SUPREME COURT OF NOVA SCOTIA

Citation: *Safire v. Halifax Regional Municipality*, 2018 NSSC 253

Date: 2018-10-15
Docket: Hfx No. 457873
Registry: Halifax

Between:

Robert Doyle Safire

Applicant

v.

Halifax Regional Municipality and Bell Mobility Inc.

Respondent

DECISION

Motion to Strike Judicial Review

Judge:	The Honourable Justice Christa M. Brothers
Heard:	April 16, 2018, in Halifax, Nova Scotia
Decision	October 15, 2018
Counsel:	Robert Doyle Safire, self-represented Applicant E. Roxanne MacLaurin, for the Respondent

By the Court:

Overview

[1] The Applicant, Mr. Safire, seeks judicial review of a “decision” (as he describes it) of the Halifax Regional Municipality (the "HRM"). Specifically, the Director of Planning (the "Director") provided a letter of concurrence with respect to Bell Mobility Inc.'s ("Bell") proposal to construct a telecommunication tower at Three Fathom Harbour, Nova Scotia. The Respondent, HRM, has brought this motion to dismiss the Application for Judicial Review on various grounds, including standing, mootness and jurisdiction.

Background

[2] This matter involves the approval and construction of a telecommunication tower by Bell at Three Fathom Harbour, Nova Scotia. Bell holds a spectrum license (the "license") issued by the Federal Minister of Industry (the "Minister") pursuant to s. 5(1)(a)(i.1) of the *Radiocommunication Act*, RSC 1985, c R-2 ("the Act"). The license authorizes Bell “to provide services in specified frequency ranges within a defined geographical area”, while adhering “to established antenna siting procedures.” As a prerequisite to Bell's proposal to construct a tower, Bell was required to consult, in accordance with Industry Canada’s circular, *Radiocommunication and Broadcasting Antenna Systems*, CPC-2-0-03 ("the Circular"). Industry Canada is now known as Innovation, Science and Economic Development Canada ("ISED").

[3] The mandate articulated in the Circular is descriptive of the Minister's powers:

> Section 5 of the *Radiocommunications Act* states that the Minister may, taking into account all matters the Minister considers relevant for ensuring the orderly development and efficient operation of radiocommunication in Canada, issue radio authorizations and approve each site on which radio apparatus, including antenna systems, may be located. Further, the Minister may approve the erection of all masts, towers and other antenna-supporting structures. Accordingly, other proponents must follow the process outlined in this document when installing or modifying an antenna system. Also, the installation of an antenna system or the

> operation of a currently existing antenna system that is not in accordance with this process may result in its alteration or removal and other sanctions against the operator in accordance with the *Radiocommunication Act.*

[4] The consultation process required Bell to contact the Land Use Authority ("LUA") to ascertain local requirements for antenna systems, to notify the public, and to address relevant concerns, either in accordance with local requirements or (if there was no local procedure) Industry Canada's default process. Section 4 of the Circular states, in part:

> 4. Land-use Authority and Public Consultation
>
> Contacting the Land-use Authority
>
> Proponents must always contact the applicable land-use authorities to determine the local consultation requirements and to discuss local preferences regarding antenna system siting and/or design, unless their proposal falls within the exclusion criteria outlined in Section 6. If the land-use authority has designated an official to deal with antenna systems, then proponents are to engage the authority through that person. If not, proponents must submit their plans directly to the council, elected local official or executive. The 120-day consultation period commences only once proponents have formally submitted, in writing, all plans required by the land-use authority, and does not include preliminary discussions with land-use authority representatives.
>
> …
>
> Following the Land-use Authority Process
>
> Proponents must follow the land-use consultation process for the siting of antenna systems, established by the land-use authority, where one exists. In the event that a land-use authority's existing process has no public consultation requirement, proponents must then fulfill the public consultation requirements contained in Industry Canada's Default Public Consultation Process (see Section 4.2). Proponents are not required to follow this requirement if the LUA's established process explicitly excludes their type of proposal from consultation or it is excluded by Industry Canada's criteria. Where proponents believe the local consultation requirements are unreasonable, they may contact the local Industry Canada office in writing for guidance…. [Emphasis added]

[5] In addition to the Circular, the dispute resolution process for siting antennas is set out in another Industry Canada circular, *Antenna Siting Dispute Resolution;* IPC-2-0-17 (April 2013) (the "Dispute Resolution Circular").

