

SUPREME COURT OF NOVA SCOTIA

Citation: Benjamin-Harvie v Nova Scotia (Public Service Long Term Disability Plan), 2009 NSSC 201

Date: 20090629

Docket: Ken No. 227430

Registry: Kentville

Between:

Dena Benjamin-Harvie

Plaintiff

v.

The Trustees of the Nova Scotia Public Service
Long Term Disability Trust Fund

Defendant

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Judge: The Honourable Justice Gregory M. Warner

Heard: June 14, 2009, in Kentville, Nova Scotia

Subject: *CPR 12* - action is barred on the principle of *res judicata*

Summary: The plaintiff sued the defendant for benefits under the Plan, based on her inability because of illness or injury, as defined in the Plan's Guidelines, from engaging in any occupation which she is or may become fit through education, training, experience or rehabilitation, and which pays not less than 80% of her current pay for her former position. The defendants plead *res judicata* (issue estoppel) because the plaintiff had exercised her right of administrative appeal under the Plan and had lost that appeal. The plaintiff applies under *CPR 12* for determination, as a question of law, whether the defendant's *res judicata* should be permitted.

Issue: Should the defendant's application for *res judicata* be permitted?

Result:

The MAB administrative appeal met the *Danyluk* stage one preconditions to *res judicata* or issue estoppel. Applying the *Danyluk* stage two contextual analysis, the Court declines to exercise discretion to bar the *res judicata* defence.

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