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COURT OF KING'S BENCH OF MANITOBA

IN THE MATTER OF:

THE ESTATE OF MINNIE BLUSTEIN	) Jana Taylor) for the Public Guardian and Trustee))) Jessica Hersey) for the charitable interests))) Ian Scarth) for the beneficiaries on an intestacy))) JUDGMENT DELIVERED:) May 2, 2025)

GREENBERG J.

INTRODUCTION

[1] This is an application by the Public Guardian and Trustee ("PGT") for directions regarding the estate of Minnie Blustein who was a ward of the PGT at the time of her death. The directions which the PGT seek relate to whether either of two handwritten notes, found among Ms Blustein's possessions, are testamentary documents that can be admitted to probate. If not, her estate would be distributed as an intestacy.

[2] As will be explained, whether the estate is distributed as a testacy or an intestacy, only some of the potential beneficiaries have been identified. As a result, the court granted an order appointing counsel to represent the interests of each group. The PGT takes no position on the issue before the court but has left it to the two appointed counsel to present the competing arguments.

BACKGROUND

[3] Ms Blustein passed away on October 22, 2017 at the age of 88. At the time, she had been a ward of the PGT for 10 years. Ms Blustein's parents pre-deceased her and she had no spouse, partner, children or siblings. At the time of Ms Blustein's death, the PGT was unaware of any family or friends other than a maternal cousin who lives in Ontario. It is not clear whether that cousin actually knew Ms Blustein or merely knew of her, but he told the PGT that Ms Blustein and her mother both suffered from mental health issues and had isolated themselves from others.

[4] The PGT became committee of Ms Blustein's person and property in March 2007 after an order was issued by the Director of Psychiatric Services under s. 61 of ***The Mental Health Act***, C.C.S.M. c. M10. She had been living by herself in a house but was moved into a personal care home where she lived for the remainder of her life. When Ms Blustein's house was cleaned out by the PGT, they found two short handwritten notes, one dated February 15, 1972 and one dated November 25, 1994. Both were signed by Ms Blustein. The handwriting has been compared to other known samples of Ms Blustein's handwriting and there is no dispute that the two documents were written entirely by Ms Blustein.

[5] The 1972 document states:

> I, Minnie Blustein, not feeling in very good health, make this will, that in the event of my demise, everything I own should be used for (Jewish children) orphanage in Israel.

[6] The document goes on to say that her property should be converted into a trust fund and that the interest each year should be divided among accounts for each orphan "so that they will have something of their own to start life with." This note was written the year after Max Blustein, Ms Blustein's father, died.

[7] The 1994 document, which is entitled "Blustein Family Trust", states:

> To any relations or friends who feel that they are entitled to my estate I leave the sum of one dollar which is more than they ever gave me.
>
> The estate I leave in the hands of the public trustee, the interest from Canada Savings Bonds into which everything is to be invested and the cash is invested now to be divided into 3 equal parts in the names of ~~Bessie Blustein, Max Blustein, Minnie~~ & given scholarships for the needy – 50% of the interest is to be reinvested as well as the bonds which become due yearly. 5000.00 scholarships.
>
> [names crossed out in original]

[8] This note was written the year after Bessie Blustein, Ms Blustein's mother, died. It appears that Ms Blustein's estate (now valued at about $500,000) was inherited from her parents.

[9] The issue before me is whether either of the two notes is a testamentary document that can be admitted to probate. If not, then Ms Blustein's estate will be distributed under ***The Intestate Succession Act***, C.C.S.M. c. 185, and the beneficiaries will be the first cousins of Ms Blustein who survived her death and any issue of first cousins who pre-deceased her (ss. 5, 6). In addition to the maternal cousin referred to above, an heir

tracing company has identified seven paternal first cousins, three of whom survived Ms Blustein. None of those cousins live in Canada. There is no information as to whether the four deceased paternal first cousins have surviving issue. And there is no evidence as to whether there are maternal first cousins other than the Ontario cousin. None of the cousins provided any evidence. As with the Ontario cousin, there is no indication that the paternal cousins knew Ms Blustein or that they wish to make a claim to her estate. One of the identified cousins did not even respond to inquiries from the heir tracing company. I also note that no one has come forward in the eight years since Ms Blustein died to claim any interest in the estate. I point this out because it might explain why Ms Blustein did not make any provision for family in either of the two notes.

