

**CASE NO.****VOL. NO.****PAGE**

IVAN SMITH HOLDINGS LIMITED,  
a body corporate

- and -

BOLANDS LIMITED, a body  
corporate, LOBLAWS PROPERTIES  
LIMITED, a body corporate, and THE  
OSHAWA GROUP LIMITED, a body  
corporate

(Appellant)  
(Respondent by Cross-Appeal)

(Respondent)  
(Appellant by Cross-Appeal)

CA 177214

Halifax, N.S.

CROMWELL, J.A.

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[Cite as: *Ivan Smith Holdings Ltd. v. Bolands Ltd.*, 2002 NSCA 146]

**APPEAL HEARD:** October 15, 2002

**JUDGMENT DELIVERED:** November 27, 2002

**SUBJECT:** **Consensual arbitrator - jurisdiction with respect to damages and rectification**

**SUMMARY:** The parties, a landlord and tenant under a lease, agreed that disagreements between them regarding any clause or provision of the lease would be settled by arbitration. A disagreement arose about whose responsibility it was under the lease to repair certain damage to the premises. Under the lease (and subject to a waiver argument), the tenant was obliged to repair damage caused by its acts or omissions to the extent not covered by insurance. The disagreement related primarily to whether the damage had been caused by the tenant and whether it was covered by insurance. The parties selected an arbitrator. He ruled that 1. the damage had been caused by the acts and omissions of the tenant; 2. the landlord had obtained the insurance coverage required under the lease and that it did not cover the damage; 3. one aspect of the insurance clause in the lease should be rectified, if necessary, to conform to the parties' agreement; 4. the landlord had not waived its claim, and 5. the tenant should pay the landlord damages for the cost of repairs and consequential losses. The tenant applied for judicial review in the Supreme Court. The judge set aside the part of the arbitrator's award which ordered damages to be paid. The landlord appealed and the tenant cross-appealed.

**ISSUES:** Did the judge err in quashing the arbitrator's damage award?  
Did the arbitrator err in rectifying the lease, in considering the insurance issues and in finding that the landlord's claim had not been waived?

**RESULT:** Appeal allowed and cross-appeal dismissed. The arbitrator had jurisdiction to award damages and to apply the doctrine of rectification as part of his mandate to finally settle disputes concerning the provisions of the lease. He did not err in considering the insurance issues or in the manner in which he resolved those issues or the waiver issue.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 23 pages.