

**SUPREME COURT OF CANADA**

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| **Citation:** Halifax (Regional Municipality) *v.* Nova Scotia (Human Rights Commission), 2012 SCC 10, [2012] 1 S.C.R. 364 | **Date:** 20120316**Docket:** 33651 |

**Between:**

**Halifax Regional Municipality, a body corporate**

**duly incorporated pursuant to the laws of Nova Scotia**

Appellant

and

**Nova Scotia Human Rights Commission,**

**Lucien Comeau, Lynn Connors and Her Majesty**

**the Queen in Right of the Province of Nova Scotia**

Respondents

- and -

**Canadian Human Rights Commission**

Intervener

**Coram:** McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein and Cromwell JJ.

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| **Reasons for Judgment:**(paras. 1 to 60) | Cromwell J. (McLachlin C.J. and LeBel, Deschamps, Fish, Abella and Rothstein JJ. concurring) |

Halifax (Regional Municipality) ***v.*** Nova Scotia (Human Rights Commission), 2012 SCC 10, [2012] 1 S.C.R. 364

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**Indexed as:** Halifax (Regional Municipality) ***v.*** Nova Scotia

(Human Rights Commission)

2012 SCC 10

File No.: 33651.

2011:  October 19; 2012:  March 16.

Present: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein and Cromwell JJ.

on appeal from the court of appeal for nova scotia

 *Administrative law — Judicial review — Standard of review — Complaint filed with Nova Scotia Human Rights Commission — Commission requesting appointment of board of inquiry — Decision set aside on judicial review — Board prohibited from proceeding — Appeal allowed — Whether chambers judge applied correct standard of review — Whether Commission erred in requesting appointment of board of inquiry.*

 The complainant, a francophone Acadian parent who had children enrolled in one of the French‑first‑language schools in Halifax, filed complaints alleging that the funding arrangements for the schools discriminated against him and his children on the basis of their Acadian ethnic origin. Following municipal amalgamation and the consequent amalgamation of the affected school boards, Halifax imposed a tax to allow it to satisfy the statutory requirement that it maintain supplementary funding to schools that had received such funding prior to amalgamation. However, Halifax schools that formed part of the newly created Conseil scolaire acadien provincial, a province‑wide public school board that administers French‑first‑language schools, did not receive supplementary funding. Legislation did not require Halifax to provide it to these schools.

 After investigating the complaints, the Commission requested that a board of inquiry be appointed. Shortly thereafter, a *Charter* challenge brought by other parents led to a statutory amendment providing for supplementary funding for Conseil schools in Halifax. The *Charter* challenge was dismissed on consent. Halifax applied for judicial review of the Commission’s decision to refer the complaint against it to a board of inquiry. A judge of the Nova Scotia Supreme Court set the referral decision aside and prohibited the board from proceeding. The Nova Scotia Court of Appeal reversed and cleared the way for the board of inquiry to go ahead.

 Held: The appeal should be dismissed.

 Judicial intervention is not justified at this preliminary stage of the Commission’s work. The Commission did not decide that the complaint fell within the purview of the Act. Instead, the Commission made a discretionary decision that an inquiry was warranted in all of the circumstances. That decision should be reviewed for reasonableness. The decision was reasonable in the circumstances of this case. Whether judicial intervention is justified at this preliminary stage of the Commission’s work turns mainly on the ongoing authority of this Court’s decision in *Bell v. Ontario Human Rights Commission*, [1971] S.C.R. 756 (“*Bell* (1971)”). It remains good authority for the proposition that referral decisions are subject to judicial review, but, beyond that, itshould no longer be followed and courts should exercise great restraint in intervening at this early stage of the process. Under the contemporary Canadian law of judicial review, questions that would have been considered jurisdictional under *Bell* (1971) would not be so quickly labelled as such. Moreover, the notion of “preliminary questions”, which permeates the reasoning in *Bell* (1971), has long since been abandoned.Even more fundamentally, contemporary courts would not so quickly accept that questions such as the one dealt with in *Bell* (1971) can be answered by an abstract interpretive exercise conducted without regard to the statutory context. Early judicial intervention also risks depriving the reviewing court of a full record bearing on the issue; allows for judicial imposition of a “correctness” standard with respect to legal questions that, had they been decided by the tribunal, might be entitled to deference; encourages an inefficient multiplicity of proceedings in tribunals and courts; and may compromise carefully crafted, comprehensive legislative regimes. Moreover, contemporary administrative law accords more value to the considered opinion of the tribunal on legal questions, whether the tribunal’s ruling is ultimately reviewable in the courts for correctness or reasonableness.

 Given the breadth of the Commission’s discretion and the preliminary nature of its referral decision, a reviewing court should intervene in such a decision only if there is no reasonable basis in law or on the evidence to support it. This standard of review ensures that the reviewing court gives due deference to both the administrative decision and the administrative process. Whatever the ultimate merit of the complaints in this case might be, the information before the Commission provided it with a reasonable basis for referring the novel and complex complaints to a board of inquiry. The report of the Commission’s investigator, along with the surrounding circumstances, provided a reasonable basis in law and on the evidence for the Commission’s decision and it made no reviewable error.