ISSUES

[10] To admit a holograph will into probate the court must be satisfied that the entire document is in the testator's handwriting and that at the time it was signed, the testator was of the age of majority and of sound mind (***The Court of King's Bench Surrogate Practice Act***, C.C.S.M. c. C290, s. 22(5)). As I said, there is no dispute that the two documents in issue here were entirely in Ms Blustein's handwriting. Nor is there any dispute that she was over the age of majority when she wrote them.

[11] The contentious issues are:

- Are either of the two notes a valid testamentary disposition? That is to say, did either evidence a clear testamentary intent?
- If so, did Ms Blustein have the requisite mental capacity to execute a testamentary disposition at the time she wrote the notes?

- If both notes are valid testamentary dispositions, which one governs distribution of the estate?
- If the bequests in the documents are too vague to determine how to distribute the estate, can the *cy-près* doctrine be applied to give effect to Ms Blustein's intent?

[12] The resolution of these issues is difficult because of the lack of evidence. Other than a single hearsay statement from the Ontario cousin, no information about Ms Blustein was provided by any family or friends. Although the PGT was her committee for 10 years, they were not able to provide any information about her prior to the events that precipitated the committeeship, which events occurred many years after the notes were written. And as counsel appointed by the court have no instructing clients, they were not able to fill in the evidentiary gaps.

ANALYSIS

Is either the 1972 note or the 1994 note a valid will?

[13] There is no dispute that both the 1972 and 1994 notes meet the formal requirements for a valid holograph will under ***The Wills Act***, C.C.S.M. c. W150, s. 6. They are both entirely in Ms Blustein's handwriting and signed at the end. Section 23 of the Act allows the court to find that a document is a fully effective will if satisfied that it embodies the testamentary intentions of the deceased. Counsel for the intestacy beneficiaries argues that neither the 1972 nor the 1994 document can be admitted to probate because neither meets the substantive requirements for a valid will in that neither demonstrates a clear testamentary intent.

[14] In ***Bennett v. Toronto General Trusts Corp.*** [1958] S.C.R. 392, the Supreme Court explained what is required to show testamentary intent. Fauteux J. explained:

> That the letter of September 27, 1952, satisfies the requirement, as to form, is beyond question; the point in issue being whether, as to substance, this holographic paper is testamentary.
>
> There is no controversy, either in the reasons for judgment in the Courts below, or between the parties, that under the authorities, a holographic paper is not testamentary unless it contains a deliberate or fixed and final expression of intention as to the disposal of property upon death, and that it is incumbent upon the party setting up the paper as testamentary to show, by the contents of the paper itself or by extrinsic evidence, that the paper is of that character and nature*: Whyte et al. v. Pollok* [(1882), 7 App. Cas. 400.]; *Godman v. Godman* [[1920] P. 261.]; *Theakston v. Marson* [(1832), 4 Hag. Ecc. 290, 162 E.R. 1452.].
>
> [emphasis added]

[15] The determination of whether a document represents a fixed and final testamentary intent is very fact specific; so, precedents are of limited assistance. In particular, I do not find helpful the cases, referred to by counsel, that consider whether notes or letters sent by a deceased to their solicitor with instructions on how they want their estate distributed are wills. For example, in the ***Bennett*** case, the issue was whether a letter sent by the deceased to her solicitor, which indicated how she wanted to distribute her estate, was a valid will. The deceased met with her solicitor after sending the letter but she could not decide who the executor should be and so planned to return for a further meeting. At a subsequent meeting, she changed some of the details of the bequests referenced in the letter. Although she met with her solicitor on other occasions after that, no formal will was ever executed. The Court held that the letter was only a preliminary to a will; that it was clear from the wording of the letter that the deceased

intended it to lead to further consultation and that subsequent events "were cogent evidence of a still deliberating mind" (at p. 398).

[16] Similarly, in ***George v. Daily***, [1997] M.J. No. 51 (C.A.)(QL), the court overturned the decision of the trial judge to admit to probate a letter written by the deceased's accountant to the deceased's lawyer which outlined the deceased's instructions for a new will. The accountant had sent the letter after a meeting with the deceased in which the deceased told the accountant of changes he wished to make to his earlier will, but there was no evidence that the deceased had seen the accountant's letter. *See also* ***Timm v. Rudolph***, 2016 MBQB 123; ***Kavanagh's Will (Re)***, 1998 CanLII 18096 (NLCA).

[17] Counsel referred to ***Nicklen Estate (Re)***, 2021 SKQB 208, where the court found that notes written by the deceased on the back of a receipt for car parts was not a valid codicil to a formal will that he had executed several years earlier. The document was not consistent with the meticulous way that the deceased usually approached things, nor with his traditional use of lawyers. Moreover, as it referred to both property that he had already disposed of and property that he wished to bequeath, it did not reflect a fixed testamentary intention.

