

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Taylor v. Dairy Farmers of Nova Scotia , 2009 NSSC 232

**Date:** 20090729

**Docket:** ST. 314398

**Registry:** Truro

**Between:**

Paul Taylor and Doug Bacon

Plaintiffs

- and -

Dairy Farmers of Nova Scotia

Defendant

**Judge:**

The Honourable Justice Gerald R. P. Moir

**Heard:**

July 29, 2009, in Halifax, Nova Scotia

**Written Release  
of Oral Decision:**

July 30, 2009

**Counsel:**

Douglas Caldwell, Q. C.  
and Ellen Sampson for the Plaintiff  
Charles Thompson for the Defendant

**By the Court:**

[1] Mr. Taylor and Mr. Bacon are dairy farmers. They started an Application challenging the *vires* of regulations recently adopted by the Dairy Farmers of Nova Scotia and approved by the Natural Products Marketing Council. They say that the regulations significantly diminish the value of their milk production quotas.

[2] On behalf of Mr. Taylor and Mr. Bacon, Mr. Caldwell moves for an *ex parte* interim injunction enjoining the Dairy Farmers of Nova Scotia from implementing the regulations. At the suggestion of the Prothonotary, Mr. Caldwell sent copies of his documents to the regulatory authority's counsel, Mr. Thompson. Mr. Thompson seeks to be heard on the motion, but Mr. Caldwell objects to that.

[3] I have to decide whether I am prepared to hear the motion *ex parte* and if so, whether the agency should be permitted to file affidavits and make submissions.

[4] I am not prepared to hear this motion on an *ex parte* basis.

[5] Rule 41.05 permits an *ex parte* interim injunction only in cases in which the judge is satisfied "there are circumstances of sufficient gravity to justify making

[the injunction] without notice”. We must read these words in context, and part of that context is Rule 22.03(2). The examples given there of gravity justifying an *ex parte* motion show how seriously the Rules regard interference with the rights of persons who are not given an opportunity to be heard.

[6] The *ex parte* motion provides this justification for proceeding without notice:

This motion is made without notice to any other person because the applicants will suffer irreparable harm if the matter is not resolved in a timely manner.

Mr. Caldwell elaborated upon urgency as a justification in his submissions this morning.

[7] In my opinion, urgency is not a sufficient reason to deprive others of the opportunity for stating their side of a dispute. The example provided in Rule 22.03(2)(d) is directly on point.

Each of the following is an example of circumstances of sufficient gravity to justify an *ex parte* motion: ...

(d) A party facing an emergency has a right to make a motion but the motion cannot be determined on notice within the time provided by these rules *even if a judge exercises the power to shorten a notice period or to direct a speedy method of notice.*

[8] We now have an entire Rule on emergency motions. Rule 28 envisions quick access to the court in an emergency and streamlining procedures to the extent that is justified by the emergency at hand. And that, it seems to me, is in accordance with current practice. The bar expects judges to be reasonably available for emergencies and is prepared to cut corners within reason. The public is well served by a sense of cooperation that avoids the *ex parte* hearing whenever possible.

[9] A decision referred to by Mr. Caldwell illustrates that practice. In *MacDonnell v. Halifax Herald Ltd.* [2009] N.S.J. No. 264 (S.C.) I mistakenly referred to the motion as being for an interim injunction. It was for an interlocutory injunction.

[10] The remedy sought here is quite drastic. A regulatory agency would be told, for the interim, not to follow subordinate legislation. This has implications that require a careful reflection on the court's authority, if any, to interfere with a

legislative process. The agency has not had time to brief that subject, the Attorney General is unaware, so is the Registrar of Regulations.

[11] The urgency concerns the nominal devaluation of the applicant's quota for some months, if indeed the regulations are *ultra vires*. There is no evidence of plans for sale or financing during that period.

[12] It is for these reasons that I dismiss the motion.

J.