

NOVA SCOTIA COURT OF APPEAL

Citation: *Cosmetology Association of Nova Scotia v. Dominey*, 2005 NSCA 100

Date: 20050624

Docket: CA 225604

Registry: Halifax

Between:

Cosmetology Association of Nova Scotia

Appellant

v.

Heather Dominey

Respondent

Judge: Justice Linda Lee Oland

Appeal Heard: November 19, 2004

Subject: *Civil Procedure Rule 20.01*

Summary: After the respondent did not return to work following injuries suffered in a motor vehicle accident, the appellant terminated her employment. The respondent's statement of claim alleged that she had had an unblemished record of service. She claimed that her employment was terminated without just cause, she had suffered financial hardship as a result, and the damages she suffered had been aggravated by the appellant's conduct in terminating her employment. The respondent claimed general, special, aggravated and punitive damages. In its defence the appellant claimed that the respondent had failed to provide medical information necessary for it to plan for her absence and return to work, termination was for cause and with notice, and any financial hardship she suffered resulted from injuries incurred in the accident and her failure to mitigate damages. The appellant challenged her allegation of an unblemished work history and maintained that the respondent had been accommodated medically at work prior to the accident.

The Chambers judge dismissed the appellant's application for production of certain documents pertaining to her medical history.

He concluded that they were not relevant in determining whether her termination was wrongful.

Issue: Whether the Chambers judge erred in law when he concluded that those documents had no practical relevance to any matter in issue.

Result: Leave to appeal granted and appeal allowed, with costs. Although the Chambers judge instructed himself as to the correct principles of law, he made a palpable and overriding error in finding that the pleadings raised but one issue relating to the termination of the respondent's employment. By attempting to isolate "the" issue, he failed to consider the entirety of the pleadings which raised several issues, including ones relating to the respondent's claims that the appellant's actions caused financial hardship, its conduct aggravated her damages, and she was entitled to aggravated or punitive damages. *Rule 20.01(1)* calling for disclosure of documents "relating to every matter in question in the proceeding" is to be liberally and broadly interpreted.

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 7 pages.