

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *Mayan Even-har v. Nadav Even-har*, 2024 NSSC 176

**Date:** 20240625  
**Docket:** 132339  
**Registry:** Halifax

**Between:**

Mayan Even-har

Applicant

v.

Nadav Even-har

Respondent

Judge: The Honourable Justice Moira Legere Sers

Heard: June 12, 2024, in Antigonish, Nova Scotia

Written Release: June 25, 2024

Counsel: Kerri-Ann Robson and Ann Levangie, for the Applicant  
Nadav Even-har, self represented Respondent

**By the Court:**

[1] On December 25, 2023, (filed January 04, 2023) Mayan Elizabeth Even-har made Application to this Court seeking an Order pursuant to Rule 80 of the *Nova Scotia Civil Procedure Rules* to enforce a December 21, 2021, Consent Order of the Supreme Court of Nova Scotia.

[2] The Applicant is the child of Selena Even-har (deceased on February 13, 2021) and the Respondent Nadav Even-har.

[3] The Applicant's mother died suddenly when the Applicant was 15 years old. At the time the Applicant was residing with her maternal Aunt and Uncle.

[4] The Applicant was one of three beneficiaries of her mother's life insurance policy with Assumption Life (Policy number ...977) with face amount of \$100,000.

[5] The Applicant and her younger sister were to receive 40 percent of these proceeds each, on their 18<sup>th</sup> birthday.

[6] The Respondent was a beneficiary of 20 percent. He did receive his 20 percent share directly from Assumption Life.

[7] The Applicant turned 18 years old in the spring of 2023. She required the funds to fund her post secondary education. She was in the first year of post secondary program at a University in Toronto, Ontario.

[8] Despite considerable efforts and requests for the funds by the Applicant to her father, the Respondent has refused to provide her with her share of the funds from her mother's life insurance policy.

[9] At one point in their back-and-forth emails on Thursday 23, 2023 he wrote to his daughter:

I'll call them back and deal with them and contact you when it's done, and this is the third time you have insinuated that someone touched your money, so I'll say again even though I don't think you deserve a single penny of it no one touched your funds and I'm working on getting it to you.

[10] The Applicant seeks a Court Order enforcing the terms of the December 21, 2021, Consent Order to have the funds which were supposed to be held in trust for her by her father, as trustee of these funds; paid directly to her immediately.

[11] The Respondent continued to insist in Court and directly to counsel and the Applicant that the funds were still held in trust for her at the CIBC. Sadly, at the time of her application she and her counsel operated under this belief.

[12] I will first outline my conclusion in summary of the facts supported by the evidence after considering all the properly tendered evidence.

[13] I will then provide an analysis of the evidence supporting these facts and finally outline the relief granted in this proceeding.

***Summary- Findings of Fact***

[14] The Applicant was one of three beneficiaries of her deceased mother's life insurance policy. She was to receive \$40,041.16 on her 18<sup>th</sup> birthday .

[15] On or about April 13, 2021, Assurance Life gave the Respondent his 20 percent share directly.

[16] He also received two cheques each in the amount of \$40,041.16; made out in the name of Nadav Even-har in trust for Mayan Even-har his daughter, the Applicant herein; the other cheque was written for the same amount to Nadav Even-har in trust for the benefit of E.E., the younger sister and remaining beneficiary of 40 percent.

[17] The cheques were dated April 6, 2021, and the address on the cheques was a location in Nova Scotia. (*The address has been redacted due to the possibility the location was a transition home.*)

[18] The Respondent cashed those two cheques into an account ending in...137 with the CBIC bank in Antigonish on April 13, 2021. This was an account he opened on February 24, 2021.

[19] In the December 2021 Consent Order respecting parenting provisions, the Respondent admitted he received these funds.

[20] Both parties were represented by counsel when this Order was entered. They agreed at paragraph 15, and it was ordered as follows:

Nadav Even-har has obtained life insurance proceeds from the insurance policy of Selena Even-har (Insurer Assumption Life: Policy #....977) in trust for the children in the amount of \$80,082.32 (\$40,041.16 for Mayan and \$40,041.16 for E.E.). The life insurance proceeds shall be held by Nadav Even-har, as trustee for the children, and each child shall obtain her equal share of the life insurance proceeds and any interest accumulated on her 18th birthday.

[21] This decision will outline the Respondent's representations to the Court from the December 2021 order to the finalization of this proceeding in June 2024; when he asserted he had no access to the funds after they were deposited to the CIBC in 2021.

[22] After the Applicant turned 18 she repeatedly asked her father to transfer the funds to her directly. He refused.

[23] He threatened the Applicant with placing them in her sister's account. He retracted this in representations made before the Court in 2023 indicating they were still in the CIBC account in Antigonish, Nova Scotia.

[24] Despite the Respondent's constant misrepresentations to the Court, on the record, to counsel and the Applicant that he did not use, withdraw or otherwise interfere with the funds; the evidence conclusively establishes that he did indeed interfere with the funds, taking them without the Applicant's consent and holding them for his own use.

[25] On April 26<sup>th</sup>, 2021, the Respondent withdrew these funds from the CIBC account in Antigonish in the total amount of \$80,082.32, by way of two separate bank drafts.

[26] The capture date of his deposits is shown in exhibit 3, Tab 2. He deposited them separately in other Banking institutions; the Applicants share in the Bank of Montreal, (capture date June 9, 2021), and the younger daughter's share in the Bank of Nova Scotia, (capture date May 27, 2021), *apparently* in Port Hawkesbury, Nova Scotia.

[27] On June 9, 2021, he deposited \$40,041.16 (½ of the total available from the two trust cheques) with Money Mart. They released \$10,000 to him on June 16, 2021, and the remainder of the hold back (\$23,755.85) on June 21, 2021, after

their percentage and fees. Other transfers were made on June 9, 2021, as well. The Respondent had the use of the entire deposit.

[28] He continues to refuse to provide the Applicant her entitlement pursuant to the Assurance Life policy. He has provided no believable evidence as to where the funds are currently.

### ***Previous proceedings***

[29] The Applicant's maternal Aunt and Uncle applied for custody of the Applicant following the Applicant's mothers' death. (File # SFATPSA-121491).

[30] Following a Judicial Settlement Conference, a Consent Interim Order was issued on **May 28, 2021**.

[31] The maternal Aunt and Uncle were granted primary care and decision-making authority for the Applicant child herein.

[32] The younger child remained in the primary care of her father, the Respondent herein.

[33] A subsequent Consent Order dated **December 21, 2021**, was issued in which the maternal Aunt and Uncle were granted sole decision-making authority for Mayan.

### ***Child Support***

[34] Both adult parties agreed at the time to waive child support and contribution to Section 7 expenses in consideration of the circumstances that existed at the time.

### ***Change in Circumstances***

[35] This Applicant remains a dependant child. She attends post secondary education in Toronto; returning to the local area to stay with friends while she attends her summer employment. She no longer lives with her Aunt and Uncle.

[36] Her financial circumstances have changed considerably. While she receives some support by friends and family she requires and is entitled to support under the applicable legislation.

[37] The Respondent father remains obligated to support her. He has not done so.

