

SUPREME COURT OF NOVA SCOTIA

Citation: *Deal v. Government of Nova Scotia*, 2023 NSSC 193

Date: 20230612

Docket: *Halifax*, No. 512885

Registry: Halifax

Between:

Judith Margaret Deal

Plaintiff

v.

Government of Nova Scotia (Department of Community Services) and North End
Community Health Centre

Defendants

Judge: The Honourable Justice Diane Rowe

Heard: December 5, 2022, in Halifax, Nova Scotia

Oral Decision: May 30, 2023

Counsel: Judith Deal, Plaintiff, self represented
Noah Entwisle, for the Defendant (North End Community
Health Centre)

By the Court, orally:

[1] Judith Margaret Deal was a client of the North End Community Health Centre (“NECH”) for many years. Social workers at NECH assisted Ms. Deal with her personal matters, including managing her finances and her claim to income assistance benefits. NECH is a non-profit organization that provides community health services, and also provides both primary health care and social work services.

[2] Ms. Deal struggles with physical and mental illness, and with poverty. She is also a person of great strength and resolve. Despite her personal challenges, over decades she has continued to work and be an active member of the community in downtown Halifax, to the extent that she is able.

[3] She was involved with a community group that published a newsletter, titled “Street Feat”, which advocated for the poor who live in downtown Halifax. Ms. Deal was one of several people who volunteered with and distributed Street Feat, offering it for sale to the public on the streets of Halifax. The Court is aware that people could buy it for a nominal amount or choose to give the seller a larger amount of money as an “at will” donation. Ms. Deal submitted to the Court that she received 50 cents per paper as her profit. She states that she sold the Street Feat

newspaper over the course of a decade or more in downtown Halifax. Rather than spend the amount earned as extra income at the time it was earned on either coffee or some other small comforts, she chose to save the money instead.

[4] Ms. Deal opened a savings account many years ago. She steadily deposited her savings from the money earned by selling Street Feat in this account. Ms. Deal's Notice of Claim states that she amassed at least \$20,000.00 in the savings account over the years.

[5] After Street Feat closed down, Ms. Deal was employed as a crossing guard, starting in 2016, as part of the Supported Employment program via the Department of Community Services ("DCS"). DCS administers the Income Assistance Program for the Province of Nova Scotia.

[6] Ms. Deal requested assistance from NECH to help with managing her income as a crossing guard. She alleges that, in late 2019, she was cut off from income assistance supports because a social worker with NECH informed DCS about her savings account. Ms. Deal also claims that the NECH worker was dismissive of her, and inappropriate in her communication concerning this serious event, causing her significant mental distress.

[7] As her income assistance claim was terminated, Ms. Deal had to draw on her savings account to pay her rent and expenses until it was exhausted.

[8] Ms. Deal is an un-represented person. Her Statement of Claim, while written as a narrative of her experiences rather than as a professional legal draft, can be read to identify two primary causes of action against NECH. They are that the termination of her income assistance was unlawful and that the defendants either intentionally or negligently inflicted mental suffering resulting in damages.

[9] She claims against NECH, and DCS, seeking restitution of the \$20,000.00 she spent to cover her living expenses after the termination of her benefit, plus damages of \$20,000.00 for psychological or emotional distress, and seeks that government look at the “systemic problems within the Department of Community Services.”

[10] NECH denies the claims entirely. NECH has filed a Motion for Summary Judgement on the evidence which is the subject of this decision.

[11] DCS was not served with the appropriate notice of the action, pursuant to the *Proceedings Against the Crown Act* R.S.N.S. 1989, c. 360, and did not appear on the motion for summary judgement. Ms. Deal was informed by the Court of the

effect of her not having served DCS in accordance with the legislation, but no additional steps were taken to address this aspect of the Motion or Action.

Proceedings

[12] NECH seeks summary judgment of the court on the evidence. It submits that there are no genuine issues of material fact for trial, and that the court is not required to determine an issue of law or mixed fact and law in this action, and that the plaintiff's claims have no real chance of success.

