

NOVA SCOTIA COURT OF APPEAL
Citation: *Casavechia v. Noseworthy*, 2015 NSCA 56

Date: 20150611
Docket: CA 426686
Registry: Halifax

Between:

Glenna Casavechia

Appellant
Respondent by Cross-Appeal

v.

Shannon Noseworthy and The Bank of Nova Scotia Trust Company,
as personal representative of the Estate of Louis Joseph William Casavechia,
Sheldon Casavechia, Nicole Casavechia, Josh Downey and Jace Downey
Respondents
Appellant by Cross-Appeal Shannon Noseworthy

Judge: The Honourable Justice Linda L. Oland

Appeal Heard: February 9, 2015, in Halifax, Nova Scotia

Subject: Holograph Wills and Codicils – Proof in Solemn Form - Costs of Executors and Other Parties

Summary: The Executor of an estate declined to bring an application for proof in solemn form of a letter handwritten and signed by the testator. Consequently, his daughter did so. The judge determined that the letter was a valid holograph codicil, and awarded the daughter party and party costs. The widow of the testator appealed the decision on the merits, and the daughter cross-appealed the costs decision.

Issues: Whether the judge erred in finding that the letter demonstrated the testamentary intention required to establish a valid holograph codicil. Whether he erred in awarding party and party costs rather than solicitor and client costs.

Result:

Appeal dismissed, and cross-appeal allowed. In finding that the letter was a valid testamentary instrument, the judge identified the correct legal test and made no palpable and overriding error. On the costs issue, the judge erred in principle by failing to address the daughter's arguments for solicitor and client costs and founding his decision on a ground not raised by the parties. Had the Executor brought the application made necessary by the acts of the testator, it would have received solicitor and client costs. It declined, and the daughter acted properly in doing so. In these circumstances, solicitor and client costs were justified.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 27 pages.