The Consultation Process

[6] On March 24, 2014, Bell submitted an application seeking a letter of concurrence from HRM. Bell sought to locate the tower, which was initially 60 metres in height (later amended to 75 metres) in Three Fathom Harbour. The HRM did not have a designated person to deal with antenna systems, as contemplated by the Circular. Therefore, it was necessary to engage HRM Council in seeking the letter of concurrence. In order to meet the requirement for public consultation, a public information meeting was held on October 29, 2015. Notice of the meeting was published in the Halifax *Chronicle Herald* and mailed to local residents. The record discloses there were about 85 people who attended, some of whom spoke, and others provided comments by e-mail.

[7] In March 2016, before Bell's application came before it, HRM Council adopted an administrative order on *The Siting of a Telecommunication Antenna,* Administrative Order 2015-005-GOV (the "Administrative Order"). The result of the Administrative Order was that such applications would no longer be considered by HRM Council, but assessed by HRM staff in view of Council guidelines and public feedback. Attachment "C" to the Administrative Order set forth public consultation requirements, including requirements for the public notification package, notice requirements, newspaper notice, signage at the site, establishment of a web site, a public information session, and response to the public.

[8] The 2016 Administrative Order did not include a "grandfather" provision for applications already commenced. Consequently, the Bell application was assessed under the terms of the Administrative Order. Bell was not required to conduct another public information session, but was required to give public notice, provide a new mail-out, and post a sign. The Director then reviewed the application under the terms of the Administrative Order. This resulted in the provision of the letter of concurrence on October 21, 2016. The site location was then approved by the Minister. The tower has been installed on the site. Originally named as a Respondent in this judicial review, Bell sought to be removed as a party and the Applicant consented to such removal. The Applicant has conceded the status of the tower is not within the jurisdiction of this Court.

[9] On the main application, the Applicant, Mr. Safire, asks this Court to set aside what he characterizes as the decision of the HRM to provide a letter of concurrence in relation to Bell's proposal to construct the tower.

[10] The Applicant seeks:

1. The letter of concurrence as issued by the Director be set aside;

2. The Court declare that the HRM's administrative Order 2015-005-60C *ultra vires*.

Grounds for Review

[11] The Applicant seeks a review on the following grounds:

1. The Director of Planning's failure to comply with the terms of the administrative order under which authority he purported to act:

(i) by failing to take into account the public response to the act;

(ii) by misconstruing the effect of the erection of the tower on the service described in the purported application, by failing to take into account the engineering advice that accompanied that application;

(iii) by failing to advertise public consultation appropriately and in particular failing to erect the sign on the property until after the meeting was held;

(iv) by acting on an application of a person different from the one seeking the benefit of the decision when that person had no application pending in the system;

(v) by failing to follow a previous decision made respecting the erection of the tower on the basis that "Staff believes the tower is not compatible with the community character, that the scenic views are materially adversely affected and that the landscape aesthetics are diminished by a visual incursion in the unobstructed scenic view."

In addition the Applicant asserts:

> 2. The decision of the Director of Planning is unreasonable because he failed to take into account the public reaction to the proposed erection of the tower and misinterpreted engineering opinion that the tower would permit coverage in the areas where the applicants assert that there is no coverage now.
> 3. The Director of Planning has failed to follow the requirements of the administrative order and consequently has exceeded his authority in reaching the decision he has made.
> 4. The Municipality has no authority contained in the Halifax Regional Municipal Charter to delegate this particular planning decision and, by that purported delegation, remove the decision-making function from elected representatives to an administrator.

[12] This motion by the HRM seeks an order dismissing the judicial review, on the basis of:

1. Mootness;
2. Not a decision subject to judicial review;
3. Jurisdiction;
4. Standing; and
5. *Vires*.

The Motion to Dismiss

Preliminary Dismissal Motion

[13] As a preliminary point, HRM says the authority to dismiss the judicial review application is found in Civil Procedure Rule 12 (determination of a point of law) and 13 (summary judgment), as well as in the Court's inherent jurisdiction. The availability of a preliminary motion to dismiss a judicial review application is confirmed by *Canadian Elevator Industry Education Program (Trustees of) v. Nova Scotia (Chief Inspector appointed pursuant to the Elevators and Lifts Act, SNS 2002, c. 4)*, 2016 NSCA 80. *Canadian Elevator Industry*, *supra,* dealt with

the issue of standing alone. The Court of Appeal did not decide whether a Rule 12 motion was available, given that the lower court's inherent jurisdiction clearly provided authority to dismiss the judicial review based on a lack of standing.

