

SUPREME COURT OF NOVA SCOTIA

Citation: *Trefry-Sweeney v. Matthews*, 2025 NSSC 386

Date: 20251201

Docket: Hfx No. 542686

Registry: Halifax

Between:

James Patrick Trefry-Sweeney

Applicant

v.

Timothy C. Matthews, trustee of the James Patrick Trefry-Sweeney Trust

Respondent

Judge: The Honourable Justice Diane Rowe

Heard: October 8, 2025, in Halifax, Nova Scotia

Counsel: Jonathan Hooper, for the Plaintiff
Timothy Matthews, for the Defendant

By the Court:

[1] This matter came before me on October 8, 2025. The Applicant Mr. James Trefry-Sweeney requests an order of the Court pursuant to the *Variation of Trusts Act*, R.S.N.S. 1989, c. 486 amending the terms of the James Patrick Trefry-Sweeney Trust (Trust).

[2] The variation Mr. Trefry-Sweeney seeks is an amendment of clause 10(b)(iv) of the Trust which currently reads:

(iv) on James Patrick becoming 30, to pay the Net Income derived therefrom together with so much of the capital as the Trustees in their discretion deem necessary or advisable to James Patrick until he becomes 35 and then pay the balance held in trust for him;

To instead be replaced with:

(iv) on James Patrick becoming 30 to pay all the remaining income and capital to him;

[3] The respondent is Mr. Timothy Matthews, K.C., in his role as the trustee of the Trust. The contingent beneficiaries are the residual beneficiaries of the Estate of Katherine Patricia Marilyn Sweeney and the Estate of Lawrence Kent Sweeney.

[4] Mr. Trefry-Sweeney requests the variation as he seeks to purchase a home, and requires the funds for a substantial downpayment and to secure financing. He points out to the Court that housing can be prohibitively expensive in Halifax, where he intends to continue to reside. He also acknowledges that there have been prior payments from the trust to provide additional financial support, but that it is not sufficient for him to become a homeowner prior to the age of 35.

[5] At the initial hearing of the application, Mr. Matthews expressed that the trustee was unable to consent to the application and was taking no position either for or against the amendment. However, he did note to the Court that the criteria for the Court to consider is the intention of the Settlers of the Trust who did not intend early termination. The Settlers' intentions may also be affected as there is a contingent interest of Mr. Trefry-Sweeney's potential children, as yet unborn, to the Trust. Mr. Matthews highlights that if the Court grants the variation and Mr. Trefry-Sweeney does have children and dies prior to reaching the age of 35, then the Trust will be exhausted without any recourse for the children. This is also the case in regard to three listed charitable contingent beneficiaries, identified as the Yarmouth Regional Hospital Foundation, the Community Foundation of Nova Scotia and Canada Gives.

[6] It was suggested that this detriment may be avoided if Mr. Trefrey-Sweeney were to maintain a life insurance policy for the amount that may be released from the Trust if a variation is approved by the Court.

[7] I received additional correspondence from Mr. Trefry-Sweeney's counsel dated October 22, 2025, with a supplemental affidavit of the applicant dated October 21, 2025. That written submission indicates that the applicant does rely on para 17 of *McNeil Estate (Re)*, 2015 NSSC 326, submitting that the provision of a life insurance policy for a certain term may address the potential of detriment upon the variation of the Trust.

[8] As the *Variation Act* at s.3(3) provides the Court may exercise its discretion to approve an arrangement on any terms it considers appropriate, unless it is detrimental to the interests of any beneficiaries incapable of giving consent. In this matter, the Court has concern about the potential and actual contingent beneficiaries, in the event the variation sought is provided and Mr. Trefry-Sweeney dies before reaching 35 years.

[9] The supplemental affidavit and submissions filed by Mr. Trefry-Sweeney indicate he will undertake to obtain an insurance policy in the amount of \$342,329

with the Trust designated as the beneficiary and to maintain the policy until he attains the age of 35 years old.

[10] The Court is satisfied that this is sufficient to address the potential detriment to contingent beneficiaries who are yet unborn, and to the contingent beneficiaries who are identified in the Trust.

[11] I will require that the draft form of Order provided to the Court be further amended by the addition of a clause 2 to provide:

That James Patrick Trefry-Sweeney shall obtain a term life insurance policy in the amount of \$342,329.00 designating the James Patrick Trefry-Sweeney Trust as beneficiary of the policy, proof of which shall be provided to Timothy C. Matthews, K.C., in his capacity as trustee of the James Patrick-Sweeney Trust, prior to any advance of the Trust's remaining income and capital.

[12] The remainder of the draft Order will remain the same, but for the renumbering of clause 2 in the draft as now clause 3.

[13] That concludes my decision on the application. Counsel are to re-submit the amended form of Order to my attention.

Rowe, J.