

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Public Trustee) v. I.W.*, 2014 NSCA 10

Date: 20140130

Docket: CA 414744

Registry: Halifax

Between:

The Public Trustee (A Corporation Sole As
Constituted by the *Public Trustee Act*, Chapter 379,
Revised Statutes of Nova Scotia 1989)

Appellant

v.

I.W.

Respondent

Judge: Bryson, J.A.

Appeal Heard: September 23, 2013, in Halifax, Nova Scotia

Subject: **Public Trustee. Adult Protection. Incompetent Persons. Trusts and Trustees. Trustee Act. Inherent and Equitable Jurisdiction.**

Summary: Public Trustee assumed management of Ms. W.'s property under *Adult Protection Act*. Management continued under s. 14A of the *Public Trustee Act*. Ms. W. now residing in a long-term care facility. Ms. W. diagnosed with dementia – not able to care for herself. Public Trustee applied to court for an order authorizing sale of Ms. W.'s home. Chambers judge dismissed application, finding that *Public Trustee Act* did not provide authority for a sale. Public Trustee had not sought guardianship under *Incompetent Persons Act* which permits the court to grant the guardian a licence to sell real property. Public Trustee appealed arguing Chambers judge erred by not invoking authority under *Civil Procedure Rules, Trustee Act* and inherent jurisdiction.

Issues: Do the *Civil Procedure Rules* and/or the *Trustee Act* and/or the court's inherent jurisdiction allow the court to authorize a sale of Ms. W.'s home?

Result: Appeal dismissed. The Public Trustee's status as manager under the *Adult Protection Act* and *Public Trustee Act* does not grant the Public Trustee authority to sell real property. Nor do those statutes authorize the court to permit a sale. The Public Trustee is a statutory agent – not a trustee vested with property. Therefore, the authority granted to the court to augment a trustee's powers under the *Trustee Act*, has no application. The Public Trustee cannot invoke inherent jurisdiction to supplement a trust status that, in the circumstances of this case, she does not have.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 30 pages.