

*In the Estate of Sharon Miriam Rubin – 2025 NBKB 282*

IN THE PROBATE COURT OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

**MP/386/2022**

2025 NBKB 282 (CanLII)

**IN THE ESTATE OF SHARON MIRIAM RUBIN**

**DECISION**

BEFORE: Justice Robert M. Dysart

AT: Moncton, New Brunswick

DATE OF HEARING: June 18, 2025

DATE OF DECISION: December 5, 2025

APPEARANCES: Josie Marks, K.C. & Daniel Campbell, counsel to the Executrix,  
Nicole Druckman

Mitchell Rubin, per se

**DYSART, J.****INTRODUCTION**

- [1] On this Application, Nicole Druckman, executrix of the estate of her late aunt, Sharon Miriam Rubin, seeks an interim passing of accounts in respect of the administration of the estate; an award of final executrix fees payable to Ms. Druckman; and the Court's approval of Ms. Druckman's plan for the distribution of the remaining assets held by the estate.
- [2] The testator, Mrs. Rubin, executed her Last Will and Testament on May 7, 2021. Mrs. Rubin appointed her niece, Ms. Druckman, as her executrix and trustee. She further directed that Ms. Druckman be appointed as the sole director of the Sheldon Rubin Professional Corporation, in which Mrs. Rubin held shares through her own holding company.
- [3] In her Will, Mrs. Rubin made several specific bequests:
- An amount to her son's caregiver, Ms. Jacinto; and
  - Several charitable donations
- [4] The residue of the estate was then to be divided and paid into three trusts for the benefit of her son, Mitchell (60%), her daughter Gabrielle (5%) and to her grandchildren (Gabrielle's children, 35%). Ms. Druckman was also appointed trustee of "the Mitchell Trust."

[5] The Will was silent with respect to compensation to be paid to the executrix.

[6] It is important to note that Ms. Druckman is an experienced lawyer, practicing in Moncton.

### **THE APPLICATION FOR LETTERS PROBATE**

[7] According to the Inventory submitted with the Application for Letters Probate, filed by Ms. Druckman in October 2022, the estate had the following assets:

#### **Real Estate:**

- House at 282 Westmount Blvd., Moncton – est. value of \$800,000;
- House/Cottage at 45 Ch. P'tit Barachois, Barachois – est. value of \$500,00;
- House at 124 Century Drive, Moncton – est. value of \$212,500\*

(\*50% interest in Century Drive Property. Other registered owner is Ms. Jacinto, who the Court understands is a caregiver for Mitchell. Mrs. Rubin, prior to her death, transferred a 50% interest in that residence to Ms. Jacinto and took back a mortgage. Ms. Jacinto pays \$400 every two weeks in repayment of that debt. The mortgage is still held by

the estate. The 50% interest in the property held by the estate will be transferred to the Mitchell Trust.)

**Investments/Amounts Owed to Estate:**

- Registered Retirement Income Fund, held by OMG Wealth Group - \$1,673,471
- Shares in 727041 N.B. Inc. - \$700,581
- Tax-Free Savings Account, held by OMG - \$1,446
- Bond - \$2,000
- Loan/Mortgage to Ms. Jacinto - \$146,630 (as at that date)

[8] The total value of those assets was estimated to be in the range of \$4.1 million.

[9] By October 2024, the date to which Ms. Druckman seeks to pass the accounts, the estate held assets in the approximate amount of \$2,800,000. By that time, both the residence on Westmount Blvd. and in Barachois had been sold. Taxes had been paid, specific bequests had been effected and partial advances had been made to the various trusts.

[10] Based on the evidence before the Court, it appears that, to October 31, 2024, a total of about \$4.9 million has passed through the hands of the executrix, Ms. Druckman.

