

REASONS FOR DECISION

[1] Gertrude Rudanycz (“Gertrude” or “the deceased”) passed away at the age of 87 on September 19, 2018. Gertrude was predeceased by her husband Joseph Rudanycz who died on August 29, 2015. Gertrude and Joseph had three children, George, (age 71), Leon (age 69) and Michael Rudanycz (age 56) and five grandchildren. Jordan, Caitlin and Bevan are the children of George and Cara Rudanycz. They have not participated in this litigation. Jennifer and Daniel are the children of Monica Schnurpel and Michael. Pursuant to Minutes of Settlement dated September 21, 2020 and the Order of Justice Conway dated January 6, 2021, Jennifer and Daniel have been removed as parties to this litigation.

[2] On June 7, 2018, about three months before her death, Gertrude made her Last Will and Testament (the “2018 Will”). The 2018 Will leaves about two-thirds of Gertrude’s Estate to Leon. George and Michael challenge the 2018 Will on the grounds of lack of knowledge and approval of the 2018 Will, lack of testamentary capacity and undue influence. For the reasons described below, this application is dismissed.

BACKGROUND

[3] Gertrude was born on December 5, 1930. She was raised in Austria by her maternal grandparents for the first six years of her life and then by her mother who was physically and emotionally abusive. At about the age of 18, contrary to her mother’s wishes, Gertrude moved to England and worked in a textile mill. While in England, she met her future husband, Joseph Rudanycz, who had come from Ukraine. Gertrude and Joseph were married in 1950 and they emigrated to Canada in 1951.

[4] Gertrude and Joseph were frugal, hardworking labourers. They had three children: George, born in 1952, Leon, born in 1955 and Michael born in 1968 (the “Brothers”). Gertrude and Joseph’s marriage was impacted by his volatility. Michael testified that Joseph struck Gertrude shortly after they married. She told Joseph that she would leave him if he ever struck her again. Joseph never struck Gertrude again and they continued to live together until Joseph died on August 29, 2015

[5] Michael states that Gertrude’s mother moved to Toronto and he has no clear recollection of neither Gertrude nor any of the Brothers visiting her. Michael recalls that he and Leon challenged their grandmother’s Estate. In a settlement reached in the mid-1990s, they each received about \$20,000.00 which was an increase of a few thousand dollars over the amount that had been proposed.

[6] Gertrude made wills in 1979, 2011 and 2018. In her 1979 Will, Gertrude appointed Joseph as her Executor. In addition, she directed that the residue be paid to her husband Joseph, and if he predeceased her, then the residue would be paid in equal shares to each of George, Michael and Leon.

George Rudanycz

[7] George, 73 years old, describes his father as an authoritarian. He states that the children “... would have to listen to my dad, and we had to figure out how to survive that”. George states that Gertrude was quiet and subservient to Joseph. He states that Gertrude, despite her lack of

education, was a very smart woman who was “always depressed”. He describes Gertrude as being “loving” towards him. George was a poor student in high school and described being “traumatized” at home by his father and bullied at school by other students. George graduated from Western University with a Bachelor of Science degree in 1976 and a Bachelor of Science Nursing degree in 1980 from the University of Windsor.

[8] After getting married in 1981, George moved to Sarnia, Ontario where he and his wife raised three children, Jordan, Caitlin and Bevan. George felt that the only way to survive his difficult relationship with his father was to move away. In 1981, while working full-time, George obtained a Master of Science in Administration from an institution in Michigan after attending night school for three years. For many years that followed, George worked as a nurse, in various capacities, at a local hospital.

[9] Once he moved to Sarnia, George states that “... I didn’t visit my parents that often. Just didn’t have the time. ...”. George states that he visited his parents a few times each year – during Christmas, sometimes for his father’s birthday. George never visited for Gertrude’s birthday. He enjoyed staying at his parent’s cottage (“Cottage”) and would visit his parents while in transit to or from the Cottage. George states that he used the cottage more than anyone else and perhaps used it exclusively since 2004. George states that while he could call Gertrude by telephone, he did not call without a reason to do so. He did not call her to just to ask how she was doing, unless an important event with respect to his family had occurred.

[10] George had a strained relationship with Gertrude. Gertrude never visited him in Sarnia. George could only recall Gertrude calling him once. Their strained relationship also impacted Gertrude’s relationship with George’s children. George’s children only visited Gertrude when he did. Gertrude chose not to attend Jordan’s wedding in Sarnia.

Michael Rudanycz

[11] Michael Rudanycz is the youngest of Gertrude’s children. He is 58 years old and married to Monica Schnurpel. They have two children, Daniel and Jennifer, aged 20 and 21. Michael attended the University of Waterloo and has various accounting degrees and financial designations. He is the managing director of a life insurance company. Michael states that he had a very good relationship with his parents while growing up in their home. His father tended to be very argumentative, screamed a lot, and disagreed with a lot of things. Sometimes his mother supported Michael and later in life she did not. He states that he had an excellent relationship with his mother. Michael states that Gertrude “loved” when he visited her and was quite happy to see her grandchildren.

[12] Michael states that his relationship with Leon became strained after his children were born as Michael did not ask Leon to be their godparent nor did he designate Leon as the children’s guardian in the will that he made in about 2005. Leon states that he learned of being passed over in about 2006-2008. Leon states that he was upset and that his parents were even more upset. Leon states that at that time he arranged to meet Michael at a coffee shop and was told that he did not ask Leon to be guardian because he travelled too much. Leon states that he never raised the issue of guardianship again. Michael states that Leon gave him a six-page document that explained why he should be the children’s guardian. He also states that Leon raised this issue again in 2012.

Michael states that he did not ask Leon to be guardian because he was not responsible as he did not come to family events on time, had been fired from one or two positions, and liked to enjoy all the money he had.

[13] Michael states that Leon was quite upset with Michael's children being cared for by his parents occasionally during the day while they were 3 or 4 years old. Michael states that he went about once a week to see his parents and about once a month the grandchildren would sleep over at Gertrude's request. On one occasion, in about 2003, when Michael had come to pick up the children from a sleepover, Leon was present and screamed that Michael was taking advantage of Gertrude and kept screaming despite Gertrude telling him to stop. Michael states that the children witnessed this event and that he installed a video camera outside his home as the children were scared of Leon.

[14] Michael states his parents gave him \$15,000 to cover the expense of his first year of university as well as a car that had a value of about \$4,000.00. He repaid these amounts to his parents. After he graduated, Michael lived at home with his parents for about five years until he got married. He states Leon told him and his parents that he should be paying rent however his parents refused to make any request.

[15] In about 2008, Michael's parents lent him \$20,000.00. He repaid that amount and borrowed a further \$60,000 in about 2010 which he also repaid.

[16] An undated note in Gertrude's handwriting is entitled "Loans to M". It states "2007, \$43 K", "2008, \$40 K", "2009, \$20.5 K", "2010 - \$60K". The letters "RET" are next to the first three amounts. Michael assumes that this means that the loans were returned or paid. The last loan is circled in blue ink and states "Dad forgiven for kids" which Michael assumes means that this debt was forgiven. Michael states that on June 15, 2012 he had lunch at a restaurant. He explained why Leon was not selected as the childrens' guardian. Leon raised the issue of his parents' loan of \$60,000 and demanded that Michael repay the loan. Shortly thereafter Michael gave Gertrude a cheque to repay the loan and told Gertrude that he was doing so because Leon demanded that he do so. He states that Gertrude apologized for Leon's behaviour. Some weeks later Michael asked her why she had not cashed the cheque, Gertrude told him not to worry about it and that he did not owe the money. Gertrude never cashed this cheque.

[17] Nevertheless, Gertrude was openly critical of Michael's request for loans from her. Gertrude's neighbour, Adina Homoki, testified that Gertrude was occasionally critical of Michael for this reason. Sharon Goldberg's notes from her meetings with Gertrude regarding the preparation of the 2018 Will states "Michael has loan of \$60,000 (he lives beyond his means)"

[18] Leon states that in 2012, Gertrude told him that she had lent Michael money on four occasions and had not been repaid. She was upset because Michael had purchased new dining room furniture which she felt that he did not need. Leon states that Gertrude asked him to speak to Michael about repaying the loan. Leon and Michael had lunch at a restaurant. As they were leaving the restaurant, Leon told him that Gertrude was concerned that he had not repaid her \$60,000 loan. Michael told him that he had lost \$350,000 day trading, owed a lot of money and was suicidal.

Leon Rudanycz

[19] Leon Rudanycz, age 70, is Joseph and Gertrude's middle son. He graduated with a degree in civil engineering from the University of Toronto and a law degree from Western University. He was admitted to the Law Society of Ontario in 1983. He did not receive financial support from his parents while attending university, however he did live at home while he attended the University of Toronto. Rather than practice law, Leon established a computer company called Parity Plus that resold computer products to computer dealers. He states that his parents cleaned his office and warehouse, about one day each week, for four years from 1987 until this successful business was sold in 1990. He paid his parents \$40,000.00 per year as a way of income spreading. Leon states that he also gave them \$20,000.00 - \$40,000.00 for the construction of a kitchen in their home and a further \$8,300.00 towards the construction costs of their home.

2011 Will

[20] Leon states that Gertrude asked him to find a lawyer so that his parents could prepare a will. Leon contacted Sharon Goldberg to make these arrangements, and she reminded him that could not be involved and asked that his parents call her. Leon states that his mother dictated to him the contents of a one page document with certain directions regarding his parents' powers of attorney and wills.

