

NOVA SCOTIA COURT OF APPEAL

Citation: *Gillan v. Mount Saint Vincent University*, 2008 NSCA 55

Date: 20080618

Docket: CA 281973

Registry: Halifax

Between:

Brenda Anne Gillan

Appellant

v.

Mount Saint Vincent University

Respondent

Judge: Honourable Justice Linda Lee Oland

Appeal Heard: March 19, 2008

Subject: *Jurisdiction - Collective Agreements - Trade Union Act, R.S.N.S. 1989, c. 475, s. 42 - Civil Procedure Rules 14.25(1)(a) and 25.01(1)*

Summary: The appellant, who had fallen and injured herself in the course of her employment, brought an action against her employer in negligence and occupier's liability. She was a union member, and the collective agreement included provisions dealing with injuries on duty and requiring the employer to provide its employees with a safe work environment. It also set out a grievance and arbitration procedure. Neither the appellant nor her union filed a grievance arising from her injury at work, or with respect to unsafe working conditions at work. Pursuant to the provisions of the collective agreement, she received short term and long term benefits. The employer claimed that in light of the collective agreement, the court had no jurisdiction in respect of the dispute. The judge directed that the jurisdiction issue be determined in advance of the balance of the trial on liability. He was satisfied that the dispute, in its essential character, arose under the collective agreement and that the court did not have jurisdiction. He also determined that the jurisdiction issue did not have to be resolved at the pleadings stage.

Issue: Whether the judge erred in law by concluding that the court did not have jurisdiction over the subject matter of this proceeding.

Whether he erred in law by failing to dismiss the employer's collective agreement defence for unreasonable delay.

Result: Appeal dismissed with costs. An analysis of the inter-related considerations set out in *Pleau* demonstrates that the judge was correct in concluding that the court did not have jurisdiction to hear the subject matter of the proceeding.

The judge did not err in determining that the jurisdiction defence may be dealt with at any stage of the proceeding, including at the outset of the liability trial. The appellant was aware of the jurisdiction issue when the defence was filed. *Rules* 14.25(1) (application to strike) and 25.01(1) (preliminary determination of a question of law) expressly permit an application at any time prior to trial. Here there are difficulties in applying under either *Rule*. Ultimately, the argument that unreasonable delay would lead to a finding of jurisdiction in the court is fatally flawed in that the parties cannot confer jurisdiction upon the court.

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 18 pages.