### ***Corporate Holdings***

[11] Based on the Affidavit evidence submitted by Ms. Druckman, and specifically information provided by the BakerTilly Accounting firm, 727041 N.B. Inc. was wholly owned by the late Mrs. Rubin, strictly as a holding company. That company's assets were 100% of the outstanding Class A and B shares of the *Sheldon Rubin Professional Corporation* – the professional corporation operated by Mrs. Rubin's late husband, Dr. Sheldon Rubin. Those monies were still held in the holding company as of October 31, 2024. BakerTilly has proposed something referred to as a “post-mortem pipeline transaction” as a means of avoiding double taxation on those corporate assets and as a means of expediting the issuance of a clearance certificate from the Canada Revenue Agency.

[12] BakerTilley has recommended that \$500,000 be held back from distribution until that transaction is completed, to account for taxes payable to the CRA, and to cover both accounting and legal fees associated with that transaction.

- [13] As a result of that plan, which will require some time, the assets of the estate have not been fully distributed. That is, the estate has not been fully administered.

***Partial Passing of Accounts***

- [14] The executrix seeks an order, providing for the partial passing of the accounts of the estate to October 31, 2024.

- [15] Ms. Druckman states that the vast majority of the work has now been completed in the administration of the estate. Complete distribution of the estate is not yet possible due to the recommended pipeline transaction.

- [16] Section 1 of the ***Trustees Act***, SNB 2015, c.21 provides the following definition:

“trust instrument” means a deed, will, document or oral declaration that creates or varies a trust, but does not include a judgment or order of a court of competent jurisdiction.

- [17] Section 66(1) provides:

On application by a qualified beneficiary or a trustee, the court may order that the trustees’ accounts be passed on a single occasion or at intervals.

- [18] Thus, this Court has no hesitation to permit an interim passing of accounts to October 31, 2024.

[19] Being satisfied that Ms. Druckman has, through meticulous record-keeping, accounted for all of the estate's assets and all amounts that have passed through her hands since Mrs. Rubin's death, and being satisfied that all expenses incurred and all reimbursements made from the estate's account have been justified and were made in furtherance of the administration of the estate, the Court indicated during the hearing that the accounts, as presented, should be passed on an interim basis to October 31, 2024.

#### **PAYMENT OF INTERIM EXECUTRIX FEES**

[20] Ms. Druckman originally claimed \$200,000 as her fees for acting as executrix of her aunt's estate. That was the total being claimed for the full administration of the estate. Ms. Druckman had hoped, it seems, that the Court would treat the interim passing of accounts, together with the proposed distribution plan, as a *de facto* final passing of accounts. The Court was not prepared to proceed in that manner. The administration is not yet complete. The estate continues to hold significant assets and is awaiting completion of the pipeline transaction.

[21] As a result, Ms. Druckman's counsel indicated during the hearing that the executrix was modifying her request, and was seeking an interim payment of fees, representing her efforts to October 2024. She claims \$125,000, with leave to seek additional fees for the balance of the work – to be

approved by the beneficiaries or awarded by the Court on the final passing of accounts.

[22] Again, the Applicant states that the vast majority of the work has been completed, meaning the \$125,000 would represent most of the fees payable on the entire administration.

[23] In support of her claim for an interim payment of fees, Ms. Druckman again relies on the **Trustees Act**, which provides:

62 The following definitions apply in this Part.

“trust” includes the estate of a deceased person whether the person dies before or after this Part comes into force.

“trustee” includes an executor or administrator of the estate of a deceased person, whether or not the property included in the estate is subject to a trust.

63(1)A trustee is entitled to fair and reasonable compensation to be paid out of the trust property for services rendered as trustee of the trust.

[...]

63(4) On application by a trustee **during the administration of the trust or on the passing of accounts**, the court may determine the amount of compensation to which the trustee is entitled under subsection (1).

[emphasis added]

[24] She also relies on the following jurisprudence, beginning with **Denofrio Estate (Re)**, 2012 ONSC 3408 (CanLII), a decision written by Justice Kershman. That case involved an interim passing of accounts by three executors.

