

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Kelly v. Nova Scotia (Police Commission) 2005 NSSC 142

**Date:** 20050602

**Docket:** SN 234907

**Registry:** Sydney

**Between:**

Carleton F. Kelly

Applicant

v.

Nova Scotia Police Commission

Respondent

and

Constable Clayton Burt and the Cape Breton  
Regional Municipality

Intervenors

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**Judge:** The Honourable Justice Frank Edwards

**Heard:** March 24 and May 19, 2005 in Sydney, Nova Scotia

**Subject:** Judicial review of hearing before administrative tribunal; fairness of the hearing and procedural fairness; also adequacy of reasons; *Police Act* and Police Review Board (“Board”).

**Facts:** Hearing before Board regarding unrepresented citizen’s complaint of biased investigation by police officer. Board dismissed complaint.

**Result:** Board’s decision set aside and rehearing ordered before differently constituted Board. Board had failed to explain format of the hearing *de novo* and basic principles of direct and cross-examination to unrepresented litigant. Board had allowed inappropriate cross-examination. Result was that the Complainant did not get a fair hearing. Also, some comment on adequacy of Board’s reasons.

**Cases Noted:** *R. v. Sheppard* (2002) 162 CCC (3d) 298 (S.C.C.)  
*Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311  
*Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643  
*Baker v. Canada (Minister of Citizenship and Immigration)*, [1990] 2 S.C.R. 817  
*Cusack v. Nova Scotia* (Superintendent of Insurance), [2000] N.S.J. No. 93 (S.C.)  
*R.D.R. Construction v. Rent Review Commission* (1982), 55 N.S.R. (2d) 71  
*R. v. Hull Prison Board of Visitors*, [1979] 1 All. E.R. 701 (C.A.)  
*Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653  
*Vanton v. British Columbia Council of Human Rights*, [1994] B.C.J. No. 497 (S.C.)  
*Dauids v. Dauids*, [1999] O.J. No. 3930 (C.A.)  
*Manitoba (Director and Family Services) v. J.A.*, [2004] M.J. No. 451 (C.A.)  
*Baziuk v. BDO Dunwoody Ward Mallette* (1997), 13 C.P.C. (4th) 156 (Ont. C.J.)  
*Smith v. Heron*, [2003] N.S.J. No. 377 (C.A.)  
*R. v. Laycock*, [1996] O.J. No. 3846 (G.D.)  
*Clayton v. Earthcraft Landscape Ltd.* (2002), 210 N.S.R. (2d) 101 (S.C.)  
*Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643  
*White v Dartmouth (City) et al.* (1991), 106 N.S.R. (2d) 45 (S.C.), at p. 6 (QL)

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