NOVA SCOTIA COURT OF APPEAL
Citation: ***Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)***, 2012 NSCA 11

Date: 20120125
Docket: CA 352666
Registry: Halifax

Between:

Halifax Regional Municipality

Appellant

v.

The Nova Scotia Human Rights Commission, Michael Craig, Tammy Robertson, Donald C. Murray, Q.C., in his capacity as a Human Rights Board of Inquiry, and the Attorney General of Nova Scotia

Respondents

Judges: Saunders, Oland and Bryson, JJ.A.

Appeal Heard: January 24, 2012, in Halifax, Nova Scotia

Held: Leave to appeal is granted but the appeal is dismissed per reasons for judgment of Saunders, J.A.; Oland and Bryson, JJ.A. concurring.

Counsel: Randolph Kinghorne, for the appellant
Lisa Teryl, for the respondent The Nova Scotia Human Rights Commission
Respondents Michael Craig, Tammy Robertson, Donald C. Murray, Q.C. in his capacity as a Human Rights Board of Inquiry and the Attorney General of Nova Scotia not participating

Reasons for judgment:

[1] After hearing submissions from counsel we recessed and then returned to court to announce our unanimous decision that the appeal ought to be dismissed, on the basis of mootness, with reasons to follow. These are our reasons.

[2] A Board of Inquiry was appointed pursuant to s. 32A of the **Human Rights Act**, R.S., c. 214, in respect of complaints launched by the respondents Michael Craig and Tammy Robertson. Essentially, the complainants alleged discrimination on the part of the Halifax Regional Municipality and Metro Transit in failing to accommodate their needs by providing buses and bus routes, equipped and accessible for persons in wheelchairs.

[3] Donald C. Murray, Q.C. was appointed to chair the inquiry. During the course of several pre-hearing conferences he was made aware of the fact that there were active discussions underway aimed at resolving the complaints. In June, 2011, Mr. Murray was presented with a document entitled "Consent Order" signed by all of the parties, together with a Memorandum of Understanding (MOU) documenting the full discussions and understandings between the parties. The MOU confirmed the policy changes that had been made, and gave further detail to the operational changes and training that were to be implemented on a go forward basis.

[4] On June 30, 2011, Mr. Murray issued a so-called interim decision to which he attached the "Consent Order" with the statement:

> .... I am prepared to adopt the "Consent Order" as the core of an interim order, with some adjustments and some comments.

In the very next sentence of his interim decision the Chair purported to:

> ... retain jurisdiction to hear the parties further on the issues of both the nature and extent of any contravention of the *Human Rights Act* by Metro Transit, as well as with respect to Metro Transit's compliance with the negotiated remedies which appear in the "Consent Order".

[5] On July 20, 2011, the Halifax Regional Municipality appealed the interim decision. The several grounds of appeal can all be distilled to a single complaint

that the Board exceeded its jurisdiction by extending its oversight beyond the time and the subject-matter authorized by its appointment. The appellant interpreted the June 30 interim decision as enabling the Board to hear new complaints of discrimination and to provide new remedies beyond those reflected in the settlement concluded by the parties.

[6] In response, the Commission says the appeal is moot and ought to be dismissed on that basis. Alternatively, the Commission says the Board's interim order cannot reasonably be interpreted to mean that its chair retained, or assigned to himself, the power to hear new complaints and craft new remedies. It asks that the appeal be dismissed and the interim order upheld. If, however, the comments by Mr. Murray in his June 30 interim decision could be interpreted as authorizing him to hear new complaints and dispense relief unrelated to the original, settled remedies, then the Commission would agree that the Board had exceeded its jurisdiction and that its interim order would be "incorrect", having created a "substantial hardship" for the appellant (**Doucet-Boudreau v. Nova Scotia (Minister of Education)**, 2003 SCC 62 at para. 58).

[7] As noted earlier, the Municipality's notice of appeal was filed July 20, 2011.

[8] On November 28, 2011, the parties notified the Chair by letter that all of the provisions of the interim order had been successfully implemented by the appellant. They asked that a final order be issued, concluding the inquiry. Mr. Murray issued his final order on November 29, 2011, which states, in part:

> 3. On November 28, 2011, I was advised, by correspondence from counsel for the Nova Scotia Human Rights Commission, that all six components of the June order have been completed by Metro Transit to the satisfaction of all the parties. I further understand that the parties have recognized the response of Metro Transit to the June order as impressive. Metro Transit has performed its undertakings with an acknowledged abundance of good faith. Metro Transit has conveyed to the parties that it will encourage and consider ways to facilitate continuing and effective dialogue with the complainants and others who are affected by transit access issues. This is the positive outcome that was anticipated from the orders that the parties recommended to this Board of Inquiry in June.

> 4. Based on the foregoing, and for the reasons already expressed in the decision I made in June, I have decided that it is appropriate to now conclude my inquiry pursuant to s. 34(5) of the *Act*.
>
> 5. A hand-signed copy of this decision will be delivered to the Commission. An electronically signed copy has been distributed to the parties in pdf format.
>
> DATED at Halifax, Nova Scotia, this 29th day of November, 2011.
>
> Donald C. Murray, Q.C.
> Board of Inquiry

[9] While we appreciate the appellant's concern that the Board may have overstepped its authority by purporting to expand its work beyond the terms of its appointment, we are unanimously of the view that we ought not to consider the merits of this appeal. The scope of the Board's mandate and whether the parties' own solicitations persuaded Mr. Murray to extend his oversight beyond what was intended need not be addressed. We wish to make it clear that our disinclination to consider such issues in this case ought not to preclude their being argued in an appropriate appeal where the inquiry has not concluded its mandate.

[10] This case is moot. The Board's final decision issued November 29, 2011, concluded the inquiry. With it, the Chair became *functus officio*.

[11] When the appellant filed its notice of appeal, the Board's June 30 interim order was still extant. One can certainly understand the Municipality's interest in preserving its rights on appeal. However, that interest disappeared upon the filing of the Board's final decision on November 29.

[12] There is no reason in this case for us to exercise our discretion and hear the appeal, in any event. First, there is no longer any live controversy between the appellant and the respondents. Second, there are no collateral issues such as a future legal action in another forum that would be impacted by the Court hearing this appeal. Finally, in considering whether to hear a moot appeal, we must be cautious when departing from our traditional role. Recognizing the demands protracted litigation places upon scarce judicial resources, we see nothing here which would cause us to delay or displace another appeal, for the sake of this one. For example, we are not convinced that the issues identified by the appellant will

re-occur soon, or raise a question of general public importance, or impact upon an unsettled area of the law with a social cost attached to it, which might then invite our intervention. In our view, none of these criteria alone, or considered together, provide a justification to hear the moot issues raised by the appellant (**Borowski v. Canada (Attorney General)**, [1989] 1 S.C.R. 342).

[13] For all of these reasons we would grant leave to the appellant to appeal the interim decision of the Board of Inquiry, but would dismiss the appeal. There shall be no order for costs.

Saunders, J.A.

Concurred in:

Oland, J.A.

Bryson, J.A.