***Proceeding in the Absence of the Respondent—Final Hearing May 23, 2024, and June 12, 2024.***

[38] A summary of my reasons granting counsel's Motion to proceed in the absence of the Respondent follows.

***First appearance - January 29, 2024***

[39] At this appearance Mr. Even-har sought an adjournment to attend an appointment with Legal Aid on February 8, 2024.

[40] The Court granted the adjournment and imposed an Interim Order designed to preserve the funds and prohibit any attempt by the Respondent to access or withdraw the funds pending final determination of the proceeding.

[41] All parties admitted that the proceeds of the life Insurance policy, in the amount of \$80,082.32, (\$40,041.16 for each of the children) had already been paid in trust to Mr. Even-har.

[42] The Respondent advised the Court directly that the funds were in an account at the Antigonish Branch of the CIBC.

[43] The Court ordered the funds were to be held by Nadav Even-har as trustee for the children as directed in the policy and the Applicant **shall obtain her equal share of the proceeds and any interest accumulated on her 18<sup>th</sup> Birthday.**

[44] The Court directed a copy of her Order be provided to CIBC Antigonish Branch.

[45] Mr. Nadav Even-har confirmed with the Court he understood the Order.

[46] He advised the Court that CIBC head office in Halifax was the financial institution he dealt with regarding the funds. He promised to confirm whether it

was the Halifax or Toronto office and promised to e-mail counsel with that information.

[47] This in-person appearance required the Applicant's counsel to travel to attend Court. Expenses were escalating for the Applicant student.

***The Second Appearance - March 19, 2024***

[48] The Respondent, the Applicant's counsel and supporters were present in person, the Applicant by phone.

[49] Mr. Even-har asked for a further adjournment to connect with counsel.

[50] Counsel objected. They voiced their concern about the delay and the ambiguity about the location of the insurance funds given comments made by the Respondent that the funds were received, cashed, and deposited to CIBC. He had previously informed counsel that the funds were in the younger sister's account.

[51] An adjournment was granted to give the Respondent more time to contact counsel.

[52] The Court indicated concern about the whereabouts of the funds.

[53] Mr. Even-har confirmed to the Court that the funds from the Applicant's mother's insurance policy remained in the CIBC (voxlog 13:57:22-14:48:21).

[54] The Court gave filing directives and set the matter down for an in-person hearing on April 18, 2024, at 2:00 pm. The Applicant was permitted to appear from Toronto by telephone.

***Third Appearance - April 18, 2024***

[55] On this date the Applicant, her counsel, and a witness from the CIBC were present to proceed. Mr. Even-har did not appear.

[56] The Court staff received the following email at 7:49 pm on April 16, 2024. (*I have directed the removal of Court staff names where applicable*)

**From:** Nadav Even-har <[nadavevenhar050579@gmail.com](mailto:nadavevenhar050579@gmail.com)>

**Sent:** Tuesday, April 16, 2024, 7:49 pm

**To:** (Court Staff)

*Hello (court staff) , I am out of country do to a family emergency back in Israel, i am do to return in time for the court date but the air space in Israel is currently closed do to security reasons, i fear that even if i get a flight out it may be delayed and i might be in ontario my connecting flight before i can make it back if i do make it back in country, so as a precaution i wanted to apply for a phone attendance just in case so there is angels covered.*

[57] Counsel asked to proceed and consented to his appearance by phone. The Bank witness testified and filed the documents required by subpoena. The Respondent was provided with the documentation.

[58] The testimony of the Branch Manager, Ms. DeYoung, confirmed the CIBC bank accounts were closed.

[59] She confirmed Mr. Even-har received from the bank two cheques in the amount of \$40,041.16 each written out in trust to him for his individual children.

[60] Mr. Even-har had an opportunity to cross examine this witness and the Court directed her to return on the next scheduled day to avail Mr. Even-har an opportunity to review the materials he was provided and cross examine her in person.

[61] Orders for disclosure were granted as requested for the Bank of Montreal and Bank of Nova Scotia; the banks named by the witness as the recipients of the bank drafts from the CIBC.

[62] Mr. Even-har advised the Court that he did not receive the funds from the CIBC. He was advised to obtain legal advice.

[63] The matter was adjourned to May 23, 2024, with directions to file.

***Fourth Appearance May 23, 2024***

[64] Present in person was the Applicant, her counsel, and the witness. Mr. Evan-har did not appear. Instead, by e-mail he requested another adjournment:



**From:** Nadav Even-har <[nadavevenhar050579@gmail.com](mailto:nadavevenhar050579@gmail.com)>

**Sent:** May 20, 2024, 8:04 AM (Saturday morning)

**To:** (Court staff)

**Subject:** Court date

*Hello, on Friday may 17 I received a call for a medical operation I was on a waiting list for six months my operation is a day before the court day and I will need the 23rd for recovery and a follow up appointment I was wondering if there is a way to move the date by just one day, I absolutely can't miss this operation so i hope something can be worked out. Thank you.*

*Nadav Even-Har*

[65] On Monday, May 20, 2024, at 4:05 pm, Court staff advised the Respondent that he was to provide an official confirmation from his doctor verifying his surgery with details as to when, where and by whom the surgery will be done. He was once again reminded to copy any correspondence with the Court to the other side.

[66] On Wednesday, May 22, 2024, at 9:03 AM the Respondent was again advised to provide a letter from his doctor to verify his surgery. He was advised that if there is no letter confirming his need to attend a medical procedure to explain why he needed the adjournment, counsel for the other party could not address whether they agree or not and the Justice could not consider an adjournment without evidence as to the necessity for an adjournment.

[67] Finally, he was advised that if there was no evidence as to the necessity of an adjournment by way of a letter from his doctor with the details of his surgery and recovery time, provided to the Court, the matter would go forward.

[68] He responded as follows:

**From:** Nadav Even-har <[nadavevenhar050579@gmail.com](mailto:nadavevenhar050579@gmail.com)>

**Sent:** Wednesday, May 22, 2024, 9:13 AM

**Subject:** Re: Court Date: Even-har v. Even-har - May 23, 2024

Hi, I contacted the clinic and let them know I need a letter I'm on my way to Halifax for the procedure so while I'm there I will remind them of it as well.

Nadav Even-har

[69] After several emails back and forth with staff, the message was sent to the Respondent to confirm the Courts position that without evidence the matter would proceed.

[70] On Thursday, May 23, 2024, the Respondent failed to appear and failed *then and subsequently* to provide any information confirming his medical procedure.

[71] Out of an abundance of caution, to ensure the Respondent had every opportunity to be present, I reluctantly adjourned the matter with the following Disclosure Orders granted, to ensure full disclosure and avoid further adjournments.

1. An Order requiring the Respondent to “Appear and Disclose” with a requirement that he provide his statement of income and property along with his last three years income tax.
2. An Order lifting the prohibition on disclosure of the bank material and permitting the Applicant to provide the information to the RCMP.
3. An Order requiring Mr. Even-har to pay child support by way of a lump sum equivalent to the proceeds of the insurance policy to which the Applicant was entitled, payable to her counsel to be held in trust pending completion of the hearing with directions to counsel to provide the Respondent and the Court with her submissions on costs.

[72] The Court reserved the right of the Respondent to speak to the Orders granted.

