

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: *O'Hara v. Nova Scotia (Education)*, 2007 NSSC 315

Date: 20071029
Docket: SH 277292
Registry: Halifax

Between:

Her Majesty The Queen *ex relator* Gary O'Hara, Deborah Brunt,
Grace Walker, Bridget Ann Boutilier, Debra Barlow, Wade Marshall
and Darren Watts

Plaintiffs/Applicants

v.

The Honourable The Minister of Education

Defendant/Respondent

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Judge: The Honourable Justice M. Heather Robertson

Heard: July 25 and 26, 2007, in Halifax, Nova Scotia

Written Decision: October 29, 2007

Subject: A challenge to the authority of the Minister of Education to act pursuant to s. 68 of the *Education Act* in appointing a person to carry out the responsibilities and exercise the authority of the Board.

Summary: The Minister of Education took corrective action pursuant to s. 68 of the *Education Act* and appointed Howard Windsor to effectively replace the Halifax Regional School Board and carry out its duties. Seven of the thirteen school board members challenged the decision seeking an order to quash the Minister's decision and an order to reinstatement.

Issue: Did the Minister have the authority to appoint Howard Windsor?
What standard of review should be applied by the Court?
What if any remedies should be granted?

Result: The standard of review that applies in the circumstance of this case is that

of “patently unreasonable.” The Minister had the legislative authority to appoint a one-person board and exercised her discretion in a reasonable manner. Application dismissed.

Cases cited: *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; *Dr. Q. v. College of Physicians and Surgeons (British Columbia)*, 2003 SCC 19; *The Law Society of New Brunswick v. Ryan*, 2003 SCC 20; *Creager v. Nova Scotia (Provincial Dental Board)*, [2005] N.S.J. No. 32 (C.A.); *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Nova Scotia (Minister of the Environment and Labour) v. Pracz et al*, 2004 NSSC 61; *Mount Sinai Hospital Centre v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281; *J. B. v. Nova Scotia (Minister of Education)* (2001), 197 N.S.R. (2d) 23 (S.C.); *Truro Sanitation Ltd. v. Nova Scotia (Minister of Transportation and Public Works)*, 2004 NSSC 146; *Sand, Surf and Sea Ltd. v. Nova Scotia (Department of Transportation and Public Works)* 2005 NSSC 233; *Brighton v. Nova Scotia (Minister of Agriculture and Fisheries)*, [2002] N.S.J. No. 298 (S.C.); *DRL Environmental Services, Demolition Resources Ltd. v. Nova Scotia (Attorney General)*, [2004] N.S.J. No. 461 (S.C.); *Rizzo v Rizzo Shoes Ltd.*, [1998] 1 S. C. R. 27; *Bell ExpressVU Limited Partnership v. Rex*, [2002] 2 S.C.R. 559; *Nova Scotia (Workers’ Compensation Board) v. O’Quinn*, [1997] N.S.J. No. 44; *Mossman v. Nova Scotia (Attorney General)*, [1995] N.S.J. No. 179 (S.C.); *Delivery Drugs Ltd. (c.o.b. Gastown Pharmacy) v. British Columbia (Deputy Minister of Health)*, [2006] B.C.J. No. 893; *Harper v. Canada*, [2004] 1 S.C.R. 827; *Knight v. Indian Head School Division*, [1990] 1 S.C.R. 653; *Moreau-Bérubé v. Nouveau Brunswick*, [2002] 1 S.C.R. 249; *Potter v. Halifax Regional School Board*, 2002 NSCA 88; *R. v. Greenbaum* (1993), 100 D.L.R. (4th) 183; *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3; S.A. De Smith, *Judicial Review of Administrative Action*, [3rd ed.], 1973 London: Stevens at p. 60; Jones & deVillars, *Administrative Law* (4th ed, 2004), p. 124-125, 244-245; *Education Act*, S.N.S. 1995-96, c. 1; *Municipal Elections Act*, R.S.N.S. 1989, c. 300; *Constitutional Questions Act*, R.S.N.S. 1989, c. 89, s. 10; and *Charter of Rights and Freedoms*, s. 2.

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