

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Wickwire Holmes v. Nova Scotia (Attorney General)
2007 NSSC 287

Date: 20071004
Docket: S.H. 276379
Registry: Halifax

Between:

Wickwire Holmes

Applicant

v.

Attorney General of Nova Scotia

Respondent

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Judge: The Honourable Justice Gregory M. Warner

Heard: April 26 and July 9, 2007, in Halifax, Nova Scotia

Subject: Contempt jurisdiction of the Small Claims Court; judicial - executive separation of powers.

Summary: Applicant obtained default judgment and execution order against client (debtor) in Small Claims Court. Debtor failed to appear for discovery in aid of execution pursuant to a Small Claims Court order. An *ex parte* application for leave for contempt was granted to the applicant by the Small Claims Court. The debtor was served by substituted service and failed to appear before the Small Claims Court at the contempt hearing. The Small Claims Court issued an order directing the Sheriff to arrest if necessary and bring the debtor before the Small Claims Court. The Sheriff, per a directive from the Department of Justice, refused to enforce this order.

Issue: The applicant seeks a declaratory order that any order of the

Small Claims Court shall be enforced according to its terms (regardless of legality) and an order directing the Adjudicator to reissue the order. The respondent seeks a determination of whether the Small Claims Court has *ex facie* civil contempt jurisdiction.

Result:

1. The Small Claims Court does not have *ex facie* civil contempt jurisdiction.
2. The Sheriff has no discretion to refuse to carry out an order of the Small Claims Court, and the Department of Justice has no authority to direct the Sheriff to refuse. Illegality for any reason is no justification; rather it must immediately seek a stay, judicial review, or other remedy from a court of competent jurisdiction.
3. In the circumstances of this case, the court declined to order the Adjudicator to reconsider the applicant's application for re-issuance of the order.

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