

**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

-and-

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

Respondents

-and-

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

Respondent

**Notice to Participate in Tribunal Appeal  
and  
Notice of Cross-Appeal**

To: Disability Rights Coalition

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

And to: Nova Scotia Human Rights Commission

Kymerly Franklin and Kendrick Douglas  
5657 Spring Garden Road, 3<sup>rd</sup> Floor, Park Lane Terrance  
PO Box 2221, Halifax, NS B3J 3C4

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

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

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

The Respondent in this appeal, the Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia (“the Province”) intends to participate in the appeal, and cross-appeals as follows:

The Province cross-appeals from the decision dated March 4, 2019, 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. This cross-appeal is from only the findings with respect to the Complaint of the Appellant the Disability Rights Coalition and not with respect to the Complaints of the Respondents Beth MacLean, Olga Cain on behalf of Sheila Livingstone, or Tammy Delaney on behalf of Joseph Delaney.

### **Grounds of cross-appeal**

The grounds of cross-appeal are

1. The Board erred in finding that the test for *prima facie* case of discrimination, within the meaning of the *Human Rights Act*, R.S. c. 214, s. 1 could be met without applying the test from the Supreme Court of Canada’s decision in *Moore v. British Columbia (Education)*, [2012] 3 SCR 360, as accepted by this Court in *Canadian Elevator Industry Welfare Trust Fund v. Skinner*, 2018 NSCA 31.
2. The Board erred in finding that the test for a *prima facie* case of discrimination could be met without applying a comparative analysis.
3. The Board erred by interpreting the Supreme Court of Canada’s decision in *Moore v. British Columbia (Education)*, [2012] 3 SCR 360 as generally providing an entitlement to “meaningful access” to generally available service, rather than an entitlement to meaningful access on a comparative basis.

4. The Board erred by failing to consider, or improperly distinguishing, prior jurisprudence that limitations of the scope of services under disability support programs did not offend relevant human rights legislation.
5. The Board Chair erred in fact and law in failing to consider and/or give weight to the witnesses of the Respondent.
6. The Board Chair erred in law by assuming jurisdiction to interpret, and interpreting, legislation other than the Human Rights Act.

**Authority for appeal**

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

Rule 90 of the Nova Scotia Civil Procedure Rules

**Order requested**

The Respondent says that the court should deny the appeal and allow the cross-appeal, and that the decision appealed from be varied to reject in its entirety the discrimination argument made by the Disability Rights Coalition, and any other remedy as this Court determines is just and appropriate.

**Contact information**


The Respondent designates the following address:


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

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

**Signature**

Signed April 23, 2019.

  
\_\_\_\_\_  
Kevin Kindred, Counsel for the Province

  
\_\_\_\_\_  
for Dorianne Mullin, Counsel for the Province

**Registrar's Certificate**

I certify that this notice of appeal was filed with the court on April 23, 2019.



[copy of any decision appealed from attached]

Caroline McInnes  
Registrar