

NOVA SCOTIA COURT OF APPEAL

Citation: *Penny v. DeLong Estate*, 2013 NSCA 74

Date: 20130618

Docket: CA 408754

Registry: Halifax

Between:

Ronald V. Penny

Appellant

v.

Donald Bruce Powers, Personal Representative of
the Estate of John Hamilton DeLong
and George Lewis, Personal Representative of
the Estate of Helen Lewis

Respondents

Judges: Oland, Fichaud and Bryson, JJ.A.

Appeal Heard: June 3, 2013, in Halifax, Nova Scotia

Subject: **Real property law. Joint tenancy. Severance.
Conveyance to oneself.**

Summary: Ms. Lewis and Ms. DeLong owned property as joint tenants. Before she died and without Mr. DeLong's knowledge, Ms. Lewis conveyed her interest in the property to herself. The deed recited that it was for the purpose of severing the joint tenancy. The chambers judge found that the deed was not effective at law to sever the tenancy. He rejected arguments that severance was effective "in equity".

Issues: Had there been a severance of the tenancy in equity?

Result: Appeal dismissed. Although some jurisdictions have made legislative changes enabling a conveyance to oneself, the common law rule that such conveyances are ineffective, prevails in Nova Scotia which has no such legislation. A

unilateral declaration or act by a joint tenant does not sever the tenancy absent a conveyance. Equity would recognize a severance in the case of an agreement to sell or a declaration of trust in favour of another party. Neither applied here. No estoppel arose because Mr. DeLong made no statement or took no action on whether Ms. Lewis detrimentally relied. It was not unfair for Mr. DeLong to rely on his strict legal rights in the absence of a valid conveyance or inequitable conduct by him.

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 6 pages.