

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** 3008361 Nova Scotia Ltd. v. Scotia Recycling Ltd.,  
2013 NSSC 256

**Date:** 20130812

**Docket:** Pic No. 405823

**Registry:** Pictou

**Between:**

3008361 Nova Scotia Limited

Plaintiff

v.

Scotia Recycling Limited

Defendant

**Revised Decision:** The text of the original decision has been corrected according to the appended erratum dated September 30, 2013.

**Judge:** The Honourable Justice N. M. Scaravelli.

**Heard:** August 12, 2013, in Pictou, Nova Scotia

**Final Written Submissions:** May 1, 2013, Jamie MacGillivray  
May 15, 2013, Matthew G. Williams

**Oral Decision:** August 12, 2013, 2013

**Counsel:** Katherine O'Coin-O'Blenis, for Jamie MacGillivray for the  
3008361 Nova Scotia Limited  
Matthew G. Williams, for the Scotia Recycling Limited

**By the Court Orally:**

[1] This is a Motion for Production of relevant documents pursuant to Civil Procedure Rule 14.12.

[2] By way of background the defendant, Scotia Recycling Limited operated out of a leased premises in the plaintiff's building in Stellarton, Industrial Park. The defendant was in the business of sorting and baling facility for recycled materials they collected from households. The building was damaged by fire on October 22, 2007. The plaintiff commenced an action against the defendant seeking damages, alleging negligence. After the fire the defendant moved to another location. In May of 2009 another fire occurred at the defendant's location resulting in destruction of that building.

[3] The Plaintiff seeks production of all documents relating to the second fire.

Specifically:

- a. A complete copy of any investigative files prepared by government authorities including but not limited to the Fire Marshall and the Town of Stellarton Fire Department;

- b. Any photographs of the aftermath of the fire;
- c. A complete copy of any internal investigation, including but not limited to statements by employees or others; and
- d. A complete copy of any of the file of any insurers who carried out investigations.

[4] The Defendant submits the Plaintiff has not established the documents are relevant to the present action.

[5] Civil Procedure Rule 14 sets out provisions relating to disclosure and discovery.

[6] Rule 14.01 provides that the meaning of relevant in Part 5.

(1) In this Part, “relevant” and “relevancy” have the same meaning as at the trial of an action or on the hearing of an application and, for greater clarity, both of the following apply on a determination of relevancy under this Part:

(a) a judge who determines the relevancy of a document, electronic information, or other things sought to be disclosed or produced must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the document, electronic information, or other thing relevant or irrelevant;

(2) a determination of relevancy or irrelevancy under this Part is not binding at the trial of an action, or on the hearing of an application.

[7] Rule 14.08 contains a presumption of full disclosure of relevant documents. The presumption is rebuttable. Rule 15 imposes a duty on a defendant to disclose relevant documents.

[8] Rule 14.01 displaced the former semblance of relevancy test. The range of discloseable documents has been narrowed to relevancy. This requires a motions Judge to decide relevancy based on the pleadings and evidence produced on the motion as if the matter were raised at trial. *Brown vs. Cape Breton Regional Municipality, Nova Scotia Court of Appeal*, [2011 NSCA 32].

[9] The issue in this motion is whether documents relating to the subsequent fire in May of 2009 at another location are relevant documents relating to the fire in this proceeding that occurred in October, 2007, as it relates to the issue of negligence.

[10] The party seeking production has the onus of establishing its relevance. *Dexter Construction Company Ltd. v. Nova Scotia (Attorney General)* [2011 NSSC 92]. The pleadings allege that in the evening of October 22, 2007 a Bobcat loader caught on fire, due to paper and cardboard jammed in the engine compartment. The fire then spread to debris scattered about on the floor of the building, then throughout the building resulting in a total loss.

[11] An affidavit of the plaintiff's solicitor was filed in support of the motion. Discoveries were held following the filing of the motion and affidavit. The plaintiff's affidavit merely sets out the occurrence of the two fires as well as the plaintiff's claim that the defendant's negligence in the operation of its business caused the fire in the present action. On these grounds the plaintiff seeks to disclosure of documents relating to the second fire.

[12] A motion Judge in these instances is put in the position of the trial Judge at trial. The request for relief must be supported by evidence, unlike *Halifax Dartmouth Bridge Commission v Walter Construction Corporation* [2009 NSSC 403] relied upon by the plaintiff, there is no evidence before me as to the manner of operation of the defendant's business in the second location that would

establish relevance to the issues of negligence raised in the pleadings. No supplemental affidavits or further evidence have been provided following discoveries. The commonality of a fire in separate buildings two years apart does not, by itself justify disclosure of documents relating to the second fire.

[13] To order disclosure of the documents at this stage of the proceedings without further evidence would only serve to sanction a fishing expedition, as stated by Justice LeBlanc in *Murphy vs. Lawtons Drugs Stores Limited*, 2010 NSSC 289.

[14] As a result the motion is dismissed. The court awards costs to the defendant in the amount of \$750.00, plus disbursements, payable forthwith.

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**Erratum:**

Page 1 reads: Katie O’Coin-O’Blenis for Jamie MacGillivray for the 3008361 Nova Scotia Limited

Page 1 should read: Katherine Aucoin O’Blenis, for Jamie MacGillivray for 30083361 Nova Scotia Limited