

BOCK J.

INTRODUCTION

[1] Maynard Allen Lawrence and Michael James Lawrence are brothers. (To avoid confusion, I will refer to them by their first names with no disrespect intended.) Their grandmother, Mary Ronyck (“Mary”), died on January 2, 2013. Ten years later, on March 23, 2023, their mother, Rose Lillian Lawrence (“Rose”), died. Both women died testate and both appointed Michael as their executor. Maynard and Michael are the only surviving beneficiaries of those estates.

[2] Unfortunately, over the years Michael has proven himself to be an incapable and unsuitable executor. As a result, on January 10, 2025, Maynard filed two separate applications for orders removing Michael as executor of the two estates and appointing himself as administrator with will annexed of his grandmother’s estate (the “Ronyck Estate”) and as executor of his mother’s estate (the “Lawrence Estate”).

[3] For the reasons that follow, both applications are granted.

[4] Before I continue, I pause to note that Michael was represented by counsel until October 15, 2025, the date of the hearing. On that date I granted his counsel leave to withdraw. Michael therefore made submissions on his own behalf.

THE LAW

[5] Every trustee is “expected to act as [any] person of ordinary prudence would act” (*Fales v. Canada Permanent Trust Co.*, 1976 CanLII 14 (SCC), [1977] 2 S.C.R. 302, p. 316). In addition, every trustee must act fairly to carry out the wishes of the executrix, and not let his own interests place him in a position adverse to any of the beneficiaries

of the estate (*Melna v. Hall*, 2000 CanLII 20739 (MB QB), 143 Man. R. (2d) 98, para. 18).

[6] In *Bereskin Estate, Re*, 2014 MBCA 15, the Court of Appeal endorsed the following summary of the legal principles which apply on an application to remove an executor:

[13] The applicable legal principles, as they were set out by the motion judge, are as follows (at para. 14):

....

(i) “[a]n estate trustee is a fiduciary and he or she holds title to and control of property for the exclusive benefit of the beneficiaries of the trust. The duty is often described as one of utmost good faith or uberrima fides” (excerpt from Jennifer J. Jenkins & The Late H. Mark Scott, *Compensation and Duties of Estate Trustees, Guardians and Attorneys*, Looseleaf (Canada Law Book, A division of Thomson Reuters Canada Limited, 2006), p. 12-2);

(ii) a court will not lightly remove an executor chosen by a testator. The onus is on the party seeking removal to show that it is a clear necessity and that the welfare of the beneficiaries requires it. See *Stern Estate, Re* (2010), 2010 MBQB 68 (CanLII), 250 Man.R. (2d) 293; 2010 MBQB 68, at para. 15;

(iii) an executor may be removed where the executor is in a conflict of interest, where the executor fails to put the interests of the trust and the beneficiaries first in his thinking, and ahead of any other interest, or where the attitude and conduct of the executor is “purely obstructive”. See *Stern*, at para. 13; *Beatrice Watson-Acheson Foundation et al. v. Polk et al.*, [2006] O.T.C. 542; [2006] O.J. No. 2518 (Sup. Ct.) (QL), at para. 53; *Somerset Estate, Re*, 1951 CanLII 476 (BC SC), [1928] 2 W.W.R. (2d) 697 (Man. C.A.), pp. 698-9.

[7] Against that legal backdrop, I turn to a discussion of the evidence filed by Maynard in support of his applications.

DISCUSSION AND DISPOSITION

[8] The evidence on both applications comes from two affidavits affirmed by Maynard on January 8, 2025. (In these reasons those affidavits are described in reference to the estate to which they correspond, i.e., the “Ronyck Affidavit” and the “Lawrence Affidavit”, respectively.) Michael did not file any evidence in reply nor did he cross-examine Maynard.

[9] Based on that evidence, I am left with no doubt that Michael must be removed as the executor of both estates. The following summary of events since 2013 bears this out.

[10] As I have already noted, Mary died testate on January 2, 2013. She was survived by her daughter, Rose, and her two grandsons. Michael was appointed executor.

[11] According to Maynard, his grandmother left an uncomplicated estate. It includes a house at 656 Simpson Avenue in Winnipeg as well as its contents, a parcel of land near Dauphin, Manitoba estimated to be about one acre, a joint interest with her daughter Rose in a second house at 30 Tamarind Drive in Winnipeg, and a 1970 Pontiac Bonneville. Maynard recalls having received one interim distribution of approximately \$60,000 from Michael “some time ago” (Ronyck Affidavit, para. 20), but there have been no other distributions from the estate.

