

NOVA SCOTIA COURT OF APPEAL

Citation: *Jono Developments Ltd. v. North End Community Health Association*, 2014 NSCA 92

Date: 20141009
Docket: CA 415197
Registry: Halifax

Between:

Jono Developments Ltd.

Appellant

v.

The North End Community Health Association,
The Richard Preston Centre for Excellence Society,
and The Micmac Native Friendship Society and
Halifax Regional Municipality

Respondents

Judge: The Honourable Justice David P.S. Farrar
The Honourable Chief Justice J. Michael MacDonald
(Dissenting)

Appeal Heard: May 14, 2014, in Halifax, Nova Scotia

Subject: **Duty of Fairness. Reasonable Expectations - Halifax Regional Municipality Charter Meaning of “Fair Market Value” - Costs.**

Summary: In March, 2008 the Halifax Regional School Board declared St. Patrick’s Alexandra Elementary School to be surplus and the school closed at the end of the 2011 school year. The Halifax Regional Municipality (HRM) took vacant possession of the property in that year. HRM issued a Request for Proposals (RFP) inviting proposals for the purchase and redevelopment of the school. The appellant and Community Group respondents all participated in the RFP. After evaluation of the RFP, HRM Council

approved HRM staff's recommendation to sell the property to the appellant for \$3 million.

Around the time that the school was approved for sale to the appellant, the Community Groups became aware of a Policy and Procedure for the Disposal of Surplus Schools passed by HRM in 2000. It outlined a set of procedures to be used when HRM disposed of surplus school properties. The Procedure had never been followed despite the fact that there had been a number of surplus schools disposed of since its passing. Upon becoming aware of the existence of the Procedure, HRM Council rescinded its decision to sell to Jono Developments Ltd., made a motion to rescind the Procedure and, then, passed a further motion to sell the property to Jono. The Community Groups sought judicial review of HRM's decision to sell to the appellant.

In a decision dated September 24, 2012, Justice David MacAdam set aside the sale on the basis that HRM had breached its duty of fairness to the Community Groups by not following the Procedure and further that it breached the HRM Charter by selling the Property below market value. Finally, he required Jono to pay a portion of the costs awarded on the Judicial Review. Jono appealed alleging that the motions judge erred in law on the motion for Judicial Review and requiring Jono to pay a portion of the costs award.

Issues:

- (1) Did the motions judge err:
 - (a) in finding HRM breached its duty of fairness to the Community Groups by failing to follow the Procedure?
 - (b) in finding HRM breached the Charter by selling the Property below market value? and
 - (c) in ordering Jono to pay a portion of the costs awarded on the Judicial Review?

Result:

Appeal allowed. The majority found HRM owed a duty of fairness to the Community Groups. However, the RFP process followed was sufficient to satisfy the duty of fairness.

The motions judge erred in finding that the duty of fairness had been breached.

The motions judge also erred in finding that HRM breached the Charter by selling below market value. There was ample evidence to support HRM's determination of the sale price. Finally, the motions judge did not err in awarding partial costs against the appellant. However, in light of the appeal being overturned, the costs award was nullified.

MacDonald, C.J. dissenting would have dismissed the appeal finding that the failure to follow the Procedure breached the duty of fairness owed to the Community Groups.

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 41 pages.