

CASE NO.

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NOVA SCOTIA POLICE REVIEW BOARD

- and -

ATTORNEY GENERAL FOR NOVA SCOTIA, representing Her Majesty the Queen in Right of The Province of Nova Scotia as represented by the Public Prosecution Service

(Appellant)

(Respondent)

- and -

RANDALL WALTER MOORE

(Third Party)

CA 157285

Halifax, N.S.

FLINN, J.A.

[Cite as: Nova Scotia Police Review Board v. Nova Scotia (Attorney General), 1999 NSCA 151

APPEAL HEARD:

November 23, 1999

JUDGMENT DELIVERED:

December 3, 1999

SUBJECT:

Administrative Law - Appeal by Administrative Tribunal arising from a decision of a Chambers judge which set aside the Tribunal's decision - not appropriate for Tribunal to be making submissions with respect to errors of law - error going to the jurisdiction of the Tribunal

SUMMARY:

A Chambers judge quashed a decision of the Nova Scotia Police Review Board to issue a subpoena to a named Crown attorney, requiring that Crown attorney to appear and testify at a Review Board hearing. Chambers judge also granted a wide-ranging declaration that the Review Board did not have jurisdiction to issue a subpoena to any Crown attorney where the Attorney General was not a party to the proceeding. The complainant, at whose request the Review Board issued the subpoena, did not appeal the decision of a Chambers judge. The appeal was launched by the Review Board itself.

RESULT: Appeal allowed in part.

The Review Board's appeal was on two grounds:

- (i) The first ground does not raise an issue as to the Review Board's jurisdiction; and, therefore, it is not appropriate for the Review Board to be separately represented on such a matter; and, in effect, advocating the correctness of its own decision.
- (ii) The Court of Appeal decided that the second ground, with respect to the declaration that was granted by the Chambers judge, is an issue which goes to the Review Board's jurisdiction.

The Court of Appeal set aside the declaration on two bases:

- (a) declaratory relief was not necessary nor desirable in this case; and
- (b) the terms of the declaration go far beyond the factual situation which was before the Review Board. Further, the terms of the declaration are so broad that the Review Board is prevented from issuing a subpoena to a Crown attorney in circumstances where the Crown attorney is otherwise compellable.

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 10 pages.