

CASE NO.**VOLUME****PAGE****Cite as: Williamson v. Williams, 1998 NSCA 195**

DOUGLAS WILLIAMSON

GEORGE WILLIAMS, SCOTIA
BOND CO. LTD., and MIDLAND
WALWYN CAPITAL, INC.

- and -

(Appellant)

(Respondents)

C.A. No. 145652

Halifax, N.S.

Freeman, J.A.

APPEAL HEARD:

September 8, 1998

JUDGMENT DELIVERED:

December 22, 1998

SUBJECT: **Fiduciary Duty; Damages; Costs.****SUMMARY:**

Appeal from assessment of damages and costs ordered by Nova Scotia Court of Appeal after allowing appeal from dismissal of claim for restitution for breach of fiduciary duty. Trial judge reduced damages to reflect tax savings, gains in investments realized by appellant after termination of relationship with broker responsible for breach of fiduciary duty, disallowed claim for consequential damages in favour of enhanced costs award, and assessed party and party costs on amount awarded, applying highest scale under tariffs. Punitive or exemplary damages were not awarded.

ISSUES:

Were damages and costs determined according to proper principles?

RESULT:

Appeal allowed in part. Trial judge did not err in adjusting damages award to reflect tax savings, nor in refusing punitive or exemplary damages. However, removal of account from respondent broker provided reasonable cutoff date for calculating the loss and the subsequent gain should not have been deducted. Consequential damages resulting from legal fees, incidental to respondents' wrongdoing but not part of costs related to recovering loss, should have been allowed. The appellant had to go through two hearings at the trial level and two appeals, (as well as the respondents' leave application to the Supreme Court of Canada). Even using the highest scale, costs determined under the tariffs were so inadequate as to be manifestly unjust. The trial judge should have used his discretion under the rules to award additional lump sum costs. The award for

damages was increased from \$74,614 to \$97,200; costs were increased to \$44,180 including \$14,180 determined from the tariffs and a lump sum of \$30,000.

This information sheet does not form part of the Court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 15 pages.