

NOVA SCOTIA COURT OF APPEAL

Citation: *Carter v. Manufacturers Life Insurance Company*, 2026 NSCA 6

Date: 20260129

Docket: CA 537670

Registry: Halifax

Between:

Terrence Joseph Carter

Appellant

v.

Manufacturers Life Insurance Company

Respondent

Judges: Farrar, Bourgeois, and Van den Eynden, JJ.A.

Appeal Heard: September 29, 2025, in Halifax, Nova Scotia

Facts: The appellant, a unionized employee of Bell Aliant/Bell Canada, sustained a back injury in 2018 and applied for disability benefits. The respondent, Manufacturers Life Insurance Company (Manulife), administered the short-term disability (STD) program and provided long-term disability (LTD) coverage. The appellant alleged that Manulife managed his claims in bad faith, causing financial harm and mental distress, and sought punitive and aggravated damages (paras [1-3](#)).

Procedural History:

- *Carter v. Manufacturers Life Insurance Company*, 2024 NSSC 245: The motion judge found the appellant's claim was governed by the collective agreement and

stayed the action pending a determination by a labour arbitrator on arbitrability (paras [5](#), [31-37](#)).

- Parties' Submissions:**
- Appellant: Argued that the nature of his claim falls outside the scope of the collective agreement and is within the jurisdiction of the court. He contended that the motion judge erred in her decision (para [5](#)).
 - Respondent: Submitted that the court lacked jurisdiction and the motion judge should have dismissed the action instead of issuing a stay. The respondent relied on the Supreme Court of Canada's decision in *Weber v. Ontario Hydro* (paras [4](#), [6](#)).

- Legal Issues:**
- Did the motion judge apply the correct legal principles in determining the essential character of the dispute?
 - Does the essential character of the dispute fall within the ambit of the collective agreement?
 - Do the circumstances justify the court exercising its extraordinary discretion to maintain jurisdiction over the dispute?

- Disposition:**
- The appeal was dismissed, and the cross-appeal was allowed without costs.

Reasons: Per Bourgeois J.A. (Farrar and Van den Eynden JJ.A. concurring):

The motion judge erred in identifying the essential character of the dispute as involving LTD benefits rather than the management of STD benefits. The dispute arose from the administration of the collective agreement, which provided for STD benefits, and thus fell within the exclusive jurisdiction of a labour arbitrator (paras [42-50](#)). The court found no justification for exercising residual jurisdiction, as the appellant could have sought effective remedies under the collective agreement but chose to commence a civil action instead (paras [51-53](#)). Consequently, the appellant's claim was dismissed (para [54](#)).

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 55 paragraphs.

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Appeal Heard: September 29, 2025, in Halifax, Nova Scotia

Held: Appeal dismissed, cross-appeal allowed without costs, per reasons for judgment of Bourgeois, J.A.; Farrar and Van den Eynden, JJ.A. concurring

Counsel: Nicolle A. Snow and Elisa Akcakiryan, Articled Clerk, for the appellant
Tricia Avery, for the respondent

Reasons for judgment:

[1] The appellant, Terrence Joseph Carter, has worked for Bell Aliant/Bell Canada (“Bell”) since 1998. He is a unionized employee, the terms of his employment governed by a collective agreement entered into between his union and Bell.

[2] The appellant sustained a back injury in 2018 and subsequently applied for disability benefits due to his inability to return to work. The respondent, Manufacturers Life Insurance Company (“Manulife”) administers a short-term disability (“STD”) program on behalf of Bell, and further provides long-term disability (“LTD”) coverage through a separate policy of insurance contracted between itself and Bell.

[3] The appellant, although eventually provided with full STD benefits and approved for ongoing LTD coverage, is of the view the respondent managed his respective claims in an unreasonable manner causing him financial harm and mental anguish. He brought an action alleging bad faith against the respondent claiming punitive and aggravated damages and damages for mental distress.

