**SUPREME COURT OF NOVA SCOTIA**
**Citation:** *Huskins v. Rehberg*, 2022 NSSC 55

**Date:** 20220228
**Docket:** Hfx No. 436612
**Registry:** Halifax

**Between:**

Gail Pamela Huskins

Plaintiff

v.

Roger Glengary Rehberg

Defendant

**Decision**

| | |
|---|---|
| **Judge:** | The Honourable Justice Denise M. Boudreau |
| **Heard:** | January 18, 19, 20, 2022, in Halifax, Nova Scotia |
| **Counsel:** | Janus Siebrits, for the Plaintiff<br>Colin D. Bryson, for the Defendant |

**By the Court:**

[1] The plaintiff brings the present lawsuit due to injuries she suffered while she was a tenant on the defendant's property.

**Facts**

[2] The plaintiff is 57 years old. She has been disabled from the workforce since approximately 1995 due to a diagnosis of multiple sclerosis and opsoclonus. She notes that the multiple sclerosis, in particular, causes her a number of physical limitations.

[3] At some point in 2012, the plaintiff commenced an online relationship with a person named Ralf Peters. Mr. Peters was a resident of Germany. He and the plaintiff bonded over their shared love of horses. Mr. Peters owned a riding facility in Germany and the plaintiff had a longstanding interest in horses and horse riding, and had owned horses herself.

[4] The plaintiff and Mr. Peters became engaged to be married. They agreed they would live in Canada and operate a horse boarding/training/riding facility.

[5] The plaintiff then started looking for suitable places for the couple to rent. She noted her requirements were a place with a residence for she and Mr. Peters, as

well as a barn and facility for the boarding of horses, as well as an indoor "run" area for the horses.

[6] The plaintiff's research brought her into contact with the defendant, who owned a property that appeared suitable, in Harrietsfield, Nova Scotia (hereinafter "the property"). The property consisted of a house, barn, and multiple acres of fields.

[7] The plaintiff spoke to the defendant about her needs, and then she and Mr. Peters came and looked at the property together. They noted that the property needed work and they told the defendant that. The plaintiff testified that the defendant responded that the property would be made suitable.

[8] The parties signed a lease on November 27, 2012. The terms of this lease were negotiated by the parties with the assistance of counsel.

[9] In relation to the obligations of the landlord (the defendant), the lease contained the following provisions:

> 4.01 The Landlord covenants with the Tenant:
>
> (a) For quiet enjoyment of the Rental Property;
> (b) To pay or cause to be paid all real, local improvement and fire protection rates assessed against the property;
> (c) To remove all broken doors, glass and other debris from the indoor area footing;
> (d) To replace the front door to the main residence of the Rental Property;
> (e) To replace the boarded up window in the living room of the main residence;

> (f) To ensure that the furnace is in good working order prior to the commencement of this Lease;
> (g) To ensure that the electrical systems on the premises of the Rental Property are safe and good working order to meet the needs of the Tenants;
> (h) To repair the roof of the Barn and to ensure in general that the structures that comprise the Rental Property are water-tight and free from leaks during the rental time and make sure that the large arena door is on its proper track and can be opened and closed.
> …

[10] The plaintiff in her evidence went through clauses (c) - (h). She noted that other than the arena door being fixed (as required by 4.01(h) of the lease), in her view, the defendant did not do any of the other things he agreed to do during the time she was living at the property.

[11] The plaintiff agreed that, for the most part, the business (involving horses) that she and Mr. Peters were starting would essentially be Mr. Peters' business. The plaintiff would contribute to the business by way of assistance to Mr. Peters.

[12] The plaintiff and Mr. Peters (and Mr. Peters' elderly mother) moved onto the property on December 1, 2012. Their horses were moved into the barn on the property the next day, December 2, 2012.

[13] According to the plaintiff the deficiencies in the property were evident immediately. There were significant roof leaks in both the house and barn. The oil tank had an electrical problem, which required an electrician to repair before oil could be delivered. The plaintiff testified that she had this problem repaired and

then filled the oil tank. (I do not know the date that oil was delivered to the property; however, the repair bill is dated November 23, 2012, so it would have been after that.) She noted that the furnace oil burned very quickly; she and Mr. Peters often used the fireplaces that existed in some of the rooms for heat.

