

CASE NO.

VOLUME

PAGE

Cite as: Ells v. Nova Scotia Farm Loan Board, 1997 NSCA 189

DENNIS ELLS, RUFUS ELLS
and ELLS FARMS LIMITED, a
body corporate

THE NOVA SCOTIA FARM LOAN
BOARD, DAVID ARENBURG and
ROBERT ADAMS

- and -

(Appellants)

(Respondents)

C.A. No. 140188

Halifax, N.S.

FLINN, J.A.

APPEAL HEARD:

December 3, 1997

JUDGMENT DELIVERED:

December 19, 1997

SUBJECT:

Proceedings Against the Crown Act, R.S., c. 360 - whether, in proceedings against the Farm Loan Board, the **Act** must be complied with - **s. 3(2)(d)** - Injunctions Against the Crown - **s. 16**

Overholding Tenants Act, R.S., c. 329 - whether Chambers judge erred in granting order for possession - procedure on appeal under the **Act**.

SUMMARY:

The Chambers judge vacated an *ex parte* interim injunction against the Farm Loan Board because actions against the Farm Loan Board are subject to the provisions of the **Proceedings Against the Crown Act** and because, under that **Act**, an injunction cannot issue against the Crown. The Chambers judge also ordered the appellant, under the **Overholding Tenants Act**, to deliver up possession of certain property to the Farm Loan Board.

ISSUE:

1. Whether, because of **s. 3(2)(d)** of the **Proceedings Against the Crown Act**, the **Act** does not apply to actions against the Farm Loan Board.
2. Whether the order for possession should be set aside because the Farm Loan Board breached an agreement with the appellant, and until the breach is rectified the appellant is entitled to remain in possession.

RESULT: Appeal dismissed.

1. If it has been determined that a corporation or other agency, owned or controlled by the Crown, is entitled to the privileges, immunities and prerogatives of the Crown, that particular corporation is not a corporation or other agency owned or controlled by the Crown within the meaning of **s. 3(2)(d)** of the **Proceedings Against the Crown Act**. It has already been determined by this Court that the Farm Loan Board is entitled to the privileges, immunities and prerogatives of the Crown because it is an administrative arm of Her Majesty the Queen in right of the Province of Nova Scotia (see **Braeside Farms Ltd. et al. v. N.S. Farm Loan Board** (1973), 5 N.S.R. (2d) 687 - affirmed on appeal (1973), 5 N.S.R. (2d) 685). Therefore, the Farm Loan Board is not a corporation within the meaning of **s. 3(2)(d)** of the **Proceedings Against the Crown Act**. The Chambers judge was correct to vacate the injunction because, under **s. 16** of the **Act**, which applies to the Farm Loan Board, an injunction cannot be issued against the Crown.

2. Even if the Farm Loan Board breached an agreement with the appellant, that agreement did not create any legal or equitable interest in the property in question, or any right of possession after November, 1966. The Chambers judge made no error in issuing an order for possession. Whether the appellant has a cause of action, in damages, against the Farm Loan Board and its employees was not before the Court.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER SHEET. THE FULL COURT DECISION CONSISTS OF 13 PAGES.