### ***Fifth Appearance - June 12, 2024***

[73] The Applicant, her counsel and the CIBC witness appeared.

[74] The Respondent failed to appear although he corresponded with the Court both prior and post hearing indicating he knew of the result of the last proceeding on May 23, and June 12, 2024.

[75] No counsel has appeared in this matter on his behalf nor corresponded with the Court.

[76] The Respondent has not filed documentation verifying his urgent medical appointment which occurred the day before the May 23, 2024, hearing.

[77] He has not responded to the Order to Disclose or the Orders for Production.

[78] I find he has been provided with all documentation provided to the Court.

[79] I am satisfied he has had ample time to contact counsel and to appear and present his evidence.

[80] The Applicant has interrupted her summer work schedule to attend these proceedings in person. I understand she is to return to Toronto in September.

[81] The CIBC Bank witness had been subpoenaed to Court on several occasions and was required to be present for cross examination by the Respondent as promised.

[82] The Respondent had not contacted the Court to explain his absence nor am I satisfied he would abide by a further Order to Appear and Disclose given his past conduct in this proceeding and his correspondence with staff.

[83] In addition, counsel for the Applicant decided to confine themselves to obtaining the insurance funds due to her at this time.

[84] That she was a beneficiary with a legal entitlement that crystallized on her mother's death and was entitled to 40 percent of the face value of the policy was not in dispute. That he received the proceeds as trustee on her behalf is not in issue.

[85] That her entitlement to receive them in hand was deferred until she reached 18 years of age, is also not in dispute.

[86] The real issue is what did the trustee of the funds do with the funds; what were his responsibilities as trustee; did he act in accordance with his duties as trustee and where were the funds and how can they be accessed?

[87] Failing the Respondent's cooperation, the Applicant's counsel had to follow the money from the Insurance Company to the CIBC and ultimately to the Respondent personally through Money Mart.

[88] The Respondent, I conclude, already knew what happened to the funds.

[89] I conclude he failed to appear simply to delay the inevitable discovery by the Applicant, her counsel, and the Court that he had taken the funds for his own use, contrary to his continuous assertions to the Court, her counsel and her that they remained in the CIBC.

[90] The prejudice of further delay to the Applicant outweighed the prejudice to the Respondent.

[91] On balancing all factors, I am satisfied that the most judicious resolution of this matter was to proceed in the absence of the Respondent.

### ***Evidence***

[92] With the consent of the Applicant's counsel, I exclude Tabs 5, 6 and 7 of exhibit 3 from consideration in these proceedings.

[93] Again, with the consent of counsel, the police records regarding the Respondent were also excluded.

### ***Respondent's Evidence***

[94] In response to the current Application, the Applicant's father, Nadav Evenhar filed a one-page letter with the Court, dated **December 12, 2023**, and one brief affidavit.

[95] In the letter he acknowledged that his daughter was in contact with him, and he advised her then that CIBC offered to direct deposit the funds to an account of her choice, and she would not give him details of her account.

[96] This suggested to the Court, counsel, and the parties that the funds remained at that time in trust with CIBC.

[97] The Respondent threatened to give the funds to his other daughter account in two weeks if she did not respond to his request. He advised the money was now in his other daughter's account and is locked until she turns 18.

[98] He retracted that statement later in Court when he wrote that they were not in his daughter's account, they were in the CIBC account.

***Communication regarding efforts made by the Applicant to obtain the funds directly from her father, the Respondent herein.***

[99] On August 14, 2023, the Applicant spoke to her father. Her then guardian, Lori-Jon Wilson, was witness to this conversation and heard him say he would give her the funds.

[100] The Respondent advised her he would investigate where the proceeds were to assist her.

[101] Between August 14, 2023, up to September 11, 2023, they corresponded.

[102] The Respondent advised her on August 14, 2023, the funds were under his name because he is the trustee. He advised he deposited the funds with the CIBC while he had an account there but changed the account since then, although the original account was still open.

[103] They tentatively made a date to meet to attend the bank in New Glasgow on August 24, 2023. He promised to look for the account information and text it to her.

[104] At about 5:14pm that same evening he advised her by electronic means that he could not find his old accounts and offered to go into the branch or contact them by phone. He further advised her the amount of insurance reserved for her was \$40,100 and he added to that another 500 plus interest. (my emphasis).

[105] On Tuesday August 15, 2023, the Applicant advised her father that she had contacted the bank in New Glasgow and was advised that no appointment was made with them and there was no one there for her she asked:

“Does it actually exist or is this a run around? Just tell me if it is all gone or not. I don’t want to waste my time if there’s nothing left “

[106] He reassured her that he made the appointment, that he had no access to the money and would not have touched it anyway. He informed her the account was under his name so she would be unable to get information on the account.

[107] He confirmed he would be at the appointment. He then indicated to her he called and confirmed the appointment. He said they told him they found his reservation with no difficulty and that they might have a way to put the money in

her account under her name before August 24, 2023. He advised her he would be working on that and keep her in the loop otherwise August 24, 2023, meeting still stands.

[108] He confirmed he had access to the account because he opened the account and that both she and her younger sister have cheques in their name so can access the money.

[109] He advised that he would do what he could as fast as possible and looks forward to getting the responsibility of having the money in trust out of his name and into the individual names of his daughters.

[110] Then the Respondent father, on Wednesday through electronic communication informed the daughter he contacted the insurance company and was informed that they could reissue a cheque and cancel the other one. They would first have to confirm if it was cashed. He asked her if she would like the funds in the mail or by direct deposit.

[111] He agreed to arrange that so she could deal directly with the insurance company.

[112] On August 17, 2023, the Applicant had not heard from her father, so she asked if he had made progress. He advised he was waiting on a call from them and said likely here early next week He said it took a month to get his share (\$20,000) but the “wheels were in motion”.

[113] He promised to keep her informed again on August 21, 2023.

[114] On August 21, 2023, he advised the Applicant that with her consent, the insurance company told him they would issue a cheque once they received the funds from CIBC. He told her he put in a request to close the trust account on the proceeding Friday, August 18, 2023.

[115] The discussion between them continued. He advised his daughter that the money would have to go from CIBC to the Insurance company and they could issue a cheque separately to her and directly. He advised he would give a consent to them to issue her a cheque and she should call and give her banking information. He advised she should have the money by Thursday and that there was no point of her going to the bank because he closed the account.

[116] She advised him she was leaving for university and needs the money as soon as possible.

[117] To speed up the process she asked if she could go into the CIBC directly and get the money from them.

[118] He said he would work on it.

[119] On August 23, 2023, she emailed early to ask if the meeting was on with the bank. He advised he was going then to the bank to make sure the cheque is sent back to the insurance company so no reason for her to go to the bank.

[120] He advised he would call when the bank opened at 10:00 am.

[121] At 10:31am, he emailed her to advise her there was no need to go into the bank, she was to give the insurance company a call the next day or Friday as it should be visible to them. He said he would text the phone number and case number later Wednesday and informed her he had given his consent.

[122] Later Wednesday, at about 3:40 pm the Applicant called the insurance company and indicated to her father that they informed her they never get money back once it is transferred to a bank.

