

2004

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REGISTRY: Bridgewater, N.S.

**IN THE SUPREME COURT OF NOVA SCOTIA**

Cite as: Warrington v. Lunenburg (Municipality), 2005 NSSC 288

BETWEEN:

GORDON E. WARRINGTON

Applicant

-and-

GORDON PETTIPAS, CLERK OF THE MUNICIPALITY OF LUNENBURG

-and-

First Respondent

-and-

CHRIS McNEILL, CLERK OF THE REGION OF QUEENS MUNICIPALITY and  
RETURNING OFFICER FOR THE AFRICAN NOVA SCOTIAN MEMBER OF THE SOUTH  
SHORE REGIONAL SCHOOL BOARD

Second Respondent

-and-

SAUNDRA VERNON, CANDIDATE FOR THE AFRICAN NOVA SCOTIAN MEMBER OF  
THE SOUTH SHORE REGIONAL SCHOOL BOARD

Third Respondent

-and-

KEN SMITH, CLERK OF THE TOWN OF BRIDGEWATER

Fourth Respondent

-and-

BEA RENTON, CLERK OF THE TOWN OF LUNENBURG

Fifth Respondent

-and-

PAMELA MYRA, CLERK OF THE MUNICIPALITY OF THE DISTRICT OF CHESTER

Sixth Respondent

-and-

KYLE HILTZ, CLERK OF TOWN OF MAHONE BAY

Seventh Respondent

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**DECISION**

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HEARD BEFORE: The Honourable Justice Margaret J. Stewart

DATE HEARD: March 15 and 16, 2005.

DATE WRITTEN

RELEASE: April 28, 2005; June 3, 2005.

COUNSEL: Brent Silver, solicitor for the Applicant  
Patrick Burke, solicitor for the First Respondent  
James P. DiPersio, solicitor for the Second Respondent  
Saundra Vernon, self represented Third Respondent  
Erica Green, solicitor for the Fourth Respondent  
David Cooper, solicitor for the Fifth Respondent  
Samuel Lamey, solicitor for the Sixth Respondent  
Jodi Mailman, solicitor for the Seventh Respondent

Reasons for judgment:

[1] Gordon E. Warrington, pursuant to s. 158 of the **Municipal Elections Act**, R.S. 1989 c. 300 as amended, seeks an Order declaring the election of the African Nova Scotian member of the South Shore Regional School Board (ANS member SSRSB) void, “on the basis that the election was not conducted in accordance the **Act**, in particular, election officials in some polls routinely distributed African Nova Scotian (ANS) ballots to voters who were unqualified to vote for the ANS School Board member and failed to properly inform voters in general of the availability of the ANS ballot or the criteria for qualified ANS electors, pursuant to s. 42(A) of the **Education Act**, 1995/1996 c.1 s.1 such that qualified electors who wanted to vote did not get the opportunity to do so.”

[2] Section 158(1) of the **Municipal Elections Act**, reads as follows:

Where an election or a vote of the electors for the determination of any matter that the council has directed be put before the electors has not been conducted in accordance with this Act, the court may, upon application, declare the election or the vote to be void.

This section should be read in conjunction with s. 164 which states in part as follows:

**164** No election shall be declared invalid

(a) by reason of any irregularity on the party of the clerk or the returning officer or in any of the proceedings preliminary to the poll; ...

(d) by reason of non-compliance with the provisions of this Act as to the taking of the poll, as to the counting of the votes or as to limitations of time;...

if it appears to the judge that the election was conducted in accordance with the principles of this Act and that the irregularity, failure, non-compliance or mistake did not affect the result of the election.

[3] A municipal election was held on the 16th of October, 2004. Among other issues to be decided by the electors on that day was a vote to determine who should serve as the ANS member of the SSRSB. Section 42 A (3) of the **Education Act**, supra provides for one ANS representative to be elected by ANS electors throughout the school region over which the school board has jurisdiction. Section 42 A (1) defines “African Nova Scotian” (ANS) to mean, “a person who is African Nova Scotia or a black person”. An “African Nova Scotian” elector is defined in s. 42A (1)(b) as, “a person who is qualified to vote in an election of a school board who is also (i) an African Nova Scotian, or (ii) the parent of an African Nova Scotian” which includes a guardian and a person acting in *loco parentis* to a child. Thus qualified electors who are ANS or the parents or guardians of an ANS are entitled to vote as ANS elector for an ANS School Board member.

