

Lorraine Robinson (appellant) v. Nova Scotia Power Incorporated, Attorney General of
Nova Scotia, Nova Scotia Utility and Review Board (respondents)
(CA 371423; 2012 NSCA 93)

Indexed As: Robinson v. Nova Scotia Power Inc. et al.

Nova Scotia Court of Appeal
Saunders, Fichaud and Bryson, JJ.A.
September 5, 2012.

Summary:

The Nova Scotia Utility and Review Board dismissed an appeal by Robinson concerning the payment of a portion of the arrears she said were incurred by her partner, Hogan, before she moved in with him. The Board affirmed an earlier decision of Nova Scotia Power Inc. and found that the Utility had properly applied its own statutory regulations when considering Robinson's request for electric service. Robinson appealed the Board's decision. Her ground of appeal was that the Board "erred by unreasonably and incorrectly interpreting Section 2.1 of the Nova Scotia Power Regulations".

The Nova Scotia Court of Appeal, on a standard of reasonableness, dismissed the appeal.

Administrative Law - Topic 3202

Judicial review - General - Scope or standard of review - The appellant's single ground of appeal was that "The Nova Scotia Utility and Review Board erred by unreasonably and incorrectly interpreting Section 2.1 of the Nova Scotia Power Regulations." - The Nova Scotia Court of Appeal accepted the respondent's position that the Board's interpretation of the regulations was entitled to deference and subject to judicial review on a standard of reasonableness - Nova Scotia Power Inc. "is a public utility, tightly regulated by the Nova Scotia Utility and Review Board pursuant to the Public Utilities Act ... The Board enjoys broad powers in the execution of its vast legislative mandate ... [A] useful next step is to isolate the threshold grounds of appeal permitted by the tribunal's home statute ... Sections 26 and 30(1) of the Utility and Review Board Act ... state that the Board's findings of fact made within its jurisdiction are 'binding and conclusive' and that an appeal lies to this Court only on questions of jurisdiction or law. ... [T]he Board enjoys a unique and specialized knowledge of the regulations and the context in which they operate. Nothing in this case raises any issues of central importance to the legal system." - See paragraphs 13 to 27.

Administrative Law - Topic 3202

Judicial review - General - Scope or standard of review - The Nova Scotia Court of Appeal stated that recent jurisprudence of the Supreme Court of Canada had re-defined the standard of review analysis in appeals from administrative tribunals - "[W]e now have a much clearer understanding of the line that is intended to separate issues which are said to be reviewable for either 'correctness' or 'reasonableness' ... [W]e know that a standard of correctness will be applied to: i. a constitutional issue; ii. a question of general law that is both of central importance to the legal system as a whole and outside the adjudicator's

specialized area of expertise; iii. the drawing of jurisdictional lines between two or more competing specialized tribunals; and iv. a true question of jurisdiction or vires. Whereas a standard of reasonableness will normally be the governing standard where the question: i. relates to the interpretation of a tribunal's enabling (or home) statute or to statutes closely connected to its function with which it will have particular familiarity; ii. raises issues of fact, discretion, or policy; or iii. involves inextricably intertwined legal and factual issues - See paragraphs 16, 21 and 22.

Administrative Law - Topic 3211

Judicial review - General - Review of exercise of statutory power - [See first **Administrative Law - Topic 3202**].

Administrative Law - Topic 9069

Boards and tribunals - Jurisdiction of particular boards and tribunals - Energy and utility boards - [See first **Public Utilities - Topic 646**].

Administrative Law - Topic 9102

Boards and tribunals - Judicial review - Scope of review - [See both **Administrative Law - Topic 3202**].

Administrative Law - Topic 9118

Boards and tribunals - Judicial review - Curial deference to decisions of tribunals - [See first **Administrative Law - Topic 3202**].

Public Utilities - Topic 646

Duties - Supply of service - New customers - Payment of arrears of prior occupant or owner - The Nova Scotia Utility and Review Board dismissed an appeal by Robinson concerning the payment of arrears she said were incurred by her partner, Hogan, before she moved in with him - The Board affirmed an earlier decision of Nova Scotia Power Inc. (NSPI) - On judicial review, Robinson's first complaint was that she had no choice but to deal with NSPI to obtain electricity and that "forcing" her to accept responsibility for Hogan's arrears before agreeing to supply electric service amounted to a breach of the utility's own regulations - The Nova Scotia Court of Appeal dismissed that argument - The actions of the NSPI "are highly regulated. ... Included within its mandate is the responsibility to collect overdue accounts. This is clearly implied by Regulation 2.1 where the Legislature has given the utility full authority to refuse to supply or to discontinue the supply of electric service in circumstances where arrears are shown to exist. The reason is obvious. A failure by one consumer to honour outstanding accounts places the burden upon the backs of other consumers who struggle to keep their accounts current." - See paragraphs 38 to 40.

