

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Downey v. Halifax Port International Longshoremen's Association*,  
2012 NSCA 49

**Date:** 20120508  
**Docket:** CA 344079  
**Registry:** Halifax

**Between:**

Terrence Downey

Appellant

v.

David Cranston and Robert Fisher, representing the members of the Board of  
Trustees of the Halifax Port International Longshoremen's Association/Halifax  
Employers Association Pension Plan and International Longshoremen's  
Association/Halifax Employers Association Welfare Trust Plan

Respondents

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**Judge:** The Honourable Justice Linda Lee Oland

**Appeal Heard:** November 15 and 16, 2011, in Halifax, Nova Scotia

**Subject:** Interpretation of Contract - Disability Pension and Welfare  
Benefits - Estoppel - *Pension Benefits Standards Act, 1985*,  
R.S.C., 1985, c. 32 (2<sup>nd</sup> Supp.), s. 14 and 17 - Raising New  
Issue on Appeal - *Canada Labour Code*, R.S.C., 1985, c. L-2,  
s. 239 and 239.1 - Costs

**Summary:** The appellant, who worked as a longshoreman starting in 1965, joined the Union in July 1991. He then worked 245 ½ hours before having to stop work. The appellant is disabled. The Trustees of the Union's pension and welfare plan refused his application for a disability pension and decided that the appellant was never a member of the plan. The appellant appealed the trial judge's decision dismissing his claim for benefits pursuant to the plan, and awarding costs, in an amount higher than the tariff, against him rather than awarding both parties costs on a solicitor-client basis payable from the plan.

**Issues:** Whether (a) the trial judge correctly determined that the appellant was not entitled to disability pension or welfare benefits, (b) the appellant should be permitted to raise arguments not raised at trial, on appeal, (c) leave to appeal the costs provisions in the order is required, (d) the judge erred in the amount of his costs award, and (e) he erred in awarding costs against the appellant.

**Result:** Appeals against the decision on the merits of the appellant's claim and against the costs award dismissed.

The judge correctly determined that, pursuant to the governing documents, the appellant was not eligible for membership in the plan and not entitled to disability pension or welfare benefits. The appellant's claim that his hours when on Workers' Compensation should be counted, was without merit. He did not satisfy all the criteria for estoppel. Nor did he meet the requirements of the provisions of the *Pension Benefits Standards Act* he raised. Even assuming that an exception to the general rule against the raising of a new issue on appeal applies, the provisions of the *Canada Labour Code* he argued are not applicable here.

Leave to appeal costs was not required in this case. The judge did not apply incorrect legal principles nor is his costs decision so clearly wrong as to amount to a manifest injustice. This litigation was not brought as a representative claim on behalf of or for the benefit of the plan beneficiaries or for its due administration; rather, it was adversarial.

<p><b>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 31 pages.</b></p>
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