

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Curtis, MacKinnon, Bonin & MacKinnon v. Burke, 2003 NSSC 248

Date: 20031217

Docket: SN 195936

Registry: Sydney

Between:

Brian Curtis, Anthony MacKinnon,
Paul Bonin and W. Francis MacKinnon

Appellants

v.

Osbourne Burke

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Gerald R. P. Moir

Heard: 9 and 10 September 2003, in Sydney

Subjects: Arbitration, Appeal, Questions of Fact and Law, Discretion; Partnership, Agreement, Terms for Dissolution, Ambiguity; *Partnership Act*, termination under s. 29 (1); *Partnership Act*, judicial dissolution.

Summary: Four crab fishermen sought to dissolve a partnership of five. One term of their agreement spoke of termination by four out of the five. Another provided for unanimity to dissolve. Agreement provided for arbitration. Before the arbitrator, the four also argued that s. 29(1) provided for termination by any partner and that there should be judicial dissolution, a power assigned to the arbitrator. Arbitrator found for the other partner.

Issues: 1) How to resolve the ambiguity? 2) Whether s. 29(1) applied? 3) Grounds to interfere with discretion to dissolve.

Result: 1) Arbitrator correctly resolved the ambiguity in favour of unanimity. 2) *Mose v. Elphick* is good law in Nova Scotia. 3) No palpable and overriding error in fact finding, and discretion exercised judicially. Appeal dismissed.

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