NOVA SCOTIA COURT OF APPEAL

Citation: *Buxton v. Nova Scotia (Attorney General)*, 2026 NSCA 7

Date: 20260129
Docket: CA 542012
Registry: Halifax

Between:

Paul Gerard Buxton

Appellant

v.

The Attorney General of Nova Scotia representing His Majesty the King in Right of the Province of Nova Scotia,
the Minister of Health and Wellness, the Department of Health and Wellness,
and the MSI Medical Consultant, Valerie Ross

Respondents

Judges:	Farrar, Bourgeois, Van den Eynden, JJ.A.
Appeal Heard:	December 4, 2025, in Halifax, Nova Scotia
Facts:	The appellant, on a waitlist for hip replacement surgery in Nova Scotia, opted to undergo the procedure at a private clinic in Ontario, incurring personal expenses for the surgery and associated costs. He did not seek prior approval from the Nova Scotia Department of Health and Wellness for reimbursement. Upon returning, he submitted a claim for reimbursement to the Nova Scotia Medical Services Insurance (MSI), which was denied (paras 1-3).
Procedural History:	• Nova Scotia Supreme Court, February 6, 2025: The trial judge dismissed Mr. Buxton's claim for reimbursement and damages related to his out-of-province surgery (para 6).

Parties' Submissions:

- Appellant: Argued that the trial judge made errors, including a reasonable apprehension of bias, and sought to introduce fresh evidence on appeal. He contended that the issue was not reimbursement per se but the fairness of the process in considering his request (paras 7-8, 19).
- Respondents: Argued that the appellant was not entitled to reimbursement as the surgery was performed at a private clinic not approved by the Minister, and that the trial judge's decision was correct (paras 9, 24-25).

Legal Issues:

- Should the fresh evidence be admitted?
- Was Mr. Buxton entitled to be reimbursed for the cost and expenses related to his surgery?
- Did the trial judge exhibit a reasonable apprehension of bias against Mr. Buxton?

Disposition:

- The appeal was dismissed with costs awarded to the respondents in the amount of $4,000, inclusive of disbursements (paras 10, 37).

Reasons:

Per Farrar J.A. (Bourgeois and Van den Eynden JJ.A. concurring):

- Fresh Evidence: The court applied the Palmer test and found the fresh evidence irrelevant and unlikely to affect the trial's outcome, thus denying its admission (paras 15-18).
- Reimbursement Entitlement: The court upheld the trial judge's interpretation of the Health Services and Insurance Act and its regulations, concluding that the appellant was not entitled to reimbursement as the surgery was not performed in a Minister-approved hospital (paras 19-26).
- Apprehension of Bias: The court found no reasonable apprehension of bias, noting that disagreement with the trial judge's decision does not constitute bias. The appellant failed to meet the heavy onus required to establish bias (paras 29-33).

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 38 paragraphs.

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Respondents

Judges:	Farrar, Bourgeois, Van den Eynden, JJ.A.
Appeal Heard:	December 4, 2025, in Halifax, Nova Scotia
Written Release:	January 29, 2026
Held:	Appeal dismissed, with costs, per reasons for judgment of Farrar, J.A.; Bourgeois and Van den Eynden, JJ.A. concurring
Counsel:	Paul Gerard Buxton, appellant in person, and Gavin Gillett Jeremy P. Smith, for the respondents

Reasons for judgment:

Introduction

[1] The appellant Paul Buxton was on a wait list for hip replacement surgery in Nova Scotia. Rather than waiting to have the surgery here, on October 16, 2020, he received a hip replacement at a private clinic, Clearpoint Surgical, in Ontario.

[2] His wife and daughter accompanied him to Ontario. He personally paid for the cost of the surgery and other associated expenses (airfare, accommodation, food, taxis and parking). Prior to having the surgery he did not contact anyone at the Department of Health and Wellness to determine if he was eligible to be reimbursed for his costs of surgery or the expenses associated with it.

[3] Upon his return to Nova Scotia, Mr. Buxton did some research and concluded he may be eligible for reimbursement from MSI (Nova Scotia Medical Services Insurance). He submitted a claim for the cost of the surgery and related expenses to MSI. The claim was denied by letter dated December 14, 2020 from MSI, and later by an undated letter from the Minister of Health and Wellness in or about early June 2021.

