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.

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Chair, and The Nova Scotia Human Rights Commission

Respondents

Judges:	Bryson, Saunders and Bourgeois, JJ.A.
Appeal Heard:	November 28, 2016, in Halifax, Nova Scotia
Held:	Appeal dismissed per reasons for judgment of Saunders, J.A.; Bryson and Bourgeois, JJ.A. concurring.
Counsel:	Dorianne Mullin, for the appellant Vincent Calderhead and Charlene Moore, for the respondents, Beth MacLean, Olga Cain and Susan Lattie Dianne Pothier, Claire McNeil and Donna Franey, for the respondent, Disability Rights Coalition Jason T. Cooke and Jennifer Keliher, for the respondent, Nova Scotia Human Rights Commission

Reasons for judgment:

[1] 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 (the "*Act*"), it came to light that 15 years earlier, the Board Chair, J. Walter Thompson, Q.C., 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.

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

[3] The Attorney General now appeals the Board's ruling to this Court and asks that we allow the appeal and order that Mr. Thompson recuse himself from any further consideration of the complaint.

[4] The appeal is strongly opposed by all three respondents: they being the individual complainants; the Disability Rights Coalition; and the Nova Scotia Human Rights Commission.

[5] For the reasons that follow I would dismiss the appeal.

Background

[6] A brief summary of the facts will be provide sufficient context for my analysis of the issues that arise on appeal.

[7] On August 1, 2014, a 44-page complaint under the *Act* was filed with the Nova Scotia Human Rights Commission. This lengthy document actually consists of four separate complaints. The first was brought by Ms. Beth MacLean, on her own behalf. The second complaint was filed by Ms. Olga Cain on behalf of her younger sister, Ms. Sheila Livingstone. The third complaint was brought by Ms. Susan Lattie on behalf of her son, Joseph Delaney. Ms. MacLean's complaint was retroactive to 1986. Ms. Livingstone's complaint was retroactive to 2004. Mr. Delaney's complaint was retroactive to 2010. Each complained that they had been discriminated against with respect to the social services provided to them because of the "combined effect" of their mental disabilities and their reliance upon social assistance. The fourth and final complaint was brought by Mr. Marty Wexler, the current chair of the Disability Rights Coalition which:

> …joins this complaint against the … Province on the basis that the DRC, as an organization, is an aggrieved person because it represents the interests of persons vulnerable to discrimination on the basis of disability … that from 1986 through to the present and continuing, the Province has and continues to act and/or fails to act in a manner that aggrieves the DRC with respect to the social services provided to people with disabilities because of the combined effect of their disabilities and their source of income (social assistance).

[8] Many of Ms. MacLean's allegations are repeated in the complaints filed on behalf of Ms. Livingstone and Mr. Delaney. I need not repeat them here. As well as joining the individuals in support of their complaints, the Disability Rights Coalition raises its own systemic complaint that the Province has, since 1986, discriminated against all persons with disabilities in Nova Scotia by not providing them with their choice of supportive community-based housing.

[9] Because the substance of the second, third and fourth complaints essentially mirror the allegations and claim for relief advanced by Ms. MacLean, I will draw from her complaint in order to illustrate the focus of their allegations.

[10] Ms. MacLean has alleged that the combined effect of her mental disabilities and reliance upon social assistance has resulted in her being discriminated against by the Province over her entire lifetime. She says she has 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. She says such "prolonged detention" has caused lasting harm to her mental and physical health and her socialization skills. She says persons like herself with mental disabilities are treated differently than other people on social assistance who are given the help they require immediately, and as of right. She claims that since 1986 the Province has discriminated against all persons with disabilities in Nova Scotia by not providing them with their preferred choice of housing in locations of their choosing. Their ongoing institutionalization has prevented them from realizing their full potential as contributing members of society. She claims entitlement to the kinds of help and professional supports she needs in order to live in the community.

[11] Ms. MacLean's personal circumstances and her request for relief are best described in her own words:

> 28. I have very little of my own money and so cannot pay for the supports that I need to live in the community. I receive some money every month from Community Services but would need more money or supports than Community Services gives me now in order for me to be able to live in the community.

29. Throughout my life, my disability-related needs could have been adequately accommodated by community-based, supportive housing. That is, I could have lived in a small (2-3 person) living situation in a home in the community with support staff as required. Some people in Nova Scotia with my needs *are* supported to live in the community in Nova Scotia by the Province, but far more people are not.

30. For people like me, whose care needs can easily be met in supportive, community based housing, being forced to live on the unit is actually harmful to our health. In my case, the prolonged detention at Emerald Hall has harmed my mental and physical health and socialization skills.

31. If I were in a financial position to personally pay the cost of a community-based living situation out of my private resources, such a setting could easily and quickly be arranged through one or other of several organizations in Nova Scotia which provide supportive housing for people with mental disabilities.

32. The barrier to living in the community for me is not that there is insufficient supportive housing available, because appropriate supportive housing options are available. Given my financial inability to pay, the barrier that I face arises from the fact that the Province has failed to provide for my need for supportive housing. As a result, I continue to languish in a locked psychiatric ward that I neither want nor need and which is actually harmful to my health and full development.

The Province's Discharge of its Obligation to Provide Supportive Housing

33. Since I was ten years old, I have been provided with care by the Province. The care has always been congregate and institutional. It never included an education. It has always been coerced; neither I nor my family were offered real choices as to where I could live or with whom.

…

Human Rights Act Violation

39. I feel that I am entitled to and should have been given the help and supports that I need to live in the community. The Province does provide assistance for people without disabilities who have no money; they are given the help they need by the Province to live in the community. The Province's failure, since 1986, to take into account and accommodate my different needs in offering supports for me to live in the community is discriminatory and a violation of s. 5(1)(a), (o) and/or (t) of the *Human Rights Act*.

