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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

MAGGIE RAE MATYSIAK,	)	Jordan Armstrong
	)	for the applicant
applicant,	)	
	)	
- and -	)	Jacqueline G. Collins
	)	for the respondent
THE ESTATE OF WERNER ARTHUR GUSTAV MATYSIAK,	)	
	)	
	)	Jana Taylor
respondent.	)	On behalf of the Public Trustee
	)	
	)	Judgment delivered orally:
	)	September 22, 2026

KOTLER J.

INTRODUCTION

[1] The applicant is the daughter of the testator, Werner Arthur Gustav Matysiak, who died on March 31, 2023. The terms of his will provided that the majority of the estate was to be used to acquire a fixed 20-year annuity that would provide for a monthly allocation to the applicant, "without deviation or encroachment whatsoever." Notwithstanding these terms, the applicant seeks to vary the trust pursuant to s. 59 of

The Trustee Act, C.C.S.M. c. T160 (the "***Act***"), so that she can receive all of the inheritance now in a one-time lump sum, rather than over the course of the 20 years contemplated by the testator. The respondent Estate resists the application on the basis that the testator's goal was to ensure a degree of long-term financial security for the applicant which would be jeopardized by dispersing the entire inheritance at once.

[2] For the reasons that follow, I am allowing the application in part, and varying the trust to allow distribution of the estate in the amounts and under the conditions necessary to support the applicant's education. The remainder of the application is dismissed.

FACTS

[3] The testator made his will on November 26, 2015, and amended it with a codicil several months later. As amended, the will provided that 15 percent of the residue would be allotted for the benefit of the applicant's son, Hunter, with the executors creating a closed or locked-in annuity to be registered until Hunter's 18th birthday and with no right of withdrawal or encroachment until then. The remaining 85 percent of the estate would be used to acquire a fixed 20-year term annuity that would provide a regular monthly distribution to the applicant during the term of the annuity. Again, the will specified that there should be no "deviation or encroachment whatsoever."

[4] After the will was executed, the applicant gave birth to two additional children, Paige and Gregory. According to the executors, who were long-time friends of the testator, the testator discussed providing for these additional grandchildren but ultimately made no further changes to the will.

[5] It is common ground among the parties that the applicant suffers from a number of medical conditions, and requires medication for ADHD, depression and PTSD. She has also undergone several surgical procedures on her hands following a 2024 injury and is still recovering from them.

[6] She receives income assistance from Employment and Income Assistance ("EIA") and has since 2014. Her current allotment is approximately $1,700 per month. She has care of Paige and Gregory, while Hunter has primarily lived with his father over the last two years. She receives just over $1,000 per month in child support. According to her affidavit, she has been advised that she is owed a significant amount of child support arrears and believes that receipt of child support will affect her ongoing eligibility for income assistance. No confirmatory evidence in this regard was offered.

[7] Similarly, the applicant is concerned that the receipt of her inheritance, either by way of lump sum or regular structured annuity payments, will reduce her eligibility for income assistance. She acknowledges that since the testator's death, the estate has been providing advances in the amount of $500 per month, totaling some $11,500 to date, without affecting her EIA eligibility, but suggests that structured payments may be different. Again, this was not confirmed before me.

[8] At the time of the testator's death, the estate had assets of approximately $362,000. While the accounts have not yet been passed, it is currently valued at approximately $223,000. At the hearing, the respondent advised that it anticipated that the applicant's monthly structured payments pursuant to the annuity would be approximately $500.

[9] As noted above, the applicant seeks to have the trust varied to provide for a one-time lump sum payment of her share of the estate. As she explains in her affidavits, she currently struggles to meet expenses and is caught in a debt cycle that is difficult to break. An extra few hundred dollars per month will help, but is unlikely to break the cycle or change her fortunes in a significant way. Rather, she seeks to use the inheritance to "attend school, provide for my [c]hildren during that time, and give me a comfortable amount of financial breathing room for when I finish school and am preparing to enter the workforce." (Applicant's Affidavit, affirmed July 18, 2025, para. 16)

[10] The applicant plans to attend the Manitoba Institute of Trades and Technology and pursue an education in either the trades or nursing. Her goal is ultimately to lift herself and her children off of income assistance. She also plans to use the money to have her two younger children assessed for Autism Spectrum Disorder.