[4] Two candidates sought to serve as the ANS member of the SSRSB; Sharon Vernon and Gordon Warrington. Eight rejected ballots aside, a total of ninety-six (96) votes were cast and

the votes polled for Ms. Vernon totaled sixty-one (61) and for Mr. Warrington, they totalled thirty-five (35). The recapitulation sheet for the consolidated ANS count reflects:

	Ms. Vernon	Mr. Warrington
1) Polling Station 1 of Region of Queens Municipality (Milton)	5	5
2) Polling Station 34B  of the Municipality of Lunenburg  (Little Tancook Island)	16	1
3) Polling station 30B  of the Municipality of Lunenburg  (Midville Branch)	18	8
4) Consolidated account of  all other polling divisions or stations:	22	21

[5] Ms. Vernon was declared the successful candidate.

[6] In Little Tancook Island and Midville Branch polls, both the Conseil Scolaire Acadien Provincial (CSAP) and the District School Board members were elected by acclamation and the

voters in these polls, if eligible, were only able to vote for the ANS School Board member along with other issues, such as Sunday shopping plebiscite. In Milton, the CSAP member was elected by acclamation, leaving the qualified electors in the polling station able to vote for either the District School Board member or the ANS School Board member, provided they were qualified to vote for the latter, but unable to vote for both, (s. 42A(10) **Education Act**, supra). Section 42A (5)(c) of the **Education Act** determines the method of confirming an elector's status as an ANS elector so as to be qualified as such and capable of voting for ANS School Board member.

It reads:

**42A (5)(c)** Where a person intends to vote in an election of an African Nova Scotian to a school board, that person shall not be required to take an oath or make an affirmation in a form attesting to that person's status as an African Nova Scotian elector, but shall be required to confirm the person's status as an African Nova Scotia elector as defined in the Education Act and, where a person wishes to provide the confirmation, the person may provide the confirmation by requesting the ballot to vote for the African Nova Scotia elector (sic) and that request constitutes the confirmation;

[7] Because the election of the ANS School Board member covers the whole of the SSRSB district, it involves all of the municipal units within the district and, accordingly, all the municipal units were named as parties as well as the other candidate, Ms. Vernon. The irregularities alleged by the applicant relate primarily to the polls within the Municipality of the District of Lunenburg; specifically, Little Tancook Island and Midville Branch and the Region of Queens Municipality; specifically, Milton and primarily centre around the manner in which the election officials distributed the ballots.

[8] With respect to Little Tancook Island polling station, the obvious irregularities relating to some 17 votes cast on the Island, in regards to the election of the ANS School Board member are acknowledged by counsel on behalf of the Municipality of Lunenburg. Ms. Vernon takes no specific position. The unchallenged affidavit of Carol Green, the Deputy Returning officer for Little Tancook Island, reflects the fact there was only one school board ballot for distribution by the poll workers and it was for the election of the ANS School Board member. The ANS School Board ballot was given by the poll worker to every qualified elector at the polling station, in compliance with what they felt their instructions and training to be. The poll worker and the Deputy Returning officer did not wait for the electors to request the ANS School Board ballot. They just gave the ballot to each of the 17 qualified electors and each responded by voting for the member. No elector requested the ANS School Board ballot. Thus, there was no confirmation by the electors of their status as ANS electors which qualified them to vote in the election of an ANS to the SSRSB, The **Education Act** necessitates confirmation of elector's status as an ANS elector as defined in the **Act** and that confirmation is provided not by taking of an oath but by requesting the ballot to vote for the ANS School Board member, specifically, the request constitutes confirmation of status, as an ANS elector, so as to become "a qualified ANS elector," (42A (10)) capable of voting. By giving the ANS School Board ballot to every qualified elector, at no point were they ever properly qualified as ANS electors, a prerequisite to voting such a member, in that the electors never requested the ANS School Board ballot confirming their status as an ANS. There was no evidence as to whether any of the 17 qualified electors would have qualified as ANS electors.

