

SUPREME COURT OF NOVA SCOTIA
Citation: *Boyce v. Abousamak*, 2014 NSSC 160

Date: 20140501
Docket: Hfx No. 344479
Registry: Halifax

Between:

Michael Boyce and Kimberley Susan Arnold-Boyce

Plaintiffs

v.

Wael Abousamak and Allison Williamson

Defendants

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Judge: The Honourable Justice Peter P. Rosinski

Heard: April 14, 2014 in Halifax, Nova Scotia

Subject: *Civil Procedure Rules* 55.03; 55.04 and 55.10

Summary: Plaintiffs are suing the tenant Defendants for having caused fire damage to Plaintiffs' rental property by careless use or disposal of smoking materials. Plaintiffs' expert filed his initial report on time per Rule 55.03. Plaintiffs received material information that "could reasonably affect the opinion" very shortly before trial. Plaintiffs filed a supplemental expert report one week before trial. Defendants requested a Rule 55.10 advance ruling regarding whether that report should be excluded at trial.

Issues:

- (1) Is an advance ruling possible in such scenarios?
- (2) Was the supplementary report disclosed in accordance with Rule 55?

Result:

Report not excluded pursuant to Rule 51.03(2)(d).

1. It is questionable whether “advance” rulings under Rule 55.10 are possible in such situations, but that issue need not be resolved in this case as effectively the trial had started.
2. Such supplementary reports triggered by the Rule 55.04(1)(e) obligation to notify must be filed with the Court and be in conformity with Rule 55.04, but are not subject to the Rule 55.03 filing deadlines since 55.04(1)(e) only requires notification to other parties “as soon as possible”; and impliedly filing with the Court by the finish date, or otherwise “as soon as possible”.

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