NOVA SCOTIA COURT OF APPEAL

Citation: Nova Scotia (Attorney General) v. Royal & Sun Alliance Insurance Company, 2004 NSCA 150

Date: 20041210
Docket: CA 222063
Registry: Halifax

Between:

The Attorney General of Nova Scotia, representing Her Majesty the Queen in Right of the Province of Nova Scotia

Appellant

v.

Royal & Sun Alliance Insurance Company of Canada, Guardian Insurance Company of Canada, The Halifax Insurance Company, Wellington Insurance Company, General Accident Assurance Company of Canada and Quebec Assurance Company

Respondents

Judges: Roscoe, Bateman and Cromwell, JJ.A.

Appeal Heard: December 3, 2004, in Halifax, Nova Scotia

Held: Appeal dismissed per reasons for judgment of Bateman, J.A.; Roscoe and Cromwell, JJ.A. concurring.

Counsel: Robert Purdy, Q.C., Peter M. Rogers, and Jacqueline Scott for the appellant
W. Augustus Richardson for the respondents Royal & Sun Alliance Insurance Co. of Canada and Quebec Assurance Company
George MacDonald, Q.C. and Jane O'Neill for the respondents Guardian Insurance Co. of Canada and Wellington Insurance Company

Daniel W. Ingersoll for the respondent General Accident Assurance Company of Canada

Reasons for judgment:

[1] This is an appeal from an interlocutory judgment of Moir, J. of the Supreme Court of Nova Scotia dismissing the appellant's application that certain interrogatories be answered (decision reported as **Nova Scotia (Attorney General) v. Royal and Sun Alliance Insurance Co. of Canada** (2003), 218 N.S.R. (2d) 288; N.S.J. No. 422 (Q.L.)).

[2] In the main action, the Province of Nova Scotia claims that the various respondent insurers wrongly declined to provide a defence or indemnity under policies of insurance. Hundreds of persons who, as young persons, were resident at certain Provincial institutions had claimed that they were abused at the hands of some of the Provincial employees in those institutions. The claimants gave notice of intent to sue the Province. The Province settled many claims through an alternative dispute resolution process and now seeks indemnity and damages from the insurers.

[3] The insurers have defended the action on a number of grounds, including breach of the policies' conditions by the Province. Should it be found that the insurers wrongly denied coverage under the policies, they say they should not be held liable to indemnify the Province for the amounts paid out in settlement of the claims, because such settlements were unreasonable, being the product of a flawed process. It is this defence that is central to this interlocutory appeal.

[4] At issue are two interrogatories wherein the Province seeks to know how the insurers have handled past "Multiple Claimant Situations". Each insurer has refused to answer these interrogatories. The Province asked the court to order that answers be provided (**Civil Procedure Rule** 19.04). The judge declined to do so. He found the interrogatories to be so broad and of such doubtful relevance that his discretion to refuse to compel answers was engaged.

[5] We are not persuaded that in exercising his discretion not to require answers to the interrogatories as worded, the Chambers judge applied wrong principles of law or a patent injustice results from his ruling.

[6] In finding no reversible error in the judge's exercise of discretion, we should not be taken to adopt his view that the information sought through such interrogatories has no potential for leading to admissible evidence. Nor do we agree with his conclusion at para 10: "[t]he issue of the reasonableness of the Province's process for settling the claims is not to be determined according to what some other party would have done". In seeking to demonstrate that the process used by the Province to settle the claims was a reasonable one, it may well be relevant to adduce evidence on methods of settlement used in like situations. The propriety of any interrogatory intended to elicit such information will turn on its wording. In addition, we are not persuaded that this case is at all comparable to cases such as **Kelly v Burns (Estate)**, (1999), 176 N.S.R. (2d) 398 (S.C.) or **Granville Sales and Auction Ltd. v. Marex Properties Ltd.** (1983), 60 N.S.R. (2d) 256 (S.C..A.D.), concerning attempts to discover past practice or conduct.

[7] We also note that the judge stated, and we agree:

> ¶12 . . . An industry standard applicable to insurers might have a semblance of relevancy as might an insurer's experience with reference to such a standard. Nothing suggests to me the emergence of such a standard but I would not preclude the plaintiff from revisiting this issue upon production of evidence that a standard has been adopted by the industry. This is not a catch 22. If there is a standard for dealing with multiple claimant situations any in the industry could speak of it.

[8] We would dismiss the appeal with costs to the respondents, collectively, in the total amount of $1500 inclusive of disbursements.

Bateman, J.A.

Concurred in:

Roscoe, J.A.
Cromwell, J.A.