[21] Ms. Goldberg states:

1. She has been a member of Law Society of Ontario since 1988 and has practiced estates law exclusively. In a typical year, she prepared 50 wills.
2. In respect of preparing a will for an elderly person, Ms. Goldberg asks questions about their personal history, their family members, their assets and other things. In taking instructions, Ms. Goldberg also turns her mind to the possibility of undue influence and, in doing so, she looks for signs that someone is hovering or essentially in charge.
3. Her notes are not a verbatim record of what was said however she tries to record as much information as possible.
4. Ms. Goldberg's notes show that she spoke to Leon on July 7, 2011, following a message left a few days by Leon. He asked whether Ms. Goldberg would prepare a will for his parents. She states that it is common for the first contact that might be made by someone other than a prospective elderly client. Her notes also show that Leon told her that his parents "want to split everything equally" between the three sons. She also told Leon that he could not give instructions of this kind as his parents, if they retained, would give her their instructions directly.
5. In respect of the 2011 Will, apart from her notes, Ms. Goldberg has little independent recollection of her meetings with Gertrude and Joseph. Her records show that she met them on July 12, 2011 for about 1.5 hours. Her notes show that she was told that Michael has a loan of \$60,000.00 and was told by Gertrude that he lives beyond his means.

6. Gertrude provided Ms. Goldberg with a note regarding the 2011 Will. She states that it is common for an elderly client to bring a note to a meeting for the purpose of drafting a will. Ms. Goldberg asks her client questions about the note to ensure that they reflect her wishes.
7. Ms. Goldberg met with and dealt primarily with Gertrude rather than Joseph. There were two further meetings in August 2011 (of about 1 hour and 45 minutes in total) and a few telephone calls. Ms. Goldberg's overall impression of Gertrude was that she was a "lively, sociable, a nice woman".

[22] Gertrude signed a Last Will and Testament on August 17, 2011.

[23] Gertrude's 2011 Will:

- (a) appoints her husband Joseph to act as Estate Trustee or should he be unable to act, Leon, and should he be unable to act Michael, and if he should be unable to act, then George;
- (b) directs that the residue of her Estate is to be paid to Joseph. If Joseph pre-deceases her, George is given the right of first refusal on the sale of the cottage property. If Joseph pre-deceases, the rest of the Estate is to be divided as follows:
 - a. One equal share to George and his children split 50% to George and 50% equally to his children;
 - b. One equal share to Leon;
 - c. One equal share to Michael and his children split 50% to Michael and 50% equally to his children.

[24] Gertrude's Power of Attorneys dated August 17, 2011 appointed her husband, Joseph, as her attorney for property and personal care and appointed Leon as an alternate attorney for property and personal care.

Joseph Rudanycz's Death – August 2015

[25] Leon is single and has no children. After his father's death in August 2015, Leon states that he spent more time with his mother. He states that he wanted to make the last few years of her life as wonderful as it could be. Leon called her every night and visited her about twice each week. Leon states that he would take Gertrude to her doctor, to her bank and shopping.

Was Leon a "Gatekeeper"?

[26] George testified that he after his father died in August 2015, and until Gertrude's death, Leon prevented George from having contact with their mother as much as he could. To the contrary, there is little evidence that George attempted to have a relationship with Gertrude after Joseph died.

Discouraged Contact ?

[27] In an email dated July 16, 2016, Leon advised George's wife, Cara, that he visited Gertrude at least twice each week and called her every day.

[28] George relies on an email exchange on January 25, 2016, as proof that Leon was acting as a gatekeeper. Leon notified George that he was seeking a new property insurance quote for their mother's home and Cottage as the premium, on renewal, had risen by a total of \$1,000.00. Leon asked George for information about the Cottage that had been requested by a broker. The email states:

George: Should I now pay the cottage insurance?

Leon: That is something you should discuss with Mom, not me.

George: I wanted u to ask mom. Is that possible?

Leon: If you would like to pay for the cottage insurance of course it would be possible. I am sure that she would like that as she had Dad's pension and CPP cut in half. I can ask her if you want. I doubt she is going to say no.

George: Of course that is why I am asking.

Leon: OK will do. [Emphasis added]

[29] George stated that he asked Leon to ask Gertrude whether he should pay for the cottage's insurance as he "... was starting to think that Leon was the gatekeeper for all this, and so, the path of least resistance ... I was okay to have Leon talk directly to my mother". This email exchange does not support the gatekeeping allegation made by George. The email shows that Leon was encouraging, not discouraging, George to contact Gertrude directly. George did not wish to do so.

[30] George refers to another email exchange with Leon from March 9, 2016 regarding the sale of the Cottage:

George: Leon, I spoke to mom and said I would pay the taxes and cottage insurance going forward. ... So she has no cost to cottage in future or worries. Thanks for taking care of mom and her house. ...

George: Mom told me tonight that she is selling the cottage. She will give me first opportunity to buy it. I want to buy it but it will take some doing. She will contact you about it.

Leon: I see. Well, I certainly don't want to buy it and I doubt very much Mike would either. I don't know what it's worth but mortgage rates are crazy low if you are interested. ...

George: Yes I do [want] to buy it. ... Mom will need help to manage the money. Not sure how to handle the process. Need to speak to you ... about this issue. What is your phone number? ...

Leon: Here's the website I mentioned with all the current rates. ... I'll look into getting appraisals over the next few weeks.

George: OK thanks for your help.

[31] The above conversation does not show Leon as a gatekeeper. Instead, it shows that Gertrude and George spoke in Leon's absence and that she offered to sell the Cottage to him. The message also shows George asking for Leon's help in arranging the purchase and its financing and Leon providing that help.

[32] Michael states that after his father died, Leon changed the locks to Gertrude's home. Monica explained that Gertrude had lost her keys a few times and that Leon had to change her locks. Michael asked Gertrude for a key and she told Michael that he would have to ask Leon for a key. Michael asked why he done so, and Leon did not respond nor did he provide him with a key.

[33] Michael testified that he would visit or attempt to visit Gertrude about 50 to 75 times each year. He states it was more difficult to visit Gertrude in the last couple of years of her life as he did not have keys to enter her home.

[34] Gertrude's hearing was compromised, and she sometimes wore a hearing aid. Michael would call Gertrude by telephone before visiting and often she did not pick up the telephone. If she didn't answer, Michael would still drive over to her home and knocked on her door. Sometimes Gertrude answered the door. Michael also states that on his way to work he would regularly stop by her home and remove the snow from her driveway.

Facilitated/ Encouraged Contact

[35] On March 14, 2018, Leon wrote to George to advise that he had set up a partial call block on Gertrude's telephone:

I set Mom's phone up to block anyone except you, me & Mike as she's getting calls from real estate agents and scammers all day long and she's fed up with them. ...

I have 519-xxx-xxxx listed for you. Are there any other #s you would like me to add ...?

[36] George responded:

Good move. Called mom yesterday because of my birthday. She did not remember it.

[37] An email from Michael to Leon dated August 7, 2016, states that on his return from his cottage he was unable to reach Gertrude by telephone and would be heading over to her house to but did not have a key.

[38] An email from Leon to Michael dated February 18, 2017, shows that Leon encouraged Michael to visit Gertrude more than once a week and Michael responded that he would try to do so:

Leon: ... If you could think it would be very good if you could visit Mom more often, preferably with the Jenny or Daniel or both, perhaps twice a week instead of the once that you do now. I know it's not easy given they go to school and all and there are after-school activities, but it would really help even if it was just you and Monica or just you. I can explain more over the phone but it would be very beneficial to her well-being. ...

Michael: ... We will try to get over more often. We have work and the kid's have programs 5 days a week, so it may not be every week, but we will do our best.

[39] In another email from Leon to Michael dated April 12, 2018, Leon is critical of Michael's failure to contact Gertrude:

Leon: ... You certainly do not appear to have any concerns about Mom since you seem to have absolutely no problem with even communicating with her for almost two weeks. I asked last year that you keep in touch with her and call at least twice a week but even that is not happening. I call her wherever I am, whether on the road or not. I realize that it just must be too hard for you even though all of us carry cell phones now. ...

Michael: Leon, read your email. Thank you for your comments. I communicate with her every week and try to go over. ... We were over in person this past weekend despite her noting that we should stay away given her cold. I have been starting to think she really doesn't want to see us or me because she's upset with me again. Probably not true but how knows. We have never not communicated for two weeks.

Leon: You did not call the week you were away from March 11-18 and when you got back you didn't call until the 24th. ...

Michael: Leon, I cannot make calls from Jamaica except in the case of emergency. My phone is a work phone and other than connecting to the hotel wifi it is not to be used outside of North America. We got back late at night on the 18th, then I had to travel for work the next day and didn't get back home until the end of the week. ... Working 80 hours a week, travelling all the time while still trying to help a bit with the kids and the household when I do try my best to call and see Mom when I can.

[40] Gertrude lived in her house until her death and largely managed her own activities of daily living with Leon's help and to a much lesser extent with Michael's help. George acknowledged that Gertrude was grateful for Leon's help. By email dated April 5, 2018, Leon told George:

... Mom says you are a tremendous help to her every day. Thank you Leon. No one can do what u do for mom.