[9] With respect to Midville Branch, a review of the affidavit and viva voce evidence of 28 of the 29 qualified electors who voted in the election of an ANS to the SSRSB reveals that all but one clearly consider themselves not to be ANS and therefore, could not be qualified as ANS electors and could not vote in the election of an ANS to the SSRSB. On this basis, their 27 votes are void.

[10] Besides not being ANS as defined by the legislation, some 15 or so of these electors on their uncontested evidence were never properly qualified to vote as ANS electors in that they were given the ANS School Board ballots and never requested the ballot thereby confirming their status as such. As with Little Tancook Island, the election officers distributed ANS School Board ballots and did not properly qualify the electors as ANS electors by failing to ensure that all electors receiving such ballots requested them. Inclusive in these electors not requesting the ANS School Board ballot is the qualified elector whose evidence was indecisive as to status, which thereby voids a further vote.

[11] With respect to the Milton polling station, the applicant submitted a total of seven affidavits and one affiant was cross examined.

[12] The applicant identified three electors, Donna L. Raynard, George Whynot and Murray Whynot (Jr.) who are ANS and who respectively, asked for, received and asked if he wanted a school board ballot and in return, received a District School Board ballot and voted same. Two of the electors would have voted specifically for the applicant and the other on the evidence for



an ANS School Board member had they been given the ANS School Board ballot rather than the District School Board ballot provided by the poll worker. The applicant maintains that upon learning that these electors wanted a school board ballot, the poll worker had an obligation to determine which school board ballot they wanted. Because the election official failed to make this determination, these three individuals were given the “wrong ballot” and voted same prior to requesting ANS ballot and therefore, the applicant lost at least two votes. I will comment further.

[13] The applicant also provided Laura Whynot’s affidavit attesting to the fact that she is an ANS who, when asked if she wanted a school board ballot, received a District School Board ballot or as argued by counsel, the “wrong ballot” ,which she raised with the poll worker before voting the District School Board ballot, but, was met with the election officer’s refusal, on her request, to exchange it for the ANS School Board ballot and was unable to vote for the applicant. The applicant’s counsel contends by refusing to exchange the ballot for an ANS School Board ballot, the poll worker, given the request to exchange before voting the District School Board ballot, inappropriately challenged the elector’s qualification as an ANS elector. However, during testimony, Ms. Whynot indicated, subsequent to receiving the District School Board ballot, she never requested the ANS School Board ballot either before or after voting the District School Board ballot. Prior to voting the District School Board ballot, she did have a discussion with the applicant. On the evidence, there is no basis to void her vote.

[14] Finally, the applicant references the uncontested circumstances of the affiant, Marie Kay who, in the company of her daughter, Susan Kay, attended the polling station and was present

when both were handed ballots for the ANS School Board member, although neither of them requested those ballots. I am satisfied, as with the Little Tancook Island, the simple handing of the ANS School Board ballot by the worker without having same requested means the electors were never properly qualified as ANS electors and, therefore, not entitled to vote for ANS school board member. On this basis, their two votes are void.

[15] With respect to Milton, Queens Regional Municipality acknowledges while it does not recognize or admit to a breach of the **Municipal Elections Act**, there were certain guidelines set out in the Nova Scotia Municipal Elections Handbook, 11th ed. 2004 (the Handbook) that perhaps were not consistently followed. However, counsel contends the failure to follow those guidelines did not result in irregularities in relation to the six particular votes in question. He contends, if one analyzes individually the six voters, notwithstanding the fact that the proposed script for a dual school board ballot situation in the Handbook may not have been exactly followed, one is left with circumstances where it cannot be said that those individual electors were treated in a manner that was contrary to the **Act** or cast a vote in a manner that was contrary to the **Act** or were denied the opportunity to cast a vote contrary to the **Act**. Basically, what happened in Queens is not contrary to the **Act**, if one looks at the voters individually and how they each were dealt with. He contends the applicant has failed to prove any deficiencies existed in Queens Regional Municipality.

