

2019

C.A. No. 486952

Between:

**Nova Scotia Court of Appeal**



**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 Contention of the Respondents**

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 Road, 3rd Floor Park Lane Terrace  
PO Box 2221  
Halifax, NS B3J 3C4

And to: **The Disability Rights Coalition**

Claire McNeil and Donna Franey  
Dalhousie Legal Aid Service  
2209 Gottingen Street  
Halifax, NS B3K 3B5

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

### **Respondents Contend**

The respondents Beth MacLean, Olga Cain on behalf of Sheila Livingstone, Tammy Delaney on behalf of Joseph Delaney, file this Notice of Contention from the decision with respect to the complaints of Beth MacLean, Olga Cain on behalf of Sheila Livingstone and Tammy Delaney on behalf of Joseph Delaney dated March 4, 2019, in the proceedings (Human Rights Commission Case No. 1414-0418) before the Nova Scotia Human Rights Board of Inquiry, made by J. Walter Thompson, Q.C. sitting as a Board of Inquiry.

For purposes of clarity, the respondents state that this Notice of Contention does not apply to that portion of the Board of Inquiry's decision which dismissed Beth MacLean's complaint relating to her time in King's Residential Rehabilitation Centre (1986-2000), nor that portion of the decision which dismissed the complaint filed by Olga Cain on behalf of Sheila Livingstone regarding the institutional placement which was provided to her by the respondent Province at Harbourview Lodge in Yarmouth from 2014-2016.

A written decision was released on March 4, 2019.

### **Decision subject to Notice of Contention**

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

**Alternative grounds put forward by the respondents Beth MacLean, Olga Cain on behalf of Sheila Livingstone, Tammy Delaney on behalf of Joseph Delaney for upholding the decision under appeal with respect to the complaints of Beth MacLean, Olga Cain on behalf of Sheila Livingstone, Tammy Delaney on behalf of Joseph Delaney:**

1. The Board of Inquiry erred by misinterpreting and misapplying the test for “discrimination” under the *Human Rights Act*.
2. The Board of Inquiry’s misinterpretation and misapplication of the test for discrimination led it into error 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 assistance/services generally available to all Nova Scotians in need.
3. The Board of Inquiry’s misinterpretation and misapplication of the test for discrimination led it into error in adopting an incorrect comparator group, one in which members of the group shared the same characteristics (here, the Board compared the complainants to other persons with disabilities), resulting in a formalistic rather than a substantive approach to the equality analysis.
4. The Board of Inquiry erred in its interpretation and application of the test for discrimination by failing to consider and apply the respondent Province’s duty to accommodate the individual complainants (Beth MacLean, Sheila Livingstone and Joseph Delaney) by providing them, too, with accommodative social assistance/services to live with equal dignity in the community.
5. 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.
6. The Board of Inquiry erred by 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*.
7. Such further grounds as counsel may advise and this Honourable Court may permit.

**Order requested**

1. Allow the Notice of Contention by upholding the decision with respect to the complaints of Beth MacLean, Olga Cain on behalf of Sheila Livingstone and Tammy Delaney on behalf of Joseph Delaney (except those portions of the decision which dismissed Beth MacLean’s complaint relating to her time in King’s Residential Rehabilitation Centre from 1986-2000, and which dismissed the complaint filed by Olga Cain on behalf of Sheila Livingstone regarding

the institutional placement which was provided to her by the respondent Province at Harbourview Lodge in Yarmouth from 2014-2016);

2. Any other remedy as the Court determines is just and appropriate;
3. Order the respondent Province to pay costs including disbursements on this appeal.

**Contact information**

The appellant designates the following address:

**Vincent Calderhead and Katrin MacPhee**

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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 25, 2019.



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**Vincent Calderhead**  
as Counsel for Respondents  
Beth MacLean,  
Olga Cain on behalf of Sheila Livingstone, and  
Tammy Delaney on behalf of Joseph Delaney