

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Critchley v. Critchley, 2006 NSSC 219

Date: 20060707
Docket: S.H. No. 263007
Registry: Halifax

Between:

Winnifred Harriet Critchley

Applicant

v.

Beryl Elizabeth Critchley and John Grave Critchley

Respondents

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Judge: The Honourable Justice Gregory M. Warner

Heard: June 6 and 7, 2006, in Halifax, Nova Scotia

**Final Written
Submissions:** June 14, 2006

Subject: Estates

Issue: Removal of estate executor

Summary: In 1986 the testator died leaving behind a much younger widow, step-mother to his three grown children and a large investment account. Income and capital were to maintain his widow for life with the remainder to his three children. In 1996 the daughter was removed as a trustee leaving the son and step-mother remaining. In 2000 the investment account took a big hit (it was heavily weighted in technology stocks.

In 2006 the daughter applied to remove her brother and step-mother (age 75) as trustees for failing to act as prudent investors and to replace them with a bankruptcy trustee. The

step-mother asked to be removed. The son opposes.

Result:

The son failed to invest as a prudent investor and made other mistakes, but no evidence established that the beneficiaries had yet lost as a result of his conduct. Removal of an executor is a discretionary and rarely used remedy, even when a breach of duty is established. Balancing the son's good faith but negligent investments in 2000 against other factors, the Court dismissed the application.

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