

**CASE NO.**

**VOL. NO.**

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**HALIFAX REGIONAL  
SCHOOL BOARD**

- and -

**JACK POTTER, MARK  
PIPER, CHRIS  
LAVERGNE, DAVID PAUL,  
DEBBIE JENNEX, DAVID  
MICHELS**

(Appellant)

(Respondents)

CA 173572

Halifax, N.S.

Oland, J.A.

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[Cite as: *Halifax Regional School Board v. Potter*, 2002 NSCA 88]

**APPEAL HEARD:**

January 31, 2002

**JUDGMENT DELIVERED:**

June 21, 2002

**SUBJECT:**

**Administrative Law — School Board — Permanent Closure of School — Notice of Contention — Civil Procedure Rule 62.09 — Duty of Procedural Fairness — Education Act s. 89 and its Regulations — Application of Maxim “He/She Who Decides Must Hear” — Procedural Irregularities — Standing — Mootness**

**SUMMARY:**

The school board voted seven to six to close a school attended by the children of the respondents. The respondents successfully applied to a Supreme Court judge in chambers for an order in the nature of *certiorari* quashing the board’s decision. The chambers judge found that the board had breached its duty of fairness by allowing a board member who had not been present at a public meeting held by the board at the school to vote on its closure. He refused to grant the respondents’ standing to object to the closure of another school. The board appealed the order quashing its decision. The respondents contended that there were additional grounds

supporting that order and urged that while the other school will remain closed, this court should hear the standing issue notwithstanding its mootness. It also applied to convert its notice of contention, insofar as it relates to the standing issue, to a notice of appeal.

**ISSUES:**

1. Whether the inclusion of the issue of standing in the respondents' notice of contention was appropriate.
2. Whether, in making a school closure decision, the school board owes the parents of the children of a school to be closed any duty of procedural fairness, and if so, the extent of that duty.
3. Whether the legal maxim "He/She who decides must hear" applies so as to disqualify a school board member who did not attend a public meeting held at the school being considered for closure from voting on its closure.
4. Whether the closure decision is invalid because no public meeting was held to consider the recommendations in a report prepared by the executive council which is comprised of senior staff of the board.
5. Whether, if in the particular circumstances of this case, the school closure process followed by the board did not comply with certain *Regulations* pursuant to the *Education Act* or its own closure procedures, its decision to close the school should be invalidated.
6. Whether this court should exercise its discretion to hear the issue of the respondents' standing to object to the board's decision to close another school which their children did not attend.

**RESULT:**

Appeal allowed. Cross-appeal dismissed.

Where the issue of standing had been argued before and dismissed by the chambers judge, it should not be raised on

appeal by way of a notice of contention. The respondents' application for conversion of their notice of contention to a notice of cross-appeal on that issue only allowed.

When the school board considers the permanent closure of a particular school or schools, it owes the public, including the parents of children attending such school or schools, a meaningful opportunity to present their case for the board's consideration. In the particular circumstances of this case, the board had satisfied that duty.

The fact that the board owes a duty of procedural fairness does not mean that the maxim "He/She who decides must hear" applies. The vote to close a school is not invalid because a board member who did not attend a public meeting held by the board to provide an opportunity for the public to present its reactions to a review committee report voted on the closure motion. The failure to hold a public meeting to review the closure recommendation in the report of the executive committee does not breach the duty of fairness owed by the board. Such a meeting is not required by the statutory or common law duty of fairness. The issues of procedural irregularity are either without merit or the procedural provisions in question are directory and their breach does not result in prejudice to an extent as to require judicial intervention.

The particular circumstances of this case not coming within any of the exceptions to the general rule against deciding cases which are moot, the court declined to exercise its discretion to decide the issue of the respondents' standing to challenge the board's decision to close the other school.

**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.**