

CASE NO.**VOL. NO.****PAGE**

McINNES COOPER &
ROBERTSON, a registered
partnership, and STEWART
McINNES, Q.C.

PATRICIA B. MacCULLOCH

- and -

(Appellants)
(Respondents on cross-appeal)

(Respondent)
(Appellant on Cross-appeal)

C.A. 165211

Halifax, N.S.

BATEMAN, J.A.

Cite as: MacCulloch v. McInnes Cooper & Robertson, 2001 NSCA 8

APPEAL HEARD:

November 29, 2000

JUDGMENT DELIVERED:

January 19, 2001

SUBJECT:

Solicitor's negligence.

SUMMARY:

Mrs. MacCulloch was an executor and one of the beneficiaries under her late husband's will. The estate, although possessed of substantial assets, was burdened by debt. Mrs. MacCulloch offered to purchase two properties owned by the estate, one being the former matrimonial home in the Halifax area and the other, a Toronto condominium. Under the will she had a right to be maintained in the matrimonial property for life. She paid \$500,000 for the properties and gave up her right to be maintained in the matrimonial home. Prior to purchasing the two properties she arranged to re-sell the matrimonial home at what appeared to be a substantial profit. The other beneficiaries and the other executors were not aware of the intended resale. The appellant, McInnes, acted for her in drafting the agreement to purchase the two properties from the estate and in reselling the matrimonial home. The solicitor did not advise Mrs. MacCulloch that, as an executor, she should obtain court approval to purchase an estate asset. After completion of the purchase and sale, as well as a later sale of the condominium, the estate was petitioned into bankruptcy. The trustee in bankruptcy successfully challenged the transaction in the courts and Mrs. MacCulloch was required to pay over to the estate the "profits" from the resales. She expended substantial legal fees in her defence on the application for an accounting of the profits. A judgment was entered against her for 1.8 million dollars in that regard but not paid by her. When the estate was closed, Mrs. MacCulloch, as principal beneficiary was assigned the right to that judgment. Mrs.

MacCulloch sued the appellants seeking damages for their negligent services. After a trial by judge alone in the Supreme Court, the appellants were found negligent in the manner in which they provided legal services to the respondent and damages were awarded. The appellants appealed the finding of negligence but not the quantum of damages. Mrs. MacCulloch cross-appealed seeking increased damages. She was not represented by counsel at trial or on the appeal.

ISSUES:

Was the solicitor negligent? If so, was his negligence causative of the damages? Did the judge err on the quantum of damages?

RESULT:

Appeal and cross-appeal dismissed. The judge did not err in finding that the solicitor was negligent in these circumstances. Causation, particularly in cases of negligence through advice not given, is primarily a question of inference by the trial judge. Here the judge did not err in inferring that Mrs. MacCulloch would have followed the appellant's advice if given. Additionally, the negligence was not limited to negligent advice but included negligent performance of a service. Causation was established on the evidence. There was no error in the trial judge's assessment of damages.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 78 pages