

CANADA / JUDGMENT

Tan v. British Columbia (Social Development and Poverty Reduction)

2024 BCSC 786

COURT

Supreme Court of British Columbia

DECIDED

9 May 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 786 Tan v. British Columbia (Social Development and Poverty Reduction) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Tan v. British Columbia (Social Development and Poverty Reduction), 2024 BCSC 786 Date: 20240509 Docket: S250154 Registry: New Westminster Between: Li Wen Tan Plaintiff And Ministry of Social Development and Poverty Reduction (MSDPR) Defendant Before: The Honourable Justice Lamb Reasons for Judgment The Plaintiff, appearing in person: L. Tan Counsel for the Defendant: D. Balca F. Zaltz Place and Date of Hearing: New Westminster, B.C. March 8, 2024 Place and Date of Judgment: New Westminster, B.C. May 9, 2024

Introduction

- [1] The plaintiff, Li Wen Tan, filed an action against the Ministry of Social Development and Poverty Reduction (the "Ministry") for reducing his Person with Disability ("PWD") benefits by the amount he receives as Canada Pension Plan disability ("CPPD") benefits. Under Part 3 Legal Basis of the notice of civil claim, Mr. Tan says that CPPD benefits are not deductible under tort law and therefore should not be deductible from PWD benefits. He says further there is no unjust enrichment because CPPD benefits count as earned income and not unearned income. Mr. Tan represents himself in this action, and he was granted a fee waiver in respect of this claim.
- [2] After pleadings were closed, the Ministry filed an application to dismiss Mr. Tan's claim pursuant to Rule 9-5(1)(d) as an abuse of process or pursuant to Rule 9-5(1)(a) as disclosing no reasonable claim. I heard this application in my role as case management judge for the more than twenty lawsuits filed by Mr. Tan against various defendants.
- [3] In its notice of application, the Ministry says this lawsuit is an abuse of process because the Ministry determined Mr. Tan was not eligible for PWD benefits in May 2023 (because he received CPPD benefits in April 2023) and his PWD benefits in June 2023 were reduced (to reflect CPPD benefits received in May 2023). The Ministry says that Mr. Tan applied for a reconsideration of the Ministry's decision and appealed the outcome of the reconsideration

to the Employment and Assistance Appeal Tribunal. The Ministry argues that this lawsuit is an abuse of process and a collateral attack on the decision of the Employment and Assistance Appeal Tribunal. However, the Ministry failed to file any evidence to prove the alleged facts in the notice of application (including any evidence of the decision, reconsideration and appeal) which leaves the Court with no evidence upon which to find an abuse of process.

- [4] On the other hand, I am satisfied the notice of civil claim discloses no reasonable cause of action. For the reasons that follow, I order the notice of civil claim be struck without leave to amend and the action be dismissed.
- [5] At the hearing of the application, the Ministry asked to amend the style of cause to reflect that the defendant ought to be "His Majesty the King in right of the Province of British Columbia" as required by s. 7 of the Crown Proceeding Act, R.S.B.C. 1996, c. 89. However, the defendant failed to include this relief in its notice of application, and I decline to amend the style of cause given my order to dismiss the action.

Legal framework

- [6] Rule 9-5(1)(a) allows the court to strike a notice of civil claim that discloses no reasonable claim. Evidence is not admissible on such an application: Rule 9-5(2). Instead, the court must assume that the pleaded facts are true when assessing whether the pleading discloses a reasonable claim.
- [7] A pleading may be struck where it is "plain and obvious" that the claim discloses no reasonable cause of action, has no reasonable prospect of success or if it is certain to fail: *Lantzville Community Association v. District of Lantzville*, 2021 BCSC 2260 at para. 11.
- [8] When deciding whether to strike a pleading, the court "should consider whether defective pleadings can be corrected by way of an amendment and whether it would be appropriate to give leave to do so": *Willow v. Chong*, 2013 BCSC 1083 at para. 23. The notice of civil claim
- [9] Mr. Tan pleads the following facts in the notice of civil claim, which I assume are true for the purposes of this application:
1. The Ministry deducted \$1358.50 from Mr. Tan's PWD benefits for May 2023, \$642.86 from his PWD benefits for June 2023, and \$642.86 from his PWD benefits for July 2023 because he received CPPD benefits;
 2. The Ministry failed to inform Mr. Tan that the CPPD exemption rule changed on October 5, 2021;
 3. Mr. Tan has tried but failed to obtain information from the Ministry regarding how CPPD benefits affected PWD benefits in 2007 and 2008;