[4] On November 1, 2021, Mr. Buxton commenced an action against the respondents for damages and the expenses incurred as a result of the out-of-province surgery. The Statement of Claim was amended on December 22, 2021.

[5] The Statement of Claim alleges misfeasance in public office, breach of trust and negligence by the Minister of Health and Wellness, the Department of Health and Wellness and Dr. Valerie Ross, the medical consultant for MSI.

[6] The matter was heard by Justice Pierre Muise of the Nova Scotia Supreme Court on October 31, 2024. By decision dated February 6, 2025,[1] the trial judge dismissed Mr. Buxton's claim.

[7] Mr. Buxton now appeals, claiming a myriad of errors on the part of the trial judge as well as alleging a reasonable apprehension of judicial bias.

[8] He also seeks to introduce fresh evidence on the appeal.

[1] 2025 NSSC 85.

[9] On April 7, 2025, the respondents filed a Notice of Contention and an Amended Notice of Contention on July 3, 2025.

[10] For the reasons that follow, I would dismiss the motion to introduce fresh evidence and dismiss the appeal with costs to the respondents in the amount of $4,000.00 inclusive of disbursements.

[11] It is not necessary to address the issues raised by the Notice of Contention.

Issues

[12] Mr. Buxton has raised a number of issues in his Notice of Appeal. As will become apparent, the only issues that need to be addressed are as follows:

> Issue 1 – Should the fresh evidence be admitted?
>
> Issue 2 – Was Mr. Buxton entitled to be reimbursed for the cost and expenses related to his surgery?
>
> Issue 3 - Did the trial judge exhibit a reasonable apprehension of bias against Mr. Buxton?

Standard of Review

[13] On the fresh evidence motion and the allegation of reasonable apprehension of bias, there is no standard of review. I will set out the tests for both of these issues when addressing them.

[14] The determination of Mr. Buxton's entitlement to be reimbursed involves the interpretation and application of the *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197 and its *Regulations* that were in force. It is a question of law reviewable on a correctness standard.[2]

[2] *McPherson v. Campbell*, 2019 NSCA 23 at para. 18 and cases cited therein.

Analysis

Issue 1 – Should the fresh evidence be admitted?

[15] On his fresh evidence motion, Mr. Buxton seeks to introduce the following documents:

(a) Memorandum of Date Assignment Conference;

(b) Letter from Appellant to Attorney General dated August 16, 2021;

(c) Canada Health Act Annual Report 2020 – 2021;

(d) Letter written by the Honourable Diane Marleau dated January 6, 1995;

(e) Letter written by the Honourable Diane Marleau dated October 16, 1995;

(f) Decision of Justice Gabriel in *Ellingsen v. Nova Scotia (Attorney General)*, 2024 NSSC 329.

[16] Mr. Buxton says the fresh evidence is necessary to address the merits of the trial judge's decision. The test for fresh evidence was recently reviewed by this Court in *Howe v. Nova Scotia Barristers' Society*, 2025 NSCA 62:[3]

> [22] Fresh evidence […] must satisfy the four-part *Palmer* test of:
>
> 1. Whether there was due diligence in the effort to adduce the evidence at the proceeding below;
>
> 2. The relevance of the fresh evidence;
>
> 3. The credibility of the fresh evidence; and
>
> 4. Whether the fresh evidence could have reasonably affected the results.
>
> [23] In addition, the fresh evidence must be in admissible form.

[17] The memorandum of the date assignment conference forms part of the file and the respondents agree it is properly before this Court. The decision of Justice Gabriel in *Ellingsen* need not be introduced as fresh evidence. It is a legal precedent that may be referred to in these proceedings.

[3] Mr. Buxton does not introduce the fresh evidence to impugn the trial process, as a result the test in *R. v. Wolkins*, 2005 NSCA 2 is inapplicable.

[18] I will deal with the rest of the purported fresh evidence summarily. For the reasons that will become apparent from my decision on the merits, all of the remaining evidence fails on the *Palmer* test, in particular; it is irrelevant and it would not have affected the result at trial.