[13] NECH had produced its affidavit disclosing documents with copies of all relevant and non-privileged documents in its possession concerning Ms. Deal's claims to Ms. Deal in accordance with the *Nova Scotia Civil Procedure Rules* ("CPR"). On May 24, 2022, it requested document disclosure from Ms. Deal. Nothing was received, and NECH filed the Motion for Summary Judgment.

[14] The first appearance on the Motion was November 7, 2022.

[15] Ms. Deal said she had not received an affidavit or brief from NECH on the motion, although an Affidavit of Service of the motion documents was filed by NECH. She did become emotional at this appearance, and the Court recessed briefly to accommodate her.

[16] With respect to the totality of Ms. Deal's circumstances, the Court decided to adjourn and reschedule the hearing, and directed Ms. Deal be re-served with the motion materials. NECH undertook to again send the documents, by registered mail.

[17] Further, at this initial appearance, the Court outlined to Ms. Deal the process for filing legible, possibly typed, materials and the meaning of the motion that was before the Court. The Court stressed to Ms. Deal that she should obtain legal information or assistance with her matter, and identified possible sources. Counsel for NECH also canvassed, orally, the written submission and the law it had filed in order to inform her more fully about the position NECH had taken on its motion.

[18] The matter was then set down to come back before the Court on December 5, 2022.

[19] At this second appearance, Ms. Deal appeared in court with undifferentiated documents, including a coil bound notebook with handwritten entries concerning her feelings. The Court did not have an affidavit from the plaintiff. Ms. Deal did file a 49 page handwritten submission, that was largely unreadable. Ms. Deal, in response to the NECH motion, relied upon her pleadings and the handwritten submission.

[20] She indicated that she received and read the NECH motion materials and the brief, but did not understand what it meant. The Court again re-canvassed the motion, procedure and legal test on the motion for summary judgement with Ms. Deal. Ms. Deal became emotional, requiring a brief recess.

[21] NECH requested that the Court consider the impact upon it if another adjournment were to be made, as it continued to incur costs to defend the action and to appear before the Court on its motion.

[22] Upon balancing the interests of the litigants, and considering the prior disclosure of documents, reviewing the materials before the Court, and considering the repeated efforts by the Court and defence counsel to inform Ms. Deal about the motion and procedure, it was determined that the hearing should proceed.

Law

[23] This is a motion for summary judgement on evidence under *Rule 13.04* which provides:

Summary judgment on evidence in an action

13.04(1) A judge who is satisfied on both of the following must grant summary judgment on a claim or a defence in an action:

- (a) there is no genuine issue of material fact, whether on its own or mixed with a question of law, for trial of the claim or defence;

- (b) the claim or defence does not require determination of a question of law, whether on its own or mixed with a question of fact, or the claim or defence requires determination only of a question of law and the judge exercises the discretion provided in this Rule 13.04 to determine the question.
- (2) When the absence of a genuine issue of material fact for trial and the absence of a question of law requiring determination are established, summary judgement must be granted without a distinction between a claim and a defence and without further inquiry into the chance of success.
- (3) The judge may grant judgment, dismiss the proceeding, allow a claim, dismiss a claim, or dismiss a defence.
- (4) On a motion for summary judgment on evidence, the pleadings serve only to indicate the issues, and the subjects of a genuine issue of material fact and a question of law depend on the evidence presented.
- (5) A party who wishes to contest the motion must provide evidence in favour of the party's claim or defence by affidavit filed by the contesting party, affidavit filed by another party, cross-examination, or other means permitted by a judge.
- (6) A judge who hears a motion for summary judgment on evidence has discretion to do either of the following:
 - (a) determine a question of law, if there is no genuine issue of material fact for trial;
 - (b) adjourn the hearing of the motion for any just purpose including to permit necessary disclosure, production, discovery, presentation of expert evidence, or collection of other evidence.

[24] As Justice Gogan observed in *Jesty v. Vincent A. Gillis Inc* 2019 NSSC 320

at paragraphs 20 -22:

[20] The law applicable to this type of motion is well settled. Reference is made to the reasons of Fichaud, J.A. in **Shannex Inc. v. Dora Construction Ltd.**, 2016 NSCA 89, and Saunders, J.A. in **Coady v. Burton Canada Company**, 2013 NSCA 106.

