

NOVA SCOTIA COURT OF APPEAL
Citation: *Heighton v. Kingsbury*, 2003 NSCA 80

Date: 20030729
Docket: CA 191516
Registry: Halifax

Between:

Ambrose Heighton, The Town of Stellarton and
The Board of Police Commissioners for the Town of Stellarton
Appellants
v.
David Kingsbury
Respondent

Judge: CHIPMAN, J.A.

Appeal Heard: June 9, 2003

Subject: **Administrative Law - *Certiorari* and prohibition - relevance of available alternative remedies**

***Certiorari* and prohibition - whether appropriate in circumstances - adequacy of alternative remedies**

Costs - appeal from award of costs on dismissal of proceedings against party where plaintiff successful against other parties

Summary: Plaintiff, a police officer, was demoted and later dismissed by a board of police commissioners on the recommendation of the chief officer of the police force. A judge in Chambers found that both the demotion and dismissal were made without jurisdiction and granted orders in the nature of *certiorari* quashing the decision, and in the nature of prohibition prohibiting further proceedings

relating to the matters dealt with in the decision. The Chambers judge found that the availability of alternative remedies under the **Collective Agreement** between the parties and under the **Police Act** was not relevant. Costs were ordered against the plaintiff respecting joinder of a party against whom no cause of action existed. The defendants appealed and the plaintiff cross-appealed respecting costs.

- Issues:**
1. Whether the availability of alternative remedies was relevant.
 2. Whether the decisions to demote and to dismiss were quashable on *certiorari*.
 3. Whether available alternative remedies were adequate.
 4. Whether an order in the nature of prohibition should have been granted.
 5. Whether the order as to costs was erroneous.

Result: The Court of Appeal, after reviewing the authorities, found that the availability of alternative remedies was relevant. The decisions to demote and dismiss were made without jurisdiction, and as the alternative remedies were not adequate, those decisions were properly quashed on *certiorari*. Prohibition was also appropriate in the circumstances. The appeal was dismissed.

The Chambers judge made no error in the order as to costs and the cross-appeal was dismissed.

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 44 pages.