

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Flinn v. McFarland, 2002 NSSC 272

Date: 20030103

Docket: SH No. 125545

Registry: Halifax

Between:

A. Bruce Flinn

Applicant(Plaintiff)

v.

Robert McFarland and Day & Ross

With Head Office in Hartland, New Brunswick
and Carrying on Business in Nova Scotia

Respondents (Defendants)

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Judge: The Honourable Justice A. David MacAdam

Heard: May 26, 2002 in Halifax

**Last Written
Submission:** September 25, 2002

Oral Decision: November 21, 2002

Written Decision: January 03, 2003

Subject: Production of Documents
Counsel's Communications with Experts
Counsel's Brief
Waiver of Privilege

Summary: At issue is whether plaintiff counsel is required to disclose to defendant's counsel his comments on a preliminary report prepared by an accident re-constructionist retained by the plaintiff, deletions from the plaintiff's medical file and witness interviews by plaintiff's law firm that were forwarded to a medical expert retained by the plaintiff. Held, applying *Greenwood Shopping Plaza v. Neil J. Buchanan Ltd. et al* (1979), 31 N.S.R. (2d) 135 that where a party wishes to rely on the testimony of an expert, they waive any privilege, and must disclose all materials and communication made to the expert for the purpose of preparing their report. It is not for the expert, nor the party retaining the expert, to excise the materials and communications on the basis they

were not relied on by the expert in forming their opinion. If provided, and made available to the expert, they must be disclosed to the opposite party. The requirement to disclose extends to otherwise confidential communication by counsel, including matters within the solicitors brief, if and when an expert is retained to prepare a report and to testify at trial.

Issue: Whether a party is required to disclose confidential and/or privileged communications or information provided to an expert retained to prepare a report and to testify at trial?

Result: The information and materials must be disclosed, and to the extent privileged, the privilege is waived.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***