Court File No. G20494-97

SUPERIOR COURT OF JUSTICE

BETWEEN:

MARY CUBELLO, FULVIO CUBELLO, and
BRENDAN CUBELLO an infant,
By his litigation guardian FULVIO CUBELLO

Plaintiff(s)

-and-

CINDY MARIE GUIDOLIN and
NATIONAL FRONTIER INSURANCE COMPANY

Defendant(s)

RULING

HEARD BEFORE THE HONOURABLE MADAM JUSTICE M.P. EBERHARD
Tuesday, March 21, 2000,
at BARRIE COURT HOUSE,
114 WORSLEY STREET, BARRIE, ONTARIO

APPEARANCES:

Mr. J. Vigmond Ms. M.J. MacMillan	Solicitors for the Plaintiffs
Mr. D. Wright	Solicitor for the Defendant Cindy Guidolin
Mr. C. Blouin	Solicitor for the Defendant National Frontier

RULING

EBERHARD, J., S.C.J. (Orally)

By way of a general comment, it appears that there is no necessity in this case to change the order of witnesses, or at least not to hear the plaintiffs first based on a need to accommodate experts' scheduling. So that is not the basis of the application and I have a real concern that there is a real danger of confusion to the jury of having to hear evidence and then perhaps to exclude it from their minds and so on, if it does not turn out to be supported by the plaintiffs' own evidence. However, in the case law that is before me, I am not persuaded that the courts have intervened on that reason alone.

I have been told that the plaintiffs will be out of the courtroom in any event but that may simply contribute to a misapprehension of their being unaware of the evidence if nothing more is said. And so, it is my ruling that I do not intend to intervene in the order of the plaintiffs' witnesses but I will make a ruling that evidence is not to be communicated to the parties for the purpose of preparing them as witnesses. That is not a complete prohibition because keeping the plaintiffs advised of developments to get instructions or for settlement purposes will be permitted. If it is

not clear where any discussion falls in that continuum, then leave will have to be sought. I realize that such an application for leave may involve privilege concerns but I must say that I agree with the comment that the plaintiff has raised the issue and so the plaintiff takes that risk.

MR. VIGMOND: Thank you, Your Honour. Might I, for the purpose of clarification, take it that that ruling will only hold until the plaintiffs testify?

THE COURT: Yes, the concern would then be done.

MR. VIGMOND: Right.

THE COURT: All right, thank you.

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Certified correct, as approved.

J.L. Crane,
Certified Court Reporter