**Cases Cited**

 **Overruled:** *Bell v. Ontario Human Rights Commission*, [1971] S.C.R. 756, rev’g *R. v. Tarnopolsky, Ex parte Bell*, [1970] 2 O.R. 672; **referred to:**  *Cowan v. Aylward*, 2002 NSCA 76, 205 N.S.R. (2d) 324; *Green v. Human Rights Commission (N.S.)*, 2011 NSCA 47, 303 N.S.R. (2d) 211; *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854; *Zündel v. Canada (Attorney General)*, [1999] 4 F.C. 289, aff’d (2000), 195 D.L.R. (4th) 394; *Bell Canada v. Communications, Energy and Paperworkers Union of Canada*, [1999] 1 F.C. 113; *Syndicat des employés de production du Québec et de l’Acadie v. Canada (Canadian Human Rights Commission)*, [1989] 2 S.C.R. 879; *Losenno v. Ontario Human Rights Commission* (2005), 78 O.R. (3d) 161; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *R. v. Tottenham and District Rent Tribunal, Ex parte Northfield (Highgate) Ltd.*, [1957] 1 Q.B. 103; *R. v. Bernard*, [1988] 2 S.C.R. 833; *R. v. Chaulk*, [1990] 3 S.C.R. 1303; *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp*., [1979] 2 S.C.R. 227; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471; *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048; *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, [2011] 2 F.C.R. 332; *Ontario Human Rights Commission v. Simpsons‑Sears Ltd.*, [1985] 2 S.C.R. 536; *Irvine v. Canada (Restrictive Trade Practices Commission)*, [1987] 1 S.C.R. 181; *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*,[1997] 3 S.C.R. 440; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Violette v. New Brunswick Dental Society*, 2004 NBCA 1, 267 N.B.R. (2d) 205; *Air Canada v. Lorenz*, [2000] 1 F.C. 494; Szczecka v. Canada (Minister of Employment and Immigration) (1993), 170 N.R. 58; *Psychologist Y v. Board of Examiners in Psychology*, 2005 NSCA 116, 236 N.S.R. (2d) 273; *Potter v. Nova Scotia Securities Commission*, 2006 NSCA 45, 246 N.S.R. (2d) 1; *Vancouver (City) v. British Columbia (Assessment Appeal Board)* (1996), 135 D.L.R. (4th) 48; *Mondesir v. Manitoba Assn. of Optometrists* (1998), 163 D.L.R. (4th) 703; *U.F.C.W., Local 1400 v. Wal‑Mart Canada Corp.*, 2010 SKCA 89, 321 D.L.R. (4th) 397; *Council of Canadians with* *Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650; *Alberta* *(Information and Privacy Commissioner) v.* *Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *Canada (National Research Council) v. Zhou*, 2009 FC 164 (CanLII).

**Statutes and Regulations Cited**

*Act to Amend Chapter 18 of the Acts of 1998, the Municipal Government Act*, S.N.S. 2006, c. 38, ss. 1, 2.

*Boards of Inquiry Regulations*, N.S. Reg. 221/91, s. 1.

*Canadian Charter of Rights and Freedoms*, s. 15.

*Canadian Human Rights Act*, R.S.C. 1985, c. H‑6, s. 49(1) [am. 1998, c. 9, s. 27].

*Education Act*, S.N.S. 1995‑96, c. 1, s. 76.

*Establishment of Conseil scolaire acadien provincial*,N.S. Reg. 38/2005.

*Establishment of the Halifax Regional School Board*,N.S. Reg. 40/2005.

*Halifax Regional Municipality Act*, S.N.S. 1995, c. 3, s. 84.

*Human Rights* *Act*, R.S.N.S. 1989, c. 214, ss. 5(1)(a), (q), 6(a), 29, 32A(1), 34(1), (7), (8), 36.

*Municipal Government Act*, S.N.S. 1998, c. 18, ss. 530, 560.

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 APPEAL from a judgment of the Nova Scotia Court of Appeal (MacDonald C.J.N.S. and Oland and Hamilton JJ.A.), 2010 NSCA 8, 287 N.S.R. (2d) 329, 912 A.P.R. 329, 66 M.P.L.R. (4th) 19, 8 Admin. L.R. (5th) 274, [2010] N.S.J. No. 54 (QL), 2010 CarswellNS 75, reversing a decision of Boudreau J., 2009 NSSC 12, 273 N.S.R. (2d) 258, 872 A.P.R. 258, 184 C.R.R. (2d) 295, 55 M.P.L.R. (4th) 69, 66 C.H.R.R. D/1, [2009] N.S.J. No. 13 (QL), 2009 CarswellNS 13. Appeal dismissed.

 Randolph Kinghorne and Karen L. Brown, for the appellant.

 John P. Merrick, Q.C., and Kelly L. Buffett, for the respondent the Nova Scotia Human Rights Commission.

 Michel Doucet, Mark C. Power and Jean‑Pierre Hachey, for the respondent Lucien Comeau.

 Edward A. Gores, Q.C., for the respondent Her Majesty the Queen in Right of the Province of Nova Scotia.

 No one appeared for the respondent Lynn Connors.

 Philippe Dufresne, for the intervener the Canadian Human Rights Commission.

 The judgment of the Court was delivered by

 Cromwell J. —

I. Introduction

1. The Nova Scotia Human Rights Commission (the “Commission”) enforces and administers the *Human Rights* *Act*, R.S.N.S. 1989, c. 214 (the “Act”), and the Act gives the Commission considerable discretion as to how it carries out that mandate. When there is a complaint that the Act has been violated and the Commission is satisfied that an inquiry is warranted in all of the circumstances, it may set up a board of inquiry to look into the matter. When the Commission sets up a board of inquiry, what is the role of a court that is asked to review that decision?
2. This question arises out of the Commission’s decision to refer Lucien Comeau’s complaints of discrimination to a board of inquiry. On judicial review, a Nova Scotia Supreme Court judge set aside that decision and prohibited the board from proceeding (2009 NSSC 12, 273 N.S.R. (2d) 258). The Nova Scotia Court of Appeal reversed and cleared the way for the board of inquiry to go ahead (2010 NSCA 8, 287 N.S.R. (2d) 329). The difference between the two courts concerned the proper scope of judicial review of the Commission’s decision. The appeal to this Court raises two main questions.
3. The first concerns the standard of judicial review of the Commission’s decision to refer the complaint to a board of inquiry. My view is that, given the breadth of the Commission’s discretion and the preliminary nature of its decision, a reviewing court should intervene only if there is no reasonable basis in law or on the evidence to support the Commission’s decision. The second question is whether, applying that standard of judicial review, the Commission made any reviewable error in appointing the board of inquiry. In my opinion, there was a reasonable basis in law and on the evidence for the Commission’s decision here and it made no reviewable error.
4. I therefore agree with the Court of Appeal that the Commission’s decision should be upheld and I would dismiss the appeal.

