

NOVA SCOTIA COURT OF APPEAL

Citation: *BM Halifax Holding Ltd. v. Nova Scotia (Attorney General)*,
2015 NSCA 89

Date: 20151006
Docket: CA 435638
Registry: Halifax

Between:

BM Halifax Holding Limited, TDB Halifax Holdings Limited and
Robin Halifax Holdings Limited

Appellants

v.

The Attorney General of Nova Scotia, Representing Her Majesty the Queen
in Right of the Province of Nova Scotia

Respondent

Judge: The Honourable Justice Joel E. Fichaud

Appeal Heard: June 1, 2015, in Halifax, Nova Scotia

Subject: Municipal law – statements of provincial interest and interim
planning area orders – *vires* of delegated legislative
instruments

Summary: The Province and Halifax Regional Municipality jointly
promoted and agreed to share substantial construction costs of
the Nova Centre, a new convention centre and related multi-
purpose complex in downtown Halifax. Their view was that
the project would bring substantial benefits to Halifax and the
Province. The developer requested public input on the initial
design then, responding to the input, sought to amend features
of the above-grade design. The approval process was
expected to take eight months. Sub-grade work had begun.
The developer, Province and Municipality were concerned
that the momentum of construction would suffer if sub-grade
work stopped while the above-grade amendments were

considered. At the Municipality's request, the Province issued a Statement of Provincial Interest and Interim Planning Area Order under the *Municipal Government Act*, S.N.S. 1998, c. 18 (as amended), ss. 193 and 194(5) and the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39 (as amended), ss. 209(p) and 214. These instruments stated that the Province has an interest in the timely construction of the project, and established an interim planning area wherein the sub-grade work could proceed pending the Municipality's decision whether to approve the above-grade design changes. The owners of other office buildings in Halifax challenged the validity of the Statement of Provincial Interest and Interim Planning Area Order. A judge of the Supreme Court of Nova Scotia dismissed their challenge. The other owners appealed to the Court of Appeal.

Issues: Are the Statement of Provincial Interest and Interim Planning Area Order *ultra vires* their enabling authority in the *Municipal Government Act* and *Halifax Regional Municipality Charter*?

Result: The Court of Appeal dismissed the appeal. The Province had an objectively ascertainable interest in the timely construction of the project. An Interim Planning Area Order is meant to effectuate the Statement of Provincial Interest. The Statement of Provincial Interest and the Interim Planning Area Order satisfied the prerequisites of the enabling legislation and were *intra vires*.

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 18 pages.