…

8. When did you last have contact with the Respondent? What happened?

> 46. I have lived in institutions run by the Province for decades, so my contact with the Respondent happens every day of my life. Efforts to secure a suitable residential setting that meets my needs have gotten nowhere.
>
> 47. I filed a Human Rights Complaint with the Commission on February 21st, 2014. Prior to then, despite my requests, the Province had failed to offer me a small options placement in the 13 years since I was sent to the NS Hospital. Following the filing of my complaint in February, a small-option home provider came to meet with me about the possibility of moving into a small options home. Unfortunately, the opening that it had was not a suitable situation for me.
>
> 48. I am requesting that a Human Rights Board of Inquiry do the following:
>
> a. Tell the Province of Nova Scotia (including the Departments of Community Services and Health and Wellness) that offering me a place to live in a hospital or other places where I didn't want to live and did not need to live since I was 10 years old was and is discriminatory and a violation of s. 5(1)(a), (o) and/or (t) of the *Human Rights Act*.
>
> b. Order the Province to treat me in a non-discriminatory way by providing me with the means to immediately access the help and supports that I need to live in the community as it does for other people who have no disabilities but who need social assistance.
>
> c. Order the Province of Nova Scotia to pay me compensation for all the years that it discriminated against me by effectively forcing me to stay in hospitals or places where I didn't want to be and didn't need to be.

[12] In May, 2015, the Nova Scotia Human Rights Commission appointed Mr. Thompson as a one-person Board of Inquiry to hear the complaints.

[13] On March 15, 2016, the Board Chair issued an order for disclosure. In its search for relevant documents, the Department of Community Services found a letter dated June 1, 2000, that Mr. Thompson had written to the (then) Minister of Community Services, Mr. Peter Christie. The contents of that letter will be discussed in the analysis that follows.

[14] Based on that letter, the appellant brought a motion on May 27, 2016, asking Mr. Thompson to recuse himself.

[15] The parties filed written submissions in advance of the hearing scheduled for June 22, 2016. Some days before the hearing the appellant discovered a second letter Mr. Thompson had written to Minister Christie dated October 24, 2001. Both letters became the subject of the parties' oral submissions at the hearing.

[16] In a decision dated July 18, 2016, the Board Chair dismissed the appellant's motion and declined to recuse himself from presiding over these proceedings.

[17] These two letters constitute the evidence which the appellant says demonstrates a reasonable apprehension of bias on the part of the Board.

Issues

[18] The many issues and arguments raised by the parties can be reduced to three simple questions:

1. What is the proper standard of review in a case such as this?
2. Should this Court decline to hear the appeal on the basis that it is premature?
3. If not, did the Board Chair err in law in finding that his two letters to the Minister did not give rise to a reasonable apprehension of bias?

Analysis

Issue #1 <u>What is the proper standard of review in a case such as this</u>?

[19] Section 36 of the *Act* allows for appeals only on questions of law:

> **Appeal**
>
> 36 (1) Any party to a hearing before a board of inquiry may appeal from the decision or order of the board to the Nova Scotia Court of Appeal on a question of law in accordance with the rules of court.

[20] A reasonable apprehension of bias is an issue of procedural fairness and, where found, results in a loss of jurisdiction. Therefore, the complaint that such an appearance of partiality exists, is seen to raise a question of law. Accordingly, our review for bias (whether apparent or actual) is carried out on a correctness standard. No deference is paid to the decision-maker's ruling.

[21] What we must decide in this case is whether Mr. Thompson was correct when he determined that a reasonable apprehension of bias did not arise in the circumstances and dismissed the appellant's motion to recuse himself. See for example, *Burt v. Kelly*, 2006 NSCA 27; *Gavel v. Nova Scotia*, 2014 NSCA 34; and *Patient X v. College of Physicians and Surgeons*, 2015 NSCA 41.

Issue #2 <u>Should this Court decline to hear the appeal on the basis that it is premature</u>?

[22] The Nova Scotia Human Rights Commission is the only respondent that has raised the issue of prematurity. Its factum says:

> 25. This appeal is interlocutory in nature; it is not a final decision and it does not involve the merits of the Complaints. As a general rule, courts are justifiably reluctant to allow appeals or judicial reviews of interim or interlocutory decisions given in the course of a proceeding, except in rare and exceptional circumstances.
>
> 26. MacAulay and Sprague in *Practice and Procedure Before Administrative Tribunals*, vol 3, loose-leaf (consulted on October 20, 2016), (Toronto: Carswell, 2004), ch 28 at 26.10-26.12 affirm that this general principle of reluctance is equally applicable to decisions involving issues of bias or jurisdiction:
>
> > At one time courts were more willing to entertain judicial reviews in the midst of agency proceedings when the issue at stake was jurisdictional – including claims that the decision-maker was biased. The desire there was to avoid requiring the parties to proceed with a process for which there was no jurisdiction in the first place. However, that is no longer the case. <u>The rule against prematurity applies today to all forms of decisions including issues of bias and other jurisdictional issues</u>. [Emphasis added in original]
> >
> > […]
> >
> > The rule against premature judicial review is not absolute. In exceptional cases the courts may entertain an application for judicial review before an agency has completed its proceedings or where all existing remedial routes have not been exhausted. But the exception for the exceptional generally applies to the adequacy of remedial options.
>
> **Commission's Book of Authorities at Tab 11**
>
> 27. In terms of determining the adequacy of remedial options, MacAulay and Sprague note that in the context of appeals, courts avoid premature intervention in ongoing proceedings by interpreting statutory appeal provisions as referring to appeals of final decisions.
>
> 28. The Commission urges this Honourable Court to adopt such an interpretation of s. 36 of the Act in the absence of extraordinary circumstances. The decision in the present case is not final; it does not go to the merits of the complaint and there are no exceptional circumstances to justify early appellate intervention. If the Appellant disagrees with the ultimate result on the Complaints, it is open to appeal the final decision on the grounds of reasonable apprehension of bias or any other alleged procedural or substantive errors of law.
>
> …

> 33. … The legislative framework of the *Act* with its remedial purpose and ultimate right of appeal, and the adverse consequences of delay for the Respondents weigh in favour of not bifurcating this proceeding and dismissing the appeal for being premature.
>
> 34. The Complaints were filed over two years ago, in August 2014. Hearing dates scheduled over three weeks in September and October 2016 had to be adjourned pending the hearing of this appeal. Furthermore, the Chair has been seized with the Complaints and with moving along the somewhat complex disclosure process for the greater part of a year and a half; if he were to be replaced, the parties would surely be delayed further while a new board of inquiry is brought up to speed. It is an important consideration to the Commission that complaints be heard and decisions rendered within a reasonable period of time.

