also by their counsel involved with the litigation against Don Broder, but now also the same counsel representing him as a beneficiary of Edmund Broder's Estate is in absolute direct conflict of interest..

- See documents of Surrogate Court hearing and postal date of service upon Don Broder.
- See letter written to Weir Bowen by R. J. Sawers & Associates.

The Defendant Don Broder makes request the presiding Judge for the trial remove the Administrators as they may be, Doris Bibaud and George Broder from the amended Statement of Claim, as the Personal Representatives of the Estate of Edmund Broder as the Estate has a Statement of Claim at the Law Courts sitting idle for sometime now unserved and as order by the case management Justice Marceau "to serve it." This Statement of Claim is absolute proof the solicitor for the Plaintiffs acknowledges the error, and has taken the precaution to cover their unprofessional behavior. The Defendants were absolutely accurate that the addition of a new Plaintiff to the original Statement of Claim prejudiced their position, and must not be allowed.

- **And the Plaintiffs are to immediately provide a copy of their alleged agreement, or alternately we the defendants, Don Broder and Craig Broder respectfully request instantaneous dismissal with costs payable to the Defendants.**

Under the Statutes of Fraud.

Respectfully submitted
By the Defendants