

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: MacQueen v. Ispat Sidbec Inc., 2006
NSSC 208

Date: 20060630
Docket: SH 218010
Registry: Halifax

Between:

Neila Catherine MacQueen , Joseph M. Pettipas, Ann Marie Ross, and Kathleen
Iris Crawford

Plaintiffs

v.

Ispat Sidbec Inc., a body corporate, Hawker Siddeley Canada Inc., a body
corporate, The Attorney General of Nova Scotia, representing Her Majesty the
Queen in right of the Province of Nova Scotia, Canadian National Railway
Company, a body corporate, The Attorney General of Canada, representing Her
Majesty the Queen in right of Canada; and Domtar Inc., a body corporate

Defendants

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Judge: The Honourable Justice A. David MacAdam

Heard: May 15 & 16, 2006 in Halifax, Nova Scotia

Written Decision: June 30, 2006

Subject: Practice and Procedure - Application to Strike - Onus -
Fiduciary Duty - Statutory and Regulatory Negligence -
Battery

Summary: Plaintiffs resided on property adjacent to or in proximity
to a steel plant, owned and/or operated at different times
by the defendants. The plaintiffs allege that the operation

of the steel plant has resulted in the contamination of their person and property. Three of the defendants seek to strike all or portions of the statement of claim as it relates to themselves.

Issue: Whether the defendants have satisfied the onus on them in applying to strike portions of the statement of claim.

Result: The onus on the defendants was to establish the plaintiffs' claims or the portions thereof sought to be struck were "absolutely unsustainable" and it was "plain and obvious" that they would not succeed. In regard to the onus on the defendants, the portions of the statement of claim relating to the claims for regulatory negligence were struck on the basis the statutes and regulations created public duties and not private duties of care on the part of Canada and/or the Province of Nova Scotia. The application to strike the allegation of negligence based on the ownership or operation of the steel works and the coke ovens was not allowed on the basis that it was not plain and obvious it would fail. The claim for a fiduciary duty relating to either a conflict of interest in Canada and Nova Scotia, by virtue of their roles as regulators, as well as operators was struck, as well as the claim for the existence of a fiduciary duty arising out of any statute or regulation. The claim for a fiduciary duty by Ispat Sidbec Inc., Canada and Nova Scotia in respect to their ownership and/or operation of the steel plant or coke ovens was not struck on the basis it was not demonstrated that it was "plain and obvious" the plaintiff would not succeed. Similarly the claim for the intentional tort of battery was struck subject to the right of the plaintiffs to apply to amend the statement of claim to properly plead either or both the torts of intentional battery and negligent battery.

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