[4] The respondent brought a motion in which it sought to have the appellant’s action dismissed. Specifically, it challenged the jurisdiction of the Supreme Court of Nova Scotia to hear the appellant’s claim. It submitted the claim fell within the scope of the collective agreement, and as such, exclusive jurisdiction to hear the dispute rested with an arbitrator. The respondent relied on the Supreme Court of Canada’s decision in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 and the authorities which subsequently followed.

[5] The motion judge, Justice Mona L. Lynch, found the appellant’s claim was governed by the collective agreement, but postponed determining whether the court would exercise a residual discretion to hear the matter. Specifically, the motion judge entered a stay of the appellant’s claim until such time as a labour arbitrator determined whether the claim was arbitrable. The appellant challenges the decision, asserting the nature of his claim falls outside the scope of the collective agreement, is within the jurisdiction of the court, and the motion judge erred in deciding otherwise.

[6] The respondent has filed a cross-appeal, submitting that if the court had no jurisdiction, then the motion judge's only recourse was to dismiss the action, and she could not issue a stay.

[7] I am satisfied, based on the guiding legal principles, the motion judge did err in her assessment of the nature of the dispute. However, for the reasons below, I reach the same ultimate conclusion; the appellant's claim falls within the ambit of the collective agreement, and thus must be resolved through arbitration, not in the court. Given the nature of the dispute, there is no reason to find the Supreme Court maintains a residual jurisdiction to hear the matter. As such, I would dismiss the appellant's claim.

Background

[8] To put the matter on appeal in context, some background will be helpful. The facts outlined herein are ones which were either acknowledged by both parties, or were contained in the affidavit filed by the respondent in support of the motion to dismiss (sworn by representative Manon Lacroix) and the appellant's affidavit filed in response. Neither affiant was cross-examined. Further factual details will be addressed in the analysis to follow.

[9] Bell provides STD benefits for its employees, and is entirely responsible for the cost of same. It has obligated itself to do so in the collective agreement, and has contracted with Manulife to administer those benefits on its behalf.

[10] Bell has also entered into a separate contract of insurance with Manulife to provide group life insurance and LTD benefits to its employees. Through deductions from their wages, employees contribute to the premiums for this coverage.

[11] The appellant was injured at work in March 2018. He received workers' compensation benefits for a period and made several attempts to return to work. His efforts to return to employment ended in September 2021 due to increasing pain. Shortly thereafter, the appellant applied for STD benefits.

[12] The appellant was approved for STD benefits in October 2021, retroactive to his departure from work in September. In January 2022, the appellant attended for an Independent Medical Assessment at Manulife's request. Relying on the outcome of that assessment, the appellant's STD benefits were suspended citing a "lack of objective medical evidence" that he could not return to work on a part-time basis.

[13] In April 2022 the appellant requested forms from Manulife to apply for LTD benefits. Initially the appellant was told by a Manulife representative that he could not apply for LTD benefits “while on short term disability and/or if you do not qualify for short term disability”. However, seven days later he was provided with the forms by Manulife. They were completed by the appellant and forwarded to Manulife.

[14] In May 2022, the appellant appealed to Manulife the suspension of his STD benefits, and was advised shortly thereafter that the decision was upheld.

[15] In June 2022 the appellant’s claim for LTD benefits was denied. This was on the basis that because he had “not exhausted the maximum duration” of his STD benefits, the appellant did not qualify for LTD benefits.

[16] It is helpful to note at this juncture that the group policy governing the appellant’s eligibility for LTD benefits included a “qualifying period” which required the expiration of STD benefits before a claim could be made.

[17] The appellant retained legal counsel and filed a Notice of Action against Bell and Manulife in September 2022. In his pleadings, the appellant sought payment of both STD and LTD benefits. The appellant subsequently filed an Amended Notice of Action in which he discontinued the action against Bell.

[18] In December 2022, the appellant filed a second appeal with Manulife for the denial of his STD benefits. The appellant alleged that because he had brought a civil claim against Manulife, it was in a conflict of interest in adjudicating his current STD appeal. In his affidavit, the appellant says this caused the adjudication of his STD appeal to be “stalled for months”. He further attests that based on the advice received from his union representative, he agreed to waive his claim of conflict, although he felt “pressured beyond belief” in making this decision.

