

SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia (Attorney General) v. Mattatall, 2013 NSSC 184

Date: 20130228

Docket: Hfx No. 216653

Registry: Halifax

Between:

The Attorney General of Nova Scotia

Plaintiff

v.

Scott David Mattatall and Pembridge Insurance Company of Canada

Defendants

LIBRARY HEADING

Judge: The Honourable Justice John D. Murphy

Heard: December 20, 2012

Written Decision: June 14, 2013
[oral decision rendered February 28, 2013]

Subject: Defendant's right to civil jury trial when Crown is Plaintiff

Summary: The Province, owner of a highway bridge, commenced action against the operator of a motor vehicle which collided with the bridge, rendering it a constructive total loss. The Defendant made no counterclaim. The Defendant elected trial by jury, and the Crown moved pursuant to *Civil Procedure Rule 52* to strike the jury notice.

Issues: (a) Does the Crown, as Plaintiff, have immunity from a civil jury trial?
(b) Is the matter too complex to be determined by a jury?

Result: When the Crown is a Plaintiff, it is not immune from a civil jury trial.

Section 14 of the *Proceedings against the Crown Act* precludes a jury trial only when the Crown is a Defendant, or Defendant by counterclaim or Interpleader, or if there is a claim by way of setoff.

When the Crown commences a proceeding, an exception arises to the principle in s.14 of the *Interpretation Act* that the Crown is not bound by legislation unless it is specifically stated to be. By necessary implication in the context of the *Nova Scotia Civil Procedure Rules*, the *Judicature Act* applies to the Crown.

When the Crown commences a proceeding and assumes benefit of the procedure available, it also assumes burdens associated with the process. The Crown cannot select the rules it chooses to apply while claiming immunity from others.

The issues in the litigation are not so technical as to be beyond a jury's capacity. The expert reports related primarily to damages, and the issues are no more complex than those regularly coming before juries in personal injury or medical malpractice cases.

The Plaintiff's motion to strike the jury notice was dismissed, with Defendants awarded costs of \$1000.

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