

FRANCIS J. HURLEY		CO-OPERATORS GENERAL INSURANCE COMPANY
	- and -	
(Appellant)		(Respondent)
C.A. No. 144304	Halifax, N.S.	FLINN, J.A.

APPEAL HEARD: April 3rd, 1998

JUDGMENT DELIVERED: May 12th, 1998

SUBJECT: **Dismissal for Want of Prosecution; Civil Procedure Rule 28.13
Abuse of Process - Civil Procedure Rule 14.25**

SUMMARY: The Chambers judge dismissed the appellant's action against the respondent pursuant to **Civil Procedure Rule 28.13** for want of prosecution. In an oral judgment, without detailed reasons, the Chambers judge decided that the appellant had abused the process of the Court. The judgment of the Appeal Court contains detailed review of the facts and circumstances.

RESULT: Appeal allowed.

The Chambers judge did not articulate, or apply, the proper test for the dismissal of an action for want of prosecution. Such an order requires:

- (a) that there has been inordinate and inexcusable delay; and
- (b) that such delay caused prejudice to the conduct of the defence.

On a review of the facts and circumstances, the Court of Appeal determined that there was no inordinate delay in this case; and, even if there was, such delay did not cause prejudice to the conduct of the defence.

While the lack of co-operation by the appellant and his counsel in seeing to it that the appellant's claim was advanced expeditiously, leaves a lot to be desired in this case, it does not amount to an abuse of the process of the Court.

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DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER
SHEET. THE FULL COURT DECISION CONSISTS OF 23 PAGES.**