

SUPREME COURT OF NOVA SCOTIA

Citation: Canadian Broadcasting Corporation v. Nova Scotia (Attorney General),
2010 NSSC 388

Date: 20101022

Docket: Hfx No. 319522

Registry: Halifax

Between:

Canadian Broadcasting Corporation

Applicant

and

The Attorney General of Nova Scotia representing Her Majesty
the Queen in right of the Province of Nova Scotia

Respondent

DECISION on COSTS

Judge: The Honourable Justice Gerald R. P. Moir

Written Submissions: July 28, 2010 and August 26, 2010

Counsel: Brian P. Casey, counsel for the applicant
Alex M. Cameron, counsel for the respondent

Moir, J.:

[1] The last line of my decision of July 27, 2010 reads, "I am inclined to order no costs, but I will respond to written submissions, if the parties wish."

[2] Mr. Casey writes:

When we appeared in chambers before Justice Robertson to schedule a date for the motion, my learned friend objected on the jurisdictional grounds that the Supreme Court was without jurisdiction to hear the matter because the application had to be made first to the Provincial Court of Nova Scotia. A date was set to argue the jurisdictional objection.

At the time of the hearing before your Lordship however, the Attorney General's jurisdictional objection was different: he argued that a necessary party was not properly before the Court. In response to a question from your Lordship, he acknowledged that that defect was curable.

If the Attorney General had advised us of that objection in December when we were before the Court, we would simply have amended our pleadings to add the Chief Judge (and avoided altogether the argument and the eight month delay it has entailed).

[3] Mr. Cameron responds:

It seems, with respect, that my friend's submissions support an argument that costs should be awarded to the Crown. My friend had the Crown's written submissions on May 20. It was clear from those submissions what the Crown's position was. Yet my friend opposed the motion both in written submission and in argument before you on June 24. Your Lordship agreed with the Crown's submission (at para. 6, 50) that the proceeding framed by my friend was flawed. My friend could have made an amendment at any time after May 20, 2010, and

avoided the application; something that he now seems to admit that he should have done.

[4] When the CBC got the Crown's brief in May, it had a complete and detailed statement of the Crown's position. The bulk of the work came afterward. So, the fact that the position changed between December and May would not have cost the CBC significantly.

[5] On the other hand, the procedures suggested at para. 17 of the decision were not advanced by the Crown in May. So, there was nothing in the Crown's brief for the CBC to embrace.

[6] Success was divided. I will order no costs.

J.