- [25] The deceased, Mr. Denofrio, had prepared both a Power of Attorney and a Will on the same day in 2006. In both documents, he named his daughter, his nephew and a former business associate as his attorneys and executors. In 2007, with his health failing, the Power of Attorney was activated, and the attorneys began to manage his affairs. They liquidated Mr. Denofrio's shareholdings in two corporations, resulting in an estate of around \$18 million.
- [26] In June 2008, Mr. Denofrio's wife commenced legal proceedings against Mr. Denofrio and the three attorneys, claiming damages of approximately \$7.2 million based on a marriage contract, as well as \$150,000.00 per month for spousal support. The attorneys defended that litigation on behalf of Mr. Denofrio and dealt with various motions brought by Mrs. Denofrio.
- [27] Mr. Denofrio died in June 2010, at which time the three began the administration of the estate as executors.
- [28] The executors sought to pass the accounts of the estate for the first year following Mr. Denofrio's death – from June 9, 2010 to June 30, 2011. They collectively sought just over \$250,000 in fees for that year. That sum was based on 2.5% of the net total capital receipts / disbursements, along with some modest net revenue flowing into the estate.

[29] Regarding the executors' right to claim compensation for the partial administration of the estate, Justice Kershman relied on a provision in Ontario's **Trustees Act** which is similar to New Brunswick's s. 64(1), cited above. In awarding the interim payment of fees, Justice Kershman wrote:

[133] The Estate is not complete and will go on for another eight years and will require future passing of accounts.

[134] The Court is of the view that the majority of the Estate work has been completed by now and that, while there will be some Estate Trustee work involved in the future, it should not be as much as it has been to date, assuming among other things that the matrimonial litigation is resolved.

[135] The Court notes that, while the percentage of the Capital Receipts, Capital Disbursements, Revenue Receipts and Revenue Disbursements is set at 2.25% in this passing of accounts, it is only set at that rate for the purpose of the passing of accounts for the period June 9, 2010, to June 30, 2011.

[136] It will not necessarily be the case that in future passing of accounts the Court will allow Estate Trustee compensation at the aforesaid level. The compensation granted in future passing of accounts in this Estate will depend on a consideration of the five factors as set out in *Re Toronto General Trusts Corporation*, supra, for subsequent periods of time.

[30] She also relies on **Borkovic v Borkovich**, 2023 BCSC 2050, a decision issued by a Court Registrar, where the Executor was awarded interim compensation on an interim passing of accounts. In that case, as in the matter before this Court, the evidence was that the vast majority of the work had been completed, with little left to do.

[31] Based on the jurisprudence relied on by Ms. Druckman and the wording of s. 63 of the **Trustees Act**, I am satisfied that the Court may, in appropriate cases and with supporting evidence to justify them, award executrix fees on an interim basis.

[32] In my view, this is a proper case in which to award interim executor's fees. Ms. Druckman has now performed the vast majority of the work in the administration of the estate. Because of the pipeline transaction recommended by BakerTilly, Ms. Druckman will not be in a position to pass the final accounts for some time. As a result, it is fair and reasonable that she be awarded executor's fees on an interim basis.

[33] The next question to be considered, therefore, is: what is an appropriate amount?

### **FACTORS IN THE ASSESSMENT OF EXECUTRIX FEES**

[34] The factors this Court must take into consideration in the awarding of trustee/executrix fees are set out in the **Trustees Act**:

63(2) As part of the compensation to which a trustee is entitled under subsection (1), a trustee is entitled to charge fees at reasonable rates for those services that are reasonably necessary for the purpose of carrying out the trust if the trustee

(a) has professional skills, and

(b) has rendered services to the trust, apart from those generally associated with the office of trustee, that required the exercise of those professional skills.

[...]

