NOVA SCOTIA COURT OF APPEAL

Citation: ***Lanteigne v. Nova Scotia (Workers' Compensation Appeal Tribunal),*** **2002 NSCA 156**

Date: 20021210
Docket: CA 178892
Registry: Halifax

Between:

Armand Gilles Lanteigne

Appellant

v.

Workers' Compensation Appeal Tribunal of Nova Scotia (WCAT), Workers' Compensation Board of Nova Scotia (WCB), A.W. Leil Cranes & Equipment, (1986) Limited, a body corporate, J.W. Cowie Engineering Limited, a body corporate, James W. Cowie and Kenneth Keith Kennedy

Respondents

Judges: Glube, C.J.N.S.; Freeman and Oland, JJ.A.

Appeal Heard: October 11, 2002, in Halifax, Nova Scotia

Held: Appeal dismissed per reasons for judgment of Oland, J.A.; Glube, C.J.N.S. and Freeman, J.A. concurring.

Counsel: Anna Marie Butler and Sarah Harris, for the appellant
Louanne Labelle, for the respondent, Workers' Compensation Appeal Tribunal
Paula M. Arab O'Leary, for the respondent, Workers' Compensation Board of Nova Scotia
M. Michelle Higgins, for the respondent, J.W. Cowie Engineering Limited
Robert L. Barnes, Q.C. and Brian Curry, for the respondents, A.W. Leil Cranes & Equipment, (1986), Limited and Kenneth Keith Kennedy
Michael F. LeBlanc and Charles Ford, for the interested party, Rodney James Humphrey

Reasons for judgment:

[1] This is an appeal of a decision of the Workers' Compensation Appeals Tribunal ("WCAT") which barred civil actions by the appellant, Armand Gilles Lanteigne, and by Rodney James Humphrey against two of the respondents, A.W. Leil Cranes and Equipment (1986) Ltd. ("Leil Cranes") and Kenneth Kennedy.

[2] On September 16, 1999 the appellant and Humphrey were two of three men carrying out their employment duties at a construction site. They were inside a steel bucket at the end of an extended boom attached to a truck crane when the boom was moved. The truck crane toppled onto its side. The bucket fell to the ground. All of the men who were in the bucket suffered personal injuries.

[3] The appellant brought an action for damages against Leil Cranes which owned the truck crane and against Kennedy, an employee of Leil Cranes, who had operated the boom. His action also named the respondents J. W. Cowie Engineering Limited, which was identified as the construction project manager, and James W. Cowie as defendants.

[4] Humphrey commenced an action against Leil Cranes, Kennedy, and A.W. Leil Holdings Ltd. ("Leil Holdings").

[5] Leil Cranes, Leil Holdings, and Kennedy applied pursuant to s. 29 of the *Workers' Compensation Act* (the *Act*) seeking a finding that the actions against them are barred. By its decision dated March 25, 2002, WCAT stayed the actions against Leil Cranes and Kennedy but not that against Leil Holdings.

[6] The appellant appeals the WCAT decision in regard to his actions against Leil Cranes and Kennedy. Humphrey, who had been a respondent in the s. 29 application, did not appeal. However, he participated in the hearing of the appeal as an interested party pursuant to *Civil Procedure Rule* 62.07(1).

Issues

[7] The appellant framed the two issues to be determined as follows:

(a) Whether WCAT was patently unreasonable in its decision

(i) that the actions against Leil Cranes are *prima facie* barred by the operation of s. 28(1)(b) of the *Act* because the fall of the crane did not involve the "use or operation of a motor vehicle";

(ii) that the two-part test in *Amos v. ICBC* (1995), 63 B.C.A.C. 1 (SCC) is not the governing authority for determining "use and operation of a motor vehicle".

(b) Whether WCAT made an error in jurisdiction by hearing evidence and submissions as to the issue of the existence of mandatory insurance coverage which involved a determination of the insurance contract.

The standard of review

[8] On an appeal to this court from a determination of whether an action was barred under s. 28 of the *Act*, the applicable standard of review is patent unreasonableness: *Queen Elizabeth II Health Sciences Centre v. WCAT* (2001), 193 N.S.R. (2d) 385 (N.S.C.A.).

