

CASE NO.

VOLUME

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Cite as: Wilson v. K.W. Robb & Associates Ltd., 1998 NSCA 117

CHARLES F. WILSON

K.W. ROBB & ASSOCIATES
LIMITED, a body corporate

- and -

(Appellant)

(Respondent)

C.A. No. 143981

Halifax, N.S.

HALLETT, J.A.

APPEAL HEARD:

May 13, 1998

JUDGMENT DELIVERED:

June 10, 1998

SUBJECT:

**Pre-judgment interest
Contract - Implied Terms
Trial Judge misapprehension of the Evidence
Trial Judge assistance to an unrepresented litigant**

SUMMARY:

The respondent sued the appellant for the balance owing for professional services rendered by the respondent to the appellant.

The Court of Appeal held the trial judge misapprehended the evidence in apparently finding that there was a contractual obligation of the appellant to pay interest at the rate of 24% per annum and, therefore, erred in awarding pre-judgment interest on this basis having stated that the rate of pre-judgment interest for the period in question ought to have been in the 10 to 12% range. The trial judge's misapprehension of the evidence went to the root of his decision. Therefore, he erred in law in the exercise of his discretion pursuant to s. 41(i) and (k) of the **Judicature Act**.

The Court of Appeal exercised its jurisdiction to do what the trial judge ought to have done and awarded pre-judgment interest for four years at 10%.

The trial judge did not err in failing to advise the appellant of the risks he ran if he did not testify.

The Court of Appeal held that the Court ought not to imply a term that the parties agreed on a rate of interest to be charged on an overdue account if there is no evidence other than the fact that an invoice claims interest at a particular rate on overdue accounts.

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