
TO DISCLOSE OR NOT TO DISCLOSE: NOVA SCOTIA COURT ISSUES DECISION ON SCOPE OF ADJUSTERS' PRIVILEGE AND WAIVER OF PRIVILEGE

Reported Case:	Huntley v. Larkin
Citation:	2007 NSSC 297
At Issue:	Whether an insurance adjuster's file, including statements of defendant, is subject to litigation privilege in personal injury action.
The Court:	Nova Scotia Supreme Court
Judgment Rendered:	October 16, 2007
Factual Summary:	Defendant and girlfriend driving in defendant's car on highway in Nova Scotia; defendant swerved to avoid third party's dog and hit a pole. Girlfriend plaintiff sustained serious brain injury in accident. Girlfriend and her parents brought claim against defendant boyfriend, defendant boyfriend's mother as owner of vehicle, and owner of the dog crossing the highway. Dog owner's insurer carried out investigation which included obtaining statements from defendant driver, and filed statement of defence on same day adjuster's investigation began. Statement from defendant driver obtained during investigation by dog owner insurer was provided to plaintiff counsel and to counsel for defendant driver; statement part of a larger investigation file. Plaintiffs requested disclosure of remainder of investigation file; insurer claimed litigation privilege over contents of file. Plaintiffs claimed disclosure of driver's statement amounted to waiver of privilege over entire investigation file.
Disposition By Lower Court:	Plaintiffs and driver defendants were adverse in interest, and disclosure of the statement to plaintiffs' counsel amounted to waiver of privilege. Partial disclosure of documents amounts to waiver of privilege over all other relevant documents dealing with the same subject matter. Subject matter in question related only to the defendant's recollection and perception of the circumstances of the accident.
Appellate Decision:	N/A