SUPREME COURT OF NOVA SCOTIA
Citation: *Horley Estate*, 2025 NSSC 190

Date: 20250618
Docket: Ken No. 540252
Probate: 14429
Registry: Kentville

In the matter of:

The Estate of Daryl Sandra Horley, deceased

Between:

The Public Trustee as personal representative of
Estate of Daryl Sandra Horley
(also known as Deryl Sandra Horley and Sandra Deryl Horley

Applicant

v.

Parish of St. James Church; The Nova Scotia Society for the Prevention of Cruelty; Parish of the Anglican Church of Apostles at Halifax; Jean (June) Turner Redden; Doris L. Patterson Sanford; Margaret Pitts Patterson; Betty Patterson Anstey; Heather Henderson Roebuck; Margaret Faulkner Rafuse; June Faulkner Hines Demont; Sheila Faulkner Burgess; Donald Faulkner; Roland Borden Lake; Donald Lake; Percy Lake; Annie Lake Conrod; Hilda Lake Conrod; and Joyce Lake McLaughlin

Respondents

Judge:	The Honourable Justice D. Timothy Gabriel
Heard:	May 21, 2025, in Halifax, Nova Scotia
Counsel:	Andrew P. Nicol, for the Applicant Tanya L. Butler and Meaghan S. Rout, for the Respondents

By the Court:

[1] This is an application by the Public Trustee, as the Personal Representative of the Estate of Deryl Sandra Horley ("the Testator" or "Ms. Horley"). Ms. Horley was also known as "Daryl Sandra Horley" and "Sandra Deryl Horley". What is sought is an order interpreting Article 4(e)(i) of her Last Will and Testament ("the Will"). The Court has also been asked to provide directions with respect to the distribution of that portion of the residue of the Estate with which Article 4(e)(i) deals.

Background

[2] The Court has the Affidavits of Shannon Ingraham-Christie, the Public Trustee of Nova Scotia ("Ingraham-Christie Affidavit") dated December 3, 2024; Trinda L. Ernst, K.C., who prepared the Will on the instructions of the Testator ("Ernst Affidavit") dated November 18, 2024; a Supplemental Affidavit from Ms. Ernst ("Ernst Supplemental Affidavit") dated May 20, 2025; and the Affidavit of Eric Thomson, Warden of the Parish of the Anglican Church of the Apostles ("Thomson Affidavit") dated March 3, 2025.

[3] Ms. Horley died on September 13, 2023. The Will named the Public Trustee as her Executor, and a Grant of Probate to that effect was issued by the Probate Court of Nova Scotia on October 6, 2023. The value of the Estate as represented in the Probate Inventory on March 26, 2024 was $468,387.33. Its value as of November 27, 2024, was $428,309.53 (*Ingraham-Christie Affidavit*, Ex. 2 & 3).

[4] The crux of this motion concerns Article 4(e) of the Will, which provides directions with respect to the distribution of the residue of the Testator's estate:

> (e) To distribute the residue of my estate equally among the following charitable organizations:
>
> > (i) **SAINT MATTHIAS ANGLICAN CHURCH** of Halifax, Nova Scotia, to be used for the upkeep and restoration of the building;
> >
> > (ii) **ST. JAMES ANGLICAN CHURCH** of Kentville, Nova Scotia, to be used for the upkeep and restoration of the building; and
> >
> > (iii) **THE SOCIETY FOR THE PREVENTION OF CRUELTY** of Kings County or its successor organization or any branch in Nova Scotia if no Kings County branch exists at my death.

[5] However, the Parish of Saint Matthias deeded the lands, including the church building known as Saint Matthias Church, to the Saint Antonios Antiochian Orthodox Church by deed dated May 4, 2011. The Parish of Saint Matthias and the Parish of St. Philip Anglican Churches subsequently amalgamated to form the Parish of the Anglican Church of the Apostles, at Halifax, on June 30, 2011 (*Ingraham-Christie Affidavit*, Ex. 4 & 5).

[6] Trinda Ernst, K.C. ("Ms. Ernst") deposed that she took Ms. Horley's instructions before preparing the Will. Her notes of those instructions (taken on June 2, 1997, insofar as they pertain to clause 4(e)(i)), read "St. Matthias Anglican Church Windsor & Chebucto – upkeep & restoration of the building" (*Ernst Affidavit*, Ex. 2).