[21] Parties to this kind of motion must put their “best foot forward”: **Canada (Attorney General) v. Lameman**, 2008 SCC 14 at para. 11. If it is determined that there is no genuine issue or material fact requiring trial, then the question becomes whether a legal determination is required and if so, an assessment of whether the responding party has established a real chance of success.

[22] Justice Saunders articulated the analysis in **Burton**, supra, at para 42:

At this point a summary of the analytical framework may be helpful. In the first stage the judge's focus is concerned only with important factual matters that anchor the cause of action or defence. At this stage the relative merits of either party's position are irrelevant. It is only if the judge is satisfied that the moving party has met the evidentiary burden of showing there are no material factual matters in dispute that the judge will enter into the second stage of the inquiry. The focus of that stage is not – as the judge put it here – to see if the “undisputed facts ... give rise to a genuine issue for trial”. This is a misstatement of the test established in *Guarantee*. Instead the judge's task is to decide whether the responding party has demonstrated on the evidence (from whatever source) whether its claim (or defence) has a real chance of success. This assessment, in the second stage, will necessarily involve a consideration of the relative merits of both parties' positions. For how else can the prospects of success of the respondent's position be gauged other than by examining it along with the strengths of the opposite's party's position ... the judge is required to take a careful look at the whole of the evidence and answer the question: has the responding party shown, on the undisputed facts, that its claim or defence has a real chance of success.

Analysis

[25] The defendant seeks summary judgment on evidence and relies upon its two affidavits, as filed by Ms. Megan MacBride and Ms. Heather Hayman, both employees of NECH.

[26] NECH submits that Ms. Deal received income assistance from DCS, pursuant to the *Employment Support and Income Assistance Act*, SNS 2000, c. 27, and regulations and policy (“*ESIA*”). Individuals with over \$2000.00 in assets are ineligible to receive income assistance.

[27] NECH assisted Ms. Deal with filing applications and supporting materials to DCS for her claim to income assistance. NECH does not have statutory authority to decide on the start or termination of income assistance benefits pursuant to the *ESIA*.

[28] It does, as its mandate, assist persons who are in receipt of income assistance payments as part of its social work services. Ms. Megan MacBride was employed by NECH as a social worker from January 2016 to August 2021, and she assisted Ms. Deal with her DCS filings at the time.

[29] In 2019, during the summer, DCS investigated Ms. Deal's eligibility for income assistance. Ms. Deal provided a statement to confirm she did not have any assets in excess of \$2000.00. Then again in November 2019, DCS investigated Ms. Deal's eligibility for income assistance, with another representation by Ms. Deal to NECH and DCS that she did not have any assets in excess of \$2000.00.

[30] On December 24, 2019, Ms. Deal received a letter from DCS informing her that Ms. Deal was no longer eligible to receive income assistance as it had discovered that she owned a bank account with more than \$20,000.00 in it. NECH received documentation that confirmed this.

[31] Ms. Deal was very upset about the termination of benefits. She blamed NECH and Ms. MacBride specifically for the loss of the income assistance.

[32] In February 2020, Ms. MacBride had a meeting with Ms. Deal at NECH. NECH submits that Ms. MacBride attempted to “lighten the mood” by observing that Ms. Deal had more money in her bank account than she did. She also expressed concern for Ms. Deal’s health based on her observations at the time.

[33] It is quite clear that Ms. Deal did not respond well to either of these expressions by Ms. MacBride. NECH chose to reassign Ms. MacBride from Ms. Deal’s file, as Ms. Hayman’s affidavit indicated, and Ms. Deal continues to receive support from NECH.

[34] NECH submits that the only material facts relate to whether the Plaintiff has suffered an actionable loss. A dispute of immaterial or incidental fact does not affect the summary judgement analysis.

[35] In this motion, the only material facts relate to whether Ms. Deal suffered actionable loss, injury or damage as a result of the wrongful acts or omissions of NECH.

