

Case No.

Vol No.

**CARL EDWARD LEAHY of Head Jeddore, in the  
Halifax Regional Municipality, Province of Nova Scotia**

**PLAINTIFF**

- and -

**BLANCHARD DAY of Oyster Pond, Jeddore, in the  
Halifax Regional Municipality, Province of Nova Scotia**

**DEFENDANT**

**Justice Walter R. E. Goodfellow**

**Halifax, Nova Scotia**

**File No. S.H. 133923**

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**LIBRARY HEADING**

**Cite as: Leahy v. Day, 1999 NSSC 99**

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**DATE HEARD: June 15 and 16, 1999**

**WRITTEN**

**DECISION: June 23, 1999**

**SUBJECT: PROCEDURE - DEFENDANT FAILED TO ATTEND TRIAL.  
ASSAULT - DAMAGES PUNITIVE**

**SUMMARY:** Trial date set in November, frequent reminders to Mr. Day who advised members of courthouse staff he would not be able to come to the court. On May 19<sup>th</sup>, 1999 Mr. Day attended at the courthouse to deliver this message personally. Mr. Day holds himself out to be 80 plus years of age and in evidence is said to be in his late seventies. In the absence of any medical certificate, affidavit or notice of motion for adjournment, coupled with repeated advice to get counsel because the trial was proceeding, including letter from myself as trial justice served upon Mr. Day by Deputy Sheriff May 19<sup>th</sup>, 1999. Resulted in trial proceeding in Mr. Day's absence.

Carl Leahy, now 33, responded to volunteer fire call at residence of Mr. Day March 20<sup>th</sup>, 1996. On one previous occasion there was a verbal confrontation between Day and Leahy, who at that time was on an adjacent property and also in 1990 a confrontation when Leahy used the Day driveway.

On this occasion, Leahy asked Mr. Day what caused the fire and Mr. Day responded by punching him out resulting in a bruise to Mr. Leahy's lower eye, a fat lip and trauma to one tooth.

Leahy suffered existing anxiety disorder and subject to panic attacks. He sought substantial damages relating all his problems to Mr. Day's conduct. Concluded the only impact of Mr. Day's conduct was some degree of aggravation of pre-existing conditions.

**Cashen v. Donovan** (1999), 173 N.S.R. (2d) 87. Punitive damages appropriate as Day's conviction on guilty plea to assault resulting in a fine fails to address Day's reprehensible conduct against a community volunteer.

**RESULT:**

Damages awarded as follows:

General damages

(a) tooth	- \$1,500.00
(b) pain and suffering - psychological aggravation	- \$7,500.00
(c) punitive damages	- \$2,500.00
(d) special damages	- <u>\$1,956.44</u>
TOTAL	<u>\$13,456.44</u>

Leahy also entitled to pre-judgment interest and costs taxed.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
QUOTES MUST BE FROM THE DECISION, NOT THIS COVER SHEET.**