

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Gallant v. Nova Scotia (Workers' Compensation Board)*, 2019 NSCA 16

**Date:** 20190307

**Docket:** CA 478572

**Registry:** Halifax

**Between:**

Shawn R. Gallant

Applicant

v.

Workers' Compensation Board of Nova Scotia, Workers' Compensation Appeals  
Tribunal, Attorney General of Nova Scotia, and Garda World Security

Respondents

**Judge:** Cindy A. Bourgeois, J.A.

**Motion Heard:** March 7, 2019, in Halifax, Nova Scotia in Chambers

**Written Release:** March 8, 2019

**Held:** Motion dismissed

**Counsel:** Shawn R. Gallant, on his own behalf  
Paula M. Arab, Q.C., for the respondent Workers'  
Compensation Board of Nova Scotia  
Alison Hickey, for the respondent Workers' Compensation  
Appeals Tribunal  
Marie-Élaine Morin, for the respondent Garda World  
Security, not appearing  
Edward A. Gores, Q.C., for the respondent Attorney General  
of Nova Scotia, not appearing

## Decision

[1] On March 7, 2019, I heard a motion filed by Mr. Shawn Gallant seeking an injunction. I dismissed his motion, providing brief oral reasons. I promised that I would provide written reasons setting out why his motion was dismissed and, in particular, why this Court does not have the jurisdiction to consider his request. These are my reasons.

## Background

[2] Mr. Gallant filed an affidavit in support of his motion for an injunction. In response, the Workers' Compensation Board of Nova Scotia (WCB) filed an affidavit of a manager familiar with Mr. Gallant's claim file, Ms. Tammy Davis. From the material filed, I am aware Mr. Gallant has had significant involvement with the WCB. As a result of his claim for benefits under the *Workers' Compensation Act* (the *Act*) arising from a workplace injury or injuries, he is in receipt of financial benefits.

[3] Mr. Gallant has been recently granted Canada Pension Plan (CPP) disability benefits, retroactive to May 2017. In February he received a lump sum payment, which he intends to use to pay for medical expenses, and set up the necessary equipment to grow medical cannabis.

[4] Mr. Gallant says that once WCB became aware that he would be receiving a lump sum retroactive payment of CPP benefits, he was verbally advised by WCB staff that half of his payment would be claimed by WCB. He believes that this is wrong and that the WCB should be prevented from claiming any portion of his CPP disability payment.

[5] Mr. Gallant asks this Court to grant an injunction prohibiting WCB from claiming any portion of his CPP disability payment.

[6] Mr. Gallant does have a current matter before this Court. He filed an Application for Leave to Appeal on July 20, 2018. That matter is scheduled to be heard by a panel of the Court on March 27, 2019. It involves an appeal from the Workers' Compensation Appeals Tribunal (WCAT), which concluded that the WCB was justified in suspending the payment of Mr. Gallant's temporary earnings replacement benefits (TERB) due to his failure to co-operate in a rehabilitation

program. That decision did not address Mr. Gallant's CPP benefits or whether WCB could claim any portion of his disability payment.

[7] Ms. Davis's affidavit indicates that WCB did advise Mr. Gallant that the *Act* permitted a deduction from his temporary earning replacement benefits of an amount reflective of his CPP benefits. However, she further stated:

11. To date, the WCB has yet to receive the information requested and required from CPP necessary to recalculate Mr. Gallant's TERB and determine if there is any overpayment (i.e. any period of time during which there was a payment of both TERB and CPP).

12. Once the information from CPP is received, Ms. Thompson, as per normal process, will recalculate Mr. Gallant's TERB and commence deduction of benefits. The WCB will also issue a letter/decision to Mr. Gallant outlining the new TERB calculation and any applicable overpayment.

13. Upon being notified of the CPP decision, Mr. Gallant has 30 days to appeal internally to a Hearing Officer of the WCB. This is the first level of appeal available to an injured worker under the *Act*.

14. No decision regarding deduction of CPP from TERB, nor any decision regarding an overpayment, if any, has been rendered by the WCB as of the date of this Affidavit.

## **Disposition**

[8] In order for this Court to provide the relief sought, it must have the jurisdiction to do so. WCB submits that this Court has no jurisdiction to grant Mr. Gallant injunctive relief. I agree.

[9] Mr. Gallant brought his motion utilizing the file number assigned to the appeal scheduled to be heard on March 27, 2019. As noted earlier, the subject matter of that appeal does not relate to the deductibility of his CPP benefits, but the suspension of his TERB. A review of the *Act* demonstrates the decision to suspend was made under s. 84. However, any decision relating to the deductibility of CPP is governed by s. 38. Although Mr. Gallant, as an injured worker, sees the two decisions as being related, they are not from a legal perspective.

[10] I also agree with the WCB that any complaint Mr. Gallant wishes to bring to this Court regarding a claim made against his CPP benefits is premature. There is yet to be a decision made. If Mr. Gallant is in disagreement with the decision to be rendered, the *Act* sets out his right to appeal. It is not to this Court—yet.

[11] Section 197 allows Mr. Gallant to first appeal to a hearing officer. If the hearing officer renders a decision with which he disagrees, Mr. Gallant has the right to appeal to the WCAT pursuant to s. 243. It is only after WCAT has rendered a decision that Mr. Gallant would have the right, afforded by s. 256 of the *Act*, to appeal to this Court.

[12] As WCB alluded to in its submissions, there may be other avenues available to Mr. Gallant to seek injunctive relief. However, I am satisfied that does not include bringing such a request to this Court in the first instance.

### **Conclusion**

[13] In the absence of a decision from which a right of appeal lies to this Court, I am without the necessary jurisdiction to consider Mr. Gallant's request for an injunction.

[14] The motion is dismissed, without costs.

Bourgeois, J.A.