NOVA SCOTIA COURT OF APPEAL

Citation: *Cape Breton-Victoria Regional Centre for Education v. McInnis*, 2025 NSCA 15

Date: 20250305
Docket: CA 530054
Registry: Halifax

Between:

Cape Breton-Victoria Regional Centre for Education
(Formerly Cape Breton-Victoria School Board)

Appellant

v.

Lisa McInnis and Santana Contracting Ltd.

Respondents

Judge:	The Honourable Justice Cindy A. Bourgeois
Appeal Heard:	February 4, 2025, in Halifax, Nova Scotia
Facts:	A teacher at Seton Elementary School, who was a unionized employee, slipped and fell in the school parking lot on January 12, 2015, while arriving at work. She sought benefits under her collective agreements and later filed a civil claim for damages against her employer, the Cape Breton-Victoria Regional Centre for Education. Her employer brought a claim against a third party, Santana Contracting Ltd., which was responsible for snow removal services at the premises (paras 5-9).
Procedural History:	*L. McInnis v. CBVRCE, Santana Contracting Ltd.*, 2023 NSSC 397: The motion judge found that the court lacked jurisdiction over the civil claim, which fell under the exclusive jurisdiction of a labour arbitrator, and stayed the claim for two years instead of dismissing it (paras 1-2, 12).

Parties Submissions:	Appellant: Argued that the court had no jurisdiction to hear the claim and that the motion judge erred by granting a stay instead of dismissing the claim outright (paras 2, 25). Respondent (Lisa McInnis): Contended that if an arbitrator declined jurisdiction, she would be left without a remedy beyond wage replacement provisions and argued for the court to exercise its residual discretion to hear her claim (paras 17, 112-113).
Legal Issues:	Whether the motion judge erred by not dismissing the plaintiff's action after concluding that the subject matter was within the exclusive jurisdiction of a labour arbitrator (para 25).
Disposition:	The appeal was allowed, and the plaintiff's claim was dismissed. Each party was ordered to bear their own costs of the appeal (paras 26, 33).
Reasons:	Per Bourgeois J.A. (Bryson and Gogan JJ.A. concurring): The motion judge correctly determined that the claim fell within the exclusive jurisdiction of a labour arbitrator, but erred in granting a stay instead of dismissing the claim. The reasons for granting a stay were unwarranted, as the discrepancy in available remedies, potential time-bar issues, and the possibility of an arbitrator not finding the dispute arbitrable did not justify retaining jurisdiction. Rule 94.06 could not be used to grant a stay where the court lacked jurisdiction. The decision in Haughn was not applicable as it involved different circumstances (paras 26-32).

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Judges:	Bryson, Bourgeois and Gogan, JJ.A.
Appeal Heard:	February 4, 2025, in Halifax, Nova Scotia
Held:	Appeal allowed without costs, per reasons for judgment of Bourgeois, J.A.; Bryson and Gogan, JJ.A. concurring
Counsel:	Tipper McEwan and Manon Landry, for the Appellant John McKiggan, K.C., for the Respondent, Lisa McInnis Franco Tarulli, for the Respondent, Santana Contracting Ltd.

Reasons for judgment:

[1] A motion judge found the court did not have jurisdiction to hear a civil claim brought by a unionized employee against her employer. Rather, the exclusive jurisdiction fell to a labour arbitrator.

[2] Instead of dismissing the claim, the motion judge entered a stay. The employer appeals, asserting that if the court had no jurisdiction to hear the claim, it had no ability to grant a stay; a dismissal was the only option.

[3] I agree. For the reasons that follow, I would allow the appeal.

Background

[4] There is no dispute amongst the parties regarding the relevant factual background giving rise to the appeal.

[5] The respondent, Lisa McInnis, was a teacher at Seton Elementary School in North Sydney. On January 12, 2015 she slipped and fell in the school parking lot as she was arriving to work. The appellant, the Cape Breton-Victoria Regional Centre for Education, was her employer.

[6] At the relevant time, Ms. McInnis was a member of the Nova Scotia Teachers Union. The terms of her employment were governed by two collective agreements – a local agreement with the appellant and a provincial agreement.

[7] As a result of her fall, Ms. McInnis sought benefits under both agreements. She received Injury on Duty benefits, Sick Leave benefits and later, Long Term Disability benefits under the terms of the collective agreements.

