

NOVA SCOTIA COURT OF APPEAL

Citation: *Paradise Active Healthy Living Society v. Nova Scotia*
(Attorney General), 2013 NSCA 9

Date: 20130123

Docket: CA 393959

Registry: Halifax

Between:

Paradise Active Healthy Living Society (PAHLS)

Appellant

v.

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

Respondent

Judge: The Honourable Justice Linda Lee Oland

Appeal Heard: November 20, 2012, in Halifax, Nova Scotia

Subject: Real Property - Abandoned Rail Corridor - *Crown Lands Act*,
R.S.N.S. 1989, c. 224, ss. 3, 5 and 38 – Doctrine of
Legitimate Expectations – Sufficiency of Reasons - Policies

Summary: A society applied to develop an abandoned railway corridor acquired by the Province, as a multi-use trail open to all-terrain vehicles and snowmobiles. During consultations pursuant to the Rails to Trails policy, proponents in the village of Paradise both for and against motorized use made submissions. The matter was highly contentious. In January 2008 the Province prohibited motorized use in the portion of the rail bed within Paradise. Later, it hired a consultant towards resolving the matter. The appellant boycotted the meetings. In October 2008 the Province removed the barriers and signs against motorized use.

The appellant applied unsuccessfully for determination of the legal status of the rail bed in Paradise and declaratory relief. The judge's decision focussed on the Province's rights as a landowner to determine the use of its property.

Issue: Whether the judge's decision deprived the appellant of the reasonable legal expectation that the closure of the rail bed to motorized vehicles would be binding for a significantly longer time.

Result: Appeal dismissed with costs. The doctrine of legitimate expectations pertains to procedural fairness, not substantive rights. The Province made no clear, unambiguous and unqualified representations that were not fulfilled, and the appellant was given an opportunity to make its case during the second consultative process. Since it is merely a policy, the Rails to Trails policy does not have a legally binding character which would fetter the Minister's discretion pursuant to the *Act* as to the entry and use of Crown lands. The judge's decision was short but his reasons were not insufficient.

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 12 pages.