SUPREME COURT OF NOVA SCOTIA
Citation: *Skinner v. Nova Scotia (Labour Board)*, 2020 NSSC 280

Date: 20201008
Docket: *Hfx No.* 495141
Registry: Halifax

Between:

Gordon Wayne Skinner

Applicant

and

Nova Scotia Labour Board

First Respondent

and

International Union of Elevator Constructors, Local 125, and
Ward Dicks, Local 125 Representative

Second Respondents

Judge:	The Honourable Justice Ann E. Smith
Heard:	September 29, 2020, in Halifax, Nova Scotia
Final Written Submissions:	(Applicant) September 30, 2020
Counsel:	Gordon Wayne Skinner, Self-represented Applicant Jeffrey David C. Waugh, for First Respondent Gordon N. Forsyth, QC, for Second Respondents

By the Court:

Introduction

[1] Mr. Skinner seeks judicial review of a decision of the Nova Scotia Labour Board dated November 25, 2019. Ms. Karen R. Hollett, sitting alone as chair of the Labour Board dismissed Mr. Skinner's duty of fair representation complaint, filed under s. 54A(3) of the *Trade Union Act* (the "*Act*"), against the International Union of Elevator Constructors, Local 125 ("Local 125" or the "Union") and Mr. Ward Dicks, Local 125 Representative. The Complaint was dismissed by the Labour Board on a preliminary basis because it found that it was filed outside the 90-day time limit for bringing a duty of fair representation complaint, and on the basis that the subject matter of the Complaint was outside of the Board's jurisdiction to consider.

[2] Mr. Skinner is an elevator mechanic and a Union member. He says that the Union's decision not to assist him in obtaining coverage for medical cannabis under the health plan provided in his collective agreement and not to provide him with assistance in dealing with the Nova Scotia Workers' Compensation Board ("WCB") constitutes unfair representation.

[3] Mr. Skinner says, among other arguments, that he did not know that there was a 90-day time period within which to bring his Complaint and that the Labour Board should not have found that he knew about the circumstances giving rise to his Complaint in 2014. Mr. Skinner's position is that Mr. Dicks told him in 2014 that the Union's grievance procedure was not available to him, and that on June 5, 2019 he learned that he could grieve and therefore the Complaint, filed on August 9, 2019, was timely.

Background

[4] Mr. Skinner completed the Labour Board's Form 22, entitled "Duty of Fair Representation – Complaints under s. 54A(3) of the *Act*" on August 9, 2019.

[5] Form 22 requires a complainant to identify the type(s) of unfair representation which occurred by checking the appropriate box and by describing the unfair representation. Mr. Skinner put a check mark beside the following boxes:

> arbitrary representation conduct which was ill-informed, reckless, or indifferent to your interests eg. A union automatically accepts the employer's version of a grievance without giving the employee a chance to respond to it.
>
> bad faith representation conduct based on ill-will, or revenge toward an employee eg. A union refuses to arbitrate a grievance because the grievor [*sic*] had run against a union official in union elections.

[6] In the narrative portion of the Complaint, Mr. Skinner wrote:

> - My union told me there were no grievance procedures
> - No resources for legal assistance
> - Numerous breaches of law, act, Section 7 violations in WCB section, as well as statement of facts
> - With no grievance AVAIL forced to Human Rights Commission
> - Retaliation is apparent, as counter offer, would not result in undue HARDSHIP, of which the BOT rejected. Threatened law suite, and now deduct 15% off medical making expensive prescriptions, and dental out of reach and unaffordable.
>
> See attached

[7] Mr. Skinner, as a Union member, is eligible for coverage under the terms of a Welfare Trust Plan (the "Plan"), pursuant to his collective agreement, which provides health and related benefits for employees working in the unionized sector of the Canadian elevator industry. The Plan is managed by a Board of Trustees (the "Trustees").

[8] In August 2010, Mr. Skinner sustained injuries in a motor vehicle accident while driving his employer's vehicle. Mr. Skinner filed a claim for compensation with the WCB. His claim was accepted on the basis that the injuries resulting from the accident were compensable.

[9] Unfortunately, Mr. Skinner suffered chronic pain as a result of his injuries and has been unable to work since the accident. In 2012, Mr. Skinner began using medical cannabis on the advice of his treating psychologist. Initially Mr. Skinner's medical cannabis was paid for under the terms of his automobile insurance policy. Those benefits expired after two years. Mr. Skinner found that medical cannabis helped relieve his pain when other drugs had not. Mr. Skinner says that he does not have the financial wherewithal to purchase medical cannabis.

