

CASE NO.**VOL. NO.****PAGE****JOSEPH MICHAEL MADORE**

- and -

DR. A. H. S. IBRAHIM

(Appellant)

(Respondent)

CA172291

Halifax, N.S.

HAMILTON, J.A.

[Cite as: *Madore v. Ibrahim*, 2002 NSCA 46]

APPEAL HEARD:

February 15, 2002

JUDGMENT DELIVERED:

April 4, 2002

SUBJECT: Civil Procedure Rules 19 and 31.08

SUMMARY: This was an appeal from an interlocutory decision with respect to answers to interrogatories and the appointment of a court expert. Certain interrogatories were put to a non-party medical doctor who had treated the appellant after he was treated by the respondent. Certain interrogatories were objected to on the bare assertion they required an opinion. The admitted purpose of the appellant was to use these answers as his expert evidence at trial.

ISSUES:

1. Is Dr. Miller in breach of his own *Code of Ethics*?
2. Should Dr. Miller be appointed a court expert and be required to answer all questions put to him in both sets of interrogatories?
3. Should Dr. Miller be required to re-answer the questions submitted in this Factum with the directive that he answer them fully and in language that is capable of being understood by a layman?
4. Should Dr. Miller be required, specifically, to give a complete and full explanation as to what went wrong in the first operation and why it was necessary for him to do a second corrective surgery?

RESULT:

1. Dismissed. Not properly before the court since the issue was not raised before the chambers judge nor dealt with in his decision.
2. Dismissed. The chambers judge made no error in refusing to appoint Dr. Miller a court expert, especially where he had indicated he did not wish to be an expert.
3. Dismissed. It would however have been better had the medical doctor used plainer language in answering the interrogatories where possible.
4. Partly allowed. The judge erred in saying that opinion evidence is never required to be given. Opinions that go into the formation of his judgment in diagnosing and treating the appellant are to be provided. Opinions typically asked of an expert witness with respect to the medical services provided by the respondent that were not formed as part of his diagnosis and treatment of the appellant, such as those going to the standard of care, its breach and any resulting damages, are not required to be provided.

No costs awarded in light of the mixed success.

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 8 pages.