

SUPREME COURT OF NOVA SCOTIA
Citation: *Bethel Estate (Re)*, 2015 NSSC 216

Date: 20150724
Docket: Truro No. 430703
Registry: Truro

Between:

The remainder beneficiaries of the trusts established under the Last Will of Harold F. Bethel, namely the Rotary Club of Truro Charitable Trust; Acadia University; St. Andrew's United Church, Truro; Pine Hill Divinity Hall; and the Governing Council of the Salvation Army, Canada

Applicants

and

The Bank of Nova Scotia Trust Company, trustee of the Last Will of Harold F. Bethel

Respondent

and

The Attorney General of Nova Scotia, representing her Majesty the Queen in right of the Province of Nova Scotia

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Arthur W.D. Pickup

Heard: January 12, 2015 (Justice Elizabeth Van den Eynden) and June 10, 2015 (Justice Arthur W.D. Pickup) in Truro, Nova Scotia

Written Decision: July 24, 2015

Subject: Trusts; variation of trusts; legislation

Summary: By a will drawn up in 1967 the settlor created five trusts by will for separate charitable organizations. Each trust provided

for the sum of \$5,000 to be advanced annually until the fund was exhausted. In 2005 the trusts had been varied on the trustee's application to accommodate applicable disbursement quotas under the federal *Income Tax Act*. By the end of 2013 the total funds available exceeded \$2 million, and it was agreed by the trustee and the beneficiaries that it was unlikely that the funds would ever be exhausted. The beneficiaries thereby sought an order confirming an arrangement under the Nova Scotia *Variation of Trusts Act* (VTA), whereby the remaining funds would be distributed to them.

Result:

The court rejected the trustee's argument that the VTA did not apply, finding that the recently-amended language of the *Act* did not suggest that it did not apply to trusts whose beneficiaries were charitable organizations, or were not individuals. Authorities interpreting other trust variation legislation with different language were of little assistance. Accordingly, the VTA did apply. The court went on to conclude that the various considerations to be weighed supported the variation. One of those considerations was the trustee's intention, which would not be significantly departed from. The trustee had intended to provide relatively significant funds to the beneficiaries, and had intended the funds to eventually exhaust themselves. Neither of these outcomes was practically possible without a variation of the trusts.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***