

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



GALLOWAY ESTATE V. BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, 2021 BCSC 413

Supreme Court of British Columbia, MacNaughton J, 10 March 2021

Application of cy prèès principles to restructure a corporate charity that had been dissolved.

Key words: Bequest, Canada, Public Broadcasting, Cy prèès, No Successor to Dissolved Corporation

1. The executor of the estates of twin sisters sought the direction of the Court as to the distribution of their estates. The joint estates (CA\$2.310 million) were to be divided into ten equal shares and seven of the shares were to be distributed to various institutions for charitable or educational purposes, with the three other shares distributed to close relatives.
2. Two of the charities, named Open Learning Agency (OLA) and Pacific Coast Public Television Association (PCPTA), no longer existed in the form described in the sisters' wills. Additionally, the St. Paul's Hospital Foundation of Vancouver amalgamated on 3 April 2017 into the St. Paul's Foundation of Vancouver, but there was no dispute that it was the successor organisation. The attorney general, pursuant to its *parens patriae* jurisdiction, provided submissions to the Court regarding the appropriate distribution of the estates. The remaining charities did not appear even though they stood to gain financially if another charity was found unentitled.
3. OLA was a public institution committed to providing lifelong learning opportunities to British Columbians and learners around the world. The Knowledge Network was one service offered by OLA. The Knowledge Network was a publicly-funded television network that provided educational, commercial-free programming through its broadcast channel, website, and applications. On 27 June 2008 OLA was continued under the name Knowledge Network Corporation (KNC). Since its name change, KNC has continued the work of the Knowledge Network. It remained committed to OLA's mandate to provide quality, freely available and commercial-free television, web, and mobile platform services to British Columbia. The attorney general and other parties agreed that KNC was the legal successor to OLA.
4. KCTS Television (KCTS) was a United States television broadcasting company. KCTS owned and operated a commercial-free educational channel, KCTS 9, or PBS Channel 9. In 2015 KCTS changed its name to Cascade Public Media (CPM). CPM is a non-profit and continues to operate KCTS 9. KCTS 9 is viewable in Canada and the United States. In 1987, KCTS organised the incorporation of Pacific Coast Public Television Association (PCPTA). It was registered as a Canadian charity so that KCTS could issue tax receipts to Canadian donors. PCPTA was dissolved in 2018.

5. The attorney general of British Columbia initially opposed the proposed distribution to CPM of the share left to the PCPTA on the basis that CPM was not the legal successor to PCPTA. It submitted that PCPTA was dissolved as of 30 October 2018, and that, as of that date, it was no longer in existence. Further, the terms of the will were that the balance of the net estate was to be distributed in equal shares “to such of the following charitable organisations that are in existence as at the date of my death”.

6. The Court noted that (at [67]):

Although I accept that CPM is not a successor to PCPTA in strict corporate terms, in the unique circumstances of this case, PCPTA had no other purpose than as a charitable vehicle for funnelling money to KCTS 9 for its use in non-commercial public broadcasting. As submitted by CPM, a gift to PCPTA was a gift to CPM with a Canadian tax receipt.

7. However, as the Court further explained (at [71]):

The concept of a “successor” under the cy-près doctrine is not limited to a strict corporate successor. In my view, the focus should be on which organization “succeeds” in meeting the testator’s charitable intent. The role of the court in applying cy-près is to determine the testator’s actual intention. I must determine the charitable purpose Ms. Galloway intended to support and provide the residual gift to the entity that carries on that purpose. In the circumstances of this case, only CPM is involved in KCTS 9 broadcasting. No other entity provides that service. Although PCPTA did not exist as a formal charity on Ms. Galloway’s death, CPM assumed responsibility for its obligations and continued to receive directly, rather than indirectly, donations to support KCTS 9 broadcasting.

8. The court concluded that the share of the net estate left to the PCPTA should be distributed to CPM under the cy-près doctrine.

IMPLICATIONS



The restructure of the public television structure may have been in response to the Federal Court of Appeal *Public Television Association of Quebec v. Canada (National Revenue)*, 2015 FCA 170. The Court upheld the revocation of the PTAQ because it was acting as a conduit and making gifts to a non-qualified donee.

VIEW THE CASE



This case may be viewed at <https://canlii.ca/t/jdnvp>

Read more notable cases in [The Australian Nonprofit Sector Legal and Accounting Almanac series](#).

Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

Date of creation: July 2021

Number of case: 2021-52

Disclaimer: The material included in this document is produced by QUT's [Australian Centre for Philanthropy and Nonprofit Studies](#) (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Creative Commons Licence:



This work is licensed under a [Creative Commons Attribution 4.0 International License \(CC-BY\)](#)



ACPNS SUPPORTING THE SECTOR

QUT's Australian Centre for Philanthropy and Nonprofit Studies is a small centre with BIG impact. Since 2001 it has taken a leading role in nonprofit teaching and research, benefiting the sector here in Australia and beyond.

RESEARCH

COURSES

RESOURCES

EVENTS

QUT Business School
The Australian Centre for Philanthropy
and Nonprofit Studies

qut.edu.au/business/acpns