[7] I am satisfied that all interested parties were provided with notice of this proceeding. Two of the Respondents, Margaret Pitts Patterson and Betty Patterson Anstey, appeared at the first Motion for Directions, held on February 4, 2025. They are two of the parties who would benefit if the bequest of one third of the residue to Saint Matthias Anglican Church should fail. They were self-represented at the time. They provided no indication as to whether they would be participating further in these proceedings. Neither of them appeared at the continuation of the Motion for Directions on April 1, 2025, nor has any of the other Respondents, other than the Parish of the Anglican Church of the Apostles at Halifax. I will therefore refer to this Church as "the Respondent", for the purposes of this decision.

Issue

[8] Given that the building and real property previously known as Saint Matthias Anglican Church, was not owned by either the Parish of Saint Matthias or the Respondent, the Parish of the Anglican Church of the Apostles, when Ms. Horley died on September 3, 2023, how should that portion of the residue of the Will, specified in clause 4(e)(i) thereof, be distributed?

[9] In order to answer that question, I will have to consider three others:

1. Does the Parish of Saint Matthias at Halifax continue to legally exist, such that the gift to "Saint Matthias Anglican Church" can be distributed to it?
2. In the alternative, is the Respondent the representative of the associated or group of organizations that include Saint Matthias, such that the gift

to Saint Matthias can be distributed to the Parish of the Anglican Church of the Apostles at Halifax?

3. In the further alternative, can the gift to Saint Matthias be saved under the doctrine of *cy-près*?

[10] If the answer to all three questions is "no", then the gift will fail, and the one-third portion of the residue of the Estate which is implicated will pass on an intestacy.

Analysis

1. Does the Parish of Saint Matthias at Halifax continue to legally exist, such that the gift to "Saint Matthias Anglican Church" can be distributed to it?

[11] First, it is important to note that the legal entity noted in the Will as "Saint Matthias Anglican Church" has never existed. Although undoubtedly referred to as such in common parlance, it is uncontroverted between the parties that its proper appellation is as noted in the Deed by which it conveyed title to the building and lands formerly owned by the church to Saint Antonios Antiochian Orthodox Church on May 4, 2011 (*Ingraham-Christie Affidavit*, Ex. 4):

> St. Matthias Church, also known as Parish of St. Matthias, and formerly known as Rector, Wardens, and Vestry of the Parish of St. Matthias, Halifax, in the County of Halifax, province of Nova Scotia, a body corporate under *The Anglican Church Act*

[12] Page 1 of that Deed also contains the following explanatory recital:

> AND WHEREAS St. Matthias Church and the Rector, (Church) Wardens and Vestry of the Parish of St. Matthias, is <u>now known as Parish of St. Matthias, Halifax, in the County of Halifax</u>, by virtue of section 10(1AB) of *The Anglican Church Act*
>
> [emphasis added]

[13] With that said, it is quite clear that the Testator's intention was that one third of the residue of her Estate was to be used for the benefit ("the upkeep and restoration of the building") of a particular asset (Saint Matthias Anglican Church). It is also clear that this asset was owned by a legal entity properly described as Saint Matthias Church and the Rector, (Church) Wardens, and Vestry of the Parish of Saint Matthias, at the time the Will was made, and which subsequently acquired the legal

identity of Parish of Saint Matthias, Halifax, in the County of Halifax, when s. 10 (1AB) of the *Anglican Church Act* ("the Act") came into effect ("Parish of Saint Matthias").

[14] As I understand counsels' argument, this issue, on its own, would not have occasioned the Public Trustee any difficulty in carrying out her duties under the Will, accepting, as she appears to, the fact that there is no real issue as to what the Testator intended to do. However, she asks whether effect can still be given to that intention, given the subsequent transfer of the building and real property formerly known as Saint Mathias Anglican Church to Saint Antonios Antiochian Orthodox Church in 2011, and the subsequent amalgamation of the Parishes of Saint Mathias and St. Philip, which have become a third legal entity: the "Parish of the Anglican Church of the Apostles, at Halifax", the Respondent.