[23] The Commission makes the point that a reluctance or aversion by Courts of Appeal to agree to hear appeals from interlocutory decisions of administrative tribunals is especially important in the human rights sphere. We were directed to this Court's decision in *Halifax (Regional Municipality) (Appellant) v. Nova Scotia (Human Rights Commission) and Mary Harnish (Respondents)*, 2008 NSCA 108 where Justice Hamilton observed:

> [11] This principle of not appealing interlocutory decisions of administrative tribunals is particularly important where human rights are concerned. This is remedial quasi-constitutional legislation. It is important that human rights matters be dealt with expeditiously. In *Nova Scotia Construction Safety Association v. Nova Scotia (Human Rights Commission)*, [2006] N.S.J. No. 210, Justice Saunders states:
>
> > [76] Recognizing the well known principle that a key objective of human rights legislation is to be remedial, the process for inquiring into and exposing acts of discrimination must be expeditious in order to be effective. Otherwise, the salutary benefit of public scrutiny, enlightenment and appropriate redress in the face of proved violations, is lost. An efficient and timely disposition of complaints is in the interest of both complainants and those whose behaviour is impugned. It is also in the public interest. People and businesses need to get on with their lives. Unlike fine wine, protracted human rights litigation does not improve with age.
> >
> > [77] In this I find the observations of LeBel, J., although in dissent, in *Blencoe, supra*, especially apt:
> >
> > > 140 Unnecessary delay in judicial and administrative proceedings has long been an enemy of a free and fair society. At some point, it is a foe that has plagued the life of almost all courts and

> administrative tribunals. It's a problem that must be brought under control if we are to maintain an effective system of justice, worthy of the confidence of Canadians. ...

[24] The Commission's view is not shared by the other respondents. On this point both they and the appellant take the position that this case has already dragged on for far too long and that it raises allegations that are too important to be left hanging. They ask that we deal with the appearance of bias issue now, on the merits. That way, either Mr. Thompson can get on with the complaint he was asked to adjudicate, or the complaint can be quickly referred to a newly constituted Board of Inquiry to consider the complaint afresh.

[25] At first blush there is some attraction to the Commission's argument. It is certainly true that we are – and ought to be – 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. I think this is such a case.

[26] This complaint was filed in August, 2014. Mr. Thompson was appointed in 2015. He and the parties have all been heavily involved in establishing the rules and parameters of the Inquiry, and whose responsibility it is to investigate and address the serious matters raised in the complaint.

[27] Faced with these circumstances, it would seem to me to be a colossal waste of time and resources if we were to decline to consider the merits of the allegation of apparent bias on the grounds of prematurity, thus permitting Mr. Thompson to carry on with and complete what is sure to be a lengthy set of hearings, followed by post-hearing submissions, then deliberations, and the ultimate filing of a decision; yet, at the end of all of that, risking the possibility that if the Board's decision were to find against the provincial government, a ground of appeal months (or years) later would likely raise the very same allegation that a reasonable apprehension of bias on the part of the Board had been established before the case was even heard. Such a prospect hardly seems sensible, efficient or just.

[28] It is on that basis that I would respectfully decline to accept the Commission's invitation that we not entertain this appeal on the grounds that it is premature. On the contrary, I think it ought to be decided now, on its merits.

Issue #3 **<u>If not, did the Board Chair err in law in finding that his two letters to the Minister did not give rise to a reasonable apprehension of bias</u>?**

[29] I wish to begin my consideration of this question by saying 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. However, after carefully considering the record and counsels' able submissions on all sides of the matter, I am not persuaded the Board Chair erred in law in refusing the Attorney's motion that he recuse himself and withdraw from these proceedings.

[30] Sadly, Ms. Dianne Pothier, of counsel for the Disability Rights Coalition, died shortly after the hearing. Her customary wise counsel, meticulous preparation and ability to identify and explain the truly important features and consequences of any given case will be missed. Not surprisingly, she advanced very strong and persuasive arguments on behalf of her client at the appeal hearing. I intend to borrow heavily from her submissions in explaining my reasons.

[31] The Attorney General does not argue – nor could it be seriously suggested – that the Board Chair ignored or failed to understand the leading jurisprudence on the issue of bias. On the contrary, Mr. Thompson's comprehensive decision is replete with accurate references to the cases and to the legal principles for which they stand. It appears to me that the Attorney General is dissatisfied with the "result", and seeks to have it set aside by attacking the Chair's findings and the weight he attached to certain facts in arriving at his decision. Respectfully, I am not persuaded that the appellant's complaints – either individually or collectively – demonstrate that Mr. Thompson was wrong.

[32] Before considering each of the Attorney's specific complaints, it is necessary to refer to the impugned correspondence that triggered the Attorney's motion in the first place. Further, since each of Mr. Thompson's letters drew a response from Minister Christie, I think it is important to include the Minister's replies as well in order to fully appreciate the context in which their dialogue ensued. The four letters are:

- J. Walter Thompson's 2-page letter dated June 1, 2000 addressed to The Honourable Peter G. Christie, Minister of Department of Community Services;

- Minister Christie's 2-page letter to Mr. Thompson date stamped July 19, 2000;
- Mr. Thompson's 3-page letter to Minister Christie dated October 24, 2001; and
- Minister Christie's 2-page reply to Mr. Thompson (which is not dated but bears in the top right-hand corner the hand scribed date November 14).

I will attach the letters as an Appendix to this decision, marked A-1 through A-4 respectively.

[33] In oral argument counsel for the appellant confirmed that the two letters written by Mr. Thompson form the entire basis for their claim of reasonable apprehension of bias in this case. Further, she acknowledged that without Mr. Thompson's first letter (June 1, 2000), his second letter (October 24, 2001) would not be enough to raise a reasonable apprehension of bias.

[34] The Attorney says Mr. Thompson's June 1, 2000 letter raises a reasonable apprehension of bias because it: advocates for the same group of persons; implicates the same government department; considers the same issues as are raised in the current inquiry; is critical of government policy which has created a situation the author describes as "absurd"; and suggests that Mr. Thompson has already drawn conclusions favourable to the claimants in this case.