Public Utilities - Topic 646

Duties - Supply of service - New customers - Payment of arrears of prior occupant or owner - The appellant argued that the Nova Scotia Utility and Review Board's interpretation of Regulation 2.1 (Nova Scotia Power Incorporated Regulations) contradicted the Board's own 1983 jurisprudence by failing to recognize that the

appellant did not "benefit" from the electricity service that resulted in the unpaid account - The Nova Scotia Court of Appeal dismissed that argument - The appellant's reliance upon the Board's 1983 decision was misplaced: that decision did not address the text of Regulation 2.1; in this case the Board found that the appellant freely agreed with NSPI to settle all arrears; and neither the 1983 decision nor s. 2.1 contained a requirement that an applicant must have benefited from electric service - The Board found that NSPI was justified in refusing to provide service based on all three subsections of Regulation 2.1 - The Board's analysis and disposition with respect to each of the conditions under Regulation 2.1 were reasonable - Accordingly, the Board did not err in finding that NSPI's actions complied with the Regulations - See paragraphs 41 to 51.

Public Utilities - Topic 646

Duties - Supply of service - New customers - Payment of arrears of prior occupant or owner - The Nova Scotia Utility and Review Board dismissed an appeal by Robinson concerning the payment of arrears she said were incurred by her partner, Hogan, before she moved in with him - The Board affirmed an earlier decision of Nova Scotia Power Inc. - On this appeal, Robinson complained that the effect of the Board's decision was to hold her responsible for Hogan's debts, and "violated family law principles" with respect to the liability of common law spouses for debts of one another - The Nova Scotia Court of Appeal held that there was no merit to that complaint - "On the evidence, the parties had not lived together long enough to create a common law relationship. There is no principle of family law that a person cannot freely enter into a contract and be responsible for a co-habitant's debts, irrespective of common law status. In any event, this dispute is subject to recognized principles of contract law and agency. A valid settlement agreement was reached. Ms. Robinson voluntarily assumed liability for Mr. Hogan's arrears." - See paragraph 52.

Public Utilities - Topic 4644

Public utility commissions - Regulation - General powers of commissions - [See first **Administrative Law - Topic 3202**].

Public Utilities - Topic 4741

Public utility commissions or corporations (incl. private providers) - Judicial review - General (incl. standard of review) - [See first **Administrative Law - Topic 3202**].

Cases Noticed:

Khosa v. Canada (Minister of Citizenship and Immigration) (2009), 385 N.R. 206; 2009 SCC 12, refd to. [para. 18].

New Brunswick (Board of Management) v. Dunsmuir, [2008] 1 S.C.R. 190; 372 N.R. 1; 329 N.B.R.(2d) 1; 844 A.P.R. 1; 2008 SCC 9, refd to. [para. 21].

Alliance Pipeline Ltd. v. Smith (2011), 412 N.R. 66; 2011 SCC 7, refd to. [para. 21].

Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board) et al., [2011] 3 S.C.R. 708; 424 N.R. 220; 317 Nfld. & P.E.I.R. 340; 2011 SCC 62, refd to. [para. 21].

Alberta Teachers' Association v. Information and Privacy Commissioner (Alta.) et al. (2011), 424 N.R. 70; 519 A.R. 1; 539 W.A.C. 1; 2011 SCC 61, refd to. [para. 23].

Halifax (Regional Municipality) v. United Gulf Developments Ltd. et al. (2009), 280 N.S.R.(2d) 350; 891 A.P.R. 350; 2009 NSCA 78, reld to. [para. 24].
Director of Assessment (N.S.) v. van Driel et al. (2010), 296 N.S.R.(2d) 244; 940 A.P.R. 244; 2010 NSCA 87, reld to. [para. 24].
Archibald et al. v. Nova Scotia Utility and Review Board et al. (2010), 290 N.S.R.(2d) 158; 920 A.P.R. 158; 2010 NSCA 27, reld to. [para. 27].
Halifax (Regional Municipality) v. Anglican Diocesan Centre Corp. et al. (2010), 290 N.S.R.(2d) 361; 920 A.P.R. 361; 2010 NSCA 38, reld to. [para. 27].

