

Reasons for judgment were given orally by:

Bateman, J.A.:

This is an appeal by Linda Smith from the decision of Justice Margaret Stewart of the Supreme Court. Justice Stewart ordered a new trial, allowing the Crown's appeal from a decision of Judge Ann E. Crawford of the Provincial Court. Ms. Smith had been charged with "practicing optical dispensing", an offence contrary to s.12 of the **Dispensing Opticians' Act**, R.S.N.S. 1989, c.131. Linda Smith was an employee of Dr. Irwin Mendolsohn, a registered optometrist. Judge Crawford had found Ms. Smith not guilty.

The sole issue before Justice Stewart was whether Judge Crawford erred in finding that Ms. Smith was entitled to the benefit of an exemption under s.17 of the **Dispensing Opticians' Act**. That section exempts a duly qualified medical practitioner from s.12 of the **Act** which prohibits any person other than a dispensing optician from practicing optical dispensing. The argument before both judges centered upon the question of whether a registered optometrist could delegate the dispensing function to an employee.

The defence had admitted before Judge Crawford that Ms. Smith was in contravention of the **Dispensing Opticians' Act** unless entitled to the benefit of the s.17 exemption in favour of a registered optometrist. In her decision Judge Crawford found that “the delegation of the dispensing function was proper”. Implicit in this statement is a factual finding that Ms. Smith was engaged in a dispensing function. Justice Stewart noted that the factual findings of the trial judge had not been disputed on the appeal. Justice Stewart found, as a matter of law, that the s.17 exemption did not permit the delegation of the dispensing function to Ms. Smith in these factual circumstances. In this regard she did not err.

Accordingly, the appeal is dismissed but, in the circumstances, without costs.

Bateman, J.A.

Concurred in:

Clarke, C.J.N.S.

Chipman, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

LINDA SMITH)

Appellant)

- and -)

**HER MAJESTY THE
QUEEN**)

Respondent)

) REASONS FOR
) JUDGMENT BY:

) BATEMAN, J.A.
) (Orally)

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