Date: 19971007 Docket: C.A. 140317

NOVA SCOTIA COURT OF APPEAL
Cite as: Conseil Scolaire Acadien Provincial v. Nova Scotia (Utility and Review Board), 1997 NSCA 160

Chipman, Bateman and Cromwell, JJ.A.

IN THE MATTER OF: **THE EDUCATION ACT**, S.N.S. 1995-96, c. 1

BETWEEN:

CONSEIL SCOLAIRE ACADIEN PROVINCIAL, a body corporate Appellant - and - NOVA SCOTIA UTILITY AND REVIEW BOARD and ATTORNEY GENERAL OF NOVA SCOTIA Respondents	Peter M.S. Bryson for the Appellant Utility & Review Board not appearing Attorney General not appearing Appeal Heard: September 30, 1997 Judgment Delivered: October 7, 1997

THE COURT: Appeal dismissed per reasons for judgment of Cromwell, J.A.; Chipman and Bateman, JJ.A. concurring.

Cromwell, J.A.:

This is an appeal from the Nova Scotia Utilities and Review Board. At the conclusion of the hearing before this Court, the appeal was dismissed for reasons to be delivered at a later date. Those reasons are as follows.

Pursuant to the provisions of the **Education Act**, S.N.S. 1995-96, c. 1, the Coordinator of the Conseil Acadien applied to the Board to establish the number of members of the Conseil and the number and boundaries of the electoral districts: see **Education Act** , s. 18(1)(d).

The Board held public hearings over a five day period and in five different locations around the province. Notice of the hearings was published in LeCourrier and The Chronicle-Herald on three occasions in advance of the first day of hearing. A Notice of Hearing was sent to Mr Sirois, Superintendent of the Conseil. A press release was also issued by the Board in relation to these hearings. A copy of this press release was sent by the Board to Mr Sirois with a covering letter asking who would present the application at these hearings. At least one member of the Conseil was present at each of the five hearings. The Board also had before it a letter dated February 20, 1997 from the Conseil (well

before the hearings began on April 21, 1997) indicating support in principle of the Coordinator's recommendations as set out in his application to the Board (although requesting some variation with respect to the electoral districts in Argyle.)

The Board released its written decision on July 10 in which it set the number of electoral districts at 8 and the total number of members at 16 according to a distribution among the districts as set out in the Board's reasons. This differed from the Coordinator's application most significantly by increasing the number of members of the Board from his proposed number of 11 to 16. It is that aspect of the Board's decision that gives rise to this appeal.

The appeal to this Court is confined to questions of law or jurisdiction: see **Utility and Review Board Act**, S.N.S., 1992, c. 11, s.30(1). The Legislature has by clear words given the Board jurisdiction to establish the number and boundaries of electoral districts and the number of members : see **Education Act**, ss. 13(5) and (6) and s. 42(1). The statute imposes certain limits on the Board's authority and structures the exercise of that authority. For example, s. 42 provides that the number of districts shall be at least 8 and not

more than 18 and s. 13(6) requires that the Board give consideration to effective representation and that such consideration is to be of greater importance than parity of voting. Within these limits and subject to the statutory directions, the decision as to the number of districts, their boundaries and the number of members is for the Board to make. It is not the role of this Court to assess whether the Board reached the best decision or the correct decision; the role of the Court is limited on this appeal to deciding whether the decision was within the Board's jurisdiction and made according to law.

The appellant raises three arguments.

It is argued in the Appellant's factum that the Conseil was denied natural justice and a fair hearing because it was not advised by the Board to prepare for and make a formal oral presentation. This argument is without merit. In light of the material filed by the Board, particularly the affidavit of Ms Wagner, the Board's Appeal Officer/Clerk, it is clear that the Board's expectation was communicated in writing to the Conseil before the beginning of the hearings. Putting the situation at its very highest, there was a misunderstanding about the role of the Conseil. There was certainly no denial

of natural justice given the advance notice of the hearings, the written request made to the Conseil and the full opportunity to the Conseil to place before the Board any material it considered relevant. The Conseil placed its position before the Board in writing and at least one member of the Conseil attended each of the five hearings. While of course any misunderstanding of this nature is regrettable, there was no denial of natural justice or loss of jurisdiction on the facts of this appeal.

