

NOVA SCOTIA COURT OF APPEAL

Citation: *D. (C.) N. v. Nova Scotia (Minister of Justice)*, 2025 NSCA 21

Date: 20250318

Docket: CA 519053

Registry: Halifax

Between:

D. (C.) N.

Appellant

v.

The Minister of Justice and the Minister of Community Services

Respondents

Docket: CA 522310

Registry: Halifax

Between:

D. (C.) N.

Appellant

v.

Nova Scotia (Department of Community Services)
and Assistance Appeal Board (Nova Scotia)

Respondents

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: March 13, 2025, in Halifax, Nova Scotia

Facts: The appellant filed an appeal under the *Freedom of Information and Protection of Privacy Act* (FOIPOP) and sought judicial review of a decision regarding social assistance eligibility. The appellant also requested state-funded counsel during the judicial review process, which

was denied. Subsequently, the appellant sought to reopen and consolidate the appeals, which were dismissed (paras [1-9](#)).

Procedural History:

Nova Scotia Supreme Court, 2023: Interlocutory decisions regarding filing dates and routine matters were made by Justice Ann E. Smith in the FOIPOP appeal (para [1](#)).

Nova Scotia Supreme Court, February 28, 2023: Justice Jamie Campbell denied the appellant's motion for state-funded counsel in the judicial review process (para [4](#)).

Nova Scotia Court of Appeal, October 6, 2023: Leave to introduce fresh evidence and leave to appeal were denied, and the appeal was dismissed (para [3](#)).

Nova Scotia Court of Appeal, October 5, 2023: Leave to introduce fresh evidence and leave to appeal were denied, and the appeal was dismissed (para [6](#)).

Nova Scotia Court of Appeal, July 3, 2024: Justice Bryson dismissed the motion to reopen and consolidate the appeals (para [8](#)).

Parties Submissions:

Appellant: Argued for the reopening of the appeals and consolidation, asserting that the appeals were not decided on their merits (paras [7-10](#)).

Respondents: [Not applicable or not found]

Legal Issues:

Whether the Orders of Justice Bryson should be set aside and the appellant's appeals re-opened (para [11](#)).

Disposition:

The motion to review the Orders of Justice Bryson is dismissed without costs to any party (para [19](#)).

Reasons:

Per Farrar J.A. (Derrick and Beaton JJ.A. concurring): The Court found that the appeals were decided on their merits, as the appellant had made full written and oral submissions, and the Orders were based on an assessment of the merits. The Court referenced *R. v. Clyde*, which allows reopening only if an appeal was not heard on its merits. Since the appeals were determined

on their merits, the Court concluded it had exhausted its jurisdiction and could not reopen the appeals (paras [12-18](#)).

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 19 paragraphs.

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Restriction on Publication:

**Confidentiality Order pursuant to *Civil Procedure Rule 85.04* to prevent
publication of any information which would identify the appellant in CA
519053**

Judges: Farrar, Derrick and Beaton, JJ.A.

Appeal Heard: March 13, 2025, in Halifax, Nova Scotia

Written Release: March 18, 2025

Held: Appeal dismissed, without costs, per reasons for judgment of Farrar, J.A.; Derrick and Beaton, JJ.A. concurring.

Counsel: D. (C.) N., appellant in person
Myles H. Thompson, for the respondent Department of Community Services
Alison Campbell, for the Attorney General of Nova Scotia
Agnes MacNeil, KC, for the respondents Minister of Justice and Minister of Community Services

Reasons for judgment:

Background

[1] The appellant filed an appeal to the Nova Scotia Supreme Court under the *Freedom of Information and Protection of Privacy Act*. In case managing the FOIPOP appeal, Justice Ann E. Smith made interlocutory decisions regarding filing dates and other routine matters. The appellant sought leave to appeal the decisions and leave to introduce fresh evidence on the appeal (CA 519053).¹

[2] CA 519053 was heard before a Panel of this Court on October 4, 2023.

[3] By Order for Judgment dated October 6, 2023, leave to introduce fresh evidence was denied, leave to appeal was denied and the appeal was dismissed.²

[4] The Appellant also filed a judicial review of a decision of the Assistance Appeal Board of the Department of Community Services regarding eligibility for social assistance. In the judicial review process, the appellant made a motion for state-funded counsel. That motion was heard before Justice Jamie Campbell on February 21, 2023. By decision dated February 28, 2023 Justice Campbell denied the motion.³

[5] The appellant sought leave to appeal the decision of Justice Campbell and, again sought leave to introduce fresh evidence (CA 532261).

[6] CA 532261 was also heard on October 4, 2023 and by Order dated October 5, 2023, leave to introduce fresh evidence was denied, leave to appeal was denied and the appeal dismissed.

[7] On May 30, 2024, the appellant filed a Notice of Motion to reopen her appeal in CA 522310, with notice to the Minister of Justice and the Minister of Community Services in CA 519053. In the motion, she, effectively, wanted both appeals re-opened and to have CA 519053 consolidated with CA 522310.