II. Overview of Facts and Proceedings

A. *Facts*

1. Lucien Comeau complained to the Nova Scotia Human Rights Commission that the funding arrangements for the French-first-language schools in Halifax discriminated against him and his children on the basis of their Acadian ethnic origin. In order to understand the complaint, some background about school funding in Nova Scotia is required.
2. In the mid-1990s, Nova Scotia created the Halifax Regional Municipality (“Halifax”) by amalgamating the cities of Halifax and Dartmouth, the Town of Bedford and the County of Halifax: the *Halifax Regional Municipality Act*, S.N.S. 1995, c. 3, repealed by the *Municipal Government Act*, S.N.S. 1998, c. 18, s. 560 (“*MGA*”). Later, their school boards were similarly amalgamated, forming the Halifax Regional School Board: the *Establishment of the Halifax Regional School Board*, N.S. Reg. 40/2005.Before amalgamation, the cities of Halifax and Dartmouth provided supplementary funding to their respective school boards. (Provincial law allowed other municipalities to do the same, but no others did.) After amalgamation, Halifax was required by statute to maintain supplementary funding to the schools that had received funding from the former cities of Halifax and Dartmouth: the *Halifax Regional Municipality Act*, s. 84, and, after its repeal, the *MGA*, s. 530. Halifax raised this supplementary funding through taxation and then provided the funds to the relevant school boards — the Halifax and Dartmouth District School Boards at first, and then the Halifax Regional School Board after the school boards’ amalgamation. (Some additional funds were also raised and distributed in parts of Halifax other than in the former cities.)
3. At around the same time as the amalgamation, the Province created the *Conseil scolaire acadien provincial* (“Conseil”), a province-wide public school board that administers French-first-language schools: the *Education Act*, S.N.S. 1995-96, c. 1; the *Establishment of Conseil scolaire acadien provincial*, N.S. Reg. 38/2005. The Conseil’s funding came entirely from the Province and, in this respect, it differed from other Nova Scotia school boards, which also receive funding from the municipalities they serve.
4. Conseil schools did not receive the supplemental funding from Halifax that was given to other public schools in the two former cities. Mr. Comeau took exception to this state of affairs. He is a francophone Acadian parent who had children enrolled in l’École Bois-Joli, one of the three Conseil schools in the former cities. He filed a complaint against Halifax with the Commission in June 2003, and a similar complaint against the Province (specifically, against Service Nova Scotia and Municipal Relations and the Department of Education) in July 2004. (The Province made it clear in oral argument that it does not seek reversal of the Court of Appeal’s decision, meaning that the complaint against it is therefore no longer in issue.)
5. In his complaints, Mr. Comeau relied on ss. 5(1)(a) and (q) of the Act to allege discrimination in respect of the provision of a service or facilities on the basis of ethnic origin. He also alleged violation of his rights under s. 15 of the *Canadian Charter of Rights and Freedoms*. The Commission appointed an investigator, who filed three similar but separate reports on the complaints. In these reports, the investigator suggested that Mr. Comeau’s complaints “would appear to establish a *prima facie* case of discrimination” (A.R., at p. 136). It is worth noting that while the *MGA* did not provide for supplementary funding to Conseil schools, Halifax received a legal opinion that s. 76 of the *Education Act* would allow it to provide such funding should it wish to do so.
6. The complaints were put on hold for a time as a result of other litigation raising similar issues. In August 2004, five parents of children in Conseil schools launched proceedings in the Supreme Court of Nova Scotia. These parents contended that the funding scheme in s. 530 of the *MGA* violated the *Charter*, and asked for various constitutional remedies. The Commission decided to defer Mr. Comeau’s two complaints pending resolution of this *Charter* challenge. The *Charter* challenge, though, was itself adjourned pending negotiations and proposed legislative amendment. The Commission therefore reactivated the complaints process, and, on November 3, 2006, requested the appointment of a board of inquiry to deal with Mr. Comeau’s complaints. At the Commission’s request, the Chief Judge of the Nova Scotia Provincial Court appointed such a board on November 9, 2006.
7. Not long after, on November 23, 2006, an amendment to the *MGA* received Royal Assent. This amendment provided for supplementary funding for Conseil schools in Halifax, retroactive to April 1, 2006 (*An Act to Amend Chapter 18 of the Acts of 1998, the Municipal Government Act*, S.N.S. 2006, c. 38, ss. 1 and 2). As a consequence of this, the parties to the *Charter* challenge settled the matter and signed a consent order dismissing the action.

B. *Proceedings*

 (1) Supreme Court of Nova Scotia, 2009 NSSC 12, 273 N.S.R. (2d) 258 (Boudreau J.)

1. Halifax applied to the Supreme Court of Nova Scotia for orders quashing the Commission’s decision to refer Mr. Comeau’s complaint against it to a board of inquiry and prohibiting the board from proceeding. The application was granted. The chambers judge was of the view that, through the referral decision, the Commission had decided that the complaint fell under theAct. This determination was, in his view, one of jurisdiction subject to correctness review. The judge concluded that the absence of jurisdiction was clear and there would be no benefit from a fuller inquiry by the board. The judge considered but rejected the Commission’s submission that the board of inquiry had the capacity to consider a jurisdictional challenge and that the court should not intervene until the board of inquiry had ruled on the question. Relying in part on this Court’s decision in *Bell v. Ontario Human Rights Commission*, [1971] S.C.R. 756 (“*Bell* (1971)”), he decided that it was appropriate to intervene at this early stage and to prohibit the board from embarking on a potentially long but ultimately fruitless proceeding.

