

Case No.

Vol No.

ECONOMICAL MUTUAL INSURANCE COMPANY

PLAINTIFF

- and -

LAWRENCE KEVIN ELLIOTT

DEFENDANT

Justice Walter R. E. Goodfellow

Halifax, Nova Scotia

File No. S.H. 101993

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Cite as: Economical Mutual Insurance Company v. Elliott, 1999 NSSC 93

DATE HEARD: June 9, 1999

**WRITTEN
DECISION:** June 14, 1999

SUBJECT: TORTS - GRASS FIRE

SUMMARY: Elliott, a Marine Engineer, conducting burns for years, had taken firefighter courses in his employment, obtained a fire permit and on the evening of May 2nd, 1993, equipped with a shovel and a bic lighter, started a grass fire 24 to 36 inches from a barn and then moved downhill to light another fire and on moving further a short distance turned and observed the corner of the barn ablaze. The fire department arrived and had the fire almost extinguished when it ran out of water. The property owned by Elliott's common-law wife but period of cohabitation too short to provide him coverage. Economical paid insured claim of \$12,713.50 and subrogated right exercised against Elliott. Concluded Forests Act and permit do not dictate duty of care and no requirement of having additional person on hand for a backyard burning, etcetera. However, Elliott clearly negligent in lighting a grass fire which he knew to be inherently dangerous without any precaution such as having a water supply on hand as the only hose available was at the home 200 feet away and the hose was on the other side of the house. Additionally, he did not do anything such raking the grass away from the building and he was negligent in turning his back on the first fire as it was clearly foreseeable that such would rapidly spread. Acquisition of fire permit does not serve to waive or excuse his negligence.

RESULT: Economical entitled to recover \$12,713.50 and pre-judgment interest. Counsel entitled to be heard on costs.

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