

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *T & T Inspections and Engineering Ltd. v. Green*,  
2013 NSCA 107

**Date:** 20130924

**Docket:** CA 414426

**Registry:** Halifax

**Between:**

T & T Inspections and Engineering Ltd., a body  
Corporate and Alco Industrial Inc., a body corporate

Appellants

v.

Donald Campbell Green

Respondent

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**Judge:** The Honourable Mr. Justice Jamie W.S. Saunders

**Appeal Heard:** September 17, 2013

**Subject:** **Civil Procedure Rule 55. Expert Opinion. Objection to Report. Advance Ruling. Leave to Appeal. Judicial Discretion. Rebuttal Evidence. Case Splitting. Justice Delayed.**

**Summary:** The plaintiff suffered a serious head injury in 2000 when a rod hook assembly blew apart at an oil rig site in Saskatchewan. In the weeks leading up to a two month trial the judge was asked to make an advance ruling on the admissibility and treatment of experts' reports relied upon by the plaintiff. The defendants appealed the trial judge's advance ruling alleging errors in principle which would lead to the introduction of inadmissible evidence that did not qualify as rebuttal evidence and would offend the rule against case splitting. The defendants' appeal resulted in the trial being adjourned without day, the trial dates were lost, and the case would now not be tried until 2014 at the earliest.

**Held:**

Appeal dismissed. The appeal came perilously close to being denied leave. Properly characterized, this was an appeal from an advance ruling on the treatment and admissibility of evidence. Had the dispute arisen during the trial the appeal would not have been entertained until the trial was over. A similar approach should be taken in disputes over so-called advance rulings. To countenance such interruptions would effectively stop a trial in its tracks and be sure to create havoc in the workings of both trial and appellate courts. The Court was prepared to assume without deciding that an arguable issue had been raised by the defendants so that it could express brief reasons dealing with the merits. The unusual circumstances in this case called for a creative solution that would allow the theories of all sides to be fairly presented. The Court was satisfied that the trial judge's order reflected a sensible and effective exercise of judicial discretion, without any error in principle or patent injustice.

The Court expressed its concern about the obvious delay in bringing this matter to trial and urged that it proceed at a pace, possibly on an expedited basis.

*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 6 pages.*