

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Director of Assessment) v. Artificial Reef Society of Nova Scotia*, 2007 NSCA 67

Date: 20070531

Docket: CA 273952

Registry: Halifax

Between:

Director of Assessment and
Town of Bridgewater

Appellant

v.

The Artificial Reef Society of Nova Scotia

Respondent

Judge: The Honourable Justice Jamie W. S. Saunders

Appeal Heard: May 31st, 2007

Subject: **Tax. Assessable property. Costs award.**

Summary: The Artificial Reef Society is a non-profit Society which in 1998 acquired (as custodian) the HMCS Fraser, a decommissioned Canadian naval destroyer. From 1998 until 2003 the vessel was considered non-assessable by the Director of Assessment. That position changed when in January 2003 the Director decided that it had jurisdiction to assess the vessel. The ship was assessed as commercial property, most of which was declared exempt from taxation. The remainder, approximately \$35,000.00, was declared taxable.

The Society challenged the assessment, which was later affirmed by the Regional Assessment Appeal Court. The Society then commenced an application in the Nova Scotia Supreme Court which was scheduled to be heard in December 2005. At the 11th hour, upon reading the Society's written

submissions, the Director was convinced to disregard the legal opinion from its counsel and return to its 1998-2003 position, that the vessel is not assessable pursuant to the provisions of the **Assessment Act**, R.S.N.S. 1989, c. 23.

Other matters were still in issue, including the Society's claim for significant costs on the basis that the entire process was an unnecessary misadventure that would never have occurred but for the Director's erroneous decision in 2003 to assess the ship, as well as other changed positions on the part of the Director as to whether the Supreme Court, or the Regional Assessment Appeal Court, was the proper forum.

Following a contested chambers hearing, Scanlan, J. awarded the Society lump sum costs of \$20,000.00. The Director appealed. The Society cross-appealed, claiming that if there were to be any adjustment to the original cost order, then it ought to be increased in its favour.

Held: Leave to both appeal and to cross-appeal granted, but each denied. A judge's discretionary award of costs will not be disturbed unless wrong principles of law have been applied, or the decision is so clearly wrong as to amount to a manifest injustice. Neither cause for intervention arose here.

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 1 page.