Issue 2 - Was Mr. Buxton entitled to be reimbursed for the cost and expenses related to his surgery?

[19] In argument before us, Mr. Buxton took the position was the issue before Justice Muise and on this appeal was not reimbursement for his surgery, but rather the fairness of the process in the consideration of his request for reimbursement. In his factum, he writes the following:

> 41. As this honourable Court has a record of everything that was said and written in the course of the proceeding in the court below***, it can confirm that at no point in the litigation did I state, claim, argue, plead or submit that I was entitled to be reimbursed for the cost of my surgery.***
>
> 42. However, the judge in his Decision stated that I "submitted" that I was entitled to be reimbursed under Section 7 of the Hospital Insurance Regulations and he re-framed the question to be answered as, "Was Mr. Buxton entitled to any of the reimbursement he requested?" ***As a result, the question that I asked the Court to answer was never answered.***
>
> [Emphasis added]

[20] Mr. Buxton's Amended Statement of Claim states:

> 10. Contrary to his duty in Section 7, the Minister, who is also known as the Health and Insurance Commission pursuant to section 37 of the Health Services and Insurance Act, refused to reimburse the Plaintiff for the cost of a medically necessary surgery that he received as an in-patient at a hospital in another province; **by preventing him from accessing the process for reimbursement established by section 7 (1)(d)** thereby causing the Plaintiff significant financial harm.
>
> […]
>
> 13. **Ms. Ross knew that she was acting without legal authority when she refused to reimburse the Plaintiff and thereby prevented him from recovering $28,000 that he was entitled to recover.**
>
> […]
>
> 19. The Department failed to provide accurate information and by doing so, it has caused harm to the Plaintiff by assisting the Minister and his agent, **the MSI**

> **Medical Consultant, to prevent the Plaintiff from being reimbursed for $28,000.**
>
> […]
>
> **Damages**
>
> SPECIAL DAMAGES: $30,927.45
>
> 51. Hospital expenses: $28,000 plus prejudgment interest from December 14, 2020 @ 5% airfare, airport parking, taxis, accommodation & meals: $2927.45

[21] Mr. Buxton was clearly claiming that he was entitled to be reimbursed for the cost of his surgery and related expenses. It was the basis of his action.

[22] In his decision, the trial judge set out the issues he had to determine as follows:

> [12] Therefore, the issues to be determined in this action are the following:
>
> 1. Was Mr. Buxton entitled to any of the reimbursement he requested?
> 2. Did Mr. Buxton establish all the elements of misfeasance in public office?
> 3. Did Mr. Buxton establish all the elements of breach of trust?
> 4. Did Mr. Buxton establish all the elements of negligence?

[23] Whether Mr. Buxton was entitled to be reimbursed permeates all of the issues which he raised at trial and on this appeal. If he was not entitled to be reimbursed then nothing that the respondents said or did would entitle him to be paid.

[24] Mr. Buxton at no time contacted the respondents or any provincial authority prior to booking his surgery in Toronto. No one represented to him he would be reimbursed, nor did he rely on being reimbursed, when he paid for the surgery. The question, as noted by the trial judge, was whether he was entitled to reimbursement at the time the surgery was performed.

[25] The trial judge reviewed the relevant portions of the *Regulations* and the *Health Services Insurance Act.* His reasons are relatively short and I will reproduce them in their entirety.

> **LAW AND ANALYSIS**
>
> **ISSUE 1: WAS MR. BUXTON ENTITLED TO ANY OF THE REIMBURSEMENT HE REQUESTED?**

[13] Mr. Buxton submits he was entitled to reimbursement for the cost of his surgery because the version of s. 7 of the *Hospital Insurance Regulations* in effect at the time did not require pre-approval for surgery in another province in Canada and did not specify that it did not apply to private clinics or hospitals.

