

DEC 18 2013

No. _____
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

RE: MYFANWY GRIFFITHS FUND FOR THE POOR AND HOMELESS

THIS IS THE PETITION OF:

Christ Church Parish (Vancouver)
c/o Legacy Tax + Trust Lawyers
510 – 609 Granville Street
Vancouver, BC V7Y 1G5

PETITION TO THE COURT

ON NOTICE TO:

The Attorney General of British Columbia
c/o Shirley Kay
Ministry of the Attorney General
Legal Services Branch
1301 – 865 Hornby Street
Vancouver, BC V6Z 2G3

This proceeding is brought for the relief set out in Part 1 below by the person named as Petitioner in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

<p>(1) The address of the registry is:</p> <p>800 Smithe Street, Vancouver, BC V6Z 2E1</p>
<p>(2) The ADDRESS FOR SERVICE of the petitioner is:</p> <p>Legacy Tax + Trust Lawyers PO Box 10326 510 – 609 Granville Street Vancouver, BC V7Y 1G5</p> <p>Fax number for service of the petitioner: 604-683-6953</p> <p>E-mail address for service (if any) of the petitioner: N/A</p>
<p>(3) The name and office address of the petitioner’s lawyer is:</p> <p>Amy Francis Legacy Tax + Trust Lawyers PO Box 10326 510 – 609 Granville Street Vancouver, BC V7Y 1G5</p>

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. An Order to answer the following questions upon the true construction of the Will of the late Myfanwy Griffiths (the “Deceased”) dated July 13th, 2000 (the “Will”) and in the events which have happened:
 - a. Did the Deceased, by way of a gift in paragraph 3(D)(2) of the Will in which the Deceased gave two (2) out of a total of twenty (20) shares in the residue of her estate to a fund (the “Fund”) for “urgent financial assistance” to needy persons, intend that the income from the Fund could be used for providing food to needy persons?
 - b. If the answer to Question (a) is in the negative, has the gift of the Fund become impossible or impractical to carry out such that the Court may implement a scheme *cy-pres*?
 - c. If the answer to Question (b) is in the affirmative, should the income from the Fund be used to fund the street ministries of Christ Church Parish (Vancouver)?

- d. If the answer to Question (c) is in the negative, to whom and under what criteria should the income from the Fund be distributed?
2. In the alternative, the Petitioner seeks an Order pursuant to sub-section 3(4) of the *Charitable Purposes Preservation Act* SBC 2004 ch. 59 that:
 - a. the Fund is discrete purpose charitable property; and
 - b. income from the Fund may be used to fund the street ministries of Christ Church Parish (Vancouver); and
 3. The Petitioner also seeks an Order for such other relief as this Honourable Court may deem appropriate.

Part 2:FACTUAL BASIS

1. The Deceased died in Vancouver on December 23, 2006, leaving the Will.
2. Letters Probate of the Will were granted to BMO Trust Company (the “Executor”) on April 10, 2007.
3. Subject to the payment of the Deceased’s debts, funeral and testamentary expenses and the distribution of certain specific bequests to certain individuals and charities, the Will provides as follows:

(D) To divide the remainder of my estate into TWENTY (20) equal parts and to pay transfer and deliver the said parts to the named beneficiaries, [...]

(2) To THE PARISH OF CHRIST CHURCH CATHEDRAL, Vancouver, British Columbia, a parish church of the Anglican Church of Canada in the Diocese of New Westminster, TWO (2) PARTS, to be held on trust an invested by CHRIST CHURCH CATHEDRAL and the income to be used to provide urgent financial assistance to needy persons (including the homeless, the hungry and the destitute). Any income not used in any year or from year to year may be set aside and used in future years, or added to the capital to become a part thereof, as the trustees may see fit. No part of the income or capital of the Fund shall be used for the purposes of erecting, maintaining, operating or repairing diocese buildings, including the Cathedral or the organ. I request that the principle sum resulting from this bequest shall be known as the MYFANWY GRIFFITHS FUND FOR THE POOR AND HOMELESS.

4. The legal name of the Parish of Christ Church Cathedral Vancouver is Christ Church (Vancouver) (the “Cathedral”).
5. Pursuant to the terms of paragraph 3(D)(2) of the Will, the Executor distributed funds to the Cathedral in the amount of \$97,526.94 which the Cathedral accepted and used to establish a fund pursuant to the terms of the Will (the “Fund”).
6. It is not part of the mandate or ministry of the Cathedral to make cash payments to those who are in need. However, the Cathedral has an active street ministry that provides meals to the needy every week.

7. The Deceased was an active volunteer in the Cathedral's street ministries and particularly she made and served free sandwiches to the needy on a weekly basis. She also expressed to others her strong support of this ministry.

Part 3:LEGAL BASIS

1. The Petitioner will rely on the *Charitable Purposes Preservation Act*, Rule 16-1 of the *Supreme Court Civil Rules* and the inherent jurisdiction of this Court.

Part 4:MATERIAL TO BE RELIED UPON

- 1. Affidavit #1 of John Griffiths, sworn December 17, 2013.
- 2. Affidavit #1 of Gary Kenwood, sworn December 17, 2013.

The petitioner estimates that the hearing of the petition will take 15 minutes.

Date: December 17, 2013



Signature of Amy D. Francis
lawyer for petitioner

To be completed by the court only:

Order made

- in the terms requested in paragraphs of Part 1 of this petition
- with the following variations and additional terms:

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Date:[dd/mmm/yyyy]..... Signature of Judge Master