

**CASE NO.**

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**1588145 NOVA SCOTIA LTD**

- and -

**CAPE BRETON REGIONAL  
MUNICIPALITY and ATTORNEY  
GENERAL OF CANADA**

(Appellant)

(Respondent)

**CA177183**

Halifax, N.S.

**CHIPMAN, J.A.**

[Cite as: *1588145 Nova Scotia Ltd. v. Cape Breton (Regional Municipality)*, 2002 NSCA 84]

**APPEAL HEARD:**

May 30, 2002

**JUDGMENT DELIVERED:**

June 13, 2002

**SUBJECT:**

**Constitutional Law - *Constitution Act Sec. 108* - Public Harbours -  
Proof that Property is Part of Harbour.**

**Municipal Law - *Municipal Government Act, 1998 c.18* -  
Dangerous or Unsightly Premises - Proof of ownership Within s.  
3(ay)(ii)(D)**

**SUMMARY:**

The appellant was ordered by a Supreme Court judge in Chambers to demolish structures on property on the Esplanade in Sydney pursuant to the “dangerous or unsightly” provisions of the ***Municipal Government Act***. The appellant appealed to the Court of Appeal claiming that it was not the owner of the property and hence not liable under the provisions of the Act.

**ISSUES:**

1. Whether the appellant was the owner of the property within the meaning of s.3(ay)(ii)(D) of the Act. The appellant’s contention was that it was not, because the property was part of a public harbour, and that the appellant’s post-Confederation provincial grant was ineffective to give title to it and that the property was owned by the Federal Government.
2. Even if the appellant was the owner of the property it was outside the jurisdiction of the Province of Nova Scotia, being part of a public harbour.

**RESULT:** The Nova Scotia Court of Appeal reviewed the evidence placed before the Chambers judge by way of affidavits. The Court affirmed the decision of the Chambers judge that the appellant was the owner, within the meaning of the Act, of the property. It was not established that the property was within Sydney Harbour or was owned by the Federal Government. The appellant was the owner of the property within the meaning of s. 3(ay)(ii)(D) of the Act.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 9 pages.**