[9] This test for judicial intervention accords the tribunal's decision a high level of deference. In *Queen Elizabeth II Health Sciences Centre*, after pointing out that courts have been reluctant to interfere with decisions regarding the bar of civil actions made by specialized workers' compensation tribunals, Cromwell, J.A. stated:

> Judicial reluctance to intervene is reflected in the scope of review which courts apply: judicial intervention is warranted only with respect to patently unreasonable determinations. This is a very strict test: see **Huron (County) Huronview Home for the Aged v. Service Employees' Union** (2000), 50 O.R.(3d) 766 (C.A.) per Sharpe, J.A. at 774. Various phrases have been advanced to explain or define it. Cory, J. used the phrases "clearly irrational" and "evidently not in accordance with reason": see **Canada (Attorney General) v. Public Service Alliance of Canada (P.S.A.C.)**, [1993] 1 S.C.R. 941 at 963 - 4. Sopinka, J. spoke of interpretations "not reasonably attributable to the words" in **United Brotherhood of Carpenters & Joiners of America, Local 579 v. Bradco Construction Ltd.**, supra at 340 - 1. Iacobucci, J. in **Canada (Director of Investigation and Research) v. Southam Inc.**, [1997] 1 S.C.R. 748 at 777 referred to a "defect .. apparent on the face of the tribunal's reasons".

> This limited scope of review is not simply a matter of judicial restraint, but of legislative judgment. As Bastarache, J. said for the majority of the Court in **Pushpanathan**, supra at 1004, judicial deference derives from the conclusion that the question raised was one intended by the legislature to be left to the exclusive decision of the tribunal.

Analysis:

(i) "Use or operation of a motor vehicle"

[10] The issue of whether the WCAT decision barring the actions against Leil Cranes and Kennedy was patently unreasonable involves what is known as the "historic trade-off". In *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1997] 2 S.C.R. 890, Sopinka, J. referred to Sir William Meredith's recommendation that injured workers be compensated through an accident fund collected from industry and managed by the state, which was adopted in Ontario and then by other provinces. At ¶ 25, he continued:

> Sir William Meredith also proposed what has since become known as the "historic trade-off" by which workers lost their cause of action against their employers but gained compensation that depends neither on the fault of the employer nor its ability to pay. Similarly, employers were forced to contribute to a mandatory insurance scheme, but gained freedom from potentially crippling liability.

After describing the principal disadvantage, namely that there may be some who would recover more from a tort action than under the workers' compensation scheme, Sopinka, J. stated at ¶ 26:

> I would add that this so-called negative feature is a necessary feature. The bar to actions against employers is central to the workers' compensation scheme as Meredith conceived of it: it is the other half of the trade-off. It would be unfair to allow actions to proceed against employers where there was a chance of the injured worker's obtaining greater compensation, and yet still to force employers to contribute to a no-fault insurance scheme.

[11] This "historic trade-off" is embodied in s. 28(1) of the *Act* which reads:

> **28 (1)** The rights provided by this Part are in lieu of all rights and rights of action to which a worker, a worker's dependant or a worker's employer are or may be entitled against
>
> (a) the worker's employer or that employer's servants or agents; and
>
> (b) any other employer subject to this Part, or any of that employer's servants or agents, as a result of any personal injury by accident
>
> (c) in respect of which compensation is payable pursuant to this Part; or
>
> (d) arising out of and in the course of the worker's employment in an industry to which this Part applies.

[12] Section 28(2) provides an exception:

> **28 (2)** Clause (1) (b) does not apply where the injury results from the use or operation of a motor vehicle registered or required to be registered pursuant to the *Motor Vehicle Act.*

Unless the appellant and Humphreys come within that exception, the "historic trade-off" would bar their actions against Leil Cranes and Kennedy.

[13] In its decision, WCAT determined that the truck crane involved in the accident was not a "motor vehicle" when it was stationary and being operated as a crane at a worksite. That truck crane is known as a Grove Carrier. WCAT summarized the evidence as to its capabilities as follows:

> AWL [Alison Liel, president of Liel Cranes] testified that the 50-ton Grove Carrier is capable of driving to a site. When at the worksite, the outriggers are extended and the jacks go into the aluminum pads. The wheels are then lifted off the ground and the Grove Carrier is stationary while it functions as a crane. The operator stays in one cabin for the purpose of driving the Grove Carrier to the worksite, but must enter a different cabin to operate the boom and operate as a crane. The same engine which provides the power to propel the Grove Carrier while driving provides the power to operate the crane and the boom; there is a

> mechanism which permits the operator to shift the purpose for which the power is used.

