

NOVA SCOTIA COURT OF APPEAL

Citation: *Tri-County Regional School Board v. Nova Scotia (Human Rights Board of Inquiry)*, 2015 NSCA 2

Date: 20150115

Docket: CA 423496

Registry: Halifax

Between:

TRI-COUNTY REGIONAL SCHOOL BOARD

Appellant

v.

NOVA SCOTIA BOARD OF INQUIRY UNDER THE
HUMAN RIGHTS ACT, THE NOVA SCOTIA
HUMAN RIGHTS COMMISSION, JAMES
HOLLAND, THE CANADIAN UNION OF PUBLIC
EMPLOYEES, LOCAL 964, AND THE ATTORNEY
GENERAL OF NOVA SCOTIA

Respondents

Judge: The Honourable Justice Peter M.S. Bryson

Appeal Heard: November 26, 2014, in Halifax, Nova Scotia

Summary: A Nova Scotia Board of Inquiry under the *Human Rights Act* found that a pension plan requiring retirement at 65 discriminated against an employee of the appellant School Board. The required retirement was not saved by the “*bona fide* pension plan” exemption in s. 6(g) of the *Act*. The School Board appealed.

Issues: Did the Board reasonably determine that the *bona fide* pension plan exemption in s. 6(g) of the *Act* had no application in this case?

Result: Appeal allowed. Neither the Board’s analysis nor its conclusion was reasonable. The Supreme Court of Canada decision in *New Brunswick (Human Rights Commission) v.*

Potash Corporation of Saskatchewan Inc., 2008 SCC 45 set out the test for determining whether a pension plan was *bona fide* and therefore exempted from prohibition against discrimination on the basis of age.

In this case, the Board failed to properly analyze or apply *Potash*. Once a pension plan was found (as here) to be *bona fide*, that should conclude the analysis. *Potash* did not authorize a “legitimacy” analysis independently of a determination of whether a plan was “*bona fide*”. Rather, the two are to be considered together. Nor did the Board properly apply principles of statutory interpretation – plain language – or legislative purpose – balancing the prohibition against age discrimination and pension plan policy.

This information sheet does not form part of the court’s judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 14 pages.