[16] Aside from the two electors who, without requesting the ANS School Board ballot, were handed the ANS School Board ballot, counsel's analysis of the four ANS affiants, Donna

Raynard, George Whynot, Murray Whynot (Jr.), and Laura Whynot has it genesis in the fact that once a qualified elector by being on the voters' list, one is entitled to vote in the election of the District School Board member and automatically entitled to the ballot that accompanies that particular election. To vote in the school board election for District School Board member, one does not have to be an ANS elector even though you may be one. He contends Milton electors were given school board ballots which they, as qualified electors, were entitled to receive.

Counsel argues each of the Milton electors were in a position and had an opportunity to use their District School Board ballot or to request the ANS School Board ballot, thereby self declaring or confirming their status as ANS electors and qualifying to vote for the ANS School Board member. Prior to any elector voting their District School Board ballot, there was no request made for an ANS School Board ballot and no refusal of same by a poll worker. The three Milton qualified electors chose to vote their District School board ballot and the use of that ballot, pursuant to the **Education Act**, disqualified the electors, despite their request, from subsequently receiving and voting the ANS School Board ballot. They were dealt with in accordance with the **Act**. They were given a ballot for which they qualified. They used it to vote and subsequently, the three requested a second School Board ballot, i.e., the ANS School Board ballot which the poll workers, in accordance with the **Act**, refused to provide (s. 45 A (10) **Education Act** ). In fact, two other electors noted by the applicant in receipt of the District School Board ballot later specifically requested the ANS School Board ballot prior to voting the District School Board ballot, thereby qualifying as ANS electors and receiving same, voted for the ANS School Board member.

[17] Counsel for the Municipality contends whether giving the school board ballot or querying if the elector wanted the school board ballot before responding to a request for a school board ballot, or being asked for a school board ballot, the poll workers were both responding to a request for a ballot by a qualified elector who did not reference the words African Nova Scotia ballot and providing a ballot for which the electors were qualified, in compliance with Act. No mistake can be attributed to them either for their process or for the electors' subsequent failure, in noting a candidate's missing name, to request the ANS School Board ballot before choosing to use the ballot and voting for the District School Board member. Indeed, counsel contends the electors could have changed the process by requesting the ANS School Board ballot just as two other Milton electors did and as contemplated in the legislation. He notes there was a positive obligation on the electors to indicate the District School Board ballot was not the ballot of choice by requesting the ANS School Board ballot, thereby confirming their status as ANS elector qualified to vote in the election of an ANS member to the board.

[18] As for the two Milton electors who were given ANS School Board ballots without requesting them, the failure of one to provide any direct affidavit evidence and failure of the other to emphatically state, beyond providing a history, that she is not ANS leaves the Municipality questioning whether on the evidence it can be said that these two ANS School Board ballots were cast by electors who were not ANS, as the applicant would have the court hold. He made no comment on the affect of the failure to qualify these electors as ANS electors in accordance with the **Education Act**, given that neither requested their ballot; specifically that

only “a qualified African Nova Scotia elector may vote in a school board election for ... a candidate for election as the African Nova Scotian member.” (S 42 A(10))

[19] Who initiates the move towards the provision of the ANS School Board ballot when a voter approaches the poll clerk appears to be determinative of the issue for the applicant, as he, stressing pursuant s. 83(1)(c) of the **Municipal Elections Act** that it is the duty of the Deputy Returning Officer at the poll to determine if the elector is qualified, places the obligation on the poll worker to be proactive. In qualifying the elector as an ANS elector, the poll worker should determine which school board ballot the elector wants before handing any ballot to him and thereby avoid electors receiving the “wrong ballot” and voting same when they wanted the ANS School Board ballot, and did not appreciate they were only able to vote for one School Board member and would not receive another ballot.