[12] Rose died testate on March 23, 2023, and was survived by Michael and Maynard. By the terms of her will, Michael was appointed executor.

[13] Maynard attests that as of the date of his mother's death her estate included a house at 650 Simpson Avenue in Winnipeg, her joint interest in 30 Tamarind Avenue, a life insurance policy, two Dodge Caravan vans, a camper trailer and a Bobcat skid-steer. There is nothing to suggest that this estate was particularly complicated either. To date, there have been no distributions from Rose's estate.

[14] On January 15, 2024, Maynard's solicitor, Donald Zarow, sent Michael a letter in respect of each estate informing him of his retainer (Ronyck Affidavit, Exhibit E and Lawrence Affidavit, Exhibit F). In those letters he asked Michael for information with respect to each estate, including an initial inventory and a statement of all money received and payments made. Despite several subsequent requests from Mr. Zarow, Michael has yet to provide that information.

[15] Three weeks later, in a letter dated February 7, 2024, Mr. Zarow provided Michael with a very helpful and accurate list of "some of the things that should have transpired by now in relation to the administration of" the Ronyck Estate (Ronyck Affidavit, Exhibit G). Mr. Zarow's list is a useful yardstick by which to measure the extent of Michael's failure to administer the Ronyck Estate with the attention, care and diligence required by law. More than 12 years after his grandmother's death, and nearly one year since Maynard filed his notice of application, there is no evidence Michael has done anything on Mr. Zarow's list, which is set out here in full:

1. The executor should have provided a copy of Mary's Will to all beneficiaries shortly after Mary's death. Maynard has confirmed with me that he has never seen Mary's Will until now. [A copy of the will was provided by Michael to Mr. Zarow in response to his written request by letter dated January 15, 2024, Ronyck Affidavit, Exhibit E.]

2. The executor should have filed a Request for Probate of Mary's Will in court within a reasonable time period after her death, and the Grant of Probate should have been obtained from the court some time ago. It has now been 11 years since Mary passed away, and a Request for Probate of Mary's Will has yet to be filed in court.
3. An estate account should have been opened in order to receive estate funds, and to pay estate debts.
4. I am aware that Mary is the registered owner of 656 Simpson Avenue, and a joint owner (together with your mother, Rosie Lawrence) of 30 Tamarind Drive. With respect to 30 Tamarind Drive, a death certificate from The Department of Vital Statistics should have been obtained for Mary in order to remove her from the title. 656 Simpson Avenue should have been registered in the name of Mary's estate, cleaned out and prepared for sale, listed for sale, sold and the sale proceeds deposited into the estate account.
5. Any necessary income tax returns should have been prepared and filed with the C.R.A. [Canada Revenue Agency], any income taxes owing paid, or any refunds received, and a clearance certificate applied for and obtained from the C.R.A.
6. The executor should have prepared an accounting of his administration of the estate for the beneficiaries to review and approve, with Releases for the beneficiaries to sign off on. Failing approval of the accounting by the beneficiaries, the executor should have applied to court to pass the accounts. Legacies should have been distributed to the beneficiaries according to the terms of the Will.

[16] In a second letter, also dated February 7, 2024 (Lawrence Affidavit, Exhibit F), Mr. Zarow gave Michael similar advice in respect of the steps he ought to have taken as the executor of the Lawrence Estate. None of Mr. Zarow's suggested steps has been taken: no application for probate has ever been made; no estate account has ever been opened; no steps have been taken to deal with the real property which forms part of the estate; no accounting has ever been prepared.

[17] In my opinion, Michael's failure to perform his duties as executor of both estates without any reasonable excuse, and for such an extended period of time, is enough to justify his removal. Despite his self-professed expertise in accounting and tax, there is nothing to suggest that he has the skill, experience or temperament to properly administer these estates. Based on his submissions to me at the hearing, which were often rambling and disorganized, I have no reason to believe his performance will improve if he is left in place. In the words of ***Bereskin Estate***, his removal is "a clear necessity" and "the welfare of the beneficiaries requires it" (para. 13).

[18] In addition to Michael's failure to perform, there are other troubling facts which also justify his removal.

[19] To begin, in Michael's correspondence to Mr. Zarow and Maynard, he has revealed himself to be, among other things, imperious, belligerent and evasive – "purely obstructive", in other words – in his handling of the estates (***Bereskin Estate***, para. 13). His officious opening comments in his letter of February 22, 2024 to Mr. Zarow (Ronyck Affidavit, Exhibit J) offer an example:

Mr Zarrow [*sic*],

Regarding your letter of February 7th, 2024, please be advised that all mail you wish me to read in a timely manner should be addressed to myself at 30 Tamarind Drive, Winnipeg, Mb, R2G 2A6, until at least June 23rd, 2024, or further notice, whichever occurs last.

