

NOVA SCOTIA COURT OF APPEAL
Citation: *Kimbrell v. Goulden*, 2006 NSCA 102

Date: 20060921
Docket: CA 238212
Registry: Halifax

Between:

Michael L. Goulden

Appellant

v.

James Kimbrell and Betty Kimbrell

Respondents

Judge: The Honourable Justice Hamilton

Appeal Heard: April 5, 2006

Subject: **Real property; prescriptive right of way; trespass**

Summary: Two self-represented parties were involved in a dispute about whether the respondents had a prescriptive right of way to use a certain road to access their land. Mr. Goulden claimed to own the land crossed by the road. The judge frequently prevented him from introducing evidence with respect to ownership. There was evidence that another person, who had no notice of the action, may own the land. The judge held that for the purpose of this action the respondents had a prescriptive right of way to use the road.

Issues: The issues raised by the appellant were: did the judge err by refusing to admit certain specified evidence, by not considering or giving proper weight to the evidence before him, by not applying the correct law, by finding that continuous use of the road was established and by finding that a prescriptive right of way had been created where it was uncertain whether Mr. Goulden owned the land crossed by the road?

Result: Appeal allowed. Ownership of the servient tenement was relevant to the issue of whether there was acquiescence or permission given to the respondents or their predecessors in title to use the road, critical considerations in determining whether a prescriptive right of way had arisen. The judge erred in not adjourning the trial to allow notice of the action to be given to the other person who the evidence suggested may own the land.

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 17 pages.