

NOVA SCOTIA COURT OF APPEAL

Citation: *Portage LaPrairie Mutual Insurance Company v. Sabean*,
2015 NSCA 53

Date: 20150604
Docket: CA 428986
Registry: Halifax

Between:

Portage LaPrairie Mutual Insurance Company

Appellant

v.

Andrew Sabean and Cathy Hallett

Respondents

Judge: The Honourable Justice J.E. (Ted) Scanlan

Appeal Heard: February 4, 2015, in Halifax, Nova Scotia

Subject: **Insurance law: Deductibility of Canada Pension Benefits (disability payments) from SEF 44 insurance benefits.**

Summary: The trial judge relied almost exclusively on a case from the New Brunswick Court of Appeal and held that CPP disability benefits were not deductible from SEF disability benefits.

Issues:

- (1) Are CPP disability benefits in the nature of insurance and deductible from disability payments paid pursuant to SEF 44 provisions?
- (2) Did the trial judge err in not finding that a portion of costs paid by the tortfeasor's insurer were to the benefit of the respondent?

Result:

- (1) The trial judge was wrong to follow the decision from the New Brunswick Court of Appeal. The payments pursuant to the CCP Plan were in the nature of insurance payments and if they are not deducted would result in

double recovery. CPP disability benefits deducted pursuant to the provisions of SEF 44. The case is remitted to the trial judge for a calculation of SEF payments after deducting CPP disability benefits. Cost on that portion of the claim shall be reviewed by the trial judge after the adjustments are made by the trial judge in relation to the deduction of the CPP benefits.

- (2) There was not sufficient evidence to show the trial judge erred in his ruling on costs paid by the tortfeasor's insurer.

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 12 pages.