

SUPREME COURT OF NOVA SCOTIA

Citation: Adams v. Crowe, 2010 NSSC 324

Date: 20100912

Docket: Hfx No. 324509

Registry: Halifax

Between:

Jeffrey Adams

Appellant

v.

Donald Crowe

Respondent

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Judge: The Honourable Justice Glen G. McDougall

Heard: August 3, 2010 in Halifax, Nova Scotia

Subject: Defendant appeals the decision of a Small Claims Court Adjudicator that found him liable for damages to another person's surf board.

Summary: The appellant was paddling his surf board out to catch a wave while the respondent was riding another wave towards shore. A collision occurred. The appellant was found negligent and ordered to pay for the damages to the respondent's board. The adjudicator ruled out the defence of *volenti non fit injuria* and also found there was no contributory negligence on the part of the respondent.

Issues:

- (i) Does the Small Claims Court have jurisdiction to hear a case involving a collision between two surfers in coastal waters?
- (ii) Did the Learned Adjudicator err in law in finding there was a duty of care owed to the respondent and that he failed to meet the requisite standard of care?
- (iii) Did the Learned Adjudicator's failure to give a decision within 60 days after the hearing, as required by s. 29(1) of the *Small Claims Court Act*, amount to a denial of natural justice?

Result:

The Small Claims Court has jurisdiction to hear the claim; the appellant owed a duty of care and breached the standard of care required of the circumstances. As a result he was negligent and liable for the damages resulting therefrom; furthermore, the Adjudicator did not err in concluding that *volenti non fit injuria* did not afford a defence nor was the respondent contributorily negligent for his loss; finally, the 60-days allowed to file an order / decision is not mandatory but rather, strongly directory. A failure to meet the deadline does not automatically result in a nullity but depending on the situation, could create an unfairness which might amount to a denial of natural justice.

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