

Date: 19980112

Docket: CA 141606

NOVA SCOTIA COURT OF APPEAL
Cite as: Arb Recycling v. Halifax (County), 1998 NSCA 46

Roscoe, Jones and Cromwell, JJ.A.

BETWEEN:

AYLMER R. BEGG, businessman, carrying
on business under the name and style of
ARB RECYCLING

Appellant

)
)
) Appellant did not
) appear
)

- and -

THE MUNICIPALITY OF THE COUNTY OF
HALIFAX

Respondent

)
) John E. MacDonell
) for the Respondent
)

)
) Application Heard:
) January 12, 1998
)

)
) Judgment Delivered:
) January 12, 1998
)

THE COURT:

The application pursuant to Civil Procedure Rule 62.18(1) made by the respondent is granted and the appeal is dismissed with costs as per oral reasons for judgment of Roscoe, J.A.; Jones and Cromwell, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

ROSCOE, J.A.:

There are two applications before the Court made by the respondent Municipality seeking to dismiss the appeal. The first is made pursuant to **Civil Procedure Rule 62.18(1)** on the basis that the appeal is frivolous, vexatious and without merit. The second application to dismiss is made pursuant to Rule 62.13(2) on the basis that the appellant has not complied with the order of Bateman, J.A. dated October 23, 1997 that he post security for costs on or before December 1, 1997.

The appeal is from an order of Justice Hood of the Supreme Court who granted an order striking out the appellant's statement of claim in S.H. No. 117730 for failure to disclose a cause of action. In the statement of claim the appellant claimed damages because of alleged wrongdoing by the Municipality in connection with a rezoning application.

The only grounds of appeal, set out in the notice of appeal, are:

THAT the Learned Chambers Judge failed to consider the fact that neither Stewart McKelvey Stirling Scales nor the law firm Cox Downie have acted in accordance with Rule 44.01(1) and Rule 44.06(1) of the Nova Scotia Civil Procedure Rules.

AND that the Prothonotary Office knew about this transgression and refused to act in an appropriate manner.

AND that there is no time frame limiting a litigant's contention of a conflict of interest situation and that regardless of this fact, both the Barristers' Society and the Justice Minister were alerted to my concerns in a letter dated June 30, 1995.

No material was filed by Mr. Begg in opposition to the applications, nor did he appear on the hearing of them.

This Court has on two previous occasions dealt with the issue of the alleged

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conflict of interest and the actions of the two law firms mentioned in relation to the appellant. See the decisions in C.A. No. 135904/136205 dated March 26, 1997 reported at 159 N.S.R. (2d) 394 and C.A. No. 137343 dated October 7, 1997. Both of those appeals were dismissed. The issue is obviously **res judicata**. To attempt to once again have this Court hear an appeal based on the conflict of interest issue is surely frivolous and vexatious. The application to strike the appeal based on Rule 62.18(1) is therefore granted.

It is not necessary to deal with the application to dismiss based on the failure to post the security for costs.

The respondent shall have costs of the applications from the appellant in the amount of \$750.00 including disbursements.

Roscoe, J.A.

Concurred in:

Jones, J.A.

Cromwell, J.A.