[14] I have considered the motion brought by the HRM in keeping with the Court's decisions in *Canadian Elevator Industry, supra*, and *Mahoney v. Cumis Life Insurance Co.*, 2011 NSCA 31. The parties before me agree to the underlying facts. I have proceeded via Rule 12, the Court's inherent jurisdiction and in light of the cultural shift described by the Supreme Court in *Hryniak v. Mauldin*, 2014 SCC 7.

[15] The Applicant argues that the Director made four decisions which should be overturned by the Court on the motion for judicial review:

1. The decision to apply Administrative Order 2015-005-60C retroactively to a process that had already begun;

2. The determination that Bell was compliant under the HRM process;

3. The decision to issue a letter of concurrence;

4. The decision to pass Administrative Order 2015-005-60C.

[16] The Applicant says all these decisions should be overturned or found invalid. However, even if the Court granted the Applicant such an order, there would be no effect on the siting of the Bell tower, as the Federal Court has jurisdiction over the issues involved in this judicial review, that is radiocommunications and the siting of antennas. This Court does not have jurisdiction over such matters.

[17] For the reasons that follow, I do not accept the Applicant's argument that these issues involve mixed fact and law and cannot be dispensed with under Rule 12. For the reasons that follow, this matter can be dispensed with under Rule 12 and the Court's inherent jurisdiction given all the issues raised by the Applicant will ultimately have no effect on the subject matter of the judicial review, given this Court's lack of jurisdiction.

Is the letter of concurrence Reviewable?

[18] As a prerequisite to addressing jurisdiction generally, it is necessary to address the question of whether there was a decision made at the municipal level at all. HRM maintains that the letter of concurrence is not a decision reviewable by this Court, in that it is only a component of the Minister's decision-making process at the federal level. Counsel, unfortunately, does not mention Civil Procedure Rule 7.01, which states, in part:

> In this Rule,
>
> "decision", includes all of the following:
>
> (i) an action taken, or purportedly taken, under legislation,
>
> (ii) an omission to take action required, or purportedly required, by legislation,
>
> (iii) a failure to make a decision…

[19] The caselaw indicates that a "decision" requires an exercise of discretion, rather than a purely administrative function (*Ryan v. Nova Scotia (Deputy of Registrar of Motor Vehicles*, 2014 NSSC 91, at paras. 14-17). Arguably there is a form of "discretion" involved in deciding whether to concur with the proponent's proposal. However, it is clear both from the relevant law and from the governing policy documents that the LUA consultation is just that – a consultation process. It is a prerequisite to proceeding with construction of the tower, but the LUA has no decision-making power. As stated in *Rogers Communications, Inc. v. Chateauguay (City)*, 2016 SCC 23, [2016] S.C.J. No. 23, at para. 42:

> Parliament has exclusive jurisdiction over radiocommunication and … this jurisdiction includes the power to choose the location of radiocommunication infrastructure.

[20] In carrying out duties under the Act, the Minister is mandated by the Circular to account for:

> . . . all matters the Minister considers relevant for ensuring the orderly development and efficient operation of radiocommunication in Canada.

This has been deemed to include a local consultation component.

[21] As discussed in *Rogers Communications, supra*, the choice of the location of radio communication infrastructure is a federal power and the federal jurisdiction over the siting of radiocommunications infrastructure is exclusive.

[22] The Minister has the power to issue spectrum licenses and to approve the site on which apparatuses such as telecommunication towers will be located. Spectrum licences are issued under s. 5(1)(a)(i.1) of the Act, and tower approvals under s. 5(1)(f):

> 5 (1) Subject to any regulations made under section 6, the Minister may, taking into account all matters that the Minister considers relevant for ensuring the orderly establishment or modification of radio stations and the orderly development and efficient operation of radiocommunication in Canada,
>
> (a) issue
>
> …
>
> (i.1) spectrum licences in respect of the utilization of specified radio frequencies within a defined geographic area,
>
> …
>
> and may fix the terms and conditions of any such licence, certificate or authorization including, in the case of a radio licence and a spectrum licence, terms and conditions as to the services that may be provided by the holder thereof;
>
> …
>
> (f) approve each site on which radio apparatus, including antenna systems, may be located, and approve the erection of all masts, towers and other antenna-supporting structures…

[23] There is no delegation of decision-making power to LUAs provided for in the Act, nor is there any obligation to consult with them. In the case of siting of telecommunication towers, the Minister has a policy, as set forth in the Circular and related documents. The letter of concurrence, HRM says, is not a "recommendation", but only an indication that the LUA is satisfied that the proponent (in this case Bell) has undertaken the necessary consultation process and addressed any reasonable and relevant concerns relating to the siting or the tower in the given circumstances. In the event of an impasse, the Minister has the power to render a decision, regardless of whether the LUA has issued a letter of concurrence (Circular, at s. 5). Accordingly, HRM says the letter of concurrence is not a decision subject to judicial review.