63(5) In determining a trustee's compensation, the court may consider the following:

(a) the gross value of the trust property at the time compensation is claimed;

(b) any change in the gross value of the trust property since compensation was last claimed or the trust was created and the portion of that change attributable to decisions of the trustee;

(c) the amount of revenue received and expenditures incurred in administering the trust;

(d) the complexity of the work involved in administering the trust, including whether or not any difficult or unusual questions were raised;

(e) any unusual difficulties or situations encountered in administering the trust;

(f) whether or not the trustee had to instruct on litigation relating to the trust;

(g) whether or not the trustee was required to manage a business, be the director of a corporation or perform other additional roles in administering the trust;

(h) the amount of skill, labour, responsibility, technological support and specialized knowledge required in administering the trust;

(i) the number and complexity of tasks relating to the administration of the trust that were delegated to others;

(j) the time expended in administering the trust;

(k) the number of trustees; and

(l) any other matter that the court considers relevant.

[35] Effectively, the Court is required to consider the whole of the circumstances in the determination of what is “fair reasonable compensation.”

[36] As noted, Ms. Druckman was initially seeking \$200,000 as executrix fees. That assumed the Court would grant one set of fees, effectively making it a final and not an interim award of fees. The justification for \$200,000 was that it represented approximately 5% of the estate’s value, according to the Inventory submitted with the Application for Letters Probate.

[37] As stated earlier in these reasons, she now seeks \$125,000 as an interim award of fees, covering the period from Mrs. Rubin’s passing on August 14, 2022 to October 31, 2024 – a period of just over two years.

[38] Ms. Druckman argues that the general approach to fees is that, absent exceptional circumstances, an executrix is generally entitled to compensation of up to 5% of the total capital and income passing through her hands.

[39] She cites *Allaby v Allaby-Boyd*, 2022 NBQB 120 (CanLII), a decision penned by my colleague, Justice Ouellette, who cited with approval the earlier decision of Justice Stevenson in *Clowater Estate*, infra:

[127] In *Clowater Estate* (1993), 1993 CanLII 15269 (NB KB), 133 NBR (2d) 342, Stevenson J concludes by ruling that 5% should generally be the maximum allowable compensation even after considering the above-noted factors enumerated in the Trustees Act. At paragraph 23 one can read:

[23] Five per cent is a bench mark. Rarely would the court allow compensation in excess of five per cent of the total capital and income passing through an executor's hands. Absent exceptional circumstances, five per cent would be considered the maximum. [...]

[40] This approach also finds favour from this Court's decision in *Fitzpatrick et al. v. Schneeberg et al.*, 1999 CanLII 32298 (NB KB), where Justice McLellan wrote:

[16] The usual practice in this province has been to limit the compensation of executors and trustees to a maximum of 5% of all receipts of capital and income, at least until the first passing of accounts. [...]

[41] That is, 5% of the value of the capital and revenues handled by the executrix is generally considered the upper limit in terms of setting fees. It is not the presumed starting point.

[42] At the hearing, counsel for the executrix also drew the Court's attention to the Ontario Superior Court of Justice decision in *Denofrio Estate*, discussed earlier in these reasons. In considering the claim for executors' fees, Justice Kershman summarized the law in Ontario relating to the calculation of such fees as follows:

[83] The law concerning executors' compensation is set out in the case of *Jeffery Estate (Re)* (1990), 39 E.T.R. 173 (Ont. Surr. Ct.), at paras. 13 and 16:

The jurisdictional starting-point for the assessment of an executor's compensation is found in s. 61(1) of the Trustee Act, R.S.O. 1980, c. 512, reading as follows:

61.-(1) A trustee, guardian or personal representative is entitled to such fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the estate, as may be allowed by a judge of the Supreme Court or by any master or referee to whom the matter may be referred.

In the well-known case of *Re Toronto General Trust and Central Ont. Railway* (1905), 6 O.W.R. 350, Mr. Justice Teetzel suggested 5 central factors should be considered by the audit judge in arriving at the amount of an executor's compensation. Those factors are:

- the size of the trust;
- the care and responsibility involved;
- the time occupied in performing the duties;
- the skill and ability shown; and
- the success resulting from the administration.

