

**C.A. No. 02891**

**NOVA SCOTIA COURT OF APPEAL**

**Cite as: Atlantic Provinces Trucking Association v. Nova Scotia (Utility and Review Board), 1993 NSCA 122**

**B E T W E E N:**

**ATLANTIC PROVINCES TRUCKING  
ASSOCIATION**

**applicant**

**- and -**

**THE NOVA SCOTIA UTILITY AND  
REVIEW BOARD**

**respondent**

) **Alan Parish and**  
) **Lisa Welton**  
) **for appellant**

) **Richard J. Melanson**  
) **for respondent**

) **John D. Stringer and**  
) **Peter M.S. Bryson for**  
) **Halifax-Dartmouth Bridge**  
) **Commission**

) **Application Heard**  
) **July 29, 1993**

) **Judgment Delivered:**  
) **July 29, 1993**

**BEFORE: THE HONOURABLE JUSTICE ELIZABETH A. ROSCOE IN CHAMBERS**

**ROSCOE: J.A.:**

This is a Chambers application by the Appellant Association for a stay of execution pending the appeal. The appeal is from a decision of the Nova Scotia Utility and Review Board dated July 20, 1993, in which the Board granted rate increases to the Halifax - Dartmouth Bridge Commission in respect of certain classes of trucks. The increases of 75% for cash fares and 76.5% for token fares have been ordered to be effective August 3, 1993. The appeal will likely be scheduled to be heard in four to five months.

The grounds of appeal are:

1. The Board erred in law by finding that in setting class 2, 3, and 4 truck tolls, the Board's jurisdiction does not cover any aspect of the financing decisions of the Halifax - Dartmouth Bridge Commission.
2. The Board erred in law by failing to remove, or, consider removing, the Commission's foreign exchange losses from the factors to be considered in setting the class 2, 3, and 4 truck tolls.
3. The Board erred in law by making conclusions and findings that are patently unreasonable and have no reasonable basis, namely, approving class 2, 3, and 4 truck tolls which result in increases of 75% and 76.5% for cash and tokens rates respectively.
4. The Board erred in law by failing to properly consider all the relevant evidence at the hearing, namely the negative impact of rate increases on trucking companies, leading to an improper and unreasonable result and amounting to an abuse of the Board's statutory discretion in approving rate increases.

The test that must be applied to this application is set out by Justice Hallett in **Fulton Insurance Agencies Ltd. v. Purdy** (1990), 100 N.S.R. (2d) 341 where he stated at page 346:

" In my opinion, stays of execution of judgment pending disposition of the appeal should only be granted if the appellant can either:

(1) satisfy the Court on each of the following: (i) that there is an arguable issue raised on the appeal; (ii) that if the stay is not granted and the appeal is successful, the appellant will have suffered irreparable harm that it is difficult to, or cannot be compensated for by a damage award. This involves not only the theoretical consideration whether the harm is susceptible of being compensated in damages but also whether if the successful party at trial has executed on the appellant's property, whether or not the appellant if successful on appeal will be able to collect, and (iii) that the appellant will suffer greater harm if the stay is not granted than the respondent would suffer if the stay is granted; the so-called balance of convenience or:

(2) failing to meet the primary test, satisfy the Court that there are exceptional circumstances that would make it fit and just that the stay be granted in the case."

The onus on the party seeking a stay is a heavy one, not lightly discharged, especially when, as in this case, there is a public interest involved. (See **Attorney General of Canada v. Fishing Vessels Owners' Association of B.C.**, [1985] 1 F.C. 791 )

On the question of whether the Appellant has demonstrated that the Notice of Appeal raises an arguable issue I have some doubt that all of the errors alleged are questions of law and not fact. However, it does appear that the first and second grounds involving the jurisdiction of the Board to consider the impact of financing arrangements present a novel point on which an argument can be maintained. I find however, that the Appellant has failed to meet the second part of the first test established in **Fulton**, which is that if the stay is not granted and the appeal is eventually allowed, that the Appellant or its members will suffer irreparable harm that is difficult or impossible to compensate for by way of an award of damages.

As indicated by Mr. Conrad's affidavit, his company keeps accurate records of its costs for bridge crossings. Presumably others effected by the increases could also keep receipts for token purchases pending the appeal. If the appeal is successful, it would be a simple matter for the court to order a refund to those who produced proof of overpayment for bridge tolls from now to the disposition of the appeal. Conversely, it would be impossible for the Commission to recover its losses if a stay were granted and the appeal is later dismissed. I do not agree that it is simply a matter of a delayed reduction of debt.

If it were necessary to consider the balance of convenience, I would have to find that it rests with the Bridge Commission in light of the evidence respecting preparations for the imposition of the new rates and the delay from the date of its petition to the Board.

To meet the burden of the secondary test, the Appellant must prove that there are exceptional circumstances in this case that would justify the granting of a stay. I am unable to find any such circumstances. I am not satisfied that the short time delay before implementation as ordered by the Board is an exceptional circumstance in light of the eleven and one-half months that has passed since the Commission's notice of its application for increased fares.

The application is therefore dismissed. Costs shall be in the cause.

Roscoe, J.A.

NOVA SCOTIA COURT OF APPEAL

B E T W E E N:

ATLANTIC PROVINCES TRUCKING ASSOCIATION	) REASONS FOR
applicant	)
- and -	) JUDGMENT BY:
THE NOVA SCOTIA UTILITY AND REVIEW BOARD	)
respondent	) ROSCOE, J.A.
	)
	) IN CHAMBERS
	)
	)