[11] The executors support the applicant's educational goals and, as discussed below, agree to the variation of the trust to provide for them. They are concerned, however, that dispersing the entirety of the applicant's inheritance in a lump sum would run contrary to the intention of the testator, which was to provide for the applicant's financial well-being and that of her children on a long-term basis. One executor, Sharon Gurney, states in her affidavit affirmed September 3, 2025, at para. 7, as follows:

> Werner had discussions with Mary [Dempster, the other executor] and me about his estate plan. He asked us to act as executrixes of his estate. I was told by Werner and do verily believe that his main concern for his estate plan was to provide for the financial well-being of Maggie [the Applicant] and her children on a long term basis. Given Maggie's financial difficulties, which included not being

> able to maintain employment, and her dependence upon disability social assistance, he decided the best way to help her financially was to have the money set up in an annuity which would be paid out over 20 years. It was also his wish to minimize any claw back on any social assistance benefits she received; however, he understood that it would be challenging for a trustee to manage a trust fund long term given Maggie would want to control the monies and he thought she would not be able to manage the funds. He understood it would be a significant burden for us as executrixes to manage a trust fund given our ages and Maggie's disposition. As such he chose an annuity which would be managed by an independent institution.
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> [Emphasis added]

[12] It is against this factual and narrative backdrop that I consider the application.

THE LAW

[13] The application is brought pursuant to s. 59 of the ***Act***. Section 59(2) of the ***Act*** provides that unless the terms of a trust provide otherwise, it "shall not be varied or terminated before the expiry of the period of its natural duration as determined by the terms of the trust except with the approval of the court."

[14] Section 59(7) of the ***Act*** sets out terms for that approval, and specifies that:

Criteria for approval	**Critères relatifs à l'approbation**
59(7) The court shall not approve a proposed arrangement in respect of a trust unless it is satisfied (a) that the carrying out of the arrangement appears to be for the benefit of each person on whose behalf the court may consent under subsection (5); and (b) that in all the circumstances at the time of the application to the court, the arrangement appears otherwise to be of a justifiable character.	**59(7)** Le tribunal ne peut approuver un projet d'arrangement à l'égard d'une fiducie à moins qu'il ne soit convaincu à la fois que : a) la mise en œuvre de l'arrangement paraît être pour le bénéfice de chaque personne pour le compte de qui le tribunal peut donner son assentiment en application du paragraphe (5); b) eu égard à toutes les circonstances au moment de la demande au tribunal, l'arrangement paraît par ailleurs être justifiable.

[15] These criteria echo common law considerations expressed in ***May et al. v. May Estate*** (1994), 96 Man.R. (2d) 268, 1994 CanLII 16700 (MB QB). Quoting the Ontario

High Court's decision in ***Re Irving*** (1975), 66 D.L.R. (3d) 387, 1975 CanLII 714 (ON HC), Beard J. (as she then was), at para. 13 stated as follows in relation to an application to vary a trust:

> First, does [varying the trust] keep alive the basic intention of the testator? Second, is there a benefit to be obtained on behalf of infants and of all persons who are or may become interested under the trusts of the will? And, third, is the benefit to be obtained on behalf of those for whom the Court is acting such that a prudent adult motivated by intelligent self-interest and sustained consideration of the expectancies and risks and the proposal made, would be likely to accept?

[16] There are thus several issues for consideration. The first, raised by s. 59(7)(a) of the ***Act***, requires that the court assess the impact of the proposed variation on minors and other beneficiaries who cannot consent on their own, including so-called "contingent beneficiaries" – that is, ascertained or unascertained persons whose legal interests might be affected were the terms of the trust to change.

[17] Here, the will named two beneficiaries, the applicant and her son, Hunter. Each was the subject of a separate trust and the parties agree that the treatment of the applicant's share of the estate does not affect the 15 percent of the estate that will ultimately go to Hunter when he reaches the age of majority.

