

SUPREME COURT OF NOVA SCOTIA

Citation: *Kings (County) v Berwick (Town)*, 2010 NSSC 128

Date: 20100412

Docket: Ken No 318509

Registry: Kentville

Between:

Municipality of the County of Kings

Applicant

v.

Town of Berwick, Town of Hantsport, Town of Kentville,
Town of Wolfville, Annapolis Valley Regional School Board and
Her Majesty the Queen in Right of the Province of Nova Scotia

Respondents

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Judge: The Honourable Justice Gregory M. Warner

Heard: March 9 and 16, 2010, at Kentville, Nova Scotia

Subject: Contract Interpretation

Summary: For 28 years, the four municipalities in Kings County have paid their share of public education to the Kings County District School Board (now Annapolis Valley School Board) in proportion to their respective share of student enrolment (“per student”) pursuant to a written agreement dated January 21, 1982. The agreement was amended on May 10, 1989, to permit the Town of Hantsport to join. The agreement, as amended, contains no clause respecting termination.

The *Education Act* states that each municipality will fund the school board by reference to its respective share of uniform assessment “unless an agreement made and approved pursuant to Section 42 [now Section 27] otherwise provides, ...” The 1982 agreement, as amended in 1989, was so approved.

Issue:

Kings seeks a declaration that the 1982 agreement does not provide for municipal contributions on a per student basis; if so, the agreement was *ultra vires* and, alternatively, the agreement should be terminated either on a basis of frustration or on basis that the agreement is not perpetual and it should be able to unilaterally terminate it on reasonable notice.

Result:

The agreement provided for per student contributions by the municipalities as a matter of interpretation. Alternatively, Kings is estopped from denying this intent. The Court would rectify the agreement if interpretation was otherwise.

The agreement is not *ultra vires* the *Education Act*.

Frustration has not been established.

The agreement is not unilaterally terminable on reasonable notice.

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