[10] Mr. Skinner sought approval from the WCB for medical aid in the form of medical cannabis.

[11] Mr. Skinner's request was denied by a WCB case manager on the basis of a WCB policy which provided that the WCB would assist in providing health care (services and treatments) to injured workers where, *inter alia*, the health care was consistent with standards of health care practices in Canada. The WCB case manager determined that medical cannabis was inconsistent with Canadian health care standards and, therefore, not available for WCB medical aid. Mr Skinner appealed this decision through appeals within the WCB, and then to the Nova Scotia Court of Appeal.

[12] In a decision dated March 9 2018, *Skinner v. Nova Scotia (Workers' Compensation Appeals Tribunal)* 2018 NSCA 23, Mr. Skinner's appeal was dismissed by the Nova Scotia Court of Appeal.

[13] In the Spring of 2014, while his WCB appeals were proceeding, Mr. Skinner sought interim coverage for medical cannabis from the Trustees under the Welfare Plan. Drugs not approved by Health Canada were not funded under the Welfare Plan. Medical cannabis had never been funded before.

[14] The Trustees considered Mr. Skinner's request, but denied him coverage, on the basis that medical cannabis was not an approved expense under the Welfare Plan as it had, at the time, not been approved by Health Canada and therefore was not recognized by the Welfare Plan's pharmacy benefits management service provider.

[15] Mr. Skinner challenged his denial of coverage under the Welfare Plan by bringing a Complaint under the Nova Scotia *Human Rights Act*. The Board of Inquiry who heard his human rights complaint determined that Mr. Skinner had been discriminated against on the basis that exclusion of coverage for medical cannabis was inconsistent with the purpose of the Welfare Plan and deprived Mr. Skinner of a medically necessary drug prescribed by his physician.

[16] The Trustees successfully appealed the Board of Inquiry decision to the Nova Scotia Court of Appeal (*Canadian Elevator Industry Welfare Trust Fund v. Skinner*, 2018 NSCA 31). The Court of Appeal found that the Board of Inquiry erred in finding that non-coverage of medical cannabis discriminated against Mr. Skinner based on his disability. In the Court of Appeal's decision, Bryson J.A. stated:

> [119] This is a very unfortunate result for Mr. Skinner who says he cannot afford regular purchases of medical marijuana. As the Board implies in its decision, Mr. Skinner may have had greater success in an arbitration, unencumbered by the criteria of the *Human Rights Act*. The Workers' Compensation Board may yet reconsider. Apparently, some injured workers now do receive medical marihuana as medical aid. And Health Canada may come to approve some type of medical marihuana. But in the circumstances of this case, the Welfare Plan's non-coverage of drugs not approved by Health Canada does not contravene the *Human Rights Act*.
>
> [emphasis added]

The Labour Board Decision

[17] The decision of the Labour Board provides an account of what happened after the Court of Appeal's decision, overturning the Board of Inquiry's finding of discrimination.

> [9] After this Court of Appeal ruling in April 2018 overturned the Human Rights Board of Inquiry decision, Mr. Skinner received demands from the Board of Trustees of the Welfare Plan to repay $33,309.99. These are monies which had been paid out by the Welfare Plan pursuant to the Board of Inquiry decision. Mr. Skinner says he cannot afford to repay these monies and he also has expenses related to the appeal which is causing him great hardship. Mr. Skinner indicated that he spiraled downward and became angry and started to review the court decisions. He indicates that he took note of the comments by the Court of Appeal about arbitration and he again approached the Union about arbitration and legal supports but was again denied assistance.
>
> [10] Mr. Skinner states in the materials accompanying his Form 22 as follows:
>
> i. 17. The judge stated that I may have been more successful had I grieved it and took it to arbitration.
>
> ii. 18. I asked the Union about arbitration and legal supports again and was told there were no provisions for such.
>
> [11] Following a series of e-mail exchanges with the Union between April 2019-June 2019, Mr. Skinner filed his Form 22 and extensive supporting documentation with the Labour Board on August 9, 2019, seeking to have the Board require the Union to, *inter alia*, assist him in his disputes over medical cannabis with the Board of Trustees as well as his dealings with WCB. Based on a review of all information received, the Board has determined it is precluded from dealing with Mr. Skinner's complaint as explained below.

