NOVA SCOTIA COURT OF APPEAL

Citation: *Legere v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 2024 NSCA 41

Date: 20240328
Docket: CA 524408 and CA 524405
Registry: Halifax

IN THE MATTER OF:

A stated case pursuant to s. 206 of the *Workers' Compensation Act* by the Nova Scotia Workers' Compensation Appeals Tribunal to the Nova Scotia Court of Appeal in relation to WCAT Appeal 2017-308;

AND IN THE MATTER OF:

WCAT Appeal #2017-308 Between:

Alfred Legere

Appellant

-and-

Workers' Compensation Board of Nova Scotia; the Attorney General of Canada and Attorney General of Nova Scotia

Respondents

-and-

IN THE MATTER OF:

A stated case pursuant to s. 206 of the *Workers' Compensation Act* by the Nova Scotia Workers' Compensation Appeals Tribunal to the Nova Scotia Court of Appeal in relation to WCAT Appeal 2014-185;

AND IN THE MATTER OF:

WCAT Appeal #2014-185 Between:

Cynthia Doucet

Appellant

-and-

Workers' Compensation Board of Nova Scotia; the Attorney General of Canada and Attorney General of Nova Scotia

Respondents

Judges:	Farrar, Bryson and Bourgeois JJ.A.
Appeal Heard:	January 30, 2024, in Halifax, Nova Scotia
Held:	The court declined to answer the stated cases per reasons for judgment of Farrar J.A.; Bryson and Bourgeois JJ.A. concurring
Counsel:	Vanessa Nicholson and Danielle St George, for the appellants Alexander MacIntosh, for the respondent Workers' Compensation Appeals Tribunal Andrew Taillon, for the respondent Attorney General of Nova Scotia Paula Arab, KC and Scott Campbell, for the Workers' Compensation Board Shauna Hall-Coates, for the respondent Attorney General of Canada (watching brief only)

Reasons for judgment:

Background

[1] In two separate Workers' Compensation Appeals Tribunal (WCAT) decisions, dated May 18, 2023,[1] WCAT determined it would state a case to this Court to decide an issue arising in the cases.

[2] The WCAT decisions found both workers sustained a stress injury which was a disablement as defined in the *Workers' Compensation Act* (the *Act*).[2] Their injuries would have been compensable but for the exclusion of stress, other than an acute reaction to a traumatic event, from the definition of accident in the *Act*.

[3] Section 2 of the *Act* defines "accident" as follows:

> **Interpretation**
>
> **2** In this Act,
>
> (a) "accident" includes
>
> […]
>
> (iii) disablement, including occupational disease, arising out of and in the course of employment, but does not include stress other than an acute reaction to a traumatic event;

[4] On June 6, 2023, WCAT asked this Court for its opinion on the following question:

> Does the gradual onset stress exclusion found in s. 2(a) of the *Workers' Compensation Act* and paragraph 4 of Workers' Compensation Board Policy 1.3.9R violate s. 15(1) of the *Canadian Charter of Rights and Freedoms*?

[5] The matter was set down to be heard on January 30, 2024.

[6] On November 9, 2023, Bill 332, *An Act to Amend Chapter 10 of the Acts of 1994-95, the Workers' Compensation Act* was passed.

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[1] 2014-185-PAD-2 and 2017-308-PAD-2.
[2] S.N.S. 1994-95, c. 10.

[7] Section 1 of the amended *Act* removed the restriction on compensating stress-related injuries. It provides:

> 1 Section 2 of Chapter 10 of the Acts of 1994-94, the Workers' Compensation Act, as amended by Chapter 16 of the Acts of 2017 and Chapter 40 of the Acts of 2019, is further amended by
>
> […]
>
> (b) striking out "but does not include stress other than an acute reaction to a traumatic event;" in the ninth and tenth lines of clause (a); […]

[8] The amended *Act* specifically provides gradual onset stress is compensable if it arises out of or in the course of a worker's employment:

> 10J (1) Subject to subsection (2), a worker is entitled to compensation under this Part for gradual onset or traumatic mental stress if the stress
>
> (a) arises out of and in the course of the worker's employment; […]

[9] The amendments to the *Act* will take effect on September 1, 2024. During the hearing of this matter, the Court was informed the delay, between Bill 332's enactment and when it takes effect, is to allow the WCB to develop policies with respect to the amendments.

[10] At the hearing on January 30, 2024, we heard argument on whether, in light of the changes to the *Act*, the Court should still answer the stated case. At the conclusion of argument on that issue, we gave an oral decision declining to answer the stated case with reasons to follow. These are those reasons.

Analysis

[11] Section 206 of the *Act* provides as follows:

> **Stated case to Court of Appeal**
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> **206 (1)** The Board or the Appeals Tribunal may state a case in writing for the Nova Scotia Court of Appeal on any question of law.
>
> **(2)** The Nova Scotia Court of Appeal shall
>
> (a) hear and determine the question or questions referred pursuant to subsection (1); and
>
> (b) provide its opinion on the question to the Board or the Appeals Tribunal, as the case may be.

> **(3)** The Nova Scotia Court of Appeal shall not award costs in a case stated pursuant to this Section.

[12] Despite the appearance of mandatory language in subsection 206(2), this Court maintains a discretion to decline answering a stated case, depending upon the circumstances.

