

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia (Human Rights Commission) v. Annapolis (County), 2005
NSSC 310

Date: 20051114
Docket: S.K. 243232
Registry: Kentville

Between:

Nova Scotia Human Rights Commission

Plaintiff

v.

The Municipality of the County of Annapolis

Defendant

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Judge: The Honourable Justice Gregory M. Warner

Heard: May 19, Aug 15 and Sept 30, 2005 in Kentville, Nova Scotia

Subject: Human Rights - Constitutional Law
- Municipal Corporations

Issue: Whether an order requiring municipal councillors to disclose to the Human Rights Commission the reasons for resolutions passed by Council after closed sessions could or should be ordered in response to a complaint by a volunteer terminated from an advisory committee who alleges discrimination. Specifically whether an order requiring disclosure would violate s. 22 of the Municipal Government Act (MGA), or solicitor/client privilege, or the Charter.

Summary: The Council, after a closed meeting, terminated membership of a volunteer unpaid citizen on an advisory committee. When notified, the citizen asked Council for the reason. At the next meeting, after another closed session, Council defeated a motion to reinstate the citizen. Council gave no reasons. The

citizen complained to the Commission that he had been discriminated against by reason of his political affiliation. The Commission investigators requested the Municipality to provide information and records regarding the termination and the reasons therefore. The Municipality had no record of its closed sessions or of the discussions in the open meetings and declined the Commission's request that it obtain from each councillor their reason for their vote and the basis and factors that influenced it.

The Commission seeks an order under s. 31 of the Act that the Municipality provide the reasons of the councillors for their votes and the basis and factors that influenced them.

Result:

The order under s. 31 was granted. Councillors have a duty to the Municipality and the Municipality has an obligation to the Commission to provide the councillors' reasons for their votes. The duty of councillors acting as a Council was discussed. Section 22 MGA does not make proceedings in closed meetings confidential, and to the extent they do, the provisions of the Human Rights Act are paramount and trump the MGA. The limits of solicitor/client privilege were discussed and in any event the request of the Commission was for the reasons and factors for councillors votes which was not infringed by any solicitor/client consultation. The Charter is intended to protect people from government, not government from people. The municipality is government and not entitled to protection under the Charter. To the extent the court may be wrong, as a corporation the municipality can not invoke the sections of the Charter as a shield to the Commission's request.

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