Aunt Lizzie's Estate

[41] Rosie and Lizzie were the Brothers' great aunts. They lived together in North Vancouver, British Columbia. George and Leon had visited them before they had careers. Even though he had not seen them for many years, they asked George to be responsible for their personal finances and health care. He ascertained that Rose's will left her Estate to the Jehovah's Witness, to friends and a paralegal. George took Rosie and Lizzie to a lawyer. In his presence, they met with the lawyer and directed that new wills be drafted. Rosie died in 2003. Her sister Lizzie was her sole beneficiary. When Lizzie died in 2011, she left her entire Estate of about \$120,000.00 to George.

[42] George did not mention this inheritance to Gertrude or his brothers. Gertrude became aware of this inheritance in 2016. An email from Leon to George dated May 4, 2016 states:

With regard to Rosie & Lizzie's wills, which is the only personal issue I wanted to inquire about when we talked as it really hurt Mom. ...

Mom was the beneficiary of Rosie's estate for many years until [it] was changed and had a copy of the will. ... Mom was also her next closest relative and they were very close. She knew Rosie since she was a toddler. ... I don't know how many times you visited her total but I doubt you did much at all before the wills were changed except when out as teenagers except and even so it wasn't a patch on the times I visited her. ...

I wrote this email out of my love for Mom, to perhaps help to explain how she feels and to satisfy my own curiosity about something which I feel was very wrong and that I feel we all should have been made aware of when it was happening many years ago. Her own son ended up getting the entire inheritance that was always meant to go to her for many years, kept her in the dark about what was happening and ended up with a small fortune as a result. How would you like your children to do this to you ? ...

[43] On May 5, 2016, Leon notified George that Gertrude no longer would sell the Cottage to George for \$250,000.00. His email states:

[44] As I mentioned, Mom sentiments are reflected in my letter 100%. I read your response to her and it is a massive understatement to say that she was extremely upset by what you wrote. You don't really want to hear everything she said. However, even so, and this was her own idea, her final offer is that she will not sell the Cottage and [will] allow you to use it until she dies, following which you will have the first right of refusal to purchase it at market value under the terms of her will, on the following conditions:

You pay the property tax, insurance and upkeep on the cottage property until it is settled by her estate and agree in writing that no such payments by you give you any right or interest in the property or result in monies ever owing to you from Mom, her estate or your brothers.

You allow both Mike and myself free and unfettered access to use the cottage as you do until the cottage property is settled by her estate. However, I doubt Mike ever would as he has not in past since he has had one and as you know I am not that interested in going there; and

You share the money you took from Rosie & Lizzie's estates with Mike and myself by sending each of us the sum of \$40,000 and mark it as a gift on the cheque or bank draft you send. Btw, this hardly even covers what 1/3 rd of the money you received (even if we believe that you did not receive more than what you claim) would be worth today if invested since then.

If your answer is in the negative, then the cottage will be listed for sale forthwith and I will expect a list from you of what items at the cottage are your property so they can be set aside for you. ...

[45] On May 11, 2016, George responded that he would share Lizzie's bequest with Leon and Michael. His email states:

Sorry for such a delay in responds (sp). I have had to face some facts and issues that need to be resolved. I must admit to failing to deal with Rosa/Eliz estate properly. Both you and Mike are entitled to the estate too. It was selfish of me and I am sorry for what it has caused. I will arrange to send you both \$40,000 each. Cara and I have talked about the cottage. It is also selfish of me to let mom not sell the cottage. She has little money to live on as dad's pension has become much less for her since his death. Mom has made a loving offer to me, but I cannot take it. Please thank mom, as I know Mom loves me and I am so sorry for the grief that I have caused. I want to be more respectful of you, Mom and Mike.

[46] On May 11, 2016, Leon stated that he and Gertrude appreciated George's response. He stated:

... Mom also said that she has enough to live on and really does not want to take the cottage away from you and for you to enjoy it until she dies and perhaps afterward. ...

Gertrude's Cognitive Decline

[47] Michael and George state that Gertrude's cognitive decline commenced in 2013. Michael states that while Gertrude was happier after Joseph died she had become very forgetful and kept talking about how difficult her childhood had been. Monica states that Gertrude started becoming forgetful in about 2013. Gertrude would forget that certain household items had been purchased and also forgot how to set the thermostat with the result that the house was often warm in the summer and cold in the winter. On the other hand, Leon states that he did not observe any signs of cognitive decline in 2013 and 2014.

[48] On January 6, 2015, Gertrude fell while she was walking at a nearby shopping plaza after she had fainted. Two passerbys brought her home. Michael notified Leon, who was in New York, about this incident. Following his return to Toronto, Leon took Gertrude to the Sunnybrook Hospital for a follow up CT scan.

[49] On January 14, 2015, a cardiologist, Dr. A.K. Gupta, met with Gertrude and determined that this syncopal episode was secondary to a small bifrontal subarachnoid hemorrhage as well as poorly controlled high blood pressure.

[50] On January 14, 2015, Leon wrote to Michael:

As you know I am due to go to Florida on Monday Jan 19th and return 8 days later on Jan 27th late. I was fully prepared to cancel my trip as a result of this development with Mom but it seems now she is stable for over a week. She has agreed not to leave the house on her own or to do any strenuous work for at least the next 6 weeks. Also she has warned Dad to stop starting arguments and yelling at her and he seems to be complying (so far - we'll see how long that lasts). Anyway, I'll be calling her at least every 2nd day while I am away but maybe you can go over and check on her a bit when I am gone and get anything she needs at the grocery store or take her to the bank.

[51] As requested by Leon, Michael states that he saw Gertrude every other day and called her every day.

[52] Monica states after the January 2015 fall, Gertrude became easily confused. For instance, she thought that Leon was stealing her money or that Monica had turned off the water supply to her home.

[53] George states that after Joseph's funeral in August 2015, Gertrude commented that she thought that Caitlin was living in her basement even though she was living in Thunder Bay, Ontario at the time. Another time, Gertrude stated that Caitlin had written on her mirror "Thank you for the gifts". Gertrude also stated that Jordan had thrown clothes all over a room.

[54] On November 25, 2015, Leon met with Gertrude's family physician, Dr. Zuzana Gross in Gertrude's absence. Leon states that he met with Dr. Gross to obtain her approval for a disability parking permit and a disability tax credit. The form notes "shortness of breath", "limited ability to perform ADLs", "limited mobility", "poor hearing – causes problems with communication even using hearing aid". In addition, Dr. Gross's notes show Her notes show that indicate that Leon was "worried about mom" and notes "PARANOID last 3 - 4 months". It further states that "mistrusting – doesn't answer the door". Leon states that he told Dr. Gross that Gertrude was still going to the bank herself and was sleeping okay. She was reading and watching television.

[55] On January 13, 2016, Leon met with Dr. Gross again in Gertrude's absence. Leon states that he told Dr. Gross that Gertrude was starting to have short-term memory loss. Her medical notes state "mom paranoid", "walking daily (weather permitting)", "walking to the bank", "hearing impaired", "forgetful", "paranoid", "dementia starting".

[56] In an email dated July 16, 2016, Leon advised George's wife, Cara, that Gertrude's physical and mental state was "up and down". His email states:

My mom is up and down with both health and mental state. It's tough being alone all the time after being with someone for so long (good or bad!), but she is doing ok for almost 86. I visit her at least twice a week and call every day to keep tabs on her. ...

[57] In an email on August 3, 2016, George asked Leon how Gertrude was doing. Leon responded "up and down as before".

[58] Monica describes two delusional episodes displayed by Gertrude in about August 2016. In one episode Gertrude ran to a neighbour's house because she thought someone was trying to kill

her. Shortly thereafter another episode occurred where she ran to another neighbour's home as she thought that a Bell technician was trying to kill her. Police were called.

[59] On August 12, 2016, Leon sent the following message to George:

I am sad to report that Mom appears to be in the beginning stages of dementia/alzheimers, etc. She has been forgetful and a bit paranoid for a while but quite functional. However, in the past few days it took a turn for the worse. She asked me to stay here Tuesday night as she said her heart was beating fast and she had a lot of anxiety. ... By 9 pm she was down the street at a neighbours and asked them to call the police because her phones were not working. This morning she left again and asked the neighbour to call the police because her son was trying to kill her (again because the phone in her bedroom would not work). Monica came over and Mom told her I must not have my house and need money. It goes on and on.

Monica stayed all day and I got here at 5 pm and am staying overnight. Mom has been up and down all day. First she wanted to kick Monica out of the house. Then later they were having a nice conversation and Mom told me how nice Monica was. The police told me if she is caught again out and the police are called they will have to end her to a hospital for an assessment. Mom now feels she is in a jail because I am staying here.

I have contacted a home care agency and they are sending someone at 9 am tomorrow for 12 hours. Mike and I will alternate staying here overnight. ...

I would like your thoughts. I could call you tomorrow.

[60] On August 14, 2016, Leon further told George that:

... Mike, Monica and I of course realize it does not get better but likely only worse from here over time. I have an appointment to take her to the doctor Tuesday and will be getting a referral for her to a geriatric psychiatrist but of course will not tell her that. She'll likely clue in what is happening at some point but so be it. I hold the powers of attorney for both medical and financial over her but you need an assessment to invoke them. She has agreed to wear a device that will identify her and also provide the ability to communicate which she has always resisted before.

