

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Nova Scotia (Attorney General) v. MacLean*, 2017 NSCA 24

**Date:** 20170317

**Docket:** CA 454541

**Registry:** Halifax

**Between:**

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)

Appellant

v.

Beth MacLean, Olga Cain on behalf of Sheila  
Livingstone, Susan Lattie on behalf of Joseph  
Delaney, Disability Rights Coalition,  
J. Walter Thompson, Q.C., in his capacity as  
Nova Scotia Human Rights Board of Inquiry  
Chair, and The Nova Scotia Human Rights Commission

Respondents

---

**Judge:** The Honourable Mr. Justice Jamie W.S. Saunders

**Appeal Heard:** November 28, 2017, in Halifax, Nova Scotia

**Subject:** **Human Rights Act, R.S.N.S. 1989, c.214. Board of Inquiry. Reasonable Apprehension of Bias. Standard of Review. Prematurity. Legal Principles to be Applied Whenever Considering a Complaint of Apparent, or Actual, Bias. Costs.**

**Summary:** During the course of a Board of Inquiry established to consider a complaint under the *Human Rights Act*, R.S.N.S.

1989, c. 214, it came to light that 15 years earlier the Board Chair had written two letters concerning matters said to be similar to the issues raised in the complaint. The Attorney General of Nova Scotia moved to have the Chair recuse himself on the basis that the impugned correspondence raised a reasonable apprehension of bias.

After a hearing, the Chair ruled that the letters he had written did not give rise to a reasonable apprehension of bias, and he dismissed the motion.

The Attorney General appealed that ruling to this Court, asking that we allow the appeal and order the Chair to recuse himself from any further consideration of the complaint.

**Held:**

Appeal dismissed. This human rights complaint actually consists of four separate complaints alleging discrimination by the Province against the complainants because of the “combined effect” of their mental disabilities and their reliance upon social assistance. They say they have been forced to live in institutions with large groups of people and been denied the opportunity to integrate and participate in supportive, community-based housing. They allege that this “prolonged detention” has caused lasting harm to their mental and physical health and socialization skills, preventing them from realizing their full potential as contributing members of society. They say that by not providing them with their preferred choice of housing in locations of their choosing, the Province has violated their rights under the *Act*. They claim entitlement to the kinds of help and professional supports available to others, in order to live in the community.

The appellant was right to bring a motion to challenge the Board’s jurisdiction on the basis that a reasonable apprehension of bias existed. On this record, raising the issue was certainly justified and a thorough review of the allegation was warranted.

The Commission argued that this Court ought to decline to

consider the issue, on the grounds that it is premature, and that the Board ought to be able to complete its inquiry, following which – should it be necessary – an allegation that a reasonable apprehension of bias exists, could be included as a ground of appeal, were an appeal commenced. Ordinarily, this Court is reluctant to entertain appeals from interim or interlocutory rulings in the course of a proceeding, except where a departure from that norm would be appropriate. This is such a case. It would be a colossal waste of time to refuse to deal with the allegation of apparent bias now, thus permitting the Board to complete its hearings and deliberations; yet at the end of all of that risking the possibility that if the Board's decision were appealed, a ground of appeal months (or years) later would likely raise the very same allegation.

After considering the record and counsels' able submissions, the appeal is dismissed. The Attorney General has failed to displace the presumption of impartiality by offering cogent evidence that would establish a reasonable apprehension of bias in this case. The Chair's earlier writings do not demonstrate that his duty to remain impartial has been compromised. Rather, the record confirms that the Chair remains open to deciding the issues impartially and upon the evidence that will be adduced at the hearing, not on any pre-determined views favoring one side or the other.

*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 31 pages.*