[14] It was undisputed that at the time of the accident, the truck crane was not moving but rather was stationary with its stabilizers or outriggers extended and set, and that it was registered pursuant to the *Motor Vehicle Act* for operation upon a highway. The evidence also indicated that the truck crane is manufactured as a stock vehicle, that is, as one piece rather than a vehicle to which mounted, attached or auxiliary equipment was added.

[15] The appellant had urged WCAT to find that the Grove Carrier remained a motor vehicle even when stationary and set up for use as a crane and to be guided by *Amos*, supra in interpreting the words "use or operation of a motor vehicle" in s. 28(2). Humphrey had directed WCAT to *New Brunswick (Workplace Health, Safety and Compensation Commission) v. Larry's Crane Rental Ltd.*, [1996] N.B.J. No. 530 (C.A.) ("*Larry's Crane*") which he considered on all fours with the matter under consideration.

[16] WCAT chose not to follow either *Amos* or *Larry's Crane*. In its decision, WCAT stated:

> After having reviewed the competing arguments, the Panel accepts the arguments put forward by the Applicants. The resolution of this matter turns on the Grove Carrier's status as a multiple purpose or multiple use piece of machinery. With respect to such multi-purpose machinery, the governing authority would appear to be *F.W. Argue, Ltd. v. Howe,* [1969] SCR 354.

The Supreme Court of Canada in *Argue* cited and adopted the words of Tyrwhitt-Drake, L.J.S.C. in *Harvey v. Shade Brothers Distributors Ltd.* (1967), 61 W.W.R. 187 at p. 189 that "Shortly put, the test to be applied when considering the character of a multi-purpose article at any given time is the purpose for which, at that time, it was being used."

[17] WCAT concluded:

> In the present application, the crane was stationary when it fell over. The crane was not capable of moving along the highway, as the wheels were lifted in the air. Accordingly, the Grove Carrier was not a "motor vehicle" per s. 28(2) of the *Act* while it was operating as a crane. Consequently, the falling of the crane could not give rise to an injury resulting from the "use or operation of a motor vehicle" per s. 28(2), and the s. 28(2) exception to the statutory bar therefore does not apply.

and later commented:

> A common sense approach would indicate there is a distinction between the Grove Carrier while it being driven (sic) along a highway, as opposed to when it is stationary, with its wheels in the air, operating as a crane at a worksite. While operating as a crane, the Grove Carrier is an integral part of a worksite, and any injuries resulting from its use as a crane constitute the types of accidents and injuries primarily and directly addressed by the workers' compensation regime.

[18] The appellant submits that the WCAT decision is patently unreasonable. The defect apparent on the face of its reasons, he says, is WCAT's failure to give proper weight to the Supreme Court of Canada decision in *Amos*, supra which in his view set out the applicable test. He urges that in considering whether the action of lifting the boom of the truck crane is "a use or operation of a motor vehicle", WCAT should have examined whether this was an ordinary use of the one piece Grove Carrier, the particular vehicle before them, in accordance with *Stevenson v. Reliance Petroleum Ltd.*, [1956] S.C.R. 936, from which the court derived part of its test in *Amos*. Humphrey emphasizes the difference in meanings between "use" and "operation" and adds that WCAT was patently unreasonable in failing to follow the rationale in *Larry's Crane*, supra given that it also involved a truck crane.

[19] I will begin by considering the argument that the WCAT decision is patently unreasonable because the panel selected *Argue*, supra, rather than the decisions submitted by the appellant or Humphrey, as the governing case in the matter before it. This requires a brief review of the authorities urged by the parties.

[20] The main cases relied upon by the appellant, *Amos* and *Stevenson*, are insurance cases. In *Amos*, the insured driver had been attacked and shot while driving his van. He applied under the *Insurance (Motor Vehicle) Act Regulations* which provided for benefits "in respect of . . .injury caused by an accident that arises out of the ownership, use or operation of a vehicle . . .". In holding that he

was entitled to benefits, the Supreme Court of Canada established a two-part test when determining what is the "ownership, use or operation" of a motor vehicle in relation to the injury sustained. At ¶ 17, Major, J. for the court set out the test as follows:

> 1. Did the accident result from the ordinary and well-known activities to which automobiles are put?
>
> 2. Is there some nexus or causal relationship (not necessarily a direct or proximate causal relationship) between the appellant's injuries and the ownership, use or operation of his vehicle, or is the connection between the injuries and the ownership, use or operation of the vehicle merely incidental or fortuitous?