[18] The Labour Board referred to the nature of a union's duty established in subsection 54A(3) of the *Act*, which provides:

> No trade union and no person acting on behalf of a trade union shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in a bargaining unit for which that trade union is the bargaining agent with respect to the employee's rights under a collective agreement.
>
> [Emphasis added]

[19] The Labour Board outlined the prerequisites to filing a duty of fair representation complaint:

> [18] Even where a dispute arises out of an employee's collective agreement rights, the Board's jurisdiction to intervene is circumscribed by subsections 55(2) and (3) of the *Act*. These subsections provide as follows:
>
> > (2) Subject to this Section, a complaint shall be made to the Board pursuant to subsection (1) not later than ninety days from the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.
> >
> > (3) Subject to subsection (4), no complaint shall be made to the Board under subsection (1) or under subsection (3) of Section 54A on the ground that a trade union or any person acting on behalf of a trade union has failed to comply with clause (f) or (g) of Section 54 or subsection (3) of Section 54A unless
> >
> > > (a) the complainant has presented a grievance or appeal in accordance with any procedure
> > >
> > > (i) that has been established by the trade union, and
> > >
> > > (ii) to which the complainant has been given ready access;
> > >
> > > (b) the trade union
> >
> > [emphasis added]

[20] The Board noted (para. 14) that in Nova Scotia the "duty of fair representation" only applies to the representation by a union with respect to an employee's "rights under a collective agreement" and that therefore the Labour Board only had jurisdiction to hear complaints which relate to same. The Labour Board found that:

> [15] A number of allegations contained in Mr. Skinner's complaint fall outside the scope of the Union's duty under the *Act*. His disputes with his Union over WCB entitlements (including WCB denials of coverage for cannabis, a vaporizer and a therapeutic bed) arise under statute and do not arise out of a collective agreement and thus, the Board has no jurisdiction to consider these. While many unions do assist their injured members with WCB claims, generally there is no legal

requirement to do so under the duty of fair representation. As there is no provision in the Collective Agreement pertaining to WCB (such as a right to supplemental benefits) which might affect this issue, the Board has no jurisdiction with respect to these matters.

[21] The Board then addressed whether the Complaint was timely:

[20] As noted above, ss. 55(2) of the *Act* provides for a ninety-day time limit from the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

[21] The complaint, in its essence, is that the Union has denied Mr. Skinner access to the grievance process to challenge the denial of the coverage of medical cannabis under the Welfare Plan. As he acknowledged on the Form 22 and further explained in his submissions, he first tried to obtain the assistance of the Union to obtain coverage for medical cannabis many years before he filed his complaint At that time, he says he was advised by his Union that there was no grievance procedure or other legal supports available to him. This is why he says he went the route of filing a complaint against the Welfare Plan's Board of Trustees with the Human Rights Commission in or about 2014. Thus, on its face this aspect of the complaint is untimely as many years have passed since Mr. Skinner was first denied assistance from his Union *via a vis* the welfare Plan's decision with respect to medical cannabis.

[22] Mr. Skinner has referred to more recent e-mails with the Union and we will take the time to explain why these e-mail conversations, in our view, cannot revive his ability to complain about the Union at this time. Originally, Mr. Skinner indicated in his Form 22 the circumstances arose "when first denied assistance and again May 13, 2019." The Board has reviewed copies of e-mail exchanges between Mr. Skinner and Mr. Ward Dicks which were sent between April and June 2019 and these do not, in our view, assist Mr. Skinner in reviving this complaint.

[23] On or about April 18, 2019 the first exchange included the following:

> From: wayne skinner
>
> Sent: Thursday, April 18, 2019 1:31 PM
>
> To: Local 125
>
> Subject: RE: meeting
>
> As I have said previously via email. I would like to file grievance forms and have an explanation of the process.
>
> The rationale for my being unable to attend the union office has been explained as an accommodation request directly related to my disability/disorder, the fact my union refused to meet this accommodation request ….

