

NOVA SCOTIA COURT OF APPEAL

Citation: *Symington v. Halifax (Regional Municipality)*, 2013 NSCA 152

Date: 20131220

Docket: CA 374381

Registry: Halifax

Between:

James Symington

Appellant

v.

Halifax Regional Municipality and
Halifax Regional Police Service

Respondents

Judge: The Honourable Chief Justice J. Michael MacDonald

Appeal Heard: September 24, 2013, in Halifax, Nova Scotia

Subject: Malicious prosecution; misfeasance of public office; negligence; summary judgment; *Civil Procedure Rule* 13.04

Summary: For over a decade now, the appellant has been battling his former employer, the respondent Halifax Regional Police Service. The dispute began in 2001 when, according to the appellant, his superiors used abusive tactics while resisting his claim for medical leave. For example, they invoked their discipline process against him and also launched a criminal fraud investigation. This prompted the present action which the appellant commenced in the Supreme Court of Nova Scotia back in 2004. His original statement of claim included allegations of malicious prosecution, defamation, negligence and intentional infliction of mental harm. The malicious prosecution claim had two aspects: (a) alleged abuse of the Police Act discipline process, and (b) alleged abuse of the criminal process.

However, in earlier proceedings (2007 NSCA 90), this Court confirmed that, subject to one exception, the claim should be struck from the Supreme Court and instead resolved under the dispute resolution process set out in the parties' collective agreement. The one exception involved the malicious prosecution/abuse of criminal process claim. This, we felt, fell outside the collective agreement and could therefore proceed in the Supreme Court.

However, this surviving remnant has now also been terminated summarily by the Supreme Court because (a) the pleadings were unsustainable on their face (*Nova Scotia Civil Procedure Rule 13.03*) or, alternatively, (b) Mr. Symington failed to raise an arguable issue on the merits (*Rule 13.04*).

The appellant now asks us to overturn this latest ruling, asserting that his pleadings were in order or, even if they were faulty, that he should have been afforded the chance to amend them. He also insists that arguable issues remain warranting a full trial.

Issues: Did the Court err in dismissing this claim summarily?

Result: Appeal dismissed, the pleadings issue aside, the Court was correct to order summary judgment under *Rule 13.04*. To be successful at trial, the appellant would have to prove malice on the part of the investigating officers. Here he failed to establish malice as a genuine issue warranting a trial.

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 23 pages.