

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** MacRae Estate (Re), 2010 NSSC 157

**Date:** 20100423  
**Docket:** PtH 301816  
**Registry:** Port Hawkesbury

In the Estate of Mary Sarah MacRae

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**Judge:** The Honourable Justice Frank Edwards

**Heard:** March 30 and 31, 2010, in Port Hawkesbury, Nova Scotia

**Subject:** Probate, undue influence, resulting trust.

**Summary:** The Claimant (Theresa) and her late husband (Vinnie) (one of eight siblings) lived on the family farm from 1973 until Vinnie's death in 2002. In 1973, Vinnie's parents had convinced him to quit his job in Ontario and return to the farm. Vinnie's father died in 1975. Vinnie worked the farm and substantially improved it. Vinnie's mother (Sadie) lived with Vinnie and Theresa until shortly before her death in 2003.

In 1995, Sadie signed a deed making herself and Vinnie joint tenants. Sadie's expectation was that she would die first and Vinnie would become sole owner of the farm. Vinnie died first (2002). By operation of law, title to the farm is now in Sadie's estate. Theresa claims that there is a resulting trust in favour of Vinnie's estate.

**Issue:**

1. Has the Claimant rebutted a presumption of undue influence regarding the signing of the 1995 deed?
2. Has the Claimant proven the existence of a resulting trust in favor of her husband's estate?

**Result:** Yes, on both issues.

1. Sadie fully understood the effect of the 1995 deed. The deed would have accomplished exactly what Sadie had intended if she had predeceased her son. Sadie was not subject to undue influence.

2. It would be unjust and contrary to Sadie's intention to deprive Vinnie's estate of full ownership of the farm.

**Cases Noticed:**     *Dempsey v. Dempsey* 2010 NSSC 96;  
                          *Veinot Estate v. Veinot* 1998 CanLII 1957;  
                          *Rathwell* (1978), 83 DLR 3rd, 289 (SCC)

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