[123] He informed her that the CIBC had the funds (as they spoke on Wednesday). CIBC would return the funds to the Insurance Company. In a day or two they (she or he) would call them and give them her banking information, presumably so Assumption Life would deposit the funds directly into her account.

[124] He said this was the best way as trying to get the money from CIBC was the harder process, He assured her that the money would be returned to Assumption "no ifs or butts about the process".

[125] He put her off for another two days.

[126] On Thursday, August 24, 2023, he advised her that her calls to the insurance company were problematic as they were confused about who to deal with. He confirmed no one touched the funds. He was becoming irritated with her efforts to clarify what was happening.

[127] On Friday, August 25, 2023, she checked in for an update and he advised he would check in with the insurance company, he said he would get the name of the person she should speak to.

[128] On August 25, 2023, later in the day, he advised he did not get to them because they were closed and would call again.

[129] On Saturday, August 26, 2023, he emailed her their hours of business indicating that there would be no success until Monday.

[130] On Sunday, August 27, 2023, the Applicant texted her father to say he should call them at 8:30am Monday when they were open, and she would take it from there.

[131] On Monday, August 28, 2023, the father emailed his daughter to advise that someone from Assumption Life said it would be easier to open an account with CIBC and they can put the funds there. He said he called to advise CIBC what Assumption Life said.

[132] The Applicant asked for confirmation as to which branch of CIBC she should speak to.

[133] On the same day he explained to his daughter that the CIBC ended their relationship with him shortly after her mother died because of bad cheques he wrote. He was advised he could never have an account with them again. As a result, he advised he could not access the funds in the trust account.

[134] He advised her to open a CIBC account and he could ask that the funds in the trust account be transferred to her account, that would take seven days. He said they could both request in writing a release of the funds from the trust account but assured her that would take longer.

[135] He asked for her direct deposit info to TD bank in case he could affect the transfer and he would send confirmation to her.

[136] She asked if she could talk to them directly.

[137] He advised her as follows:



“They would never do that it completely against every security measure they have all I can offer is what we spoke about if you or any of the wonderful people surrounding you have trust issues that’s not my problem Mayan, I want this felt (sic.:dealt) with today, let me know what you want me to do”.

[138] She advised as follows:

“Call the bank and get the money transferred to me I am happy to give them my account info but if you need to do it, we will do it that way”.

[139] He continued to put her off until she stopped communicating and contacted counsel to get the funds.

### ***Following the Money***

[140] The Applicant’s mother’s life insurance policy through Assumption Life in which she and her sister E.E. were primary beneficiaries, was sufficiently identified for the purposes of this application.

[141] In paragraph 15 of the Consent Order of December 21, 2023, the parties agreed that the Respondent received the proceeds from Assumption Life in trust by way of two cheques dated April 06, 2021, naming Nadav Even-har in trust and naming each of his two daughters.

[142] Exhibit # 3, Tab 2, paragraph 1 confirms this evidence.

[143] The Respondent father admits by affidavit he deposited the funds left to his daughter Mayan by her mother in a CIBC bank account in Antigonish Nova Scotia, ending in 137. As such he testified, he believed this relieved him of any further liability.

[144] He further advised that Assumption Life confirmed the cheques was deposited and cleared. Assumption letters confirm they sent the father/Respondent two cheques in the amount of \$40,041.16 as each child’s entitlement to the process.

[145] The Respondent confirmed he was sent \$20,000 directly via direct deposit and the Applicants share was on April 13, 2021.

[146] Both the Bank Manager of CIBC and the District Manager of Money Mart, located in Fredericton, testified.

[147] Katherine DeYoung, Banking Centre leader (**Branch Manager**) for CIBC has been employed at the Antigonish CIBC for 31 years. She has been in her current position for two years.

[148] This witness created a search of bank records of the three individuals Mr. Nadav Even-har and his two daughters, Mayan and E.E. Initially, she received no electronic information.

[149] She then contacted the insurance company to obtain a copy of the cheque they issued. Armed with that information, she found that the Respondent's account into which the insurance funds were deposited, was closed. The daughters had no accounts with them.

[150] Ms. DeYoung ordered a copy of the statement of the account in which the insurance proceeds were deposited 43/...137.

[151] She provided copies of the two cheques from National Bank /Banque National which evidence confirmed that on April 13, 2021, copies of a deposit for \$80,082.32 which comprised the two cheques together, each in trust for one of the Respondent's daughters. These cheques were received by CIBC and deposited on April 13, 2021, in Antigonish.

[152] The third page of the exhibit is the CIBC retail operations bankbook reconstruction report for account number ending in **137**.

***CIBC- Exhibit 3, Tab 2 - Iron Mountain Request page 002***

[153] Ms. DeYoung also spoke to several departments within her banking system including a unit called "Divestors". This, she explained, is part of the internal Bank organization that watches fraud situations and unacceptable activity from clients.

[154] The note on the account statement indicated the account was "closed divested". This note sent the Bank manager to the divestors unit to find information.

[155] This is an internal request for copies of the transaction showing the actual withdrawals.

[156] The Bank manager confirmed that neither the Applicant nor her sister could not have accessed these funds. The funds were not deposited in their names.

[157] She confirmed there was never an account at their CIBC branch that was named Nadav Even-har in trust for the named daughters. She confirms that her search would have picked up such an account in Canada.

[158] She also confirmed that if the account was in the Respondent's *name in trust*, Mayan could not have accessed the funds.

[159] If the account was in the Respondent's name only, she could not have accessed these funds.

[160] The trustee, the Respondent in this case, if such an account existed, would be the only one to access the funds.

[161] The Respondent would be the only person able to access the account holding the funds.

[162] This evidence counters the oral unsworn statements from the Respondent to the Court at his initial appearances; that he did nothing with the funds after the funds were deposited and that he did not request or received the funds.

[163] This evidence is the most reliable evidence the Court has regarding who obtained the bank drafts from the CIBC Branch and deposited them in the named Banks.

### ***The Account***

[164] Nadav Even-har is the sole name on the account holding the funds deposited from the Insurance Company. While their names were on the insurance cheques as the beneficiaries, the daughters' names do not appear on the account.

[165] While she could not provide the opening documents for the account and could not explain why they were unavailable; she did provide his signature card for the account in question.

[166] The signature card is dated February 24, 2021. The account was opened in advance of the April 13, 2021, deposit of \$80,082.32 mentioned earlier.

[167] Mr. Nadav Even-har is listed as the primary account holder. The signature card specifically indicates that the account holder is not opening the account for the benefit of a third party.

[168] It also notes specifically that this was not opened as a joint account.

[169] Those answers were given right above the signature of the card holder that is said to be the Respondent's signature.

[170] Exhibit 2 is a copy of the account activity tendered by the Branch Manager.

[171] This record also evidences this is the account into which the insurance proceeds were deposited.

[172] There is evidence of other deposits prior to the deposit of the Applicants share of the insurance proceeds; transfers in the amount of \$18,000.00, and an additional transfer in of \$2,066.45 after the relevant deposit for our purpose.

[173] The record of accounts also evidences two withdrawals each of \$40,041.16 on **April 26, 2021**.

[174] **Each withdrawal is in** an amount equal to half the entire proceeds due to the two daughters.

