

**NOVA SCOTIA COURT OF APPEAL**

**Citation: *Re: Keddy v. Keddy (Estate of)*, 2003 NSCA 55**

**Date:** 20030521

**Docket:** CA 186973

**Registry:** Halifax

**Between:**

Keith M. Keddy

Appellant

v.

The Estate of Gladys Gertrude Keddy

Respondent

---

**JUDGE:** BATEMAN, J.A. (Orally)

**APPEAL HEARD:** May 21, 2003

**JUDGMENT DELIVERED:** May 21, 2003

**WRITTEN RELEASE OF ORAL:** May 23, 2003

**SUBJECT:** Probate - Petition for Proof

**SUMMARY:** Appeal from an order of Justice Donald Hall of the Supreme Court sitting as a judge in the Court of Probate granting a Petition for Proof in Solemn Form of the Last Will and Testament of the late Gladys Gertrude Keddy. During the time surrounding the alteration of her will the testatrix was experiencing episodes of diminished mental capacity. The judge found that the testatrix was of sound mind at the time of altering her will.

**ISSUE:** Did the judge err in so finding?

**RESULT:** Fact specific. The finding of mental capacity in such circumstances is one of

fact. There was evidence from which the judge could conclude that the testatrix, at the time of altering her will, was of sound mind. In his thorough decision the judge reviewed the evidence of capacity in detail, understood and applied the correct legal principles, and concluded, with reasons, as he was entitled to do, that he preferred that of the lay witnesses to the testimony of the medical experts. The decision does not reflect palpable or overriding error. Appeal dismissed with fixed costs to the Estate.

**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 2 pages.**