[35] With regard to Mr. Thompson's letter dated October 24, 2001, the Attorney says that this is the second time Mr. Thompson has written on behalf of the same group of persons represented in the current human rights complaint, thus indicating a predisposition which supports the position taken by these complainants.

[36] Further, the Attorney says any differences between the issues raised in the impugned correspondence and this case are insignificant, such that they and the passage of time since Mr. Thompson sent his letters, are not enough to defeat the appellant's claim that a reasonable appearance of bias has been established.

[37] I respectfully disagree.

[38] I will begin this section of my reasons by describing the legal principles engaged in this case.

[39] First, as a matter of law, there is a strong presumption of judicial impartiality, which is not easily displaced. Second, there is a heavy burden of proof upon the person making the allegation to present cogent evidence establishing "serious grounds" sufficient to justify a finding that the decision-maker should be disqualified on account of bias. Third, whether a reasonable apprehension of bias exists is "highly fact-specific". Such an inquiry is one where the context, and the particular circumstances, are of supreme importance. The allegation can only be addressed carefully in light of the entire context. There are no shortcuts. See *Wewaykum Indian Band v. Canada*, 2003 SCC 45.

[40] The "test" regarding what constitutes a reasonable apprehension of bias appears in the oft-quoted dissenting judgment of de Grandpré, J. in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at ¶40:

> …the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information, that test is "what would an informed person, viewing the matter realistically and practically— …conclude? Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly.

[41] In relation to what constitutes the "reasonable person", the qualifications are not limited to just being "reasonable". The law requires a fully *informed* "reasonable person". That is:

> …a person who approaches the question of whether there exists a reasonable apprehension of bias with a complex and contextualized understanding of the issues in the case. The reasonable person understands the impossibility of judicial neutrality, but demands judicial impartiality.

[*R. v. S.(R.D.)(R.D.S.)*, [1997] 3 S.C.R. 484]

[42] In that case, the Supreme Court of Canada explained in detail the requirement for neutrality in decision-making, and how the duty to be impartial did not oblige judges to have no sympathies or opinions at all, but rather to ensure that they were receptive to other points of view. In his reasons, Justice Cory (joined by Justice Iacobucci, said at ¶119:

> 119 The requirement for neutrality does not require judges to discount the very life experiences that may so well qualify them to preside over disputes. It has been observed that the duty to be impartial

> does not mean that a judge does not, or cannot bring to the bench many existing sympathies, antipathies or attitudes. There is no human being who is not the product of every social experience, every process of education, and every human contact with those with whom we share the planet. Indeed, even if it were possible, a judge free of this heritage of past experience would probably lack the very qualities of humanity required of a judge. Rather, the wisdom required of a judge is to recognize, consciously allow for, and perhaps to question, all the baggage of past attitudes and sympathies that fellow citizens are free to carry, untested, to the grave.
>
> True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind.
>
> (Canadian Judicial Council, *Commentaries on Judicial Conduct* (1991), at p. 12.)

[43] In that case the issue was whether the trial judge's remarks concerning credibility when acquitting the accused in a criminal case had given rise to a reasonable apprehension of bias. In finding that the Crown had failed to prove bias or a reasonable apprehension of bias, Justices L'Heureux-Dubé and McLachlin, as part of the majority, concluded at ¶35:

> True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind.

[44] Having an opinion will not disqualify a decision-maker from fairly adjudicating a matter; it is the ability to approach one's consideration of the issues in dispute with an "open mind" that is required. See as well *Arsenault-Cameron v. Prince Edward Island*, [1999] 3 S.C.R. 851 at ¶3.

[45] Awareness of the context in which a case has arisen does not disqualify an adjudicator from fairly deciding a case. To the contrary, the Court in *R.D.S.* at ¶49 found that such an understanding is highly desirable:

> Awareness of the context within which a case occurred would not constitute such evidence; on the contrary, such awareness is consistent with the highest tradition of judicial impartiality.

[46] These same principles were recently considered by the Court in *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25. While the Court found a reasonable apprehension of bias based on the trial judge's intervention during the course of the proceedings, a separate

allegation based on the judge's prior involvement in minority language rights failed.

[47] In that case it was said that the judge served as a governor of the Fondation franco-albertaine. The views and philosophy of this organization were thought to be aligned with the complainant in the case, Yukon Francophone School Board. This involvement alone was not enough to support a reasonable apprehension of bias. Writing for a unanimous Court Abella, J. said:

> [61] Membership in an association affiliated with the interests of a particular race, nationality, religion, or language is not, without more, a basis for concluding that a perception of bias can reasonably be said to arise. We expect a degree of mature judgment on the part of an informed public which recognizes that not everything a judge does or joins predetermines how he or she will judge a case. …

[48] Thus, evidence of extra-judicial knowledge and activities outside of the litigation will not, by itself, justify a finding of reasonable apprehension of bias.

[49] These then are the principles I will apply when addressing the Attorney General's complaints. I begin by saying that, in my opinion, Mr. Thompson understood and correctly applied all of these principles when considering and ultimately dismissing the Attorney General's motion that he recuse himself from hearing the case. Respectfully, the appellant has failed to identify any error of law in Mr. Thompson's analysis or disposition.

[50] I turn now to the specific issues raised by the parties. The variety of matters can be conveniently addressed if they are collapsed into three categories: similarity of issues; connection with the parties; and passage of time.

Similarity of issues

[51] The Attorney General says Mr. Thompson underestimated the similarity of the issues between his experience as a member of the Criminal Code Review Board and his current role as Chair of this Human Rights Board of Inquiry. I disagree. The alleged similarity between the Criminal Code Review Board context, and the human rights context, is not determinative. Mr. Thompson's description of the similarities and differences demonstrates a contextual understanding of problems confronting the seriously mentally ill, detained under the *Criminal Code*, and the various complainants who have launched this human rights complaint. The issue is not Mr. Thompson's prior experience and views, but

whether they prevent him from having an open mind concerning the adjudication of the human rights dispute.

[52] There is no evidence to suggest that Mr. Thompson would be prevented from judging this matter fairly. Rather, the opposite is apparent. Mr. Thompson expresses a clear awareness of his past views concerning community-based placements, and that he is conscientiously maintaining an open mind concerning the "multi-faceted and complex" issues before him in this human rights complaint.