[175] Copies of those cheques are shown in Exhibit 2 as Bank Drafts made out from the CIBC exactly as they had been tendered on deposit; that is to Nadav Even-har in trust for Mayan Even-har and in trust for Emmerson Even-har.

[176] This exhibit also evidences where they were deposited.

[177] The cheque for the benefit of the Applicant was deposited to the Bank of Montreal and the cheque for the benefit of E.E. was deposited with the Bank of Nova Scotia in Port Hawkesbury.

[178] The exhibit shows the CIBC account as closed before the end of April 2021. In contrast there are the assertions of the Respondent that this account is still open in April 2024 and the funds were still in the account.

***The Respondent's Account with CIBC***

[179] The opening of the Respondent's CIBC account was not in accordance with the Bank's usual practice. It was directly contrary to a decision made by the Bank with respect to Mr. Nadav Even-har in 2017.

[180] The divestors within the Bank wrote to Mr. Even-har by letter dated 1/4/17 and advised him they (CIBC and its group of companies) had decided to end their banking relationship with him. They indicated that any further requests to open any accounts or products with CIBC and its group of companies would be declined.

[181] Their decision was made because they identified his unacceptable account activity during a then recent review of his account.

[182] They indicated that his accounts as identified in the letter would be closed effective 3/4/17.

[183] The current account he opened ending in ...137 in February 2021 was clearly contrary to this decision.

[184] Since the Bank witness was ordered to provide all documentation respecting the Respondent holdings with the CIBC, had there been a change of heart or had he rectified the broken relationship, there ought to have been documentation spelling that out. There was no such documentation.

[185] One can only wonder why he was permitted to open this account at the CIBC branch given their 2017 decision. I have no information before me that he addressed their concerns.

[186] I can only conclude it was an oversight or mistake by Bank employees to permit the Respondent to open the account he opened in February 2021, into which the insurance proceeds were deposited. That does not get us any further to a resolution in this case. Permitting the withdrawal in the manner in which it was done may prove a more difficult inquiry.

***Client Profiles***

[187] The Bank Manager testified that normally a customer has only one profile.

[188] She learned at the time of her search arising out of the subpoena that Mr. Nadav Even-har had five profiles with the CIBC.

[189] A profile is a customers information file containing phone numbers addresses and employment identification. All his profiles had the same date of birth.

[190] In the Respondent's case, there were different addresses and phone numbers on some. The accounts under investigation relating to his profiles include a location in Purlbrook, Malignant Cove, Boylston and Dartmouth, Nova Scotia.

[191] She could not confirm how this had happened.

[192] This information does not bring us closer to a solution. It is simply evidence that for the current Branch Manager, this situation was outside the norm. It also speaks to a gap in the Banks ability to get information to its employees when account searches are undertaken.

***“In trust cheques”***

[193] The Bank Manager was questioned about their policy on trust accounts such as the one in which the trust cheques were deposited.

[194] She confirmed that typically such a cheque made out to someone in trust *should have been deposited to an account with that exact name on the cheque, i.e., to the trustee in trust for the named beneficiary.*

[195] The Bank witness advised that the method of depositing the cheque and dealing with these funds was not the ordinary method they would follow. The witness indicated that Mr. Evan-Har should never have been permitted to open an account of this nature at all or in his name only.

[196] If a cheque was made out to a person “in trust” for someone else, the name of the account should reflect that. In this case, it did not.

[197] In this situation, she acknowledges that the funds should have been deposited to an account in name of *Nadav Even-har in trust for Mayan Even-har.* Instead in this instance it went directly into the Respondent's personal account in the Respondent's name only.

[198] The result was, she confirmed, only Mr. Nadav Even-har could access the funds.

[199] Therefore, there was no protection for the beneficiary of the trust.

[200] It appears that a decision was made to return the funds to Mr. Nadav Even-har in the exact way they were received, again with no protection for the beneficiary.

[201] This witness was not able to speak to why this was done. There is no direct evidence from the employees at the bank if that was initiated by the Bank or the Respondent.

[202] Whether the bank drafts were initiated by the Respondent or the Bank, the drafts were approved and given back to the account holder in exactly the same manner as they were given to the bank by him earlier.

[203] On April 15, 2021, and April 19, 2021, the Bank approved two Bank transfers and two withdrawals on April 26, 2021, both in the amount of \$40,041.16.

[204] This was approved by the then manager and a customer service representative, both of whom no longer work with the Bank.

[205] When questioned, the current Bank Manager could not speak to why the Bank decided to give back the funds directly to the Respondent, knowing they were trust cheques in trust for the children.

[206] At that point, I conclude, they had to have known they were cheques *in Trust* for the named beneficiaries.

[207] There was no argument or evidence before me directed to the question about the Bank's responsibility at that point to protect the funds.

[208] There was some discussion around whether the Bank initiated the withdrawal because they discovered they erred in opening the account or whether they simply responded to Mr. Even-har's demand for the funds.

[209] The error, if any, was in opening the account and putting the funds in an account that did not reflect the intention of the cheque as written.

[210] It is open for discussion as to whether the Bank is responsible for returning the funds to a client whose previous relationship with them, they had terminated at a central Bank-corporate level. They must have been aware at a corporate level that they had previously terminated this relationship.

[211] What was their responsibility to the beneficiaries of the funds at that point when the funds were in their possession. Can they wash their hands at this point? This was not argued before me.

[212] I draw no conclusions on the liability of the Bank at that point.

[213] In the end, when the account holder requested the entire funds, the CIBC provided two bank drafts, giving the Respondent back exactly what he had received from the insurance company.

[214] The two bank drafts were approved: one to Nadav Even-har in trust for Mayan Even-har and another for Nadav Even-har in trust for E.E. in the amount of \$40,041.16 each.

[215] The bank manager confirmed that only the account holder could have requested the drafts.

[216] The account shows that on **April 26, 2021**, there were two withdrawals for \$40,041.16. The transaction journal shows the withdrawal of \$40,041.16 which goes to ...3345 which is identified as the Antigonish bank draft account through which both bank drafts were made out. At the end of the journal, the account shows as closed out.

[217] For the Applicant's cheque there is a serial number ....5247 on the back of the cheque indicating this bank draft was cashed at the Bank of Montreal on June 9, 2021, with two signatures.

[218] The other bank draft was deposited into the Bank of Nova Scotia, apparently at Port Hawkesbury.

[219] This unfortunately provided no protection to the daughters.

[220] The witness confirmed that there are currently no funds at the Bank of CIBC for either the daughters or Nadar Even-har.



***Evidence from Money Mart***

[221] A subpoena was issued to the New Glasgow Branch of National Money Mart Company.

[222] Ms. Thomas, as district manager for the National Money Mart company, carrying on business as Money Mart, provided an affidavit sworn on June 11, 2024. She has been employed with Money Mart for thirteen years.

[223] She appeared by video from Fredericton, New Brunswick to respond to the subpoena and verify the documentation provided as exhibit 5.

[224] Ms. Thomas in her capacity as District Manager spoke to the records provided.