[14] In her evidence, the plaintiff had multiple and extensive complaints about the defendant as a landlord. In the plaintiff's view, the defendant essentially did nothing that he was required to do pursuant to the lease. The plaintiff complained that the home was not properly wired, that some rooms would have no heat at all, and that the plumbing was inadequate. She further notes that the defendant would repeatedly attend at the property without giving 24 hours notice, or any notice at all; she would become aware of his presence when he would call out to them. The plaintiff described being very displeased about these repeated intrusions and, at least once, even called the police to complain.

[15] The plaintiff testified that she was unable to install a phone and internet service in the house; it was her understanding that the electrical system in the house would not permit it, as it was not up to code. In fact, she says, the electrical and power did not work consistently throughout the house.

[16] The plaintiff further noted that on one occasion her fridge was unplugged, which caused her food to spoil. The plaintiff believes that this was done by the defendant.

[17] Some of the plaintiff's complaints were somewhat confusing. For example, she noted her further complaint that there was no water in the barn, which she stated is inappropriate for a horse facility. However, she later explained that she had asked the defendant about water in the barn, he told her there was no water in the barn, and he said it could be fixed for a price. I do not know when this conversation happened or why she blames the defendant for that situation.

[18] The plaintiff also complained about some issues relating to debris inside and outside the barn (e.g., insulation hanging from the walls; boards and other refuse in the field); however, she later seemed to agree that such things were not the defendant's responsibility in any event.

[19] At some point early in the tenancy, the plaintiff made a formal complaint through the Residential Tenancy Board. An inspector from Halifax Regional Municipality came out to the property and the plaintiff took him through the house, and showed him the problems. An order was issued (December 13, 2012) providing that a number of deficiencies needed to be rectified. The plaintiff

testified that none of these deficiencies were addressed while she was a tenant at the property.

[20] At some point in early December 2012, the plaintiff testified that she noticed a large white barrel located near the entry door to the barn (the "big green door"). She also noticed that there were warning labels on this barrel about dangerous chemicals being contained therein. She was concerned about this and wanted the barrel removed.

[21] The plaintiff testified that she spoke to the defendant about moving the barrel. She later saw the defendant and another man move the barrel to a spot near the house. She said that she spoke to him again, wanting the barrel moved again, and she later noticed that it had been moved to inside the barn. She mentioned it again, at which point it appeared inside the indoor riding arena. She then mentioned it again to the defendant, wanting it moved again, and it then was placed just outside the barn by the smaller "human" door.

[22] Other than the very first time, the plaintiff did not actually see the barrel being moved to these other places, and so she does not know who moved it. She believes that it was moved by the defendant in response to her requests.

[23] The plaintiff notes that she herself did not place the barrel in any of these locations, nor did she bring the barrel to the property in the first place. She notes that the product that it contains is not a product that she uses, nor did she see Mr. Peters use it. In her view, such a product would not be used around horses as it is dangerous and might even be a liability.

[24] The court was provided with photographs of the white barrel and the label that was affixed to it. The label states that the contents are MIP Liquid 123-1 (Heavy Duty Alkaline Cleaner). It is the plaintiff's understanding that this is an industrial cleaning product.

[25] On December 22, 2012, a number of very unfortunate events occurred. According to the plaintiff, tensions had escalated between herself and Mr. Peters. At approximately 10:30 or 11:00 that morning, the plaintiff testified that Mr. Peters assaulted her by striking her with a piece of wood. The plaintiff called the police and Mr. Peters was arrested and taken from the home.

[26] At approximately 5:00 that same evening, the plaintiff went out to the barn to feed the horses. After having done so, and on her way out the door of the barn, she placed some material on the ground to put the lock back on. Her hand hit the

white barrel, which fell over. The plaintiff picked up the barrel and then picked up her items. She then realized that she was unable to see.

[27] The plaintiff tried making her way back to the house, but eventually fell and began crying out for help. She then heard voices and an ambulance was called; she explained to them what had happened. The plaintiff's eyes were flushed and she was taken to hospital where this treatment continued.

[28] The plaintiff testified that while her eyes have essentially returned to normal function, her left eye continues to be somewhat blurry. Her eyelashes and eyebrows fell out and have never grown back. She also described continued sensitivity to bright lights and certain limitations with housework (i.e., doing dishes).