[15] To begin to answer that question, we first turn to the Thomson Affidavit. Among other things, Mr. Thomson says therein:

> 24. Prior to the Amalgamation, parishioners of Saint Matthias congregated at the real property at 2480 Windsor Street, Halifax, Nova Scotia, bearing PID 00145144 (the "Windsor Street Site").
>
> 25. Prior to the Amalgamation, parishioners of St. Philip congregated at the real property at 6670 Bayers Road, Halifax, Nova Scotia, bearing PID 00059022 (the "Bayers Road Site").
>
> 26. The Windsor Street Site was conveyed by Saint Matthias to St. Antonios Antiochian Orthodox Church ("St. Antonios") on or about May 4, 2011, with the consent of Bishop Moxley.
>
> 27. A true copy of the indenture conveying the Windsor Street Site to St. Antonios is attached hereto as Exhibit "E".
>
> 28. The Bayers Road Site was retained and became the location for the newly amalgamated Anglican Church of the Apostles.
>
> 29. The Anglican Church of the Apostles continues to congregate at the Bayers Road Site.

[16] He then continues:

> 31. When the Amalgamation took place, Saint Matthias' assets, including the proceeds from the sale of the Windsor Street Site, were rolled into the assets of the Anglican Church of the Apostles.
>
> 32. Likewise, when the Amalgamation took place, St. Philip's assets were rolled into the assets of the Anglican Church of the Apostles.

[17] The parties concur that the amalgamation of the two parishes was carried out in a procedurally correct manner. The process is prescribed by the *Act*:

> (7A) Notwithstanding anything contained in this Section, where
>
> (a) two or more parishes form a combination of parishes that share the services of the clergy; or
>
> (b) the Bishop considers that because of the lack of financial resources, two or more parishes should share the services of the clergy, the Bishop may, with the concurrence of the Synod or the Diocesan Council, amalgamate the parishes into a single parish by an instrument in writing,
>
> (c) if the Bishop sends to the parish corporation of each parish a notice recommending that the parishes be amalgamated and requiring each parish to hold, within ninety days after the notice is received by the corporation, a meeting to consider the measure; and
>
> (d) if
>
> (i) each parish holds the meeting as required in the notice and the meeting adopts the recommendation,
>
> (ii) the parish does not hold the meeting as required in the notice, or
>
> (iii) the parish holds the meeting, the meeting does not adopt the recommendation and a period of one year elapses after the meeting.
>
> (7B) Where the Bishop executes an instrument in writing pursuant to subsection (7A) amalgamating two or more parishes, the parishes, at a joint meeting convened by the Bishop or a person designated by the Bishop and held at such time as is set out in the notice convening the joint meeting, shall, in accordance with the Canons as they will apply after the amalgamation become effective, elect a parish council for the amalgamated parish.

[18] Additionally, s. 2(1) of the *Act* tells us that:

> ...
>
> (ba) "congregation" means a group of people organized to minister, worship and learn from God's Holy Word, with or without a place in which to worship or meet;
>
> …
>
> (d) "parish" means (i) a congregation, or (ii) two or more congregations that are, for the purpose of ministry, grouped together; served by a member of the clergy licensed by the Bishop in a territory or district allotted by the Bishop for that purpose;

[19] I next consider the Instrument of Amalgamation itself, which is dated April 28, 2011, and is attached as Exhibit B to Mr. Thomson's Affidavit. It is a short document, and it is reproduced in its entirety:

INSTRUMENT OF AMALGAMATION
OF

Parish of St. Matthias, at Halifax, in the County of Halifax (formerly known as the Rector, Wardens and Vestry of the Parish of St. Matthias, at Halifax, in the County of Halifax) (the "Parish of St. Matthias")

AND

Parish of St. Philip, at Halifax, in the County of Halifax (formerly known as the Rector, Wardens, and Vestry of the Parish of St. Philip at Halifax, in the County of Halifax)
(the "Parish of St. Philip")

TO FORM

Parish of the Anglican Church of the Apostles at Halifax

Definitions:

In this instrument of amalgamation,

> "The Anglican Church Act" means The Anglican Church Act, S.N.S. 1967, c. 130, as amended;
>
> "Amalgamation" means the combination and amalgamation of the Parish of St. Matthias and the Parish of St. Philip pursuant to the Anglican Church Act;
>
> "Bishop" means the Right Reverend Susan E. Moxley, Bishop of the Diocese of the Anglican Church of Canada known as the Diocese of Nova Scotia and Prince Edward Island, a corporation sole under the Anglican Church Act;
>
> "Diocesan Council" means the governing body established pursuant to the constitution of the Diocesan Synod of Nova Scotia and Prince Edward Island, itself incorporated by The Anglican Church Act;

"Parish Meeting" means a meeting of the parishioners of a parish called to consider whether an application should be made to the Bishop to approve the Amalgamation;

"Registrar" means Registrar of the Diocese, Janice Roby, appointed by the Bishop;

Recitals

1. A majority of the parishioners of the Parish of St. Matthias present at a Parish Meeting approved the Amalgamation;
2. A majority of the parishioners of the Parish of St. Philip present at a Parish Meeting approved the Amalgamation;
3. The Diocesan Council concurred with the Bishop making the Amalgamation on 9 April 2011;

Amalgamation

The Bishop hereby combines and amalgamates the Parish of St. Matthias and the Parish of St. Philip, effective on 30 June 2011.

Name

The name of the amalgamated parish corporation shall be the "Parish of the Anglican Church of the Apostles at Halifax".

Executed at Halifax on 28 April 2011.

c/s

The Right Reverend Susan E. Moxley
Bishop of Nova Scotia and Prince Edward Island

Filed with the Registrar on 28 April, 2011 as Document No. 2011.01.

Janice Roby, Registrar

[20] Of note is that there is nothing in the *Act* which suggests that either of the two parishes comprising the amalgam "the Parish Anglican Church of the Apostles" ceases to exist as a result of the amalgamation process. The triggering process noted in section 7A above contemplates a situation where "two or more parishes form a combination of parishes that share the services of a clergy" (7A(a)), or where, due to financial circumstances, the Bishop considers that "two or more parishes should share the services of the clergy".

[21] In such situations, the Bishop is vested with a discretion to "amalgamate the parishes into a single parish by an instrument in writing". The Councils of the two parishes being amalgamated jointly elect the Council for the amalgamated entity (*Act*, ss. 7A and 7B).

[22] The language used in the Instrument of Amalgamation is also instructive. In the definition section, we learn that "amalgamation" means the combination and amalgamation of the Parish of Saint Matthias and the Parish of St. Philip pursuant to the Act.

[23] The verb "combine" and the noun "combination" admit of no difficulty. For example, the *Canadian Oxford Dictionary*, 2nd edition, Barber, K. (2004), defines the latter as:

> Combination *noun* 1 the act or an instance of combining; the process of being combined. 2 a combined state (*in combination with*). 3 a combined set of things or people. 4 a sequence of numbers or letters used to open a combination lock. …

[24] "Amalgamation" is a word usually employed within the corporate law context, and *Black's Law Dictionary*, 11th edition, Garner, A.B. (2019). St. Paul, MN: Thomson Reuters, defines the term thus:

> Amalgamation, n. (17c) The act of combining or uniting; consolidation <amalgamation of two small companies to form a new corporation>. See MERGER (1). - amalgamate, vb. - amalgamator, n

[25] I conclude that the Parish of Saint Matthias and Parish of St. Philip have combined and are subsumed by the present legally recognized entity called the Parish of the Anglican Church of the Apostles, at Halifax. Neither of these two constituent parishes exists any longer as an independent entity. The practical effect of this is that there is no legally recognized entity in existence to whom the gift to "Saint Matthias Anglican Church" may be distributed.

[26] As I have alluded to earlier, in these circumstances, three options remain available to the Court. First, if I am satisfied that the Respondent is the "successor" to the Parish of Saint Matthias, then the former could receive the gift in the latter's stead. I say this because the gift to "Saint Matthias Anglican Church", as specified in the Will, was clearly intended to benefit the Parish of Saint Matthias.

[27] Second, if I am satisfied that the doctrine of *cy-près* applies in its favour, the gift could pass to the Respondent through that means.