[18] A trickier question is the status of Paige and Gregory, the applicant's children born after the testator's will was completed. There is evidence that the testator wanted to assist them, though they were not mentioned in the will. Is this sufficient to make them contingent beneficiaries such that given their age, I must assess the impact of the proposed variation from their perspective? The parties agree that the answer is no. Paige and Gregory are not contingent beneficiaries and no such assessment is required. The Public Guardian and Trustee takes the same position. I agree. While I can

consider evidence of the testator's intentions in certain areas - see ***Charlesworth Estate***, ***Re***, 1996 CanLII 17984 (MB QB), 108 Man R. (2d) 228, paras. 17-20 - they do not change the clear terms of the will, particularly given the evidence suggesting that the testator considered amending the will again and chose not to. The first section of s. 59(7) is addressed.

[19] This leaves the thornier issue of s. 59(7)(b). As the sole beneficiary of the trust in question, the applicant takes the position that an arrangement of a "justifiable character" includes giving her immediate access to the entire value of her inheritance, rather than making her wait to receive it in small installments over a prolonged period of time. She relies on the common law rule in ***Saunders v. Vautier*** (1841), 4 Beav. 115, 49 E.R. 282, which favoured such immediate access prior to the introduction of s. 59 of the ***Act***. As the Manitoba Court of Appeal explained in ***Teichman Estate Re*** (1996), 110 Man. R. (2d) 114, 1996 CanLII 12472 (MB CA), at paras. 9 and 10:

> Prior to the enactment of s. 59, an individual who was of full age and sound mind, and who was the sole beneficiary of a trust, could vary or terminate that trust. Similarly, two or more individuals, all of whom are of full age and sound mind, and who constitute the only beneficiaries of a trust, could agree among themselves to vary or terminate the trust. The right of a beneficiary or beneficiaries to vary or terminate became known as the rule in *Saunders v. Vautier* (1841), 4 Beav. 115, 49 E.R. 282, in which the rule found expression. Unanimity was required, except that the court could consent on behalf of beneficiaries who were minors or otherwise lacked capacity or who were as yet unborn, so long as the arrangement was for the benefit of those beneficiaries.
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> The 1983 amendments [to the *Trustee Act*] made a fundamental change. Even where there is unanimity among beneficiaries, and no contingent interests, the variation or termination will be permitted only when the court finds the arrangement to be of a justifiable character.

[20] I note that these amendments followed the Manitoba Law Reform Commission's *Report on The Rule in Saunders v. Vautier*, Report #18, January 8, 1975, which stated at p. 23 as follows:

> Having examined the Rule and its legal rationale, and having taken an extended foray through the Manitoba jurisprudence, we conclude that while the Rule may have some support in legal theory, it is far too often at odds with the dictates of common sense and fairness. To be sure, as a matter of sheer probability, it must in some case coincide with the equities, but if it does, it will be purely by chance and not design. As a rule of distributive justice it simply is no longer tenable, and its treatment by the courts is a clear indication of this.

[21] The report also noted at p. 21 that:

> … As with so many other areas of the law, competing policy considerations mean that a sensitive balance must be drawn between the Scylla and Charibdis of certain law and uncertain equity; the sanctity of a testator's intentions; the repugnance of controlling property from the grave; the need to protect a spendthrift from himself; the economics of making assets productive; the conserving of those assets that are subject to waste; all of these factors and more press upon the decision maker in the effort to do justice with wisdom and fairness. …

[22] The Law Reform Commission recommended that Manitoba join Alberta in abolishing the rule in ***Saunders v. Vautier*** and replacing it with a rule requiring such variation or termination of trusts to receive approval of the court, which could balance the relevant competing values and interests in the circumstances of the particular case. The amendments to the ***Act*** appear to have largely followed these recommendations.

[23] The applicant submits that notwithstanding these amendments, and the Court of Appeal's reference to the "fundamental change" they engendered, courts in Manitoba have continued to favour the common law rule and allowed unanimous beneficiaries to vary or terminate their trusts in most cases, even where this runs contrary to the stated will of the testator.