4. Mr. Tan's multiple mental disorders have worsened since 2010 due to irritants at his current BC Housing suite; and
 5. Mr. Tan has developed various physical symptoms because he is not able to get a good night's sleep.
- [10] In terms of relief sought, Mr. Tan seeks the following orders in the notice of civil claim:
1. that the Ministry pay Mr. Tan "lost CPP benefits" in the amount of \$642.86 per month from now until he is 65 years old (total: \$254,572.56);
 2. that the Ministry allows Mr. Tan to keep his full monthly PWD benefit without deduction and to receive CPPD benefits;
 3. that the Ministry pay Mr. Tan \$2644.22 for deductions from his PWD benefits in May through June 2023; and
 4. that the Ministry pay Mr. Tan's court costs, legal fees and "time, energy, money" spent.
- [11] As an alternative to these orders, Mr. Tan says the Ministry has the option to settle with him outside of court.
- [12] The legal basis for the claim appears as follows in Part 3 of the notice of civil claim:
1. Double recovery exempt from physical and mental injuries/damages CPP disability payment is not deductible under Tort law, my mental and physical conditions are getting worse from multiple mental disabilities, and (traffic noise, lack of sleep, heat, neighbor cigarette smoke) from my current home. All these caused plaintiff to suffer pain in ears, lack of appetite, loss of weight, low energy level, loss of balance, lack of ability to concentrate, feeling of fatigue, etc. My mental and physical conditions are deteriorating which fall under the tort law. Therefore [the Ministry] should not deduct PWD. It should not be double recovery.
 2. Similar Tort case Maillet v. Rosenau 2006 BCSC 10
 3. No unjust enrichment CPP is not like social assistance, it is funded by contributions and only [those] who have contributed into CPP can receive CPP. It will count as earned income, NOT unearned income.

Analysis

- [13] I am satisfied that the notice of civil claim fails to set out a viable claim against the Ministry for damages. There is no tort or other cause of action alleged against the defendant. The fact that CPPD benefits may not be deductible from tort damages on the basis they are collateral benefits has no relevance and does not establish a viable cause of action against the Ministry. Unjust enrichment does not arise on the facts pleaded. The fact that CPPD benefits are taxed differently than PWD benefits does not create a cause of action against the Ministry.

- [14] PWD benefits are paid pursuant to the Employment and Assistance for Persons with Disabilities Act, S.B.C. 2002, c. 41 and regulations (the "Statutory Scheme"). The Ministry acknowledges that it is the branch designated by the Province of British Columbia to administer the Statutory Scheme.
- [15] The Statutory Scheme establishes how the Ministry determines entitlement to PWD benefits and the amount of PWD benefits payable. The regulation (B.C. Reg. 265/2002) pursuant to the Employment and Assistance for Persons with Disabilities Act defines "earned income" and "unearned income". The latter includes "any type or class of Canada Pension Plan benefits": regulation, s. 1(1). The Statutory Scheme establishes how "unearned income" affects the calculation of PWD benefits. The Statutory Scheme establishes how a person may seek review of any Ministry decision related to entitlement to or amount of PWD benefits.
- [16] Read most generously, the notice of civil claim seeks a remedy against the Ministry for reducing Mr. Tan's PWD benefits by the amount of the CPPD benefits which he receives. Determining the amounts of PWD benefits is a matter within the purview of the Ministry and any decisions are reviewable in accordance with the Statutory Scheme, including by appealing to the Employment and Assistance Appeal Tribunal. Dissatisfaction with the Ministry's interpretation and application of the Statutory Scheme does not give rise to a cause of action against the Ministry (or properly against His Majesty the King in right of the Province of British Columbia, as per s. 7 of the Crown Proceeding Act).
- [17] In his oral submissions in answer to the Ministry's application Mr. Tan objects to having his PWD benefits reduced by CPPD benefits because CPPD benefits are considered taxable income whereas PWD benefits are not taxable income. As a result, Mr. Tan receives less in his pocket each month since he started receiving CPPD benefits than he did when he only received PWD benefits because income tax is deducted from his CPPD benefits. The Ministry has informed Mr. Tan that his PWD benefits will be reduced by the amount of CPPD benefits to which he is entitled, whether he actually collects CPPD benefits or not. In other words, Mr. Tan does not have the option of declining CPPD benefits and collecting the full amount of PWD benefits to which he would otherwise be entitled.
- [18] While Mr. Tan's objection to the effect of his receipt of CPPD benefits may be understandable, it does not give rise to a cause of action against the Ministry. There is no legal basis, identified by Mr. Tan or otherwise, for advancing a claim for damages against the Ministry for interpreting and applying the Statutory Scheme in a way that Mr. Tan perceives to be unfair. In particular, there is no legal cause of action that would result in the Ministry or the Province of British Columbia being liable to Mr. Tan for damages because the Statutory Scheme apparently reduces his PWD benefits by the amount of CPPD benefits he is entitled to and does receive.

- [19] Mr. Tan's plea that tort damages are not reducible by CPPD benefits does not disclose or create a cause of action in tort against the Ministry or the Province. In Maillet, the court found that CPP benefits are not deductible from an award for loss of future earning capacity in a claim for personal injury. However, this does not give rise to a cause of action against the Ministry or the Province on the basis that the Statutory Scheme reduces PWD benefits by CPPD benefits.
- [20] Mr. Tan's plea of "no unjust enrichment" in connection with the definition of earned and unearned income does not disclose or create a cause of action against the Ministry or the Province.
- [21] In terms of the possibility to amend, Mr. Tan failed to provide any proposed amendments. That said, given the lack of legal foundation to a claim for damages in these circumstances, I am satisfied there is no amendment that would result in a viable claim.
- [22] In summary, I am satisfied that the notice of civil claim should be struck pursuant to Rule 9-5(1)(a) with no leave to amend because it is plain and obvious that the notice of civil claim discloses no viable claim. The action is dismissed without costs, as the defendant waived any entitlement it might otherwise have to costs. "Lamb J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://www.bccourts.ca/jdb-txt/sc/24/07/2024BCSC0786.htm
CASE PAGE	https://chat.esheria.ai/case-law/canada/tan-v-british-columbia-social-development-and-poverty-reduction-2024

Prepared on 28 October 2026 · Esheria