[18] A suicide note written six months after the execution of a formal will was found not to be a testamentary document in ***Popowich Estate***, 2012 ABQB 665. In the nine page note, the deceased explained why she was ending her life and repeated that her mother was not responsible. She also said that her mother should "take my money and do things for yourself." The court found that the deceased did not wish to change her formal will, which had given half of her estate to her husband. Rather, she was merely

telling her mother not to feel bad about spending the money that the deceased left to her in her formal will.

[19] By comparison, in ***Casavechia v. Noseworthy***, 2015 NSCA 56, the court found that a handwritten note where the deceased "confirmed a promise" to give his daughter a lakefront lot on his property was a valid codicil. The court found the short note evidenced testamentary intent even though it did not use typical testamentary language or refer to the gift taking place on his death. Oland J.A. said:

> [30] The late Mr. Casavechia was not a lawyer. It is not surprising that his letter did not use words and phrases that a lawyer, or perhaps a person more familiar with legal terminology pertaining to wills and estates, might have chosen. The test is whether, in all the circumstances, the document indicated a deliberate or fixed and final expression of intention as to the disposal of property upon death. The fact that it did not contain precise legal terminology, or expressly refer to an existing will, is not determinative.

[20] A list setting out assets of the deceased and the people who were to have them was held to be a valid testamentary document in ***Canada Permanent Trust Co. v. Bowman***, [1962] S.C.R. 711, in spite of the fact that it did not refer to an executor, the testator's death or the residue of the estate. Martland J. explained:

> 13 In my opinion the contents of the paper in question here do contain the evidence to show the kind of intent to which he refers in this passage. The wording of the document is a statement of the wishes of the deceased respecting the disposal of her property and it is implicit in the document read as a whole that she wished such disposition to be made following her death. In addition, the word "bequests", which she used following reference to various dispositions previously mentioned in the document, is a term which is ordinarily applicable to property taken by will (see *Re Snowball* [[1941] O.R. 269 at 272.]).

[21] In this case, both documents state a desire by Ms Blustein to leave all her estate to charity – in the 1972 document, to an orphanage in Israel; in the 1994 document, for

scholarships for the needy. In my view, the language in both documents indicates a "fixed and final expression of intention as to the disposal of property upon death" (***Bennett***, *supra,* para. 5). Ms Blustein uses the term "will" in the 1972 document and expresses her wishes as to what is to be done with "everything I own" "in the event of my demise". In the 1994 document, she refers to her "estate" and how it is to be distributed.

[22] As I said, there is no extrinsic evidence that would assist in interpreting the 1972 or 1994 document. To the extent that there is extrinsic evidence, it would support a fixed and final intent by Ms Blustein to leave her estate to charity. She had no family in Manitoba and there is no evidence of any relationship with the cousins who have been located. As I said earlier, it is not clear whether they had ever met her. As she says in the 1994 document, "To any relatives or friends who feel that they are entitled to my estate I leave the sum of one dollar which is more than they ever gave me."

[23] There is no evidence that Ms Blustein had any friends. She spent her last 10 years in a personal care home. There is no evidence that anyone ever visited her there. This is not a case where suspicions are raised because a family member has been inexplicably excluded from the will. The intestacy beneficiaries here have no moral claim to any part of the estate.

[24] There is no question that the 1972 note evidences a clear testamentary intent. The fact that Ms Blustein did not name a specific beneficiary does not detract from that. It is clear from the document that she wished her estate to be used for a charitable purpose. Counsel argued that the fact that she changed the nature of the charitable

object in the 1994 document shows that the 1972 document did not exhibit a fixed and final intent. But it is not uncommon for people to change testamentary bequests. That does not refute their intent at the time of the original bequest. ***The Wills Act*** specifically provides for a change of heart. A later will revokes an earlier will (s. 16(b)).

[25] Counsel for the intestacy beneficiaries argues that the 1994 document does not indicate a fixed and final testamentary intention because the names of "Bessie Blustein", "Max Blustein" and "Minnie Bluestein" were scratched out. Counsel suggests that these three were the named beneficiaries and that Minnie, by crossing out the names, showed that she did not have a settled intention as to how to distribute her estate. But it is obvious that Minnie was not intending the three named people to be beneficiaries. She, of course, could not be a beneficiary of her own will and her father and mother passed away before the document was signed. I believe that she named her parents and herself so that the trusts would be named in their honour. In fact, the document is titled "Blustein Family Trust". That title is not scratched out. She likely scratched out the names because she changed her mind about the name of the trust. That does not suggest she did not have a fixed and final intention about the distribution of her estate.

