

IN THE SUPREME COURT OF NOVA SCOTIA

ATTORNEY GENERAL OF CANADA,
in Right of the Minister of Transport

PLAINTIFF

- and -

MARINESERVE.MG INC., a body corporate,
and MARITIME HARBOURS SOCIETY, an
incorporated society

DEFENDANTS

Justice Walter R. E. Goodfellow

Halifax, Nova Scotia

S.H. 173182

LIBRARY HEADING

[Cite as: Attorney General of Canada v. Marineserve.MG Inc. et al 2002 NSSC 147]

DATE HEARD: April 18th, 2002 (Chambers)

DECISION: May 24th, 2002

SUBJECT: APPLICATION FOR A STAY-COMMERCIAL ARBITRATION ACT,
C.P.R. 14.25 and 41(e) JUDICATURE ACT

SUMMARY: As part of the 1995 National Marine Policy, it was the intention to end Transport Canada's ownership and operation of regional/local ports by virtue of a Port Divestiture Program. Maritime Harbours Society was incorporated as a non-profit society and the management of the Digby port was transferred to it October 21st, 1999. Transport Canada commences this action seeking a series of remedies as against MHS as being in relation to the contracts between Transport Canada and MHS and in particular, their contribution and operating agreement of October 21st, 1999.

MHS filed a defence to the action raising the *Commercial Arbitration Act* and the agreed contractual alternate dispute mechanism of arbitration. MHS applies for a stay of the Transport Canada action and it is opposed on the basis that MHS must establish the three prerequisites, namely,

(1) that MHS must show that a party to an Arbitration Agreement

has commenced legal proceedings against another party to the Agreement;

(2) the legal proceedings must be in respect of a matter agreed to be submitted to arbitration; and

(3) the application must be brought timely.

The first prerequisite is admitted and a finding that the pleadings and evidence before the court in this application clearly meet the second prerequisite and finally, even if the time prerequisite is to be strictly interpreted, such was met by MHS and the court considered interpretation preferable was to look at the intent and purpose of the contract and legislation. Transport Canada insisted upon the alternate dispute resolution mechanism being in all of their contracts. When parties choose an alternate dispute mechanism, such as arbitration, it is because they recognize such is being more suited, less demanding of resources and expenses and likely to produce a result in a far more timely fashion than resorting to litigation. The prerequisites being met, Transport Canada and MHS are to be held to their contractual bargain and a stay ordered. Action against Defendant, Marineserve.MG Inc., who is not a party to the Arbitration Agreement can continue. MHS misinterpreted its authority in relation to first step of Arbitration Agreement and therefore denied costs even though successful on the application.

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