

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Wright v. Nova Scotia (Public Service Long Term Disability Plan Trust Fund), 2005 NSSC 146

Date: 20050603

Docket: S.P. No. 06732(217704)

Registry: Pictou

Between:

Robert Bruce Wright

Plaintiff

v.

The Nova Scotia Public Service Long Term
Disability Plan Trust Fund

Defendant

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Judge: The Honourable Justice Douglas L. MacLellan

Heard: April 4, 5, 6, 2005 in Pictou, Nova Scotia

Subject: **CIVIL LAW - Claim for back benefits under Long Term Disability Plan**

Summary: **The plaintiff was covered by Government LTD plan which provided for benefits for 30 months if disabled from a person's own occupation, thereafter if because of illness not able to engage in occupation which paid at least 80 % of your former salary. Plaintiff was diagnosed with depression and job burn-out and went off work. He received disability benefits for 30 months but was then terminated. The Plan provided an appeal procedure based on medical grounds which he used but was unsuccessful. Some years later he started civil action to recover lost benefits.**

Defendant used terms of Plan making medical appeal

decision final as defence to plaintiff's action along with concept of res judicata and also that plaintiff was in fact not disabled.

Issue: (1) Was plaintiff's action barred by terms of LTD plan or on principle of *res judicata*?

(2) If plaintiff's action not barred was he in fact disabled?

Result: Plaintiff's action not barred by decision of Medical Appeal Board because appeal did not deal only with medical ground. Res judicata did not apply.

Plaintiff was disabled at time of termination of benefits and up to present. Defendant ordered to make back payments.

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