

SUPREME COURT OF NOVA SCOTIA

Citation: *Dawgfather PHD v. HRM*, 2016 NSSC 104

Date: 2016-04-19
Docket: *Hfx* No. 439836
Registry: Halifax

Between:

Dawgfather PHD

Applicant

v.

Halifax Regional Municipality

Respondent

and

Nadia Perry

Intervenor

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Judge: The Honourable Justice James L. Chipman
Heard: March 29 and 30, 2016 in Halifax, Nova Scotia
Final Written Submissions: April 4, 2016
Written Decision: April 15, 2016
Subject: Administrative law.
Application to quash/for a declaration of invalidity.

Summary:

The Applicant and Intervenor sought to quash and set aside a resolution of the Halifax Regional Municipality Council. The resolution pertained to a bicycle lane pilot project on University Avenue in Halifax. The Applicant and Intervenor argued they would be adversely affected if construction of the bicycle lane went ahead.

The Respondent contested the application, arguing that the establishment of a bicycle lane is the function of their Traffic Authority and not Council. They argued that the actions of

the Traffic Authority relating to the bicycle lane on University Avenue were in accordance with the requirements of law.

Issues:

- (1) Jurisdiction
- (2) Whether the application to quash the resolution to approve the construction of a bicycle lane on University Avenue should be allowed?
- (3) Whether declaratory relief is available?

Result:

The Court concluded it had jurisdiction over the Application pursuant to:

1. Section 207 of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39 ("*HRM Charter*"); and
2. *Civil Procedure Rules* 38.01(1) and 38.07(5).

The establishment of a bicycle lane is a form of traffic regulation within the function of the Traffic Authority and not Council. Council is empowered, under s. 325(1) of the *HRM Charter*, to close streets. This must be done by policy. But s. 325(1) has no application here because establishing a bicycle lane is not a street closure. The Applicant therefore failed to establish that Council failed to follow a statutory procedure. The Court found the rest of his attacks on the legality of the resolution amounted to criticisms of Council's failure to follow internal procedure, which cannot constitute illegality. Accordingly, the Applicant's application to quash the resolution under s. 207 was dismissed.

Determined the Applicant was provided ample participatory rights. Found the Respondent acted reasonably and correctly in adopting the resolution. Accordingly, the Court denied the application for declaratory relief and dismissed the application in its entirety.

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