

NOVA SCOTIA COURT OF APPEAL

Clarke, C.J.N.S.; Hart and Matthews, J.J.A.

Cite as: Halifax District School Board v. Pytka, 1994 NSCA 113

BETWEEN:

HALIFAX DISTRICT SCHOOL BOARD
C. Peter McLellan, Q.C.

Appellant

- and -

SAUL PYTKA AND TOWER ROAD
PARENT TEACHER ASSOCIATION

Respondents

)

Noella M. Martin
for the Appellant

Darlene A. Jamieson
for the Respondent

)

Appeal Heard:
June 8, 1994

Judgment Delivered:
June 8, 1994

THE COURT: Appeal dismissed because it is moot, per oral reasons for judgment of Clarke, C.J.N.S., Hart and Matthews, J.J.A. concurring.

The reasons for judgment of the Court were delivered orally by:

CLARKE, C.J.N.S.:

On August 10, 1993, Justice Saunders granted the respondent's (Parent Teacher Association) application for an order in the nature of certiorari. It quashed a decision made by the appellant (Board) that the Tower Road School in Halifax would be closed and its students transferred to another school. As a result, the Tower Road School remained open during the 1993-94 school year.

The Board appealed contending that it had acted within its jurisdiction under the provisions of the **Education Act**, R.S.N.S. 1989, c. 136, the **School Boards Act**, S.N.S. 1991, c. 6, and, pursuant to s. 21 of the latter **Act**, the by-laws it had passed to regulate its procedures. In concluding otherwise, the Board alleged the trial judge erred in law.

After this appeal was commenced the process by which the decision is made by a school board to permanently close a school has been overtaken by regulations made on March 10, 1994 by the Minister of Education for the province of Nova Scotia. These regulations, made pursuant to the **Education Act**, s. 5, effectively create a new regime for the process to be followed in determining the closure of a school. It is agreed that the future of the Tower Road School is subject to the new regulations.

We have concluded that, in these circumstances, this appeal has now become moot. Accordingly, and without expressing any opinion supporting the reasoning of the trial judge, the appeal is dismissed. We award the respondents \$7,500.00, including both costs and disbursements here and in the court below.

Clarke, C.J.N.S.

Concurred in:

Hart, J.A.

Matthews, J. A.