

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Kentville (Town) v. Nova Scotia (Human Rights Commission)*,  
2004 NSCA 44

**Date:** 20040324  
**Docket:** 213878  
**Registry:** Halifax

**Between:**

Town of Kentville and Brian A. MacLean,  
Chief of Police for the Town of Kentville

Appellants

v.

Nova Scotia Human Rights Commission and  
Patricia Saunders and H. Archibald Kaiser

Respondents

**Judges:** Bateman, Saunders and Hamilton, JJ.A.

**Appeal Heard:** March 24, 2004, in Halifax, Nova Scotia

**Written Judgment:** March 25, 2004

**Held:** **Appeal dismissed per oral reasons for judgment of  
Bateman, J.A.; Saunders and Hamilton, JJ.A.  
concurring.**

**Counsel:** Michael V. Coyle, for the appellants  
Michael Wood, Q.C., for the respondent Human Rights  
Commission  
R. Lester Jesudason, for the respondent H. Archibald  
Kaiser  
Respondent Patricia Saunders in person

Reasons for judgment:

[1] This is an appeal by the Town of Kentville and Brian A. MacLean, the Town's Chief of Police, from a decision of Justice C. Richard Coughlan of the Supreme Court of Nova Scotia refusing to grant orders in the nature of *certiorari*.

[2] Constable Patricia Saunders had filed a complaint with the Nova Scotia Human Rights Commission alleging discrimination in relation to her employment with the Kentville Police Service. Professor H. Archibald Kaiser was appointed a one person Board of Inquiry to hear the complaint. Well prior to the commencement of the hearing, Commission counsel, John Merrick, Q.C., without the knowledge of the other parties to the complaint, brought to Professor Kaiser's attention matters which, in the opinion of Commission counsel, raised an issue of apprehended bias warranting Professor Kaiser's recusal. Upon consideration of the issue Professor Kaiser, without consultation with the parties, recused himself from hearing the complaint. Another person was appointed as the Board. The appellants made application for an order in the nature of *certiorari* quashing the recusal decision of Professor Kaiser and quashing the action of the Commission in appointing a new Board of Inquiry.

[3] Justice Coughlan determined that this was not a proper case for a grant of *certiorari*, the recusal decision lying solely within the discretion of Professor Kaiser and not being one which affected the parties' substantive rights. He held, in the alternative, that even if *certiorari* were available, he would not exercise his discretion to grant the order.

[4] We are not persuaded that Justice Coughlan erred in declining to quash the recusal decision. As this appeal is completely without merit it is appropriate that the appellants pay costs to the respondent Human Rights Commission in the total amount of \$1000.00 inclusive of disbursements. The complainant Patricia Saunders did not participate in the appeal.

Bateman, J.A.

Concurred in:

Saunders, J.A.

Hamilton, J.A.