The later case of *Re Atkinson*, 1951 CanLII 101 (ON CA), [1952] O.R. 685 (C.A.) added some helpful clarifying comments on the s. 61(1) discretionary power, especially on the use of "percentages" to establish the level of compensation. The Court said at p. 698:

If these statutory provisions are properly borne in mind, then in many instances the proper compensation may well be reflected by the allowance of percentages, **but the particular percentages applied, or any percentages, are not to be regarded as of paramount importance; they should be employed only as a rough guide to assist in the computation of what may be considered a fair and reasonable allowance; the**

**words of the statute override everything else and that fair and reasonable allowance is for the actual "care, pains and trouble, and time expended"**. In some estates, indeed perhaps in many, no fairer method can be employed in estimating compensation than by the application of percentages. In others, while percentages may be of assistance, it would be manifestly unreasonable to apply them slavishly and to do so would violate the true principle upon which compensation is always to be estimated.

It can readily be recognized that, depending upon the idiosyncrasies of the particular estate, the care, pains and trouble and time expended may be disproportionate to the actual size of the estate. A small, complex estate may make more demands upon the trustee's care and time and skill than a much larger estate of a simpler nature; conversely, even in a large estate with many complex problems, assessment of the compensation by the adoption of what might be said to be "the usual" percentages would result in a grossly excessive allowance.

**There are many later cases which show that, in Ontario at least, a practice has developed of awarding compensation on the basis of 2 1/2% percentages against the four categories of capital receipts, capital disbursements, revenue receipts and revenue disbursements along with, in appropriate cases, a management fee of 2/5 of 1% per annum on the gross value of the state:** see Dickson & Wilson, Ontario Estate Practice, 2d ed. (1986) at pp. 474-5. However, cases such as *Re Kennedy* [1944] O.W.N. 734 and *Re McPherson* [1945] O.W.N. 533 make it clear that the award of a management fee requires special circumstances and will not be allowed automatically or routinely. Beyond this, of course, the cautionary words of the *Re Atkinson* case, *supra*, emphasize that the use of percentages must not become a ritual.

**To me, the caselaw and common sense dictate that the audit judge should first test the compensation claims using the "percentages" approach and then, as it were, cross-check or confirm the mathematical result against the "five-factors" approach set out in *Re Toronto General Trust and Central Ont. Railway, supra*.** Usually, counsel will, in argument, set out a factual background against which the five factors can be brought to bear on the case at hand. Additionally, the judge will consider whether an extra allowance should be made for management based on special circumstances. The result of this testing process should enable the judge to determine whether the claims are excessive or not and, in the result, will enable the judge to make adjustments as required. **The process is not scientific but is not intended to be: in the estate context, it is a search for an award which reflects fairness to the executor; in a real sense, the search is for an appropriate quantum meruit award in a unique setting.**

[84] The Court of Appeal confirmed the law in relation to the percentage formula in *Laing Estate* (1998), 1998 CanLII 6867 (ON CA), 41 O.R. (3d) 571 (C.A.), at p. 574: “We agree with and adopt the approach taken in *Jeffery Estate*. In our view, it best achieves the appropriate balance between the need to provide predictability while, at the same time, tailoring compensation to the circumstances of each case.”

[85] *Gordon Estate (Re)*, [1998] O.J. No. 4170, is a decision of the Ontario Court of Appeal which was heard by Krever, Doherty, and O’Connor JJ.A. on October 2, 1998. The decision was released on October 20, 1998. This Court notes that the panel and dates in *Laing Estate*, *supra*, are identical.

