

NOVA SCOTIA COURT OF APPEAL
Citation: *Laushway v. Messervey*, 2014 NSCA 7

Date: 20140128
Docket: CA 412677
Registry: Halifax

Between:

Peter Laushway

Appellant

v.

Albert Messervey & Sobeys Group Inc.

Respondents

Judge: Mr. Justice Jamie W.S. Saunders

Appeal Heard: September 16, 2013, in Halifax, Nova Scotia

Subject: **Search for Truth. Privacy. Computer Hard Drive. Metadata. Electronic Information. Forensic Analysis. Civil Procedure Rules 14 and 16. Production Orders. Standard of Review. Judicial Discretion. Relevance. Presumption. Burden of Proof.**

Summary: The appellant, a self-employed businessman, who earns his income selling health products over the Internet claimed that as a result of injuries sustained in a motor vehicle accident the amount of time he was able to devote to his business was substantially reduced as he was only able to sit at his computer for short periods of time. Before the mishap he said he spent 12-15 hours a day at his computer, but is now limited to 2-3 hours each day at most. Part of his suit against the respondents included a significant claim for lost income. The respondents sought an order for production requiring the appellant to produce the metadata from his computer's hard drive, intending to have it analyzed by a forensic expert to determine usage patterns in the years following the accident. The Chambers judge granted the production order. The

appellant appealed.

Held:

Appeal dismissed. The Court undertook a lengthy analysis of Rules 14 and 16 and established a 3-step test for the application of those Rules when deciding whether compelled production of electronic information is justified.

Based on the unique circumstances in this case the appellant had put his computer use squarely in issue. There was a clear, direct link between the hours he said he spent at his computer, and his income as a salesman. The information was relevant, and the respondents should be entitled to access that information in order to test the extent and reliability of the appellant's claim.

The precise terms and conditions contained in the production order properly addressed the important privacy, policy and technical issues triggered by the requested forensic analysis.

The Court provided a list of ten topical questions to guide trial judges when applying the law and exercising their discretion in weighing the evidence and balancing competing interests before deciding whether to grant or refuse production orders in cases such as this one.

<p><i>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 26 pages.</i></p>
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