

**CASE NO.**

**VOL. NO.**

**PAGE**

JOELLAN LYNN HUNTLEY  
by her Litigation Guardian, BYRON  
HUNTLEY, BYRON HUNTLEY  
and LOUISE HUNTLEY

- and -

THEODORE HOGETERP

(Appellants)

(Respondent)

CA 171715

Halifax, N.S.

Flinn, J.A. (Orally)

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[Cite as: Huntley v. Larkin, 2001 NSCA 163]

**APPEAL HEARD:**

November 15, 2001

**JUDGMENT DELIVERED:**

November 15, 2001

**SUBJECT:** **Interlocutory Procedure - Interlocutory Appeal - Production of Witness Statements - Litigation Privilege.**

**SUMMARY:** Chambers judge refused the appellants' application for the production of two witness statements on the ground that they were subject to litigation privilege and that privilege had not been waived. The fact that the statements were subject to litigation privilege was not in issue on the appeal. The only issues were whether the privilege had been waived and whether general principles of fairness demanded that the witness statements be produced.

**RESULT:** Appeal dismissed.

1. The giving of copies of the statements to the maker of the statements does not, of itself amount to evidence of an intention to waive and there was no other evidence before the Chambers judge upon which he could conclude such an intention;
2. The mere fact that the wife of the giver of the statement was present when the statement was made does not satisfy the onus

on the appellants to demonstrate a clear intention to forego the privilege;

3. The court of appeal considered counsel's submissions with respect to general principles of fairness and was not satisfied that any patent injustice arises to the appellant from the decision of the Chambers judge.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 3 pages.**