

**CASE NO.**

**VOL. NO.**

**PAGE**

MacDONALD CHISHOLM INCORPORATED  
and EQUISURE FINANCIAL NETWORK INC.

WILLIAM LAWRENCE CHISHOLM

- and -

(Appellants)

(Respondent)

C.A. 155716

Halifax, N.S.

**FREEMAN, J.A.**

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[Cite as:MacDonald Chisholm Inc. v. Chisholm, 1999 NSCA 127]

**APPEAL HEARD:**

October 4, 1999

**JUDGMENT DELIVERED:**

October 28, 1999

**SUBJECT:**

**Contract, breach, mitigation, damages.**

**SUMMARY:**

The elderly founder of an insurance business was retained as a consultant for a successor company under an agreement that included an escape clause providing that if the existing shareholders sold their shares the purchaser would have discretion to terminate the arrangement. The existing shareholders were two holding companies. When the holding companies themselves were sold by their individual shareholders the respondent was notified that his services were no longer required. The respondent succeeded in an action for breach of contract and was awarded damages of about \$116,000 for lost past and future income.

**ISSUES:**

The appellants deny the contract was breached; if it was they assert the termination was justified under an amalgamation a few months later; they allege failure to mitigate.

**RESULT:**

The appeal was allowed in part without costs. Breach of contract was upheld because the existing shareholders, the holding companies, had not changed. Damages were reduced by a twenty per cent contingency factor to reflect the possibility of termination resulting from an actual change of ownership such as the amalgamation. No failure to mitigate was found.

**This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 8 pages.**