[emphasis added]

[43] That statement of the law in Ontario does not seem to precisely square with the approach that has been adopted in this Province, especially with the enactment of the “new” ***Trustees Act*** in 2015, and the lengthy list of factors which the Court must consider. Notably, the size of the estate is but one of those factors, and so using a percentage, which closely links the size of the estate to the ultimate compensation, cannot be treated as a governing or paramount factor. The guiding concern must be to achieve fair and reasonable compensation in the circumstances, while also appreciating that in only rare cases would the fees be expected to exceed 5% of the capital and revenue passing through the executrix’s hands. That, as I understand, is the proper approach to setting executor’s fees in New Brunswick.

## ANALYSIS

[44] I will now turn to the various factors.

[45] ***The gross value of the trust property***: This case involves a relatively large estate, with the total of all capital and revenues passing through the

Executrix's hands valued at just below \$5 million. That would tend to weigh towards a higher award of fees.

[46] ***Any change in the gross value of the trust property since compensation was last claimed or the trust was created and the portion of that change attributable to decisions of the trustee:*** the evidence before the Court indicates that Ms. Druckman has skillfully liquidated and converted the assets, including the sale of two homes. The value of the estate has increased slightly from the initial estimates in the Inventory filed with the Application for Letters Probate; but that increase in value did not occur, it seems to the Court, due to any particular decisions or strategies adopted by the executrix. It would seem that some of the assets fetched higher values on the market than was originally anticipated. This would seem to be a neutral factor in terms of compensation.

[47] ***The amount of revenue received and expenditures incurred in administering the trust:*** aside from the rents received in respect of the loan/mortgage on the Century Drive property, there were no significant revenues received by the estate since Mrs. Rubin's death. It would appear that the executrix has paid out a large number of expenditures totaling \$1.6 million. Some of those are specific bequests under the Will, while others relate to funeral expenses, payments made in respect of professional fees for accountants and lawyers, maintenance fees for the real property, and

several which would seem to relate to payments made in respect of Mitchell Rubin which would not seem to fall squarely inside the four corners of the administration of the estate. Overall, this factor would tend to weigh slightly towards a higher award of fees.

[48] ***The complexity of the work involved in administering the trust, including whether or not any difficult or unusual questions were raised:*** The executrix maintains that this was a particularly complex estate to administer due to there being three parcels of real property, two of which had to be sold. As well, there are shares in a holding company which itself held shares in a professional corporation.

[49] In her affidavit, Ms. Druckman states that she had to:

- Identify and close Dr. and Mrs. Rubin's personal bank accounts;
- Open an Estate Account;
- Meet with OMG Wealth Management to liquidate the investments held by Mrs. Rubin personally and by the corporations;
- Clarify the nature of the corporate structures and holdings;
- Prepare and execute corporate resolutions to make herself a director of 727041 NB Inc. and the professional corporation;
- Retain and instruct BakerTilly Accountants for advice regarding the liquidation of the corporate assets;
- Remove and auction the contents of the houses;

- Maintain and insure the unoccupied properties;
- Make and negotiate an insurance claim with respect to the Barachois property, which had sustained hurricane damage;
- Secure an easement right-of-way for the Barachois property, which was landlocked (including the legal work for which she did not charge professional fees);
- Retain and instruct a real estate agent to sell the Westmount Blvd. and Barachois properties and oversee the sales which took place in 2023 (including legal work associated with both transactions, for which she did not charge professional fees);
- Collect the payments from Ms. Jacinto towards the mortgage;
- Pay out the specific bequests;
- Liquidate personal assets, such as a vehicle; and
- Wind down various accounts, such as cell phone, credit cards, newspaper subscription, etc.

[50] Ms. Druckman also notes that, as the trustee of the Mitchell Rubin Trust, she has “taken over providing guidance and support for her cousin, who requires guidance with both financial and non-financial decision-making.” Of course, that work as a trustee of the Mitchell Trust would fall under a different trust than the Estate of Sharon Miriam Rubin, and if Ms. Druckman is entitled to compensation for her work in that capacity, any claim would have to be brought pursuant to that other trust.

