

SUPREME COURT OF NOVA SCOTIA

Citation: Jollimore Estate v. Nova Scotia (Public Archives), 2011 NSSC 218

Date: 20110720

Docket: Hfx No. 335260

Registry: Halifax

Between:

The Canada Trust Company, Personal Representative and
Trustee of the Estate of Roberta Jollimore

Applicant

v.

Public Archives of Nova Scotia, Estate of Gregory Jollimore,
Hazel Moore, Harold Brownhill, Eugenie MacLeod, Basil
Brownhill, and Zero Population Growth of Canada, Inc.

Respondents

LIBRARY HEADING

Judge: The Honourable Justice C. Richard Coughlan

Heard: May 20, 2011, in Halifax, Nova Scotia

**Final Written
Submissions:** June 2, 2011

Written Decision: July 20, 2011

Subject: Estates - Legacies and Devices - Lapse - Beneficiary killing Testatrix

Wills - Legacies - Lapse - Beneficiary killing Testatrix

Summary: Son killed his mother and then committed suicide. The mother's will provided gift to son and, if he predeceased her, a gift to the Public Archives of Nova Scotia. The son cannot benefit from his mother's estate.

The mother's heirs on intestacy submit the gift to the Public Archives was subject to a condition precedent that the son predecease the mother. As the son survived the mother, the condition precedent had not occurred and an intestacy takes place.

The Public Archives submits as the gift to the son was void for reasons of public policy, the gift to it ought to be given effect.

Issue: Who is entitled to the estate?

Result: In interpreting a will, the objective of the court is to ascertain the testator's actual or subjective intent.

What was Ms. Jollimore's actual or subjective intention? It was that her son, Gregory Ross Jollimore, would receive her estate upon her death and if Mr. Jollimore did not receive her estate, the estate was to go to the Public Archives of Nova Scotia. Ms. Jollimore used words to express her intention. If Mr. Jollimore predeceased, the estate was to go to the Public Archives. It would not be in her contemplation that her son - her beneficiary - would kill her.

Ms. Jollimore's will was straight forward - if Gregory Jollimore did not receive her estate, it was to go to the

Public Archives. No other parties were mentioned. To use the words, “If my son, Gregory Ross Jollimore has predeceased me”, in the circumstances of this case to find an intestacy would completely ignore Roberta Jollimore’s wishes.

The residue of Roberta Jollimore’s estate is to go to the Public Archives of Nova Scotia.

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