[8] Ms. McInnis filed a Notice of Action on December 24, 2018, in which she claimed damages for her injuries.

[9] The appellant defended the action. It further brought a Third Party claim against the respondent Santana Contracting Ltd, which had provided snow removal services at the appellant's premises at the time of the fall.

[10] On March 8, 2022, the appellant filed an Amended Notice of Motion in which it sought an order permitting it to amend its defence to plead a lack of

jurisdiction and, if the amendment was granted, an order dismissing Ms. McInnis' action due to a lack of jurisdiction.

[11] The appellant's motion for dismissal was brought pursuant to Civil Procedure Rule 4.07(1) which provides:

> A defendant who maintains that the court does not have jurisdiction over the subject of an action, or over the defendant, may make a motion to dismiss the action for want of jurisdiction.

[12] The motions were heard by Justice Patrick J. Murray on August 30, 2022. In written reasons released October 31, 2023, the motion judge granted the appellant's request to amend its defence, found that Ms. McInnis' claim rested in the exclusive jurisdiction of a labour arbitrator, and stayed the claim for a period of two years.[1]

Decision under Appeal

[13] It is helpful to briefly review the motion judge's reasons relating to the issue of jurisdiction. In assessing whether exclusive jurisdiction rested with a labour arbitrator in the matter before him, the motion judge referenced the leading case authorities, notably *St. Anne Nackawic Pulp & Paper Co. Ltd. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704; *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42; *Gillan v. Mount Saint Vincent University*, 2008 NSCA 55; and *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)*, 2007 NSCA 38.

[14] After reviewing the legal principles, the motion judge set out the three considerations which must govern his analysis:

> [35] First, the Court should consider whether there is a statutory process that gives the arbitrator exclusive jurisdiction. Second, the Court should consider whether the dispute falls within that exclusive jurisdiction. Third, the Court should consider whether or not to use its residual discretion to hear the dispute to grant relief outside the arbitrator's jurisdiction.

[1] *L. McInnis v. CBVRCE, Santana Contracting Ltd.*, 2023 NSSC 397.

[15] With respect to the first consideration, the motion judge concluded:

> [72] I find the statutory process here gives exclusive jurisdiction to an arbitrator.
>
> [73] I am satisfied the Defendant has met step one of the test. I turn to consider the second step as outlined by ***Horrocks***, which is whether the dispute or difference is captured by the [collective] agreement. Properly stated, does the nature of the dispute fall within that jurisdiction.

[16] The motion judge then undertook an analysis of the nature of the civil claim as well as the provisions of the collective agreements. After doing so, he concluded that the "essential character" of Ms. McInnis' claim fell within the scope of the provincial collective agreement.

[17] The motion judge then turned to the third and final consideration. He set out the position of the parties as follows:

> [112] The Plaintiff says that should an arbitrator decline jurisdiction, she will be left without a remedy beyond the wage replacement provisions of Article 26.01-26.06 entitled, "Leave for Injury on Duty".
>
> [113] Ms. McInnis submits that even if her claim is of a type that can be heard though the grievance process, the Court should exercise its residual discretion to hear her claim because there is no provision for making a claim under the collective agreement, other than for wage loss.
>
> [114] The Defendant submits there is no basis for the Court to use its residual discretion to hear this claim because that discretion exists only to grant remedies outside the power of an arbitrator. Relying on ***Gillan*** the Defendant summarized the Court's key findings in its brief:
>
> > 78. In ***Gillan*** the Court of Appeal analyzed this issue at paragraphs 39-48. They key holdings of the Court were:
> >
> > (a) The possibility that exemplary or punitive damages may not be available before a labour arbitrator is not sufficient to create jurisdiction of the Court, at paras 42-43,
> >
> > (b) The failure to file a grievance within the time prescribed in the Collective Agreement does not create jurisdiction for the Court, at paras 44-45; and

(c) Where a plaintiff could have sought remedies under the Collective Agreement but did not, there is no need for the exercise of the Court's residual discretion, at paras 44-46.

