

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Brogan v. Bank of Montreal , 2013 NSSC 76

**Date:** 20130613

**Docket:** Syd. No. 279326

**Registry:** Sydney

**Between:**

**THOMAS BROGAN, SR., THOMAS BROGAN, JR.,  
PATRICK BROGAN, PATRICIA BROGAN and FRANCIS  
A. REASHORE**

Plaintiffs

v.

**BANK OF MONTREAL, JOAN DEAN, DUNDEE  
PRIVATE INVESTORS INC./SERVICES FINANCIERS  
DUNDEE INC, amalgamated from 3947327 CANADA INC.,  
formerly known as HERITAGE FINANCIAL SERVICES  
LIMITED and MITCHELL WHALEN**

Defendants

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**Judge:** The Honourable Associate Chief Justice Deborah K. Smith

**Heard:** February 12<sup>th</sup> and 27<sup>th</sup>, 2013, in Halifax, Nova Scotia

**Final Written**

**Submissions:** May 31<sup>st</sup>, 2013

**Written Decision:** June 13<sup>th</sup>, 2013

**Counsel:** Derrick J. Kimball, Esq. on behalf of the Plaintiffs  
Alexander S. Beveridge, Q.C. on behalf of the Bank of Montreal  
and Joan Dean  
Roderick (Rory) H. Rogers, Q.C. on behalf of Dundee Private Investors  
Inc./Heritage Financial Services Limited  
D. Kevin Burke, Esq., on behalf of Mitchell Whalen

**Subject:** Motion for an Order disqualifying the Plaintiffs' law firm from acting as  
counsel in this matter.

**Summary:** The Plaintiffs are represented by the firm of Kimball Brogan. Derrick J.  
Kimball is the solicitor of record for the Plaintiffs. His partner, Nash T.  
Brogan, is co-counsel with Mr. Kimball on the file. Mr. Brogan is related to  
all of the Plaintiffs.

**Issues:** Whether Mr. Brogan is precluded from acting as counsel in this matter. Whether the other lawyers in Mr. Brogan's firm are precluded from acting.

**Result:** There is no blanket prohibition against representing a friend or a family member in a proceeding. When considering a motion to remove a solicitor, the court analyzes the nature of the relationship between the lawyer and the client(s) and whether the relationship will interfere with the lawyer's duty to provide objective, disinterested professional advice. The court will also consider whether the lawyer has a personal involvement or interest in the proceeding. The concern is the lawyer's ability to remain objective and independent when advising the client and dealing with the other parties and the court.

In this case, the court had little information about the relationship between Mr. Brogan and his family beyond the fact that they are immediate family members. The court noted that Mr. Brogan was a witness in the present motion and will be questioned on discovery. He may be a witness at trial. The court concluded that Nash Brogan should not be a witness and counsel at the same time. Accordingly, an Order will issue precluding Nash Brogan from acting further in relation to this action.

The court further concluded that at this stage of the proceeding there is an insufficient basis to conclude that the other lawyers at Kimball Brogan should be precluded from acting in relation to this matter. This aspect of the motion was dismissed reserving to the Defendants the right to bring a further motion for the removal of Mr. Brogan's partners and associates as the case develops and further information is known.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.**