[24] HRM adds that it has no jurisdiction to regulate the location of telecommunication antennas through its zoning by-laws or otherwise. While HRM offers no legal foundation for this statement, beyond general references to the legislation and the policies, it is consistent with the reasoning of the majority of the Supreme Court of Canada in *Rogers Communications, supra*. In that case, a municipality issued a "notice of reserve" prohibiting construction on a property which the Minister had approved as an antenna site. Wagner and Côté, JJ held that the notice was *ultra vires* the province and, therefore, beyond the power of the municipality, given its purpose and effect on the siting of the antenna system:

> 72 … [W]e consider that the notice of a reserve seriously and significantly impaired the core of the federal power over radiocommunication and that this notice served on Rogers is therefore inapplicable by reason of the doctrine of interjurisdictional immunity.
>
> 73 We note in closing that the facts of this case provide a good illustration of the co-operation between the various federal and provincial authorities that is contemplated in the Circular. The Circular describes the mechanism for the consultation that must be held to ascertain the concerns of municipalities and take their interests into account when deciding where to locate a radiocommunication antenna system. It also ensures the establishment of an efficient and orderly radiocommunication network across the country. The process it describes is clearly effective: at the hearing, the AGC stated that out of the more than one thousand situations in which the installation of antenna systems had been approved in the 2014-15 year, only three had resulted in an impasse between the spectrum licence holder and the municipality in question. In the instant case, Rogers initiated the required consultation process twice, and the consultation took a total of eight months to complete. [Emphasis added.]

[25] These comments concerning the purposes of consultation support the proposition that a letter of concurrence from HRM is not an exercise of jurisdiction, only an element of a consultation process that does not bind the Minister in respect of the location of a tower under s. 5(1)(f) of the Act.

[26] Furthermore, it is clear from the Act, the Circular and the *Guide to Assist Land-Use Authorities in Developing Antenna Siting Protocols* (the "Guide") that a LUA does not make decisions regarding the siting of antennas but only participates and influences decisions within the Minister's power.

[27] The Applicant maintains that the authority for siting the tower in this case was in fact s. 5(1)(a)(i.1), not s. 5(1)(f) of the Act. The Applicant concedes in his brief that the jurisdiction of the federal government has not been challenged and is not being challenged in this judicial review. Bell holds a spectrum licence that would have been issued under s. 5(1)(a)(i.1), and the tower approval relates to that licence. The Applicant refers to the Industry Canada Circular, (Dispute Resolution Circular). The Dispute Resolution Circular distinguishes between antenna systems that require site-specific authorizations through the issuance of a radio licence – assessed under s. 5(1)(f) of the Act – and situations involving proponents who already hold a radio authorization, such as a spectrum licence. In particular, section 4.0 of the Dispute Resolution Circular states:

> … Under the Condition of Licence, spectrum licence holders must adhere to the antenna siting procedure. Annex A further explains the aspects that must be considered with these kinds of projects with regard to the resolution of disputes…

[28] Annex "A" indicates that where the proponent of an antenna system already holds a spectrum licence, "authority to install an antenna system comes from the Act, subparagraph 5(1)(a)(i.1)", and that "[a]n approval is not issued for each specific location of the licence holder's sites…". A holder of a spectrum licence is "permitted to establish and modify their radiocommunications networks within the terms and conditions of their spectrum licence", including "compliance with the antenna siting procedure. . . (*Dispute Resolution Circular,* Annex A). Annex A goes on to describe the procedure to be followed when a proponent requests a determination by Industry Canada as to whether they have satisfied their consultation requirements:

> When departmental intervention is requested from a Proponent to determine if they have satisfied their consultation requirements:
>
> - The Department will, as part of the assessment, determine whether the site is necessary in that immediate area in order to deliver the carrier's desired throughput or whether an existing site can provide a similar level of service;
>
> - The Department will assess if the general requirements of the antenna siting procedure were followed; and
>
> - If the Department determines that the consultation requirements were respected as described in Section 4.3 of the antenna siting procedure, Industry Canada will confirm in writing that the Proponent has respected that condition of its licence and may proceed with the project (*Antenna Siting Dispute Resolution* at Annex A).

