

NOVA SCOTIA COURT OF APPEAL

Cite as: Nova Scotia (Health) v. Dickie, 1997 NSCA 32

Freeman, Pugsley and Bateman, J.J.A.

**BETWEEN:**

THE DEPARTMENT OF HEALTH

Appellant )

- and -

SHARON DICKIE

Respondent )

)  
) Catherine J. Lunn  
) for the Appellant

)  
) I. Claire McNeil  
) for the Respondent

)  
) Appeal Heard:  
) January 10, 1997

)  
) Judgment Delivered:  
) January 10, 1997  
)

**THE COURT:** Appeal allowed without costs per oral reasons for judgment of Freeman, J.A.; Pugsley and Bateman, J.J.A. concurring.

The reasons for judgment of the Court were delivered orally by:

FREEMAN, J.A.:

This matter is before us as an appeal from the decision of a judge of the Supreme Court of Nova Scotia who ordered further disclosure under the **Freedom of Information Act**, S.N.S. 1993, c. 5, on an appeal from the decision of the head of the Department of Health accepting the recommendation of a review officer.

Section 41(2) of the **Act** provides:

41 (2) The head of a public body who has refused a request for access to a record or part of a record shall, immediately on receipt of a notice of an appeal by an applicant, give written notice of the appeal to any third party that the head of the public body

- (a) has notified pursuant to this Act; or
- (b) would have notified pursuant to this Act if the head of the public body had intended to give access to the record or part of the record.

On inquiry by the court we were advised by counsel that notice had not been given to the third party.

Accordingly, the Supreme Court lacked jurisdiction.

The judgment appealed from is set aside as having been made without jurisdiction.

The matter is remitted to the Supreme Court where a new hearing will be necessary after the requisite notice has been given by the head of the Department.

There will be no order for costs.

Freeman, J.A.

Concurred in:

Pugsley, J.A.

Bateman, J.A.

C.A. No.131292

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