

CASE NO.

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GRAHAM MENZIES

CAPE BRETON - VICTORIA
REGIONAL SCHOOL BOARD

- and -

(Appellant)

(Respondent)

CA 157921

Halifax, N.S.

FLINN, J.A.

[Cite as: *Menzies v. Cape Breton - Victoria Regional School Board*, 2000 NSCA 49]

APPEAL HEARD: April 10, 2000

JUDGMENT DELIVERED: April 10, 2000

WRITTEN RELEASE OF ORAL: April 11, 2000

SUBJECT: Education Act, S.N.S. 1995-96, c. 1, s. 36 - appeal by teacher of dismissal - failure of teacher to fully comply with the Notice provisions in the Act - no party objecting - parties proceeding for 11 months as if appeal was going forward - failure to comply fully with the Notice provisions raised on the opening day of the hearing.

SUMMARY: The appellant school teacher appeals his dismissal by the respondent School Board pursuant to s. 37 of the **Education Act**. Notice, in writing, of the appeal was given to the Minister of Education. No written Notice of Appeal was given to the School Board although there was some evidence that the School Board's solicitor knew that the teacher had intended to appeal. On a *certiorari* application the Chambers judge quashed the decision of the Appeal Board (appointed by the Minister of Education to hear the appellant's appeal). The Chambers judge decided that the Board of Appeal had no jurisdiction to hear the appeal because of the teacher's failure to comply fully with the Notice provisions of s. 36 of the **Education Act**.

RESULT: Appeal allowed.

This case is fact specific. It is apparent, in this case, that the requirement of the appellant to give written notice of his appeal to the

School Board (in addition to the notice of appeal which had been given to the Minister of Education) was ignored by both the appellant and the School Board. Both parties proceeded, for nearly 11 months, on the assumption that the appeal would go forward, and without any suggestion that there was anything amiss with the process. Further, there is no evidence that the School Board has been prejudiced, in any way, as a result of not receiving the written notice as provided for in s. 36 of the **Act**.

The Court of Appeal decided that an injustice would result if, under the particular circumstances of this case, the School Board could rely on the appellant's failure to fully comply with the Notice provisions of the **Education Act** so as to deprive the appellant of a hearing of his appeal on its merits.

The matter was remitted to the Board of Appeal to hear the appellant's appeal on its merits.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 5 pages.