- [51] I agree with Ms. Druckman that Mrs. Rubin's estate is more complex than the average estate. That said, most estates involve many of these same tasks. For example, many (if not most) involve the selling of at least one property. Most involve the engagement of an accountant. Most involve emptying homes and liquidating personal assets. Most involve opening an estate bank account and closing out subscriptions and social media accounts.
- [52] As for the corporate assets, it is acknowledged that this is not the norm; but at the same time, it must be recalled that the professional corporation was inactive (as Dr. Rubin predeceased his wife) and that the numbered company's only assets were shares in the professional corporation. So, while Ms. Druckman was required to become a director and to oversee the liquidation and conversion of the companies' assets, this was not a situation where she had to run the companies or take an active role as a director in order to preserve the estate's value or engage in any complicated corporate reorganizations.
- [53] In the end, I am satisfied that the administration of Mrs. Rubin's estate was somewhat more complex than most estates, weighing towards a higher award of fees.

- [54] ***Any unusual difficulties or situations encountered in administering the trust.*** Those are discussed earlier in this assessment. There is nothing more to add here. This would be a neutral factor.
- [55] ***Whether or not the trustee had to instruct on litigation relating to the trust.*** There was no litigation involving the estate. This is a neutral factor.
- [56] ***Whether or not the trustee was required to manage a business, be the director of a corporation or perform other additional roles in administering the trust.*** This was addressed previously in these reasons. There is nothing to add. This is a neutral factor.
- [57] ***The amount of skill, labour, responsibility, technological support and specialized knowledge required in administering the trust.*** It is noteworthy that Ms. Druckman provided certain legal services to the estate, in the form of negotiating and executing the right-of-way for the Barachois property, and in effecting the sale of the Westmount Blvd. and Barachois properties. She did not charge for these services. This would tend to support a higher award of fees.
- [58] As well, as an experienced lawyer, I have no hesitation in finding that Ms. Druckman's skill and experience served the estate and its beneficiaries very well. As noted, her record-keeping was meticulous and her work as

executrix is beyond reproach. That being said, it is also clear that she engaged experts to assist her in the administration of the estate, which is an important consideration in addressing this factor.

[59] The estate paid BakerTilly more than \$10,000 for its advice regarding the pipeline transaction, and the professional corporation paid BakerTilly more than \$6,000 in relation to services rendered to July 2023. She also retained legal counsel in August 2022, and the invoice suggests that counsel performed the following work:

- “Review co-ownership agreement; review promissory note” (presumably relating to the Century Drive property)
- “Review Minute Books to assure (sic) everything is included and updated”
- “Review material regarding net worth of estate”
- “Drafting memo to N Druckman with comments on dissolution of S. Rubin’s corporate interest”
- “Drafting documents to update directors, officers and shareholders of S. Rubin’s corporate interests”
- “Research regarding executrix compensation”

[60] The invoice also references discussions regarding the establishment of trusts, and a significant amount of time was recorded to preparing and reviewing the materials submitted on the Application for Letters Probate.

- [61] The estate then paid legal fees for the preparation of the materials used on the passing of accounts, with legal fees of more than \$30,000 being incurred.
- [62] Ms. Druckman also retained legal counsel for advice regarding the distribution of estate assets and to assist with reporting to the beneficiaries. The cost of those legal services was minimal, at less than \$1,000 – but they are indicative of the fact that Ms. Druckman retained counsel for even those kinds of routine responsibilities.
- [63] Overall, it is apparent that while Ms. Druckman performed some legal work involving the property transfers and the right-of-way, she brought little in the way of legal expertise to the majority of her work as executrix. She paid others for that, which is entirely appropriate. But she will not be compensated for the work performed by those professionals, to whom the estate has already paid many thousands of dollars. This therefore tends to weigh towards lower fees.
- [64] ***The number and complexity of tasks relating to the administration of the trust that were delegated to others:*** This has already been considered under other factors, above. This is therefore a neutral factor.

