

NOVA SCOTIA COURT OF APPEAL  
**Cite as: MacInnis Estate v. MacDonald, 1995 NSCA 99**

Chipman, Jones and Pugsley, JJ.A.

**BETWEEN:**

THE ESTATE OF THE LATE	)	
J. MacInnis, represented by its	)	
Administrators, BRIAN MacINNIS	)	
	)	Daniel J. MacIsaac
	)	for the Appellant
	)	
Appellant	)	
	)	
- and -	)	
	)	Arthur J. LeBlanc, Q.C.
	)	for the Respondent
MARLENE MacDONALD and	)	
DONALD B. MacDONALD	)	
	)	
	)	
Respondents	)	
	)	
- and -	)	Appeal Heard:
	)	May 31, 1995
MARLENE MacDONALD and DONALD B.	)	
MacDONALD	)	Judgment Delivered:
	)	May 31, 1995
	)	
	)	
Cross-appellants	)	
	)	
- and -	)	
	)	
THE ESTATE OF THE LATE ALEXANDER	)	
J. MacINNIS, represented by its Administrators	)	
BRIAN MacINNIS and ALEXANDER	)	
MacINNIS	)	
	)	
	)	
Cross-respondents	)	

**THE COURT:** Appeal and cross-appeal dismissed per oral reasons for judgment of Jones, J.A.; Chipman and Pugsley, JJ.A.

The reasons for judgment of the Court were delivered orally by:

JONES, J.A.:

This is an appeal from a decision in an action by the administrators to recover the proceeds of bank accounts held in joint accounts by the deceased, Alexander J. MacInnis and the respondent, Marlene MacDonald. Alexander J. MacInnis died on July 6, 1993, at the age of 75 years. His wife died in 1991. They both died intestate. They held real and personal property including bank accounts in joint tenancy. Mr. MacInnis took possession of these assets upon his wife's death.

Mr. MacInnis was survived by eight children including the respondent Marlene MacDonald the eldest and the administrators.

Mr. MacInnis at the time of his death held three bank accounts jointly with Marlene MacDonald at the Royal Bank and the credit union in Port Hood. In January, 1992, Mr. MacInnis went to the bank and the credit union alone and instructed the bank and the credit union that he wished to transfer the three accounts to joint accounts with his daughter, Marlene. These instructions were carried out by the bank and the credit union. He instructed Marlene to go to the bank and the credit union to sign the cards and she did so. Marlene was the only child fully aware of the accounts. While Mr. MacInnis discussed disposing of his real property with his other children he never discussed the accounts. At the time of his death the accounts contained some \$75,000.00.

There were meetings of the family following Mr. MacInnis' death. Unfortunately there was a great deal of acrimony at these meetings which was exacerbated by the fact that Marlene declined to disclose the full amounts in the accounts. The administrators brought the present action for an accounting and claiming the proceeds in the accounts for the benefit of the estate.

After a trial in which most of the children testified the trial judge found in favour of the respondents. He carefully reviewed the authorities and concluded that Mr. MacInnis clearly intended to make a gift of the moneys in the accounts to his daughter, Marlene. The trial judge held that the presumption of advancement applied and that the gift was not

impressed with a trust in favour of the deceased or his grandchildren. He dismissed the action but did not grant costs to the respondents.

The administrators have appealed from the decision. The respondents have cross-appealed on the issue of costs. The administrators contend that the trial judge erred in applying the presumption of advancement and concluding that the evidence supported an intention on the part of the deceased to benefit his daughter, Marlene.

We have reviewed the record and heard counsel and it has not been shown that the trial judge erred in law or fact. The appeal must be dismissed with costs to the respondents which we fix at \$1500.00 plus disbursements. As to the respondents' cross-appeal we are not satisfied the trial judge erred in the exercise of his discretion. The cross-appeal is dismissed but without costs.

J.A.

Concurred in:

Chipman, J.A.  
Pugsley, J.A.

C.A. No. 110285

NOVA SCOTIA COURT OF APPEAL

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THE ESTATE OF THE LATE ALEXANDER  
J. MacINNIS, represented by its  
Administrators, BRIAN MacINNIS and  
ALEXANDER MacInnis

	)	
	)	
- and -	)	REASONS
FOR	)	
	)	JUDGMENT
BY:	)	
MARLENE MacDONALD and	)	
DONALD B. MacDONALD	)	