[24] She points in particular to a pair of 1996 decisions of the Manitoba Court of Appeal. In ***Knox United Church v. Royal Trust Corporation of Canada*** (1996), 110 Man. R. (2d) 281, 1996 CanLII 18052 (MB CA), the testator had directed that money be paid to a trustee who would invest it for 20 years, then pay the accumulated amount to a church, the sole beneficiary under this share of the estate. The church applied to vary the trust to (i) have the trustee hold the capital in perpetuity, and (ii) pay out the proceeds of the investment yearly, rather than at the end of the 20 years contemplated by the will. The motions judge denied the application on the basis that it ran contrary to the settlor's intentions and was not "clearly of a justifiable character."

[25] The Court of Appeal reversed the decision, holding that:

> [7] In our view, the learned motions judge placed undue emphasis on the intentions of the testatrix, which will inevitably be overcome in every successful application to vary, and by so doing, he did not exercise his discretion on a sound basis in determining what constitutes a justifiable character.

[26] Referring to its earlier decision in ***Brown et al. v. National Victoria and Grey Trust Co.***, unreported, November 12, 1985, Suit No. 341/85, the court held that while s. 59(7) of the ***Act*** "qualifies the rule in **Saunders v. Vautier**," that rule "still makes considerable sense." Without defining the term, "justifiable character," Huband J.A. suggested that in a situation where "all of the affected beneficiaries were financially responsible, that no party was gaining any apparent advantage over another and the equities as between the parties were reasonable," the fact that the proposed arrangement did not correspond to the testator's intention did not inhibit the court from concluding that it was of a justifiable character.

[27] In the second case, ***Teichman***, the applicant's father had divided his estate in two. The first part was to be turned over immediately to his son. The second part was to be held in trust for ten years and then delivered to his daughter. During those ten years, she was to receive a weekly allowance of several hundred dollars generated by the trust's income. She applied to have the trust varied to match the terms of her brother's share of the estate. Again, the initial application was unsuccessful on the basis that it ran contrary to the wishes of the testator.

[28] The appeal appeared twice before the Court of Appeal. On the first occasion, the court was generally receptive to the application but expressed certain concerns. The matter returned before the court and the appeal was allowed. The court stated as follows:

> [11] The fact that [an] application runs contrary to the express wishes of the testator does not, in and of itself, adversely affect the character of the arrangement. It is axiomatic that an application to vary or terminate will be contrary to the express wishes of the testator. But in *Brown v. National Victoria Grey and Trust Co*. … and again in *Knox United Church v. MacDougall Estate* … this court has stated that the rule in *Saunders v. Vautier* still makes considerable sense. As long as the affected parties know what they are doing, and the proposed arrangement does not appear to give any beneficiary an advantage over any other beneficiary, the approbation of the court should not be withheld. The intention of s. 59 was not to discourage such applications.
>
> [12] In the present case, however, two concerns emerged from the [first hearing of the appeal.] Firstly, the affidavit evidence identified the probable reason for the 10-year delay before the gift to [the applicant] would become absolute. From time to time [she] has been treated for a condition of depression which may have caused her late father to have concerns about her mental health. The court requested further evidence as to [her] condition. Secondly, remote as it may be, there are possible contingent interests. …

[29] The court noted that "we have now been supplied with evidence by an associate professor of psychiatry who conducted an evaluation of [the applicant]. His opinion is

that she was fully capable of managing her own affairs." Arrangements were also put in place the second concern, which, as I have already discussed, do not apply here. On that basis, the appeal was allowed and the trust was varied. (See ***Teichman***, para. 13)

[30] I also note that in ***May***, Beard J. held that benefits arising from a proposed variation can be financial, social, moral or an enhancement of family well-being. In determining the interests of certain beneficiaries – in that case, adult grandchildren who stood to receive an amount of money on their 50th birthday – she included as a consideration the fact that "by terminating the trust and having the residue paid out now, the grandchildren will be receiving the funds while their families are young and when the money may be most needed, rather than later when they are likely to be more financially secure." (Para. 23)