 (2) Nova Scotia Court of Appeal, 2010 NSCA 8, 287 N.S.R. (2d) 329 (MacDonald C.J.N.S. (Oland and Hamilton JJ.A. concurring))

1. The Commission and Mr. Comeau successfully appealed to the Nova Scotia Court of Appeal.
2. The Court of Appeal considered the appropriateness of a superior court intervening “to stifle a Board of Inquiry even before it begins” (para. 16). The court accepted that, in appropriate circumstances, the courts have discretion to prohibit the work of administrative bodies in mid-stream. However, the Court of Appeal referred to cases commenting that this Court’s decision in *Bell* (1971) is of doubtful ongoing authority and should not be applied too widely. The Court of Appeal noted that *Bell* (1971) represents a “high watermark when it comes to pre-emptively curtailing administrative decisions” (para. 18). When courts are asked to prohibit the ongoing work of administrative bodies, they should exercise restraint. The appropriate test for judicial intervention at this early stage of the process is that the tribunal’s lack of jurisdiction to deal with the matter is “clear and beyond doubt” (para. 22). This judicial reluctance to interfere while the administrative process is unfolding is the result of “significant deference” to the Commission’s broad mandate to investigate complaints and to the Commission’s broad discretion to request the appointment of a board of inquiry (paras. 24-29). Applying this approach, the Court of Appeal found that the chambers judge had made two errors.
3. First, he had erroneously characterized Mr. Comeau’s complaints as seeking only legislative reform. In fact, Mr. Comeau had asked for, and the Commission had pointed to the possibility of, other remedies which were not clearly and beyond doubt outside the Commission’s mandate (paras. 32-33). Second, the chambers judge had misapprehended the nature of the Commission’s decision. All the Commission had done was to refer the complaint to a board of inquiry; the Commission had not decided any issue on its merits. These remained for the board of inquiry to address. Both of these errors represented “palpable and overriding errors of fact” on the part of the chambers judge, while his failure to accord deference to the Commission’s decision represented an error of law (paras. 33 and 36 (emphasis deleted); see also para. 37).
4. In the Court of Appeal’s view, it was not clear and beyond doubt that the complaint was outside the board’s jurisdiction and the chambers judge had consequently been wrong to intervene. The court allowed the appeal and reinstated the appointment of the board of inquiry.

III. Analysis

A. *The Applicable Standard of Review*

1. The resolution of two issues separated the chambers judge and the Court of Appeal in their understanding of the role of the reviewing court in this case. The first relates to the applicable standard of judicial review. This turns mainly on the nature of the Commission’s decision. My view is that the Commission’s decision was not a determination of its jurisdiction but rather a discretionary decision that an inquiry was warranted in all of the circumstances. That discretionary decision should be reviewed for reasonableness. The second issue raises the related question of when judicial intervention is justified at this preliminary stage of the Commission’s work. This turns mainly on the ongoing authority of this Court’s decision in *Bell* (1971). In my view, *Bell* (1971)should no longer be followed and courts should exercise great restraint in intervening at this early stage of the process. Further, the reasonableness standard of review, applied in the context of proposed judicial intervention at this preliminary stage of the Commission’s work, may be expressed as follows: is there a reasonable basis in law or on the evidence for the Commission’s conclusion that an inquiry is warranted? Applying that test here, the Commission’s decision should have been allowed to stand.

 (1) The Nature of the Commission’s Decision

1. The chambers judge applied the correctness standard of review because he thought that the Commission had made a determination that “the complaint fell under the[Act]and therefore under its jurisdiction” (para. 53). The Court of Appeal disagreed with this characterization of the Commission’s decision. Rather than making a decision about its jurisdiction, the Commission had “simply decided to advance the complaint to the next level by establishing an independent Board of Inquiry” (para. 35).
2. I respectfully agree with the Court of Appeal. The Commission’s decision to refer a complaint to a board of inquiry is not a determination of whether the complaint falls within the Act. Rather, within the scheme of the Act, the Commission plays an initial screening and administrative role; it may, for example, decide to refer a complaint to a board of inquiry so that the board can resolve a jurisdictional matter.
3. The Act sets up a complete regime for the resolution of human rights complaints. Within this regime, the Commission performs a number of functions related to the enforcement and promotion of human rights. With regard to complaints, it acts as a kind of gatekeeper and administrator. Under s. 29 as it read at the relevant time, the Commission was required to “instruct the Director [of Human Rights] or some other officer to inquire into and endeavour to effect a settlement” of a complaint, provided that the complaint is in writing in the prescribed form or that the Commission “has reasonable grounds for believing that a complaint exists”.
4. Where a complaint is not settled or otherwise determined, the Commission may appoint a board of inquiry to inquire into it (s. 32A(1)).  The Commission has a broad discretion as to whether or not to take this step. The Commission may do so if it “is satisfied that, having regard to all circumstances of the complaint, an inquiry thereinto is warranted” (*Boards of Inquiry Regulations*, N.S. Reg. 221/91, s. 1). There is no legislative requirement that the Commission determine that the matter is within its jurisdiction or that it passes some merit threshold before appointing a board of inquiry; the Commission must simply be “satisfied” having regard to all the circumstances of the complaint that an inquiry is warranted.
5. Once appointed, a board of inquiry conducts a public hearing into the complaint and decides the matter. The board of inquiry has the authority to determine any question of fact or law required to make a determination on whether there has been a contravention of the Act, and has the power to remedy such contravention (ss. 34(1), (7) and (8)). There is an appeal to the Court of Appeal from a decision of the board of inquiry on questions of law (s. 36).
6. What is important here is that a decision to refer a complaint to a board of inquiry is not a determination that the complaint is well founded or even within the purview of the Act. Those determinations may be made by the board of inquiry. In deciding to refer a complaint to a board of inquiry, the Commission’s function is one of screening and administration, not of adjudication.
7. The nature of this role has been recognized in the Nova Scotia case law and in the case law which has developed in relation to the similarly worded provisions of the *Canadian* *Human Rights Act*, R.S.C. 1985, c. H-6: see *Cowan v. Aylward*, 2002 NSCA 76, 205 N.S.R. (2d) 324, at para. 40; *Green v. Human Rights Commission (N.S.)*, 2011 NSCA 47, 303 N.S.R. (2d) 211, at paras. 35-36; *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854, at para. 53; *Zündel v. Canada (Attorney General)*, [1999] 4 F.C. 289 (T.D.), at para. 20 (“*Zündel* (1999)”), aff’d (2000), 195 D.L.R. (4th) 394 (F.C.A.) (“*Zündel* (2000)”); and *Bell Canada v. Communications, Energy and Paperworkers Union of Canada*, [1999] 1 F.C. 113 (“*Bell* (1999)”), at paras. 35-37. While there is some limited assessment of the merits inherent in this screening and administrative role, the Commission is not making any final determination about the complaint’s ultimate success or failure: see, e.g., *Cooper*, at para. 53; and *Syndicat des employés de production du Québec et de l’Acadie v. Canada (Canadian Human Rights Commission)*, [1989] 2 S.C.R. 879, at p. 899.
8. Moreover, the Commission’s referral decision is a discretionary one. Subsection 32A(1) of the Act provides that the Commission “may” appoint a board. Section 1 of the *Boards of Inquiry Regulations* expands on this permissive language, stating that the Commission “may” appoint a board “if the Commission is satisfied that, having regard to all circumstances of the complaint, an inquiry thereinto is warranted” (see *Green*, at para. 5). It is up to the Commission to perform an initial investigation of a complaint and decide whether or not an inquiry is warranted in all of the circumstances.
9. Having regard to the statutory scheme and the Commission’s role in it, I agree with the Court of Appeal that the chambers judge erred in his characterization of the decision to appoint a board of inquiry. The Commission’s referral decision did not involve the sort of determinations that the chambers judge thought it did. Instead, the Commission’s function was simply one of exercising its statutory discretion to decide whether it was satisfied that, having regard to all of the circumstances of the complaint, an inquiry by a board of inquiry was warranted, a function “more administrative than judicial in nature”:  *Losenno v. Ontario Human Rights Commission* (2005), 78 O.R. (3d) 161 (C.A.), at para. 15.
10. Discretionary decisions by administrative tribunals, such as the Commission’s referral decision in issue here, are normally subject to judicial review on a reasonableness standard: *Dunsmuir* *v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 53. Halifax, however, relies on the decision of this Court in *Bell* (1971) for the proposition that neat and discrete points of law on which referral decisions rely are reviewed for correctness by the courts and that such review may occur before the administrative tribunal itself has addressed the issue. The continuing authority of *Bell* (1971) was the second point on which the chambers judge and the Court of Appeal disagreed and I turn to it now.