...

[20] In that same letter, Michael takes offence at Mr. Zarow's reasonable inquiries about the Ronyck Estate and fails to respond to any of them meaningfully.

[21] This same obstructive attitude is reflected, to a greater or lesser extent, elsewhere in the evidence. For instance, on February 7, 2024, Mr. Zarow wrote to Michael to follow up on the questions he had first posed in his letter of January 15, 2024. Not only was Michael's reply of February 22, 2024, unresponsive, but it also included this unwarranted outburst (Ronyck Affidavit, Exhibit J and Lawrence Affidavit, Exhibit G):

... I expect no further "response required" communication from Maynard until such time as I can provide you with the accurate, and up-to-date, complete probate information needed to make your decisions and to enable liquidation of estate assets, which will come far sooner if I am allowed to continue with my accounting tasks – uninterrupted.

[22] Similarly, when Mr. Zarow asked Michael one month later whether estate bills had been paid and how that year's property taxes on the houses at 650 and 656 Simpson Avenue and 30 Tamarind Drive would be paid, Michael answered, unhelpfully, "The fact that you are concerned about how I'm going to pay the property taxes, actually scares the crap out of me ..." (Lawrence Affidavit, Exhibits H and I).

[23] Furthermore, there is evidence from which to conclude Michael is preferring his own interests over the interests of the estates and its two beneficiaries. Again, by way of example:

- a. Michael is using 30 Tamarind Drive for his own benefit without any compensation to either estate (Ronyck Affidavit, Exhibit J);
- b. he has claimed to be entitled to a "management fee" in respect of 656 Simpson Avenue of \$100 to \$1,000 per year, despite the fact it appears to have remained vacant since 2013 at considerable expense to the estate (Ronyck Affidavit, Exhibit J);

- c. he has threatened to take steps to have Maynard disinherited should Maynard seek relief in court (Ronyck Affidavit, Exhibit L); and
- d. he purports to be charging the Lawrence Estate \$225 per hour for “accounting and taxation services” and threatens to increase that rate to \$250 per hour should Maynard “choose to not treat [him] like family” (Lawrence Affidavit, Exhibit D), despite the fact that he is not a professional accountant and appears never to have rendered any useful accounting or taxation services to either estate.

[24] Finally, there are concerning indications in Michael’s correspondence that he has allowed 30 Tamarind Drive to fall into disrepair, to the detriment of the estates and its two beneficiaries. This is evidenced by Michael’s own description of the “current state of disrepair” of that house in his letter to Maynard, dated September 12, 13 and 14, 2023 (Lawrence Affidavit, Exhibit D). This in turn raises concerns about whether the houses at 650 and 656 Simpson Avenue have been properly maintained during the years they have stood empty.

[25] All of this leads me to conclude that Michael’s removal as the executor of both estates is urgently required. He has completely failed to carry out his responsibilities as executor, despite having years to do so. He has not acted prudently or fairly. He has demonstrated an obstructive attitude and approach to these matters, preferred his own interests over those of the estates and their beneficiaries, and failed to take appropriate care of the estates’ assets.

[26] I find Maynard to be a suitable candidate for appointment as executor in substitution for Michael in respect of the Lawrence Estate, and as administrator with will annexed in respect of the Ronyck Estate. In her will, Rose named Maynard as her alternate executor (Lawrence Affidavit, Exhibit A). Mary named her daughter, Rose, to be her alternate executrix (Ronyck Affidavit, Exhibit A). That is obviously no longer possible. In the circumstances, it is appropriate that Maynard be appointed administrator with will annexed in respect of the Ronyck Estate.

[27] I also order that Michael produce to Maynard (through his counsel) an accounting in respect of his handling of both estates within 60 days of the date of the order, and thereafter that a reference in respect of each estate be made to the Associate Judge to pass such accounts; that Michael forthwith deliver to Maynard (through his counsel) the original last Will and Testament of Rose and Mary; and that Michael forthwith deliver to Maynard (through his counsel), all documents of every kind relating to the Ronyck Estate and Lawrence Estate, including all financial records.

[28] The parties did not make submissions with respect to costs. In the circumstances, I would be inclined to order Michael pay Maynard's reasonable costs and disbursements on a solicitor-client basis from his share of the estates. However, not having heard submissions from the parties, I make no award for the time being. Should the parties be unable to come to agreement with respect to the issue of costs they may make arrangements for a further appearance before me.

_____ J