[225] These records were tendered to close the circle and create the link between the bank transfers from CIBC to the Respondent, permitting him to deposit the proceeds of the insurance policy due the Applicant and her sister first with two other Banks (Bank of Montreal and Bank of Nova Scotia) and then one with Money Mart in June 2021.

[226] If there is a gap in testimony between the withdrawal from the Bank of Montreal and the Bank of Nova Scotia; the requirements for verification of depositor and deposit that existed on deposit with Money Mart covers that gap.

[227] The evidence supports a conclusion that the Respondent deposited the exact amount due to the Applicant to his Money Mart account. He then withdrew the funds he deposited with Money Mart; received the Applicant's (his daughter's) share of the insurance proceeds personally without having to hold them in trust.

[228] I have not directed my attention to the chain of possession of the funds in trust for the younger daughter as that is not the purpose of this inquiry.

[229] Not all documentation regarding the Respondent's dealings with Money Mart were provided. There were multiple transactions on Nadav J. Evan-Har's account unrelated to the insurance proceeds; indicating his ability to continue to operate an account with Money Mart between January 12, 2016, to and including January 31, 2023. He was known to them before and after the transactions in issue.

[230] Paragraph six of Ms. Thomas's affidavit indicates she reviewed their business records associated with Nadav J. Evan-har transactions with Money Mart and provided to the Court that which remained.

[231] She verified that neither of the Respondents' children have an account with Money Mart.

[232] She advised that on the June 9, 2021, their customer Nadav J. Evan-har, sought to deposit and, subsequently, on June 16, 2021, withdraw, a cheque in the amount of \$40,041.16.

[233] This transaction occurred at the New Glasgow office of Money Mart identified in the documentation by number 2275.

[234] This witness advised that the documentation she provided to the Court (introduced in compliance with the business records requirements satisfied) required the approval of the central organizational body within the company because the amount of the cheque exceeded \$10,000.

[235] She advised that at the time of deposit, the Respondent was required to provide information to confirm the source of the money, paper, and photo verification of the identity of the party trying to cash the bank transfer (the Respondent), and a working phone number and address. These measures were there to protect Money Mart and to verify the existence of the funds and the identity of the account holder.

[236] There was no uncertainty about the identity of the Respondent, Nadav Even-har. The witness testified the money would not have been released to anyone other than him as the account holder.

[237] I restrict myself in weighing the evidence that this witness can accurately speak to with respect to Money Mart records as the person who deposited the insurance proceeds is no longer employed with Money Mart.

[238] I am also aware that the money from CIBC appeared to be deposited into two different banks and thereafter the evidence before me as to the Money Mart deposit is with regards to one cheque only, which was deposited into Money Mart.

[239] This witness, as district manager for the National Money Mart company, can speak to the ordinary procedure to be taken on a request to deposit a cheque

over \$10,000 and to the existence of the account transactions and their meaning but she did not give details as to which bank verified the existence of the funds; just that they had to be verified in advance of deposit.

***June 9, 2021***

[240] The witness testified that the accounts indicate that the New Glasgow branch of Money Mart deposited a cheque on June 21, 2021, in the amount of **\$40,041.16** having obtained the approval required to verify the Respondent's identity.

[241] On that date the records further indicate a hold back by Money Mart of **\$33,755.85** while Money Mart verified the funds existed. They charged him **\$3.99** for the cheque/bank transfer **and \$1,281.32** as their percentage.

[242] On the same date, Money Mart released to Respondent **\$1,500** and a repayment of funding of **\$3,000**.

***June 16, 2021***

[243] One June 16, 2021, the Respondent withdrew, and they released **\$23,655.85** and **\$10,000**, it appears by e-transfer.

[244] While she advised that records verifying the initial acceptance of the large cheque would have to have been completed as a prerequisite to cashing a cheque this size, she also advised that records are destroyed six months after the transaction.

[245] She did remember the cheque that she saw was a cheque in the name of Nadav Even-har in trust for Mayan Evan-har.

[246] She indicated they have no specific requirements about cheques of this nature (*trust cheques*) and would only release the funds to the account holder and the principal name on the cheque.

[247] She testified that the money would not have been released to any other person including the daughters/beneficiaries.

[248] Having followed the insurance proceeds from the insurance company to the Respondent, I conclude without a doubt that on April 13, 2021, the Respondent

father, received the proceeds of life insurance in trust for his two daughters. He admitted that.

[249] He opened an account at the CIBC on February 24, 2021, and deposited these trust cheques on April 13, 2021, in the CIBC account in Antigonish. He admits that.

[250] Thereafter, in his unsworn submissions before the hearing on his initial appearances and his written submission by way of affidavit, he testified he had no control over the fund.

[251] He said he divested himself of liability for the funds after he deposited them.

[252] He testified he did not touch them, did not withdraw them; was unable to withdraw them and indicates that it is the bank policy that prevented him from obtaining the funds.

[253] He chastised his daughter when he felt she intimated he took the funds for his own use.

[254] He offers no evidence to support this submission. That is critical to these finding. He offered no evidence to explain or counter the evidence. His submissions are not only not supported by the totality of the evidence to the contrary; they are entirely unbelievable.

[255] There is overwhelming evidence that he was complicit in the representations to the Court as contained in paragraph 15 of the Consent Order dated December 21, 2021, representing to the Court that between December 2021 to the current date, the insurance funds remained in what he called the trust account at the CIBC.

[256] The truth was, he personally withdrew the funds two years earlier in April 2021, deposited them to two different banks and following that withdrew them and deposited at least the Applicant's with Money Mart on June 9, 2021; then withdrew it from Money Mart on June 16, 2021.

[257] He boldly lied to the Honourable Justice setting down this matter. He purposefully delayed the discovery of his lies delaying the discovery of his manipulation of the Applicant's insurance proceeds.

[258] Aside from his contempt of the Court process, his behavior was an abuse of the Courts process.

[259] Making matters worse, as seen above in the communication between the Respondent and his daughter, he continued to mislead and deceive her to permit her to believe that the funds were in an account at the CIBC in Antigonish and that he was trying to obtain them for her.

[260] He strung her along with promises until she was forced to hire a lawyer (as a student) and to pursue the funds, believing, as he intentionally misleads her, that these funds were still available.

[261] This is not a Criminal Court. This is a Civil proceeding, and I am constrained by the remedies I may impose.

[262] There can be no mistake that Mr. Even-har's behavior is unconscionable as a father, a trustee, and a litigant.

[263] He has taken his daughter's money without her consent and deprived her without lawful reason, and he did so with out any sign of remorse.

[264] He also continuously misled the Court.

[265] In drawing these conclusions, I am aware that there is another cheque made out to the younger daughter in the same amount of money that was deposited to Money Mart.

[266] The evidence regarding the whereabouts of her insurance funds is not before me.

[267] If there is a small possibility of confusion between the two cheques in the tangled web of tracing the Respondent's efforts to convert the daughters' entitlement for his own use such that the monies belonging to the two daughters could have become mingled; it is up to the Respondent to account for what he did as trustee to clarify the confusion.

[268] He created the subterfuge, and he is in the best position to clear up any misperceptions. He has chosen not only to remain silent but to misrepresent the truth to the Court at every opportunity.

[269] This Court must be limited to the totality of the evidence before me and determine on the balance of probabilities what happened and the whereabouts of the Applicants insurance funds.

