

NOVA SCOTIA COURT OF APPEAL

Citation: *Capital District Health Authority v. Murray*, 2017 NSCA 28

Date: 20170413

Docket: CA 439251

Registry: Halifax

Between:

Capital District Health Authority

Appellant

v.

Mark Jason Murray and The Attorney General of Nova Scotia, representing Her Majesty the Queen in right of the Province of Nova Scotia

Respondents

Judge: The Honourable Justice Joel E. Fichaud

Appeal Heard: February 17, 2017, in Halifax, Nova Scotia

Subject: Class actions – common issues and preferable procedure under the *Class Proceedings Act*, S.N.S. 2007, c. 28 – civil action under s. 8 of *Charter of Rights* – tort of intrusion upon seclusion

Summary: The Capital District Health Authority operates the East Coast Forensic Hospital. The Hospital learnt that patients possessed illicit drugs on the Hospital's premises. With the Hospital's assent, Correctional Services Workers of the Provincial Department of Justice conducted strip searches on 33 patients. Mr. Murray was one. Mr. Murray, on behalf of the 33 patients, moved to certify a class proceeding under the *Class Proceedings Act*. The motion named the Authority as defendant, and claimed (1) a civil cause of action under s. 8 of the *Charter of Rights* for an unreasonable search, and (2) the tort of intrusion upon seclusion. The motions judge certified the proceeding and defined seven common issues. The Authority appealed. The Attorney General of Nova Scotia had been added as a co-defendant, and participated in the

appeal as a respondent to support the position of the Authority.

Issues: The Authority and Attorney General submitted that the motions judge erred by determining, under s. 7(1)(c) and (d) of the *Class Proceedings Act*, that (1) there were common issues, and (2) a class proceeding would be the preferable procedure.

Result: The Court of Appeal reworded the common issues, but otherwise dismissed the appeal. Under the principles of s. 7(1)(c), there were proper common issues for both causes of action. Under the principles of s. 7(1)(d), the class proceeding was a preferable to individual lawsuits. In several respects, the motions judge's wording of the seven common issues erred in principle. The Court of Appeal stated three common issues and deleted the others.

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 43 pages.