I am sorry to say, as I mentioned to you yesterday, that it would definitely not be a good idea that you visit her when in Toronto so please do not. I would not even call. It would only stress her out even more and she would also be wondering why you are suddenly so interested in her, especially given the events of the past few days, when you have been pretty distant to her for so long and have had such a difficult relationship with her.,,,

[61] George responded:

Thanks for the information. But at some point I should be able to visit mom. It is unreasonable not to see her. I missed dad before his death and I do not want to with mom. She may not react in a way that you suggest. She still is my mom too despite what may have happened before.

[62] Michael states that he and Leon looked at placing Gertrude in a home for persons suffering from dementia however they did not proceed with doing so as Leon did not want to do so. Monica states that Gertrude told them that if she had to live with a babysitter, she would kill herself. As a result, Leon made the decision not to move Gertrude into a retirement home. They tried to have a caregiver spend the day with Gertrude however that only lasted one day, as Gertrude once again said that she would kill herself if she had to live with a “babysitter”.

[63] On October 18, 2016, George asked Leon about Gertrude’s condition. He testified that he did not visit or call her since the events involving Gertrude that were described in Leon’s email dated August 12, 2016. Their email exchange was as follows:

George: Can you keep me in the loop on how mom is doing. I have not heard anything for a while.

Leon: You haven’t been inquiring and there hasn’t been any news. I call Mom every day and having been doing so since [Dad] died as Mike only visits once a week and otherwise I would not know if something happened. Nothing has occurred since the 2 episodes happened in the summer and she has been quite normal with nothing indicating that dementia setting in. I think much of it may have to do with the fact that I have eliminated all the things that set her off in her home. She still goes to the store and bank herself even though I tell her I will take her. She also does quite a lot of gardening, sometimes 6+ hours per day and everything else on her own. It’s quite amazing really given she’ll be 86 in 7 weeks. Most people at this point are in a home or only partially or non-ambulatory and can’t take care of themselves. She has admitted that she herself finds she is getting more forgetful and that her mind doesn’t always work the way she wants it to. She has resisted me taking [her] to the doctor so far but I am hoping I will be able to at some point to convince her. There’s no point trying to force her to as it simply will not work.

[64] On November 9, 2016, George asked Leon by email whether Gertrude was interested in having any visitors. Leon responded:

George – Why do you keep asking me all these questions? Why do I have to be the go-between for you all the time? You are her son. Why haven’t you developed a relationship with her just like I have? ... Mom loves you just like she does all her children. Does she want you to visit her? I think you need to answer that question yourself.

[65] On February 18, 2017, Leon told Michael to visit Gertrude more often as she was losing her memory:

Ok. Consider making some sacrifices as I am afraid Mom is losing her memory. Contact, especially face-to-face, can help to reduce the rate of decline which could unfortunately get to a point where she may not even know us anymore. This decline will of course have many other consequences which we’ll have to face as they arise.

[66] On June 9, 2017, Leon sent the following message to Michael:

Mom is freaking out because she thinks something happened with Jenny and no one is telling her. She mentioned that you said Jenny had some kind of growth on her chest and she has heard nothing since. ... Please give her a call and update her ...

[67] Michael states that his daughter Jenny never had a growth on her chest and that he never told Gertrude that Jenny had a growth on her chest.

[68] Michael and Monica state that on the last few years prior to her death, Gertrude was not cooking, nor maintaining her home. She could not recall her grandchildren's ages and did not acknowledge their birthdays. Gertrude also referred to Michael's wife Monica as 'Cara'. (Cara is the name of George's wife). Gertrude would constantly repeat herself over and over during a conversation. She insisted to Leon that Michael was stealing from her and then insisted to Michael that Leon was stealing from her. She insisted at one point that her granddaughter was living in the basement when Caitlin was actually at school in Thunder Bay.

[69] By February 2018, Michael states that Gertrude was losing weight and had stopped cooking for herself. Her home was not as clean as it used to be and he would clean up and wash any dishes that were in the kitchen sink. This view was not supported by Leon nor did Ms. Goldberg observe an unkept house when she attended the home on a few occasions in mid-2018.

[70] On April 13, 2018, Leon sent an email to Michael that expressed little concern regarding Gertrude's condition:

Leon: ,, At this time I really don't have any issues with her well-being, mental or otherwise. Anyone can get a panic attack. Also, I don't think it's necessarily easy to live alone in your 88th year in a big house with no one to talk to and the kids all gone, especially when you lived such a hard life. Luckily she has some really good neighbours across the road, on the east side and down the street that visits or she talks to every once in a while. She is able to clothe and wash herself, cook, shovel the snow (when you couldn't ...), garden, clean the house, cook, understand her financial statements, watch TV, keep up with the news, complain when the utility bills are too high ... and talk lucidly about many topics. She might be forgetful sometimes but at her age anyone is. ... As such, to me hardly seems to be suffering from any early stages of Alzheimers or Dementia. She just doesn't need incidents in her life that make her panic especially since, as you know, she has always been a real worrier. ...

However, if you have any concerns with Mom and her well-being right now, physical, mental or otherwise, either right now or at any time in the future, I want to hear them. ...

[71] Michael did not challenge the accuracy of Leon's statements after he receiving this email, however at trial he testified that these statements were inaccurate. He states that he did not respond to Leon because Leon held the power of attorney and wanted to avoid a critical response from Leon.

2018 Will

[72] As he did with the 2011 Will, Leon contacted Sharon Goldberg and told her that Gerturde wanted a new Will and that he suspected that his brothers would challenge it.

[73] George states that Leon never told him that he was arranging for Gertrude to meet with a lawyer to prepare another will.

[74] Gertrude's 2018 Will:

- (a) Appoints Leon as Estate Trustee and if he is unable to act then Sharon Goldberg is to be Estate Trustee.
- (b) Directs that all household and personal items are to be given to Leon.
- (c) Directs that the Cottage is to be transferred to George.
- (d) Directs that \$200,000.00 be given to each of Michael's two children (Daniel Rudanycz and Jennifer Rudanycz).
- (e) Directs that \$50,000.00 be given to the Hospital for Sick Children Foundation.
- (f) The residue of Gertrude's Estate is to be transferred to Leon. If he predeceases Gertrude, then the residue is to be given to the Hospital for Sick Children Foundation.

[75] Unlike the 2011 Will, where Gertrude's estate was split between each of her three children (once her grandchildren's bequests are included), Michael receives nothing under the 2018 Will whereas his children receive \$200,000.00 each. Similarly, although George receives the Cottage under the 2018 Will, but his children receive nothing.

[76] Ms. Goldberg's evidence regarding the 2018 Will was as follows:

1. On April 12, 2018, she received a call from Leon on April 12, 2018 who told her that Gertrude wanted to change her will. Leon said that he told Gertrude not to change her will as he feels that his brothers will challenge a new will. Ms. Goldberg told Leon that she did not want to hear from him and that Gertrude had to call her directly and that he could not be involved with any of the changes.
2. On April 13, 2018, Gertrude left two voicemail messages which stated that her husband had died and that she would like to change her will.
3. On April 19, 2018, Gertrude met with Ms. Goldberg for just over two hours. Gertrude brought a one page note to the meeting that she had written. It states:

200 thousand each Jenny & Daniel at age 27 years

Cottage to George

50 thousand to Sick Kids Foundation in memory of Dr. Ross Johnson

Remainder to Leon Rudanycz. Contents also to Leon

From Gertrude Rudanycz ...

Cottage \$350,000 House \$800,000 Cash \$300,000

Ms. Goldberg made seven pages of notes. Gertrude provided details of her personal history and what she owned. Gertrude brought instructions in her own handwriting to the meeting. They discussed the terms of the bequests to Jenny and Daniel.

The notes show that following some discussion Gertrude provided Ms. Goldberg with her revised views regarding the estimated value of her house (\$1.2 million), her cottage (\$350,000) and financial assets, including cash (\$800,000), and that Ms. Goldberg pointed out that each son would expect one-third of that total amount or \$750,000.00 each.

Ms. Goldberg's notes indicate that Gertrude wanted to make a \$50,000 bequest to the Sick Kids Foundation because she was grateful for the help that Dr. Johnson had provided to George when he was a teenager.

Ms. Goldberg's notes show that she explained to Gertrude that if George only receives the Cottage, then he may think that he should receive another \$400,000.00. Similarly, if Michael's children receive a total of \$400,000.00 then Michael may also think he should get another \$350,000.00. Ms. Goldberg said that this approach would result in Leon getting "way too much". Gertrude stated that Leon buys all food, he does repairs, he calls every day, sees snow is shoveled.

Gertrude told Ms. Goldberg that she did not mind if George complains about not getting a full share as he did not work hard. Similarly, she felt that Michael would also complain but noted that she had not cashed a \$60,000 cheque that he had given her to repay a loan.

The notes state "Wants Leon to have everything ... she does not want them [George and Michael] to get what they don't deserve". At that meeting, Gertrude completed an Interview Questionnaire that poses various questions to be asked of the client. Amongst other things, this Questionnaire shows that previous wills were discussed and that Gertrude "... thinks Leon s/b [should be] rewarded, George's kids got enough, Mike has enough. What if she (Mike's wife) leaves and takes everything? It's his problem." When asked about the reasons for the changes, Gertrude stated that no one is pressuring her. The Interview Questionnaire, under the heading mental capacity (consider mini-mental status examination), Ms. Goldberg found that Gertrude was very talkative and responded in an appropriate way to the questions that she asked.

