

**NOVA SCOTIA COURT OF APPEAL**

**Citation: *Higgins v. Nova Scotia (Attorney General)*,  
2013 NSCA 155**

**Date:** 20131220

**Docket:** CA 417846

**Registry:** Halifax

**Between:**

Forrest C. Higgins Jr.

Appellant

v.

The Attorney General of Nova Scotia  
Representing Her Majesty the Queen in Right  
of the Province of Nova Scotia and D.D.V. Gold  
Limited, a body corporate  
and the Mining Association of Nova Scotia and  
Nova Scotia Federation of Agriculture

Respondents

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**Judge:** The Honourable Justice M. Jill Hamilton

**Appeal Heard:** November 22, 2013, in Halifax, Nova Scotia

**Subject:** **Costs; Challenging the validity of a vesting order issued pursuant to s. 70 of the Mineral Resources Act, S.N.S. 1990, c. 18.**

**Summary:** The judge at first instance found that the landlord's challenge of the validity of the expropriation of his land was distinct from asserting a claim for compensation. Accordingly, he found that the costs provisions of the **Expropriation Act**, R.S.N.S. 1989, c. 156 did not apply and ordered the landowner to pay party and party costs to D.D.V. Gold Limited, the deemed expropriating authority, and the Attorney General of Nova Scotia. The landowner appealed.

**Issue:** Did the judge err in ordering the landowner to pay party and party costs?

**Result:** Leave to appeal granted, but costs appeal dismissed. The entitlement to and assessment of costs in land expropriation cases are governed by statute. The **Expropriation Act**, R.S.N.S. 1989, c. 156, provides a landlord is entitled to be paid reasonable costs incurred for the purpose of asserting a claim for compensation. There is no provision for the payment of costs to an expropriated landowner who challenges the expropriation itself. The judge did not err in holding that there is a distinction between challenging the validity of the expropriation itself and asserting a claim for compensation, so that the costs provisions of the **Expropriation Act** do not apply. Nor did he err in awarding the costs he did under the **Civil Procedure Rules**.

**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 7 pages.**