[31] She held that terminating the trust would not be inconsistent with the testator's goals, which were to benefit these individuals. Citing ***Re Irving***, she observed that while "the root" of a trust must always be preserved, it may nevertheless be "prun[ed] … to promote fruitfulness." (See ***May***, para. 15, quoting ***Irving***, p. 399)

[32] For its part, the respondent relies on several cases from Alberta, another jurisdiction where the rule in ***Saunders v. Vautier*** has been statutorily overridden. The legislation in the two provinces was at one point comparable, requiring that variations or terminations be of a "justifiable character." Recent amendments to the Alberta ***Trustee Act*** now create a list of more narrowly-defined considerations, including: the nature of all interests and objects and the effect on them of the proposed

variation; any benefits or detriments to any person that may result from the approval or lack of approval of the proposed arrangement; the intentions of the settlor, where they can be ascertained; and any other factors the court considers important. (See ***Trustee Act***, SA 2022, c T-8.1, s. 67(2)) The respondent's cases pre-date these amendments.

[33] In one of those cases, ***Samoil v. Samoil***, 1999 ABQB 766, at para. 41, the Alberta Court of Queen's Bench held that factors to consider in determining whether a proposed variation was of a justifiable character included "the purpose of the variation, the views of the trustees and the intention of the founder of the trust." While the relevant intentions were those present at the time the will was executed, the court could also consider an apparent decision not to change the will after a beneficiary's circumstances have changed, assuming the testator was aware of those changes.

[34] In ***Salt v. Alberta (Public Trustee)*** (1986), 45 Alta. LR (2d) 331, 1986 CanLII 1695 (AB QB), the court similarly appeared to define "justifiable character" in terms that placed significant weight on the intentions of the settlor and seemed to require a reason to displace them. Noting that "[t]here does not appear to have been any exceptional change in circumstance of any of the beneficiaries" since the settling of the trust and that "there do not appear to be any compelling administrative or tax reasons for the proposed arrangement," Hutchinson J. held that "I can find no persuasive reason for interfering with the terms of the trust established by the testator" and dismissed the application to vary. (See paras. 29 and 30)

[35] Having reviewed all these authorities, along with several others, I draw the following conclusions:

- The common law rule in ***Saunders v. Vautier*** is not in force in Manitoba, having been replaced by s. 59(7) of the ***Act***, which requires the court to determine, *inter alia*, whether a proposed arrangement is "of a justifiable character."
- Notwithstanding that, the rationale underlying the rule – that competent adults with equitable title to assets should not be subject to restrictions placed by those with no remaining ownership interests in the property – continues to hold considerable force in Manitoba. Perhaps more than in Alberta, which appeared to place more weight on fidelity to the settlor's intentions during the period where its trust legislation was similar to that of Manitoba.
- Even in Manitoba, however, where the basis for a settlor's decision to structure an inheritance to delay immediate and full receipt of the trust property is apparent, the court will assess these concerns in determining whether a proposed variation or termination is of a justifiable character.

ANALYSIS

[36] The applicant submits that, as in ***May***, her father's intention in setting up the annuity for her was to provide her with a benefit. I do not disagree, but the evidence suggests that there was more to his intention than that. Ms. Gurney's affidavit explicitly describes conversations between herself, Mary Dempster and the testator, wherein he asked them to act as his executors and described his testamentary intentions and the rationale for the way he had structured his will. This included his concern that the

applicant would "want to control the monies, and he thought she would not be able to manage the funds." (At para. 7)

[37] The applicant suggests that the will was structured the way it was simply to avoid interfering with her eligibility for EI benefits. Again, I am sure this is true - Ms. Gurney references his "wish to minimize any claw back on any social assistance she received" - but the evidence suggests that this was not his only concern. Rather, he was also concerned about "her financial struggles" which he "attributed … to her disabilities, which he told us were ADHD and other mental health issues." (See paras. 6 and 7)

[38] "Given Maggie's financial difficulties," Ms. Gurney's affidavit continues, "which included not being able to maintain employment, and her dependence on disability social assistance, he decided the best way to help her financially was to have the money set up in an annuity which would be paid out over 20 years." (See para. 7)

[39] I note that this also appears consistent with the testator's actions during his life, which included assisting the applicant with discrete financial issues such as buying groceries or paying for vehicle registration but do not appear to have included large transfers of money to be used at the applicant's discretion.

