

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Connolly v. Royal Bank of Canada, 2007 NSSC 375

**Date:** 20071012

**Docket:** SK 183752

**Registry:** Kentville

**Between:**

Gary Connolly, in his personal capacity and  
as representative of the Estate of Margaret Connolly

Plaintiff

v.

Royal Bank of Canada, a body corporate  
and Terrance Hebb

Defendants

**Judge:** The Honourable Justice John D. Murphy

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**Judge:** The Honourable Justice John D. Murphy

**Heard:** March 6-9, 2007 in Kentville, Nova Scotia

**Final Written  
Submissions:** April 5, 2007

**Written Decision:** February 7, 2008  
{*Oral decision rendered October 12, 2007*}

**Subject:** Negligence: Economic Loss, Negligent Misstatement, Negligent  
Performance of Service

**Summary:** During 2001, Mr. Connolly held discussions with Defendant Bank and its Manager, Mr. Hebb, concerning adding Mrs. Connolly as an insured mortgagor on their home/business property. Mr. Connolly had been the sole owner of the premises when mortgage was first obtained, and prior to discussions with the Bank his wife had become a joint owner. Mrs. Connolly was diagnosed with a fatal brain tumor in January 2002 and became uninsurable before mortgage and insurance arrangements were made. Plaintiff alleged Defendants were negligent, and claim disability benefits from the date of Mrs. Connolly's diagnosis, as well as payout of the mortgage and other amounts which would have been payable if mortgage insurance had been arranged.

- Issue:** Are Defendants liable pursuant to:
- (1) Negligence simpliciter;
  - (2) Application of an exception to the rule against recovery for pure economic loss:
    - (a) Negligent misrepresentation - **Hedley Byrne** doctrine;
    - (b) Negligent provision of service.

**Result:** Plaintiff's claim dismissed.

- (1) Negligence Simpliciter - Claim was for pure economic loss and could not succeed in the absence of personal injury or property damage.
- (2)
  - (a) Negligent misrepresentation - Although a "special relationship" existed between the Bank and its client, Plaintiff did not establish that Defendants made any misrepresentation. Defendants' only commitment was to "look into" the matter, and they did not misrepresent any existing fact, or with reference to the future make any statement which was at least in part untrue, inaccurate or misleading with respect to an existing fact.
  - (b) Negligent Provision of Service - Bank's relationship with client was that of a service provider, which is a recognized category in which negligent performance can lead to recovery for pure economic loss. However, examination of the dealings between the parties did not indicate that the Plaintiff was negligent in performing a service. No concrete instruction was given by the Plaintiff and no undertaking to perform a service was made by the Defendants when the topic was discussed prior to December 2001 at meetings which had been arranged to address other matters. Defendants made reasonable efforts to contact Plaintiff following receipt of instructions by voicemail in December 2003. Plaintiff did not establish that Defendants failed to make reasonable steps to fulfil an undertaking to provide a service which Plaintiff was relying upon them to perform.

Mrs. Connolly's being an uninsured mortgagor at the time of diagnosis did not result from Defendants' negligence.

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