[28] Finally, if I conclude that neither of the first two options is available, the gift would fail, and the one third of the residue of the Estate which the gift was intended to encompass, would be distributed in accordance with the provisions of the *Intestate Succession Act*.

> *2. Is the Respondent the "successor" to the Parish of Saint Matthias, such that the gift to "Saint Matthias Anglican Church" specified in the Will may be distributed to it?*

[29] In the case of *Fort Sackville Foundation v. Darby Estate*, 2010 NSSC 27, the testator bequeathed his residence and the contents thereof to the "Heritage Society Bedford". This was a misnomer. The correct name was the Bedford Heritage Society, and that entity had wound up and disposed of its assets two years before the testator signed his Will.

[30] The Fort Sackville Foundation claimed to be the successor to the Bedford Heritage Society. Justice Moir, as he was then, demurred, and concluded instead that:

> [9] The evidence makes it clear that the society and the foundation were closely related and their development led to one giving way to the other. They could have grown together by amalgamation. However, the society chose to do that by dissolution and transfer of assets.
>
> [10] Ms. Jardine refers me to passages at pp. 765 to 768 of Donovan W. M. Waters, *Waters' Law of Trusts in Canada*, 3rd ed. (Toronto: Thomson Carswell, 2005). This discussion leads me to conclude that the courts avoid disturbing a gift just because the testator got the name wrong, the courts take a broad approach to legal successorship, but that approach is not so broad as to allow the court to find a successor for an entity that has ceased to exist.
>
> [11] We can find "apparently defunct institution...in an existing institution" through "amalgamations, schemes, absorptions, or change of name, organization or its work", but we cannot do that if the apparently defunct institution "has indeed

> ceased to exist" (p. 768). The caselaw to which Ms. Jardine referred is consistent with this view of the law.
>
> [12] The Bedford Heritage Society ceased to exist. It and the Fort Sackville Foundation did not choose amalgamation, or some similar scheme. The society chose unequivocally to terminate itself. That is, it dissolved under s. 26 of the *Societies Act*, R.S.N.S. 1989, c. 435.
>
> [13] Therefore, Fort Sackville Foundation is not the successor of the Bedford Heritage Society.
>
> [emphasis added]

[31] In the case at Bar, the situation is different. As we have seen, the instrument of amalgamation clearly demonstrates that the Parishes of Saint Matthias and St. Philip did choose amalgamation, and also that the combined entity lives on as the Parish of the Anglican Church of the Apostles at Halifax.

[32] As noted earlier, the Public Trustee has agreed that the amalgamation was a "valid" one (*Public Trustee Brief*, para. 17).

[33] As such, the relocation of Saint Matthias congregation from the Windsor Street site to the Bayers Road site (former site of St. Philip's Parish and current site of the Respondent) does not affect the analysis. The amalgamation occasioned, among other things, the transfer of all of the assets of the former Parish of Saint Matthias (as well as those of St. Philip) to the newly amalgamated entity. The Respondent, Parish of the Anglican Church of the Apostles at Halifax, is the clear "successor" to the Parish of Saint Matthias. As a result, the gift may be distributed to the Respondent.

3. In the alternative, can the gift to "Saint Matthias Anglican Church" be saved under the doctrine of cy-près?

[34] Having found that the successor to the Parish of Saint Matthias in Halifax is the Parish of the Anglican Church of the Apostles at Halifax, strictly speaking, there is no need that I consider whether the gift may pass under the doctrine of *cy-près*.

[35] With that having been said, however, I can say that in the event that I had concluded differently, or, alternatively, in the event that I am incorrect in determining that the Respondent is the successor to the legatee specified in the Will, I would have concluded that the gift may pass to the Respondent under the doctrine of *cy-près*. I will explain.

