

Ex-Ports Canada Police chief in Halifax wins big disability settlement | The Chronicle Herald

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Crews move shipping containers in the port of Halifax. The former director of the port police service has won \$680,000 after a court ruled an insurance company unfairly clawed back his disability payments. (THE CANADIAN PRESS / File)

The former chief of Ports Canada Police in Halifax has won a major legal battle against an insurance company that clawed back his disability payments.

The court-ordered settlement for Bruce Brine amounts to the largest punitive and aggravated damages award in Nova Scotia history, Brine's lawyer, Barry Mason, said Thursday.

Brine was awarded \$500,000 in punitive damages, \$150,000 in aggravated damages and \$30,000 in general damages for a breach of his insurance contract.

Brine had been the superintendent of ports police in the city but stopped working in 1995, going on long-term disability for depression. He started receiving the benefits that year from National Life, now known as Industrial Alliance Insurance and Financial Services Inc., Nova Scotia Supreme Court papers said.

But in the fall of 1998, the insurer stopped paying Brine those benefits, arguing he had received lump sum payments from the Canada Pension Plan and Public Service Superannuation, court documents said. National Life alleged it had therefore overpaid Brine \$99,506.64.

Because of an upfront clawback, Brine stopped receiving long-term disability payments, the documents said.

After Brine declared bankruptcy in 1999, the insurer maintained the debt went on regardless, court heard. National Life also alleged the former ports cop had misappropriated funds because he hadn't let the company know about the pension payments.

In 1996, Brine went to the Canadian Human Rights Commission, alleging he had been poorly treated by Ports Canada, which dismissed him from the top job the year before. In 2004, the commission awarded him \$300,000.

National Life believed his disability benefits were taxable, the court papers said, but the Tax Court of Canada ultimately ruled they weren't. Despite that ruling, the insurer continued to issue Brine with T4A slips, court heard.

The insurer started legal proceedings against Brine in 2001, seeking the alleged overpayment. By that time, due to the clawbacks, the sum had dropped to almost \$41,000.

Brine counterclaimed in 2001, denying the allegations and arguing the insurer breached its duty of "utmost good faith" to him.

The subsequent trial placed Brine as the plaintiff and National Life as the defendant.

During the trial, Brine testified that he always understood that his benefits, which were about 70 per cent of his salary, weren't taxable.

He said his depression worsened after National Life stopped paying. The insurer had also stopped providing him with rehabilitation services.

Brine said he experienced great financial hardship as a result of the insurer's actions and had to sell his house. He also incurred major legal fees in fighting his termination and encountered tax problems.

A National Life employee testified that Brine hadn't let the company know he had applied for Canada Pension Plan benefits, adding that it was his obligation to keep the insurer up to date.

The employee also said it was routine for the insurer to go after a 100 per cent clawback in similar cases.

The agent also testified that Brine had never urged National Life to act on the federal tax decision in his favour. The insurer also wanted an independent psychiatric review of Brine in 1998.

A senior official at National Life testified that one of the reasons Brine's rehabilitation services were suspended was because the insurer had not witnessed any progress regarding his return to the workforce.

Justice Cindy A. Bourgeois rejected the insurers' arguments, questioning the "credibility" of the National Life representatives' testimony.

"I find it more probable that (the agent's) evidence was a purposeful attempt to paint Mr. Brine in as negative light as possible in order to reinforce National Life's position," the judge wrote.

Bourgeois also said Brine did not act in a fraudulent manner toward the insurer.

In addition to the amounts awarded to Brine for damages, she ordered about \$62,000 for the clawback payments.

National Life, however, was awarded \$210,000, its portion of Brine's \$300,000 human rights commission settlement as an offset to the insurance benefits paid him.

"By virtue of National Life's bad faith conduct, Mr. Brine suffered significant distress and added loss," Bourgeois wrote, adding that the insurer must be deterred from "engaging in the eliciting of misleading evidence."

Mason said a decision on court costs is being decided by the judge.

About the Author

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