> The contact information for the secretary and name to contact re reduction on dues
>
> Therefore please send the information request via email
>
> Thanks Wayne
>
> From: Local 125 ≤elevator.loc125@ns.sympatico.ca≥
>
> Sent: Thursday, April 18, 2019 1:34:04 PM
>
> To: wayne skinner
>
> Subject: Re: meeting
>
> The Financial Secretary for Local 125 is Ward Dicks Suite 102, 14 McQuade Lake Crescent, Halifax Nova Scotia B3S 1B6
>
> As for grievance forms and an explanation of the grievance procedure, I am unsure what you are referring to or looking for, as the only grievances that the Union can file is when one of our signatory companies is in violation of the Collective Agreement.
>
> If there is something else you are looking for, you will need to be more specific.
>
> Regards,
>
> Ward Dicks
>
> B/R IUEC Local 125
>
> From: wayne skinner
>
> Sent: Thursday, April 18, 2019 1:43:29 PM
>
> To: Local 125 125 ≤elevator.loc125@ns.sympatico.ca≥
>
> Subject; RE: meeting
>
> Ward as with other unions there must be a process to address issues where a member and union disagree on an issue.
>
> The judge in the court of appeal stated I may have been more successful had I grieved the denial and took it to arbitration,
>
> I would like to do just that for medical marihuana and legal supports to address violations of abuse of power, rising to protentional criminal code violations (evidence tampering) a;; inflicted by the wcb, including induced psychological injuries.

[24] Mr. Skinner also provided copies of his e-mail exchanges with Mr. Ward Dicks in early May 2019 (apparently prompted by a letter from the Board of

Trustees solicitor requesting repayment of funds). These included the following response from Mr. Dicks on May 13th:

> From: Local 125
>
> Sent: May 13, 2019 10:37 AM
>
> To: wayne skinner
>
> Subject: response to email May 10, 2019

Good morning Wayne,

As per the email you sent to Christopher Perri [legal counsel, Welfare Plan Board of Trustees] and copied to the Union on May 10, 2019 you asked me "if any potential legal recourses exist: My answer to that is IUEC Local 125 can only grieve or arbitrate Signatory Companies on violations of the Collective Agreement. (see email sent to you on April 18, 2019 regarding that issue) and unfortunately no legal support is available though our Local for other matters.

I have sent by regular mail on Friday May 10, 2019 hard copies of the documents that you requested: Collective Agreement, Constitution and By-Laws of the International Union Elevator Constructors Local 125, and the Constitution and By-Laws of the International Union of Elevator Constructors

On April 18, 2019 I also sent you a response on how to receive a reduction in Out of Work dues and to date you have not responded.

I have also said many times before that we would be pleased to meet and accommodate you in the Union Office to discuss any issues you may have.

Regards,

Ward Dicks

B/R IUEC Local 125

[25] The Union says that the e-mailed denial of assistance with respect to filing a grievance on April 18th (which was more than 90-days before the complaint was filed) would statute bar Mr. Skinner's complaint. Mr. Skinner submits that Mr. Ward's answer in April cannot be described as definitive and submitted that the May 13th e-mail (which was inside the 90-day period) was the relevant denial.

[26] In the Board's view neither of these e-mail exchanges assist Mr. Skinner. This is because a "series of rebuffs" where there has been no material change in circumstances does not restart the clock on the limitation period. This interpretation is supported by the Supreme Court of Canada. As Laskin, C.J. wrote in *Upper Lakes Shipping Ltd. v. Sheehan et al.*, [1979] 1 S.C.R. 902:

> However, I cannot agree that there can be any number of requests and refusals, relating to the same circumstances to enable a complainant to found a succession of complaints under s. 187(1) so long as he takes care to bring them successively within ninety days of any request and refusal.

> That would make a mockery of s. 187(2), even if it was applicable irrespective of res judicata, which was not mentioned by the Federal Court of Appeal.

[27] That is precisely what happened here. Many years previously, Mr. Skinner went to the Union and they refused to file a grievance or provide any legal supports to assist him in fighting the Welfare Plan's denial of coverage for medical cannabis. After reading the Court of Appeal's comments about the grievance and arbitration process (echoing what was previously said by the Human Rights Board of Inquiry in 2017), Mr. Skinner was prompted to once again approach the Union for support with filing a grievance and was again denied any representation by the Union to challenge the Welfare Plan's denial.

[28] Mr. Skinner also submits that he was not aware that he had a complaint until June when he stumbled on the grievance process on Google and consulted a lawyer. He says this was when he realized he was wrongly advised about this by Ward Dicks. Thus, from his perspective the Board can find that he did not know prior to June and ought not to have known until then of the circumstances of the complaint and he is therefore not late in filing this complaint. In the Board's view, however, the circumstances of Mr. Skinner's complaint arose when he first requested and was denied access to the grievance process or any other legal supports to assist him *via a vis* the decision of the Welfare Plan regarding medical cannabis.

