

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Cushing v. Hood, 2007 NSSC 97

**Date:** 20070410

**Docket:** S.Y.6512; 180082

**Registry:** Yarmouth

**Between:**

Wendy Cushing, Future Group Realty  
Limited and Russell Cushing

Plaintiffs

v.

S. Clifford Hood

Defendant

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**Judge:** The Honourable Justice Allan P. Boudreau

**Heard:** December 18, 2006 at Barrington and December 20,  
2006 at Yarmouth, N.S.

**Written Decision:** April 10, 2007

**Subject:** Practice; Solicitor-client privilege; Solicitor-client  
relationship.

**Summary:** This case is about the sometimes difficult question of when solicitor-client privilege arises; made more difficult by the fact that two associated lawyers from the same firm and one of their wives are involved in the pertinent conversations. The plaintiff, Russell Cushing, practiced law as an associate with the defendant, S. Clifford Hood, from 1992 to 2000. In December of 1998, Wendy Cushing, Russell Cushing's wife, was contemplating leaving her employment as a real estate broker with Tinkham Real Estate (Tinkham). Mr. Hood and Mr. Cushing had a conversation and one of the topics discussed was whether Ms. Cushing should give notice to Tinkham. Mr. Hood thought that some notice should be

given. Mr. Cushing told Ms. Cushing that she should give notice and he told her what Mr. Hood's thoughts were on the subject. Ms. Cushing was apparently not inclined to listen to what Mr. Cushing had to say. A short time later Ms. Cushing was in Mr. Cushing's office and Mr. Cushing asked Mr. Hood to come in and basically repeat the conversation the two had had previously regarding Ms. Cushing leaving Tinkham. Ms. Cushing subsequently left her employment with Tinkham without giving notice and she has been sued by Tinkham. In November of 2000, Mr. Hood discussed the general nature of his conversations with the Cushings with Tinkham owner, Sharon Fraser and with Tinkham's lawyer, Kevin MacDonald. The Cushings have now sued Mr. Hood for breach of solicitor-client privilege and they seek an injunction and punitive damages.

**Issue:**

1. Were the two conversations which occurred during mid-December of 1998 between the Cushings and Mr. Hood concerning Ms. Cushing's prospective departure from Tinkham subject to solicitor-client privilege?
2. If solicitor-client privilege applies, what are the appropriate remedies?

**Result:**

Canvassed the authorities on how and when a solicitor-client relationship is established and the resulting privilege arises. Found that a solicitor-client relationship had not been established. Dismissed plaintiffs' action.

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