[14] The relevant portions of s. 7, at the time, stated:

> … [W]here a resident receives insured in-patient services in a hospital, including a federal Hospital, outside Nova Scotia, the Commission shall reimburse him, or the person who on his behalf pays for the services, for the cost of the services, or the Commission shall make payment directly to the hospital for the services, provided that
>
> (a) the services are required because of accident or sudden attack of illness or the receipt of the services is approved by the Commission;
>
> (b) the out-of-province hospital which supplied the treatment is a federal Hospital or is licensed or approved as a hospital by the governmental hospital licensing authority in whose jurisdiction the hospital is situate; or is approved by the Commission if there is no such authority;
>
> ….
>
> (d) the Commission is satisfied that the person is entitled to receive the services and that they were medically necessary.

[15] There is no dispute that the surgery Mr. Buxton underwent was not "required because of accident or sudden attack of illness". The question is whether reimbursement of the cost of the surgery could be approved as being medically necessary, which question includes the issue of entitlement.

[16] The *Regulations* are made under the *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197.

[17] S. 2 (d) of the *Health Services and Insurance Act* defines "hospital" as meaning "a hospital that has been approved under the *Hospitals Act* and any other hospital or facility that has been approved as a hospital by the Minister for the purposes of this Act".

[18] S. 2 (f) of the *Hospitals Act*, R.S.N.S. 1989, c. 208, defines "hospital" as meaning:

> … a building, premise or place approved by the Minister and established and operated for the treatment of persons with sickness, disease or injury and the prevention of sickness or disease, and includes a facility, a maternity hospital, a nurses' residence and all buildings, land and equipment used for the purposes of the hospital, or means, where the context requires, a body corporate established to own or operate a hospital, or a program approved by the Minister as a hospital pursuant to this Act or any other Act of the Legislature.

[19] S. 74 of the *Hospitals Act*, states:

> 74 (1) The Governor in Council may enter into and carry out, or may authorize the Minister or a member of the Executive Council to enter into and carry out, an agreement respecting the observation, examination, investigation, treatment, care and maintenance of persons in hospitals with the Government of Canada or with another government or agency or any combination thereof.
>
> (2) Unless an agreement has been made under this Section, no person for whom the Government of Canada or a government other than the Government of the Province is responsible shall be entitled to receive observation, examination, investigation, treatment, care or maintenance in a hospital in the Province at the expense of the Province.

[20] "Minister" is defined under both Acts as meaning the Minister of Health and Wellness.

[21] These applicable definitions of "hospital", and s. 74 of the *Hospitals Act*, clearly show the reference to "hospital" in s. 7 of the *Regulations* is a reference to a hospital that has been approved by the Minister.

[22] Harold McCarthy, Director of Insured Services for the Department of Health and Wellness, at the relevant time, testified that there is a list of hospitals in other provinces that are approved for reciprocal billing in Nova Scotia and that neither Clearpoint, nor any other private hospital, is on that list. Only public hospitals are on the list. As he had not found Clearpoint on the list, he checked with a representative of the Ontario OHIP and was informed that Clearpoint was licensed under the *Private Hospitals Act* of Ontario and privately owned.

[23] Mr. McCarthy testified that there is an interprovincial health representatives committee which determines the hospitals that are appropriate reciprocal billing facilities, and which may be approved by the Minister.

[24] There is no evidence that the Minister ever approved Clearpoint as a hospital for the purposes of reciprocal billing, nor that it is a hospital for the purposes of s. 7 of the *Regulations*, nor that it was ever determined to be an appropriate reciprocal billing facility.

[25] As such, Mr. Buxton was not, and is not, eligible for reimbursement under s. 7 of the Regulations.

[26] "Commission" is defined under the *Health Services and Insurance Act* as meaning the Health Services and Insurance Commission. However, Mr. McCarthy testified that the Commission had never been formed and that references to the Commission are effectively references to the Minister and his delegates.

[27] So, at the relevant time, the Minister or his delegates also determined whether they approved the receipt of services by a person having obtained out-of-province medical services, whether that person was entitled to receive them and whether they were medically necessary.