[53] Mr. Thompson is also correct in his finding that the legal context is very different between a complaint based on discrimination, which involves finding protected grounds and disadvantage, and a "plea" across Federal/Provincial jurisdictional lines about meeting the *Criminal Code* obligations for least restrictive and least onerous treatment. Given that the *Criminal Code* cannot obligate provincial authorities, Mr. Thompson's "plea" in 2000 was not in the nature of a legal claim. In contrast, this human rights complaint is a legal claim against the Province of Nova Scotia in respect of which Mr. Thompson's letters of 2000 and 2001 make no comment.

[54] The evidence presented by the appellant, in the two letters written by Mr. Thompson to the Minister of Community Services, shows that Mr. Thompson previously expressed concerns on behalf of those found to be a 'significant risk' under the mental disorder provisions of the *Criminal Code*, and Masonview Homes, an organization providing housing to members of the deaf community with respect to access to community-based supportive housing. Mr. Thompson makes no reference to discrimination or a violation under the *Human Rights Act*. In his response, the then Minister confirms that there is a moratorium on the creation of new community-based homes. The Minister did not take issue with any of Mr. Thompson's statements. Should the Province now wish to distance itself from the Minister's declared views as they existed in 2000, there is no evidence to suggest that Mr. Thompson has closed his mind or would be unable to adjudicate the matter impartially.

[55] A useful comparison to the appellant's assertion that there is a strong similarity of issues can be found in *Arsenault-Cameron, supra*. In that case the Government of Prince Edward Island argued that there was a reasonable apprehension of bias because Justice Bastarache had been involved personally and as an advocate on similar issues in relation to Francophone language rights as those raised in the appeal before the Supreme Court of Canada. The Province

complained that Justice Bastarache's long history as a champion of Francophone language rights excluded him from fairly adjudicating a case involving Francophone education rights. The evidence presented by the Province in support of their motion for recusal included references to written legal arguments, legal texts and media interviews where Justice Bastarache had expressed his views and opinions consistent with the appellant's position, including the interpretation of s. 23 of the *Charter*, and whether the Court could order the government to expend funds in creating French language schools under s. 24. The evidence showed that Justice Bastarache had previously represented one of the Intervenors in the appeal, in a similar s. 23 claim. He had also previously represented a similar parents' group advocating for French language education, from Summerside, PEI, the same community as the appellant's, in a very similar claim. After considering all of these circumstances the Court found that Justice Bastarache's previous involvement did not demonstrate any pre-judgment of the issues in the case and that a reasonable apprehension of bias had not been established.

[56] Based on the uncontroverted factual record in *Arsenault-Cameron*, we see that in order to establish a reasonable apprehension of bias, the evidence must demonstrate that the judge, or in this case, the Board of Inquiry, would not approach the issue with an open mind or be capable of acting impartially. Showing that the judge had previously expressed an opinion on the very issue presented in the case before him or her is insufficient. Showing that the judge had previously represented one of the parties, or personally advocated on the same issue as one of the parties to the dispute to be tried, is also insufficient. There must be cogent evidence that raises a reasonable apprehension the trier of fact has closed their mind to other opinions on the issue.

[57] Turning back to the circumstances in this case, it is clear that in his 2000 and 2001 correspondence Mr. Thompson makes no reference to discrimination or a violation under the *Human Rights Act*. The appellant has failed to point to any evidence which suggests that Mr. Thompson has prejudged this human rights complaint, or that he will be unable to conduct the inquiry and decide the matter impartially, on the basis of the evidence presented at the hearing.

[58] It bears repeating that the evidence with respect to alleged bias relied upon by the appellant in this case is considerably weaker than the evidence presented by the Province of PEI in *Arsenault-Cameron*. As we have seen, the undisputed evidence in that case clearly established that language rights and s. 23 of the *Charter* featured prominently in Justice Bastarache's earlier writings, advocacy,

media interviews and appearances in both his personal and professional capacities. In contrast, there is no evidence that Mr. Thompson has expressed prior views with respect to the claims of discrimination presented in this case. Even if he had, it is clear from *Arsenault-Cameron* that such evidence alone would be insufficient to disqualify him from deciding the matter impartially.

Connection with the parties

[59] Neither am I satisfied that there is any questionable link between Mr. Thompson and the populations, parties or subject-matter joined in the current human rights dispute. For example, the appellant has attempted to argue that there is a link between Mr. Thompson and the Coalition in relation to Dr. Michael Kendrick, which raises an appearance of bias. Apart from the fact that Mr. Thompson is familiar with Dr. Kendrick's report, a publicly funded report commissioned by the government, and that he was provided with information concerning Dr. Kendrick and his review by Minister Christie, there is no evidence to link Mr. Thompson with Dr. Kendrick. Anyone familiar with social justice issues affecting persons with disabilities in Nova Scotia during the same timeframe would have been expected to share similar knowledge.

[60] The appellant points to Mr. Thompson's reference to the "Kendrick Report" in his letter of October 24, 2001, as evidence that Mr. Thompson is somehow pre-disposed to the position of the complainants, because the Coalition has indicated its intention to call Dr. Kendrick as an expert witness at this Board of Inquiry hearing. It should be remembered that Dr. Kendrick was originally identified by the Minister in his letter of July 19, 2000, where he describes Dr. Kendrick as "an international consultant specializing in mental health and disability" hired by the Province to conduct an external review of the department's delivery of its community-based options program. The Minister invited Mr. Thompson to contact Dr. Kendrick directly regarding his concerns, and provides a phone number. It is also worth noting that Mr. Thompson deliberately chose to put his letter on firm letterhead, advocating a specific proposal on behalf of his client, Masonview Homes.

[61] In his response to Mr. Thompson's October 24, 2001, the Minister thanks him for his "proposal on behalf of Masonview Homes to construct and operate two new small Options for clients who are hearing-impaired" and refers to the Kendrick report, stating that the report's recommendations are "under review". Again, the Minister did not dispute the statements in Mr. Thompson's letter, and

his response appears to confirm, rather than deny, the concerns raised by Mr. Thompson. Neither letter provides any evidence that Mr. Thompson is pre-disposed in this human rights complaint, to take a position favouring the complainants, or against the Province.

