

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

KEVIN CHISHOLM

STEPHEN and LINDA MacNEIL

- and -

(Appellant)

(Respondents)

CA 156350

Halifax, N.S.

CROMWELL, J.A.

[Cite as: MacNeil v. Chisholm, 2000 NSCA 31]**APPEAL HEARD:**

January 21, 2000

JUDGMENT DELIVERED:

February 16, 2000

SUBJECT:**Real Property - Title - Boundaries - Adverse Possession - Powers of Court of Appeal - Appellate Review of Findings of Fact at Trial****SUMMARY:**

The respondents Stephen and Linda MacNeil sought a Certificate of Title for a peninsula of land at Ironville, Cape Breton, based on adverse possession. The appellant, Kevin Chisholm, sought a Certificate or a declaration of title to the same property based on paper title. The trial judge dismissed Chisholm's claim to paper title finding that the lands in question were not within the description of the deeds relied upon. The judge granted a Certificate of Title to the MacNeils holding that they, and those through whom they claimed, had been in possession for at least 20 years prior to the commencement of their proceeding in August of 1993. Chisholm appealed both findings.

ISSUES:

1. Did the trial judge err in dismissing Chisholm's claim for paper title?
2. Did the trial judge err in granting the MacNeils a Certificate of Title based on adverse possession?

RESULT:

Appeal dismissed. On the paper title issue, the judge did not err in deciding that the descriptions in the relevant deeds do not include the subject lands. He did not misapply the doctrine of *res judicata* or err in his interpretation of the **Marketable Titles Act**, S.N.S. 1995 - 96, c. 9. As for possessory title, the trial judge did not make any error justifying appellate intervention in concluding that the MacNeils had established possessory title.

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 23 pages.