

Case In Point

Nova Scotia Court of Appeal Finds Benefit Plan Can Exclude Medical Marijuana

Date: April 27, 2018

The Nova Scotia Court of Appeal recently confirmed that an administrator of a benefit plan may choose what specific drugs and medications will be covered by a plan, and in particular, held that the exclusion of medical marijuana is not discriminatory under human rights legislation.

In [*Canadian Elevator Industry Welfare Trust Fund v. Skinner*](#), an elevator mechanic, Mr. Skinner, was prescribed medical marijuana to treat chronic pain suffered as a result of a motor vehicle accident. Initially, Mr. Skinner's prescription for medical marijuana was covered under his no-fault automobile insurance policy. However, these benefits expired after two years.

As a member of the International Union of Elevator Constructors, Mr. Skinner also had access to a health and welfare plan (the "Welfare Trust Plan"). Upon the expiry of his automobile insurance benefits, Mr. Skinner requested coverage for medical marijuana under the Welfare Trust Plan but was denied coverage, as drugs not approved by Health Canada were not funded under the Welfare Trust Plan. Mr. Skinner challenged this decision before the Nova Scotia Human Rights Board of Inquiry, which found that Mr. Skinner had been discriminated against on this basis.

The Trustees of the Welfare Trust Plan appealed the Board of Inquiry's decision to the Nova Scotia Court of Appeal.

In reviewing the Board of Inquiry's decision, the Court determined that the only issues before it were whether the Welfare Trust Plan was required to reimburse Mr. Skinner for his costs, and whether failing to do so would violate the *Human Rights Act*.

The Court held that there was no connection between Mr. Skinner's disability and the decision of the Welfare Trust Plan Trustees to deny him coverage. Accordingly, there was no violation of the *Human Rights Act*. In coming to this conclusion, the Court found that the refusal to provide a drug that was not approved by Health Canada was not discrimination, as no other participants in the Welfare Trust Plan were entitled to coverage for medical marijuana.

Significantly, the Court held that the Board of Inquiry had incorrectly determined that Mr. Skinner's disability was a factor in the Trustees' decision to deny coverage. Instead, the Court held that Welfare Trust Plan did not exclude medical marijuana due to Mr. Skinner's disability. Had the Welfare Trust Plan done so, he would have had grounds for a complaint. However, given that the evidence did not establish that his disability was, in any way, related to the Trustees' decision, the Court held that the Welfare Trust Plan's denial of coverage for medical marijuana did not amount to discrimination.

The Court's decision clarifies that human rights legislation will not go so far as to require a private benefit plan to cover all "necessary" medications and drugs prescribed by physicians. Were that the case, the Court noted that every request for excluded medications could be subject to a human rights complaint, and tribunals would become arbiters of private benefit plans. This ruling should provide comfort to health and welfare plans which are required to deliver benefits in a cost-effective and prudent manner.