[270] I am aware that the Respondent has multiple accounts and that those accounts are not before me in evidence.

[271] My conclusion on the evidence using the correct burden of proof satisfies me that the Respondent received the Applicant's 'in trust proceeds', moved them through various Banks and ultimately Money Mary to hide them and to use them for his own purposes.

### ***Remedies***

[272] This Application was made pursuant to Rule 80 of the *Nova Scotia Civil Procedure Rules*:

80.02 Enforcement (1) An interlocutory or final order may be enforced by further order, including an order for any of the following: (a) seizure and protection of property; (b) putting a party in possession of property such as an order that provides for delivery of property to a party or that requires a sheriff, receiver, or other person to remove a person from land; (c) authorizing a person to do an act required to be done by a party under the order, such as executing a conveyance, making a direction for transfer of a licence, or authorizing access to premises, documents, or electronic information; (d) receivership or an injunction; (e) an order under Rule 88 - Contempt. (2) An enforcement order that authorizes a person to do an act required to be done by a party may provide that the party is bound by the action of the authorized person.

### ***The Law***

[273] There is guidance for persons who are invested with the responsibility as trustee of property, including life insurance for the benefit of a child.

[274] Aside from common sense there are legal duties and ethical principles associated with the role of trustee whether that trustee is formally appointed complete with a Bond requirement and trust documents, or as in this case a parent receiving insurance proceeds in the form of a "trust cheque" in their name for the benefit of their child, as beneficiary.

[275] Protecting the financial bequest of a mother to her child invests a significant duty on the trustee to preserve that investment for the child.

[276] The trustee must guard it; if permitted by Court Order invest the capital in approved investments for its proper preservations and prevent its diminishment.

[277] The trustee, if permitted by Court Order, may disburse the proceeds for the benefit of the beneficiary while the trustee remains the caretaker of the funds but only if required and her other sources of income are insufficient to meet her needs.

[278] Finally, the trustee is obliged to pay over that financial gift to the child when required to do so by law or the terms of the trust inclusive of interest earned.

[279] The Courts have reluctantly approved expenditures out of insurance proceeds when prior approval has not been obtained. *Ryan v Sleigh* [2007] N.S.J. No. 452.

[280] As will be seen in this brief review of the duties and principles of trusteeship set out in common law and identified in Statute, we are entitled to expect the trustee of a child's inheritance to adequately protect and preserve her inheritance, with attention to proper growth so as not to diminish the capital.

[281] Particularly in the absence of trust document and a bond, a trustee who acts alone must tread cautiously.

[282] Should they contemplate disbursing the capital they ought to seek prior approval from a source of authority other than their own, an authority such as the Court.

[283] They must refrain absolutely unless permitted by Court Order from disbursing the proceeds to address their personal aims and purposes.

[284] In this circumstance, failure to protect the proceeds and to pay over to the beneficiary her entitlement is not only a breach of the contract, but also a breach of trust and in this case a Breach of a Court Order and a significant breach of the ethical and moral duty of the trustee.

[285] In this case we have the benefit of an added level of duty with the December 21, 2021, Court Order under the *Parenting and Support Act*, 2015, c. 44, and further

the subsequent Court directions to the father and trustee to preserve the asset and pay over that asset together with interest on the child turning in 18.

[286] His duty as trustee exists concurrently with his duty as father and as a parent required to support his dependant child.

[287] Further we have the acknowledgement by the father of his duty as trustee, his professed understanding of the Court directions and his continuous acknowledgement to his daughter that he knew of her entitlement and was doing his best to provide her with the funds.

[288] All his assertions we now know were deceptions; a ploy to delay the discovery that he converted the proceeds to his account immediately on receipt from Assumption Life in April 2021. He ultimately used the insurance proceeds as his own with accountability to no-one, not the Court, not counsel and most of all, not to his daughter.

[289] The basic duties of a trustee are addressed in Halsbury's at HTR-4 and HTR-135. A definition of breach of trust appears at HTR-159. As set out in Halsbury's at HTR-4 and HTR-135." "The basic duties of a trustee ( HTR-135 Halsbury's Laws of Canada - Trusts (2024 Reissue) (Hoffstein):

1. 135: Trustees are fiduciaries, and as such specific duties attach to their role. Once a trustee is appointed and accepts the office, the trustee becomes subject to the duties and powers of that office. Duties of trustees reflect the fiduciary nature of a trusteeship. The fundamental principle underlying the office of trusteeship is the fiduciary obligation that trustees must administer property for the benefit of beneficiaries. Therefore, it is self-evident that when a power of discretion is conferred upon a trustee, he must exercise it for the benefit of the beneficiaries. There can be no grant of discretionary power which would place the trustee beyond the control and oversight of the Courts, as any such grant would be fundamentally repugnant to the fiduciary nature of the trustee's office. (Emphasis mine) There are limits on the freedom of choice granted to trustees pursuant to a discretionary power that may be enforceable by the Courts in certain circumstances. Specific duties. When exercising their discretion, trustees are bound to adhere to certain fiduciary obligations imposed by law; the breach of which enables judicial intervention and the potential awarding of equitable remedies to objecting beneficiaries.

These include the duty to: (1) act in accordance with the terms and purposes of the discretionary power; (2) consider the exercise of their



discretion; (3) act reasonably and not perversely or capriciously; (4) take into account relevant considerations and to refrain from considering extraneous considerations; (5) at all times to act in good faith; (6) be loyal; (7) consider the potential beneficiaries of the discretionary power and maintain an even hand; and (8) to account and provide information.

Sources of duties. There are three main sources of trustee duties: legislation;<sup>1</sup> judicial pronouncement; and the trust instrument. The trustee statutes provide that a trust instrument prevails over any contrary provision in the governing statute unless the statute provides otherwise.

[290] I again refer to para 159: (*Halsbury's Laws of Canada - Trusts (2024 Reissue)*) (*Hoffstein*) for assistance in determining “what constitutes breach of trust”.

159: Any act 1 or omission 2 that contravenes the trustee's obligations, 3 or is outside the bounds of those duties, 4 or any failure to perform a duty in connection with the trust, constitutes a breach of trust. 5 If such an act omission causes a loss to the trust, the cestui que trust is entitled to a remedy against the trustee, or the trustee's estate.<sup>6</sup>

[291] To add to the common law meaning of trustee we can refer to statutory definitions as set out in *the Guardianship Act*, S.N.S., 2002, c.8, s.8 and the *Trustee Act*, R.S., c. 479, s. 1.

### **Trustee of property**

8 (1) Where a person appoints a trustee of property that the person has devised, bequeathed or given to a child, the trustee is entitled to receive and hold that property for the child in accordance with the terms of the trust.

(2) For greater certainty, where a person authorizes, in writing, another person to receive property that the first person has devised, bequeathed, or given to a child, that other person is a trustee of that property within the meaning of subsection (1). 2002, c. 8, s. 8.