[29] The plaintiff also suffered burns to her face, lips and cheeks, as well as her hands. I have been provided photographs taken within the week of the incident showing the extent of the injuries. The plaintiff notes she continues to experience periodic re-occurrences of the "burning" or rashes in her cheeks and her hands, even to the present day.

[30] There were no Rule 55 expert reports at this trial. I have letters from treating physicians which provide the following pertinent information:

> **From Dr. Maria Torok (dermatology) February 13, 2013:**
>
> "On examination, the skin at the fingertips and cheeks was erythematous and tender to touch. There was no evidence of a secondary infection.
>
> Touch sensation elicited a hypersensitive response in the fingertips. The old fissures from the old exposure seem to have healed well…
>
> Unfortunately, at this time, there is little dermatological treatment for the old chemical burn…"
>
> **From Dr. Kerri Purdy (dermatology) July 25, 2013:**
>
> "On examination today, there is evidence of mild scaling, non-inflammatory plaques involving her temple region of her face. She does have some lichenification in her periorbital region, in particular the inner skin overlying the inner canthi of her eyes and the underside of her eyes. There is some active dermatitis involving her left antecubital fossa.
>
> Impression:
>
> Ms. Huskins does not have any real active dermatitis involving her eyelids and her face today, but there is evidence of chronic eczematous changes such as lichenification. We do suspect that she has a component of recurrent dermatitis involving her eyelids and her face."

[31] The plaintiff was later seen by a plastic surgeon (Dr. Bendor-Samuel) to determine whether she had treatment options available to her within that field; he indicated that there were not.

[32] It does not appear that there is any further treatment available to the plaintiff, in the sense that these recurrent episodes of rash on her face/eyelids will need to be dealt with as they occur; there is no permanent or long-term solution.

[33] After her treatment at the hospital following the accident, the plaintiff returned to the property. She knew she could no longer care for the horses and she

took immediate steps to have them boarded elsewhere. She herself continued to reside at the home on the property.

[34] The plaintiff testified that the home on the property was “condemned” on January 5 or 6, 2013. She did not explain this comment on direct examination, but elaborated on cross-examination.

[35] As previously noted, the plaintiff had been complaining about the furnace to the defendant. On December 27, 2012, the defendant left a note that he would be coming the next day to look at the furnace.

[36] The plaintiff recalled that by about that time, there was no heat into the house from the furnace. She was only using one room of the house, the livingroom, and heating herself with the fireplace in that room.

[37] This situation continued into 2013. The plaintiff testified that in early January 2013, a pipe in the kitchen froze and burst causing water to be expelled in the kitchen and onto electrical wiring. The fire department was called to the home (not by the plaintiff, but by a friend). According to the plaintiff, the fire department told the plaintiff that she could no longer live there as it was not safe. She then left.

[38] It was put to the plaintiff in cross-examination that, in fact, the defendant had come to her during this period and told her that there was no oil in the oil tank

and that she should leave the home. The plaintiff stated she had no memory of that event occurring.

[39] The defendant testified and confirmed that he had entered into the lease with the plaintiff and Mr. Peters in November 2012, and that the lease was prepared with each side having lawyers to assist. The defendant noted that the plaintiff and Mr. Peters attended to inspect the property many times before the lease was signed; he estimated ten times at the house and 15 times at the barn.

[40] The defendant testified that he did some of the repairs that he needed to do. For example, in his view, the leaking in the barn roof was a minor problem and not a major leak as alleged by the plaintiff. He stated that he himself went on the barn roof and fixed it by way of caulking.

[41] The defendant acknowledged that some of the other repairs required of him in section 4.01 of the lease were not completed. However, he noted that he had started working on some of the items, but since the plaintiff was only at the property a little over a month, he was unable to complete them before she left.

[42] The defendant testified that the white barrel containing the chemical was not his and that he had not placed it there. He testified that he never moved the barrel on any occasion and that he himself had never used such a product.

[43] In direct examination, he testified that he recalled the plaintiff asking him once to move the barrel; as he recalls it, the barrel was then located outside, near the tower at the back of the barn. He said he responded to the plaintiff, “I didn’t put it there.” He says he did not move it, he did not ask anyone else to move it, and he never saw it again. The defendant says he has no idea how it came to be at the door of the barn (where the accident happened).