According to the Applicant, this means that:

> . . . once the LUA renders a decision to issue a letter of concurrence, that decision absolves the Minister from rendering any decisions as the Proponent will be in compliance with the terms and conditions of the spectrum license. Where there is no ministerial decision, there is no recourse through the Federal Court. The LUA's decision becomes the action that provides clearance for the Proponent to proceed with erecting their tower. [Emphasis by Mr. Safire]

[29] The Applicant goes on to refer to the dispute resolution process for resolving an "impasse" in the Dispute Resolution Circular. An impasse occurs when an initiating stakeholder "informs the Department in writing that a consultation process is under way but an impasse has occurred with respect to a specific antenna siting proposal" (*Dispute Resolution Circular* at s. 5.1). This triggers an investigation and assessment by Industry Canada, which may result in a decision that Industry Canada will consider the impasse no further, or to a process of information-gathering and departmental review, leading to a decision by the Regional Director.

[30] However, nothing in these procedures supports any delegation of the Minister's decision-making authority. Whether the site is approved under s. 5(1)(a)

or s. 5(1)(f), it is the Minister's decision. As Sara Blake writes in *Administrative Law in Canada*, 6th ed. (Toronto: Lexis Nexis, 2017) at 7.68:

> [n]ot everything a public official does is subject to review. To be reviewable it must affect the Applicant's legal rights or interests.

[31] The Applicant concedes that decisions rendered under federal authority are subject to review by the Federal Court. The Applicant attempts to draw on a false dichotomy between a federal decision if no letter of concurrence has been issued, resulting in an impasse versus where a letter of concurrence is obtained. He argues that once a letter of concurrence is obtained, no decision is made by the Minister. This is not correct. Simply because a municipality - a LUA - undertakes a consultation process required and directed by the Minister through circulars does not take away or delegate the Minister's authority and jurisdiction over the subject matter.

[32] Additionally, as I will discuss in more detail below, it appears to be an incorrect statement of law to suggest, as the Applicant does, that the lack of an express Ministerial order after the consultation process means that no remedy is available from the Federal Court.

HRM's Objection to Jurisdiction

[33] HRM submits that even if the issuance of the letter of concurrence is reviewable, it can only be reviewed as part of the reasons of the Minister in his approval of the site. In other words, the Applicant can only attack the letter of concurrence as part of an application for judicial review of the Minister's decision under the *Federal Courts Act*, R.S.C. 1985, c F-7.

[34] Section 18 of the *Federal Courts Act* states:

> Extraordinary remedies, federal tribunals
>
> 18 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction
>
> > (a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and

> (b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

[35] The scope of judicial review is further elaborated upon in s. 18.1, which provides, in part:

> Application for judicial review
>
> 18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.
>
> Time limitation
>
> (2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days…

[36] Pursuant to s. 2(1) of the *Federal Courts Act*, with certain irrelevant exceptions:

> . . . a “federal board, commission or other tribunal means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown . . .

This definition encompasses a Minister exercising a statutory discretion. In *Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62, [2010] SCJ No 62,

Binnie, J said, for the Court:

> 3 The definition of "federal board, commission or other tribunal" in the Act is sweeping. It means "any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown" (s. 2), with certain exceptions, not relevant here, e.g., decisions of Tax

> Court judges. The federal decision makers that are included run the gamut from the Prime Minister and major boards and agencies to the local border guard and customs official and everybody in between…

[37] Returning to the Applicant's claim concerning the unavailability of Federal Court relief due to the lack of a specific decision, Federal Court judicial review is available without a decision or order. In *Telus v. Canada (Attorney General)*, 2014 FC 1, [2014] FCJ No 1, the Court said:

> 28 Subsection 18.1(1) of the FCA states that an application for judicial review may be made by the Attorney General or by anyone directly affected by the "matter" in respect of which relief is sought. Subsection 18.1(2) states that an application for judicial review "in respect of a decision or an order" of a federal board, commission or other tribunal shall be made within 30 days of communication of the decision.
>
> 29 Accordingly, where the subject-matter of a judicial review is a "matter", rather than a "decision or order", the 30-day time limit does not apply... Therefore, the question is whether the Applicant is seeking judicial review of a decision or of a matter.

