

CASE NO.

VOL. NO.

1994

IN THE SUPREME COURT OF NOVA SCOTIA

S.H. No. 109629

BETWEEN:

MITSUI & CO. (POINT ACONI) LTD.,
a body corporate

PLAINTIFF

- and -

JONES POWER CO. LIMITED, a body corporate, and
J.A. JONES CONSTRUCTION COMPANY, a body corporate

DEFENDANTS

1994

IN THE SUPREME COURT OF NOVA SCOTIA

S.H. No. 109664

BETWEEN:

JONES POWER CO. LIMITED

PLAINTIFF

- and -

MITSUI & CO. (POINT ACONI) LIMITED

DEFENDANT

Justice Robert W. Wright

Halifax, Nova Scotia

S. H. No. 109629/109664

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[Cite as: Mitsui & Co. (Point Aconi) Ltd. and Jones Power Co. Ltd. , 2001 NSSC 178]

HEARD: Before the Honourable Justice Robert Wright in Chambers at Halifax,
Nova Scotia, on November 27, 2001

ORAL

DECISION: November 30, 2001

**WRITTEN
RELEASE**

OF DECISION: December 5, 2001

SUBJECT: Amendment of Pleadings - Civil Procedure Rule 15.01(c)

SUMMARY: On July 28, 1992, Mitsui and Jones Power signed a Memorandum of Understanding, the stated purpose of which was to eliminate current misunderstandings relative to Jones' compensation under their contract for the construction of a power generating plant for Nova Scotia Power. Jones repudiated the MOU the day after it was signed and in the litigation that followed, it pleaded and maintained the position throughout that the MOU was not valid and legally binding.

In 1998, Mitsui (which had pleaded and conducted its case on a MOU valid basis right from the beginning) successfully applied for an Order severing, for prior determination, the issue of the validity of the MOU. Shortly afterwards, Jones applied (without having made any application to amend its pleadings) for leave permitting it to file a new expert report quantifying its claims on a MOU valid basis. That application was denied.

The MOU was found to be valid and legally binding on the parties, both in Chambers and in the Court of Appeal. Having lost that battle, Jones brought this application for leave to amend its pleadings before the next phase of the trial proceedings begins in which the MOU will be interpreted by the Court. The main objective of the proposed amendments was to plead the existence of the MOU, what Jones says the MOU means, and the resulting effect on the quantum of its claims. The Application was staunchly opposed by Mitsui who argued that Jones was acting in bad faith amounting to an abuse of process, given the earlier judicial rulings that had been made, and that the amendments, if allowed, would cause prejudice to it that cannot be compensated in costs.

ISSUE: Should the amendments sought by Jones be permitted at this stage of the proceedings, given their history and complexity?

HELD: The Court was not satisfied that Mitsui had discharged the burden upon it to demonstrate that Jones was acting in bad faith in some manner or that an injustice or abuse of process would result from the proposed amendments. Although Mitsui would undoubtedly suffer prejudice if the amendments were allowed, it had not demonstrated to the satisfaction of the Court that such prejudice could not be compensated in costs. Accordingly, the application was granted, subject to certain restrictions imposed by the Court on the form of the amendments sought.

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