

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Crosby v. Higgins Construction Ltd., 2008 NSSC 98

**Date:** 20080401

**Docket:** SCP 267850/SP 283117

**Registry:** Pictou

**Between:**

John Crosby

Appellant

v.

Higgins Construction Limited

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Douglas L. MacLellan

**Heard:** March 4<sup>th</sup>, 2008, in Pictou, Nova Scotia

**Written  
Decision:** April 1<sup>st</sup>, 2008

**Subject:** Civil law, Appeal from Small Claims Court

**Summary:** Respondent did extensive work on appellant's building, part of which involved supervising two subcontractors who installed a heat pump and electrical panels on the premises. Both were located in same room. Fire inspector determined that was a violation of fire regulations and appellant had to arrange to have separate rooms for each unit at considerable cost. Appellant then attempted to have his costs to do that set off against money he owed the respondent for other work. Adjudicator determined that the respondent was not the general contractor and therefore not responsible for discovering the mistake in regard to the location of the two units. Adjudicator rejected the claim of a set off.

**Issue:** What is appropriate standard of review from decision of Adjudicator? Was appellant the general contractor?

**Result:**

Standard of review in regard to Adjudicator's finding of fact is whether the Adjudicator made a palpable or overriding error (Davison v. Nova Scotia Government Employees Union, [2005] N.S.J. No. 110)

Finding that appellant was not general contractor was reasonable and should not be set aside. Appeal dismissed.

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