

NOVA SCOTIA COURT OF APPEAL

Citation: Nova Scotia (Securities Commission) v. Potter, 2012 NSCA 12

Date: 20120131

Docket: CA 351542; CA 353014

Registry: Halifax

Between:

Staff of the Nova Scotia Securities Commission

Appellant

and

Daniel F. Potter, Calvin W. Wadden and Kenneth G. MacLeod

Respondents

and

National Bank Financial Ltd. and Mr. Eric Hicks

Appellants

and

Staff of the Nova Scotia Securities Commission/
Daniel F. Potter, Calvin Wadden and Kenneth MacLeod

Respondents

Restriction on Publication: Pursuant to *Civil Procedure Rules* 90/37(15(b);
90.37(15)(c); 90.37(15)(d)

Judge: The Honourable Justice Peter M. S. Bryson

Appeal Heard: November 14, 2011

Subject: Securities Regulation; Administrative Law; Declaratory
Judgments

Summary: Staff objected that a certain question asked at a discovery could not be answered without breaching Nova Scotia securities laws. Before the Commissioner, staff took the position that even specifying what laws might be breached would breach those

laws. Staff suggested an *ex parte*, in camera hearing before the Commissioner for determination of its objection. The Commissioner declined. He ruled that the question was irrelevant but the legality of the question should be submitted to the Court for determination. The Nova Scotia Supreme Court held an in camera hearing. In its public decision, the court ruled that the question would not violate Nova Scotia securities law. The court discussed particulars of the question and the objection in a sealed decision.

Issue: Should a declaration have been granted?

Result: Appeal allowed. Issue remitted to the Commissioner for determination. Commissioner was best placed to interpret Nova Scotia securities law. A declaration should not be issued where the Commission had the necessary jurisdiction to afford relief. The Commissioner could consider the question on an O'Connor-type application ((1995), 4 S.C.R. 411, para. 30). The Commissioner had jurisdiction to consider the legal question and to provide for all necessary ancillary relief, including confidentiality orders or undertakings. Pending conclusion of the matter before the Commission and further order of the court, the sealing order, publication ban and undertakings as to confidentiality should remain in place.

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 15 pages.