

SUPREME COURT OF NOVA SCOTIA

Citation: *Brooks Estate v. Brooks Estate*, 2013 NSSC 319

Date: 20131021

Docket: Hfx. 411047

Registry: Halifax

Between:

Frederick Brooks, Co-Executor and Co-Trustee of
the Estate of Marcel Brooks and Co-Trustee of Life
Insurance Trust

Applicant

and

Brendon Ewing and Brenda Brooks, Co-Executors
and co-Trustees of the Estate of Marcel Brooks
and Co-Trustees of Life Insurance Trust

First Respondents

and

Kahlyn McIntyre, child beneficiary, by her Litigation
Guardian, Devonna McIntyre and Justin Huntington,
beneficiary

Second Respondents

Judge: The Honourable Justice C. Richard Coughlan

Heard: May 1, 2013, in Halifax, Nova Scotia

**Last Written
Submission:** July 11, 2013.

Counsel: Bruce W. Evans, counsel for the Applicant
Matthew J.D. Moir, counsel for Brendon Ewing

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Subject: Wills, Estates and Trust Law - Trusts - Administration - Accounting - Trustee - Breach of Trust

Summary: A deceased was survived by two minor children. He had made a will naming his parents and a friend as executors and trustees. The will was not probated. He had two life insurance policies when he died. The proceeds of the insurance policies were deposited into separate bank accounts. One of the accounts was in the name of the deceased's parents. The deceased's mother withdrew \$50,000 from the account and purchased a bank draft payable to a company of which the friend was President, Secretary and Recognized Agent. The money was used to operate the company's account.

The deceased's father applied for an order declaring the life insurance proceeds are held in trust for the deceased's children, removing the other trustees, seeking an order for an accounting and tracing of the \$50,000, and payment of the \$50,000 and prejudgment interest and/or the profits and gains earned on the \$50,000.

Issues: Are the funds held in a trust for the deceased's children? Should the trustees other than the applicant be removed? Should an accounting be ordered? Should Mr. Ewing be excused from his breach of trust?

Result: The funds are held in trust for the deceased's children. The trustees other than the applicant are removed as they were not acting in the interests of the beneficiaries of the trust. An accounting of the \$50,000 is to be provided. The trustee may then elect to have the beneficiaries' interest in the property into which a portion of the trust funds were transferred or judgment against Mr. Ewing for \$50,000 and interest at 7% (seven percent) per annum.

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