

CASE NO.

VOL. NO.

PAGE NO.

PROVINCE OF NOVA SCOTIA)

IN THE COURT OF PROBATE

COUNTY OF KINGS)

IN THE MATTER OF:

**THE ESTATE OF THE LATE HAROLD B.
LEGGE, LATE OF PORT WILLIAMS, KINGS
COUNTY, NOVA SCOTIA**

Justice C. Richard Coughlan Kentville, Nova Scotia Probate No. 10,330

[Cite: Legge Estate, 2001 NSSC 156]

LIBRARY HEADING

HEARD: **At Kentville, Nova Scotia, before the Honourable Justice C.
Richard Coughlan, on June 29th, 2001**

DECISION: **November 1st, 2001**

SUBJECT: **Wills - Entitlement to Income from Trust - Apportionment
between Income and Capital - Order of Priority of Abatement of
Bequests and Devises**

SUMMARY: **The late Harold B. Legge died in July, 1993. At the time of his
death the major asset in his estate was shares of the common
stock of Harold B. Legge Transport Company Limited. The
Will gave the testator's widow a life interest to receive the
dividends paid on 70% of the common shares of the Company.**

Capital dividends were declared by the Company and the shares sold. A previous order held the first capital dividend was to be held in trust and the income from 70% of the fund paid to the widow. The Will provided only income actually earned be paid to individuals entitled to it. The Will gave the Trustees power to apportion and divide the estate. There was the possibility of a shortfall in the estate necessitating abatement.

- ISSUE:**
1. The amount due to Sharon Legge as income from the trust in which she has a life interest.
 2. The manner in which the anticipated shortfall of funds is to be allocated among the beneficiaries.

- RESULT:**
- Considering the terms of the Will and surrounding circumstances, the second capital dividend is to be dealt with in the same manner as the first capital dividend. The Will is clear the life tenant is entitled to income actually earned on the funds held in trust. The expenses and debts are to be apportioned by the executors and trustees pursuant to the authority in the Will. The “even hand” rule is excluded by the terms of the Will. If there is a shortfall of funds, abatement shall be in the following order:
1. Out of the residuary personalty
 2. Out of the residuary real property
 3. Out of general bequests
 4. Out of demonstrative bequests
 5. Out of specific bequests
 6. Out of the specifically devised real property.

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