

CASE NO.

VOL. NO.

PAGE

Dr. SUDHIR RAJKHOWA

- and - **DR. ANDREW C. WATSON and
MARITIME MEDICAL CARE INCORPORATED**

(Appellant)

(Respondents)

CA160670

Halifax, N.S.

PUGSLEY, J.A.
(Orally)

[Cite as: *Rajkhowa v. Watson*, 2000 NSCA 50]

APPEAL HEARD:

April 12, 2000

JUDGMENT DELIVERED:

April 12, 2000

WRITTEN RELEASE OF ORAL:

April 13, 2000

SUBJECT:

**Severance of Issues of Liability and Damages - Jury Notice -
CPR 25.01(1)(d), 25.01(1)(f), 28.04**

SUMMARY:

The appellant sued the respondents for damages arising from defamation. The appellant intended to proceed by way of jury trial, as is his right under the **Judicature Act**. The Chambers judge granted the respondents' application to sever the issues of liability and damages, concluding the "factual issues with respect to defamation can be determined by a jury and the damages dealt with thereafter".

RESULT:

Appeal allowed.

The normal practice is that liability and damages should be tried together, but the court may order severance when it is just and convenient to do so. In determining what is just and convenient the court must consider the effect of such a decision on all of the parties, as well as its effect on the court system. A jury trial raises, however, unique and perhaps unworkable problems. In the circumstances of this case, the credibility of the appellant is a significant issue to be resolved in the determination of liability, as well as the assessment of damages. The appellant has the right to have both issues determined by the same jury. The order of the Chambers judge would result in the appellant being deprived of this right, as the basis of the severance application was the respondents' submission that all pre-trial preparation respecting the issue of damages should be delayed until after the issue of liability had been determined. There is no authority to

recall a jury, whether discharged or not, at some later date to assess damages. Thus, in the absence of the appellant waiving his right to have damages assessed by a jury, the order for severance would result in unfairness to the appellant amounting to an injustice, and adversely reflect on the administration of justice.

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 13 pages.