[40] I conclude therefore that the testator's intention was not only to benefit the applicant, but to provide a benefit to her long-term, and that he determined that the best way to do that was to provide for structured payments over a number of years rather than a large lump sum payment.

[41] That raises the question of what weight that intention is entitled to. I agree with the applicant that Manitoba authorities emphasize the equitable principles that gave rise to the rule in ***Saunders v. Vautier*** and place less emphasis on the intention of the testator. Absent an apparent reason for a delay in providing assets forthwith to a sole beneficiary, the case law in this province suggests that courts should be reluctant to withhold their approval, particularly based only on the fact that the testator's plan is being redrawn.

[42] I find with respect that this appears to be a stronger position than that adopted in Alberta at the time it had similar legislation, and for that reason, I find the Alberta authorities I was given somewhat less persuasive, although they were nevertheless instructive and appreciated.

[43] As ***Teichman*** illustrates, however, the principle is not absolute. Where the basis for the testator's caution was apparent, the Court of Appeal was prepared to explore those concerns and, indeed, went so far as to require reassurance that they had been addressed and were no longer a basis on which the proposed variation should be refused. In that case, the applicant provided an expert opinion that previous mental health concerns notwithstanding, she was now "fully capable of managing her own affairs."

[44] No such opinion has been provided in this case. On the contrary, the applicant's evidence is that she continues to suffer from "ADHD, anxiety, depression and PTSD." She has required income assistance since 2014 and continues to do so. As noted

above, these appear to have been concerns underlying her father's structuring of his will, and the evidence suggests that they unfortunately remain challenges in her life.

[45] Nevertheless, the applicant maintains that she "knows what she is doing" (see p. 11 of applicant's brief) and will have no difficulty managing the money. She points in this regard to a consultation she has carried out with a certified financial planner. Having reviewed the materials, I have several observations:

- In her brief, the applicant points to her ability to care for her young family on her limited income as evidence of her financial management abilities. Her affidavit, however, states that she struggles to pay her expenses on a regular basis.
- In her affidavit affirmed July 18, 2025, she states that she pays $2,400 per month for rent, not including utilities. The benefit letter she filed with her affidavit, however, indicates that her rent is $1,600. The address in question is the same in both documents. At the hearing, this apparent discrepancy remained largely unexplained. I am not suggesting a lack of candour – there is likely a logical explanation of some kind. The inconsistency in the applicant's materials, however, tends to support the testator's concerns.
- The applicant suggests that her previous financial difficulties were the result of an abusive relationship that she left four years ago. She says that her credit score is now good and that her bills are up to date. I do not minimize any of this, and I accept that financial abuse is a common

feature of abusive relationships. I note again, however, her evidence that she currently struggles to pay her bills on a regular basis. Further to that, the plan prepared for her by the financial planner contains a line item called "debt repayment to family and friends" in the amount of $10,000.

- The applicant's affidavit states that she wants to use the money to go to school so that she can lift herself and her children up to the point they no longer require income assistance. She intends to "pursue an education in either the trades or nursing." Her affidavit, however, also states that she suffered significant damage to one of her hands in 2024, nearly severing a tendon, and that she is still recovering from surgeries on both hands. She may have nerve damage. It is not clear how she plans to study the trades or nursing while this is all ongoing.
- Finally, I note in general terms that the applicant makes a number of assertions that are left unexplored and, in some cases, unconfirmed. She claims in her affidavit that the receipt of annuity payments under the will will disentitle her to EI benefits, although the advances on those payments that she has been receiving since November of 2023 have apparently not had this effect. This is not confirmed, and the respondent takes the position that it is inaccurate.
- Similarly, the applicant's affidavit claims that she has been advised that she is owed some $60,000 in child support arrears and that "I verily believe that receipt of child support will disqualify me for income

> assistance in the near future." Again, this remains unconfirmed. More importantly, is she expecting to receive a large arrears payment in the near future? If so, how might this affect her financial situation and the need to vary the annuity at issue in her application? It does not appear to be part of the financial plan submitted to me. (At para. 9)