4. Ms. Goldberg told Gertrude that she believed that George and Michael would contest her proposed changes.
5. On May 11, 2018, Gertrude met with Ms. Goldberg for about 1 hour and 15 minutes. Ms. Goldberg recalls that she asked Gertrude for particulars of the location of the Cottage and that Gertrude ran upstairs and within two minutes produced four files about the Cottage that had all the required information.
6. On May 25, 2018, Gertrude met with Ms. Goldberg for almost 30 minutes.

7. On June 7, 2018, Gertrude met with Ms. Goldberg for almost one hour for the purpose of reviewing and signing the will. Ms. Goldberg states that she reviewed all of the main points – such as the names of executors, any dispositions such as the Cottage and the division of the residue – with Gertrude. Gertrude signed the 2018 Will in Ms. Goldberg’s office.
8. Most of the above meetings took place in Gertrude’s home and the last meeting took place in Ms. Goldberg’s office. No one was present during these meetings other than the people who witnessed her signature on the 2018 Will. Ms. Goldberg states that based on her interactions with Gertrude in 2018 she had “absolutely” no reason to believe that someone else was pressuring her and that the instructions were not her own.
9. Ms. Goldberg recalls Gertrude’s home being very tidy and nicely organized. She had no concerns about the temperature or odour in the house when she visited. Ms. Goldberg states that she is sensitive to smell and would have recorded that.
10. Her general overall impression of Gertrude at these meetings was that she was always personally tidy and dressed appropriately. She appeared to walk well on her own. Ms. Goldberg recalls Gertrude running up her stairs at one of the meetings. Although during one meeting Gertrude became very emotional when recalling harm that she had suffered during her childhood, Ms. Goldberg recalls Gertrude as generally pleasant, outgoing and bubbly.
11. As a result of these meetings, Ms. Goldberg concluded that Gertrude had capacity. Based on her observations, Ms. Goldberg did not think that Gertrude required a capacity assessment. Ms. Goldberg also did not have any feeling that there was undue influence.

ISSUES

- [77] The issues to be determined at trial were identified. by Order dated June 7, 2019 as follows:
- (1) Was the 2018 Will made under suspicious circumstances?
 - (2) Did Gertrude know and approve of the 2018 Will?
 - (3) Did Gertrude have testamentary capacity on the date of execution or of giving instructions for the 2018 Will?
 - (4) Was 2018 Will made under undue influence?

ANALYSIS

[78] To prove a will, its propounder has the legal burden to establish that: (a) it was duly executed; (b) the testator had the requisite testamentary capacity, and (c) the testator knew and approved of its contents: *Neuberger v. York*, 2016 ONCA 191, at para. 77. A will may be challenged on the grounds of undue influence: See *Roe v. Roe*, 2024 ONCA 179.

[79] The legal burden of proof on the propounder of a will can shift more than once. In *Vout v. Hay*, [1995] 2 S.C.R. 876, Sopinka J. stated:

26 ... 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]

Issue #1: Was the 2018 Will made under Suspicious Circumstances?

[80] In *Stekar v. Wilcox*, 2016 ONSC 5835, aff'd 2017 ONCA 1010, Lederman J. stated:

52 Suspicious circumstances may be raised by:

- (a) circumstances surrounding the preparation of the will;
- (b) circumstances tending to call into question the capacity of the testator; or
- (c) circumstances tending to show that the free will of the testator was overcome by acts of coercion or fraud: see *Vout v. Hay*, [1995] 2 S.C.R. 876 (S.C.C.) at para. 25.

53 Suspicious circumstances in any of the three categories will affect the burden of proof with respect to knowledge and approval, and if the circumstances reflect on the mental capacity of the testator, the burden with respect to testamentary capacity.

54 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. 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 those issues must be proved in accordance with the civil standard of proof on a balance of probabilities: *Vout v. Hay*, at para. 27. [Emphasis added]

[81] Michael and George allege the following suspicious circumstances:

- (a) Gertrude had difficulty hearing even with the use of a hearing aid based on a Disability Tax Credit Certificate issued by Dr. Gross issued January 2016. There is no evidence that Gertrude's hearing impairment was an issue in respect of Ms. Goldberg's dealings with Gertrude. I also note that the Certificate indicates that "mental functions necessary for everyday life" is not applicable. Further, although it is submitted that Gertrude's hearing impairment led to isolation, it was acknowledged that there was no evidence that Gertrude could not hear her children when they spoke to her.
- (b) It is asserted that Gertrude had uncontrolled high blood pressure and did not take her medication. There is evidence to support this assertion given the fainting episodes that occurred in 2015. However, there is no evidence to support that Gertrude had uncontrolled high blood pressure in 2018.
- (c) It is asserted that both Dr. Shulman and Dr. Herrmann found that the small blood vessels in Gertrude's brain were bleeding and affecting her executive functioning and ability to think rationally. In addition, they submit that Gertrude's forgetfulness (referenced in an email dated October 16, 2016 where he states that Gertrude is "getting more forgetful" and that "her mind doesn't always work the way she wants it to". However, Dr. Shulman found that there was insufficient clinical data to determine the extent of her cognitive impairment and whether it would have nullified her testamentary capacity. Any delusions she suffered before making the 2018 Will, would have played no role impacting the making of the 2018 Will. Dr. Hermann further states that her medical records show no formal diagnosis of dementia, depression, anxiety or psychotic disorders. He opines that it was very possible that in 2016, Gertrude was experiencing mini-strokes which led to brief episodes of delirium, forgetfulness, disorientation and acute paranoia. He notes that these symptoms waned with the stabilization of her underlying medical condition.
- (d) It is asserted that the 2018 Will makes no testamentary sense and constituted a significant change from the 1979 Will and the 2011 Will which equally divides Gertrude's estate amongst the Brothers (including their children) in the event of Joseph predeceasing her. Under the 2018 Will, with an estimated estate of \$2,350,000.00 (with a 1/3 interest being \$750,000.00) the Brothers no longer receive a 1/3 interest each for themselves and their children. Michael's children equally share \$400,000.00. Michael receives nothing rather than the anticipated balance of \$350,000.00. George receives the Cottage estimated at \$350,000.00 whereas his children receive nothing, rather than the anticipated balance of \$400,000.00. George and Michael assert that there is no rationale for these changes. Gertrude gives \$50,000 to the Sick Kids Foundation. Ms. Goldberg met with Gertrude for many hours over many days to obtain and confirm her instructions. After Joseph's death, Gertrude became closer to Leon and vice versa. He called her every day. George and Michael did not. Michael suggests that he tried to call her regularly but Gertrude often did not always hear his telephone calls. George remained largely removed from her life even after Joseph died. In addition, Gertrude appreciated Leon's commitment. Her October 2017 note to Leon, described earlier, states "thank you for your endless hours of work" and "sorry for always depending on you". On the other hand, Gertrude felt much less connected

with George and Michael and there is no evidence of any such note of appreciation having been sent to them.

- (e) It is asserted that Leon was instrumental in the preparation of the 2018 Will having made the initial call to Ms. Goldberg (as he did in respect of the 2011 Will), and having told her that he did not want Gertrude to change the 2011 Will because he did not want his brothers to challenge the new will.

[82] I find that the 2018 Will was made under suspicious circumstances for the following reasons:

- (a) Leon, a beneficiary under the 2018 Will, was involved in arranging for the 2018 Will to be prepared albeit in a limited way.
- (b) The secrecy surrounding the 2018 Will particularly as Leon did not notify his brothers that Gertrude was making another will particularly as that will excluded Michael and George's children as beneficiaries and increased Leon's share.
- (c) The 2018 Will represents a significant change from the 2011 Will.

[83] As a result, I find that the burden of proof rests with Leon to establish that Gertrude knew and approved of the 2018 Will. However, given that the suspicious circumstances do not reflect on Gertrude's mental capacity, the presumption regarding testamentary capacity remains given that there is no dispute that the 2018 Will was executed in accordance with the requisite formalities.

Issue #2: Did Gertrude know and approve of the contents of the 2018 Will?

[84] The test for whether a testator knew and approved of the contents of their Will turns on "whether the Will as written represented the testator's intentions": *Sikora Estate (Re)*, 2015 ABQB 374, at para. 42; *Garwood et al v Garwood et al*, 2017 MBCA 67, para. 18. Put another way, testamentary capacity is the ability to make choices, whereas "knowledge and approval" requires "... no more than the ability to understand and approve the choices that have already been made": *Halliday v Halliday Estate*, 2019 BCSC 554, at para. 179; *Estate of Felice Pipito (Re)*; *Rita Harrison v. Rita Pipito*, 2021 ONSC 8430, para. 64.

[85] On May 11, 2018 and on June 7, 2018, Ms. Goldberg states that she described and reviewed the main points of a draft of the 2018 Will with Gertrude. The meeting on June 7, 2018 lasted about one hour. Changes were made to the drafts at Gertrude's request. Gertrude signed every page of 2018 Will. Given these circumstances, and the discussions reflected by Ms. Goldberg's notes, I find that Gertrude knew and approved of the contents of the 2018 Will.

Issue #3: Did Gertrude have testamentary capacity on the date of execution or of giving instructions for the 2018 Will?

