

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Mahoney v. Cumis Life Insurance Company*, 2011 NSCA 31

**Date:** 20110330

**Docket:** CA 327577

**Registry:** Halifax

**Between:**

Mary Isobel Mahoney

Appellant

and

Cumis Life Insurance Company

Respondent

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**Judge:** The Honourable Justice Joel Fichaud

**Appeal Heard:** March 16, 2011

**Subject:** **Preliminary Determination of Law - Rule 12**

**Summary:** Mr. Mahoney, who had a pre-existing heart condition, was in a motor vehicle accident and died of a heart attack shortly after. His widow sued for recovery on an accidental death insurance policy. The insurer applied under *Rule 12* for a determination that the death was not accidental. The Chambers judge held that the death was caused partly by the pre-existing heart condition and was outside the policy's definition of "accidental death". He dismissed Ms. Mahoney's action. Ms. Mahoney appealed.

**Issues:** Was the judge entitled to make a finding of cause of death in an application under *Rule 12*?

**Result:** The Court of Appeal agreed with the judge's interpretation of

the insurance policy. *Rule 12* deals with a determination of law and did not entitle the judge to find as a fact what caused the death. The Court of Appeal allowed the appeal in part.

**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 10 pages.**