[21] The court in *Amos* referred to its decision in *Stevenson* where the "purpose test" was first articulated. In that case, gasoline was being delivered from a tank truck to a service station when it escaped because of the negligence of the driver and caught fire, causing extensive property damage. The delivery company sought indemnity under two insurance policies, one of which was an automobile liability policy which insured against liability "arising from the ownership, use or operation" of the vehicle.

[22] At ¶ 18 of *Amos*, Major, J. noted that a majority of the court in *Stevenson* had held that the accident arose out of the use or operation of a motor vehicle. He quoted Rand, J. at p. 941 of *Stevenson*:

> An analogous "use", as distinguished from "operation", is exemplified in the case of a bus. The undertaking in such a case includes the entrance and exit to and from the bus of passengers. If the steps are defective and a passenger is injured, could it be said that injury did not arise out of the "use"? The expression "use or operation" would or should, in my opinion, convey to one reading it all accidents resulting from the ordinary and well-known activities to which automobiles are put, all accidents which the common judgment in ordinary language would attribute to the utilization of an automobile as a means of different forms of accommodation or service. (emphasis added)

[23] Since the appellant in *Amos* was injured while driving his van, the accident clearly resulted from the "ordinary and well-known activities to which automobiles are put" and the purpose portion of the two-part test easily satisfied. The main issue in *Amos* involved the second portion, the causation test.

[24] The *Amos* decision made no mention of *Argue* which the Supreme Court of Canada had decided some 20 years earlier. In *Argue*, as in *Stevenson*, the motor vehicle was a tank truck. The fuel delivery man pumped 471 gallons of fuel oil into the premises although the tank only had a 300 gallon capacity. At issue was the interpretation of a provision in *The Highway Traffic Act* which barred actions for recovery of damages "occasioned by a motor vehicle" unless commenced within a certain time. Spence, J. did not consider *Stevenson* relevant as it dealt with liability under an insurance policy and depended upon the words of the policy. He stated at p. 369:

> . . . the damage was not caused by the use or operation of a motor vehicle but was caused by the use or operation of the pump mounted on the motor vehicle when the motor vehicle itself was stationary. I agree . . . that the fact that the engine which propelled the tank truck along the highway was also the motor which drove the pump does not mean that the damage which ensued by such pumping when carried out negligently was "damage occasioned by a motor vehicle".

He was also of the view that the definitions of "motor vehicle" and "vehicle" suggested something propelled or driven along a surface and not a stationary pump. After adopting the test in *Harvey*, supra that it is the purpose for which a multi-purpose article is used at any given time that determines its character, Spence, J. held that the legislative provision did not bar the action.

[25] In deciding the s. 29 application then, WCAT was confronted with three Supreme Court of Canada decisions, none of which dealt with a workers' compensation matter. Two (*Amos* and *Stevenson*) were insurance cases with wording "in respect of . . .injury caused by an accident that arises out of the ownership, use or operation of a vehicle" (*Amos*) and "arising from the ownership, use or operation" of a vehicle (*Stevenson*) which is slightly different from that, "where the injury results from the use or operation of a motor vehicle", in s. 28 of the *Act*. In one of those (*Amos*), the court had set out a two-part test but the case itself had not involved a multiple purpose vehicle. Two of its decisions (*Stevenson*

and *Argue*) involved the same type of multiple purpose vehicle, namely a tank truck, but came to different results. One of the three (*Argue*) addressed the issue of multiple purpose vehicles more squarely than the others, but was an older decision and dealt with a limitation of actions matter where the wording, "occasioned by a motor vehicle," was again different from that considered in the WCAT decision.

[26] The case argued before WCAT which had the closest factual circumstances and underlying legal issues is the 1996 decision of the New Brunswick Court of Appeal in *Larry's Crane*. There, at the time of the accident, the 10 ton boom truck was stationary with its engine running and its front and rear outriggers or stabilizers extended and set. The issue was whether the accident involved "the use of a motor vehicle"; if so, the action was not barred under that province's workers' compensation legislation. However the 10 paragraph decision did not mention any of *Amos, Stevenson,* or *Argue*; indeed, it did not refer to any jurisprudence whatsoever. After summarizing the arguments of counsel, the court compared the English and French versions of the applicable legislation, concluded that a broader interpretation was appropriate, and determined that the action was not barred.

