**IN THE SUPREME COURT OF NOVA SCOTIA**
**Citation:** Smith v. Maritime Pro Stock Tour Ltd, 2007 NSSC 272

**Date:** 20070926
**Docket:** S.H. No. 284680
**Registry:** Halifax, NS

**Between:**

Wayne Smith

Plaintiff/Defendant
by Counterclaim

v.

Maritime Pro Stock Tour Limited, a body corporate

Defendant/Plaintiff
by Counterclaim

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**Judge:** The Honourable Associate Chief Justice Deborah K. Smith

**Heard:** August 30th, 2007

**Oral Decision:** September 11th, 2007

**Written Release of Decision:** September 26th, 2007

**Subject:** Application for an Interlocutory Injunction.

**Summary:** The Applicant is a stock car driver who participates in the Maritime Pro Stock Tour. He is a former three-time Maritime Association of Stock Car Auto Racing champion and, according to his evidence, has a total of forty-one professional race wins.

On June 9th, 2007, the Applicant placed second in a race which took place at the Riverside Speedway. The next day he was advised that he had been disqualified from the race as the carburetor that he had used had failed what is commonly known as a "no-go gauge test".

Drivers that participate in the Maritime Pro Stock Tour accumulate points towards what is known as the CARQUEST Challenge. The driver with the most points at the end of the racing season is awarded the CARQUEST Points Championship. As a result of being disqualified from the June 9th, 2007 race the Applicant, who had been in first place in the CARQUEST Challenge, was moved to 25th place.

The Applicant protested the disqualification and met with Tour officials in an attempt to resolve the matter. A resolution was not reached. On August 22nd, 2007 the Applicant commenced an action in the Supreme Court of Nova Scotia against the Tour claiming, *inter alia*, breach of contract and a breach of the principles of natural justice. On August 23rd, 2007 the Applicant filed an Interlocutory Notice (Application Inter Parties) seeking an Order enjoining the Tour from making any award, official or unofficial, of the championship of the Maritime Pro Stock Car Tour for the 2007 season pending further Order of the Court.

A Defence and Counterclaim to the main action was filed by the Tour on August 28th, 2007. A number of defences were raised including the fact that the Applicant had signed an application/registration form which purported to release the Tour, on a full and final basis, from all claims that the Applicant may have or may in the future have against the Tour.

**Issue:** Should an Interlocutory Injunction be granted in the circumstances of this case?

**Result:** The Court referred to the three-stage test set out in **RJR-MacDonald Inc. v. Canada (Attorney General),** [1994] S.C.J. No. 17. The Court was satisfied that the application was neither vexatious nor frivolous and that there was a serious question to be tried. However, the Court was not satisfied that the applicant would suffer irreparable harm if the application was refused. The Court acknowledged that the term "irreparable" refers to the nature of the harm suffered rather than its magnitude (**RJR-MacDonald Inc. v. Canada (Attorney General)**, *supra***)** but said that nevertheless, the harm must be serious (see **Whitecourt Roman Catholic Separate School District No. 94 v. Alberta** (1995), 30 Alta. L.R. (3d) 225 at ¶ 32). In addition, the Court held that the evidence of irreparable harm must be clear and non-speculative. As the Applicant did not satisfy the Court that he would suffer irreparable harm if the application was refused, the application for an Interlocutory Injunction was dismissed.