

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Monk v. Wallace, 2009 NSSC 425

**Date:** 20090423  
**Docket:** Amh No. 306720  
**Registry:** Amherst

**Between:**

**Catherine Monk**

Applicant

v.

**Dr. Timothy Wallace, Cumberland Regional Health Authority**

Respondents

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**CHAMBERS DECISION**

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**Judge:** The Honourable Justice John D. Murphy

**Heard:** April 23, 2009, in Amherst, Nova Scotia  
{*Oral decision rendered April 23, 2009*}

**Written Decision:** June 9, 2010  
{*Editing in written decision limited to improving organization and grammar, quoting text of Civil Procedure Rules referenced in oral decision and expanding references to parties' submissions.*}

**Subject:** *Civil Procedure Rule 6* : Conversion of Application in Court to Action

**Summary:** Applicant's claim alleging breach of contract, medical malpractice, and health authority's responsibility was commenced by filing Notice of Application in Court under *Rule 5*. The Respondents filed separate Notices of Contest disputing all bases upon which the Applicant claims, and moved for an order converting the application to an action. Respondents indicate issues of credibility and expert evidence will be involved, and wished to have trial by jury.

**Issue:** Should the proceeding be converted to an action pursuant to *Civil Procedure Rule 6*?

**Result:** Respondents satisfied their burden to establish that the application should be converted to an action.

The circumstances identified in *Rule 6.03* as making application the preferable route do not apply in this case - there is no indication Applicant's substantive rights would be eroded in the time it would take to bring the matter to trial, nor will the court be required to hold several hearings in one proceeding. Criteria in *Rule 6.04* deeming action to be the preferable procedure are met - Respondents have expressed intention to exercise their right to trial by jury, and it would be unreasonable prior to document exchange and discovery examination to require Respondents to provide early disclosure or complete witness information as contemplated by the application procedure, particularly as credibility is likely to be a major issue.

The factors in favour of an application set out in *Rule 6.02(5)* are not present - witnesses, including expert witnesses, cannot be quickly identified; the case presently in its early stages cannot be prepared and heard in months rather than years; the length and content of the hearing cannot be predicted; the court cannot be confident that credibility can be satisfactorily assessed during an application hearing rather than at trial.

Litigation will not necessarily be more efficient or less costly if the matter proceeds as an application, and trial would preserve the right to determination by jury and offer more procedural safeguards to address matters relating to fact finding, expert testimony and assessing credibility.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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