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CASE SUMMARY: APPEAL OF TRIAL DECISION FINDING DEFENCE OF ARSON MADE OUT DISMISSED

Insurance law – Fire insurance – Arson – Intentional acts – Evidence – Burden of proof – Appeals

Bidart Estate v. Portage La Prairie Mutual Insurance Co., [2018] N.S.J. No. 224, 2018 NSCA 52, Nova Scotia Court of Appeal, June 15, 2018, J.E. Fichaud, C.A. Bourgeois and A.S. Derrick JJ.A.

The insured appealed a trial decision dismissing his action against his insurer. The insured brought a claim against his insurer in respect of its denial of coverage following a fire which caused extensive damage to the insured's home. The insurer claimed the insured had intentionally set the fire.

The trial judge concluded the defence of arson was made out and dismissed the claim. The main issue on appeal was whether NFPA 921 Guide for Fire and Explosive Investigations modified the legal test to be applied and whether the trial judge had inappropriately placed the burden of proof on the insured.

NFPA 921 was considered by all the experts as being the recognized standard for fire cause and origin investigations. A great deal of the evidence before the trial judge was devoted to establishing the proper methodology set out in NFPA 921 and whether the insurer's expert was compliant with it.

The Court of Appeal concluded the trial judge had not misapplied NFPA 921 and, therefore, there was no reason to interfere with the conclusion the fire was incendiary. The trial judge was not obligated to apply NFPA 921 nor was she obligated to adhere to the scientific method outlined therein. A finding that a fire was classified as undetermined in accordance with NFPA 921 would not prevent a trial judge from concluding it was incendiary based on all the evidence. In the result, the appeal was dismissed.

This case was digested by [Cameron B. Elder](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Cameron B. Elder at celder@harpergrey.com.