[44] In cross-examination, his evidence was markedly different on that point. He then said he never heard of this barrel until after the accident, when a police officer called him to tell him what had happened. Upon being questioned further about that discrepancy, he confirmed that his last answer was his evidence.

[45] The defendant further stated that he believed that the police officer (who called on the date of the accident from the scene) was laughing during the call. The defendant interpreted the officer’s attitude as one of disbelief of the plaintiff.

[46] The defendant testified that in response to the plaintiff’s complaints about the furnace, he attended the home on December 28. He brought a furnace repairman, Maurice Henneberry, with him. He described the two of them trying to start the furnace, and noting that it would start but immediately stop. The defendant

testified that Mr. Henneberry asked him to check the oil tank; the defendant did and found it to be empty.

[47] The defendant testified that he went to the livingroom and found the plaintiff lying on the floor under a blanket. The house was very cold and the room had wood “all over”; the plaintiff was obviously heating herself with the fireplace in the room. The defendant says he told the plaintiff that she needed to put oil in the oil tank, or she had to leave. He says the plaintiff refused to leave and told him to leave her alone.

[48] Two or three days later, the defendant testified that he and Mr. Henneberry returned to the home to see if everything was okay. They again checked the furnace and, once again, the defendant found the oil tank to be empty. He went into the livingroom and again found the plaintiff there. No lights were on. The defendant says he again told the plaintiff she had to put oil in the tank or leave, and also reminded her that he had told her in the past not to use that fireplace.

[49] The defendant testified that some days later, he was called by either the fire department or police department to come out to the house on the property. He attended and noted the house was “a mess”; there was water everywhere. The fire

department also showed the defendant a bucket full of hot ashes, which they had sprayed with water.

[50] The defendant says that the plaintiff was told to get out of the house by the authorities that day; however, he heard her say that she was not leaving.

[51] The defendant called one other witness, Maurice Henneberry, a furnace repairman. He described going with the defendant to the home on the property on two occasions, a few days apart, between Christmas and New Year 2012. He was present because he had been asked by the defendant to look at the furnace.

[52] Mr. Henneberry described that on the first occasion, he pressed the restart button on the furnace and it started, but then stopped. He bled the line and tried again, and once again the furnace started and then stopped. Mr. Henneberry therefore suspected that the oil tank was empty, and asked the defendant to go look at the oil tank to check. While the defendant was gone, he could hear arguing upstairs. He heard someone being told to “get out”. Mr. Henneberry described being quite uncomfortable, as he did not wish to be present for any conflict. He and the defendant then left.

[53] A few days later Mr. Henneberry attended again, with the defendant, at the home. According to Mr. Henneberry, the very same thing happened on that

occasion; the furnace would start and stop, so he again suspected that the oil tank was still empty and he told the defendant to go check. They both then left.

**Analysis**

[54] In my view, only Mr. Henneberry was a fairly candid, straightforward and reliable witness. I accept his version of the events that he was involved in.

[55] Neither the plaintiff nor the defendant impressed me from the perspective of either credibility or reliability. I would find it difficult, where their evidence diverges without any independent confirmation, to accept either version of events.

[56] The plaintiff did not recall, or denied, events that were clearly borne out (e.g., the lack of furnace oil in late December 2012). The plaintiff blamed things on the defendant (e.g., the sorry state of the barn) that she later acknowledged were not his responsibility. I accept that the plaintiff did run out of oil in late December; yet, for some reason, she faults the defendant for that.

[57] The plaintiff acknowledged having memory issues as a result of her pre-existing health difficulties, so it is possible that she is giving evidence as best she can, but does not remember events accurately. Having said that, quite frankly, I find that she was quite motivated to put forward her opinion, repeatedly, that the

defendant was a terrible landlord. That theme ran through her evidence in its entirety.

[58] Similarly the defendant's evidence, in my view, was coloured by his desire to paint the plaintiff as a terrible tenant, or worse. I entirely reject his evidence that a police officer would laugh about the plaintiff's injuries, in her presence; that evidence was not credible and, in my view, was motivated by spite. It is also obvious that the defendant was not truthful in relation to his evidence about the barrel. At first he admitted that it had been brought to his attention by the plaintiff, then later he entirely denied that same evidence. I find that denial to entirely lack credibility.

