

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Municipality of the County of Colchester v. Spencer 2004 NSSC 156

Date: 2004 08 09
Docket: S.T. 220896
Registry: Truro

Between:

Municipality of the County of Colchester

Plaintiff

and

Winnifred Spencer

Defendant

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Judge: The Honourable Justice Gerald R. P. Moir

Heard: 1 June 2004 and 22 June 2004

Subjects: Municipal Law; Dangerous or Unsightly Premises

Summary: Colchester made an order under s. 346 of the *Municipal Act* requiring the owner of a junk yard to remove all junk and not bring new junk to the yard. The operators rolled over their inventory of junk. Colchester sought the aid of the Court under s. 352(3) to remove the new junk.

Issues: Whether the discretion under s. 352(3) ought to be exercised? Whether the municipality has the power to regulate land use under s. 346?

Result: Colchester did not clearly notify the respondent of the prospective nature of the dangerous and unsightly premises remedy sought before Committee of the Whole and it failed to disabuse the operators of their understanding that rolling over the inventory would be sufficient. Discretion declined. In any event, municipalities do not have statutory authority to regulate land use through their powers respecting dangerous or unsightly premises. For the latter, municipalities must objectively assess whether the premises are unsightly or dangerous for the kind of use they are lawfully being put to: *Chester v. Aloni*, [1996] N.S.J. 107 (CA).

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