[13] In *Nova Scotia* (*Workers' Compensation Board) v. Weagle*, this Court declined to answer a stated case put forward by the WCB:[3]

> In **Hebb v. Family and Children's Services of Lunenburg County et al** (1982), 51 N.S.R. (2d) 447, Macdonald J.A. said the following at p. 449-450:
>
> > When available, the stated case procedure is an expeditious method of obtaining judicial opinion as to the correctness in law of certain interlocutory or final decisions or rulings.
> >
> > ...
> >
> > In my opinion a stated case or similar proceeding in civil matters must state all the relevant facts and must indicate the question, or questions, of law to be determined by the court. The question must be responsive to the facts and findings and must not be of a moot, hypothetical, purposeless, speculative or academic nature.
>
> The questions which the applicant has put to this Court are, in the words of Macdonald J.A. in **Hebb**, "... predicated on a determination as yet unmade … They are therefore, in my view, not responsive to the evidence or to any determination made to date in the case and, indeed, by their very wording are speculative and hypothetical".
>
> Further, to give definitive answers to broad ranging questions concerning the interpretation of provisions of the **Workers' Compensation Act**, S.N.S. 1994-95, c. 10, could stifle the incremental development of jurisprudence with respect to claims under that **Act**. As Justice Sopinka said, in **R. v. Martineau**, [1990] 2 S.C.R. 633, at p. 682:
>
> > In my view, the issue of subjective foresight of death should be addressed only if it is necessary to do so in order to decide this case or if there is an overriding reason making it desirable to do so. Overbroad statements of principle are inimical to the tradition of incremental development of the common law. Likewise, the development of law under the *Canadian Charter of Rights and Freedoms* is best served by deciding cases before the courts, not by anticipating the results of future cases.
> >
> > [Emphasis added.]

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[3] *Nova Scotia (Workers' Compensation Board) v Weagle*, 1998 NSCA 35.

[14] In light of the passage of Bill 332 into law, the purpose of the stated case has now evaporated.

[15] In its reasons for stating the case in this proceeding, WCAT highlighted the prospective nature of the stated case:

> Importantly, the Tribunal has issued conflicting decisions regarding the constitutional validity of the stress exclusion. Guidance from the Court of Appeal is particularly important in these circumstances. The conflicting findings are found in *Decision 2014-706-AD* (September 11, 2019, NSWCAT) and *Decision 2011-359-AD* (December 6, 2012, NSWCAT).
>
> It is unknown whether an "opinion" from the Court of Appeal can include a declaration of invalidity.
>
> However, there would not be much practical difference, should the Court of Appeal make the opinion as sought by the Worker. Subsequent decision-makers could only ignore such an opinion at their own peril. Further, it is assumed that the Attorney-General of Nova Scotia would bring such an opinion to the attention of the Government with an appropriate recommendation.[4]

[16] WCAT was looking for guidance from this Court on the question of whether a general or absolute bar to recovery for claims of chronic or gradual onset stress is compliant with the equality provision of the *Charter*. This was in the specific context of conflicting decisions from WCAT on this particular point.

[17] Now that this question has been resolved by the Legislature, there is no longer any material value in receiving an answer to the stated case. Put simply, the decision of this Court – practically speaking – will be of no precedential value or effect. From a judicial resource perspective, there is no longer any reason to answer the stated case as posed and we declined to do so.

[18] There is a second reason why we declined to answer the stated case. At the time s. 206 was enacted, the workers' compensation regime in Nova Scotia was going through a significant transition. It was moving from a clinical rating schedule, which provided compensation based on the physical loss associated with a workplace accident, to a wage loss system. In *Hayden v. Nova Scotia (Workers' Compensation Appeal Board)*,[5] the Supreme Court of Nova Scotia, Appeal Division, found the Appeal board erred in using the clinical rating schedule method

[4] 2014-185-PAD-2 (Re), 2023 CanLII 43082 (NS WCAT).
[5] 1990 NSCA 2.

of benefit calculation. The WCB was mandated to develop an earnings loss method of compensating injured workers.

[19] In *Proposals for Reform*, a White Paper dated October 6, 1994, the Department of Labour explained the significance of the change to the method of compensating injured workers. At that time, it could reasonably be contemplated that with the extent of the changes to the *Act*, there would be legal issues arising that would need to be addressed by this Court. That turned out not to be the case. The *Act* has been in operation for almost thirty years with a substantial body of jurisprudence having been developed with respect to it.

[20] Section 206 of the *Act* was never intended to be used by WCAT to obtain this Court's opinion on matters falling squarely within its own expertise and ability to decide. WCAT recognized the value to this Court of having its analysis on issues respecting constitutional questions at first instance:[6]

> Generally, there is benefit in having the Tribunal address a constitutional question at first instance. The Tribunal's analysis can be valuable to the Court of Appeal because the Tribunal has expertise in the workers' compensation scheme and understands the purpose of statutory provisions and practical implications. However, in this case, there are already two Tribunal decisions which the Court could review where it applies its expertise to these questions.

[21] In the present instance, WCAT had the evidence to decide the appeals before it. Had it done so, the parties may have appealed that decision to this Court in the normal course, and we would have had the benefit of WCAT's decision on the issue.

[22] WCAT is asking this Court to decide two of its appeals by way of stated case. However, s. 206 was never intended as a mechanism for this Court to decide appeals in WCAT's stead. Deciding issues, properly the subject matter of appeals before WCAT, would not constitute an appropriate use of this Court's resources.

[23] For these reasons, we declined to answer the stated case.

Farrar J.A.

Concurred in:

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[6] 2014-185-PAD-2 (Re), 2023 CanLII 43082 (NS WCAT).

Bryson J.A.

Bourgeois J.A.