

NOVA SCOTIA COURT OF APPEAL DISTINGUISHES WEBER AND ALLOWS A PLAINTIFF WHO IS COVERED BY COLLECTIVE AGREEMENT TO FILE A CIVIL ACTION

Pleau v. Canada (Attorney General)

Facts

The Plaintiff was an employee of the Public Service of Canada whose employment was governed by the *Public Service Staff Relations Act* ("PSSRA") and a collective agreement made pursuant to the PSSRA. The Plaintiff was dismissed from his employment in December 1992, and grieved his dismissal under the collective agreement. In April 1994, an adjudicator reinstated him and restored his lost salary and benefits.

Subsequently, the Plaintiff, his wife and his two infant children commenced an action in the Supreme Court of Nova Scotia against the Attorney General of Canada and nine federal public servants. The action alleged that the individual Defendants conspired to cause injury and damage, breached their fiduciary duty, and abused their office by virtue of their wrongful conduct toward the Plaintiff. These acts were alleged to have affected the Plaintiff in such a way that his wife and children suffered mental distress that required medical and other professional treatment.

The Defendants' applied to the Supreme Court of Nova Scotia for an order striking out the Plaintiff's Statement of Claim or for Summary Judgment on the ground that the action arose from the Plaintiff's employment and was therefore subject to the grievance procedure set out in the PSSRA and the collective agreement.

Nova Scotia Supreme Court

The Court refused to strike out the Plaintiff's Statement of Claim and dismissed the Defendants' action for Summary Judgment. The Court stated that it was not plain and obvious that the claim could not succeed because the boundary between court and arbitral jurisdiction requires an analysis of the particular facts in the broader labour relations context.

The Defendants sought leave to appeal to the Nova Scotia Court of Appeal.

Nova Scotia Court of Appeal

Cromwell J.A., speaking for the Court, granted leave to appeal but dismissed the appeal.

Cromwell J.A. found that the following three main considerations underpin the Supreme Court of Canada's decisions in such cases as *St. Anne Nackowic Pulp and Paper Co. Ltd. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704, and *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929:

- i. whether the legislation and the collective agreement show a strong preference for a particular dispute resolution process;
- ii. whether the essential character of the dispute is governed, expressly or by implication, by the scheme of the legislation and the collective agreement; and
- iii. whether the legislative process provides effective redress for the alleged breach.

In answer to the first question, the Court found that neither the *PSSRA* nor the collective agreement mandated a dispute resolution process other than the Courts. The *PSSRA*, unlike Acts such as the *Nova Scotia Trade Union Act*, does not require collective agreements to contain a mandatory grievance procedure. The collective agreement in question did not provide such a procedure. The grievance procedure under the collective agreement allowed only certain categories of grievances to be submitted to adjudication. Accordingly, the Court's jurisdiction was not limited by the collective agreement or the *PSSRA*.

In response to question two, the Court found that the essential character of the dispute did not arise out of the collective agreement. The Defendants conceded that the matters alleged in the Statement of Claim could not be referred to adjudication under the collective agreement. Since the Plaintiff had no possible recourse to adjudication and the substance of the dispute was not addressed in any way by the collective agreement, Cromwell J.A. found that *Weber* did not apply.

In response to the third question, the Court noted that although the grievance procedure under the collective agreement was available to the Plaintiff, adjudication under the collective agreement was not available. Accordingly, no adequate redress existed for the Plaintiff other than through the courts.

Accordingly, the Court took jurisdiction over the dispute.