[19] The outcome of the STD appeal was eventually determined in June 2023, with it being dismissed by Manulife. On June 28, 2023, the appellant filed a third appeal of the termination of his STD benefits, and provided updated medical information in support.

[20] On July 21, 2023, the appellant was advised by Manulife the decision to terminate his STD benefits had been reversed and he would receive retroactive benefits to cover the maximum STD benefit period.

[21] The appellant's claim file, including the recent updated medical information was then transferred to Manulife's long-term disability group. On August 25, 2023, the appellant's claim for LTD benefits under the group policy was approved, retroactive to October 19, 2022.

[22] The appellant continues to be in receipt of LTD benefits. In November 2023, the appellant again amended his pleadings, adding a claim against Manulife for the alleged bad faith management of his disability claims.

Legal Principles

[23] Before outlining the basis for the motion judge's decision, I will set out the relevant legal principles. Both parties acknowledge that *Weber* is the foundational authority relevant to determining whether the Supreme Court of Nova Scotia possesses the jurisdiction to hear the appellant's claim, or whether that exclusively lies with a labour arbitrator.

[24] In *Weber*, the Supreme Court of Canada provided direction respecting how claims arising in a unionized setting were to be addressed. Specifically, the Court considered whether superior courts and labour arbitrators ought to share concurrent jurisdiction over such matters. The Court concluded where legislation and/or the relevant collective agreement provided for a final dispute resolution process by way of arbitration, disputes which in their *essential character* arise from a collective agreement must be resolved through grievance and arbitration, not in the courts.¹

[25] This Court in *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)*, 2007 NSCA 38 applied the principles flowing from *Weber*, including the required analytical process to determine the question of jurisdiction. Justice Cromwell (as he then was) wrote:

[18] To carry out the required analysis, the court must address two main questions. The first concerns the ambit of the dispute resolution scheme and the second concerns whether the dispute falls within it. The court must look at the essential character of the dispute, determined according to its full factual context, and not at the legal characterization which the parties have chosen to place on it: see, e.g., **Morin**² at paras. 15-20; **Vaughan v. Canada**, [2005] 1 S.C.R. 14 at

¹ There was no dispute in this case that the relevant legislation, the *Canada Labour Code*, R.S.C. 1985, c. L-2, as amended and the collective agreement provided for final dispute resolution through arbitration. Rather, the central issue in dispute was whether the essential nature of this dispute fell within the ambit of the collective agreement.

² *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Quebec (Attorney General)*, [2004] 2 S.C.R. 185.

para. 11; **Weber** at para. 49. Any other approach would leave it open to innovative pleaders to evade the dispute resolution process established by the legislation and the collective agreement. This would undermine the purposes of the legislative scheme and the intention of the parties: **Weber** at para. 49. As McLachlin, J., as she then was, wrote for the majority in **Weber** at para. 43:

... the analysis of whether a matter falls within the exclusive arbitration clause must proceed on the basis of the facts surrounding the dispute between the parties, not on the basis of the legal issues which may be framed. The issue is not whether the action, defined legally, is independent of the collective agreement, but rather whether the dispute is one “arising under [the] collective agreement”. Where the dispute, regardless of how it may be characterized legally, arises under the collective agreement, then the jurisdiction to resolve it lies exclusively with the labour tribunal and the courts cannot try it.

[Emphasis in original]

[19] The same idea was expressed by Bastarache, J. in **Regina Police Assn Inc. v. Regina (City) Board of Police Commissioners**, [2000] 1 S.C.R. 360 at para. 25: “... the decision-maker must determine whether, having examined the factual context of the dispute, its essential character concerns a subject matter that is covered by the collective agreement. ... If the essential character of the dispute arises either explicitly, or implicitly, from the interpretation, application, administration or violation of the collective agreement, the dispute is within the sole jurisdiction of an arbitrator to decide.”

[20] The collective agreement need not deal with a matter explicitly, provided that the essential character of the dispute arises implicitly from the interpretation, application, administration or violation of the agreement.

