

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Elliott v. Insurance Crime Prevention Bureau*, 2005 NSCA 115

**Date:** 20050810

**Docket:** CA 221995

**Registry:** Halifax

**Between:**

Hugh Laird Elliott, Helen Geraldine Elliott,  
Michael David Elliott and Thomas Augustus Elliott

Appellants

v.

Insurance Crime Prevention Bureau, William A.  
Wilson, Donald T. Matheson Engineering Limited,  
Donald T. Matheson, MDS Environmental Services  
Limited, Dominique Levesque, The Attorney General  
of Nova Scotia representing Her Majesty the Queen in  
Right of the Province of Nova Scotia, Francis J. Savage  
and Marsh Adjustment Bureau Limited

Respondents

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**Judge:** The Honourable Justice Thomas Cromwell

**Appeal Heard:** January 11 and 18, 2005  
Additional Written Submissions May 24, 2005

**Subject:** Negligence – Duty of care – Witness immunity – Applications  
to determine preliminary points of law

**Summary:** The appellants' home was destroyed by fire. Their insurer refused to pay, alleging arson. It did so relying on investigations and reports by the respondents. The appellants sued the insurer on the policy and succeeded, but did not obtain punitive or aggravated damages. Some of the respondents testified as experts for the insurer at that trial. The appellants then sued the respondent investigators, alleging that they had been negligent in their investigation and reporting to the insurer. The respondents applied for determination of

preliminary points of law as to whether they owed the appellants any duty of care and, if so, whether the appellants' claims were barred by witness immunity. The chambers judge found that the respondents owed the appellants no duty of care and that, in any event, the appellants' claims were barred by witness immunity. The appellants appealed.

- Issues:**
1. Were the issues appropriate for determination under **Rule 25** and did the judge err in drawing inferences from the agreed facts?
  2. Did the respondents owe the appellants a duty of care?
  3. Were the appellants' claims barred by witness immunity?

**Result:** Appeal dismissed. The judge did not err in proceeding under **Rule 25** or in drawing reasonable inferences not inconsistent with the agreed facts. While he erred in finding that there was no proximity between some of the respondents and the appellants, policy considerations negated the *prima facie* duty of care that arose with respect to them. The judge was correct to find that witness immunity barred the claims against Savage, the Province, Matheson Engineering and Matheson, but erred in finding that it did so with respect to the claims against the other respondents.

**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 77 pages.**