

CASE NO. VOL. NO. PAGE

DAVID DUCHÊNE MERRILL LYNCH & CO., CANADA
LIMITED, a body corporate, MERRILL
LYNCH CANADA INC., a body corporate

and WILLIAM MORRISON

- and -

(Appellant)

(Respondents)

CA 160817

Halifax, N.S.

CROMWELL, J.A.

(Orally)

[Cite as: Duchêne v. Merrill Lynch & Co., 2000 NSCA 54]

APPEAL HEARD: April 19, 2000

JUDGMENT DELIVERED: April 19, 2000

WRITTEN RELEASE OF ORAL:

SUBJECT: **Privilege - Contemplated Litigation - Production of Documents**

SUMMARY: The Chambers judge refused to order production of a document for which privilege was claimed on the ground that the document was prepared in contemplation of litigation and that its purpose was to rebut allegations that might be made in such litigation.

ISSUE: Did the Chambers judge err?

RESULT: Leave to appeal granted. Appeal allowed. While the record may support an inference that one of the purposes for which the document was prepared was contemplated litigation, there was no evidence in the record supporting the finding that the dominant purpose for which the document was prepared was that of submitting it to a legal advisor for advice and use in litigation. The burden was on the respondents to adduce such evidence and having failed to do so, the claim of privilege should not have been upheld.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 2 pages.