

NOVA SCOTIA COURT OF APPEAL

Citation: *Kirby v. Dominion of Canada General Insurance Company*,
2008 NSCA 14

Date: 20080213

Docket: CA 284475

Registry: Halifax

Between:

Brenda Jessie Kirby

Appellant

v.

The Dominion of Canada General Insurance Company,
a body corporate, and Mark Robert Strickland

Respondent

Judge: The Honourable Justice Jamie W. S. Saunders

Appeal Heard: February 5, 2008

Subject: Appeals from interlocutory, discretionary orders. Standard of review. Fresh evidence. Motion to sever proceedings. **Civil Procedure Rule 5.**

Summary: Appeal from a chambers judge's decision allowing an application brought by the Dominion of Canada General Insurance Company to sever the contractual claim brought against it, which the appellant (plaintiff) had added to a personal injury claim against a motorist. On appeal, the appellant sought to introduce fresh evidence consisting primarily of transmittal letters among counsel, and extracts from discovery examinations.

Held: Leave to adduce fresh evidence refused. The proffered material was not relevant, and even if it were it could not reasonably be expected to have affected the chambers judge's decision.

The Court's discretion to sever claims under **Rule 5.03(1)**

is broad. The judicial exercise of that discretion comes down to this: applying proper legal principles the judge must weigh all of the circumstances involved and determine a course of action that will best attain the object of the **Rules** which is to secure the just, speedy and inexpensive determination of every proceeding. The chambers judge did not err in principle, nor did any obvious injustice arise, in deciding that the joint trial of Section A and Section B claims would unfairly delay the administration of justice to the detriment of all parties. The interpretation of certain policy provisions, the necessary pre-conditions for payment of no-fault benefits, and the potential limitation defence barring recovery of such expenses, were the principal questions in the Section B claim, yet distinct from the myriad of issues that arose in the Section A claim.

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 9 pages.