

NOVA SCOTIA COURT OF APPEAL

**Citation: *Nova Scotia (Attorney General) v. Force Construction Ltd.*,
2009 NSCA 96**

Date: 20090917

Docket: CA 304815

Registry: Halifax

Between:

Attorney General of Nova Scotia representing
Her Majesty the Queen in Right of the Province of Nova Scotia

Appellant

v.

Force Construction Limited

Respondent

Judges: Bateman, Hamilton and Fichaud, JJ.A.

Appeal Heard: September 17, 2009, in Halifax, Nova Scotia

Written Judgment: September 18, 2009

Held: Appeal dismissed per oral reasons for judgment of
Bateman, J.A.; Hamilton and Fichaud, JJ.A. concurring.

Counsel: Michael T. Pugsley, for the appellant
David A. Graves, Q.C. and Kevin D. Gibson, for the
respondent

Reasons for judgment:

[1] The Province was found liable for breach of contract in a tendering situation and required to pay damages. The reasons for judgment of Justice Glen G. McDougall of the Supreme Court of Nova Scotia are reported at 2008 NSSC 327. Those reasons provide full detail of the circumstances and trial positions of both parties.

[2] The judge determined that the Province had failed in its obligation to treat all bidder's equally by requiring the lowest compliant bidder to provide additional assurances after submitting its bid (see reasons at para. 43). We are not persuaded that in so concluding he erred.

[3] Nor are we satisfied that he erred in his calculation of damages, having found that but for the Province's breach, the respondent would have been awarded the contract.

[4] The appeal is dismissed with costs payable of \$12,400.00 representing 40% of those at trial. In addition the respondent shall have its disbursements on the appeal as taxed or agreed.

Bateman, J.A.

Concurred in:

Hamilton, J.A.

Fichaud, J.A.