

NOVA SCOTIA COURT OF APPEAL

Citation: *Canada (Attorney General) v. MacQueen*, 2013 NSCA 143

Date: 20131204

Docket: CA 392560

Registry: Halifax

Between:

The Attorney General of Canada, representing
Her Majesty the Queen in right of Canada

Appellant

v.

Neila Catherine MacQueen, Joseph M. Petitpas, Ann Marie
Ross, Kathleen Iris Crawford, Sydney Steel Corporation, a body corporate, and
The Attorney General of Nova Scotia, representing Her Majesty the Queen in right
of the Province of Nova Scotia

Respondents

Docket: CA 393200

Registry: Halifax

Between:

Sydney Steel Corporation, a body corporate, and
The Attorney General of Nova Scotia, representing
Her Majesty the Queen in right of the Province of Nova Scotia

Appellants

v.

Neila Catherine MacQueen, Joseph M. Petitpas, Ann Marie Ross,
and Kathleen Iris Crawford, and The Attorney General of
Canada representing Her Majesty the Queen in right of Canada

Respondents

Judges: The Court (Oland, Farrar and Bryson, JJ.A.)

Appeal Heard: March 19, 20 and 21, 2013, in Halifax, Nova Scotia

Subject: Class Actions – Certification – *Class Proceedings Act*, S.N.S. 2007, c. 28, s. 7(1) and 15

Summary: The lawsuit by certain property owners and residents of Sydney against Canada, Nova Scotia and Sysco pursuant to their operation of the Sydney steel works was certified as a class proceeding. The appellants appeal the Certification Order, arguing that the requirements of s. 7(1) of the *Class Proceedings Act* that must be met before a proceeding can be so certified were not satisfied. They also say the judge erred in regard to the scope of his jurisdiction under s. 15 of the *Act*.

Issues: Whether the certification judge erred in finding that: (1) the pleadings disclosed causes of action under trespass, battery, negligent battery, liability under the rule in *Rylands v. Fletcher*, and nuisance; (2) the claims of the proposed class members raise common issues; (3) a class proceeding would be the preferable procedure for the fair and efficient resolution of the dispute. Whether he erred in determining the scope of his jurisdiction.

Result: The appeals are allowed. The Order certifying the lawsuit as a class action is overturned.

The facts as set out in the pleadings do not support the cause of action of strict liability as based on the rule in *Rylands v. Fletcher*. They also do not support the causes of action of trespass, battery, and negligent battery.

The remaining causes of action, namely, nuisance, negligence, and breach of fiduciary duty, are not sufficiently common to all the prospective class members to justify certification as class actions.

A class action lawsuit is not the preferable procedure in this case because it would not provide the expected benefits. For example, it would not save judicial resources nor give claimants easier and less expensive access to justice.

Finally, whether, in re-drawing the class boundaries on his own motion, the certification judge exceeded his jurisdiction pursuant to s. 15, is moot and need not be addressed by the court.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 54 pages.