[20] In support of same, counsel references the guidance the election officers can draw from considering the Handbook which, in Chapter 8 entitled, “Guide for School Board Ballots to be Issued” deals with the Milton polling station scenario and refers the reader to specific script #1, which counsel acknowledges is not mandatory; but, contends demonstrates the manner in which election officers need to approach their task. He argues election officers have a duty to only provide ballots to people who are qualified and the Handbook is saying you need people to indicate what ballot they want so when they show up or ask for a school board ballot, you cannot just hand them a ballot. The election officer needs to say, “What ballot do you want?” By stating in the script, “If the elector does not request either school board ballot, ask the elector which of

the school board ballots he chooses”, and then “If the elector does not request either ballot after being asked to choose, direct the elector to the poster which describes the qualifications to vote for the African Nova Scotia member and, after giving the elector an opportunity to review the information on the poster, ask the elector to return to the table and to choose one of the two available ballots,” the Handbook is directing the election officers to ask which ballot do you want in the case of the two school board ballots and not to distribute any school board ballot until the elector indicates which ballot they want. Counsel suggests one should conclude from the way the guidelines are written that if the elector cannot be prompted to choose which ballot they want, then they are deemed to have chosen none. You choose a ballot or you receive none. He submits there is no onus on the elector to initiate the process in order to receive an ANS ballot. The onus is on the election officer to qualify the elector and determine which ballot. He submits there is a duty on the election officer to ensure that there was a clear indication from the elector that the elector wanted the ANS School Board ballot. It is incumbent upon the election officer to have the elector clearly indicate which ballot he wants. Counsel argues by providing the elector with the District School Board ballot, the election officer is making an assumption that the person is not an ANS. By not going through the process of, do you want a school board ballot, and what school board ballot do you want, because we have two, and requiring the elector to provide a clear direction as to which ballot he wants, and providing a ballot, what the election officer is really doing is challenging the elector because the election officer does not have a clear indication from the elector which ballot he wants and the election officer assumes the elector wants the District School Board ballot.

[21] Section 83(1) of the **Municipal Elections Act** sets out the duties of the Deputy Returning officer (DRO) at the poll and it reads:

**Section 83 (1)** At the hour fixed for opening a polling station and during polling hours the deputy returning officer shall

(a) admit into the polling station each elector who has not already voted at the polling station and see that he is not impeded or molested;

(b) have the elector who is before him declare his name and address;

(c) if the elector is qualified to vote, have the poll clerk enter the name and address of the elector in the poll book;

(d) draw a line through the name of the elector on the official list of electors;

(e) detach the ballot papers from the bound or stitched stubs;

(f) fold each ballot paper so that, when folded, his initials can be seen without unfolding it;

(g) direct the elector to return the ballot papers, when marked, folded as shown with the counterfoil attached; and

(h) subject to subsection (2), deliver the ballot papers to the elector.

[22] By the elector declaring his name and address and the poll clerk entering it in the poll book, and being able to draw a line through the name of the elector on the official list of electors, the elector is qualified to vote and entitled to ballot papers, subject to the possible requirements of taking an oath pursuant to subsection (2). To fit the criteria of an ANS elector, pursuant to s. 42A (1)(b) of the **Education Act**, a person must first be qualified to vote in an election of a School Board and also be an ANS or the parent of an ANS. How one goes about being qualified as an ANS elector after being qualified as an elector is set out in s. 42A (5)(c) and it is the duty of

the election officer to make sure the procedure of confirmation of one's status, as an ANS elector occurs. This entails the elector, only if he wishes, requesting the ANS ballot, as the request is the confirmation, before the election officer provides the ballot. This request for the ANS ballot, satisfies the election officer as to the elector's status and results in the elector being a "qualified ANS elector" and the elector must receive the ballot. The request for the ballot triggers the confirmation of the elector's status as an ANS able to vote for the ANS member of the school board for an elector already qualified to vote in the school board election.

[23] The applicant infers a violation of the principles of the **Municipal Election Act** lies in the fact that the election officers at the Milton poll did not advise each elector of the fact that there were two school board ballots. In order to invalidate the election, I have to find such a positive obligation on the election officers, if not met by them, is contrary to the principles of the **Act** and when considered with the results of the other two polls, the outcome of the election of the ANS School Board member is affected because as stated, at least two of the three Milton electors would have voted for the applicant.

[24] One of the purposes of the legislation is to provide for the election of a specific school board member by those electors who are specifically qualified under s. 45 A (5)(c) and only those.