> [28] However, having determined that Mr. Buxton had not undergone his surgery in a Minister-approved hospital, the Minister knew that he was automatically ineligible and, thus, there was no need to make any determination in relation to the particular services Mr. Buxton received.
>
> **[29]** ***There is no dispute that the Out of Province Travel and Accommodation Assistance Policy of the Department of Health and Wellness requires preapproval to gain entitlement to reimbursement for travel and accommodations. No legislation, nor evidence, to the contrary has been brought to the court's attention. I am not aware of any. Mr. Buxton acknowledged he did not obtain preapproval. Therefore, he was not, and is not, entitled to reimbursement for travel and accommodation expenses related to his surgery in Ontario.***
>
> [Emphasis added]

[26] The trial judge properly cited the appropriate legislation and applied it correctly to the facts in Mr. Buxton's case. In doing so, he arrived at the proper conclusion that Mr. Buxton was not entitled to reimbursement for expenses associated with his surgery in Toronto.

[27] Having reached that conclusion, the remainder of the allegations in Mr. Buxton's Statement of Claim fell by the wayside.

[28] Although it was unnecessary, the trial judge also addressed Mr. Buxton's other arguments and concluded that the decision to deny benefits was correct and dismissed the other claims.

Issue 3 - Did the trial judge exhibit a reasonable apprehension of bias against Mr. Buxton?

[29] Mr. Buxton argues the trial judge had a reasonable apprehension of bias by asking Mr. Buxton about the significance of arguments that he was making and the relevance of certain information. This Court in *R. v. Nevin*, 2024 NSCA 64 defined the test for a reasonable apprehension of bias:

> [47] Bias has been defined as "a predisposition to decide an issue or a cause in a certain way which does not leave the judicial mind perfectly open to persuasion or conviction". The test for establishing a reasonable apprehension of bias has been consistently applied by Canadian courts of all levels since the case of *Committee for Justice and Liberty v. Canada (National Energy Board)*:
>
> > […] 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—and having thought the matter through—conclude. Would he think that it is more likely than not that [the trier of fact], whether consciously or unconsciously, would not decide fairly."
>
> […] The grounds for this apprehension must, however, be substantial and I entirely agree with the Federal Court of Appeal which refused to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience".

[30] In his factum, the appellant says the following on the issue of bias:

> 117. The previous seven issues show that the Judge consistently deprived me of my right to equal treatment under the law and created an apprehension of bias by routinely breaching legislative provisions and common law rules, principles and doctrines in order to arrive at decisions that prejudiced me and favoured the Respondents. However, as can be seen from the conduct that I have identified below, an apprehension of bias was inherent in almost everything that was said and done by the Judge in the course of the trial and in his decision:
>
> […]
>
> 142. The Judge made an overwhelming number of "errors" and yet not one of them favoured my position in the litigation. Therefore I submit that, on the totality of the facts, it is clear that the Judge was biased in favour of the Respondents and that I have suffered as a result.

[31] Mr. Buxton conflates being ruled against with having a reasonable apprehension of bias against him.

[32] There is a heavy onus on Mr. Buxton to establish a reasonable apprehension of bias. Simple disagreement with the decision and findings of the trial judge is not sufficient. An informed person, viewing the matter realistically and practically, would not think it was more likely than not that Justice Muise would fail to decide the issues fairly.

[33] I would dismiss this ground of appeal.

Notice of Contention

[34] As previously noted, in light of my decision on the merits, it is not necessary to address the Notice of Contention. However, I will take it into consideration when assessing costs on the appeal.

Costs

[35] Costs below were awarded against Mr. Buxton in the amount of approximately $15,000.00. The respondents seek 40% of that amount or $5,887.00 on this appeal.

[36] The filing of the Notice of Contention was unnecessary and required Mr. Buxton to address an issue that was not warranted. As a result, I would reduce the amount sought and award the respondents costs of the appeal in the amount of $4,000.00 inclusive of disbursements.

Conclusion

[37] The fresh evidence motion is denied, the appeal is dismissed with costs to the respondents in the amount of $4,000.00 inclusive of disbursements.

[38] Finally, at various times in these proceedings Mr. Buxton made disparaging comments about the conduct of the individual respondents and their counsel. There is nothing in the record which would support these criticisms.

Farrar, J.A.

Concurred in:

Bourgeois, J.A.
Van den Eynden, J.A.