

<u>CASE NO.</u>	<u>VOLUME</u>	<u>PAGE</u>
GILBERT L. GAUDET		WAYNE BARRETT and MARLENE BARRETT
(Appellant) (and Cross Respondent)	- and -	(Respondents) (and Cross Appellants)
	- and -	CANADIAN IMPERIAL BANK OF COMMERCE
		(Respondent)
C.A. No. 143446 C.A. No. 143752	Halifax, N.S.	PUGSLEY, J.A. and CROMWELL, J.A.

APPEAL HEARD: April 8, 1998

JUDGMENT DELIVERED: August 28, 1998

Cite as: Gaudet v. Barrett, 1998 NSCA 109

SUBJECT: **Solicitor-Client relationship, Fiduciary Duty and consequent damages**

Bank - Customer Relationship, Damages arising from Negligent Misrepresentation

SUMMARY: Appellant solicitor submits trial judge erred in concluding solicitor breached a fiduciary duty owed to clients, in concluding that the solicitor was jointly and severally liable for damages awarded against co-defendants, in awarding non-pecuniary damages in addition to general damages awarded against co-defendants, and in awarding costs on a solicitor-client basis.

Respondent clients cross-appeal submitting the trial judge erred in failing to hold solicitor "fully liable" for all interest accruing on a line of credit owed by the clients to their bank, in failing to hold the solicitor fully liable on a joint and several basis for all damages assessed against co-defendants, and for limiting damages for mental anguish to \$10,000.

Clients also appeal dismissal of their action against their bank submitting bank breached its fiduciary duty to them, or alternatively, was liable to them in negligent misrepresentation.

RESULT: Appeal by solicitor allowed in part, reducing amount awarded against him by \$10,000, and also setting aside award of costs on a solicitor and client basis and substituting an award for party and party costs only. Balance of appeal by solicitor dismissed.

Clients cross-appeal allowed in part. The trial judge took into account issues of foreseeability and causation which were not relevant in view of the nature of the breach of fiduciary duty by the solicitor. Balance of issues raised in cross-appeal rendered moot in view of the Court's conclusion eliminating majority of Bank's claim for interest from the clients.

Clients appeal against the Bank allowed on the basis of negligent misrepresentation. Determination of appropriate damages. The Court concluded that in these circumstances the trial judge was correct in determining no fiduciary duty arose in the course of the transaction between the clients and the Bank.

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DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER
SHEET. THE FULL COURT DECISION CONSISTS OF 64 PAGES.**