[26] Counsel for the intestacy beneficiaries also argues that the fact that Ms Blustein did not name the specific family or friends whom she was excluding from sharing in her estate, and the fact that the exclusion seems emotional, shows that the document is the result of an impulsive act and not a considered plan. I disagree. She had good reason for not including relatives or friends. The document shows a deliberate and final intent

that people who never had anything to do with her should not benefit from her estate by operation of intestacy laws.

[27] Nor do I accept the argument that the fact that Ms Blustein was not more specific about how the scholarships would be administered shows she did not have a settled testamentary intent.

[28] In ***George v. Daily***, at para. 27, Philp J.A. adopted the following statement form ***Re Eames Estate***, [1934] 3 W.W.R. 364 (Man. K.B.), at p. 366:

> The Court owes a sacred duty to protect a man's last will. The guiding principle is to give effect, if possible, to his intentions. Where the law designates a form in which such must be expressed this latter limits the operation of the principle, but the instrument itself is not destroyed. It is still the act of the deceased, and if though it is bad in one form it is good in another, the Court must enforce it. Our statute encourages testators to draw their own wills. That being so, the statute and any such will should be construed benignly and every effort made to avoid any construction which would invalidate the will.

[29] I am satisfied that in both the 1972 and 1994 notes, Ms Blustein expressed a fixed and final intent, at the time of the writing, regarding how she wished her estate to be distributed.

Capacity

[30] The propounder of a will must establish that the testator had capacity to execute the will, that is to say, "a disposing mind and memory" (***Vout v. Hay***, [1995] 2 S.C.R. 876, at para.20). In the case of a "formal" will, those who witnessed the execution of the will usually provide evidence of capacity. With a holograph will, where there were no witnesses, people who knew the testator at the time the will was executed can provide that evidence. The question is how capacity is established where, as here, the

propounder cannot locate anyone who knew the testator when the will was written. That brings me to the presumption of capacity.

[31] The leading case on this issue is ***Vout v. Hay***, where Sopinka J. said:

> 26 Suspicious circumstances in any of the three categories to which I refer above will affect the burden of proof with respect to knowledge and approval. The burden with respect to testamentary capacity will be affected as well if the circumstances reflect on the mental capacity of the testator to make a will. Although the propounder of the will has the legal burden with respect to due execution, knowledge and approval, and testamentary capacity, the propounder is aided by a rebuttable presumption. Upon proof that the will was duly executed with the requisite formalities, after having been read over to or by a testator who appeared to understand it, it will generally be presumed that the testator knew and approved of the contents and had the necessary testamentary capacity.
>
> 27 Where suspicious circumstances are present, then the presumption is spent and the propounder of the will reassumes the legal burden of proving knowledge and approval. In addition, if the suspicious circumstances relate to mental capacity, the propounder of the will reassumes the legal burden of establishing testamentary capacity. Both of these issues must be proved in accordance with the civil standard. There is nothing mysterious about the role of suspicious circumstances in this respect. The presumption simply casts an evidentiary burden on those attacking the will. This burden can be satisfied by adducing or pointing to some evidence which, if accepted, would tend to negative knowledge and approval or testamentary capacity. In this event, the legal burden reverts to the propounder.
>
> [emphasis added]

[32] In the case of a holograph will, proof of due execution and knowledge and approval is established by showing that the will is entirely in the deceased's handwriting and signed by the deceased. As to capacity, while the will in ***Vout v.*** **Hay** was executed in front of witnesses, the presumption of capacity has been applied to holograph wills (***Robitaille v. Robitaille Estate***, 2011 NSSC 203; ***Anderson Estate, Re***, 2009 ABQB 285).

[33] In ***Anderson***, Veit J. found that the presumption was not rebutted by the fact that the deceased was declared a "dependent adult" under Alberta's ***The Dependent Adults Act***, R.S.A., c. D-32, shortly after writing the will on the basis of medical evidence that

he had symptoms of cognitive impairment. She said (at para. 46): "It is trite to say that the mere fact that a person is a dependent adult does not mean that the person does not have testamentary capacity."

