

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Northern Construction Enterprises Inc. v. Halifax (Regional Municipality)*, 2014 NSSC 166

**Date:** 20140505

**Docket:** Halifax No. 412683

**Registry:** Halifax

**Between:**

Northern Construction Enterprises Inc.

Applicant

v.

The Halifax Regional Municipality

Respondent

and

Dwight Ira Isenor and Stacey Lea Rudderham

Intervenors

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**Judge:** The Honourable Justice John D. Murphy

**Heard:** July 11, 2013 in Halifax, Nova Scotia

**Subject:** Whether s.2.29 of the Halifax Regional Municipality Charter, which purports to give HRM authority to regulate “extractive facilities” at quarry sites is *ultra vires*.

**Summary:** Northern Construction Enterprises Inc.’s request for a permit to develop a rock quarry was refused by the Halifax Regional Municipality on the basis that the proposed operations would comprise “extractive facilities” prohibited under s.2.29 of the *Land Use By-law* for Planning Districts 14 and 17 (“LUB”) made pursuant to the Halifax Regional Municipality Charter. Northern brought an Application in Court, seeking a

declaration that s.2.29 (the “By-law”) is *ultra vires* and of no force and effect. The respondent contends that the By-law is *intra vires* the Municipality’s enabling legislation, and the intervenors, who reside near the proposed quarry, support that position.

**Issues:** (1) Validity of By-law

**Result:** Although the Province has authority under the *Environment Act* to determine the location of quarries (sites for extraction or removal of rock), the Municipal By-law giving HRM authority to regulate extractive facilities (structures and work related to processing) at quarry sites is *intra vires*. The *Environment Act* and HRM Charter are not in conflict when the scope and purpose of the By-law and HRM’s authority to regulate land use planning and industrial activity are considered. The Supreme Court of Canada and NS Court of Appeal in **Halifax v. Ed DeWolfe Trucking Ltd** 2007 NSCA 333 prescribe a modern approach of deference in interpreting municipal powers. The By-law was found to be valid when a modern and purposive interpretation is applied to its ordinary language in the context of an overall statutory scheme, including provisions in the *Environment Act* that recognize municipal responsibility and authority in relation to industrial approvals.

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