

NOVA SCOTIA COURT OF APPEAL

[Cite as: Smith v. Canadian Institute of Strategic Studies, 2001 NSCA 179]

Bateman, Hallett and Freeman, JJ.A.

BETWEEN:

WANDA SMITH, a Commercial Recorder Western
Region Assessment Appeal Court

Appellant

- and -

THE CANADIAN INSTITUTE OF STRATEGIC STUDIES,
a body corporate carrying on business under the name Lester
B. Pearson Training Centre, and THE MUNICIPALITY OF THE
COUNTY OF ANNAPOLIS, a body corporate under the provisions
of the Towns Act

Respondents

REASONS FOR JUDGMENT

Counsel: Kirby Eileen Grant for the appellant
Christa M. Hellstrom for the respondent Institute
W. Bruce Gillis, Q.C. for the respondent Municipality

Appeal Heard: December 6, 2001

Judgment Delivered: December 6, 2001

THE COURT: Leave to appeal granted and appeal dismissed per oral reasons for
judgment of Bateman, J.A.; Hallett and Freeman, JJ.A. concurring.

BATEMAN, J.A.: (Orally)

- [1] This is an application for leave, and, if granted, an appeal from an interlocutory order of Justice Charles Haliburton of the Supreme Court, declining to order that the respondent Municipality's (Plaintiff in action) claim, which had been commenced by Originating Notice (Action) proceed, instead by Originating Notice (Application) pursuant to **Civil Procedure Rule 37**.
- [2] As has been often stated, this Court will not interfere with a discretionary order, especially an interlocutory one such as this, unless wrong principles of law have been applied or patent injustice would result (**Exco Corporation Limited v. Nova Scotia Savings and Loan Co.** (1983), 59 N.S.R. (2d) 331).
- [3] While such disputes are most commonly and properly commenced by Originating Notice (Application), it is clear that, here, the discovery of the underlying facts is the central issue and critical to the resolution of the matter.
- [4] In these circumstances we cannot say that the Chambers judge erred at law in concluding that the appellant had not satisfied the onus of establishing that this proceeding should go by way of Originating Notice (Application). Accordingly, the appellant has not met the test for intervention by this Court.
- [5] While we would grant leave to appeal, the appeal is dismissed with costs payable by the appellant to the respondent Municipality fixed at \$750 inclusive of disbursements.

Bateman, J.A.

Concurred in:

Hallett, J.A.

Freeman, J.A.