[36] NECH submits that the evidence that is before the Court establishes that:

- DCS notified the Plaintiff that it terminated her income assistance on December 24 , 2019 in accordance with its legislation and policy as she owned a bank account containing in excess of \$20,000.00.
- Ms. Deal did meet with Ms. MacBride, who made a comment on the practical and legal implications of Ms. Deal's savings account and made a comparison to her own financial status.
- Ms. Deal did have mental and emotional distress on the termination of benefits.
- Ms. Deal did not suffer a psychiatric injury as a result of NECHs acts or omissions by its employees.

[37] NECH, in its submissions, acknowledged that Ms. Deal experienced a degree of mental distress as a result of the termination of her income assistance. NECH also submitted that Ms. Deal had her unredacted medical records for the time period since June of 2022, as provided by NECH, but did not enter them into evidence concerning the claim of a psychiatric injury.

[38] The Court agrees with NECH that there was no evidence before the Court from Ms. Deal in response to the motion for summary judgment to assess whether there was a genuine dispute of fact regarding whether Ms. Deal had suffered a psychiatric injury that is compensable.

[39] Ms. Deal expressed in her oral submissions and pleadings that she was shocked at how Ms. MacBride dealt with her at the meeting. Ms. Deal had trusted Ms. MacBride with her financial interests, as she had with her predecessor at

NECH. Ms. Deal's pleadings and submission indicate that this former social worker had not informed DCS about the savings account, although she alleges he had knowledge. She relied on this silence continuing, and the termination of benefits coincided upon Ms. MacBride's tenure as her social worker. Ms. Deal interpreted a meeting with a representative of DCS, investigating the claim, and as arranged by Ms. MacBride, as the social worker having "set me up".

[40] Ms. Deal, at one point, referred to having a "trustee". The Court did enquire about this person's identity and whether they were currently still in place, however Ms. Deal was unable to respond with a clear answer on this point.

[41] Ms. Deal's continuing emotional response to her experience of having her income assistance benefits terminated in 2019 was apparent during her submissions. It was noted by the Court, however, that Ms. Deal conceded in her oral submission that she was upset by the DCS' decision to terminate her benefits, and distressed, but no more than what would be expected.

[42] There is no genuine dispute concerning the facts as set out above and therefore the Court moves on to the next step in the test for summary judgment.

[43] The undisputed material facts demonstrate that the Plaintiff's claims do not require a determination of law or of mixed fact and law. NECH did not cause Ms.

Deal's loss of income assistance as the legislative authority is exercised, and the program ultimately administered, by the DCS, who is not appearing on the motion or in the action. Further, there is no evidence before the Court from Ms. Deal to support the possible claim of a compensable psychiatric injury, caused by NECH, that may require a determination of mixed fact and law.

[44] At this point, the analysis is concluded. There is no real chance of success of the claims outlined by Ms. Deal as against NECH.

Conclusion

[45] In the Court's view, primarily, Ms. Deal wished to be heard by NECH, and by DCS. She wished to be treated with respect. Ms. Deal maintained that she had not been untruthful to DCS or NECH, and that the existence of the saving account was known by another social worker at NECH without any repercussions. Ms. Deal's dispute is with the policy and the administrative decision of DCS to terminate her benefits on the basis of her diligent savings.

[46] The Court appreciates that NECH attempted to deal with a vulnerable client with care and respect during its litigation of her claim. It is unfortunate that communication with her at an earlier point was not successful in outlining the scope of NECH's role in providing social work services to Ms. Deal and its

overlapping role and administrative responsibilities in relation to DCS' income assistance programs.

[47] The Court grants the NECH motion for summary judgement. There are no facts in dispute on this motion.

[48] The facts that are before the Court establish that the defendant was not responsible for the DCS' policy or its decision to terminate Ms. Deal's income assistance benefit, and that it was bound to communicate with DCS concerning its clients' circumstances. In regard to the claim for psychiatric injury, there is no evidence before the Court to establish the tort or the injury.

[49] Summary judgment is appropriate, and the motion is granted. The Defendant is the successful party. The action is dismissed without costs, as NECH submits it does not seek any.

Diane Rowe, J.