[292] In the *Guardianship Act* the guardian of the property of a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of majority, S.N.S., 2002, c. 8, s. 11. The Guardian under the *Guardianship Act* as described is subject to the *Trustee Act* as set out in section 9: of *the Trustee Act*, R.S.N.S. 1989, c. 479. As can be seen in the *Trustee Act* there are standards of a trustee must follow when using or handling a fund in trust for another; they generally require Court approval. For example:

### **Investments authorized by Court. Deposit of trust moneys pending investment**

7 In addition to the investments authorized by Section 3 or by the trust instrument, except where that instrument expressly prohibits such investment, a trustee may invest funds in such other securities as the **Court or a judge upon application in any particular case selects as fit and proper, but nothing herein shall relieve the trustee of his duty to take reasonable and proper care with respect to the investments so authorized. R.S., c. 479, s. 7.** (My emphasis)

8 A trustee may, pending the investment of any trust moneys, deposit the same during such time as is reasonable in the circumstances in a trust account in the name of the trustee in any chartered bank of Canada, or in any approved trust company, loan corporation or any other like depository which has by order of the Governor in Council been approved as such depository. R.S., c. 479, s. 8.

**Condition upon deposit pending investment.**

9 Where a trustee deposits trust moneys as authorized in Section 8, he shall maintain a ledger account in his books for the particular trust estate for which such trust moneys are held or shall require the account in the bank or other depository ledger to be opened and kept in the name of the trustee for the particular trust estate for definition of a fiduciary duty to your beneficiary such moneys are held. R.S., c. 479, s. 9.

***The Reasonable /Ordinary Person***

[293] What should a reasonable or ordinary citizen be expected to know about their duties if it was not already obvious to the Respondent. It is common knowledge that ignorance of the law is no excuse; should he have claimed such ignorance. A simple search online would yield the following definition for any trustee holding funds for another.

[294] An American search might yield this definition in the Consumer Financial Protection Bureau:

“A fiduciary is someone who manages money or property for someone else. When you’re named a fiduciary and accept the role you must -by law- manage the person’s money and property for their benefit, not yours.” They cite four simple rules:

1. Act only in their best interests.
2. Manage their money and property carefully.
3. Keep their money and property separate
4. Keep good records.

To the same question “what is fiduciary obligation” The Canadian Encyclopedia website states:

“The legal system recognizes many special relationships in which one party is required to look after the best interests of the other in the best possible way. These relationships are called fiduciary relationships. They include parent/child.... Fiduciary relationships involve trust and confidence, they require that the fiduciary (i.e., the party entrusted with taking care of another party) acts honestly, in good faith, and strictly in the best interests of the other party (i.e. the beneficiary)”.

[295] The trustee in this instance has not provided any ledger or evidence of the use to which he put the Applicant’s share of the proceeds as he is obliged to do. There has been no accounting for the insurance funds.

[296] The case before me is perhaps more tangible from a strictly legal rather than equitable standpoint. It was clear from the moment of receipt of the funds that the funds were to be held in trust.

[297] His legal liability as parent and trustee continued towards the Applicant. His duties were part of a *Parenting Support Act* and his duties made clear in paragraph 15 by the Court Order.

[298] This creates an enforceable legal obligation imposed by law pursuant to the *Parenting and Support Act* and *Rule 80* of the Civil Procedure Rules. His tangible Order acknowledges her entitlement and his acceptance of his trust obligations to hold these funds and pay them over.

[299] I do not have to tenuously reach into the Courts equitable jurisdiction to find a claim for a return of the funds owing to the Applicant although the general duties of trustees have been discussed in common law and statute.

[300] Whether the general duties as trustee are formal or informal as spelled out in *Ryan* or subsequently incorporated into Court Order as appears to be the case here; the Respondent was aware of his duties, professed to be holding the funds in trust for his daughter, was ordered under the *Parenting and Support Act* in December 2021, to hold them in trust and pay them to his daughter on her 18<sup>th</sup> birthday.

[301] When questioned by the Judge he acknowledged this duty and consented to the Order on the advice of his lawyer. He confirmed he understood obligations.

[302] Once the breach of the Court Order has been established there are clear remedies and duties on the Respondent because there are clear remedies pursuant to the Court Order and Rule 80.

[303] In *Ryan v. Sleigh* [2007] N.S.J. No. 452 the trustee was required to take out a bond.

[304] In *Ryan*, Robertson J. required the trustees of insurance funds to repay to the beneficiary (their sibling) that which they had mingled with their personal accounts.

[305] In that case the Court did permit some set off for family expenditures made necessary by becoming guardians as well as trustees for the child.

[306] Robertson J. noted that Courts generally require advance approval to allow trustees to spend capital on the dependant child if that child requires more than the guardian or parent can reasonably pay.

[307] In the case before me the trustee/father was not the primary parent. The child's Aunt and Uncle were her de facto and later legal guardians by Court Order consented to by the father /trustee. It must be noted there was no suggestion or evidence they had access to any of the funds.

[308] There was no bond, no trust document; just the ordinary duties of trustee, his acknowledgment of his duties and his knowledge as to why he was holding the funds. There are no redeeming factors for his behavior.

[309] In this case the father was aware he held the money in trust, he represented that to the Court and to his daughter.

[310] He could not claim set off given he did not expend support on his eldest daughter. She was not living with him at her mother's death and for much of the remainder of her dependency.

[311] The Applicant expressed through her counsel that she cannot afford further proceedings and believes there is little likelihood of recovery of monthly child support given the history of non support.

[312] I have reviewed the transactions in the Money Mart account and note that the Respondent has had access to considerable funds and was able to travel (if he in fact did travel) to Israel.

[313] However, given his historical behavior, I understand her reluctance to seek anything but the benefit of the insurance proceeds at this time.

[314] I do find she remains a dependant adult child and reserve for her that right to apply in future.

[315] The findings I have made support a lifting of the ban on disclosure of the bank and Money Mart records to the RCMP should they be asked by the Applicant to investigate the transactions perpetrated by this Respondent which deprived the Applicant of her property and much needed support.

[316] The findings support a Child Support and Enforcement Order to continue the requirement that the Respondent pay to the Applicant immediately a lump sum amount compensating her for the funds she lost through his actions with interest to date.

[317] She is not restricted in her remedies for enforcement. All remedies available to the Director of Maintenance Enforcement and pursuant to Rule 80 of the Civil Procedure rules are available should he not pay the proceeds immediately according to this decision.

[318] The Respondent shall pay the Applicant the proceeds of the life insurance due her with interest as calculated by the *Interest on Judgments Act* on or before June 27, 2024.

[319] She is entitled to an Order for seizure and protection of property; or /and delivery of property to her to assist her in obtaining the equivalent of the proceeds of the insurance policy that was due to her with interest to date. Her entitlement to this remedy would commence with this Order and non payment in accordance with the directions of the order.

[320] Failing receipt of the funds, the Applicant may proceed with a Motion for Contempt of Court pursuant to Rule 80.

[321] The Respondent is reminded that the penalties for civil contempt can include but not be limited to incarceration.

[322] Costs will be determined once the Applicant's counsel update their figures and provide a copy of that update to the Court and the Respondent. He shall have 1 week from the date of filing of the Applicant's adjusted cost submissions to respond to the cost's submissions. Counsel's final costs submission on costs was received June 20, 2024. The Respondent had until June 27, 2024, to respond.

Moira Legere Sers, J.