

NOVA SCOTIA COURT OF APPEAL

Citation: Coates v. Capital District Health Authority,
2011 NSCA 4

Date: 20110107

Docket: CA 326406

Registry: Halifax

Between:

Rosanne Coates

Appellant

v.

Capital District Health Authority, Dr. Anil Rickhi,
and Dr. Stephen Sheehan, and
Nova Scotia (Minister of Justice)

Respondents

Judge: The Honourable Justice Oland

Appeal Heard: December 9, 2010

Subject: Section 41 of the *Freedom of Information and Protection of Privacy Act*, SNS 1993, c. 5, s. 1 - Jurisdiction of the Court of Appeal

Summary: The Supreme Court of Nova Scotia heard the appellant's appeal pursuant to s. 41 of the FOIPOP Act and issued a decision and order. After the appellant appealed to the Court of Appeal, it was discovered that she had inadvertently failed to give the Minister notice of her appeal to the Supreme Court pursuant to s. 41(1A) which states that "An appeal is deemed not to have been taken . . . unless a notice of appeal is given to the Minister by the person taking the appeal."

Issue: Whether the Court of Appeal has the jurisdiction to hear an appeal of the merits of the Supreme Court decision.

Result: This a question of statutory interpretation. Where the Minister was not served with the requisite notice on a timely basis pursuant to s. 41(1A), the appeal to the Supreme Court has never been undertaken. Its decision and order are nullities. This court lacks the jurisdiction to hear an appeal of the merits of its decision.

To protect the Minister's right to participate under s. 41(1B) and to preserve the rights of the parties, the s. 41 appeal is remitted to the same Supreme Court Justice and the Minister is given a certain period to file and serve notice of its intention to participate. If the Minister does not, the Supreme Court may proceed to decide the matter and, if the Minister does, the Supreme Court shall establish filing and hearing particulars.

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 18 pages.