[29] While Mr. Skinner's personal circumstances, both health wise and financially, have unfortunately deteriorated, the circumstances giving rise to this complaint have not. The Union has been steadfast and unwavering in its denial of access to the grievance process or any other legal support to challenge the Welfare Plan's denial of coverage for medical cannabis. Mr. Skinner has known since in or about 2014 that his Union would not be providing him with any assistance in getting coverage for medical cannabis. As noted earlier, whether the Union's position is the correct approach is not the issue at this time. The issue is whether we have jurisdiction to hear the complaint and given that it is out of time we do not.

[30] Mr. Skinner also asked the Board to extend the time limit if we found it to have been exceeded. The Board, however, has no ability to do this. This Board has consistently interpreted the time limit in subsection 55(2) as mandatory and providing us with no jurisdiction to extend it (see, for example, *MK v. Union,* 2019 NSLB 54 (Can LII); *YI v. Union*, 2018 NSLB 90 (Can LII); *PD v. Union and JB*, 2016 NSLB 152 (CanLII); and *CH v. Union and EC*, 2015 NSLB 192 (CanLII)). This approach is also supported b the Supreme Court of Canada's decision in *Upper Lakes* (supra). Mr. Skinner referred us to *AB v. Amalgamated Transit Union, Local No. 569*, 2008 51104 (AB LRB) and submitted that as he is unsophisticated in labour relations and for other reasons we can and should extend the 90-day time limit. We note, however, that the legislation in Alberta is different and the labour board in that province does have this discretion. We do not.

[emphasis added by this Court]

[22] The Labour Board dismissed the Complaint on the basis that it did not have jurisdiction to hear it.

Standard of Review

[23] The standard of review of administrative decisions is presumptively reasonableness, as determined by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 ("*Vavilov*"). That presumption can only be rebutted where legislative intent indicates that another standard is to be applied, or if the rule of law requires that the correctness standard be applied.

[24] The legislature will have indicated that it intended a standard other than reasonableness where (a) the legislature includes specific language on what standard courts should apply (*Vavilov*, para. 33) or (b) where the legislature has provided a statutory appeal mechanism from an administrative decision to a Court (*Vavilov*, para. 37).

[25] There is no language in the *Act* suggesting that anything other than the reasonableness standard applies, and there is no mechanism in the *Act* to appeal a Labour Board decision to the Court.

[26] The rule of law requires a correctness standard where constitutional questions are involved (*Vavilov*, para. 55), where there are general legal questions of importance to the legal system as a whole (*Vavilov*, para. 60), and where there are questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, para. 64).

[27] In *Vavilov* (para. 61), the Court provided examples from the case law of questions that would <u>not</u> be considered questions of law of central importance to the legal system as a whole. One example was "whether a limitation period had been triggered under securities legislation, citing *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67. In *McLean*, the Court rejected the premise that the limitation period before it was a general question of law of central importance (para. 28).

[28] In the circumstances before this Court, the Labour Board is tasked with reviewing the evidence and determining when Mr. Skinner knew, or ought to have known about the "action or circumstances giving rise to the complaint", in the context of the *Act*.

[29] This Court finds that the appropriate standard of review of the Labour Board's decision is reasonableness. The standard of reasonableness was described as follows in *Vavilov*:

> [82] Reasonableness review aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law: see *Dunsmuir*, at paras. 27-28 and 48; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 10; *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3, at para. 10.
>
> [83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem. The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171, that, "as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did": at para. 28; see also *Ryan*, at paras. 50-51. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker – including both the rationale for the decision and the outcome to which it led – was unreasonable.
>
> [emphasis added]

[30] The Labour Board also responded to Mr. Skinner's request for an extension of the 90-day time limit. The Board held that it had no jurisdiction to do so, stating that it has consistently interpreted the 90-day time limit for filing duty of fair representation complaints as mandatory, as the *Act* did not provide it with discretion to grant an extension.

[31] On December 30, 2019, Mr. Skinner filed a Notice of Judicial Review of the Labour Board's decision with this Court.

[32] On January 17, 2020, Mr. Skinner filed a Notice of Constitutional Issue.

[33] The Notice of Constitutional Issue was not served on the Attorney General in relation to the hearing before the Labour Board. The Labour Board in its decision does not refer to that part of Mr. Skinner's Complaint where he states:

> Numerous breaches of law, act, Section 7 violations in WCB Section, as well as statement of facts.

