

NOVA SCOTIA COURT OF APPEAL

Citation: *Hartling v. Nova Scotia (Attorney General)*, 2009 NSCA 130

Date: 20091215
Registry: Halifax

Between:

Docket: C.A. 308621

Helen Hartling, Melissa Gionet, Anna Marie MacDonald and
The Nova Scotia Coalition Against No-Fault Insurance Society,
an incorporated association

Appellants

v.

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

Respondent

and

Insurance Bureau of Canada, an incorporated association

Respondent

And between

Docket: C.A. 306318

Saquoia McKinnon, an infant by her Litigation Guardian,
Kathryn Jean McKinnon and John McKinnon

Appellants

v.

Adam Thomas Roy

Respondent

and

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

Respondent

and

Insurance Bureau of Canada, an incorporated association

Respondent

JUDGE: MacDonald, C.J.N.S.

APPEALS HEARD: October 13 and 14, 2009, in Halifax, Nova Scotia

SUBJECT: **Damage awards, legislative cap on non pecuniary damages. Constitutional Law, s. 15, *Charter of Rights and Freedoms* (equality). Insurance Law, statutory interpretation; validity of regulations. Practice, applications for leave to appeal, mootness; arguable issue.**

SUMMARY: In two appeals that we heard together, three automobile accident victims challenge the Province’s 2003 legislation capping non-monetary damages for “minor injuries” at \$2,500. Specifically, they say that this law, denying them their right to full compensation, is discriminatory according to the equality provisions of Canada’s *Charter of Rights and Freedoms* and as such ought to be declared invalid. Alternatively, the appellants assert that the government of the day undermined the true will of the Legislature by enacting regulations that expanded the reach of this cap beyond what the legislation ever intended.

For its part, the Province insists that this legislation is not discriminatory and that the regulations are properly designed to further its objects. Instead, it says that this initiative reflects sound public policy designed to contain sky-rocketing automobile insurance premiums.

The judge at first instance found no discrimination and held the regulations to be valid. The appellants ask this court to reverse that decision.

ISSUES:

1. Did the judge err in finding no discrimination?
2. Did the judge err in upholding the regulations?

RESULTS:

The first appeal is dismissed. The legislation is not discriminatory as contemplated by the *Charter*. Further, the appellants have not established that the impugned regulations run afoul of the legislation.

Leave is denied in the second appeal because there is no longer an arguable issue to be tried.

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 55 pages.