

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Cape Breton Explorations Ltd. v. Nova Scotia (Attorney General)*,  
2013 NSCA 134

**Date:** 20131126  
**Docket:** CA 416544  
**Registry:** Halifax

**Between:**

Cape Breton Explorations Ltd.

Appellant

v.

The Attorney General of Nova Scotia,  
Nova Scotia Power Incorporated, and  
The Nova Scotia Utility and Review Board

Respondents

**Judge:** The Honourable Justice Linda Lee Oland

**Motion Heard:** September 20, 2013, in Halifax, Nova Scotia

**Subject:** Confidentiality – *Civil Procedure Rules* 85.04, 90.02(1) and  
90.37(15)

**Summary:** One of several grounds of appeal alleged that the Board erred in approving the confidential treatment of certain information the utility filed with its application to the Board. The utility brought a motion for a confidentiality order, to determine which filings and/or arguments will be confidential on the hearing of the appeal.

**Issues:** Whether this Court has jurisdiction to hear a motion for a confidentiality order. Whether the Court should grant the confidentiality order sought by the utility.

**Result:** The matter of the confidential treatment of documents was remitted to the Board. Pursuant to *Rules* 85.04, 90.02(1) and

90.37(15), this Court has the authority to hear and determine a confidentiality motion. However, the record pertaining to the Board's decision to grant confidential treatment is slim. In particular, its reasoning and whether the Board conducted the analysis required by its own Rules were not apparent. The matter was remitted to give the Board an opportunity to set out its analytical path and to permit this Court to conduct a meaningful judicial review.

*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 17 pages.*