

**CASE NO.**

**VOLUME**

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Cite as: DesRosiers v. MacPhail, 1998 NSCA 159

DR. JACQUES DESROSIERS  
and JEAN PALMER

WANDA MacPHAIL, CAROL M.  
NEWBURY, CRAIG MacPHAIL,  
SUSAN ARSENAULT and  
OSCAR ARSENAULT

- and -

(Appellants)

(Respondents)

C.A. No. 144651

Halifax, N.S.

HALLETT, J.A.

APPEAL HEARD:

May 20, 1998

JUDGMENT DELIVERED:

September 10, 1998

SUBJECT:

**Negligence/Doctors Damages - Reduction of Future Earning Capacity**

SUMMARY:

The trial judge found that a doctor, who performed an abortion on Mrs. MacPhail, and a nurse at the Morgentaler Clinic in Halifax were liable for damages suffered by Mrs. MacPhail when her vehicle strayed across Highway 103 colliding head-on with a Ford Bronco coming from the opposite direction.

The finding of liability was appealed as was the award of damages for reduction of Mrs. MacPhail's earning capacity as a result of the injuries she suffered.

RESULT: The Court of Appeal concluded that the trial judge misunderstood the medical evidence but that his finding on liability ought nevertheless to stand for reasons other than those expressed by the trial judge.

The Court reduced the award for loss of future earning capacity from \$516,297.00 to \$395,125.00 on the basis that the trial judge failed to consider contingencies.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER SHEET. THE FULL COURT DECISION CONSISTS OF 41 PAGES.**