[25] In order to imply a positive obligation on the election officials to find out which school board ballot the elector wants, I have to find that the legislation either states that or implies that



one of the principle of the legislation is to ensure an ANS voter is aware of the right to vote in a specific election of an ANS member and to make them aware of what they have to do or not do to exercise that right. I can find no positive obligation in the legislation to do that. The only onus on the election official is to accept the request for the ANS ballot from the qualified elector, thereby confirming his status as an ANS elector or else there is no entitlement to the ballot. There is a very positive obligation on the elector to self declare his status as an ANS elector by coming forward and making the request. There is no onus on the election official to do anything when not asked. An election official is not going to know who meets the criteria of ANS under the legislation and if so, the election official is not going to know if they want to exercise that right unless they make a request as required by the legislation to confirm their status. There is nothing in the legislation to cause me to interpret this another way.

[26] The legislation is set up in such way that it puts a positive onus on the qualified elector to self-declare that he wants to exercise his special qualifications beyond residency of being an ANS elector, by requesting a ballot. The election officers themselves without some assistance and input from the qualified elector cannot qualify the elector to vote in the election of the ANS member. It requires confirmation by the elector set out in s. 42A (5)(c) of the **Education Act**. By making a request for the ballot, the qualified elector thereby qualifies himself for that ballot. If the request is not made, the elector is still qualified and entitled to the District School Board ballot. The request can occur at any point up until the District School Board ballot is cast. The confirmation is not to be challenged by the election official (s. 42A (8)). The legislation makes no provision for the election official to explain its provisions inclusive of telling the electors, if

they have a choice, that voting one ballot will disqualify them from the opportunity of voting on another school board ballot. It does make special provision as to the duty of the election officials in qualifying an elector. This obligation was fulfilled by the election officers at each poll in compliance with s. 83(1). It is necessary for a person wishing to confirm their status as an ANS elector to be qualified to vote in an election of a school board.

[27] As to whether I am able to interpret the legislation as if it requires such a positive obligation on the election officials, when the legislation itself does not make it clear, I can find nothing in the wording of the positive obligation on the elector pursuant to s. 45 A (5)(c) to imply an obligation on the election officer to ensure that the elector is aware that there are two ballots or that the particular elector might be entitled to choose one of two ballots. I can interpret nothing in the positive obligation on the elector to imply an equally positive obligation on the election officials.

[28] Nor can I imply such a positive obligation is one of the principles of the legislation because the very definition of elector who is entitled to the ANS ballot is such that the elector is not readily identifiable in every case which means discussion has to be held with every elector who appears before the election official. Then, even if the elector meets the special criteria, it is the elector's option to participate in voting in an election of the ANS member or the District member.

[29] If at a minimum, the election official must make certain that the qualified elector is aware that there are two ballots for the school board election, that would imply that the elector has a choice of which ballot they use or it could indicate to the elector they are entitled to both. In fact, the option as to which ballot they want to use is only available to those who qualify as ANS electors and they are excluded from voting for both. How does the election officer know to whom the statement engaging the elector into an exchange should be directed. From experience with dealing with the witnesses, it would not be self evident to an election officer who will qualify as an ASN elector and the election official certainly would not know if the status could be confirmed because they were a parent of an ANS. The election official would have to initiate the exchange to each and every elector. It could result in providing information to some electors, given the nature of the questions that could pursue. Is it practical to initiate discussion with each and every elector when considering what occurs in a polling station on election day with respect to the number of people lining up to vote, delays, voters with time limitations, etcetera. Election officials required to initiate discussions might say or do something that is misunderstood, be misleading, confusing or not be able to be consistent and may be left to interpret whether there truly was a request by the elector following the exchange. Indeed, one of the witnesses was not able to appreciate the specific directions provided by the applicant candidate at the Milton polling station with respect to requesting an ANS ballot. In the end, the elector with stated intention to vote for the applicant never made the request of the poll worker and voted the District School Board ballot.

In requiring an election official to initiate and engage in discussions about ballots and qualifications, he or she may be open to abuse. Electors may not want or wish to declare they do not want a particular ballot or want to have the issue raised.

