

SUPREME COURT OF NOVA SCOTIA

Citation: Gillis v. Roy Stutley Plumbing and Heating Ltd., 2011 NSSC 514

Date: 20111130

Docket: Hfx No. 183960

Registry: Halifax

Between:

Kathy Gillis

Plaintiff

v.

Roy Stutley Plumbing and Heating Limited, a body corporate
and the Estate of Roy Stutley

Defendants

- and -

Intact Insurance Company

Intervenor

Judge: The Honourable Justice Suzanne M. Hood

Heard: November 23, 24, 25, 29, 30 and December 1, 2011, in Halifax,
Nova Scotia

Oral Decision: November 30, 2011

Written Decision: August 10, 2012

Counsel: Brian J. Hebert and Jason May, for the plaintiff
Scott C. Norton, Q.C. and Chris Madill, for the defendants

By the Court (Orally):

[1] Rule 55 of the **Civil Procedure Rules** provides that a physician's narrative can be provided. The question in this case is whether a chiropractor is a physician within the meaning of that Rule.

[2] The *Medical Act*, S.N.S. 1995-96, c. 10 defines who is a medical practitioner at subsection 2(s):

- (s) "medical practitioner" means a person who is registered in the Medical Register, Defined Register, Temporary Register or Medical Education Register;

[3] The *Medical Act* also defines the practice of medicine at subsection 2(w):

- (w) "practice of medicine" includes, but is not restricted to,

...

- (iii) offering or undertaking to prevent or to diagnose, correct or treat in any manner or by any means, methods, devices or instrumentalities any disease, illness, pain, wound, fracture, infirmity, defect or abnormal physical or mental condition of any person,

[4] Because that definition is very broad, section 45 of the *Medical Act* excludes, among other professionals, chiropractors (ss (n)).

[5] The *Chiropractic Act*, S.N.S. 1999 (2nd Sess.), c. 4, subsection 2(c) defines chiropractic:

- (c) "chiropractic" means professional services usually performed by or under the supervision of a chiropractor and includes
 - (i) diagnosis, examination and treatment of persons principally by hand and without the use of drugs or surgery of the spinal column, pelvis, extremities and associated tissues, ...

[6] If it were not for section 45 of the *Medical Act*, chiropractors would be subject to that *Act* as would many others who treat people, including optometrists, psychologists, dentists, pharmacists, *et cetera*, many of whom have spent many years becoming qualified, some just as long as medical practitioners have. None of these are medical practitioners within the meaning of the *Medical Act* nor, in my view, are they “physicians” within the meaning of Rule 55.

[7] I am supported in this view by the wording of section 3 of the *Medical Act*. That section gives a list of words and phrases, including “physician” and says that any of those phrases:

... includes a person registered in the Medical Register, Temporary Register, Defined Register or the Medical Education Register who holds a licence.

The *Chiropractic Act* has a similar section.

[8] Furthermore there are two decisions which, although not binding on me, have come to the same conclusion, albeit within the context of disability insurance policies requiring the claimant to be under the treatment of a licenced physician.

[9] In *Gibson v. Mutual Benefit Health & Accident Assn.*, 1958 CarswellMan 17 (MBQB), the Court concluded a chiropractor did not fit within in the words “a legally qualified physician.”

[10] In *Rose v. Paul Revere Life Insurance Co.*, 1991 CarswellBC 304 (BCCA), the Court concluded a psychologist was not a “physician” or “licenced physician.” It gave examples of others, including chiropractors, who examine and care for the sick, but are not “properly described as physicians.”

[11] Accordingly I conclude that Dr. Yuen’s report is not admissible as a treating physician’s narrative.