[86] This test for testamentary capacity was described in *Stekar v. Wilcox*, 2017 ONCA 1010, at para. 14 as follows:

The test for testamentary capacity has been well-established since the Supreme Court of Canada, in *Skinner v. Farquharson* (1902), 32 S.C.R. 58 (S.C.C.), adopted the formulation of the test offered in *Banks v. Goodfellow* (1870), L.R. 5 Q.B. 549 (Eng. Q.B.), at p. 565:

It is essential to the exercise of such a power [of testamentary capacity] that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties — that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.

[87] A diagnosis of dementia or cognitive impairment does not necessarily mean that a person lacks testamentary capacity. I adopt the views expressed by Goss, J. in *From Estate*, 2019 ABQB 988, at paras.121-124:

121 Testamentary capacity is a legal construct, medical evidence is not required: *Stevens v. Crawford*, 2001 ABCA 195 (Alta. C.A.) at paras 19 and 20, leave to appeal denied, (2002), [2001] S.C.C.A. No. 483 (S.C.C.); *Mah v. Zukas Estate*, para 56. Whether a testator has the requisite capacity to make a will is a question of fact to be determined in all of the circumstances. The assessment is a highly individualized and fact-specific inquiry. In *Laszlo v. Lawton*, 2013 BCSC 305 (B.C.S.C.), the court stated at para 198:

Testamentary capacity is not a medical concept or diagnosis; it is a legal construct. Accordingly, scientific or medical evidence - while important and relevant - is neither essential nor conclusive in determining its presence or absence. Indeed, the evidence of lay witnesses often figures prominently in the analysis. Where both categories of evidence are adduced, it is open to the court to accord greater weight to the lay evidence than to the medical evidence, or reject the medical evidence altogether: *Baker Estate v. Myhre* (1995), 28 Alta. L.R. (3d) 428 at para. 39 (Q.B.); *O'Neil v. Brown Estate*, [1946] S.C.R. 622 [O'Neil]; *Spence v. Price* (1945), [1946] 2 D.L.R. 592 at 595-96 (Ont. C.A.); *James v. Field*, 2001 BCCA 267 at para. 77; *Miliwat v. Gagné*, 2009 BCSC 1447, aff'd 2010 BCCA 323 [*Miliwat*].

122 Indeed, the evidence of lay witnesses can be preferred to the evidence of medical witnesses with respect to determination of testamentary capacity: *Field v. James* [2001 CarswellBC 815 (B.C. C.A.)], para 77; *Stewart v. McLean*, 2003 ABQB 96 (Alta. Q.B.), para 200; Sweetnam, para 802. As noted in *Maduke Estate (Re)*, 2019 ABQB 90 (Alta. Q.B.), para 12, quoting Laidlaw JA in *Spence v. Price* [1945 CarswellOnt 376 (Ont. C.A.)]:

The quality of a person's mind manifests itself by conduct and expressions of thought. The conclusions to be reached from such evidence do not depend for their correctness upon the possession or exercise of special skill or knowledge. A judgment may be formed by a person of sound mind and reason, exercising powers of observation and deduction, without the use of any scientific learning whatever. It is a practical question which may be answered by a layman of good sense with as much authority as by a doctor. The weight to be properly given to the evidence

touching the question depends in part upon the extent of the observations made by a witness.

123 Memory is a critical requirement underpinning testamentary capacity: *Wasylynuk v. Bouma*, 2018 ABQB 159 (Alta. Q.B.) at para 127, aff'd 2019 ABCA 234 (Alta. C.A.), application for leave to appeal filed September 6, 2019, [2019] S.C.C.A. No. 316, 2019 CarswellAlta 1109 (Alta. C.A.) ("*Wasylynuk*"), citing *Simpson v Gardners Trustees*, (1833) 11 Ct of Sess Cas 1049 at 1051-52 (Scottish Ct of Sess); *Murphy v. Lamphier* (1914), 31 O.L.R. 287 (Ont. H.C.), aff'd (1914), 20 D.L.R. 906, 32 O.L.R. 19 (Ont. C.A.); *Fraser, Re* (1932), 26 Alta. L.R. 551, [1932] 3 W.W.R. 381 (Alta. C.A.) at para 19. In *Simpson*, Lord Cringletie explained to the jury that memory is the determining factor as to whether a deceased had sufficient mental soundness to understand and instruct execution of a deed as follows (at 1051-1052):

This may or may not injure or destroy the mind, and it appears to me that the grand criterion by which to judge whether it was injured or destroyed, is to ascertain the state of the memory. It is memory that affords us all the materials on which to exercise judgement, and to arrive at a conclusion or resolution. Without memory the mind cannot act, and it is the first of the intellectual faculties which fails, where the mind is in a state of decay.

124 This passage was later cited in *Murphy v. Lamphier*, where Chancellor Boyd discussed the role of memory in the assessment of testamentary capacity more broadly as follows (paras 111, 117):

... See the old citations used by Vankoughnet, C., in *Menzies v. White* (1862), 9 Gr. 574, 576, "that sane memory for the making of a will is not at all times when the party can speak, read, or write, or had life in him, nor when he can answer to anything with sense, but he ought to have judgment to discern, and to be of perfect memory; that it is not sufficient that the testator be of memory when he makes his will, to answer familiar and usual questions, but he ought to have a disposing memory, so as to be able to make a disposition of his property with understanding and reason, and that is such a memory which the law calls sane and perfect memory." ...

The question for decision was said to be, not whether the testator knew that, he was giving all to his wife and excluding all other relatives, but whether he was at that time capable of recollecting who those relations were, of understanding their respective claims upon his regard and bounty, and of deliberately forming an intelligent purpose to exclude them from any share in his property. This statement of the principle of decision has been approved in *Banks v. Goodfellow* (1870), L.R. 5 Q.B. 549, 568. [Emphasis added]

[104] Both parties provided medical expert evidence. Dr. Richard Shulman and Dr. Nathan Herrmann are geriatric psychiatrists. They provided retrospective medical-legal opinion reports with respect to Gertrude's testamentary capacity and vulnerability to undue influence based largely on their review of the medical records from Dr. Gross and other medical records, the affidavits

filed by the parties, the discovery transcripts. Dr. Herrmann had Ms. Goldberg's file when he prepared his report whereas Dr. Shulman did not.

[88] Both Dr. Richard Shulman and Dr. Nathan Hermann agree that a lack of testamentary capacity has not been established.

[89] Dr. Shulman opined:

In my clinical opinion, particularly from review of Sharon [Goldberg]'s notes, it is probable that Gertrude maintained sufficient semantic knowledge that she would have been able to understand the nature of the act of will-making and its effects. ...

In my clinical opinion, there is insufficient clinical data to provide an opinion about her ability to understand the extent of the property she was disposing. However, it is probable that with supported decision-making, Gertrude probably maintained sufficient knowledge of the property of which she was disposing such that she probably maintained the ability to understand the value and nature of her assets. ...

In my clinical opinion, there is insufficient clinical data apart from Sharon's notes to provide an opinion about her ability to comprehend and appreciate the claims to which [she] ought to give effect, and all of the information that purports to describe her views came otherwise from Leon. I am not able to assist the Court from analysis of medical evidence to provide a clinical opinion whether it is probable that Gertrude maintained sufficient ability to comprehend and appreciate the claims to which she ought to give effect. ...

There is clinical evidence to suggest that Gertrude was suffering from cognitive compromise from subcortical cerebrovascular disease at the time the last Will was completed, but there is not sufficient clinical data to determine the extent of her cognitive impairment and if that cognitive compromise would have nullified her testamentary capacity or not. Although she may have had delusions at times prior to executing the last Will, those delusions would have played no role impacting the Will and there is no clinical evidence that delusions impacted the testamentary decisions. ...

[90] Dr. Herrmann opined:

Unfortunately, the medical records, which include information from a family physician from 2012, provide no information that would suggest Gertrude had, or did not have, testamentary capacity in 2018. The only capacity which was suggested indirectly in these records, by her signature on a Revenue Canada Disability Credit form from 2015, suggested that her family MD felt she was capable to release personal health information at that time.

In terms of medical or psychiatric disorders that could potentially be threats to her capacity, and/or could increase susceptibility to undue influence, the medical records provide little support for these. There are no formal diagnoses of dementia, depression, anxiety, or psychotic disorders, nor was she formally assessed, investigated, or treated for any of these conditions. ... While there did appear to be the onset of episodes of "paranoia" and

forgetfulness in 2016, and by August 2016, the MD thought that “dementia was starting” there are other potential medical hypotheses for the events of 2016, and as mentioned above, it is curious that no urgent assessment was actually ordered, no investigations or treatment were ordered, and there was a complete lack of follow-up medical interventions until 2018. These facts suggest to me that her paranoia and forgetfulness either improved or stabilized and no longer required urgent intervention.

In terms of alternative hypotheses for the events of 2016, it appears to me that Gertrude had obvious cerebrovascular disease by 2015 when she had a subarachnoid hemorrhage likely secondary to poorly controlled hypertension, as suggested by a cardiologist. Her brain scans at the time suggest evidence of significant cerebrovascular disease. Her family MD had also documented “cardiac disease” and treated her for hypercholesterolemia, more cerebrovascular risk factors supporting a potential diagnosis of cerebrovascular disease. Therefore, it is very possible that in 2016 Gertrude was experiencing transient ischemic attacks and/or lacunar infarcts (“mini-strokes”) which led to brief and variable episodes of delirium which included the typical symptoms of disorientation, forgetfulness and even acute paranoia. In the context of delirium, these neuropsychiatric symptoms would wax and wane but would ultimately improve once the delirium cleared with stabilization of her underlying medical condition(s). If this was the case, it would also not necessarily be surprising if subsequent to 2016 her mental status improved or plateaued, and she required no further medical intervention. ...