[18] The motion judge proceeded to consider the relevant legal authorities, including the following:

> [117] Statutory tribunals often deal with subjects that go to the core of their specialized training, such as a labour arbitrator dealing with labour relations issues. What a tribunal should hear or not hear involves giving way to the legislative choice of the forum of resolution. Exclusive arbitral jurisdiction has been extended to human rights issues even when the completing tribunal is the statutory body overseeing such complaints. (***Horrocks para. 21***)
>
> [118] In ***Horrocks***, the Court had this to say on residual curial discretion:
>
> > [23] A further caveat: the exclusive jurisdiction of a labour arbitrator is subject to the residual curial jurisdiction to grant remedies that lie outside the remedial authority of a labour arbitrator, including interlocutory injunctions (*Weber*, at para. 67; see also *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd.*, [1996] 2 S.C.R. 495; *Bisaillon*, at para. 42). This ensures that there is no "deprivation of ultimate remedy" (*Weber*, at para. 57, quoting *St. Anne Nackawic*, at p. 723)…
> >
> > [73] Statutory tribunals are established by legislatures to carry out certain statutory mandates. They are given specialized jurisdiction and "assigned . . . tasks" for efficiency, access to justice, or other reasons (*St. Anne Nackawic*, at p. 719; see also J.-A. Pickel, "Statutory Tribunals and the Challenges of Managing Parallel Claims", in E. Shilton and K. Schucher, eds., One Law for All? *Weber v Ontario Hydro* and Canadian Labour Law: Essays in Memory of Bernie Adell (2017), 175, at p. 178). When statutory tribunals are established, courts should give way to this special grant of jurisdiction so as not to undermine the benefits intended by the legislature — one such benefit is the provision of speedy and affordable dispute resolution with "a minimum of disruption to the parties and the economy" (*Weber*, at para. 46). While courts of course retain residual jurisdiction to hear matters not conferred on other bodies (*Regina Police Assn.*, at para. 26), statutory tribunals require jurisdictional space, so to speak, to do their jobs.

> [119] Common law remedies may not fit as neatly into a grievance process as do the more common workplace grievances. However, as stated above, the specialized authority is intended to achieve certain benefits with a minimum of disruption.
>
> . . .
>
> [124] In ***Horrocks***, the Court had this to say about an adjudicator's jurisdiction:
>
> > [13] It is settled law that the scope of a labour arbitrator's jurisdiction precludes curial recourse in disputes that arise from a collective agreement, even where such disputes also give rise to common law or statutory claims (*St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704, at p. 721; *Weber*, at para. 54; *New Brunswick v. O'Leary*, [1995] 2 S.C.R. 967; *Allen v. Alberta*, 2003 SCC 13, [2003] 1 S.C.R. 128, at paras. 12-17; *Goudie v. Ottawa (City)*, 2003 SCC 14, [2003] 1 S.C.R. 141, at paras. 22-23; *Bisaillon v. Concordia University*, 2006 SCC 19, [2006] 1 S.C.R. 666, at para. 30)…
>
> [125] Further the Court stated, in relation to "curial jurisdiction":
>
> > [19] In ***Weber***, the Court elaborated upon the scope of exclusive arbitral jurisdiction identified in ***St. Anne Nackawic***, holding that it also ousted curial jurisdiction over tort and Charter claims arising from a collective agreement.
> >
> > [20] The Court agreed that the matter fell within exclusive arbitral jurisdiction. That jurisdiction, it explained, captures disputes that are <u>factually related</u> to the rights and obligations under the collective agreement, <u>even where those same facts give rise to other legal claims</u> based in statute or the common law.
>
> [126] As to whether there is "room" for curial jurisdiction over the claim, the court stressed it is not how the dispute is defined legally, but how it is factually related to the rights and obligations under the collective agreement, that is relevant.
>
> (Underlining by motion judge)

[19] After considering the arguments advanced by the parties and the relevant case authorities, the motion judge declined to find or exercise residual jurisdiction over the claim.

[20] Before continuing with the motion judge's reasons, it is useful to pause to confirm that none of his conclusions to this point have been challenged by the parties on appeal.

[21] The final question the motion judge asked himself was: "Should the Court dismiss the Plaintiff's Action?"

[22] The motion judge identified three concerns which, for him, made an outright dismissal unattractive:

- An arbitrator may not view Ms. McInnis' claim as being properly the subject of arbitration;
- An arbitrator may not grant "the full scope of remedies" sought by Ms. McInnis in her claim; and
- Ms. McInnis was likely out of time to file a grievance and thus may be time-barred from having her dispute arbitrated.