[8] By Orders dated July 3, 2024, Justice Bryson of this Court sitting as a Chambers Judge dismissed the motion to re-open in CA 522310 and dismissed the motions for consolidation and reopening in CA 519053.

¹ To avoid confusion, I will refer to the appeals by their numbers.

² 2023 NSCA 69.

³ *D. (C.) N. v. Nova Scotia (Community Services)*, 2023 NSSC 71.

[9] On July 12, 2024, pursuant to Rule 90.34 the appellant filed a Motion for Leave to Review the Orders of Justice Bryson to Chief Justice Michael Wood. On August 2, 2024, the Chief Justice directed the appellant's motion to be heard by a Panel of this Court. He did so on the basis of this Court's decision in *R. v. Clyde*, 2024 NSCA 66, which allowed an appeal to be reopened. *Clyde* was decided shortly after Bryson, J.A. denied the appellant's motion.

[10] The motion to reopen was heard on March 13, 2025 before a Panel of this Court. For the reasons that follow, I would dismiss the motion without costs to any party.

Issue

[11] The only issue for consideration on this appeal is whether the Orders of Justice Bryson should be set aside and the appellant's appeals re-opened.

Analysis

[12] In *R. v. Clyde*, 2024 NSCA 66, this Court held the jurisdiction to reopen an appeal exists only if the appeal was not heard on its merits. In its reasons for reopening Mr. Clyde's appeal, the Court relied upon several cases, including a recent decision of the Ontario Court of Appeal, *R. v. Scott*, 2023 ONCA 820:

[14] In *Scott, supra*, the Ontario Court of Appeal, in discussing the restricted ability to re-open an appeal said:

[33] Under any formulation, jurisdiction to reopen after a formal order has been issued is precluded where there has been a hearing at which merit based arguments were made and a decision that is based on the panel's appreciation and assessment of the merits of the appeal, as opposed to a basis independent of the merits. For example, an appeal that was heard on the merits but was then dismissed because the appellant abandoned it would not fall into the *Rhingo*[1]⁴ formulation or any of the later formulations of when jurisdiction is precluded.

[13] As the appeal hearing got underway, Mr. Clyde discharged his lawyer and discontinued his appeal before it was decided on its merits. The Dismissal Order of the Court was based solely on Mr. Clyde's decision to abandon his appeal and not

⁴ *Rhingo* is a reference to the Ontario Court of Appeal decision in *R. v. H. (E.)* (1997), 33 O.R. (3d) 202.

based on any legal findings. In reopening Mr. Clyke's appeal, this Court found in the circumstances his appeal could be reopened:

[16] There were no merit based arguments made, nor was the panel's determination to dismiss the appeal based on any consideration of the grounds of appeal. I am satisfied this Court is not *functus officio* and has jurisdiction to consider the motion.

[14] The question before Bryson, J.A. and on this motion was whether the appellant's appeals were "decided on the merits."

[15] Both CA 519053 and CA 532261 were interlocutory appeals. In interlocutory appeals, the application for leave to appeal is argued at the same time as the merits of the appeal. The appellant made full written and oral submissions on the merits of the appeals. The Orders issued by the Court were based on an assessment of the merits.

[16] The operative portion of the Order in CA 519053 provides:

1. The motion to admit fresh evidence is denied. The appellant has not demonstrated the evidence was relevant to the issues on appeal or that it could have affected the outcome of the proceedings before Justice Ann E. Smith (*R. v. Palmer*, [1980] 1 S.C.R. 759, at p. 775).
2. Leave to appeal is denied and the appeal is dismissed. Leave to appeal requires the appellant to raise an arguable issue relating to the interlocutory orders of Justice Ann E. Smith. The appellant appears to have misunderstood the role of this Court. Her presentations, both in writing and orally, sought to address issues that were not the subject of a decision of Justice Smith and were not properly before this Court.
3. As no costs were sought by the respondent, none will be awarded.

[17] The operative portion of the Order in CA 522310 provides:

1. The motion for leave to introduce fresh evidence is dismissed. The appellant has not established the proposed fresh evidence has any relevance to the issues on the appeal.
2. The appellant has also not demonstrated an arguable issue that Justice Campbell erred in law or that his decision will result in a patent injustice in failing to order state funded counsel to the appellant.
3. Leave to appeal is denied without costs to any party.

[18] Having made a determination on the merits and issuing Orders, this Court has exhausted its jurisdiction on these appeals. The appeals do not fall within the narrow circumstances described in *Clyke*. Justice Bryson was correct to dismiss the motion. There is no basis on which a Panel of this Court could set aside his Orders.

Conclusion

[19] The motion to review the Orders of Justice Bryson is dismissed. No costs were sought and none are awarded to any party.

Farrar, J.A.

Concurred in:

Derrick, J.A.

Beaton, J.A.