It is argued that the Board's allocation of members per district is so contrary to the weight of evidence as to be patently unreasonable. The essence of the argument on this part of the appeal is well stated in paragraph 38 of the Appellant's factum and is this: " that in the absence of strong evidence to the contrary, the Board should not, in effect, substitute its opinion of "effective representation" for that of those most intimately knowledgeable and connected with administration of the Conseil Acadien."

This submission cannot be accepted. It was for the Board to decide how the members were to be allocated. In reaching its decision, it must comply with the legislative directions and carefully consider the evidence before it. It is

not obliged to pay special deference to the opinions of certain individuals or groups. While there was considerable support for the Coordinator's proposed allocation, that support was not unanimous. Quite apart from the extent of the support or otherwise for that allocation, it was not improper for the Board to consider the issue of voter parity, provided it did so within the statutory directives. The Board considered a range of views and relevant evidence in relation to them. The Board was aware of and appears to have wrestled with the issue of equality of regional representation and how voter parity should be weighed in relation to it. The interchange between the Chair of the Board and the witness Clyde DeViller at the hearings on April 25, particularly at pages 838 to 845 of the English version of the transcript is a good example.

The fact that the Board decided not to give effect to the position of a strong majority of witnesses before it does not, of itself, mean that the Board acted unreasonably. It considered the evidence and the requirements of the Act and reached a decision that was open to it. Having regard to the statute and the evidence, its decision is not patently unreasonable or wholly unsupportable by the evidence.

The appellant also argues that the Board erred in law and jurisdiction

by failing to give proper consideration to effective representation as required by s. 13(6) of the **Education Act**. This argument has several aspects.

First it is argued in the Appellant's factum that the Board erred in law by considering the factors set out in s. 44 of the **Act** when determining the number of members. Section 44 deals with the determination of the number and boundaries of electoral districts but does not refer to the number of members. However, the Board said, at page 12 of its decision, that it must address the factors enumerated in s. 44 in relation to determining the number of members. Assuming without deciding that this constitutes an error of law, it is not every error of law that requires a decision to be set aside. Even if the Board is not required to consider the factors set out in s. 44(3), none of the factors there set out is an irrelevant or improper matter for the Board to consider.

Far from leading the Board to give undue weight to parity of voting, s. 44(3) (a) directs once again that effective representation is of greater importance as set out in s. 13(6). In this section of its reasons for decision the Board twice indicates that voter parity is not the primary factor: see pages 15 and 18 of the reasons for decision. In these circumstances, even assuming that

the Board erred in its statement that it must consider s. 44 when addressing the issue of the number of members, this is not an error that results in loss of jurisdiction. While the Board may have misstated the law, this did not lead it to consider any irrelevant or improper matters or into giving inappropriate weight to the matters it was bound to consider. In short, it is clear from reading the reasons of the Board as a whole that this alleged misstatement of the law did not affect the result: **Central Broadcasting Company v Canada Labour Relations Board , [1977] 2 S.C.R. 112 at 118 - 119.**

It is also argued that the reasons of the Board indicate that it gave undue weight to parity of voting. Given the explicit references in the Board's decision to the requirement that voter parity was not to be the prime factor and that the numbers ordered by the Board result it very significant departures indeed from voter parity, this argument cannot be accepted.

The Appellant's position in a nutshell is that the Board was wrong to depart from the numbers proposed by the Coordinator given that his approach appears to have been widely accepted. However, it is not our role to assess the wisdom of the Board's decision provided that such decision was reached

according to the statutory directives and the law. We find that the Board had jurisdiction and did not commit any error of law that justifies interfering with its decision.

As announced at the conclusion of the hearing, the appeal is dismissed. We are indebted to Mr Bryson for his very able submissions both in his factum and orally.

Cromwell, J.A.

Concurred in:

Chipman, J.A.

Bateman, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

CONSEIL SCOLAIRE ACADIEN PROVINCIAL, a body corporate	)	
	)	
Appellant	)	
- and -	)	REASONS FOR JUDGMENT BY:
	)	
NOVA SCOTIA UTILITY AND REVIEW BOARD and ATTORNEY GENERAL OF NOVA SCOTIA	)	CROMWELL, J.A.
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Respondents	)	
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