IN THE SUPREME COURT OF NOVA SCOTIA

Cite as: The Nova Scotia Woodlot Owners and Operators Association v. Kimberly-Clark Nova Scotia, 2002 NSSC 011

BETWEEN:

THE NOVA SCOTIA WOODLOT OWNERS AND OPERATORS ASSOCIATION - CENTRAL WOOD SUPPLIERS DIVISION

APPLICANT

- and -

KIMBERLY-CLARK NOVA SCOTIA

RESPONDENT

Justice Robert W. Wright **Halifax, Nova Scotia** **File No. S.H. No. 171917**

LIBRARY HEADING

HEARD: Before the Honourable Justice Robert W. Wright at Halifax, Nova Scotia on January 8, 2002.

ORAL DECISION: January 10, 2002

WRITTEN RELEASE OF DECISION: January 23, 2002

SUBJECT: Judicial Review Application

SUMMARY: The Nova Scotia Woodlot Owners and Operators Association was certified under the provisions of the *Pulpwood Marketing Act* (since renamed the *Primary Forest Products Marketing Act*) to act as bargaining agent for all producers of pulpwood within certain counties of Nova Scotia who sold pulpwood to Kimberly-Clark at its mill in Abercrombie, Nova Scotia.

Under the scheme of the Act, an organization so certified must first obtain a

declaration from the Nova Scotia Primary Forest Products Marketing Board that a bargaining situation exists between itself and another before collective bargaining negotiations can be required.

The Association applied for such a declaration after Kimberly-Clark made a unilateral business decision in 1995 to stop buying pulpwood altogether, in favour of buying pulpwood chips, and later sawmill chips, as the raw material for its mill. The Association's Certificate of Registration did not authorize it to bargain for the sale of sawmill chips.

After deciding a preliminary issue in 1998 (which was also the subject of an earlier judicial review), the Board proceeded with the Association's application for a declaration that a bargaining situation existed between itself and Kimberly-Clark. The Board found in the changed circumstances that a bargaining situation did not exist and it dismissed the application. The Association then applied to this court for an order in the nature of *certiorari*, seeking to quash the decision of the Board.

ISSUES:
(1) What is the appropriate standard of review?

(2) Did the Board commit a reviewable error of law in making its decision?

HELD: The standard of review to be applied, consistent with the finding of the court in the earlier judicial review application, was that of reasonableness *simpliciter*. In applying that standard of review, it could not be said that the Board's decision was unreasonable in the sense of being clearly wrong through a defect either in the evidentiary foundation itself or in the logical process by which conclusions were drawn from it. It had not been demonstrated that the Board committed any reviewable error of law that would justify the intervention of the court. The application was therefore dismissed, with costs to be paid to Kimberly-Clark in the sum of $1,000 plus disbursements.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.**