[59] In the final analysis, as I have already stated, I found it hard to accept either litigant's evidence with much confidence.

[60] Much of the evidence I heard dealt with the parties' complaints against each other. The plaintiff described, in great detail, the defendant's failures to respect his obligations under the lease, the formal processes she went through to try and enforce the lease, the inconvenience and cost to her, and so on. All of it, she says, happened because the defendant was a terrible landlord. The defendant, in his evidence, responded to those complaints in kind.

[61] The relevance of all these complaints, in the context of this proceeding, was not made entirely clear to me. As I understand it, the plaintiff's argument is that this evidence was illustrative of the defendant's lax attitude generally towards his property, and toward his duties and obligations as a landlord. Such would act as context for what happened with the barrel.

[62] In my view, while this evidence may have some tangential relevance as to context, most of it was superfluous and, in the final analysis, not very helpful. I have referenced some of that evidence within this decision, again, mainly as context, but also so that my comments relating to its relevance might be better understood.

[63] As a starting point, two things are abundantly clear to me following this trial: a) the plaintiff (and Mr. Peters) and the defendant did enter into this lease, and b) it turned into a disaster for them both. The landlord/tenant relationship entirely collapsed in about a month.

[64] Whose fault that was is unclear; each party blames the other. But there is no need for me to decide those issues in order to fulfill my role within the present litigation. The apportionment of blame for the collapse of this leasehold is not my role, nor my concern. My role is to adjudicate the action before me.

[65] Therefore, and to that end, I have no hesitation in accepting and finding that the plaintiff was injured as she described on December 22, 2012. The issue I must then resolve is whether the defendant is liable, in whole or in part, for what happened.

[66] The plaintiff had brought her claim in negligence. This requires a finding of a duty of care on the part of the defendant, the establishment of a standard of care, and an assessment of whether the defendant has breached that standard of care.

[67] As to duty of care, the defendant was the landlord and the plaintiff was the tenant of the property upon which the accident happened. As to the barrel itself, there is, quite simply, no evidence as to who placed it in the location where the accident happened. Both the plaintiff and the defendant deny that it was their barrel. They both deny placing it there and, in fact, they both deny ever having even used such a product.

[68] It is certainly possible that the defendant moved the barrel, once, at some point, from the barn to the house (as the plaintiff alleges). However, while this may have happened, I would not be prepared to say that I accept that as a fact. Frankly, on its face, such an action on the part of the defendant seems objectively unlikely, for any number of reasons. Why, upon being told by the plaintiff that she was

concerned about a barrel full of dangerous chemicals, would the defendant move it closer to the residence?

[69] In the final analysis, and for the reasons I have already discussed (relating to the credibility and reliability of the parties), I find it difficult to accept either party's evidence on that particular issue. In any event, even if it had happened, it would not inform my assessment of liability.

[70] Notably, Mr. Peters did not testify, and so we have no evidence as to whether he had anything to do with the barrel being on the property at all, or whether he might have placed the barrel at the specific location where the accident happened.

[71] In those circumstances, the plaintiff has argued that the defendant's liability is found in the *Occupiers Liability Act* SNS 1996 c. 27 (hereinafter the *Act*). I note the following sections of that *Act* as having relevance for my purposes:

> **Interpretation**
> 2 In this Act,
> (a) "occupier" means an occupier at common law and includes
> (i) a person who is in physical possession of premises; or
> (ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on the premises or the persons allowed to enter the premises,
>
> and for the purpose of this Act, there may be more than one occupier of the same premises;
> …

> **Duties of occupier**
> 4(1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that each person entering on the premises and the property brought on the premises by that person are reasonably safe while on the premises.
> (2) The duty created by subsection (1) applies in respect of
> (a) the condition of the premises;
> (b) activities on the premises; and
> (c) the conduct of third parties on the premises.
> …
> **Duties of landlord**
> 9(1) Where under a lease of premises a landlord is responsible for the maintenance or repair of the premises, the landlord owes the same duty to each person entering on the premises as is owed by the occupier of the premises.
> …

[72] The plaintiff's case is therefore dependent upon the court accepting that the defendant was an occupier of the property; or, in the alternative, that he met the criteria in section 9(1) of the *Act*.

