

SHOULD I STAY OR SHOULD I GO? BC SUPREME COURT STAYS WRONGFUL DISMISSAL PROCEEDING

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The British Columbia Supreme Court recently ordered an interim stay of proceedings pending a determination by the Workers' Compensation Appeal Tribunal ("**WCAT**") on whether the plaintiff's claims, in whole or in part, were under the exclusive jurisdiction of the *Workers Compensation Act* ("**Act**").^[1]

Background

In *Garritty v Richmond Kinsmen Home Support Society* ("**Garritty**")^[2] the plaintiff claimed damages for wrongful dismissal and aggravated damages for mental distress. The plaintiff claimed it was a fundamental term of her employment that she be treated with dignity and respect and that the defendant not create or allow to exist a working environment that was hostile to her, and that the defendant breached those fundamental terms by condoning harassment in the workplace and creating a hostile work environment.

The allegations by the plaintiff of workplace harassment and associated damages opened up the door for the defendant employer to plead in its Response to Civil Claim that the plaintiff was a "worker" and the defendant was an "employer" as defined by the Act. The impact of this was that potentially all claims made by the plaintiff for damages arising out of any personal injuries allegedly suffered in and out of the course of her employment with the defendant as a result of any breach of duty of care, harassment or any other act or omission by the defendant, would fall within the workplace bullying and harassment provisions of the Act. If correct, then much if not most of the plaintiff's civil claims would be statute barred and the BC Supreme Court did not have jurisdiction to hear the matter.

The defendant filed an application for a determination by WCAT of this jurisdictional issue. The plaintiff took the position that discoveries and other pre-trial evidentiary steps should proceed in the face of the WCAT application. The defendant sought an interim stay of the civil proceedings to prevent the parties incurring needless expense on pre-trial procedures pending a final determination by WCAT.

Decision

The defendant was successful in demonstrating that there were conceivable grounds on which the plaintiff's

claim, at least in part, could fall within the exclusive jurisdiction of the Act.

Under section 254, the Act gives WCAT exclusive jurisdiction to determine all questions of fact and law required to be determined under section 257, including, where a civil action has been commenced, the question of whether the action is statute barred.^[3] This means that once an application for a section 257 determination is commenced, WCAT will make a determination whether or not the court chooses to grant a stay.

The court cited *Hazell v Toews* which held that the issue of whether a claim falls within the Act may be raised at any stage of the proceedings and if that is done on any conceivable grounds, the proper course is to stay the action and refer the matter to WCAT for determination.^[4] *Hazell* also provides that a stay should be entered where court's time and resources might be wasted if the action were to proceed without a resolution of the jurisdictional issue.^[5]

In order for WCAT to make a determination under section 257, the civil action must be based on a disability caused by occupational disease, a personal injury, or death.^[6] The court concluded it was conceivable that WCAT might determine the plaintiff's action involved a claim for an alleged mental stress injury arising out of and in the course of her employment as a "worker" within the meaning of the Act, and was, at least in part, an action based on personal injury.

The court found that there would be minimal inconvenience to the plaintiff if the stay was granted, but that the defendant would likely incur expenses that may, at least in part, be wasted in the event WCAT determines the plaintiff's claim, or some part of it, falls within WCAT's exclusive jurisdiction. Furthermore, the court concluded that the harm or prejudice to the defendant would not be fully ameliorated by an award of costs. Accordingly, the court concluded that there should be a stay of the civil action pending WCAT's section 257 determination.

Take Away

Workplace conduct which results in injuries, including mental health injuries, to an employee can be covered by workers compensation legislation in certain cases. When faced with a wrongful dismissal action, employers should consider whether all or part of the employee's claim falls outside of the court's jurisdiction and instead within the exclusive jurisdiction the *Workers' Compensation Act*, the *Employment Standards Act*, or the *Human Rights Code*. If an employer determines that the employee's claim may be within the jurisdiction of WCAT, to be successful in applying for a stay of proceedings, the employer must demonstrate there are conceivable grounds on which the plaintiff's claim, at least in part, could fall within the exclusive jurisdiction of the *Workers' Compensation Act* and that the employer would be prejudiced if the stay is not granted. A stay of proceedings may not prevent a trial on all issues in dispute, but it may serve to eliminate unnecessary time and expense defending the civil claim and possibly eliminate it completely.

by Joan M. Young, Natalie Cuthill, and Tiffany Misri, Articled Student

[1] *Workers Compensation Act*, RSBC 1996, c 492 (the “Act”).

[2] *Garrity v Richmond Kinsmen Home Support Society*, 2016 BCSC 2204.

[3] Act at section 254.

[4] *Hazell v Toews*, [1997] BCJ No 2495 (BCSC).

[5] *Ibid.*

[6] Act at section 257.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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