(Bolding in original, Emphasis added, Footnote added)

[26] The Court in *Cherubini* also cautioned that although a relevant factor, a party to the action being a non-party to the collective agreement, is not determinative of jurisdiction. Justice Cromwell explained:

[47] Who the parties are and their relationships to the collective agreement are relevant considerations in determining the essential character of the dispute. However, it is the essential character of the dispute, not the identity of the parties who are being sued that remains the central consideration. This principle is in my view correctly stated in George W. Adams, **Canadian Labour Law**, 2nd ed. (Toronto: The Cartwright Group, 2006) at 12.572c: “[b]ringing an action against someone who is not a party to the collective agreement does not give a court jurisdiction if the essential character of the dispute at hand still arises under the collective agreement.”

...

[49] The approach outlined in Adams' text and in **Piko**³ has been stated and applied by the courts in many cases. These cases hold that, regardless of how an action is legally framed, and regardless of the identity of the named defendants and their relationship to the collective agreement, the courts are without jurisdiction over a dispute where, in its essential character, it arises from the interpretation, application or alleged violation of a collective agreement. To take any other approach would be to focus on the legal characterization which a plaintiff may impose on the facts and would permit creative plaintiffs to undercut the statutory scheme of mandatory exclusive arbitration. ...

(Bolding in original, Case authorities omitted, Emphasis added)

[27] It is important to note that even where it is determined exclusive jurisdiction over a dispute rests with a labour arbitrator, the courts may choose to exercise an exceptional residual jurisdiction. As noted by Justice Cromwell in *Cherubini*, the circumstances justifying doing so are narrow:

[68] Courts may in exceptional cases take jurisdiction even in cases in which a labour arbitrator otherwise has exclusive jurisdiction: the courts retain residual authority to provide remedies which the arbitrator is not empowered to grant. This extraordinary and discretionary power allows the courts to prevent a "real deprivation of ultimate remedy.": **Weber** at paras. 54 -57 citing **St. Anne**⁴ at p. 723. As was said in **Canadian Pacific Limited v. Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation**, [1996] 2 S.C.R. 495 at para. 5, courts have a residual, discretionary authority, even where there is a comprehensive code for settling labour disputes, to grant relief not available under it.

[69] This residual, discretionary power is not to be invoked simply because the rights and remedies in the grievance arbitration process do not mirror judicial remedies. The relevant consideration is not whether the scheme provides the same rights and remedies as would a court, but whether the court's failure to intervene would result in a "real deprivation of ultimate remedy.": **Weber**, at para. 57. In short, what is important is that the scheme provide an answer to the problem: **Vaughan** at para. 36; **Phillips v. Harrison** at para. 80.

(Bolding in original, Emphasis added, Footnotes added)

[28] Further, in *Gillan v. Mount Saint Vincent University*, 2008 NSCA 55, this Court found the inability of a claimant to seek punitive damages through the arbitration process was insufficient to trigger a residual jurisdiction. The Court

³ *Piko v. Hudson's Bay Co.* (1998), 41 O.R. (3d) 729.

⁴ *St. Anne Nackawic Pulp & Paper Co. Ltd. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704.

similarly rejected a lapsed time period for bringing a grievance under the collective agreement as sufficient to provide recourse to the courts:

[44] The appellant also claims that she cannot obtain effective redress under the Collective Agreement. This argument relates to the fact that neither she, nor the Union on her behalf, filed a grievance respecting her injury at work or the alleged unsafe working conditions. She says that her injuries took a long time to manifest, and that she did not contemplate any role for the Union in relation to her injury and subsequent termination of her employment. No grievance having been filed within the time periods stipulated in the Collective Agreement, she argues that she has lost the ability to grieve or to have the matter arbitrated in accordance with that dispute resolution process. Accordingly, only the courts can provide her with effective redress.

