

NOVA SCOTIA COURT OF APPEAL

Citation: *Smith v. Nova Scotia (Attorney General)*, 2004 NSCA 106

Date: 20040915

Docket: CA 202492

Registry: Halifax

Between:

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

Appellant

v.

Terrance L. Smith

Respondent

- and -

The Nova Scotia Government and General Employees Union

Intervenor

JUDGE: Cromwell, J.A.

APPEAL HEARD: March 22 and 23, 2004

JUDGMENT DELIVERED: September 15, 2004

SUBJECT: **Interlocutory relief – Proceedings Against the Crown Act –
Interlocutory injunctions against officers of the Crown**

SUMMARY: Mr. Smith, a long time employee of the Shelburne Youth Centre, was accused, but ultimately cleared, of breach of duty and physical abuse in relation to youth in his charge at the institution. He was demoted, then sent home with pay and then advised in a letter from

the deputy minister that these arrangements would come to an end if he did not report to a new position at the institution or make other arrangements. The new position was one that Mr. Smith felt, supported by his treating psychologist, was not suitable for him. Mr. Smith commenced an action and then sought and was granted an interlocutory injunction in the Supreme Court enjoining the deputy minister of justice from proceeding with the steps set out in the deputy minister's letter. The Crown appealed.

ISSUES:

1. Did the judge err in finding that Mr. Smith had established an arguable case that his rights had been infringed?
2. Did the judge err in finding that he could issue an interlocutory injunction against the deputy minister in light of s. 16(4) of the **Proceedings Against the Crown Act**, R.S.N.S. 1989, c. 360?
3. Did the judge err in finding that Mr. Smith had established irreparable harm?

RESULT:

Appeal dismissed. The judge did not err in finding that Mr. Smith had made out an arguable case that the deputy minister's actions were a dismissal and in excess of his statutory authority. Interlocutory injunctions against Crown officers such as the deputy minister may issue where the officer has exceeded his or her authority. In light of the Memorandum of Agreement that applied to employees in Mr. Smith's position, the deputy minister's actions were arguably in excess of his statutory authority and could be enjoined. Finally, the judge did not err when he concluded that, in the unique circumstances of employees in Mr. Smith's position and in light of the provisions of the Memorandum of Agreement, damages at trial would not be an adequate remedy.

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 38 pages.