

Nova Scotia Court of Appeal

Between:

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

Appellants

-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-

Disability Rights Coalition

Respondent

-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: 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: Nova Scotia Human Rights Commission

KyMBERly Franklin and Kendrick Douglas
5657 Spring Garden Road, 3rd Floor, Park Lane Terrance
PO Box 2221, Halifax, NS B3J 3C4

And to: Disability Rights Coalition

Claire McNeil
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

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, specifically the finding that the test for *prima facie* discrimination was met with respect to the individual complainants.
- The Province cross-appeals from the decision dated December 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, specifically the quantum of general damages awarded, and the award of costs.

Grounds of cross-appeal

The grounds of cross-appeal are

Re cross-appeal of the March 4, 2019 decision finding prima facie discrimination:

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*.

Re cross-appeal of the December 4, 2019 decision on remedy:

1. The Board awarded costs when there is no jurisdiction to order costs pursuant to the *Human Rights Act* or its regulations.
2. The Board awarded general damages in an amount at variance with the principles governing general damages under 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 overturn the finding of *prima facie* discrimination, or in the alternative, overturn the award of costs and reduce the award of general damages, 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, 8th 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 January 7th, 2020.



Kevin Kindred, Counsel for the Province



Dorianne Mullin, Counsel for the Province

Registrar's Certificate

I certify that this notice of appeal was filed with the court on January __, 2020.