[38] The Applicant in *Telus, supra* at 41, argued that the Minister:

> . . . did not have the legal authority to make decisions or impose spectrum licence conditions which … have the effect of prescribing eligibility criteria . . .

in respect of the granting of spectrum licences, which was solely within the jurisdiction of the Governor in Council. There was a dispute as to whether the substance of the application was a “decision” subject to the time limits under s.18, or a “matter” subject to the more flexible requirements of s 18.1. After reviewing the caselaw, the Court concluded, in *Telus, supra*:

> 42 The Minister's decision to attach the subject conditions on any spectrum licences that large wireless service providers may ultimately successfully bid on was made through the Policy and Technical Framework and restated in the Licensing Framework. The Licensing Framework states … that the "conditions will apply to all licences issued through the auction process for spectrum in the 700 MHz band". Therefore, in my view, these are decisions which will be unaffected by the ultimate auction process. To that extent, those decisions have been made and they are discrete. They apply to specific spectrum access in specific geographic areas for … specific time periods. However, they were made within the context of the Policy and Technical Framework and, therefore, form

> part of a policy which is ongoing. By issuing the licences with the attached conditions, the Minister will be acting upon policy.
>
> 43 Given this, and based on *Moresby* …, above, which interpreted *Krause* to stand for the proposition that "[b]ecause illegality goes to the validity of the policy rather than to its application, an illegal policy can be challenged at any time", and the broad definition given to the term "matter" in *May*, I have concluded that the present issue falls within section 18.1 and therefore the 30-day limit has no application.

[39] *Telus, supra*, stands for the proposition that federal judicial review does not necessarily require a discrete decision; rather, a policy may be challenged directly. Transferred to the present circumstances, this supports the conclusion that the ongoing administration of the relevant policies could be challenged, without the need for a discrete decision approving the location of the tower.

[40] The Applicant's arguments for the reviewability of the letter of concurrence, and for the Court's jurisdiction to do so, rest on one essential point: the lack of an express Ministerial decision after the consultation and letter of concurrence. According to the Applicant, this means that the concurrence is the decision. It is apparent from the legislation and from the caselaw that all decision-making authority respecting the siting of radiocommunication towers belongs to the relevant Federal authorities, and is accordingly reviewable only by the Federal Court. Nevertheless, he has cast the application as one for judicial review of a "decision" of the HRM. In reality, in my view, the decision – or "matter" – with which his application is concerned is the installation of the tower. The HRM consultation process is one component of that matter, and not a decision in and of itself which is reviewable. There is no apparent reason why alleged inadequacies in the consultation process could not be a basis for seeking judicial review in Federal Court.

[41] *Rogers Communications, supra*, briefly describes the co-operation between the federal and provincial authorities when the Minister is making a decision concerning the siting of an antenna. It is clear in this description that the consultation is not a delegation of federal power and does not result in this Court having jurisdiction over the issues.

[42] It would not be an economical use of this Court's time to deal with this matter when, regardless of the outcome, no interests would be impacted, given that

the only court that has the power to affect the tower - the subject of the Applicant's discontent - is the Federal Court.

[43] Attachment "C" to the Administrative Order addresses public notification. At s. 2(1) the HRM directs that, in any public notification package, the following comments about jurisdiction concerning antenna systems be included. They are apropos, and I cannot state the point more clearly:

> Antenna Systems are exclusively regulated by Federal legislation under the *Radiocommunication Act* and administered by Industry Canada. Therefore, Provincial legislation such as the *Halifax Regional Municipality Charter*, including zoning by-laws, do not apply to these facilities. It is important to understand that Industry Canada, while requiring the applicants to follow the Municipality's *Siting of a Telecommunication Antenna System Administrative Order*, makes the final decision on whether or not an antenna system can be constructed. The Municipality is provided the opportunity to influence the location and design of proposed antenna systems by commenting to Industry Canada, but does not have the authority to approve or refuse the construction of an antenna system.

Mootness, Standing and Vires

[44] Given my decision in relation to the question of jurisdiction, I need not address the issues of mootness, standing and vires argued by the HRM.

Conclusion

[45] For all the reasons articulated, the Applicant has sought judicial review in the wrong court. The Applicant seeks to ultimately nullify or set aside the Minister's decision concerning the siting of the Bell antenna. To do so, the Applicant must seek redress from the Federal Court.

[46] The Applicant's notice of judicial review should be struck, with costs awarded to the HRM in the amount of $1,000 as per Tariff C.

Brothers, J.