

PLESNER V. BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Decision Summary

Court	B.C. Court of Appeal
Citation	2009 BCCA 188
Result	Appeal Allowed
Judge	Prowse , Frankel, Ryan
Date of Judgment	April 30, 2009
WCAT Decision(s) Reviewed	WCAT 2005-03861

At issue before the Court of Appeal was whether the mental stress provisions in s. 5.1 of the *Workers Compensation Act* (Act) and policy item #13.30 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) were constitutional. The Petitioner did not pursue the administrative law arguments raised on judicial review, namely that WCAT's interpretation and/or application of the Act and policy was patently unreasonable.

Facts

The facts of the case were as follows. There was an accident at the Petitioner's workplace, a generating plant, in which a natural gas pipe burst, causing a stream of natural gas to vent into the atmosphere. The employer evacuated the Petitioner with other employees away from the gas line location and emergency response teams closed off the line about an hour after the venting began. The Petitioner worked voluntary overtime on the same day of the accident. The Petitioner applied for compensation to the Workers' Compensation Board, operating as WorkSafeBC (Board) for stress and depression resulting from the accident, among other work incidents. The Board denied the Petitioner's claim for mental stress. He appealed to WCAT. WCAT upheld the Board's decision, finding that the Petitioner's mental stress claim did not meet the requirements set out under section 5.1 of the Act and item #13.30 of the RSCM II because the event was not one that would be "generally accepted as traumatic" as required by policy.

Court of Appeal Majority

The Court of Appeal majority (Prowse, Frankel, JJA) allowed the appeal and remitted the matter back to WCAT for rehearing. The Court declared that some of the provisions of item #13.30 contravene section 15(1) of the *Canadian Charter of Rights and Freedoms* (Charter) and cannot be saved under section 1. Section 15(1) of the Charter provides that every individual has the right to equal protection and benefit of the law without discrimination, including discrimination based on mental or physical disability. In particular, the majority found that the provisions of item #13.30 which set out the examples of what an acute reaction and traumatic event are and the reference to the

event being “generally accepted as being traumatic” contravened the Charter.

The majority severed those provisions of item #13.30 and declared them to be of no force and effect. The majority concluded that the descriptor of “traumatic event” in section 5.1(1)(a), as qualified in item #13.30, gives rise to substantive discrimination on the basis of mental disability as the ability of persons suffering from mental stress to access compensation and other benefits is significantly restricted in comparison with workers suffering physical injuries. The Court found that those with mental stress have to show that they suffer a work related injury, and in addition, that the work related injury was caused by a traumatic event, which item #13.30 further qualifies by requiring that the event be akin to “horrifying”. In contrast, those who suffer physical injuries merely have to show that they suffered a work related injury to receive compensation.

The Court did not strike down section 5.1 of the Act, finding that section 5.1(1)(a), in itself, does not give rise to substantive discrimination.

Court of Appeal Dissent

In dissent Madam Justice Ryan dismissed the challenge to section 5.1 of the Act and item #13.30 on the basis that they did not violate section 15(1) of the Charter. She found that the distinction being drawn is not being done on the basis of an enumerated ground protected by the Charter, but on the basis of the manner in which the injury was acquired.