[46] Taking all of this into consideration, I find that this case falls within the ambit of ***Teichman***. It is not just that the proposed application runs contrary to the express wishes of the testator - this will always be the case where a beneficiary or beneficiaries seek to vary or terminate a trust. On the facts before me, however, as in ***Teichman***, "concerns emerge" from the evidence that "identify the probable reason" for structuring the applicant's inheritance as an ongoing and scheduled payout rather than an immediate lump sum payment. (At para. 12) Unlike ***Teichman***, these concerns have not been addressed by the evidence filed on the application. Rather, they remain and suggest that overriding the testator's wish to ensure a steady source of financial support for the applicant – albeit a modest one – would constitute an attack on the root of the trust, and not simply a means of pruning it to help it better achieve its aims.

CONCLUSION

[47] I am therefore not prepared to vary the trust to order that the applicant's entire inheritance be paid out as a one-time lump sum. In my view, in all the circumstances at the time of this application, this would not be of a justifiable character.

[48] That said, I take the applicant's point that while an extra few hundred dollars a month may help meet expenses, it is unlikely to support lasting change in her

circumstances. Ms. Gurney's affidavit advises that the executors are not opposed to varying the trust to support the applicant's education, which could open the door to such lasting change.

[49] Ms. Gurney's affidavit suggests a lump sum payment of $20,000. In its brief, the respondent increases this to $40,000. With respect, I am not comfortable simply throwing numbers around with no basis in evidence or connection to the educational costs or benefits that they are intended to cover. The financial plan offered by the applicant suggests a "college fund" of $12,000. Is this what her proposed field of study will cost? No evidence has been placed before me.

[50] Rather, what I am prepared to do is vary the trust to allow encroachment on the applicant's share of the estate to the extent that the executors feel appropriate to provide for:

- Educational expenses relating to tuition, supplies, textbooks, transportation and the like, as determined by the executors; and
- Support of the applicant and her children while she is in school, again as determined by the executors.

[51] To be clear, this may be carried out by way of lump sum payment or structured payments, in advance or as expenses are incurred, as the executors determine is most appropriate - I am mindful of the executors' express wishes that they not be made trustees of the applicant's share of the estate and do not want to put them in that position. I do expect, however, that the applicant will prepare some sort of education plan, along with a budget, that the executors can use in determining the degree and

form of encroachment appropriate to support the reasonable and laudable goal of acquiring an education that will improve the lives of the applicant and her children over the long-term. In my view, this is a variation of a justifiable character that is consistent with the fundamental goal of the trust - a "pruning" to improve its fruitfulness.

ANCILLARY MATTERS

[52] The parties raised several additional issues in their materials and in their submissions before me. A number of specific pieces of property were discussed, including a vehicle and a coin collection, that were the subject of earlier disagreements that were ultimately resolved. The parties agree that these are not matters requiring a ruling, and accordingly I make no comment about them except to note that I have considered them as part of the general narrative as the parties asked me to do.

[53] The issue of executors' fees was also raised. The applicant believes that fees are not warranted in the circumstances. The executors disagree. Again, the parties agree that this is an issue for an eventual passing of accounts, although the applicant wanted her frustration noted. I do so, but decline to make any comments on the issue of compensation, which is not part of the application before me.

[54] Finally, the applicant asks that the costs of this application be borne by the executors personally, rather than by the Estate. The executors, for their part, ask that costs be assessed against the applicant's share of the estate so as not to prejudice Hunter. In all the circumstances, I am inclined to simply award costs in the cause. The applicant's position, though unsuccessful in this case, was generally supported by

Manitoba authorities and her interest in providing a more stable and secure future for herself and her children is understandable.

[55] I have two further comments. At the beginning of the hearing, I urged the parties to explore the possibility of finding common ground, as they fundamentally want the same thing – immediate, medium-term and long-term support for the applicant and her family. I continue to encourage such discussions.

[56] Finally, I want to thank counsel on both sides, as well as counsel for the Public Guardian and Trustee, for their helpful materials and submissions, which were of great assistance.

_____ J.