[34] In Mr. Skinner's "Statement of Facts", attached to Form 22 he states, *inter alia*,

> History
>
> This case is about the Union's decision not to provide legal supports, to address abuse, and breaches of the Act and criminal code by the WCB, and to cover the costs of medical marijuana under the terms of the union agreement with loc. 125 of the International Union of Elevator Constructors.
>
> 1. The Complainant alleges that given his disability and medical need; fiduciary responsibility; the protections afforded to all members from egregious, malicious harm Respondent's failure to cover such expenses constitutes negligence in my union's commitment to protect me from such harms.
> 2. <u>These harms rise to numerous section 7 and 15 charter violations (As indicated in the WCB Legal Section)</u>
>
> [emphasis added]

[35] Mr. Skinner's Section 7 and 15 *Charter* arguments all have to do with his attempts to secure medical cannabis as a medical aid through the WCB and the Trustees.

[36] The Labour Board determined both that Mr. Skinner knew of the circumstances giving rise to his unfair representation complaint in 2014 and it lacked jurisdiction to extend the 90-day time limit.

[37] In post-hearing submissions (received, but not requested by this Court), Mr. Skinner says that "it was and is my intent to challenge the 90-day time limit constitutionally." Mr. Skinner had confirmed at the Motion for Date and Directions in this proceeding that he was not challenging the legislation itself, but instead was challenging the application of the limitation period to his Complaint in the circumstances.

[38] In the Notice of Constitutional Issue Mr. Skinner states, *inter alia*:

> **Legislation in issue**
>
> The legislation asserted to be unconstitutional

> The legislation at issue is that the Labor Board, failed to properly apply section 54A(3) NS Trade Union act on bad faith, resulting a violation under section seven of the Charter and warrants consideration against under section 15. Bad faith Section 54A(3) of the Trade Union Act sets out the union's Duty of Fair Representation: As the evidence clearly indicates my union acted in an arbitrary manner; Arbitrary – This is conduct that is ill-informed or reckless, or where the union has not given sufficient consideration to or has been indifferent with regard to your interests and failed to adequately investigate your grievance
>
> Bad Faith; Bad Faith. The fraudulent deception of another person; the intentional or malicious refusal to perform some duty or contractual obligation. One can make an honest mistake about one's own rights and duties, but when the rights of someone else are intentionally or maliciously infringed upon, such conduct demonstrates bad faith.
>
> **Reason for assertion**
>
> 1) The grounds for asserting the legislation is unconstitutional are as follows:
> 2) The union and the Labor Board's interpretation of section 54(A) does not coincide with the legislation.
> 3) The union and the labor Board failed to recognize my section 15 charter right, as indicated in the letter from my Psychologist Dennis Allaby indicated the urgency and necessity of coverage and risk of suicide.
> 4) The union and Labor Board failed to acknowledge that this is end of the line medication, where all other medications failed.
> 5) The union and labor board failed to address according to the DSM-5 with my condition intreated it will
> 6) [emphasis added]

[39] Mr. Skinner clearly says that the Board's application of the limitation period was unreasonable and incorrect in light of his section 7 and 15 *Charter* rights. Although Mr. Skinner, in his post-hearing submission now says that 'it was and is his intent to challenge the 90-day time limit constitutionally", that issue was not before the Board.

[40] Mr. Skinner's references to *Charter* violations in his written submissions to this Court relate to his position that he is at a risk of self-harm if he does not receive coverage for medical cannabis from either the Trustees or WCB:

> - As the letter from Dennis Allaby to the Union states, that suicide is a huge concern. Exhibit A tab 5; This is certainly a Section seven charter issue, but the Human rights commission is limited to discrimination…

- … I sent a "Mountain of Evidence" in an attempt to pose a charter challenge, covering all charter rights, including section seven against the WCB of which Mr. Goes, said there was nothing wrong.
- There has been a perpetual stream of letters and correspondence to the WCB, WCAT, WAP and the minister's office identifying the abuses and violations o [sic] law and charter rights

[41] The Board made a non-discretionary decision that the Complaint was time barred under the *Act*. Mr. Skinner did not provide notice to the Attorney General that he would be making *Charter* arguments before the Board, as required by section 10 of the Nova Scotia *Constitutional Questions Act*, RSNS 1989, c. 89.