 (2) *Bell* (1971)

1. In *Bell* (1971), Mr. McKay, a black man from Jamaica, complained to the Ontario Human Rights Commission alleging discrimination on the basis of race, colour and place of origin by being refused rental of living accommodations contrary to the *Ontario Human Rights Code, 1961-62*, S.O. 1961-62, c. 93, s. 3, as amended by S.O. 1967, c. 66, s. 1*.* The *Code* contained anti-discrimination provisions with respect to refusal of “occupancy of any . . . self-contained dwelling unit” (s. 3). The Commission referred the complaint to a board of inquiry whose role was to investigate the matter, determine whether it was supported by the evidence and, if so, recommend a course of action to the Commission. At the outset of the hearing before the board of inquiry, the respondent to the complaint asked that it be dismissed for lack of jurisdiction, contending that the accommodation in question was not a “self-contained dwelling unit” and thus did not fall within the purview of the *Code*. The board refused to make the finding that the premises were not a self-contained dwelling unit because, at that stage of the proceedings, there was no way of knowing whether they were or not.
2. The respondent then applied to the Supreme Court of Ontario for an order prohibiting the board from proceeding and filed affidavit evidence supporting his contention that the premises were not self-contained. The judge hearing the application found that the premises were not a self-contained dwelling unit and prohibited the board from proceeding with the inquiry. The Court of Appeal reversed on the ground that the judicial intervention by way of prohibition had been premature. As Laskin J.A., as he then was, put it on behalf of a unanimous five-member panel of the Court of Appeal, “if no objection can be taken to the establishment or constitution of the board of inquiry it is premature to seek to stall its proceedings at their inception on the ground of an apprehended error of law . . . which it is assumed the board will make”: *sub nom.* *R. v. Tarnopolsky, Ex parte Bell*, [1970] 2 O.R. 672, at p. 679. On the further appeal to this Court, the question was whether the respondent, who was convinced that the complaint did not relate to a matter within the purview of the *Code*, was precluded from having that issue determined by a court until the board had done so (p. 769).
3. A majority of this Court answered the question in the negative and restored the order of the judge at first instance prohibiting the board from continuing with the inquiry. On the subject of prematurity, Martland J., writing for the majority, quoted with approval from *R. v. Tottenham and District Rent Tribunal, Ex parte Northfield (Highgate) Ltd.*, [1957] 1 Q.B. 103. There, Lord Goddard C.J. had addressed the question of when it was appropriate for a court to grant prohibition in an ongoing administrative proceeding on the basis of a point the tribunal had not yet considered. He stated that

 it would be impossible and not at all desirable to lay down any definite rule as to when a person is to go to the tribunal or come here for prohibition where the objection is that the tribunal has no jurisdiction. . . . For myself, I would say that where there is a clear question of law not depending upon particular facts . . . there is no reason why the applicants should not come direct to this court for prohibition rather than wait to see if the decision goes against them . . . . [Emphasis added; p. 108.]