[34] Proof of testamentary capacity is necessarily fact based. So the cases referred to by counsel are of limited assistance because they are based on the evidence that was before the court. As I said, in this case there is no evidence about Ms Blustein's circumstances when she wrote the notes. Counsel for the intestacy beneficiaries says that the comment of Ms Blustein's cousin, Aaron Wolfson, that Ms Blustein had a history of mental health issues raises suspicious circumstances. But that comment is contained in a single sentence in the affidavit of Alison Hunter, the PGT estate officer with conduct of Ms Blustein's estate. The statement is hearsay and may itself be based on hearsay. The cousin lives in Ontario and there is no evidence as to whether he ever met Ms Blustein. In any event, a history of mental illness does not itself preclude capacity (see e.g. ***Hoffman v. Heinrichs***, 2012 MBQB 133; ***Weidenberger Estate, Re***, 2002 ABQB 861).

[35] While Ms Blustein was suffering from mental health issues when the PGT became her committee in 2007, that was years after she wrote the 1972 note and the 1994 note.

[36] In some cases, even without extrinsic evidence, the condition of the will could raise issues as to capacity, for example, if there is scribbling on it or numerous or incomprehensible deletions and additions. As well, the substance of the will may raise suspicious circumstances, for example, where the testator had dependent children but left everything to a neighbour. In this case, the documents were neatly written and the

bequests are not surprising. As Ms Blustein had no close family and lived a solitary life, it is not surprising she left her estate to charity.

[37] In any event, there is other evidence of capacity. Ms Blustein was appointed administrator of her mother's estate in January 1994. She had counsel at the time. I assume her counsel would not have filed an application for administration on her behalf if there was an issue as to her capacity to manage the estate. Ms Blustein was also able to sign documentation in February 1994 when her mother's home was transferred to her.

[38] There is insufficient evidence to rebut the presumption of capacity in either February 1972 or November 1994. Both the 1972 and 1994 documents meet the requirements for a valid holograph will. By operation of s. 16(b) of ***The Wills Act***, the 1972 will is revoked by the 1994 will.

Cy-près

[39] In her 1994 will, Ms Blustein leaves her estate in the hands of the "public trustee" to invest and to use 50% of the interest generated for "scholarships for the needy". (In 1994, the Public Guardian and Trustee was known as the "Public Trustee".) In my view, Ms Blustein's intent to set up a charitable endowment is clear. However, while the PGT can act as the administrator of Ms Blustein's estate, they cannot act as trustee of an endowment fund. As a result, the trust as worded cannot be implemented.

[40] There are two ways that the court can ensure that the wishes of a testator are carried out: 1) by the court's inherent administrative scheme power or 2) by application of the *cy-près* doctrine. The difference between the two vehicles seems to relate to whether the flaw in the trust is in the object of the trust or in the administrative

mechanism to execute it. In Donovan W.M. Waters, Mark R. Gillen & Lionel D. Smith, eds., *Waters' Law of Trusts in Canada*, 5th ed. (Toronto: Thomson Reuters, 2021), c. 14. VI, A.1, the author explains:

> Once it is ascertained that a trust object is charitable, then, as we have seen, it will not fail for uncertainty. The court has an inherent jurisdiction to compose a scheme, or to direct its officials to draw up a scheme, whereby any uncertainty is removed and the gift made operative. This was, and remains in jurisdictions where it is not being rendered statutory, the administrative scheme making power. As can be seen from the older case law, a scheme may have been approved in order to clarify the charitable purpose in terms of what is to be done, to deal with excess income above expenditure needs, to appoint new trustees where, for instance, trustees are neglecting their office or have made away with trust property, or more recently to remove a racially discriminating condition barring certain persons from qualifying for benefit. In the last century this inherent judicial power has been more frequently exercised in the variation of trustees' investment powers. Trustees faced with restrictive investment powers that were drawn in days when the market and accepted investment practice were very different have turned to this judicial authority.
>
> . . .
>
> When uncertainty is found in a testamentary or *inter vivos* charitable trust, and in Canada it is the testamentary trust which seems to have been most extensively employed, the approach taken by the courts in exercising their power is to discover and implement the donor's intent. For instance, where the testator has incorrectly recorded the name of a charitable institution, the court will take considerable care to discover, if it all possible, the actual institution which he or she had in mind; It will not be content merely to assume that an institution doing similar work to that described must have been the body intended. Where details have been omitted in the setting out of the administrative machinery of the trust, or were the testator has failed to record the names of his or her beneficiary institutions, having said they are to be "religious" or "universities", for example, the court by scheme will fill in the details and have the name supplied, drawing its criterion from whatever evidence there is of what the testator would have wished to do. If the evidence is entirely ambiguous, the court will come as close as it can to the various possibilities of the testamentary situation. If on the other hand it becomes evident that, though the objects are clearly and fully expressed, it is impossible to carry them out, then the court will make or direct a scheme *cy-près* which contains objects approximately as nearly as possible to the testator's objects.
>
> [footnotes omitted]

