

NOVA SCOTIA COURT OF APPEAL

[Cite as: Nova Scotia School Board Association v. Driscoll, 2002 NSCA 37]

Roscoe, Freeman and Saunders, J.J.A.

BETWEEN:

NOVA SCOTIA SCHOOL BOARD ASSOCIATION,
ANNAPOLIS VALLEY REGIONAL SCHOOL BOARD, CAPE
BRETON-VICTORIA REGIONAL SCHOOL BOARD,
CHIGNECTO - CENTRAL REGIONAL SCHOOL BOARD,
CONSEIL SCOLAIRE ACADIEN PROVINCIAL, HALIFAX
REGIONAL SCHOOL BOARD, SOUTHWEST REGIONAL
SCHOOL BOARD and STRAIT REGIONAL SCHOOL BOARD

Appellants

- and -

CATHERINE DRISCOLL, VICTOR FLEURY, DEREK HAYNE,
ALLAN KENNEDY, RUSSELL MACDONALD, HANK
MIDDLETON, HAROLD DUNSTAN, JOE MACEACHERN,
BILL REDDEN, Trustees of the Nova Scotia Teachers Union Group
Insurance Fund; NOVA SCOTIA TEACHERS UNION, THE
NOVA SCOTIA TEACHERS UNION GROUP INSURANCE
FUND, THE MANUFACTURERS LIFE INSURANCE COMPANY,
and JOHNSON INCORPORATED

Respondents

REASONS FOR JUDGMENT

Counsel: C. Peter MacLellan, Q.C./John D. Rice for the Appellants
Michael S. Ryan, Q.C. for the Respondents Driscoll, et al. and NSTU
Nancy F. Barteaux for the Respondent Johnson Incorporated
William L. Ryan, Q.C. for the Respondent Manufacturers Life

Appeal Heard: March 19, 2002

Judgment Delivered: March 19, 2002

THE COURT: The appeal is dismissed with costs as per oral reasons for judgment of Roscoe, J.A.;
Freeman and Saunders, J.J.A., concurring.

ROSCOE, J.A.: (Orally)

- [1] This is an appeal from a decision of Justice Hamilton allowing the respondents' applications made pursuant to **Civil Procedure Rule** 11.05(a), to set aside the appellants' originating notice (actions) commenced in the Supreme Court of Nova Scotia on the ground that the appellants' claim was to be determined by arbitration as provided in the statutory scheme created by the Nova Scotia Legislature, and the collective agreements entered into between the appellant School Boards and the respondent, Nova Scotia Teachers Union (NSTU). Justice Hamilton set aside the appellants' claims arising under 94 out of 99 collective agreements between these parties.
- [2] With respect to the five claims arising out of collective agreements that did not contain any provision for final resolution of disputes between the parties, Justice Hamilton stayed the same until the final determination by arbitration of the appellants' claims, including all appeals from an arbitral award arising out of the 94 collective agreements.
- [3] The respondents Johnson Incorporated (Johnson) and Manufacturers Life Insurance Company (ManuLife) had alternatively applied to Justice Hamilton to have the appellants' originating notice (actions) and statement of claim struck pursuant to **Rule** 14.25(1)(a) on the ground that the statement of claim disclosed no reasonable cause of action against those two respondents. With respect to those applications, the order issued by Hamilton, J. (as she then was) provided that the applications were adjourned without day with leave to each of Johnson and ManuLife to renew those applications in the event the appellants proceeded in the Supreme Court of Nova Scotia with their claims arising out of the aforesaid five collective agreements.
- [4] Johnson and ManuLife have asked this court to exercise jurisdiction and set aside the appellants' statement of claim pursuant to **Rule** 14.25(1)(a). The appellants, during oral argument, conceded that Johnson's notice of contention had merit and should be allowed.
- [5] We have carefully reviewed the statement of claim and the decision of Hamilton, J. We have considered the written and oral submissions of counsel for the various parties. We are not persuaded that Justice Hamilton erred in law, nor that her decision results in a manifest injustice to any of the parties. In light of the concession, with respect to Johnson, the relief sought in the notice of contention is granted, that is, that the action against Johnson is struck out. In all other respects, the appeal is dismissed. We are not prepared to grant to ManuLife any different relief or disposition than that ordered by Justice Hamilton.
- [6] The appellants shall pay forthwith to the respondents the costs of the appeal inclusive of disbursements which we fix as follows: \$1,500.00 to the Nova Scotia Teachers Union and the Trustees and \$1,500.00 each to Johnson and ManuLife.

Roscoe, J.A.

Concurred in:

Freeman, J.A.

Saunders, J.A.