

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Cape Breton (Regional Municipality) v. Nova Scotia
(Attorney General), 2008 NSSC 111

Date: 20080423

Docket: SN 266560

Registry: Halifax

Between:

Cape Breton Regional Municipality

[Plaintiff]

- and -

Attorney General of Nova Scotia

[Defendant]

Judge: The Honourable Justice John D. Murphy

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Judge: The Honourable Justice John D. Murphy

Heard: November 28, 2007, in Halifax, Nova Scotia
{*Interlocutory Application*}

Final Written

Submissions: March 11, 2008

Subject: Constitutional Law - Justiciability; Civil Procedure - Reasonable Cause of Action; Standing

Summary: Cape Breton Regional Municipality (CBRM) commenced the proceeding to obtain a declaration that the Legislature and Government of Nova Scotia breached commitments under s.36 of the *Constitution Act*, 1982 with respect to municipal equalization and economic development. Nova Scotia brought an interlocutory motion seeking to strike out the proceeding.

Issue: (a) Should the proceeding be struck out under *Civil Procedure Rule 14.25(1)(a)* as disclosing no reasonable cause of action?
(b) Should the Economic Development Complaint also be struck out because CBRM does not have standing to pursue that aspect of the claim?

Result: CBRM's claim ordered struck out as disclosing no reasonable cause of action. The Province satisfied an applicant's burden under *Rule 14.25* to establish that it is plain and obvious that the claim is absolutely unsustainable.

The proceeding does not raise a justiciable issue - the questions CBRM seeks to have determined do not have a sufficient legal component to warrant court intervention. If the court were to adjudicate the dispute, it would exceed its proper role within Canada's constitutional framework and engage in political and economic considerations which are not appropriate for judicial determination. Decision to strike out action is based upon consideration of wording in s.36 and 52 of the *Constitution Act*, fundamental constitutional principles, and case law.

CBRM's general attack on government action, absent any challenge to provincial legislation, did not plead material facts to create an informed environment for the court to consider whether a reasonable argument might be advanced as to whether s.36 of the *Constitution Act* could possibly have been intended to create enforceable rights.

Declaratory judgment is not a remedy available to the Plaintiff - justiciability is a prerequisite to determining what relief may be available.

Determination that the proceeding does not raise a justiciable issue and that pleadings do not disclose a reasonable cause of action make it unnecessary to determine whether Municipality has standing to pursue the Economic Development Complaint; however, had the pleadings raised a justiciable constitutional issue regarding economic development, CBRM would have standing as of right to maintain the Economic Development Complaint, and would also satisfy the test for public interest standing.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
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