Statutes Noticed:

Nova Scotia Power Incorporated Regulations, Regulation 2.1 [para. 4].

Counsel:

Claire McNeil and Crystle Hug (third year law student), for the appellant;
Colin J. Clarke and Alison Bird, for the respondent, Nova Scotia Power Incorporated;
Edward A. Gores, Q.C., for the respondent, Attorney General of Nova Scotia (not participating);
Bruce Outhouse, Q.C., for the respondent, Nova Scotia Utility and Review Board (not participating).

This appeal was heard on June 5, 2012, in Halifax, Nova Scotia, before Saunders, Fichaud and Bryson, J.J.A., of the Nova Scotia Court of Appeal. In reasons written by Saunders, J.A., the Court of Appeal delivered the following decision on September 5, 2012.

Appeal dismissed.

Editor: E. Joanne Oley

Administrative Law - Topic 3211

Judicial review - General - Review of exercise of statutory power - The appellant's single ground of appeal was that "The Nova Scotia Utility and Review Board erred by unreasonably and incorrectly interpreting Section 2.1 of the Nova Scotia Power Regulations." - The Nova Scotia Court of Appeal accepted the respondent's position that the Board's interpretation of the regulations was entitled to deference and subject to judicial review on a standard of reasonableness - Nova Scotia Power Inc. "is a public utility, tightly regulated by the Nova Scotia Utility and Review Board pursuant to the Public Utilities Act ... The Board enjoys broad powers in the execution of its vast legislative mandate ... [A] useful next step is to isolate the threshold grounds of appeal permitted by the tribunal's home statute ... Sections 26 and 30(1) of the Utility and Review Board Act ... state that the Board's findings of fact made within its jurisdiction are 'binding and conclusive' and that an appeal lies to this Court only on questions of jurisdiction or law. ... [T]he Board enjoys a unique and specialized knowledge of the regulations and the context in which they operate. Nothing in this case raises any issues of central importance to the legal system." - See paragraphs 13 to 27.

Administrative Law - Topic 9069

Boards and tribunals - Jurisdiction of particular boards and tribunals - Energy and utility boards - The Nova Scotia Utility and Review Board dismissed an appeal by Robinson concerning the payment of arrears she said were incurred by her partner, Hogan, before she moved in with him - The Board affirmed an earlier decision of Nova Scotia Power Inc. (NSPI) - On judicial review, Robinson's first complaint was that she had no choice but to deal with NSPI to obtain electricity and that "forcing" her to accept responsibility for Hogan's arrears before agreeing to supply electric service amounted to a breach of the utility's own regulations - The Nova Scotia Court of Appeal dismissed that argument - The actions of the NSPI "are highly regulated. ... Included within its mandate is the responsibility to collect overdue accounts. This is clearly implied by Regulation 2.1 where the Legislature has given the utility full authority to refuse to supply or to discontinue the supply of electric service in circumstances where arrears are shown to exist. The reason is obvious. A failure by one consumer to honour outstanding accounts places the burden upon the backs of other consumers who struggle to keep their accounts current." - See paragraphs 38 to 40.

Administrative Law - Topic 9102

Boards and tribunals - Judicial review - Scope of review - The appellant's single ground of appeal was that "The Nova Scotia Utility and Review Board erred by unreasonably and incorrectly interpreting Section 2.1 of the Nova Scotia Power Regulations." - The Nova Scotia Court of Appeal accepted the respondent's position that the Board's interpretation of the regulations was entitled to deference and subject to judicial review on a standard of reasonableness - Nova Scotia Power Inc. "is a public utility, tightly regulated by the Nova Scotia Utility and Review Board pursuant to the Public Utilities Act ... The Board enjoys broad powers in the execution of its vast legislative mandate ... [A] useful next step is to isolate the threshold grounds of appeal permitted by the tribunal's home statute ... Sections 26 and 30(1) of the Utility and Review Board Act ... state that the Board's findings of fact made within its jurisdiction are 'binding and conclusive' and that an appeal lies to this Court only on questions of jurisdiction or law. ... [T]he Board enjoys a unique and specialized knowledge of the regulations and the context in which they operate. Nothing in this case raises any issues of central importance to the legal system." - See paragraphs 13 to 27.

