

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Royal & Sun Alliance Insurance Company v. Hillier*, 2005 NSCA 151

**Date:** 20051124

**Docket:** CA 248952

**Registry:** Halifax

**Between:**

Royal & Sun Alliance Insurance Company of Canada,  
a body corporate

Appellant

v.

Gary Hillier

Respondent

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**Judge:** The Honourable Justice Thomas Cromwell

**Appeal Heard:** November 10, 2005

**Subject:** Summary judgment - Abuse of process

**Summary:** After a civil jury trial, Mr. Hillier recovered a tort judgment in a personal injury action. The award included a sum for future loss of earnings. He then sued his Section B insurer for loss of income benefits. The insurer applied for summary judgment, arguing that the action was an abuse of process because the judgment in the civil trial settled Mr. Hillier's claims for loss of income. The chambers judge dismissed the insurer's application and it appealed.

**Issues:** Did the chambers judge err in dismissing the summary judgment application?

**Result:** Appeal dismissed. The issues on which Mr. Hillier's entitlement to Section B benefits depended were not the same as those resolved by the jury in the tort action. Questions about

the rights as among Mr. Hillier, the tortfeasor and the Section B insurer in the event Mr. Hillier proved entitlement under Section B were not before the Court.

**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 4 pages.**