[41] Courts are more flexible in assessing the objects of a charitable trust than in the objects of a private trust. As explained in *Waters' Law of Trusts in Canada*, c. 14, III, A.1:

> A private discretionary trust must have certainty of objects to this extent, that it must be able to be determined with certainty whether any given individual is a member of the class of beneficiaries. The requirement of certainty is therefore the same for discretionary trusts or trust powers, and for simple or ordinary powers.
>
> Charitable or public trusts are exempted from the requirement of that form of certainty of objects. As a concession to charity, and provided the settlor has wholly devoted the trust property to the furtherance of charitable objects, the law permits the settlor to describe the trust objects simply as for charitable purposes or for one type of charitable activity, without particularizing further as to the specific purposes which are to be pursued or the specific charitable institutions which are to receive benefit from the trust. The certainty required of the objects of a charitable trust is that the purpose or range of purposes or institutions contemplated by the settlor is within the legal concept of charity. Has the settlor enabled his or her trustees to do anything which would be non-charitable? — that is the question.

[42] So, for example, in ***Stoughton and Heward United Church Pastoral Charge v. Saskatchewan (Minister of Finance)***, [1987] S.J. No. 566 (QB)(QL), the court found that the bequest in the deceased's will "to my Trustees to be used for the relief and benefit of the deserving poor and needy in the district in which I farmed" created a valid charitable trust. Therefore, the court was entitled to determine how to implement the trust - what object is as near as possible to that described by the testator. Where it cannot be determined which of several charities is closest to the testator's intent, the bequest may be divided between them (***Conroy Estate, Re***, [1973] 4 W.W.R. 537, 1973 CarswellBC 108, at paras. 7-8).

[43] In ***Re Angell Estate***, [1955] M.J. No. 28 (QB)(QL), the court found that a clause in the will that provided that property be sold and the proceeds be paid out to "needy aged persons" was valid (not too uncertain). Williams C.J.Q.B. found that, in the absence

of any limitation in the will as to the place of residence of the needy aged persons, it was a fair inference that the testatrix expected the bequest to benefit persons in the locality where she had lived (para. 20).

[44] In my view, Ms Blustein's language is not ambiguous. The object of the bequest in the 1994 will is clear. Her family and friends were not to benefit (other than by the nominal amount of one dollar). She wished her estate to be used for scholarships for the needy and, for that purpose, she set up an endowment. The problem is with the scheme for implementing that object. This is not a situation where I need to apply the *cy-près* doctrine to find an object as near as possible to the object described in the will. Nor will it be difficult to determine who the ultimate beneficiaries will be. The difficulty with implementing the trust is that the named trustee, the PGT, is incapable of acting as trustee. Resolving this problem is more a matter of exercising the court's inherent jurisdiction than applying *cy-près*. But both principles would lead to the same place.

[45] Counsel for the charitable interests provided a list of charities/institutions in Winnipeg which currently distribute scholarships based on need or could manage an endowment for that purpose – the Winnipeg Foundation, the Jewish Foundation of Manitoba, the University of Manitoba and the University of Winnipeg. Ms Blustein did not place any limitations on who should be eligible to receive scholarships other than that they should be "needy". In my view, her intent would be best implemented by setting up the trust with an institution that would reach the broadest part of the community. After considering the information provided about the above named charities, I believe

that establishing an endowment with the Winnipeg Foundation in the name of the Blustein Family would best meet Ms Blustein's intent.

[46] I do not have any evidence as to whether the other directions in the will, such as what percentage of the interest should be distributed and the value of the individual scholarships, will need modification to be implemented. If necessary, the PGT can seek further directions in this regard.

CONCLUSION

[47] The handwritten document, dated November 25, 1994, should be admitted to probate as the last will of Minnie Blustein. The will should be interpreted to provide that Ms Blustein's estate be used to establish an endowment with the Winnipeg Foundation in the name of the Blustein Family for the purpose of providing scholarships to needy persons to use in furthering their education. Further directions as to management of the endowment can be sought by the PGT if needed.

[48] The reasonable costs of the PGT and the reasonable legal fees of the two counsel who were appointed by the court to represent the competing interests should be paid out of the estate.

_____J.