[36] The term *cy-près* is a truncated form of the old, Anglo-French phrase "cy-près comme possible", which (approximately) translates to "as near as possible". When describing the circumstances and preconditions under which it may be invoked, recourse is often had to *Waters' Law of Trusts in Canada* (3rd edition), at pages 765 – 766:

> … Difficulties can arise when the donor, as a testator, names a charitable institution. If he has named it correctly, then there is no problem, of course, but he may have referred to the intended institution by a shortened name used in casual speech or simply not have remembered the name correctly. There are numerous Canadian cases concerned with this difficulty. As a general practice the courts make every effort to discover which beneficiary was intended by the testator, and do not allow misdescription - either an imperfect or inaccurate description - to defeat the testator's intent. The same is true when the beneficiary is an institution, but in the case of charitable gifts the courts often seem to lean over backwards to avoid the finding that the intended institution cannot be discovered. The reason for this is that, if the institution cannot be discovered, and the court also reaches the conclusion that the testator intended to benefit the misnamed institution and that institution only, then the gift would have to fail. Whereupon the trust property would fall back into the estate.
>
> Consequently the courts take the view that, if the description is insufficient with reasonable certainty to designate the intended beneficiary, the institution in that position is the intended recipient. In *Edwards v. Smith*, where the testator made a bequest to the "Wesleyan Methodist Superannuated Ministers Funds," Spragge C. drew attention to the fact that there was no such fund, and then observed that the Connexional Society of the Wesleyan Methodist Church maintained a fund known as "the Superannuated or Worn-out Preachers Fund." This is not precisely the term used in the will, he said, but there was no other fund more appropriate to the testator's language, and he scarcely found room to doubt that the fund mentioned was the one intended. He then found that the latter fund was the one intended.
>
> As is the normal rule in the interpretation of wills, not only intrinsic but extrinsic evidence may be admitted to prove identity between the institution before the court and that intended. In *Re Weldon*, the executor's affidavit thus identified the two named beneficiaries.
>
> If the beneficiary intended by the testator is thus discoverable, the courts have said on several occasions that there is no need to invoke the *cy-près* doctrine. A *cy-près* scheme is only needed when it is impossible to say which institution is intended to benefit. …

[37] In its most important sense, Ms. Horley's gift was not conditional. She did not say that "provided such and such happens, I convey one third of the residue of my

estate to Saint Matthias Anglican Church for the upkeep and maintenance of the building". The "string" which she attached to the bequest was that the funds were to be used for the maintenance and upkeep of the building at which the congregation (then) attended for worship. She provided no contingency or alternative in the event that this bequest could not be fulfilled. Her intent was to benefit her congregation by leaving a fund by means of which repairs to the building which housed the congregation could be effected.

[38] That congregation, which formerly worshipped at Saint Matthias Anglican Church on Chebucto and Windsor Streets in Halifax, now does so at the premises of what was formerly those of St. Philip Anglican Church on Bayers Road in Halifax. As previously noted, these are the two amalgamated Parishes (and congregations) which today form the present day Parish of the Anglican Church of the Apostles at Halifax, the Respondent.

[39] Consequently, had I not found that the Respondent was the successor to the Parish of Saint Matthias at Halifax, the entity intended by the testator to benefit from the testator's gift to "Saint Matthias Anglican Church", I would have concluded that the Respondent should nonetheless receive the benefit specified in the Will under the doctrine of *cy-près*.

Conclusion

[40] The one-third portion of the Testator's Estate referenced in Article 4(e)(i) shall be distributed to the Respondent, Parish of the Anglican Church of the Apostles at Halifax, as the representative of the associated successor group of organizations that includes the Parish of Saint Matthias.

Costs

[41] Both parties to this motion were very reasonable in the positions which they took. The Applicant was thorough and motivated solely by the desire to ensure that the funds were properly distributed given Ms. Horley's intentions as expressed in the Will. The Respondent was also reasonable, and in fact, the Court concurred with its position, as explained above.

[42] Although the issue was not a novel one, or particularly complicated, participation by both parties was necessary to ensure that funds were not distributed improperly. The affidavits and briefs engendered were relatively short and to the point, and counsel also made the (very reasonable) decision not to cross-examine

any of the deponents. The entire matter took less than one half day. This decision is dispositive of the only contentious matter with respect to this Estate, of which the Court is aware.

[43] Having considered the above, I exercise my discretion and make an award of costs to the Respondent, payable by the Estate.

[44] I begin with *Civil Procedure Rule* 77, Tariff C, and the amount of $1,000. I apply a multiplier of two, for a total costs award of $2,000.

[45] I am satisfied that such an award will do justice between the parties and will result in substantial (albeit, incomplete) recovery by the Respondent, in the circumstances of this case.

Gabriel, J.