

NOVA SCOTIA COURT OF APPEAL

Citation: AMCI Export Corporation v. Nova Scotia Power Inc.,
2005 NSCA 152

Date: 20051124

Docket: CA 246740

Registry: Halifax

Between:

AMCI Export Corporation

Appellant

v.

Nova Scotia Power Incorporated

Respondent

Judge: The Honourable Justice Freeman

Appeal Heard: November 9, 2005

Subject: **Attachment Orders, Rules of Civil Procedure, Rule 49.01(1)(a); non-resident corporation, Corporations Registration Act.**

Summary: AMCI, an American corporation with its head office in Latrobe, Pennsylvania, appealed a judgment of the Nova Scotia Supreme Court upholding an attachment order against its assets in Nova Scotia obtained by Nova Scotia Power Corporation pursuant to **Civil Procedure Rule 49.01(1)(a)** on grounds that AMCI was resident out of the jurisdiction. N.S. Power had sued AMCI for more than \$11,000,000 damages for alleged breach of one contract to supply coal but owed AMCI more than \$7,000,000 on another contract which was being performed. It sought to attach the account it owed and more than \$2,000,000 worth of coal it alleged AMCI owned at a terminal in Cape Breton, which it said were AMCI's only assets in Nova Scotia. The attachment order was issued by the prothonotary but AMCI applied to a chambers judge to have it set aside pursuant to **Rule 49.12(c)** on grounds that it was not necessary for the security of Nova Scotia Power as plaintiff.

Issues: The issue was whether AMCI was resident out of the province within the meaning of **Rule** 49.01(1)(a).

Result: The appeal was dismissed with costs. A defendant corporation could have residence in the jurisdiction pursuant to **Rule** 49.01(1)(a) if it could show sufficient presence in the province to counter impediments faced by a plaintiff in enforcing judgments and orders against a non-resident corporation. Such presence was to be determined in each case from evidence of *indicia* of residence. On the evidence before the chambers judge he did not err in finding the appellant to be resident out of the jurisdiction, and in refusing to exercise his discretion to set aside the attachment order.

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 17 pages.