

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Allen v. Royal Canadian Legion*, 2007 NSCA 44

**Date:** 20070419

**Docket:** CA 273709

**Registry:** Halifax

**Between:**

Donald Allen, a member of the Royal Canadian Legion  
and the branch thereof formerly chartered under the name  
“Scotia” Branch, and a representative of a number of persons  
who are former members of the Scotia Branch, Royal Canadian  
Legion, Halifax, Nova Scotia

Appellant

v.

Nova Scotia - Nunavut Command, a  
Provincial Command of the Royal Canadian Legion

Respondent

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**Judge:** The Honourable Justice Fichaud

**Appeal Heard:** March 26, 2007

**Subject:** **Interlocutory dismissal of statement of claim**

**Summary:** The chambers judge dismissed the action on an interlocutory application because (1) the action was filed outside six months for *certiorari* under *CPR* 56.06 (2) laches barred the claim, and (3) there was an internal appeal procedure.

**Issue:** Did the chambers judge properly apply the *certiorari* limitation period and laches? Should factual issues respecting the alternative remedy be left for trial?

**Result:** The appeal was allowed. The statement of claim claimed a declaration, not *certiorari*. The six months limitation in *CPR* 56.06 did not apply. Laches was not pleaded and involved factual issues for trial. The adequacy of the alternative appeal also involved factual issues for trial.

**This information sheet does not form part of the court’s judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 18 pages.**

