

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Human Rights Commission) v. Halifax (Regional Municipality)*, 2010 NSCA 8

Date: 20100211

Docket: CA 307568

Registry: Halifax

IN THE MATTER OF: The *Human Rights Act*, R.S.N.S. 1989, c. 214

IN THE MATTER OF : The Complaint of Lucien Comeau dated June 26, 2003, filed pursuant to the provisions of the *Human Rights Act*.

IN THE MATTER OF: An application by the Halifax Regional Municipality in the nature of *certiorari* and prohibition to review the decision of the Nova Scotia Human Rights Commission to appoint Lynn Connors as the Board of Inquiry in the Comeau complaint and to prohibit Lynn Connors as the Board of Inquiry from proceeding to convene a hearing into the Comeau complaint.

Between: Nova Scotia Human Rights Commission and Lucien Comeau

Appellants

v.

The Halifax Regional Municipality, a body corporate duly incorporated pursuant to the law of Nova Scotia, and Lynn Connors and Her Majesty The Queen in Right of the Province of Nova Scotia

Respondents

JUDGE: MacDonald, C.J.N.S.

APPEAL HEARD: December 10, 2009, in Halifax, Nova Scotia

SUBJECT: **Administrative Law; prerogative writs; prohibition; certiorari; standard of review; human rights legislation.**

SUMMARY: The appellant Comeau filed a complaint with the appellant Nova Scotia Human Rights Commission alleging that the Halifax Regional Municipality discriminated against him as a person of Acadian descent. Essentially his issue involved the fact that as a taxpayer, he helped finance special projects for schools in his area. Yet his children, who attended a designated French school, received no such benefit.

The Municipality, alleging that the Commission had no jurisdiction to entertain the complaint, asked the Nova Scotia Supreme Court to set aside the Commission’s decision to appoint a Board of Inquiry and to prohibit the Board from proceeding. The Supreme Court granted this relief and both Comeau and the Commission appeal to this court.

ISSUE: Did the Supreme Court commit reversible error?

RESULT: Appeal allowed. The Supreme Court’s approach to this matter reflected error. Here the Board of Inquiry was struck before it even started. To justify such extraordinary relief, the purported lack of jurisdiction must be “clear and beyond doubt”, a test not met in this case. The Supreme Court order was set aside and the Board was reinstated.

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.