[45] None of the evidence before the judge supports the claim of a slow manifestation of injuries. This is not a situation where the appellant was without recourse or remedies for her injury. The Collective Agreement provided a dispute resolution process. Because of the terms in that contract with the University, her job was held open for her for some time. She received short term benefits, which were followed by long term benefits extending some two years. What she received may not be the amount she hopes to obtain through her action in negligence and occupier's liability against her employer. However, she had a means to seek redress and she obtained the several types of redress negotiated by her Union on behalf of the employees, without any proof of fault for her loss. It should also not be forgotten that whether she can establish her claim in tort against the University, or the damages she claims is not certain, but is subject to the risks of litigation.

[46] As stated in *St. Anne Nackawic* at p. 729 and in *Weber* at ¶ 54 and ¶ 57, the courts possess limited residual jurisdiction in certain situations involving labour relations. In this situation, where the appellant could have sought effective remedies under the Collective Agreement, there is no need for the exercise of that residual jurisdiction.

[29] To summarize the above principles, where a court is tasked with determining if it possesses jurisdiction to hear a claim arising from a unionized setting, it should:

- Identify the essential character of the dispute. This is done by examining the factual context. How the parties to the dispute choose to characterize the dispute is not determinative. Rather, an analysis of the factual context must be undertaken and is central to the determination;

- Once the essential character of the dispute is identified, the collective agreement must be examined to assess whether the dispute, explicitly or through implication arises from the interpretation, application, administration or violation of the collective agreement; and
- If the essential character of the dispute arises from the collective agreement, thus falling into the exclusive jurisdiction of a labour arbitrator, the court may consider exercising residual discretion to hear it. This is an exceptional exercise of discretion, and is to be exercised only where it is clearly demonstrated the arbitration process does not or could not have provided the claimant with an adequate remedy.

[30] I turn now to the motion judge’s decision.

Decision under Appeal

[31] The motion judge’s reasons are reported at 2024 NSSC 245. After setting out the respective positions of the parties, she notes that her analysis is governed by the principles set out in *Weber*, and also references *Cherubini*. Relying on those decisions she observes: “After examining the factual context of the dispute, I must determine whether its essential character concerns a subject matter that is covered by the collective agreement.”⁵

[32] The motion judge identified the issues she was required to determine as follows:

Does the court have jurisdiction to hear the Plaintiff’s claim?

- a. Does the dispute arise under the collective agreement either expressly or inferentially?
- b. Does the grievance and arbitration process afford effective redress?

[33] After setting out the legal principles, the motion judge, referencing the pleadings, identified the nature of the dispute as “the manner in which Manulife dealt with [the] claim for long-term disability benefits”:

[19] The dispute here was originally about the denial of short and long-term disability including arrears of payments, the commencement of long-term disability as well as punitive damages and damages for mental distress. Amendments were made to the Statement of Claim after Terrence Carter’s long-

⁵ Decision, at para. 13.

term disability payments were reinstated. The dispute remaining after the amendments is over the manner and alleged bad faith with which Manulife dealt with Terrence Carter’s claim for long-term disability payments. It is no longer about the payments or arrears owing under the policy. I am not deciding the merits of those claims but the character of the dispute.

(Emphasis added)

[34] After noting Manulife was not a party to the collective agreement, the motion judge directed herself that she must still “determine whether the dispute arises out of the collective agreement”. She concluded the collective agreement contemplated the “right to long-term disability” and as such, the dispute arose thereunder.

[35] The motion judge then turned to whether the court should use its residual discretion to hear the dispute. She noted:

[42] In *Gillan v. Mount Saint Vincent University*, 2008 NSCA 55 the Court of Appeal noted:

[43] In my view, the judge did not err when he decided that the possibility exemplary or punitive damages might not be available would not be sufficient to create jurisdiction in the court.

The court notes the limited residual jurisdiction of the courts and finds that where the appellant could have sought effective remedies under the collective agreement there was no need to exercise the residual jurisdiction (para. 46).

[43] I find that the arbitrator has the power and the duty to determine all the claims made by Terrence Carter. I decline to exercise my residual jurisdiction as the arbitrator has the authority to grant the relief sought by Terrence Carter.