1. Relying on this passage, the Court rejected the position adopted by the Court of Appeal that the application for prohibition had been premature. Martland J. noted that the facts about the nature of the premises related only to the structure of the building and did not involve choosing between the conflicting testimonies of witnesses. He took the view that the judge to whom the application for prohibition was made had discretion to grant it or not. However, he had not erred in intervening in this case. The board of inquiry had “no power to deal with alleged discrimination in matters not within the purview of the Act” and the respondent “was not compelled to await the decision of the board on that issue before seeking to have it determined in a court of law. . .” (p. 775). (I should add that the Court was concerned that there might not be any effective judicial review after the board completed its work: see p. 769.)
2. In the case before us, the chambers judge relied on *Bell* (1971) in deciding that it was appropriate to deal with “the question of the Commission’s jurisdiction” at a preliminary stage — indeed, before there had been any determination of whether the complaints fell within the purview of the Act (para. 48). He was of the view that there would be no benefit obtained from “a fuller or expanded factual background . . . in order to adjudicate and decide the application and issues” raised in the prohibition proceedings (para. 48). The Court of Appeal, for its part, noted that courts should take a restrained approach to “pre-emptively curtailing” administrative decisions (para. 18). After referring to cases that cautioned against giving *Bell* (1971) too broad a reading and even questioning its ongoing authority, the Court of Appeal stated that “a tribunal’s work should not be prohibited unless its lack of jurisdiction is ‘clear and beyond doubt’” (para. 22). Applying that test, the Court of Appeal concluded that the board’s lack of jurisdiction was not “clear and beyond doubt” and that the chambers judge should not have prohibited it from conducting its inquiry (para. 34).
3. I accept *Bell* (1971) to the extent that it stands for the proposition that referral decisions such as the one at issue in this case are subject to judicial review. However, I consider that, beyond that, *Bell* (1971) should no longer be relied on. Subsequent developments in Canadian administrative law have undermined the validity of this precedent to the point that there are compelling reasons for no longer following it: see *R. v. Bernard*, [1988] 2 S.C.R. 833, at pp. 849-50 and 855-58; *R. v. Chaulk*, [1990] 3 S.C.R. 1303, at p. 1353.
4. There are two aspects of *Bell* (1971) to be considered. One is its holding that whether the premises were “self-contained” was a preliminary jurisdictional question on which the courts owed no deference to the views of the tribunal and with respect to which there was no point in waiting for the tribunal’s decision. Martland J. noted that whether the dwelling was self-contained concerned “an issue of law respecting the scope of the operation of the Act, and on the answer to that question depends the authority of the board to inquire into the complaint of discrimination at all . . . and a wrong decision on it would not enable the board to proceed further” (p. 775 (emphasis added)). However, under the contemporary Canadian law of judicial review, the question of whether a residence is “self-contained” would not be so quickly labelled as a jurisdictional question on which the courts are entitled to substitute their opinion for that of the board of inquiry: see *Zündel* (1999), at paras. 44-45; and, more generally, *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp*., [1979] 2 S.C.R. 227, at p. 233; *Dunsmuir*, at para. 59; and *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, at para. 18. Moreover, the whole notion of “preliminary questions”, which permeates the reasoning in *Bell* (1971), has long since been abandoned: see, e.g., *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, at pp. 1083-90; *Dunsmuir*, at paras. 35-36 and 59; *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, [2011] 2 F.C.R. 332, at paras. 39-45; D. J. M. Brown and J. M. Evans, with the assistance of C. E. Deacon, *Judicial Review of Administrative Action in Canada* (loose-leaf), at para. 3:4400; and D. J. Mullan, *Administrative Law* (2001), at pp. 57-58 and 61-65. Even more fundamentally, contemporary courts would not so quickly accept that the question of whether a property is “self-contained” could be answered by the abstract interpretive exercise undertaken in *Bell* (1971), conducted without regard to the provision’s context within a specialized, quasi-constitutional human rights regime: *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at pp. 546-47; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, atpara. 33; and Mullan (2001), at p. 58.
5. The second aspect of *Bell* (1971) is its approach to judicial intervention on grounds which have not been considered by the tribunal or before anadministrative process has run its course. Since *Bell* (1971), courts, while recognizing that they have a discretion to intervene, have shown restraint in doing so: see, e.g., the authorities reviewed in *C.B. Powell*, at paras. 30-33; *Irvine v. Canada (Restrictive Trade Practices Commission)*, [1987] 1 S.C.R. 181, at p. 235; *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*,[1997] 3 S.C.R. 440, at paras. 60 and 72; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 51; *Violette v. New Brunswick Dental Society*, 2004 NBCA 1, 267 N.B.R. (2d) 205, at para. 14; and *Air Canada v. Lorenz*, [2000] 1 F.C. 494 (T.D.), at paras. 13-15.
6. While such intervention may sometimes be appropriate, there are sound practical and theoretical reasons for restraint: D. J. Mullan, *Administrative Law* (3rd ed. 1996), at §540; P. Lemieux, *Droit administratif:* *Doctrine et jurisprudence* (5th ed. 2011), at pp. 371-72. Early judicial intervention risks depriving the reviewing court of a full record bearing on the issue; allows for judicial imposition of a “correctness” standard with respect to legal questions that, had they been decided by the tribunal, might be entitled to deference; encourages an inefficient multiplicity of proceedings in tribunals and courts; and may compromise carefully crafted, comprehensive legislative regimes: see, e.g., Szczecka v. Canada (Minister of Employment and Immigration) (1993), 170 N.R. 58 (F.C.A.), at paras. 3-4; *Zündel* (1999), at para. 45; *Psychologist Y v. Board of Examiners in Psychology*, 2005 NSCA 116, 236 N.S.R. (2d) 273, at paras. 23-25; *Potter v. Nova Scotia Securities Commission*, 2006 NSCA 45, 246 N.S.R. (2d) 1, at paras. 16 and 36-37; *Vancouver (City) v. British Columbia (Assessment Appeal Board)* (1996), 135 D.L.R. (4th) 48 (B.C.C.A.), at paras. 26-27; *Mondesir v. Manitoba Assn. of Optometrists* (1998), 163 D.L.R. (4th) 703 (Man. C.A.), at paras. 34-36; *U.F.C.W., Local 1400 v.* *Wal-Mart Canada Corp.*, 2010 SKCA 89, 321 D.L.R. (4th) 397, at paras. 20-23; Mullan (2001), at p. 58; Brown and Evans, at paras. 1:2240, 3:4100 and 3:4400. Thus, reviewing courts now show more restraint in short-circuiting the decision-making role of the tribunal, particularly when asked to review a preliminary screening decision such as that at issue in *Bell* (1971).
7. Moreover, contemporary administrative law accords more value to the considered opinion of the tribunal on legal questions, whether the tribunal’s ruling is ultimately reviewable in the courts for correctness or reasonableness: *Council of Canadians with* *Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at para. 89; *Alberta* *(Information and Privacy Commissioner) v.* *Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 25; *C.B. Powell*, at para. 32; and Brown and Evans, at para. 3:4400.
8. For these reasons, *Bell* (1971) should no longer be followed in relation to its approach to preliminary jurisdictional questions or when judicial intervention is justified in an ongoing administrative process.
9. How, then, should the chambers judge have approached Halifax’s application for prohibition?
10. First, he ought to have applied the standard of reasonableness to the Commission’s decision to refer the complaint to a board of inquiry. He should not have asked whether the Commission had correctly determined that the complaint was within the purview of the Act, but whether the Commission had reasonably concluded that, having regard to all the circumstances, an inquiry was warranted.
11. Second, the chambers judge should have exercised restraint in intervening to prohibit a determination by the board of inquiry as to whether the complaints fell within the purview of the Act*.*  With the benefit of hindsight, we can see that the risks of this course of action resulting in an inefficient multiplicity of proceedings and delay materialized here — and in a dramatic fashion. Nearly nine years and three levels of court proceedings after Mr. Comeau filed his complaints, this proceeding has only reached the end of the beginning. Only now can the board of inquiry appointed in November 2006 finally begin to address the substance of Mr. Comeau’s complaints and the objections by Halifax and the province to them.