[27] WCAT was also directed to *Cordeiro v. Lafarge Canada Inc*., [1997] O.J. No. 4571 (Ont. C.J.), decided a year after *Larry's Crane*, in which a person was injured when a cement truck was pouring a load of cement. A provision in the *Insurance Act* barred liability in the case of "loss or damage arising directly or indirectly from the use or operation . . . of an automobile". After referring to all of *Amos*, *Stevenson* and *Argue*, Browne, J. applied the two-part test articulated in *Amos* which counsel agreed was applicable. He held that the purpose to which the cement truck was put at the time of the accident was not an ordinary and well known activity for which automobiles are put. Rather, its "dominant purpose" at the time of the accident was to convey cement to the foundation; it was in effect a pumping station.

[28] As set out in ¶ 16 above, WCAT was of the view that the resolution of the s. 29 application turned on the Grove Carrier's status as a multiple purpose piece of machinery and selected *Argue* as the governing authority. Since the truck crane was stationary and operating as a crane when it fell over, WCAT decided that at the time of the accident it was not operating as a motor vehicle within s. 28(2) of the *Act*, and consequently the exception to the statutory bar did not apply. In my view, this determination cannot be said to be patently unreasonable.

[29] It is apparent from reviewing the case authority that, as counsel for Leil Cranes submitted before WCAT, there is no "bright line of authority" that had to be followed. None of the Supreme Court of Canada cases, *Amos*, *Stevenson*, and *Argue*, while helpful, was decided in a similar statutory context or involved a close factual situation. None is clearly determinative as to the approach that should be taken nor as to the result in a situation involving a multiple purpose vehicle such as that before WCAT. Even in *Stevenson*, supra in which the court concluded that the multiple purpose vehicle there, a tank truck, met its "purpose test", the court acknowledged at p. 940 that there may be uses of multiple purpose vehicles which are separate and severable from the automobile or transportation function:

> He [the appellant's solicitor] classified what was being done with a number of examples of similar non-automobile uses of such a vehicle: receiving visitors on a home trailer while stationary; using spray-painting equipment set up on and moved from place to place on a truck; a circus truck carrying a cage from which a lion escapes and does mischief; a peanut or like familiar stand set up in a truck and disposing of its wares at different places. <u>These can, no doubt, be described as separate and distinct in their nature and purpose from that of the automobile; the use of the truck can properly be differentiated from the function of the apparatus or means conveyed</u>; but the question is whether we have here such a severable activity.

[30] In its decision, WCAT took note of the cases relied upon by the appellant and Humphrey. It pointed out that *Amos*, which set out a two-part test the appellant considered applicable, did not involve a multiple purpose piece of machinery. It described *Larry's Crane*, which had the most similar facts, as "lightly reasoned" in that that decision did not refer to any cases pertaining to such machinery nor to *Amos* or *Argue*. It also observed that *Larry's Crane* had included a consideration of the French language text as an interpretive aid.

[31] It is my view that having regard to all these circumstances, WCAT was not patently unreasonable in its decision that the actions against Leil Cranes and Kennedy are barred by the operation of s. 28(1) of the *Act* because the fall of the crane did not involve the "use or operation of a motor vehicle."

[32] I turn next to the appellant's argument that the WCAT decision was patently unreasonable in that WCAT purported to interpret s. 28(2) of the *Act* without a

determination having been made that mandatory insurance coverage existed. The appellant says that unless and until that has first been decided by agreement or following application, WCAT cannot go on and interpret the statutory exception. He submits that s. 28(2) which refers to "a motor vehicle registered or required to be registered pursuant to the *Motor Vehicle Act*" presupposes some such coverage and that the availability of insurance coverage could affect the interpretation of that provision. After pointing out that a broader interpretation of "use or operation" was taken in the insurance cases of *Amos* and *Stevenson* and a narrower one in the limitation period case of *Argue*, he suggests that if coverage is in place, WCAT must take a broader interpretation and if not, a narrower one, but until it knows whether or not there is insurance, WCAT cannot proceed to interpretation. The appellant raised this argument on appeal but had not made it at the s. 29 hearing before WCAT.

[33] It is not necessary, in the particular circumstances of this case, to decide whether or not it is essential that an initial determination be made as to whether mandatory insurance coverage exists before it considers interpretation. Leil Cranes acknowledged at the WCAT hearing that it had insurance coverage for the accident involving the fall of the truck crane. Consequently, WCAT knew that insurance was in place, although under Leil Cranes' commercial general liability policy rather than its motor vehicle policy. According to the appellant's argument then, WCAT was entitled to move to consideration of the interpretation issue.

