

**IN THE SUPREME COURT OF NOVA SCOTIA**

**APPEAL DIVISION**

Cite as: Cape Breton Development Corporation v. Nova Scotia (Workers' Compensation Board), 1992 NSCA 44

**BETWEEN:**

CAPE BRETON DEVELOPMENT Corporation	)	Harvey L. Morrison
Appellant/Applicant	)	for the Appellant
- and -	)	E.A. Nelson Blackburn, Q.C.
	)	for the Respondent,
	)	Ernest R. Butts
WORKERS' COMPENSATION APPEAL BOARD)	)	
(NOVA SCOTIA)	)	
Respondent	)	Application Heard:
- and -	)	December 31, 1992
ERNEST R. BUTTS	)	Decision Delivered:
Respondent	)	December 31, 1992

**BEFORE THE HONOURABLE MADAM JUSTICE ELIZABETH ROSCOE,  
IN CHAMBERS**

**ROSCOE, J.A.: (in Chambers)**

This is an application for leave to appeal pursuant to s. 182(1) of the **Workers' Compensation Act**, R.S.N.S. 1989, c. 508, which is as follows:

" An appeal shall lie to the Appeal Division of the Supreme Court from any final decision of the Appeal Board upon any question as to its jurisdiction or upon any question of law, but such appeal can be taken only by leave of a judge of the Appeal Division, given upon application for leave to appeal which must be made to said judge within thirty days after the rendering of the decision, and upon such terms and conditions as the judge may determine."

Subsection (2) reads:

" Notice of the hearing on an application for leave to appeal pursuant to subsection (1) shall be given to the Appeal Board at least two clear days before the application is heard."

The respondent, Ernest Butts, opposes the application for leave on the basis that it is out of time. The decision of the Worker's Compensation Appeal Board appealed from is dated November 18, 1992. A notice of appeal was filed by the appellant on December 18, 1992. The notice of application for leave was filed on December 24, 1992 for a hearing in Chambers today, December 31, 1992.

This same issue with respect to the time was addressed by this Court in **Wolter v. The Municipality of Digby, et al.** (1983), 65 N.S.R. (2d) 178; **Re Chafe** (1974), 10 N.S.R. (2d) 261; and in **Spiropoulos v. Director of Assessment**, an unreported decision dated August 23, 1983, S.C.A. No. 01195.

I have considered the arguments of counsel and these cases and I find, relying on these authorities, that the application for leave in this case is out of time and that the Civil Procedure Rules of allowing for extension of time do not apply. I do not find that the amendments to the **Workers' Compensation Act** since **Re Chafe** change the fact that the leave application must be heard within thirty days of the date of the decision appealed from. The application for leave is therefore dismissed without costs.

- 3 -

J.A.