(Emphasis added)

[36] Notwithstanding the motion judge clearly declining to exercise residual discretion above and finding the arbitrator could grant an effective remedy, she appears to modify her position later in the decision:

[49] The nature of the dispute is covered by the collective agreement and the grievance and arbitration process affords effective redress. Terrence Carter will not be deprived of his ultimate remedy if the matter goes to an arbitrator as the arbitrator has the power to grant the relief sought. The court will not use its residual discretion to hear the dispute unless the arbitrator decides that the matter is not arbitrable. The Notice of Action and Statement of Claim of Terrence Carter in this matter is stayed pending the decision of the arbitrator on whether the claims and matters are arbitrable.

(Emphasis added)

[37] The order ultimately issued incorporates the subsequent wording:

FURTHER, IT IS HEREBY DETERMINED THAT this Honourable Court will not use its residual discretion to hear the dispute unless an arbitrator determines that the matter is not arbitrable;

Issues

[38] Both parties raise concerns with the motion judge's decision.

[39] In his Notice of Application for Leave to Appeal and Notice of Appeal, the appellant sets out the following grounds of appeal:

1. The Chambers Justice erred in her determination that the essential character of the dispute fell within the ambit of the Collective Agreement and was therefore arbitrable.
2. The Chambers Justice erred in her determination that the Collective Agreement affords effective redress.
3. The Chambers Justice erred in her determination that residual discretion was not necessary, due to Her Ladyship's finding referenced in ground number 2.

[40] In its Notice of Application for Leave to Cross Appeal and Notice of Cross Appeal, the respondent set out the following sole ground of cross appeal:

1. The Chambers Justice erred in her decision to stay, and not dismiss the Plaintiff's Notice of Action and Statement of Claim, after concluding that the essential character of the dispute fell within the ambit of the Collective Agreement and was therefore arbitrable.

[41] Based on the arguments of the parties and a review of the record, notably the "full factual context" of the dispute, I would reframe the issues to be determined as follows:

1. Did the motion judge apply the correct legal principles in determining the essential character of the dispute?
2. Does the essential character of the dispute, properly identified, fall within the ambit of the collective agreement?

3. Do the circumstances justify the court exercising its extraordinary discretion to maintain jurisdiction over the dispute?

Analysis

Did the motion judge apply the correct legal principles in determining the essential character of the dispute?

[42] The motion judge cited *Weber* and *Cherubini* as setting out the required analytical framework to guide her consideration and correctly instructed herself to examine the factual context of the dispute in order to ascertain its essential character. However, I am satisfied she did not follow this instruction, leading her to misidentify the dispute as involving LTD benefits. I will explain.

[43] As noted earlier herein, the parties filed affidavits on the motion. The appellant's affidavit, in particular, provided essential factual context which, with respect, the motion judge did not consider. Some of this has already been set out in the background discussion, however, the foundation for the appellant's claim for bad faith damages is particularly relevant.

[44] In his affidavit the appellant sets out the source of his mental anguish and stress:

50. It is difficult to describe the harrowing experience I was put through over the past several years, and which continues now. It has been physically and mentally exhausting, devastating financially and the impact on my family life is immeasurable.
51. It was roughly 15 months before the decision to terminate my STD was overturned. During this period, I was selling personal belongings to pay bills and stay afloat.
52. Manulife terminated my STD when there was no change in my condition since the date I had been approved for STD. It is my belief that I was being terminated prior to the LTD eligibility date so Manulife could deny me LTD based on a technicality. I continuously felt as though Manulife was looking after their own interests to the exclusion and detriment of mine.
53. I held a valid disability Policy that I paid for, and when I turned to Manulife for help, I was refused the right to even apply for benefits. I had to involve a lawyer before forms were given to me.
54. I was pressured and coerced to take a position that I did not believe, in order to have my second STD appeal heard. The pressure to agree that Manulife was not in a conflict position to adjudicate my STD appeal was unbearable. I was desperate financially. I felt like I was being strong-

armed to say something I did not agree was true just to have my appeal heard.

55. The financial devastation and stress on me and on my family was and is immeasurable. My emotional and mental health deteriorated drastically over the course of this ordeal. My wife has left me and is now filing for a divorce as a direct result of the emotional and financial devastation of the last few years.
56. As a result of the undue stress, anguish and egregious claim handling, I filed an amendment to the pleading to claim aggravated and punitive damages, which was issued on November 29, 2023. . . .