[23] In anchoring his authority to grant a stay as opposed to a dismissal, the motion judge referenced Civil Procedure Rule 94.06:

> [171] Rule 94.06 gives a judge a discretion to grant the order or provide other relief that is in the judge's discretion, when a rule permits a party to make a motion for an order.

[24] The motion judge further referred to the decision in *Haughn v. Halifax (Regional Police Commissioners)*, 2001 NSSC 117 where a stay was ordered "in similar circumstances" to the matter before him. He ultimately concluded:

> [174] I find the appropriate remedy in these circumstances is to stay the present proceeding, pending submission to arbitration or any other form of proceeding that is permitted under the statutes applicable to the parties and the dispute in question. I too would add the proviso that if no application is made to lift the stay within two (2) years of the date of these reasons, then the action will stand dismissed.

Issue

[25] In its Notice of Appeal, the appellant sets out a single ground of appeal:

> The Learned Motions Judge erred by not dismissing the Plaintiff's action after concluding that the subject matter of her action was within the exclusive jurisdiction of a labour arbitrator under the applicable collective agreements.

Analysis

[26] The motion judge undertook a thorough and legally sound analysis of the jurisdictional question before him. His conclusion that Ms. McInnis' claim fell within the exclusive jurisdiction of a labour arbitrator was well-reasoned. It has not been challenged on appeal. However, I am satisfied the motion judge fell into error in then proceeding to grant a stay. The only available outcome, given his previous conclusions was to dismiss the claim.

[27] By issuing a stay the motion judge was, in effect, retaining jurisdiction over the claim. However, none of the three reasons he gave for doing so were warranted. In particular, I note:

- In *Gillan*, this Court found that a unionized employee's claim arising from a slip and fall at work fell within the exclusive jurisdiction of a labour arbitrator. Therefore, the motion judge's concern that an arbitrator may not find the dispute to be arbitrable was misplaced;

- It has long been recognized that the discrepancy between the remedies available through arbitration versus a civil claim is not a reason for a court to retain jurisdiction. See *Gillan* at paras. 41-43 and *Cherubini* at para. 69; and

- The fact that a claimant may be out of time to file a grievance does not give jurisdiction to a court to hear a civil claim that would otherwise have been within the exclusive jurisdiction of a labour arbitrator. See *Cherubini* at para. 79 and *Gillan* at para. 46.

[28] Further, I am of the view that the motion judge's reliance on Rule 94.06 as a source of authority for granting a stay was in error. It provides:

> **94.06 Judicial discretion when party permitted to make a motion**
>
> A Rule that permits a party to make a motion for an order gives a judge a discretion to grant the order or provide other relief that is in the judge's discretion.

[29] The above Rule, like all the others contained in the *Civil Procedure Rules*, are meant to govern proceedings where the Supreme Court of Nova Scotia (or the Nova Scotia Court of Appeal) has jurisdictional competency. It cannot be used to give a court jurisdiction where it does not otherwise exist.

[30] Finally, I am satisfied the motion judge was wrong to rely on the decision in *Haughn* as justifying the granting of a stay in the present matter. With respect, in concluding that *Haughn* involved "similar circumstances" to those involving these parties, the motion judge overlooked critical distinctions.

[31] In that case, there was a real issue of whether the disputes in question were encompassed in the relevant collective agreement. Notably, there were aspects of the dispute that pre-dated the collective agreement and raised the potential that the dispute may be governed by the *Police Act*. Unlike in the present matter, there had not been a determination made that the dispute fell within the exclusive jurisdiction of a labour arbitrator.

[32] I am satisfied that having found the matter fell within the exclusive jurisdiction of a labour arbitrator and concluding there was no residual jurisdiction to exercise, the motion judge was required to dismiss the claim. Without jurisdiction, he had no ability to grant a stay.

Disposition

[33] For the reasons outlined above, I would allow the appeal and dismiss Ms. McInnis' claim against the appellant. In the circumstances of this matter, I would order that each of the parties bear their own costs of the appeal.

Bourgeois, J.A.

Concurred in:

Bryson, J.A.

Gogan, J.A.