

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Lockhart v. New Minas (Village), 2005 NSSC 93

Date: 20050426
Docket Number: S.K. 212728
Registry: Kentville

Between:

Linda Lockhart

plaintiff

v.

The Village of New Minas, a body corporate

Defendant

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Judge: The Honourable Justice Gregory M. Warner

Heard: April 14, 2005, at Kentville, N.S.

Subject: Civil Practice - severance per Rule 5.03

Issues: Whether an action claiming wrongful dismissal and defamation against a municipal unit should be severed.

Summary: Eighteen year municipal clerk sued Village for constructive dismissal and defamation. The period relevant to constructive dismissal was December, 2002 to May, 2003 and the date of the alleged defamation was January 13, 2003. The plaintiff relied upon the defamation as a portion of the conduct of the defendant that entitled her to a finding of constructive dismissal. The Village defended with respect to the wrongful dismissal claim by its regular counsel and with respect to the defamation claim (except punitive damages) by counsel appointed by its insurer.

It's defamation counsel submitted that the two causes of action should be always be severed as a matter of principle and if not, on a balance of convenience, because the factual issues and legal issues are so different, they should not be tried together. They rely on *obiter* in the only Nova Scotia decision on the matter: **Peddle v. Rowan Cos.** (1993), which decision was decided on its individual facts but which decision included a generalized statement consistent with the pre1988 Ontario practice of prohibiting the two causes of action from being tried together.

Result:

The motion to sever was denied. Following the 1988 Ontario decision, **Foley v. Signtech**, the Court rejected the principle of an absolute prohibition. The Court balanced the ability of the plaintiff to pursue her two causes of action together, against the difficulty that a Court may have in giving clear instructions to a jury with respect to these two separate causes of action. The extent to which the evidence would overlap was a significant relevant factor. The fact that the plaintiff was unemployed and may not be able to pursue two separate actions against the Municipality and would be faced with a considerably longer and more costly and duplicitous set of proceedings, was a serious threat to access to civil justice.

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