

NOVA SCOTIA COURT OF APPEAL
Citation: *Coffin v. Sandford*, 2003 NSCA 43

Date: 20030415
Docket: CA 189085
Registry: Halifax

Between: Sheila Coffin and Donald Coffin

Appellants

v.

Michael Grant Sanford

Respondent

Judges: Chipman, Freeman and Roscoe, J.J.A.

Appeal Heard: April 15, 2003, in Halifax, Nova Scotia

Written Judgment: April 15, 2003

Held: Appeal dismissed with costs to the respondent, per oral reasons for judgment of Roscoe, J.A.; Chipman and Freeman, J.J.A. concurring.

Counsel: David W. Richey, for the Appellants
Shawn H. E. Harmon, for the Respondent

Reasons for judgment:

- [1] The narrow issue raised in this appeal is whether in a personal injury action, documents sent by the plaintiffs' counsel to an expert witness continue to be privileged and protected from discovery where the expert has relied on the material in preparation of the medical-legal report which the plaintiffs intend to introduce at trial. The Chambers judge, Justice Gerald Moir, relying on the decision of this court in **Greenwood Shopping Plaza v. Buchanan** (1979), 31 N.S.R. (2d) 135, [see paras. 46 - 62] (leave to appeal to Supreme Court of Canada dismissed: (1979) 32 N.S.R. (2d) 270) found that although the documents were originally protected by litigation privilege, the privilege had been waived when plaintiffs' counsel released the expert report to counsel for the defendant.
- [2] The standard of review applied in this court in matters such as this has been settled in **Minkoff v. Poole and Lambert** (1991), 101 N.S.R. (2d) 143 and often reiterated:

. . . [T]his court will not interfere with a discretionary order, especially an interlocutory one such as this, unless wrong principles of law have been applied or a patent injustice would result. The burden on the appellant is heavy.

- [3] In our view Justice Moir did not apply wrong principles of law in the exercise of his discretion in this matter. Leave to appeal is allowed but the appeal is dismissed. The appellants will pay to the respondent, forthwith, his costs of this appeal which are hereby fixed at \$1,000.00, inclusive of disbursements.

Roscoe, J.A.

Concurred in:

Chipman, J.A.

Freeman, J.A.