[42] This Court finds that it was not unreasonable for the Labour Board to not refer to Mr. Skinner's *Charter* arguments in its decision. The constitutional validity of s. 55(3) of the *Act* nor its application to Mr. Skinner's circumstances were not before the Board.

[43] Further, the *Charter* values approach to administrative decision making applies where discretionary decisions are made. The Board concluded, reasonably and correctly, in this Court's view, that it had no discretion to extend the 90-day time limit.

The Motion for Fresh Evidence

[44] Mr. Skinner made a motion to admit new evidence on the hearing of this judicial review. Normally, only the record before a decision maker will be considered by a Court on judicial review. There are exceptions to this general rule. One of those exceptions is when procedural fairness of the decision maker is challenged (See *Nova Scotia (Attorney General) v. Judges of the Provincial Court and Family Court of Nova Scotia,* 2018 NSCA 83 at para. 73).

[45] Mr. Skinner organized his proposed new evidence in two packages, labelled as Exhibit "A" and Exhibit "B." After discussion with counsel and Mr. Skinner, it became evident that Exhibit "A" was basically the Record on Judicial Review. It was not new evidence, but I agreed to allow it to be entered into evidence because I thought that Mr. Skinner might have prepared for Court using Exhibit "A", rather than the Record and it might facilitate his ability to make argument.

[46] The contents of Exhibit "B", however, included excerpts from the *Criminal Code*, emails from Mr. Skinner to various Nova Scotia Ministers including the

Minister and Deputy Minister of Labour and Advanced Education, attaching a "Notice of Breach of Contract" signed by Mr. Skinner, a letter dated August 28, 2016 to the Ministers of Labour, Health and Justice, allegedly identifying breaches of law and abuse, letters from the Minister of Labour in response to concerns expressed by Mr. Skinner relating to the WCB, one of which Mr. Skinner interprets as the Minister committing to an investigation, a WCB "Follow-up Medical Opinion" dated in 2016 and attached news articles relating to the WCB, a December 2012 Psychology report, emails between Mr. Skinner and various Provincial Ministers which focus on alleged violations of the *Workers Compensation Act* and WCB Policies and a "Notice of Breach of Contract" sent to the Department of Finance and Treasury and the Executive Council Office dated August 23, 2019 wherein Mr. Skinner alleges that the WCB and the Department of Labour and Advanced Education are in violation of "the Nova Scotia 2.1 services contract."

[47] As is evident from this brief review of the Exhibit "B" proposed fresh evidence, it is centered on matters and alleged violations of policy and the WCB *Act*, not within the jurisdiction of the Labour Board. These documents are simply not relevant to this Court's determination of Mr. Skinner's judicial review and are not admitted as fresh or new evidence.

[48] The documents at Tab 32 of Exhibit "B" relate to Mr. Skinner's allegations regarding the Labour Board and bias/procedural unfairness/conflict of interest.

[49] I allowed these documents to be entered into evidence as Mr. Skinner said that they showed bias and conflict of interest on the part of Phillip Veinotte, Employer Representative because Mr. Veinotte sits both as a director of the WCB and as an employer side member of the Nova Scotia Labour Board. The documents also show that Ms. Betty Jean Sutherland sits as a Worker Representative on the WCB and as an employee member of the Labour Board.

[50] None of the documents behind Tab 32 prove any bias or procedural unfairness on the part of the Board of Directors of the WCB, or the Board of Directors of the Labour Board, including Mr. Veinotte, or Ms. Sutherland or their Minister. Further, neither Mr. Veinotte nor Ms. Sutherland sat on the Labour Board which considered his Complaint. The Complaint was heard by the Chair of the Board, sitting alone.

Conclusions

[51] This Court finds that the Labour Board made a reasonable decision when it dismissed Mr. Skinner's Complaint. The Board reasonably concluded that

Mr. Skinner knew since 2014 that his Union would not be providing him with assistance in obtaining coverage for medical cannabis. The Board reasonably, and correctly, in this Court's view, concluded that the *Act* did not allow the Board to extend the 90-day time limit. Further, the Labour Board reasonably concluded that Mr. Skinner's unfair representation Complaint against the Union and Mr. Dicks did not arise out of Mr. Skinner's rights under his collective agreement, and on that basis, it lacked jurisdiction to hear his Complaint.

[52] Mr. Skinner's motion for judicial review of the Labour Board's decision is dismissed, with costs to the Union in the amount of $500. The Attorney General did not seek costs, and none are awarded.

Smith, J.