 (3) Applying the Standard of Review to the Commission’s Screening Decision

1. As we have seen, there are two aspects of the jurisprudence about judicial review of screening decisions sought in the midst of an ongoing administrative tribunal process. The first relates to the applicable standard of review and is concerned mainly with the outcome of the decision-making process. The standard of review ensures that the reviewing court gives due deference to the administrative decision maker. The second relates to the risks of premature intervention. The focus here is mainly on the process and the concern for efficiency, the minimization of costs and the preservation of the administrative scheme’s integrity. Of course, this second aspect also resembles the first in its desire that courts should enjoy the benefit of considered administrative decisions, and should pay deference to those decisions where appropriate.
2. While these two aspects are well entrenched in the jurisprudence, it is artificial to separate the analysis in this way in the context of judicial review of a preliminary screening decision such as the one in issue here. Where, as here, reasonableness is the applicable standard of review, a more straightforward approach is to bring these two aspects together in the application of the standard of review. The reviewing court’s approach must reflect the appropriate level of judicial deference both to the substance of the administrative tribunal’s decision and to its ongoing process.
3. Reasonableness as a standard of review reflects the appropriate deference to the administrative decision maker. It recognizes that certain questions that come before administrative tribunals do not lend themselves to a single result; administrative decision makers have “a margin of appreciation within the range of acceptable and rational solutions”: *Dunsmuir*, at para. 47 (emphasis added). Reasonableness is a concept that must be applied in the particular context under review. The range of acceptable and rational solutions depends on the context of the particular type of decision making involved and all relevant factors: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at paras. 17-18 and 23. As was said in *Khosa*, reasonableness is a single concept that “takes its colour” from the particular context (para. 59). In this case, both the nature of the Commission’s role in deciding to move to a board of inquiry and the place of that decision in the Commission’s process are important aspects of that context and must be taken into account in applying the reasonableness standard.
4. In my view, the reviewing court should ask whether there was any reasonable basis on the law or the evidence for the Commission’s decision to refer the complaint to a board of inquiry. This formulation seems to me to bring together the two aspects of the jurisprudence to ensure that both the decision and the process are treated with appropriate judicial deference.
5. There is precedent for taking this approach. Particularly helpful is the decision of Evans J. (as he then was) in *Zündel* (1999). While this is a pre-*Dunsmuir* decision, the approach is completely consistent with that set out by the Court in that case. *Zündel* (1999) concerned an application for judicial review of the Canadian Human Rights Commission’s decision to request the appointment of a Human Rights Tribunal to inquire into certain complaints made to the Commission. While the legislative scheme in issue in *Zündel* (1999) was not identical to that in the Nova Scotia Act, the power of the Canadian Human Rights Commission to request the appointment of a Tribunal is conferred in words virtually identical to those in the Nova Scotia *Boards of Inquiry Regulations*.The federal Commission, at any stage after the filing of a complaint, “may request the Chairperson of the Tribunal to institute an inquiry into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted” (s. 49(1) of the *Canadian Human Rights Act*, as amended by S.C. 1998, c. 9, s. 27). Evans J. held that he should only intervene to prohibit continuation of the inquiry if satisfied that “there [was] no rational basis in law or on the evidence to support the Commission’s decision that an inquiry by a Tribunal is warranted in all the circumstances of the complaints” (para. 49).
6. While I would use the word “reasonable” rather than “rational”, I do not think there is any difference in substance between the two formulations. As the Court said in *Dunsmuir*, a result reached by an administrative tribunal is reasonable where it can be “rationally supported” (para. 41).
7. In my view, this formulation is an appropriate way to reflect, in the context of the Nova Scotia statutory scheme, both the appropriate standard of review and the judicial reluctance to intervene in relation to the Commission’s decision to refer a complaint to a board of inquiry. I reach this conclusion for several reasons.
8. First, this threshold for judicial intervention is firmly tied to the reasonableness standard of judicial review. In the context of the broad discretion given to the Commission to refer a complaint for inquiry, reasonableness review must focus primarily on whether there is any basis in reason for such an inquiry. The test of any reasonable basis on the law or the evidence seems to me to appropriately reflect this requirement.
9. Second, this formulation, in my view, is well adapted to the particular role which the legislation gives to the Commission, a role which has been described by this Court as “an administrative and screening” role (*Cooper*, at p. 893). While no doubt the Commission, in deciding to refer for inquiry, has some quite limited role to screen the merits of the complaint, its task is not to decide the issues which underlie its decision to proceed to the next stage; these are left to the board of inquiry (*Zündel* (2000), at para. 4). By not focussing solely on the merits of the complaint, the formulation I propose recognizes that the Commission might decide to appoint a board of inquiry in order to allow the board, after a full hearing, to decide a jurisdictional or other important legal point. This would provide a reasonable basis for the Commission’s decision.
10. Third, this formulation reflects the appropriate deference to the Commission’s process. Just as reasonableness requires appropriate deference to a tribunal’s decision, it also implies appropriate deference to its processes of decision-making. The proposed formulation makes it clear that reviewing courts should be reluctant to intervene before a board of inquiry has addressed the substance of the points with respect to which the application for judicial review is brought. A reviewing court should take into account the benefit of having the board’s considered view of the point raised on review as well as the risks of an unnecessary multiplication of issues and delay as was caused by premature judicial intervention in this case. Only where there is no reasonable basis in law or on the evidence to support the Commission’s decision that an inquiry by a board of inquiry is warranted in all the circumstances would it be appropriate to overcome judicial reluctance to intervene.
11. Finally, this approach is consistent not only with case law on judicial review of decisions to refer complaints for adjudication, but also with the modern law concerning the discretion in relation to intervening by way of judicial review in ongoing administrative proceedings. As to the former, I refer for example not only to *Zündel* (1999), but also to other cases in the federal courts in relation to the similarly worded powers of the Canadian Human Rights Commission to request referral of complaints to the Human Rights Tribunal: see, e.g., *Bell* (1999); and *Canada* *(National Research Council) v. Zhou*, 2009 FC 164 (CanLII). As to the latter, I refer to decisions such as *Lorenz*, *Psychologist Y*, *C.B. Powell*, and the other cases and texts to which I referred earlier in my reasons on this point.
12. I conclude that in reviewing the Commission’s decision to request appointment of a board of inquiry to inquire into these complaints, the reviewing court should ask itself whether there is any reasonable basis in law or on the evidence to support that decision.

