

CASE NO.

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IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

HERMAN JUURLINK and HENRIKA JUURLINK

PLAINTIFFS

- and -

MUNICIPALITY OF EAST HANTS

DEFENDANT

Justice C. Richard Coughlan

Truro, Nova Scotia

S.T. No. 09331

[Cite as: Juurlink v. East Hants (Municipality) , 2001 NSSC 159]

LIBRARY HEADING

HEARD: At Truro, Nova Scotia, in Chambers, before the Honourable Justice C. Richard Coughlan, on October 16th, 2001

DECISION: November 7th, 2001

SUBJECT: Statutes - Interpretation - Presumption against a Directive Operation
Arbitration - Jurisdiction of Arbitrator to initially deal with questions of law.

SUMMARY:

The male plaintiff, his father and brother, applied with the Nova Scotia Farm Loan Board for a loan to purchase lands at Shubenacadie, Nova Scotia. The Board conditionally agreed to loan money in June, 1972. In August, 1972 instructions were sent to the Juurlinks' solicitor and a deed to the Board was recorded in September, 1972. After the indebtedness was paid to the Board the land was conveyed to the plaintiffs in March, 1994.

In February, 1968 part of the land in question was designated as the Shubenacadie Watershed area pursuant to the **Water Act**. A regulation which prohibited certain activities within the designated area was enacted in August, 1972. In September, 1972 the plaintiffs' predecessors in title entered into an agreement with the defendant which prohibited certain activities within 15 feet from Snide's Lake and provided for an annual payment to the landowners.

In 1975, a new agreement was entered into, the Municipality setting out the use of the area within 20 feet from Snide's Lake.

In 2000, the plaintiffs listed their property for sale and concerns were raised by the defendant about the agricultural use of the watershed lands. The plaintiffs claim the defendant's position has adversely affected their ability to sell their farm and seek the appointment of an arbitrator.

ISSUES:

1. Does s. 106(8) of the **Environment Act** have retroactive effect?
2. If the answer to issue one is no, is the arbitration of the claim pursuant to the **Arbitration Act** or the **Commercial Arbitration Act**.
3. Should the court or the arbitral tribunal initially deal with issues of law?

RESULT:

Section 106(8) of the **Environment Act** does not have retroactive effect. A claim for injurious affection pursuant to the **Water Act**, the arbitration of which was not commenced prior to the coming into force of the **Commercial Arbitration Act**, is arbitrated pursuant to the **Commercial Arbitration Act**. The **Commercial Arbitration**

Act provides an arbitral tribunal may determine any question of law that arises during the arbitration and any questions of law concerning the claim for injurious affection should initially be dealt with by the tribunal. The application is allowed.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS COVER SHEET.***