[62] Neither am I persuaded that there is any troubling nexus between the views expressed by Mr. Thompson in his correspondence, and the matters he will be asked to address in this human rights inquiry. There can be no dispute that in his 2000-2001 correspondence to the Minister, Mr. Thompson was not dealing with an allegation of discrimination. He made no comment about discrimination or any claim or remedy similar to those advanced by the respondents involved in this human rights case.

[63] The essence of the complaint before this Board of Inquiry is not whether community-based supports are desirable – the Province has endorsed that position publicly. Rather, the central issue raised in this complaint is whether the Province of Nova Scotia is doing enough to follow through on its commitment to provide non-discriminatory services to persons with disabilities. The June 1, 2000, letter did not address, much less pre-determine, these issues.

[64] Even 16 years ago, in his response dated July 19, 2000, Minister Christie took no issue with either the facts, or the views expressed by Mr. Thompson in his June 1, 2000 letter. Apart from clarifying that the "embargo" was in fact a "moratorium", the Minister endorsed the concerns raised by Mr. Thompson in his letter. The clear implication to be drawn is that the June 1 letter was not considered contentious by the Minister and represented an accurate statement and awareness of the context in which community-based services to forensic patients were being offered by the government in 2000. Thus, in line with the Supreme Court of Canada's comments in *R.D.S.*, the letter exhibits a knowledge and awareness of context which is commendable and "consistent with the highest tradition of judicial impartiality".

[65] As I have explained, the Supreme Court of Canada has described the fully informed "reasonable person" as someone who has "a complex and contextualized understanding of the issues in the case".

[66] Unlike *Wewaykum*, and *Arsenault-Cameron*, where there was evidence that the decision-maker had had prior involvement with either one of the parties or the actual issues in litigation, Mr. Thompson's June 1, 2000 letter is an expression of views, and there is no suggestion that he has had any involvement in the issues,

parties or relief claimed in the human rights complaint he has been appointed to hear.

Passage of time

[67] Finally, I wish to address the lengthy period of time that has elapsed since Mr. Thompson wrote his letters in 2000 and 2001. This situation is most similar to that of *Wewaykum* where the Supreme Court of Canada dismissed the allegation of bias filed against Mr. Justice Binnie. In that case there had been a 15-year gap between Justice Binnie's activity in the litigation during his time in private practice, and the case before the Court. At ¶85 the Court declared:

> To us, one significant factor stands out, and must inform the perspective of the reasonable person assessing the impact of this involvement on Binnie J.'s impartiality in the appeals. That factor is the passage of time. …

[68] Based on the 15-year intervening time period in that case and the limited role Binnie, J. played in the litigation, the Court concluded that a reasonable, informed person would not be concerned that Justice Binnie would be, consciously or unconsciously, unable to remain impartial. The application for his recusal was dismissed.

[69] Positions, attitudes, and opinions change over time. I can do no better than to quote from Mr. Thompson's reasons on this point where he says:

> The Province submits that as the complaint encompasses the date of my letter, the views I expressed then are still alive. The issue is, however, not what view I held then, but rather what view do I hold now. In my view, a reasonable person would not accept that a perspective on facts and issues in 2000 militates against an open mind now about other similar facts in 2016. A reasonable person, even an uninformed reasonable person, would not think that a view of circumstances of a case expressed 16 years ago would compromise a view one might hold of a similar set of circumstances now. We learn, we change, we evolve. Hearings themselves change views.

[70] This is just but one example from Mr. Thompson's decision which provides cogent evidence that he is both aware of his prior views, changes that have affected those views, and his appreciation of the importance of maintaining an open mind as a decision-maker. He has acted in a manner consistent with his obligation to remain open to new and different perspectives. Even if I had found – which I have not – that Mr. Thompson's 2000-2001 correspondence addressed similar issues to

those raised in this human rights complaint, I am satisfied that given the significant amount of time that has elapsed, and in the absence of any further evidence, I would not be concerned that Mr. Thompson's impartiality had been compromised. After carefully considering the record and counsels' very helpful submissions, I am satisfied that there is no basis to question Mr. Thompson's statements that he remains open to deciding the issues raised in this complaint impartially and upon the evidence that will be adduced at the hearing, not on any pre-determined views or inclinations, favouring one side or the other.

[71] Decision-makers are not mute, neutral ciphers. They bring to the decision-making process an intellect that is shaped and informed by their training, upbringing, relationships, and life experience. Those influences cannot be discarded like some old coat. What matters is that they not compromise the decision-maker's ability to keep an open mind and decide the case impartially.

[72] The sentiments of Justice Abella in *Yukon Francophone School Board*, are especially apt:

> [59] While I fully acknowledge the importance of judges avoiding affiliations with certain organizations, such as advocacy or political groups, judges should not be required to immunize themselves from participation in community service where there is little likelihood of potential conflicts of interest. Judges, as Benjamin Cardozo said, do not stand on "chill and distant heights": *The Nature of the Judicial Process* (1921), at p. 168. They should not and *cannot* be expected to leave their identities at the courtroom door. What they *can* be expected to do, however, is remain, in fact and in appearance, open in spite of them. …

[73] Before concluding these reasons I wish to deal with the implications of a submission apparently shared by some or all of the respondents. Their arguments seemed to suggest that special caution ought to be exercised by Courts of Appeal whenever bias (apparent or real) is alleged on the part of the decision-maker in cases that involve human rights litigation. We were told that lawyers appointed to head Boards of Inquiry are expected to have demonstrated a level of experience and expertise in advocacy that concerns social context, activism, human rights, and the challenges facing the poor and disadvantaged within their communities. To support the argument, counsel for the Commission pointed to the "Board Chair's" policy taken from the Nova Scotia Human Rights Commission website, which reads in part:

Board Chairs

The roster for Board of Inquiry Chairs is created by an independent selection committee which evaluates their qualifications. The minimum qualifications currently are:

- A law degree.
- At least five years of experience in their professional field.
- Demonstrated experience in weighing conflicting information/evidence to arrive at a fair Decision.
- Demonstrated experience in chairing hearings, meetings, or consultations where there are conflicting interests.
- Experience with human rights legislation or human rights issues.
- Resident of Nova Scotia, subject to the discretion of the Commission to appoint to the Panel Member Roster an individual(s) living within a reasonable travel radius of Nova Scotia, i.e., in a major centre in Prince Edward Island and New Brunswick.