[34] As to the submission that once it is found that insurance coverage exists WCAT has to take a broader interpretation of the statutory wording, I would reiterate that for the reasons given in my review of the case authority earlier in this decision, the approach WCAT followed was not patently unreasonable. In my view, nothing in WCAT's interpretation of s. 28(2) of the *Act,* its statement that while operating as a crane the Grove Courier was an integral part of the worksite, or its decision that the fall of the crane truck did not involve the "use or operation of a motor vehicle" and barring the civil actions of the appellant and Humphrey, meets the strict test for judicial intervention.

The Jurisdictional Issue

[35] At the outset of the s. 29 hearing WCAT heard a preliminary motion by Leil Cranes, Leil Holdings and Kennedy which asked it to hear evidence concerning insurance ramifications including underwriting practices, mandatory motor vehicle

insurance, and uninsured risks as an aid in interpreting s. 28(2) of the *Act*. WCAT allowed the motion and heard evidence from a certified risk manager pertaining to the underwriting of risks and the coverage on the truck crane including, whenever it was set up and operating as a crane, the exclusion of coverage under the motor vehicle policy by way of a SEF 30 endorsement which, according to the appellant, was permitted under s. 123 of the *Insurance Act* and had such an effect. Since the evidence established that Liel Cranes was covered for the accident involving the truck crane, insurance coverage was not in issue before WCAT.

[36] The appellant contends that WCAT erred in jurisdiction by hearing that evidence and submissions. Since it challenged the jurisdiction of the tribunal, this court heard submissions by WCAT on this ground of appeal.

[37] In its decision, WCAT summarized the arguments before it on the availability and extent of mandatory motor vehicle insurance, the effect of the SEF 30 endorsement, and its jurisdiction to interpret or to refer to the *Insurance Act* for the purpose of interpreting workers' compensation legislation. WCAT then stated:

> Given the Panel's conclusion that the fall of the crane did not involve the "use or operation of a motor vehicle", it is not necessary for the Panel to render any detailed rulings or findings concerning the parties' arguments with respect to mandatory motor vehicle insurance, or other insurance coverage, beyond the matters addressed in the within paragraph.
>
> . . .
>
> Section 28 of the *Act* sets out the "historic tradeoff" in the Nova Scotia legislation. Therefore, the exception in s.28(2) must be interpreted in the light of the necessity of providing employers protection from lawsuits with respect to workplace injuries. Therefore, the Panel finds that the Legislature intended to restrict the s.28(2) exception to those situations where an employer enjoys the protection of mandatory motor vehicle insurance, and s.28(2) should be interpreted in the light of this legislative object. The Panel generally accepts the Applicants' arguments with respect to the scenario where an employer may not have sufficient mandatory motor vehicle insurance coverage to cover an award made against it. Rather, what is relevant is that an employer who falls within s.28(2) of the *Act* enjoys the benefit of a mandatory insurance policy, even if there is a risk that the level of coverage may be inadequate in the face of a serious injury.

[38] As indicated at the outset of this extract, it was not necessary that WCAT consider the evidence regarding the existence or extent of mandatory motor vehicle insurance coverage in determining whether the civil actions brought by the appellant and Humphrey were barred by s. 28(2) of the *Act*. None of the evidence it heard is reflected in its decision on that issue.

[39] After reviewing the record before us and the WCAT decision as a whole, I am of the view that the portion of its decision quoted above, which forms the basis of this ground of appeal, is *obiter*. It is an observation which does not form an essential part of the reasons in WCAT's determination of the s. 29 application.

[40] Moreover, it would seem to me that in order to determine whether it had jurisdiction to interpret or to refer to the *Insurance Act* for the purpose of interpreting workers' compensation legislation, it was necessary for WCAT to hear the evidence and the submissions of the parties since they might pertain to its consideration of the definition and scope of the bar of civil actions which is, after all, a central feature of the workers' compensation system. Even assuming, without deciding, that WCAT did not have the jurisdiction to do so, it does not appear that its choosing to hear that evidence and submissions was of any consequence in the particular circumstances of this case.

Disposition

[41] I would dismiss the appeal.

Oland, J.A.

Concurred in:

Glube, C.J.N.S.

Freeman, J.A.