

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Smith v. Michelin North America (Canada) Inc., 2006 NSSC 15

**Date:** 20060116

**Docket:** SH 248992

**Registry:** Halifax

**Between:**

Everett Smith

Applicant  
(Respondent)

v.

Michelin North America (Canada) Inc.

Respondent  
(Applicant)

---

**LIBRARY HEADING**

---

**Judge:** The Honourable Justice A. David MacAdam

**Heard:** Heard in Chambers November 24 and 25, 2005 in  
Halifax, Nova Scotia

**Subject:** CPR 9.02 - Proceeding by Application

**Summary:** Mr. Smith, as applicant in a proceeding commenced by Application pursuant to C.P.R. 9.02, sought to be appointed to represent members, members spouses and beneficiaries with an interest in the Pension Plan created by his employer, Michelin North America (Canada) Inc., the respondent. He also sought a declaration that the respondent was not entitled to use any Pension Plan surplus to fund contributions and any surplus in the fund was that of the members not the respondent. The Application also sought a separate accounting of the Pension Plan fund as it existed prior to its merger with the pension fund of another Company that had been taken over by the respondent. Not in issue, was the entitlement of individual members to any monies required to be paid into the Plan by the respondent.

**Issue:** Whether the proceeding should be continued as if it had begun as an Originating Notice (Action) or should remain as an Application?

**Result:** Initially the applicant indicated he intended to present evidence of communications from the respondent in support of its interpretation that the Pension Plan did not permit the respondent to use any surplus in the Plan as its contribution to the Plan. Also, in asking for a separate accounting of the original Plan, he would have to introduce evidence the plan was subsidizing the merged Plan and the respondent had not been “even handed” in providing benefits under the Plan. In each circumstance it was clear there would be disputed evidence, and in such a circumstance the proceeding should be converted into an Originating Notice (Action). However, counsel on the hearing indicated no evidence of communications by the respondent would be advanced to support its interpretation of the Plan, and withdrew its application for a separate accounting on the Application. Therefore, since the only issue was the right of the respondent to take a holiday from contributions to the Plan, and if not so permitted, the amount to be paid into the Plan, and in view of the fact that any claims to benefits by individual members of the Plan were not part of the Application, the application by the respondent to convert the proceeding to an Originating Notice (Action) was dismissed.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***