

**CASE NO.**

**VOL. NO.**

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DR. ANDRÉ TOUCHBURN,  
DR. FRANK LORD, DR. CLOVIS  
EID, and DR. BENOÎT GRENIER

- and -

HENRY JOSEPH O'BRIEN and  
THE ATTORNEY GENERAL OF  
CANADA, representing Her Majesty  
the Queen, and MYLES TRENHOLM

(Appellants)

(Respondents)

CA 174820

Halifax, N.S.

HALLETT, J.A.

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[Cite as: *Touchburn v. O'Brien*, 2002 NSCA 21]

**APPEAL HEARD:**

January 29, 2002

**JUDGMENT DELIVERED:**

February 8, 2002

**SUBJECT:**

**Appeal from Interlocutory Order - Minkoff v. Poole and Lambert**  
(1991), 101 N.S.R. (2d) 143.  
**Civil Procedure Rule 11.05(a) - setting aside statement of claim**  
**Jurisdiction of Nova Scotia Court over out of province defendants**  
**Oakley v. Barry** (1998), 166 N.S.R. (2d) 282

**SUMMARY:**

The appellants applied for leave to appeal and, if granted, appealed from an interlocutory judgment of Justice Wright in which he dismissed the appellants' application made pursuant to **Civil Procedure Rule 11.05(a)** for an order setting aside the respondent's originating notice and statement of claim on the ground that the Nova Scotia Supreme Court was without jurisdiction. Justice Wright found that the Court had jurisdiction to adjudicate the claim made by the respondent that the appellants were negligent in their medical treatment of him while a prisoner at an institution in New Brunswick. The respondent alleges that as a result of an improper medical diagnosis (a failure to diagnose a circulatory problem) he suffered a stroke on May 30<sup>th</sup>, 1999, while under the appellants' care. He was released from prison in June, 1999 and returned to his home in Nova Scotia. Since then he has been treated in Nova Scotia for the stroke and other medical problems. He was advised by Dr. Rebelo, an internal medicine specialist, that he had not received proper medical care while incarcerated in New Brunswick. He suffered a so-called second stroke (a TIA) on July 2<sup>nd</sup>, 2000.

The respondent resides in Nova Scotia; the appellants in New Brunswick. He is 66 years of age, in poor health, which makes travel very difficult, and is in poor financial circumstances.

**RESULT:**

The Court of Appeal held Justice Wright did not err in his assessment of the facts nor err in applying the decision of this Court in **Oakley v. Barry** in determining the Supreme Court of Nova Scotia had jurisdiction to adjudicate the respondent's claim.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 7 pages.