

1998

SN 08612

IN THE SUPREME COURT OF NOVA SCOTIA
Cite as: MacNeil v. Nova Scotia (Attorney General), 1998 NSSC 100

BETWEEN:

STEPHEN MACNEIL and LINDA MACNEIL

PLAINTIFFS

- and -

ATTORNEY GENERAL OF THE PROVINCE OF NOVA SCOTIA

- and -

KEVIN CHISHOLM

DEFENDANTS

DECISION AS TO COSTS

WRITTEN

REPRESENTATIONS: November 1998

DECISION: November 26, 1998

**COUNSEL: Mr. Patrick J. Murray
Solicitor for the Plaintiffs**

**William R. Burke
Solicitor for the Defendants**

GOODFELLOW, J.

1. In the written decision, following a four day trial, I granted the MacNeil's application under the Quieting of Titles Action and indicated to counsel they were entitled to be heard on the issue of costs.

Counsel have made written representations, which I have carefully reviewed and I consider the proper exercise of discretion to be as follows.

While I agree that in a property title/boundary type dispute, the "amount involved", as related to the possible value of the land or the right, is not always easy as, to ascertain or sufficiently reflective of what was required in the litigation.

Fundamentally however, the court should look first to whether or not "an amount involved" is relatively clear from the evidence, as to the probable value of the land and provided it is not so minimal or extreme, the amount involved should govern.

I agree with Mr. Burke that there is some guidance in the evidence as to the value of the land. The land was purchased by the MacNeil's by way of a vendor take back mortgage upon which the MacNeil's paid interest on the \$35,000.00 purchase price at the rate of 8%. While they maintain the property over the years, there is no indication of any expenditures by way of improvement. Mr. Burke says that the purchase price was \$30,000.00 and I think he is accurate, because the mortgage back to the vendor, from my

recollection, was in that amount. Of marginal assistance at the most, is its assessed value to the MacNeil's of \$22,900.00. There is also the evidence that at one time the MacNeil's were attempting to sell the property for \$35,000.00 and finally, the property had commercial value to Mr. Chisholm.

Overall, I think a reasonable value to be attached to the land for the purposes of determining "an amount involved" is \$34,000.00 and the MacNeil's are entitled to party and party costs in accordance with Tariff A, Scale 3, \$3,675.00.

A secondary issue arises with respect to entitlement to certain disbursements. The MacNeil's seek reimbursement for Cape Breton Post, \$227.04 and Attorney General \$800.00. It would be an unfair exercise of the court's discretion to reimburse the MacNeil's. These disbursements, which they would have incurred whether or not there was a contested proceeding and accordingly, they are not allowed.

I await the final order from Counsel.

J.