

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**Citation:**[Cummings v. MacKay, et al 2003 NSSC 196]

**Date:** 20030919  
**Docket:** S.P. No. 05614/181818  
**Registry:** Pictou

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Between:**

James and Stacey Cummings

**Plaintiffs**

v.

Elmer MacKay and Lorne Resources Company

**Defendants**

v.

The Attorney General of Nova Scotia

**Third Party**

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**Judge:**

The Honourable Justice Douglas L. MacLellan

**Heard:**

August 14, 2003, in Pictou, Nova Scotia.

**Subject:**

**Civil Law - Application to strike statement of claim under Rule 14.25(1)(a)** Third party applied to strike statement of claim issued against it by defendants alleging that it did not disclose a cause of action.

**Summary:**

Defendants added third party to action started against it by plaintiff. Dispute between plaintiff and defendant over ownership of a piece of property. In 1985, the third party, the Director of Assessment, had changed the assessment rolls to reflect that the predecessor in title to the plaintiff was the assessed owner of the property instead of the predecessor in title to the defendants. Defendants predecessor in title had been assessed owner prior to that time. Defendants allege negligence by Director in changing assessed owner without notice to the previous owner. Third party argued it had no duty of care to the defendants and that therefore the statement of claim should be struck.

**Issue:**

Did the third party have duty of care to defendants as assessed property owners?

**Result:**

Application dismissed. Test set out in *Cooper v. Hobart* [2001] 3 S.C.R. 537 applied and Director of Assessment found to have duty of

care to property owners individually. Claim of negligence can proceed against the Director of Assessment.

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