Administrative Law - Topic 9102

Boards and tribunals - Judicial review - Scope of review - The Nova Scotia Court of Appeal stated that recent jurisprudence of the Supreme Court of Canada had re-defined the standard of review analysis in appeals from administrative tribunals - "[W]e now have a much clearer understanding of the line that is intended to separate issues which are said to be reviewable for either 'correctness' or 'reasonableness' ... [W]e know that a standard of correctness will be applied to: i. a constitutional issue; ii. a question of general law that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise; iii. the drawing of jurisdictional lines between two or more competing specialized tribunals; and iv. a true question of jurisdiction or vires. Whereas a standard of reasonableness will normally be the governing standard where the question: i. relates to the interpretation of a tribunal's enabling (or home) statute or to statutes closely

connected to its function with which it will have particular familiarity; ii. raises issues of fact, discretion, or policy; or iii. involves inextricably intertwined legal and factual issues - See paragraphs 16, 21 and 22.

Administrative Law - Topic 9118

Boards and tribunals - Judicial review - Curial deference to decisions of tribunals - The appellant's single ground of appeal was that "The Nova Scotia Utility and Review Board erred by unreasonably and incorrectly interpreting Section 2.1 of the Nova Scotia Power Regulations." - The Nova Scotia Court of Appeal accepted the respondent's position that the Board's interpretation of the regulations was entitled to deference and subject to judicial review on a standard of reasonableness - Nova Scotia Power Inc. "is a public utility, tightly regulated by the Nova Scotia Utility and Review Board pursuant to the Public Utilities Act ... The Board enjoys broad powers in the execution of its vast legislative mandate ... [A] useful next step is to isolate the threshold grounds of appeal permitted by the tribunal's home statute ... Sections 26 and 30(1) of the Utility and Review Board Act ... state that the Board's findings of fact made within its jurisdiction are 'binding and conclusive' and that an appeal lies to this Court only on questions of jurisdiction or law. ... [T]he Board enjoys a unique and specialized knowledge of the regulations and the context in which they operate. Nothing in this case raises any issues of central importance to the legal system." - See paragraphs 13 to 27.

Public Utilities - Topic 4644

Public utility commissions - Regulation - General powers of commissions - The appellant's single ground of appeal was that "The Nova Scotia Utility and Review Board erred by unreasonably and incorrectly interpreting Section 2.1 of the Nova Scotia Power Regulations." - The Nova Scotia Court of Appeal accepted the respondent's position that the Board's interpretation of the regulations was entitled to deference and subject to judicial review on a standard of reasonableness - Nova Scotia Power Inc. "is a public utility, tightly regulated by the Nova Scotia Utility and Review Board pursuant to the Public Utilities Act ... The Board enjoys broad powers in the execution of its vast legislative mandate ... [A] useful next step is to isolate the threshold grounds of appeal permitted by the tribunal's home statute ... Sections 26 and 30(1) of the Utility and Review Board Act ... state that the Board's findings of fact made within its jurisdiction are 'binding and conclusive' and that an appeal lies to this Court only on questions of jurisdiction or law. ... [T]he Board enjoys a unique and specialized knowledge of the regulations and the context in which they operate. Nothing in this case raises any issues of central importance to the legal system." - See paragraphs 13 to 27.

Public Utilities - Topic 4741

Public utility commissions or corporations (incl. private providers) - Judicial review - General (incl. standard of review) - The appellant's single ground of appeal was that "The Nova Scotia Utility and Review Board erred by unreasonably and incorrectly interpreting Section 2.1 of the Nova Scotia Power Regulations." - The Nova Scotia Court of Appeal accepted the respondent's position that the Board's interpretation of the regulations was entitled to deference and subject to judicial review on a standard of reasonableness - Nova Scotia Power Inc. "is a public utility, tightly regulated by the Nova Scotia Utility

and Review Board pursuant to the Public Utilities Act ... The Board enjoys broad powers in the execution of its vast legislative mandate ... [A] useful next step is to isolate the threshold grounds of appeal permitted by the tribunal's home statute ... Sections 26 and 30(1) of the Utility and Review Board Act ... state that the Board's findings of fact made within its jurisdiction are 'binding and conclusive' and that an appeal lies to this Court only on questions of jurisdiction or law. ... [T]he Board enjoys a unique and specialized knowledge of the regulations and the context in which they operate. Nothing in this case raises any issues of central importance to the legal system." - See paragraphs 13 to 27.