

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

**Citation:** McIntyre v. McNeil Estate, 2010 NSSC 135

**Date:** 20100401  
**Docket:** 55987  
**Registry:** Sydney

**Between:**

Edna P. McIntyre, Gerald McNeil and Kenneth (Roy) McNeil  
Petitioner

v.

The Estate of James F. McNeil, deceased and Wade Wadman, Executor and  
Trustee of the Last Will and Testament of James f. McNeil  
Respondent

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**Judge:** The Honourable Justice Theresa Forgeron

**Heard:** September 29 and 30, 2008, March 11, 12 and 26, December 7 and 8, 2009 and April 1, 2010, in Sydney, Nova Scotia

**Final Written Submissions:** December 23, 2009 and January 7 and 13, 2010

**Oral Decision:** April 1, 2010

**Written Decision:** April 20, 2010

**Subject:** Estate Law: *Testators' Family Maintenance Act* application.

**Issue:** Entitlement and Remedy

**Result:** In his 2005 will, the Testator named his youngest child as the sole beneficiary. His other four surviving children were excluded. Three of those children made application for relief under the *Testators' Family Maintenance Act*. The court held that the Plaintiffs met the burden upon them. They established on a balance of probabilities that the Testator died without having made adequate provision for their proper maintenance and

support, taking into account all relevant circumstances. The Testator failed to meet his legal and moral obligations. The Plaintiffs established a need for maintenance, relative to the size of their father's estate, and also proved a strong moral claim. The court awarded each of the three Plaintiffs 12 % of the net value of the Estate. A specific dollar amount was not assigned because the court was not provided with credible evidence as to the true value of the estate and in particular the value of the salvage license and the real property. In the event the parties were unable to determine a proper valuation of the license and real property, or in the alternative, a mechanism by which the Plaintiffs would receive their portion of the estate, the court retained jurisdiction to determine these issues.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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