Finally, while it is up to the court to determine whether the records and examination of the drafting lawyer should be accepted, the information she provided appears to support the fact that Gertrude would have met the *Banks v. Goodfellow* criteria for testamentary capacity: understanding the nature of the instrument, knowledge of her estate, knowledge of her potential beneficiaries, not making dispositive decisions based on delusional ideation, and not being unduly influenced. I was also impressed by her description of Gertrude’s appearance, and the appearance of her house, neither of these raising concerns about potential cognitive or functional impairment which might accompany a dementing illness

[91] George and Michael also submit that Ms. Goldberg did not do a sufficiently thorough job of obtaining explanations for Gertrude’s changes to the 2011 Will and of ascertaining whether Gertrude has a sound testamentary mind given the changes from the 2011 Will requested. There was no legal expert evidence adduced to support this view.

[92] I find as follows:

- (a) Gertrude understood the nature and effect of the 2018 Will. This conclusion is supported by Ms. Goldberg’s evidence that she had no doubt that Gertrude had testamentary capacity but also by the evidence of Dr. Shulman who opined that that “... it is probable that Gertrude maintained sufficient semantic knowledge that she would have been able to understand the nature of the act of will-making and its effects.”
- (b) Gertrude understood the nature and extent of her assets that she is disposing. This is evident from Ms. Goldberg’s evidence. Dr. Shulman also states that “... it is probable

that with supported decision-making, Gertrude probably maintained sufficient knowledge of the property of which she was disposing such that she probably maintained the ability to understand the value and nature of her assets.”

- (c) Gertrude was able to comprehend and appreciate the claims to which she ought to give effect. Ms. Goldberg’s notes show that she had discussions with Gertrude about the prospective claims of George, George’s children, Michael and Michael’s children. These discussions occurred more than once. Ms. Goldberg told Gertrude that her sons may feel unloved if their shares of her estate were reduced. Ms. Goldberg states that Gertrude was well aware that she was making a significant change the 2011 Will. Dr. Shulman agreed that Gertrude identified and appreciated the claims of those persons who might reasonably expect to benefit from her estate.
- (d) Gertrude gave the following reasons for the changes found in her 2018 Will:
 - (i) Gertrude had given Michael significant financial support and had forgiven a \$60,000 loan. She also stated that “Mike has enough” and asked what if Mike’s wife leave and takes everything?
 - (ii) As noted, Gertrude was very grateful Leon’s help after Joseph died. Ms. Goldberg’s notes from April 19, 2018 note that Gertrude stated that “Wants Leon to have everything ... she does not want them [George and Michael] to get what they don’t deserve”. It should be noted that George acknowledged that Gertrude was grateful for Leon’s help. By email dated April 5, 2018, Leon told George: “ ... Mom says you are a tremendous help to her every day. Thank you Leon. No one can do what u do for mom.”
 - (iii) Gertrude stated “George’s kids got enough”. This could be a reference to the Cottage which George’s family uses and which was left to George under the 2018 Will. Gertrude also indicated to Ms. Goldberg that she did not really have much of a relationship with George’s children. She also told Ms. Goldberg that she had sent money to George while he was in university.
- (f) I find that Gertrude was free of any disorder or delusion of the mind that might influence her testamentary dispositions which had she been of sound mind would not have made. There is no evidence to establish otherwise. Dr. Shulman’s report states “There is clinical evidence to suggest that Gertrude was suffering from cognitive compromise from subcortical cerebrovascular disease at the time the last Will was completed, but there is not sufficient clinical data to determine the extent of her cognitive impairment and if that cognitive compromise would have nullified her testamentary capacity or not. Although she may have had delusions at times prior to executing the last Will, those delusions would have played no role impacting the Will and there is no clinical evidence that delusions impacted the testamentary decisions”. Further, Ms. Goldberg stated that she would not have prepared the 2018 Will had she had any concerns about Gertrude’s capacity. In respect of whether the elements of the test for testamentary capacity were satisfied I adopt the view expressed in *Kates Estate*, 2020 ONSC 7046, at para. 79, that “...the evidence of

the drafting solicitor who had met with and spoken repeatedly with the testator should be preferred over all else, even that of medical professionals”.

[93] Accordingly, I find George and Michael have failed to establish that Gertrude did not have testamentary capacity. In any event, I would have come to the conclusion that Gertrude had testamentary capacity at the time that the 2018 Will was drafted and signed had suspicious circumstances in respect of her mental capacity been established.

Issue #4: Was the 2018 Will made under Undue Influence?

[94] George and Michael submit that Leon manipulated Gertrude to change her 2011 Will because he was angry at both George and Michael. They allege that he was angry at George for not sharing their Aunt Lizzie’s estate in 2016 although he subsequently made amends by paying \$40,000 to both Leon and Michael. They also allege that Leon was angry since about 2006-2007 for not being named as guardian of Michael’s children.

[95] George and Michael further submit that Gertrude made the 2018 Will under Leon’s undue influence on the following grounds:

- (a) Gertrude had been bullied by her mother and learned not to fight back;
- (b) Michael and George’s children, both loved by Gertrude, were excluded from the 2018 Will;
- (c) Leon, the alleged influencer, believed he was the better son and had been very generous towards them
- (d) Gertrude was dependent on Leon. He had controlled of her finances and bill payments.
- (e) Leon changed the locks twice on Gertrude’s home and did not give them keys.
- (f) Leon controlled the information about Gertrude given to Michael and George
- (g) Leon inserted himself into Gertrude’s life after Joseph’s death. Leon took charge of the administration of Joseph’s estate even though she was the Executor. When Leon found out about George inheriting the entirety of Aunt Lizzie’s estate, Gertrude stated that she was going to sell the Cottage.

[96] An allegation that a testator made a Will under undue influence requires “ . . . proof that the testator’s assent to the Will was obtained by influence such that instead of representing what the testator wanted, the Will is a product of coercion”: *Vout v. Vout*, [1995] 2 S.C.R. 876, at para. 21. The person alleging undue influence bears the onus of proving it: *Vout* , para. 28.

[97] In *Banton v. Banton* [1998] O.J. No. 3528, Cullity J., stated at para. 59:

A testamentary disposition will not be set aside on the ground of undue influence unless it is established on the balance of probabilities that the influence imposed by some other person on the deceased was so great and overpowering that the document reflects the Will

of the former and not that of the deceased. In such a case, it does not represent the testamentary wishes of the testator and is no more effective than if he or she simply delegated his Will-making power to the other person. [Emphasis added]

[98] In *Trotter v. Trotter*, 2014 ONCA 841, M.L. Benotto, J.A. stated:

58 Undue influence involves the domination of the will of one person by another. Undue influence exists when a testator is coerced into doing that which she does not desire to do: *Wingrove v. Wingrove* (1885), 11 P.D. 81 (Eng. Prob. Ct.), at p. 82. As stated by Cullity J. in *Scott v. Cousins*, [2001] O.J. No. 19, 37 E.T.R. (2d) 113 (Ont. S.C.J.), at para. 113, quoting E.V. Williams et al., *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate*, 17th ed. (London: Stevens & Sons, 1993), at p. 184:

There is no undue influence unless the testator if [she] could speak [her] wishes would say “this is not my wish but I must do it.”

59 The high burden of establishing undue influence rests with the party asserting it. However, circumstantial evidence can be used by those challenging a will to discharge their burden — otherwise, “undue influence would cease to have much practical significance in the law of wills”: *Scott v. Cousins*, at para 48.

60 The motion judge’s conclusion that there was no undue influence is summed up in the following statements, at paras. 145 and 180 of her judgment:

The inescapable finding that does not require a trial to fully appreciate is that Audrie was nobody’s fool.

I find that the record before me gives a full appreciation of what Audrie wanted for herself and how she went about making it happen.

61 These conclusions do not address the circumstances that were potentially indicative of undue influence: Audrie’s vulnerability and dependency, the allegations that Audrie felt she had to please John despite her own wishes, the allegations of domination and control, questions about the confidentiality and independence of her legal advice and instructions, and Audrie’s statements to an independent lawyer that John was trying to manipulate her: *Scott v. Cousins*, at para. 114; *Gironda v. Gironda*, 2013 ONSC 4133, 89 E.T.R. (3d) 224 (Ont. S.C.J.), at para. 77.

62 Nor do the motion judge’s conclusions accurately capture the law of undue influence. Audrie could be “nobody’s fool” and want certain things for herself, yet still be subject to undue influence. Audrie could falsely believe that she was heavily indebted to John as a result of his inflated invoices and thereby feel obliged, contrary to her wishes, to do what he wanted. A person may appreciate what she is doing but be doing it as a result of coercion or fraud: see *Vout v. Hay*, [1995] 2 S.C.R. 876 (S.C.C.), per Sopinka J., at para 29.

63 In *Boyse v. Rossborough* (1857), 10 E.R. 1192 (Eng. C.A.), Lord Cranworth said, at p. 1211:

I am prepared to say that influence, in order to be undue within the meaning of any rule of law which would make it sufficient to vitiate a will, must be an influence exercised either by coercion or by fraud...