[30] At the conclusion of the hearing, upon inquiring as to whether the Handbook was even evidence before me, it was admitted as an exhibit by consent. During the course of the submission, there was acknowledgment that any guidance provided to the election officials through it was not mandatory. However, no evidence was led as to who was involved in preparing the Handbook, and how, and what authority it has, the basis for it, and if evidence, what is its relation to the legislation. No reference was made as to whether the Handbook with its scripts qualified as “directions” under s. 42 A (5)(f) of the **Education Act**. That section provides that “the Municipal Elections Officer may give such directions as may be necessary for the purposes of this section,” Similarly no reference was made as to whether the Handbook qualifies as Municipal Elections Officer’s “instructions” under s. 3 (2) of the **Municipal Elections Act**, given that the **Municipal Elections Act** applies “mutatis mutandis” to the election of the African Nova Scotia member to a school board under s. 42 A (g) of the **Education Act**. Section 3 (2) of the **Municipal Elections Act** indicates that “Municipal Elections Officer may (a) issue to returning officers, such instructions as he may deem necessary to assist in the effective execution of this Act.”

[31] The evidence is unclear as to whether the scripts provided in the Handbook relating to an elector’s choice of school board ballots are “directions” or “instructions” given by the Municipal

Elections Officer pursuant to s. 42 A (5)(f) and/or s. 3 (2). The Handbook, with its proposed information and scripts, is not a regulation within the meaning of s. 2 (g) of the Regulation Act, R.S.N.S. 1989 c. 393 as it is not made in the exercise of legislative power confirmed by or under the legislation. As to whether it has some status, the Handbook appears to be prepared by Service Nova Scotia and Municipal Relations. According to the acknowledgements, the 11th edition was updated with the assistance of a Municipal Elections Handbook project team consisting of four regional Municipalities members, exclusive of any of the respondents, that were struck in consultation with the Association of Municipal Administrators. The project team was assisted by the staff of Service Nova Scotia and Municipal Relations, of whom, the Municipal Elections Officer, Janet Willwerth is referenced as one. She provided the “editing and technical assistance” while a departmental solicitor assisted with the legal advice. The forward to the Handbook places a caveat on its use by stating;

“Of course, the Municipal Elections Act and any relevant provisions in other statutes must be followed for official reference if there is a conflict between the legislation and the Handbook.”

[32] At best, on the evidence there is a reference to the Municipal Elections Officer providing editing and technical assistance to the information. In any event, assuming the Handbook to be a direction or instruction of Municipal Elections Officer, there is an issue with the Handbook’s script creating or implying a possible obligation on electors where the legislation itself does not create such.

[33] In circumstances where dual Districts and ANS School Board ballots are available, by stating, “If the elector does not request either school board ballot, ask the elector which of the two school board ballots he/she chooses,” the Handbook assumes that the District School Board ballot also needs to be requested by electors when in fact all qualified electors are entitled to it, inclusive of the ANS elector yet to be qualified as such and necessitates election officials addressing all qualified electors. The legislation does not require qualified electors to make such a request.

[34] Insofar as the intention is discernable from the language of the legislation, I am satisfied the onus is on the elector to request an ANS ballot in order to confirm their status and become a qualified ANS elector. Taking into account the purpose of the legislation including both the purpose of the legislation as a whole and of the particular provisions to be interpreted, it cannot be said that the Milton electors were treated in a manner contrary to the legislation or cast a vote in a manner contrary to the legislation or were denied the opportunity to cast a vote contrary to the legislation. I am unable to say that the ANS election was not carried out in accordance with the legislation. The election officials provided qualified electors with ballots that they were entitled to, never refused a request for an ANS School Board ballot prior to a vote being cast for the District School Board member, and did not allow electors to vote for both District School Board member and the ANS School Board member. There is no intention in the legislation to impose upon the election officials a positive obligation either expressed or implied to ensure that every elector is aware he has potentially two school board ballots in circumstances where there was dual elections of school board members.

[35] Being satisfied that the election was conducted in accordance with the principles of the **Municipal Elections Act** and that the deficiencies raised by the applicant with respect to each of the three polling stations, specifically, Little Tancook Island's 17 ballots, Midville Branch's 28 ballots, and the 2 ANS School Board ballots cast in Milton have not affected the results of the election, I declare the election of ANS member of SSRSB not to be invalid.

J.