

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *D.E. & Son Fisheries Ltd. v. Goreham*, 2004 NSCA 53

**Date:** 20040414

**Docket:** 214059

**Registry:** Halifax

**Between:**

D.E. & Son Fisheries Limited

Appellant

v.

Dwayne Goreham, Danny Shand and Ricky Smith

Respondents

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**Judge:** Bateman, J.A.

**Appeal Heard:** April 5, 2004

**SUBJECT:** **Interlocutory appeal on filing of evidence on re-hearing of application in Supreme Court**

**SUMMARY:** The Chambers judge granted summary judgment which was reversed on appeal. The Appeal Court directed that the applicant for the summary judgment was free to bring before the Supreme Court judge, the application for the alternative relief claimed at the same time as the summary judgment. The Chambers judge, on the re-hearing, refused to permit the applicant to file affidavits, believing that the application must be re-heard on the record as it was at the original application.

**ISSUES:** Did the judge err in: (1) refusing to receive the additional material; and (2) in failing to apply the test for a mandatory injunction to the record before him?

**RESULT:** The Chambers judge erred in refusing to permit the applicant to file affidavits. Additionally, the Chambers

judge failed to apply the test for mandatory injunction to the record before him. Appeal allowed and matter remitted to a different judge for hearing on the merits.

**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 6 pages.**