.....

It is, however, extremely difficult to state in the abstract what acts will constitute undue influence in questions of this nature. It is sufficient to say, that allowing a fair latitude of construction, they must range themselves under one or other of these heads — coercion or fraud.

[99] Undue influence is inferred from the circumstances. In *Roe v. Roe*, 2024 ONCA 179, the Ontario Court of Appeal stated, at para. 18:

There is no set list of considerations that must be considered in all cases when considering an allegation of undue influence. Instead, the analysis of the issue is case specific and should examine the circumstances to understand the nature of the relationship between the alleged influencer and the deceased.

[100] Relevant considerations in respect of whether a testator has been unduly influenced in making a will may include:

(a) "... the testator's isolation, the failure to explain why certain family members were not named as beneficiaries, the existence of *inter vivos* gifts, the circumstances surrounding the creation and execution of the impugned Will, and statements made by the deceased that he feared the respondent.": *Roe*, para. 17.

(b) "Indications of the potential for undue influence include where the testator is dependent on the beneficiary for emotional and physical needs, where the testator is socially isolated, where the testator has experienced recent family conflict, where the testator has experienced recent bereavement, where the testator has made a new Will not consistent with prior Wills, and where the testator has made testamentary changes simultaneously with changes to other legal documents such as powers of attorney.: *Gironda v. Gironda*, 2013 ONSC 4133, at para. 77, per Penny J.

[101] George and Michael rely on the following list of circumstances described by the Quebec Court of Appeal in *Krivokapic c. Josephe Boss*, 2022 QCCA 536:

[27] Examples of conduct that may lead to a conclusion of undue influence include: inciting animosity against a presumptive heir, alienating family and friends, interfering in the testator's affairs, acting in such a way as to exercise complete control over a testator's will, such as by intercepting their mail, or refusing to summon a notary to prepare a codicil or new will.

[28] In evaluating the impact that undue influence may have had, a court can take into consideration the testator's ability to resist such efforts which may be a function of their state of health or of their degree of isolation or seclusion. As a result, evidence regarding the testator's capacity can be relevant in analysing undue influence. [Footnotes omitted]

[102] While undue influence in the making of a will can be inferred, the circumstances must lead to the conclusion that if Gertrude could speak her wishes she would say “this is not my wish but I must do it:”. Using the considerations described in *Roe*, *Gironda*, and *Boss*, above, I find that:

- (a) Gertrude was not isolated by Leon or at all. Leon visited her twice a week after Joseph’s death. Michael states that he visited about once a week. Both Michael and George could have called Gertrude whenever they wished. There is no evidence that Leon alienated family and friends. Leon encouraged and asked his brothers to contact Gertrude and see visit her. Gertrude was not housebound, and she saw neighbours, shopped and banked.
- (b) Gertrude did explain to Ms. Goldberg why Michael was not being named as a beneficiary. Her reasons for not naming George’s children as beneficiaries were less clear however it appears that she was estranged from them given that she told Ms. Goldberg that she could have went to his son’s wedding but chose not to do so. There is no evidence that Leon had any animosity in respect of George’s children and thus there is no basis for the view that he would have coerced Gertrude to exclude them from her will.
- (c) There is no evidence of *inter vivos* gifts from Gertrude to Leon.
- (d) There is little evidence of Leon’s involvement in the creation of the 2018 Will. He contacted Ms. Goldberg to arrange an appointment for Gertrude. Ms. Goldberg noted that this was not uncommon for elderly clients. At the time of this contact, Gertrude was about 87 years old. He did not attend the many meetings that Gertrude had with Ms. Goldberg. It appears that Leon prepared a typed one-page note that provides the particulars of Gertrude’s financial assets (such as a TFSA) that she gave to Ms. Goldberg.
- (e) George and Michael submit that Leon bullied Gertrude. There is no evidence that Gertrude told anyone that she feared Leon. To the contrary, she told George and Ms. Goldberg how wonderful Leon had been.
- (f) Gertrude was dependent on Leon for emotional and physical needs. However, as noted, this was a result of him making the time to care for his mother whereas his brothers did not, for their own reasons, make the same level of commitment to meet her emotional and physical needs.
- (g) There was no recent bereavement. Joseph died about seven years earlier.
- (h) There was no recent family conflict. The events related to the guardianship, the sale and Aunt Lizzie’s estate occurred a few years or more earlier.
- (i) The 2018 Will was not entirely consistent with prior wills however it still resulted in each son or their children receiving a substantial share of Gertrude’s estate.
- (j) George and Michael submit that Leon interfered in Gertrude’s affairs. It is submitted that after Joseph died, Leon “took charge” of Joseph’s funeral and the administration of Joseph’s estate. There is no allegation of any wrongdoing. Rather than being viewed as interference in her affairs, a more sensible view is that he was simply helping his then 84-year-old mother through a difficult period. Joseph was the attorney under the power of

attorney for property that she made in 2011 and Leon was the alternate. It is not surprising that Leon played a greater role in Gertrude's financial affairs after her death. While he took over the preparation of preparing her tax returns from Michael, the evidence shows that they were prepared in consultation with Michael. Although he had no prior involvement in the management of the Cottage, it is not surprising that when the property insurer increased the premiums for Gertrude's home and Cottage by a significant amount in 2016, that he sought out quotes from other insurers. The assertion that Leon, rather than Gertrude, decided to sell the Cottage in 2016 after the discovery of George's inheritance of Aunt Lizzie's estate is unsupported in the evidence.

- (k) There is insufficient evidence to show that Leon incited animosity against a presumptive heir. While Leon and Michael had conflict in 2012 stemming from Michael's decision not to name Leon as the guardian of his child, there is no evidence that this was an animating issue six years later when Gertrude made her will. Ms. Goldberg's notes do not indicate that Gertrude raised this issue at that time. Instead, the reasons related to Michael being excluded from her will largely related to his perceived spending habits and lack of need for the money. Similarly, the drama that arose in 2016 related to the discovery that George had not disclosed that he had inherited the entirety of Aunt Lizzie's estate about four years earlier to the exclusion of Gertrude and others, does not appear to have been a concern at time that Gertrude made the 2018 Will given that she left the Cottage to George and that Ms. Goldberg's do not reference this matter.
- (l) While Gertrude was in a weakened cognitive condition at the time of making the 2018 Will, Dr. Shulman and Dr. Herrmann did not agree on whether Gertrude was vulnerable to undue influence by Leon.

Dr. Shulman stated:

In my retrospective clinical opinion, given Gertrude's cognitive compromise particularly for the management of finances and her psycho-social dependence on Leon, that Gertrude would have been vulnerable to undue influence by Leon. I leave it to the Court to determine if undue influence actually occurred.

Dr. Hermann stated:

Given the lack of formal medical or psychiatric diagnoses I would not consider her to be especially susceptible to undue influence. While it could be argued that the physical disabilities noted in the Revenue Canada Disability Tax Credit implied she could be considered to be at risk of social isolation, a condition which might increase her susceptibility to undue influence, her family MD did note that she was still living independently and going out on her own, at least as of 2016.

As noted earlier, Ms. Goldberg's evidence was that she had "absolutely" no reason to believe that someone else was pressuring Gertrude and that the instructions were not her own. Her notes also indicate that Gertrude told her that she was not being pressured to change her will.

[103] I find that the circumstances are insufficient to satisfy the burden of proving that Gertrude was coerced by Leon to make the 2018 Will and that it did not reflect her wishes.

[104] As noted by Penny J. in *Gironda*, at para. 51.

The testator does not need to be fair, considerate or kind and, indeed, may even act capriciously provided that instructions are given freely from a sound mind, memory and understanding.

[105] In the final analysis, it appears that Gertrude simply wanted to leave a larger share of her Estate to Leon, than to George and Michael (including their respective children), in appreciation for his dedication to her particularly after Joseph died. Gertrude's handwritten note from October 2017 reflects this sentiment and states:


Dear Leon!

Thank you for your endless hours of work. And listen[ing] to my complaining. I am OLD and tired. And sorry for always depending on you. Every time even when you were just a little boy. ...

DISPOSITION

[106] I find that Gertrude knew and approved of the 2018 Will and that she had testamentary capacity at the relevant times. I also dismiss the submission that the 2018 Will resulted from undue influence. Accordingly, I find that the 2018 Will is valid. This application is dismissed.

[107] Leon shall deliver his costs submissions within ten days. George and Michael shall deliver their responding costs submissions within twenty days. Leon may deliver reply submissions within thirty days. Costs submissions shall be no more than five pages each exclusive of any offers to settle and a bill of costs.



Mr. Justice M.D. Faieta

CITATION: Rudanycz v. Rudanycz, 2025 ONSC 3191
COURT FILE NOS.: CV-18-00041322-00ES
DATE: 20250612

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL SERGEY ANDREW RUDANYCZ and
GEORGE JOSEPH RUDANYCZ

Applicants

– and –

LEON TERENCE RUDANYCZ, as the named Estate
Trustee of the Estate of Gertrude Rundanycz, deceased,
and in his personal capacity, Jennifer Rudanycz and
Daniel Rudanycz, minors, by their Litigation Guardian
the Office of the Children’s Lawyer, Jordan Rudanycz,
Caitlin Rudanycz and Bevan Rudanycz

Respondents

REASONS FOR JUDGMENT

Mr. Justice M.D. Faieta

Released: June 12, 2025