(Emphasis added)

[45] The appellant's reference to being denied LTD on the basis of a contractual technicality was repeated by his counsel in her submissions to this Court. There is no dispute that the group policy precluded the appellant from qualifying for LTD until such time as he had exhausted his STD benefits.

[46] The theory of bad faith advanced by the appellant is centered on the premise that Manulife, in the course of managing his STD claim, purposely suspended his benefits so that he would be prevented from meeting the qualification period under the LTD policy.

[47] The factual context of the dispute, including the appellant's own allegation of bad faith, is in relation to the management of his STD claim. The termination of benefits, the multiple appeals, the delay in having his benefits reinstated, and the mental distress the appellant says arose as a result thereof, are all in relation to Manulife's administration of his STD claim. That is the essential nature of the dispute, and the motion judge erred in concluding otherwise.

Does the essential character of the dispute, properly identified, fall within the ambit of the collective agreement?

[48] This issue can be dealt with quickly by asking whether the management of STD benefits falls within the ambit of the collective agreement. It clearly does.

[49] I do not intend to cite particular sections of the collective agreement. It is sufficient to note the collective agreement provides:

- Bell is obligated to pay STD benefits to qualifying employees;

- STD benefits are available for employees who are absent for eight or more consecutive calendar days;
- A “Disability Management Group” will receive documentation to determine if an employee qualifies for STD benefits;
- The “Disability Management Group” is entitled to consult with treatment providers to determine ongoing STD eligibility; and
- The specific calculation of STD benefits payable is determined based upon the employee’s years of service.

[50] Bell has agreed to provide its employees with STD benefits in the collective agreement. The evidence further establishes that although Bell has contracted with Manulife to manage STD claims, it remains responsible for payment. I am satisfied the dispute here, the management of the appellant’s STD benefits, arises from the administration of the collective agreement. As such, it falls within the exclusive jurisdiction of a labour arbitrator.

Do the circumstances justify the court exercising its extraordinary discretion to maintain jurisdiction over the dispute?

[51] As noted earlier, notwithstanding finding a dispute falls within the ambit of a collective agreement, a court retains the ability to exercise an extraordinary residual jurisdiction to hear it. This residual jurisdiction is available “to provide remedies which the arbitrator is not empowered to grant”.⁶ Further, a court should decline to exercise jurisdiction “where the appellant could have sought effective remedies under the Collective Agreement”⁷ but did not.

[52] I am not satisfied the present matter is the type of claim justifying the exercise of residual jurisdiction. In reaching this conclusion, I note:

- The appellant’s evidence demonstrates his union was aware of his difficulties regarding the administration of his STD claim, provided advice in that regard, and noted a grievance could be taken following the outcome of his final appeal;
- The appellant, as opposed to bringing a grievance regarding the administration of the STD benefits he claimed he was entitled to under the collective agreement, chose to commence a civil action; and

⁶ *Cherubini*, at para. 68.

⁷ *Gillan*, at para. 46.

- Even if the passage of time now precludes a grievance being brought (no evidence of this was provided), this Court in *Gillan* found this does not trigger the exercise of residual jurisdiction.

[53] This dispute rests with a labour arbitrator. There is no justification for the exercise of residual jurisdiction. Without jurisdiction, a judge has no authority to grant a stay (see *Cape Breton-Victoria Regional Centre for Education v. McInnis*, 2025 NSCA 15). The appropriate remedy is a dismissal of the appellant's claim.

Disposition

[54] I would uphold the motion judge's determination the dispute fell within the ambit of the collective agreement, but for differing reasons. Furthermore, I would decline to find a residual jurisdiction rests with the court to hear the appellant's claim. As requested by the respondent in its cross-appeal, I would set aside the motion judge's stay and dismiss the appellant's claim.

[55] In the circumstances of this case, I would order that each party bear its own costs of the appeal.

Bourgeois, J.A.

Concurred in:

Farrar, J.A.

Van den Eynden, J.A.