

2019



C.A. No. 486952

Nova Scotia Court of Appeal

Between:

Disability Rights Coalition

Appellant

-and-

The Attorney General of Nova Scotia  
representing Her Majesty the Queen in Right  
of the Province of Nova Scotia (including the Minister  
of Community Services and the Minister of Health and Wellness)

Respondent

-and-

Nova Scotia Human Rights Commission

Respondent

Beth MacLean, Olga Cain on behalf of Sheila Livingstone,  
Tammy Delaney on behalf of Joseph Delaney

Respondents

-and-

J. Walter Thompson, Q.C. sitting as a Board of Inquiry

Respondent

**Notice of Appeal (Tribunal)**

To: Nova Scotia (Attorney General)  
representing Her Majesty the Queen in Right  
of the Province of Nova Scotia (including the Minister  
of Community Services and the Minister of Health and Wellness)

Kevin Kindred and Dorianne Mullin  
Nova Scotia Department of Justice  
Legal Services Division  
1690 Hollis Street, 8<sup>th</sup> Floor  
PO Box 7  
Halifax, NS B3J 2L6

And to: Nova Scotia Human Rights Commission

Kymerly Franklin and Kendrick Douglas  
5657 Spring Garden Rd, 3rd Flr. Park Lane Terrace  
PO Box 2221, Halifax, NS B3J 3C4

And to: Beth MacLean, Olga Cain on behalf of Sheila Livingstone,  
Tammy Delaney on behalf of Joseph Delaney

Vince Calderhead  
Pink Larkin  
1463 South Park St, Halifax, NS B3J 3S9

And to: J. Walter Thompson, Q.C.  
Quackenbush, Thomson Law  
2571 Windsor Street  
Halifax, NS B3K 5C4

### **Appellant appeals**

The appellant appeals from the decision dated March 4, 2019, in whole regarding that portion of the decision that relates to the complaint of Disability Rights Coalition, in the proceedings before the Nova Scotia Human Rights Board of Inquiry, made by J. Walter Thompson, Q.C. sitting as a Board of Inquiry.

A written decision was released on March 4, 2019.

### **Order appealed from**

The decision, dated March 4, 2019, was made at Halifax, Nova Scotia.

### **Grounds of appeal**

The grounds of appeal are:

1. The Board of Inquiry erred in its interpretation and application of the test for “discrimination” under the *Human Rights Act*.
2. The Board of Inquiry erred in its interpretation and application of the test for discrimination as applied to the appellant’s complaint of systemic discrimination.
3. The Board of Inquiry erred in misapprehending the human rights complaint filed by the appellant.
4. The Board of Inquiry erred in its interpretation and application of the test for discrimination in failing to consider the discriminatory effect of the respondent Province’s policies and practices affecting people with disabilities who require supports and services to live in the community, including the discriminatory nature and effects of the ‘moratorium’; segregation and

congregate care of persons with disabilities as a condition of receiving the service; extensive wait times for persons with disabilities to receive the service; frequently being placed at locations remote from family and friends as a condition of service; as well as the respondent Province's practice of treating access to social services as a discretionary matter rather than as a matter of statutory entitlement.

5. The Board of Inquiry erred in its interpretation and application of the test for discrimination by failing to consider the adverse effects for the group of individuals who have been placed in institutions but wish to live in community and have been assessed by the respondent Province as being eligible for supports and services to live in community.
6. The Board of Inquiry erred in its interpretation and application of the test for discrimination by failing to consider the adverse effects on the group of individuals who have been assessed to be eligible for services and supports but instead, placed by the respondent Province, on an indefinite waitlist to receive for services and supports to enable them to live independently in the community.
7. The Board of Inquiry erred in its interpretation and application of the test for discrimination by failing to consider the respondent Province's duty to accommodate, and in particular the duty to provide social services that accommodate persons with disabilities, in providing them with assistance to live with equal dignity in the community.
8. The Board of Inquiry erred in its analysis of the test for discrimination, in failing to identify the relevant 'distinctions' and corresponding 'adverse effects' of the respondent Province's treatment of persons with disabilities, primarily in terms of whether they enjoy substantive equality compared with persons without disabilities in their access to social services/social assistance.
9. The Board of Inquiry erred in its interpretation and application of the test for discrimination in finding that individualized assessments were necessary to determine discrimination and misapprehending the evidence with respect to individual assessments of persons with disabilities.
10. The Board of Inquiry erred in its identification of the "service" at issue in the human rights complaint; specifically, in limiting the service at issue to 'services for persons with disabilities' rather than social services generally.
11. The Board of Inquiry erred in its interpretation and application of the test for discrimination in adopting an incorrect comparator group, requiring that members of the group share the same characteristics, resulting in a formalistic rather than a substantive approach to equality.



12. The Board of Inquiry erred in its interpretation and application of the test for discrimination as it applies to persons with disabilities in applying a “medical model” of care, in the place of substantive equality.
13. The Board of Inquiry erred in its interpretation and application of the test for discrimination by failing to adopt a purposive approach.
14. The Board of Inquiry erred in rejecting Canada’s international human rights obligations as a source to inform the interpretation and application of the *Human Rights Act* and the legal test for discrimination.
15. The Board of Inquiry erred in conflating the test for a violation under s. 5 of the *Human Rights Act* with the test for justification under s. 6 of the *Act*.
16. The Board erred in its failure to properly consider the intersecting grounds of ‘physical or mental disability’ and ‘source of income’ in its analysis of the discriminatory effect of the respondent Province’s policies and practices.
17. Such further grounds as counsel may advise and this Honourable Court may permit.

#### **Authority for appeal**

*Human Rights Act*, RSNS 1989 c. 214, s. 36

Rule 90 of the Nova Scotia Civil Procedure Rules.

#### **Order requested**

1. Allow the appeal;
2. Set aside the decision below by the Board of Inquiry;
3. Make a determination of discrimination on a *prima facie* basis and refer the matter to a Board of Inquiry, differently constituted, to complete the hearing of the appellant’s complaint with respect to s. 6 of the *Human Rights Act*;
4. Any other remedy as the Court determines is just and appropriate;
5. Order the respondent Province to pay costs including disbursements on this appeal.

#### **Respondent’s Notice of Intention to Participate**

A respondent may participate in this tribunal appeal as a respondent only if the respondent files a notice of intention to participate no more than ten days after this notice of appeal is delivered to the respondent.

#### **Motion for date and directions**

The appeal will be heard on a time and date to be set by a judge of the Court of Appeal. The appellant must, not more than twenty-five days after the date this notice is filed, make a motion to a judge of the Court of Appeal to set that time and date and give directions. You will be notified of the motion.

**Contact information**

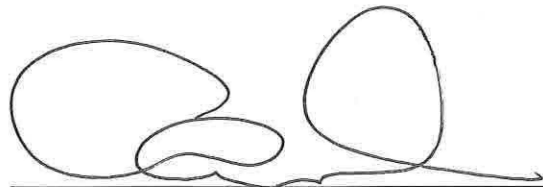
The appellant designates the following address:

Claire McNeil  
Counsel for the appellant, Disability Rights Coalition  
Dalhousie Legal Aid Service  
2209 Gottingen Street  
Halifax, NS

Documents delivered to this address will be considered received by the appellant on delivery.  
Further contact information is available to each party through the prothonotary.

**Signature**

Signed April 8, 2019.



Claire McNeil, Counsel for the appellant

**Registrar's Certificate**

I certify that this notice of appeal was filed with the court on

April 8, 2019  


[copy of any decision appealed from attached]

TIMOTHY MORSE  
 Registrar