

NOVA SCOTIA COURT OF APPEAL

Citation: *Bidart Estate v. Portage La Prairie Mutual Insurance Company*,
2018 NSCA 52

Date: 20180615

Docket: CA 464753

Registry: Halifax

Between:

Stephen Bidart, Personal Representative of
the Estate of Michael Bidart

Appellant

v.

The Portage La Prairie Mutual Insurance Company,
a body corporate

Respondent

Judge: The Honourable Justice Cindy A. Bourgeois

Appeal Heard: May 9, 2018, in Halifax, Nova Scotia

Subject: Defence of civil arson, burden of proof

Summary: In September 2010, a fire caused extensive damage to the home of Michael Bidart. He made a claim to his insurer, the respondent. After conducting an investigation, the respondent concluded the fire was incendiary (deliberately set) and denied coverage.

The matter was heard over eight days, with the trial judge receiving extensive evidence, both *viva voce* and documentary. Both parties adduced expert evidence relating to the origin and cause of the fire. The central issue at trial was whether the respondent established the defence of arson.

The trial judge concluded the defence of arson had been made

out and dismissed the claim. The appellant challenges that decision.

Issues:

(1) Did the trial judge misapply the NFPA 921, "*Guide for Fire and Explosive Investigations*", resulting in her applying an incorrect burden of proof and flawed test for the defence of civil arson?

(2) Did the trial judge err in her treatment of the statement of Michael Bidart?

(3) Did the trial judge err in her treatment of the expert evidence?

Result:

Appeal dismissed. The trial judge was not obligated to apply the NFPA 921. Contrary to the appellant's assertion, that document did not modify the legal test to be applied by the trial judge to the evidence. She did not apply an incorrect burden of proof, or inappropriately place the burden on the appellant.

The trial judge did not err in the treatment of the statement provided by Mr. Bidart, nor did she err in her treatment of the expert evidence.

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 19 pages.