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NOVA SCOTIA COURT OF APPEAL

Citation: Symington v. Halifax (Regional Municipality), 2007 NSCA 90

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Date: 20070822
Docket: CA 272956
Registry: Halifax

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Between:

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James Symington

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Appellant

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- and -

Halifax Regional Municipality, Halifax Regional Police Service,
Tim Moser and Fred Sanford

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Respondents

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- and -

Municipal Association of Police Personnel

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Intervenor

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Judge:	The Honourable Justice Fichaud
Appeal Heard:	June 7, 2007
Subject:	**jurisdiction of court or labour arbitrator or disciplinary process under the *Police Act***

Summary: A municipal police officer, subject to a collective agreement, alleged he was mistreated by his employer. The dispute related to whether the officer was entitled to sick leave or (the employer's view) had abused sick leave. The officer was disciplined, and the discipline was resolved in his favour under the procedures in the *Police Act*. The officer sued the employer for various torts. The Supreme Court struck the claim because the dispute was disciplinary and exclusively for the disciplinary process under the *Police Act*. The officer appealed.

Issue: Is the matter in the court's jurisdiction?

Result: The essential character of the dispute related to sick leave entitlement. This was in the jurisdiction of an arbitrator under the collective agreement.

Whether the discipline should be varied or set aside was "disciplinary" and exclusively for the process under the *Police Act*. But those were not the issues here. The issues here were exclusively for an arbitrator, not the court. An exception was the officer's claim of malicious prosecution for alleged abuse of the criminal process, which was outside the collective agreement, was not excluded from court by the disciplinary procedures of the *Police Act*, and was properly for the court. Issue estoppel did not bar that claim. The appeal was allowed in part.

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 45 pages.