Desirable qualifications include:

From among the applicants who meet the minimum qualifications listed above, preference for appointment to the Panel Member Roster will be given to those who have:

- Experience with administrative or quasi-judicial tribunals.
- Experience applying principles of natural justice.
- Experience with conflict resolution such as mediation or other forms of alternative dispute resolution.
- Knowledge of discrimination and its effects on individuals and society. Familiarity with approaches to preventing and remedying discrimination.
- Commitment to restorative approaches to dispute resolution.
- Experience with social justice issues.
- Experience with cross-cultural issues.

…

[74] I agree it is reasonable to expect that lawyers appointed to head Boards of Inquiry will have acquired experience in cultural and social justice issues and that such a background will be valued. But that cannot mean this Court need concern itself with the effect of a finding of reasonable apprehension of bias in the sense

that it might then possibly deplete the pool of available lawyers considered qualified to chair Inquiries. The test for reasonable apprehension of bias remains the same in law, no matter what the context. Either it arises, or it does not.

Conclusion

[75] As a matter of law, there is a strong presumption in favour of judicial impartiality. The assessment of whether a reasonable apprehension of bias exists is largely fact-based. In light of the 15-year intervening period since the letters were written, and having regard to the factual and contextual circumstances surrounding Mr. Thompson's previous contact with the Minister, and the difference between those circumstances and the material issues arising in the present human rights complaint, I find that 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.

[76] I would dismiss the appeal. I am not persuaded that there are any exceptional circumstances in this case which would cause us to depart from our usual approach (*CPR* 90.51) which is not to award or impose costs in a tribunal appeal.

Saunders, J.A.

Concurred in:

Bryson, J.A.

Bourgeois, J.A.

Appendix A - 1

J. WALTER THOMPSON
SUITE 200, 5151 DUKE STREET, P.O. BOX 397
HALIFAX, NOVA SCOTIA B3J 2N7

June 1, 2000

The Honourable Peter G. Christie
Minister
Department of Community Services
PO Box 696
Halifax NS B3J 2T7

Dear Peter:

As you may know, the former government reappointed me to the Board of Review under the *Criminal Code*, albeit as a simple member rather than as chair as I had been for 15 years.

I am pleased to be back and very impressed with the model for care which has evolved for forensic patients. I have seen miracles of rehabilitation.

I do have a concern and I hope you will forgive me for writing you about it as an old friend of yours and the government's. Two cases have come before us recently where patients have continued to live at the Nova Scotia Hospital, because in one case a group home placement was not available, and because in another a supervised apartment was not available. I understand there is an embargo on new places. No one is being admitted unless someone leaves. This has produced a grid lock where scarcely anyone is moving anywhere.

J. WALTER THOMPSON
SUITE 800, 5151 DUKE STREET, P.O. BOX 997
HALIFAX, NOVA SCOTIA B3J 2X7

This situation is absurd. The Hospital is five times more expensive than a group home, and I guess the multiple would be more for a supervised apartment.

There are other issues besides money, of course; the liberty of the subject, the safety of the public and good patient care. The patients subject to our jurisdiction are entitled under the *Code* to the least restrictive disposition. I am concerned that patients are required to live in the Hospital, not because it is legally warranted under the *Code*, but because established facilities are unavailable to them. I am also concerned that we may be driven to place people in the community without the care and supervision they really should have to protect the public. We can't hold people in the Hospital indefinitely. There may be times when we must discharge absolutely without the security of a transition. Good patient care also requires, for many patients, a supported transition to community living. In some cases, continued detention will be destructive.

I do hope the government will very soon provide new places in order to save money, protect the rights of those whose liberty is restricted under the *Code*, and provide good patient care.

Yours very truly,

J. Walter Thompson

JWT/kec

cc: The Honourable Jamie Muir
Minister of Health

Appendix A-2

Department of
Community Services
Office of the Minister

PO Box 803
Halifax, Nova Scotia
B3J 2T7

Our file number

JUL 19 2000

Mr. J. Walter Thompson
Suite 200, 5162 Duke Street
PO Box 307
Halifax, NS B3J 2N7

COPY

Dear Mr. Thompson:

I am very pleased to learn of your continued involvement with the Board of Review. I wanted to get back to you regarding your recent letter and your concerns related to the moratorium on the development of licensed facilities and community-based options under the mandate of the Department of Community Services.

By way of background information, the Department released the *Report of the Review of Small Options in Nova Scotia* in April 1998. This report provides background information on the development of residential services for individuals who are frail, elderly, or who have mental or physical disabilities in Nova Scotia. It is the result of public consultation sought on proposed policy and standards outlined in two discussion papers, *Moving Towards Deinstitutionalization-A Discussion Paper* and *Community Residential Services: A Discussion Paper on Unlicensed Services for Adults* (February 1998). For further information on the review, you may wish to refer to the report which has been posted on the Department of Community Services website (http://gov.ns.ca/coms/smallopt.htm).

As part of the Departmental review, an assessment of all individuals residing in small option homes was completed. Interim Standards were introduced in November 1996 to ensure minimum standards are in place for homes where provincial funding is provided on behalf of residents.

A moratorium has been placed on the expansion of the current system. The moratorium encompasses the development of any new small option, with the possible exception of those homes that have been developed as part of an approved Departmental initiative such as the planned downsizing and closure of the Halifax County Regional Rehabilitation Centre.

The aforementioned Report highlights the need for the redesign of the current system, including the need for further consultation with stakeholders and, in particular, discussions related to government's role in small option settings where individuals receive no financial assistance.

/2....

Part of the redesign of the current system has seen the transfer of seniors programs from the Department of Community Services to the Department of Health on April 1, 2000. The transfer of these programs will help ensure seniors are provided with the right service at the right time in the right place at the right cost. It will also be much easier for seniors and their families to access services through one department. This change will enable the Department of Community Services to focus specifically on its primary client population: persons who are mentally and/or physically challenged and mental health consumers.

In addition, the Department of Community Services has recently announced an external independent review to assess the current delivery of services to clients funded by the department in Community Based Options. It should address any lingering questions people may have about the program and provide government and the people of Nova Scotia with an analysis of the programs now in place.

