

**NZ EQUITY AND THE  
LAW OF SUCCESSION  
CASE NOTES**



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Sample

## ***Auckland City Mission v Brown* [2002] 2 NZLR 650**

**Source:** Hard copy via your law library or electronically via a subscription service

**Court details:** Court of Appeal

**Facts:**

- Eric Miller worked hard to build an estate worth \$4.6 million.
- In his will, he bequeathed to his daughter Inge shares and investments, furniture and jewellery and forgave half a \$20,000 loan (total worth \$110,000).
- Miller had a low opinion of Inge's husband Shane and was concerned that anything he gave to Inge would be wasted.
- He also gave \$400,000 to a friend; \$500,000 to the Cancer Society; \$250,000 to a long-term employee and placed a \$1m commercial property in trust for his three grandchildren.
- The remainder was to be split – two-thirds to the Auckland City Mission and a third to the Salvation Army.
- Inge claimed – and the charities accepted – that her father had failed in his moral duty.
- However, the charities argued \$650,000 would right the wrong, whereas Inge wanted half the estate.

**Procedural history:**

- The High Court found Inge was a dutiful daughter – despite her parents' acrimonious split and her father's "often shabby" treatment – and awarded her an extra \$1.6m from the charities' share.

**Issue:**

- Whether charitable organisation should defend charitable bequests.

**Reasoning / Decision (Commentary):**

- The Court of Appeal, however, found that "far in excess" of what was needed to remedy Eric's moral failing and cut it to \$850,000, or about 20 per cent of his estate.
- They also made clear charities should not be criticised for defending bequests.

**Ratio:**

- Richardson P, who delivered the decision of the court noted that:  
"The Judge remarked that, unusually, the charities played an active role in the proceeding and argued forcefully that further provision should not exceed \$650,000. Elsewhere he compared the legacy to the City Mission with the total donations it received annually and with its annual income, commenting on the limited provision Mr Miller had made for the charities in his lifetime; observed that the bequest to the

Cancer Society was directly associated with Freda's death from cancer and, he inferred, was a gesture of both remorse and penitence on Mr Miller's part; and he noted Mr Miller's lack of any particular connection with the other charities...

Turning to the charities, in the observation he made relative to the size of the legacy to the City Mission and what he drew from Mr Miller's reasons for benefitting the Cancer Society, and lack of any particular connection with the other charities (para [24] above), the Judge appears to have overlooked that it is not for a beneficiary to have to justify the share which has been given (*Williams v Aucutt*, para [33] above) and that where the provision is sufficient to repair any breach of moral duty, the testator's wishes should prevail (para [36] above). In this regard it is clear from the reasons he gave to his solicitor that Mr Miller did not act arbitrarily in selecting these charities.

As well, charities such as the Cancer Society, the City Mission and the Salvation Army are regarded under our laws as serving the public good. In contemporary less closely knit communities affected by the economic and social changes of the last 15 years, charities may properly be regarded by altruistic testators as having an enhanced role. It is not unreasonable that the charities draw the attention of the court to their work and the benefits for the public which they can achieve with the support of substantial donations.

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