[65] ***The time expended in administering the trust:*** Ms. Druckman has not provided any calculation or even an estimate of the time she spent administering the estate. The Court is therefore required to assess this factor by reviewing what she reportedly did, again while also considering the tasks that were performed by accounting and legal professionals - for which the estate has already paid. Ultimately, this is a neutral factor.

[66] ***The number of trustees:*** As the only trustee, it was solely Ms. Druckman who performed that work. There was no sharing of that workload. That factor is, in my view, neutral as to the quantum of the fees to which Ms. Druckman is entitled.

## **ANALYSIS**

[67] In my view, while the value of Mrs. Rubin's estate is relatively high, the complexity of the estate was not so high as to justify executrix fees at the very upper range, i.e. at 5%.

[68] Firstly, as was noted during the hearing, the use of percentage is no more than a rough guideline. To slavishly focus on the percentage would risk overcompensating in some cases, while undercompensating in others. To illustrate the example, one can easily imagine an estate where there are three properties, some investments, a couple of bank accounts and a

professional corporate – similar to Mrs. Rubin’s estate – but with a value of only \$2.5 million.

[69] The use of a percentage basis risks awarding compensation which is not linked to the efforts undertaken by the executrix, such that the same work could result in half the fees or double the fees.

[70] The Court must determine what is fair and reasonable in all the circumstances of this case. Ms. Druckman claims for her “care, pains, time and trouble” expended as executrix, but she has not provided any evidence of the number of hours she spent on this work.

[71] The period in question is for just over two years. In my view, the estate’s complexity does not match its value. That is, for a \$4.9 million estate, it was not particularly complex. Ms. Druckman appropriately retained and relied on legal and accounting experts to perform a great deal of the work, meaning that she provided little “value added” to the estate by virtue of her being a lawyer. And to focus only on the percentage risks artificially inflating the fees to a level that is no longer fair and reasonable.

[72] Taking into consideration all of the factors enumerated in s. 63(5) of the **Trustees Act**, considering all of the evidence before the Court, and recognizing that Ms. Druckman appears to have been a detailed and

capable executrix of the estate, I am of the view that reasonable and fair compensation for the interim period to October 31, 2024, should be set at \$70,000.

[73] Again, this is an interim award. The Executrix is permitted to seek additional fees on the final passing of accounts, should that occur. And, upon any such request for additional fees, the Court shall consider this interim award of executrix fees and Ms. Druckman's assurances to the Court that the vast majority of the work in the administration of the estate was completed by October 31, 2024.

#### **APPROVAL OF THE EXECUTRIX'S PROPOSED PLAN TO SETTLE THE ASSETS**

[74] Following some discussion with counsel at the hearing, the Court indicated that it was not prepared to pre-approve the proposed plan for the settlement of the estate. As was expressed to counsel, the executrix does not need the Court's approval to distribute the assets to the beneficiaries in accordance with the Will. To be clear – the Court does not express either approval or disapproval of the proposed distribution plan.

[75] Given that the final settlement of the estate may not occur for several years due to the pipeline transaction, the Court instructed that, should the executrix seek to pass the accounts again in the future (interim or final), she

is free to do so. An accounting is not always necessary. But this Court will not pre-approve the proposed distribution plan, amounting in effect to a final passing of accounts. The Court has accepted the partial or interim passing of accounts to October 31, 2024. If a further passing of accounts is needed, it will occur when the executrix brings that forward.

## **DISPOSITION**

[76] The Court approves the accounts submitted by the executrix, Nicole Druckman, from the date of Mrs. Rubin's death to October 31, 2024, as presented.

[77] The executrix shall be entitled to \$70,000 as an interim payment of executrix fees to October 31, 2024, on the basis that the vast majority of the work in the administration of the estate was completed by October 31, 2024.

[78] The request for pre-approval of the proposed distribution plan is refused, as it is premature.

**DATED** at Moncton, New Brunswick this 5<sup>th</sup> day of December 2025.

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Robert M. Dysart,  
Judge of the Probate Court  
of New Brunswick