

NOVA SCOTIA COURT OF APPEAL

Citation: *Canadian Elevator Industry Welfare Trust Fund v. Skinner*,
2018 NSCA 31

Date: 20180412
Docket: CA 460851
Registry: Halifax

Between:

Board of Trustees of the Canadian Elevator Industry
Welfare Trust Fund

Appellant

v.

Gordon “Wayne” Skinner, the Nova Scotia Human Rights Commission,
Benjamin Perryman and the Attorney General of Nova Scotia

Respondents

-and-

The Nova Scotia Private Sector Employers Roundtable,
the National ME/FM Action Network and Twelve (12) Health and
Welfare Trust Funds for Unionized Employees in Nova Scotia

Intervenors

Judge: The Honourable Justice Peter M.S. Bryson
Appeal Heard: October 2, 2017, in Halifax, Nova Scotia
Subject: Human rights. Nova Scotia Human Rights Act. Pension Plans. Administrative law.
Summary: Mr. Skinner was a member of the International Union of Elevator Constructors which made him eligible for health benefits under a Welfare Plan administered by the appellant Trustees. Mr. Skinner experienced chronic pain following a motor vehicle accident. Narcotic and anti-depressants were not effective for him and had negative side effects. His physician prescribed medical marijuana which was effective in managing Mr. Skinner’s pain. His request for

reimbursement of medical marijuana expenses was rejected by the Trustees because the Welfare Plan did not cover prescription drugs not approved by Health Canada. Medical marijuana had not been approved. Mr. Skinner brought a human rights complaint based on his disability. The Human Rights Board of Inquiry found Mr. Skinner had been discriminated against. The Trustees appealed.

Issues: (1) Did the Board err in law in the test it applied for *prima facie* discrimination?

(2) Did the Board err in law when finding that the alleged discrimination was “based on” Mr. Skinner’s disability?

Result: Appeal allowed. The Board erred in its application of the three-part *prima facie* discrimination test described by the Supreme Court in *Moore v. British Columbia (Education)*, 2012 SCC 61. Specifically, the Board erred in finding that non-coverage of medical marijuana discriminated against Mr. Skinner “based on” his disability. The Welfare Plan did not cover medical marijuana because it was not approved by Health Canada. All such Plans necessarily have limited benefits for those with a disability. It could not be automatically discriminatory for the Trustees to impose reasonable limits on reimbursable benefits. Mr. Skinner has access to all the medications available to any other eligible plan member. Mr. Skinner experienced an adverse impact because those medications were not effective for him personally—not because he fell within a protected group described in the *Human Rights Act*.

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 30 pages.