This review is being conducted by Dr. Michael Kendrick, an international consultant specializing in mental health and disability. Part of his mandate will be to draw on best practices of similar services currently available in other jurisdictions and indicate whether any components of those services could be usefully incorporated into policy in Nova Scotia. The review will also provide comment upon whether the current interim standards which apply to Community Based Options should be incorporated in regulations. Should you wish to provide your comments directly to Dr. Kendrick, he can be reached at 1-800-296-9037.

I share your concern that the care, safety and supervision of residents in homes licensed and/or funded by the Department is paramount. Before any new homes are opened, it is important that all existing homes meet the minimum standards and the necessary infrastructure and regulatory framework are established to support the future development of the system.

I trust this will provide you with a progress report of the ongoing work within the Department related to the provision of community supports for adults.

Sincerely,

Original Signed by

Peter G. Christie

cc. Honourable Jamie Muir

bcc. Ms. Barb Burley
Ms. Janet Bray
Mr. Greg Gammon
Ms. Joan Collier (2)

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Appendix A-3

BURKE MITTON THOMPSON
BARRISTERS & SOLICITORS

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CORRESPONDENCE
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HALIFAX, NOVA SCOTIA B3J 2N7

October 24, 2001

Honourable Peter Christie
Minister of Community Services
5675 Spring Garden Road
Halifax NS B3S 1H1

Dear Peter:

Masonview Homes has solicited my help more as an advocate than as a lawyer. This is a very "soft" issue. It is not one I like to put on the firm's letterhead since I think that sends the wrong message, but I suppose in all professionalism I must. Please do not take the letter amiss.

The world of the profoundly deaf is unique. The deaf are isolated from the community and often relate best to others who are deaf rather than the hearing community. Deafness presents its own significant challenges. These challenges are greatly compounded for those who are not only deaf, but also suffer from mental or cognitive disorders.

Masonview Homes provides support to a total of fifteen clients residing in five units located in the Woodside, Dartmouth vicinity. One client is hearing-impaired, five are profoundly deaf. One profoundly deaf client resides at Masonview 4A; two reside at Masonview 4B; two at 7 Acadia, and the sixth client (hearing impaired) reside at 19 Provost. Two deaf clients are presently on the wait list.

Presently, Nova Scotia only has two facilities that provide accommodations and support services to the deaf/mentally challenged. Northwood Manor, Halifax is one such facility (limited to the over-50 pop); Masonview Homes, the other.

The "Kendrick Report" heads a section of its Executive Summary as follows:

> An Emphasis on the CBO System Producing More Individualized Options

and then says:

> The evaluation noted that the bulk of the CBO options still remain group living options, and that these sorts of options are increasingly seen by service users, families and the majority of professionals, as much too restrictive, quasi-institutional, and inadequately individualized in view of the more "personalized" options that are increasingly being developed in the field. It noted that personalized options of this kind have already been developed, often rather innovatively, in Nova Scotia and that this should be built upon.

If there are any individuals who need "individualized Options" or more "flexible" and "personalized" options, it is the mentally and cognitively disordered deaf. The ideal of individualized options with "more authority and decision making shared with the service users and the their families" can only be obtained for this special community by providing them with their own facility. The mix of services and goals for an integrated group of deaf and hearing people with disability renders the ideal impossible. There must be an option for them alone.

While Kendrick says many innovations would "be quite challenging to implement", it would not be difficult at all to be innovative and provide a residence for this special group of deaf people. Masonview has recently acquired property on 7 Woodside Street, Dartmouth. They propose to construct two new units (semi-detached), tailored specifically to hearing-impaired and profoundly-deaf individuals in a small option setting.

Masonview would be prepared, with the advice of their clientele, their families and other interested parties, to finance and construct this specialized home on the understanding that the cognitively and mentally disordered deaf in their care will transfer to it. This would add no expense to the Province, and is consistent with Kendrick's recommendation: "The Nova Scotia Department of Community Services Should Permit and Encourage Funds Currently Held In Established Or Fixed Residential Models To Be Used More Flexibly On Behalf Of Individuals." I enclose a copy of the plans proposed for these homes.

The transfer would, however, leave vacant beds in the homes from which the transfers were made. These beds will be available should the present moratorium on placements be lifted.

We request the Department to approve the reallocation of six hearing impaired/deaf clients to the new facility and their replacement with suitable hearing clients in Masonview's existing homes. We would appreciate very much the opportunity to meet with appropriate members of your department to further explain our ideas. Our proposal is a positive step toward developing housing and specialized programs for those with disabilities among the deaf community.

Yours very truly,

J. Walter Thompson

OCT 26 2001

Attachments – B. Burley

Appendix A-4

Department of
Community Services
Office of the Minister

PO Box 696
Halifax, Nova Scotia
B3J 2T7

The Honourable Cecil Clarke

07-00786

Mr. J. Walter Thompson, Q.C.
Burke Milton Thompson
Barristers & Solicitors
PO Box 307
Halifax, NS B3J 2N7

COPY

Dear Mr. Thompson:

Thank you for your letter of October 24, 2001, regarding a proposal on behalf of Masonview Homes to construct and operate two new Small Options for clients who are hearing impaired.

We do appreciate the specific needs of the deaf and hearing impaired community and are sensitive to these needs. As you know, there is a moratorium in place on the development of new small option facilities funded by the Department of Community Services. This moratorium will remain in place for the foreseeable future.

This does not preclude the construction of a new duplex (two small option units), as a replacement for the current six residents of Masonview Homes who are hearing impaired. These six residents may move into these two units, should the residents and their families so choose. It must be understood however, that the Department of Community Services will not provide monies for construction costs and, secondly, that the current per diem rates for these residents will remain the same. The two small options in Masonview Homes from which the resident transfers were made would be considered closed and this department would not longer place/fund residents in these settings.

The recommendations contained in the Kendrick report are under review by the Department of Community Services. We continue to review and monitor the licensed/funded residential services to determine "best practices" within the confines of fiscal responsibility and client need within Nova Scotia.

I realize this is not the reply which your client is seeking however, it is the only answer which we may give at this time.

Sincerely,

Peter G. Christie

bcc: Mr. Bob Cowell
Ms. Janet Bray
Ms. Joan Collier (2)