B. *Did the Commission Make a Reviewable Error?*

1. I agree with the Court of Appeal that the Commission’s referral decision should not be disturbed. While Mr. Comeau’s complaint faces some challenging legal hurdles, my view is that there was a reasonable basis, provided primarily by the novelty and complexity of the complaints, for the Commission to be satisfied that an inquiry was warranted in all of the circumstances. It is not our role to opine on the merits or otherwise of the complaint, but I will briefly explain why I think that the Commission’s referral decision meets this standard.
2. Mr. Comeau alleged that Halifax had “treated, and continue[d] to treat, [him] and [his] children differentially on account of [their] ethnic origin (Acadian) by levying the supplementary tax . . . and by not providing any of the funds generated by the supplementary tax to the [Conseil]” (A.R., at p. 119). Mr*.* Comeau contended that this differential treatment violated ss. 5(1)(a) and (q) of the Act. (He also contended that it violated his s. 15 *Charter* rights, but the Commission has made clear that it does not intend to pursue this aspect of his claim.)
3. In this appeal, Halifax presents a number of arguments as to why the Commission erred in deciding to refer Mr. Comeau’s complaint to a board of inquiry. It argues that the funding regime was not arbitrary or discriminatory; that at the relevant time Nova Scotia municipal bodies lacked the statutory authority to provide supplementary funding to the Conseil; that the amendments to the *MGA* have rendered Mr. Comeau’s complaint moot or *res judicata*; that language is not a protected characteristic under the Act because it does not fall under s. 5(1)(q)’s reference to ethnic origin; and that s. 6(a) of the Act, which shields “the provision of or access to services or facilities [and] the conferring of a benefit on or the providing of a protection to youth or senior citizens” from scrutiny under the Act, exempts school funding from the Act’s purview.
4. The Commission’s investigator addressed many of these points in his reports. He was of the view that the funding situation might have constituted differential treatment on the basis of ethnic origin, and that this differential treatment might have prevented Conseil schools from providing some services. On the basis of a legal opinion drafted by Halifax’s municipal solicitor, the investigator also thought that Halifax might have had the legal authority to correct the situation by providing supplementary funding to Conseil schools (A.R., at pp. 130, 134 and 136). He considered that a possible remedy could be requiring Halifax to provide such funding, perhaps retroactively (A.R., at p. 133). (It is worth noting in this regard that Mr. Comeau’s complaint covers a period that begins before the period covered by the retroactive amendments to the *MGA*.) Moreover, the investigator was of the view that the intent of s. 6(a) was to protect programs for youth and seniors from complaints of age discrimination; the provision, interpreted in this way, would not shield programs that benefit some young people and not others in a discriminatory way (A.R., at p. 133).
5. With respect, Halifax’s submissions on Mr. Comeau’s complaint, whatever their ultimate validity, are largely beside the point in a judicial review of a referral decision such as the one before the Court in this appeal. It is not this Court’s role to assess the complaint. This Court’s role is limited to assessing the Commission’s decision to refer the complaint to a board of inquiry. In making its referral decision, the Commission had the investigator’s reports before it. Without expressing any opinion on the merits of Mr. Comeau’s complaint, I am of the view that these reports, along with the surrounding circumstances, provided a reasonable basis for the Commission to refer Mr. Comeau’s novel and complex complaints to a board of inquiry which, of course, would be entitled, among other things, to enter into a detailed consideration of the merits of Halifax’s objections.
6. I conclude that, whatever the ultimate merit of Mr. Comeau’s novel and complex complaints might be, the Commission had a reasonable basis for concluding that an inquiry before a board of inquiry was warranted in all of the circumstances.

IV. Disposition

1. I would dismiss the appeal, with costs to both the Commission and Mr. Comeau.

 *Appeal dismissed with costs.*

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 Solicitor for the respondent Lucien Comeau:  Université de Moncton, Moncton.

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