[73] Generally speaking, a tenant would have exclusive possessory right over leased premises and would therefore be the sole "occupier" of those premises for the purposes of the *Act*. However, exceptions are found at section 2(a)(ii) and section 9(1).

[74] I note that I have been provided with no caselaw where a landlord was found to be an "occupier" of leased premises. The plaintiff has provided me with a few cases involving occupier's liability, but all of them involve defendants who were, quite clearly, "occupiers" under the *Act*. In fact, in those cases the issue was not even debated; the only dispute as to liability revolved around the appropriate

standard of care (*Roscoe v. Halifax (Regional Municipality)*, 2011 CarswellNS 941; *Smith v. Atlantic Shopping Centres Ltd.*, 2006 CarswellNS 177).

[75] In *Allison v. Rank City Wall Canada Ltd.*, 1984 CarswellOnt 694, a landlord was found liable for losses incurred in a parking garage of an apartment building. However, I find that to be an easily distinguishable case. A parking garage is a common area for tenants, as opposed to a tenant's actual leased premises. Common areas of an apartment building (stairwells, lobbies, parking garages) would normally remain within the landlord's possession and control, while the actual leased premises (i.e., the apartment) would not.

[76] In the present case, the plaintiff claims that the defendant remained an "occupier" since a) he attended so frequently onto the property, and b) because he had work that he had undertaken to accomplish on the property.

[77] I see no authority for either proposition, nor do they seem logical to me. The evidence before me is that the defendant was on the property for the purpose of doing repairs (as he had agreed to do). I know of no other reason that he was there. I am unpersuaded that whether this happened frequently or infrequently makes any difference.

[78] The defendant did have very specific obligations pursuant to the lease to effect certain repairs. If he did not meet those obligations, that might constitute a breach of the lease. If he accomplished them poorly, or caused hazards while doing them, that might raise liability issues in other ways. But the mere fact that he was responsible for a specific (and fairly short) list of repairs pursuant to a lease did not give him power or control over the property. Nor is it the same thing as being "responsible for the maintenance or repair of the premises" as required by section 9(1) of the *Act*.

[79] In fact, the evidence before me shows the opposite.

[80] The plaintiff complained that during this tenancy, the defendant would often come onto the property without any notice. He would walk in and simply announce his presence by calling out. The plaintiff says she made it known to him that this was inappropriate and contrary to her wishes. She notes that she even phoned the police on at least one occasion about these intrusions.

[81] If the defendant was, in fact, routinely attending the property without giving proper notice, I can certainly understand that the plaintiff was displeased. She would have had every right to be upset and annoyed.

[82] But this evidence contradicts the plaintiff's argument. The plaintiff cannot assert that the defendant had no right to be on the property without notice (because she and Mr. Peters were entitled to its exclusive possession and quiet enjoyment), but at the same time argue that the defendant continued to somehow exercise possession and/or control of the property. Those positions are mutually exclusive and the plaintiff cannot have it both ways.

[83] The authority from caselaw and the lease, in fact, did give the plaintiff and Mr. Peters exclusive possession of the property. The plaintiff's complaints about the defendant's attendance on the property tells me that the plaintiff also had the subjective expectation and belief that she and Mr. Peters were meant to have such exclusive possession.

[84] I find that the defendant was not an "occupier" of the property in December 2012. He did not meet the definition contained in section 2(a) of the *Act*. Nor did he meet the definition contained in section 9(1) of the *Act*. General maintenance and repair was not allocated to the defendant as a term of this lease. In fact, the plaintiff acknowledged in her evidence that much of the maintenance and repair needed on the property would be the responsibility of she and/or Mr. Peters.

[85] I sympathize with the plaintiff. There is no doubt that she experienced a frightening and unfortunate accident on December 22, 2012. There is no doubt that she was injured as a result of coming into contact with the chemical in that barrel. Thankfully, it appears that her injuries have essentially stabilized and, although they flare up at times causing her pain and discomfort, they have not caused her any significant disability.

[86] Having said that, I simply cannot at law find any basis for liability on the part of the defendant. A successful claim in negligence requires the finding of a duty of care on the part of the defendant vis-à-vis the plaintiff; none has been shown to me here. Where there is no duty of care, there can be no standard of care.

[87] I dismiss the plaintiff's claim. If the parties cannot agree on costs, I would ask for written submissions from counsel.

Boudreau, J.