COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Campbell v. Workers' Compensation Appeal Tribunal*, 2023 BCCA 245

Date: 20230613
Docket: CA48362

Between:

David Gordon Campbell

Appellant
(Petitioner)

And

Workers' Compensation Appeal Tribunal, Emcon Services Inc., Christopher John Elliott, and Bowden Contracting Ltd.

Respondent
(Respondent)

Before: The Honourable Mr. Justice Butler
The Honourable Mr. Justice Abrioux
The Honourable Justice Skolrood

On appeal from: An order of the Supreme Court of British Columbia, dated May 26, 2022 (*Campbell v. Worker's Compensation Appeal Tribunal*, Vancouver Docket S203861).

Counsel for the Appellant:	R.L. Wishart M.L. Sagert
Counsel for the Respondent, Workers' Compensation Appeal Tribunal:	I.D. Morrison
Counsel for the Respondents, Christopher John Elliott and Bowden Contracting Ltd.	J.D. James O. Gavrilova
Place and Date of Hearing:	Vancouver, British Columbia April 3, 2023
Place and Date of Judgment:	Vancouver, British Columbia June 13, 2023

Written Reasons by:
The Honourable Justice Skolrood

Concurred in by:
The Honourable Mr. Justice Butler
The Honourable Mr. Justice Abrioux

Summary:

The appellant sustained injuries after being struck by a logging truck while driving home from work. He commenced an action against the owner of the truck ("Bowden"), the driver ("Elliott"), and the company responsible for repairing and maintaining highways in the area ("Emcon"). Emcon applied to the Workers' Compensation Appeal Tribunal ("WCAT") pursuant to s. 257 of the Workers Compensation Act for a determination that it was an employer and that the appellant was an employee at the time of the accident. Bowden and Elliott filed written submissions in response, in which they also sought a determination under s. 257 that they were an employer and employee, respectively. WCAT determined that the appellant and Elliott were employees, Bowden and Emcon were employers, and the appellant's injuries arose out of and in the course of his employment. On judicial review, the judge dismissed the petition, finding that the WCAT proceeding was not procedurally unfair. On appeal, the appellant alleges the judge erred in finding that it was the appellant's obligation to seek leave from WCAT to respond to Bowden and Elliott's s. 257 application and in finding that WCAT's failure to invite submissions on a paper it obtained through independent research did not result in unfairness to the appellant.

Held: Appeal dismissed. The judge did not place the onus on the appellant to seek permission to address the Bowden and Elliott s. 257 application. Rather, the judge observed that the appellant could have sought leave if he genuinely intended to challenge the employment status of Bowden and Elliott and that the appellant had received sufficient notice of their application when he was served with their written submissions in response to the Emcon application. Additionally, the paper cited by WCAT had no bearing on the key question of whether the appellant took a break from his employment at a critical period of time before the accident.

Reasons for Judgment of the Honourable Justice Skolrood:

Overview

[1] On March 16, 2016, the appellant, David Campbell, sustained significant injuries when the truck he was driving was struck by a logging truck (the "Accident") owned by the respondent Bowden Contracting Ltd. ("Bowden") and driven by an employee of Bowden, the respondent Christopher John Elliott ("Elliott"). The Accident occurred on the Barkerville Highway in central British Columbia. Mr. Campbell professes to have no memory of the Accident or the events of the day on which the Accident occurred.

[2] On August 23, 2016, Mr. Campbell commenced an action against Bowden and Elliott, as well as Emcon Services Inc. ("Emcon"), which had a contract with the provincial government to repair and maintain highways in that region of the province.

[3] On October 31, 2016, Emcon filed a response to civil claim, and on November 3, 2016, Bowden and Elliott filed a response. Both responses pleaded statutory immunity pursuant to s. 10 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 [*WCA*], as it existed at the time. That section, generally speaking, precludes civil actions to recover damages for personal injuries sustained by a "worker" in the course of their employment, where the injuries are caused by another worker or employer covered by the workers' compensation scheme.

[4] I note that the *WCA* was amended in 2020, resulting in purely editorial revisions for the purpose of clarity: see *Workers Compensation Act*, R.S.B.C. 2019, c. 1. The decision of the Workers' Compensation Appeal Tribunal ("WCAT") in issue, and the decision of the judge below, both reference the provisions of the *WCA* as it existed prior to the amendments and, for consistency, I will do the same.

[5] On November 3, 2016, Emcon applied to WCAT pursuant to s. 257 of the *WCA* for a determination that it was an employer and that Mr. Campbell was an employee within the meaning of the *WCA*. On September 30, 2019, Emcon filed written submissions in support of its application.

[6] On November 4, 2019, Bowden and Elliott filed written submissions in response, in which they also sought a determination under s. 257 of the *WCA* that they were respectively, an employer and an employee as defined in the *WCA*.

[7] On November 12, 2019, Mr. Campbell filed his written submissions with WCAT. In his submissions, he responded to Emcon's written submissions, but he did not address Bowden and Elliott's request for a s. 257 determination.

[8] On December 10, 2019, Emcon filed a rebuttal submission with WCAT.

[9] On February 13, 2020, WCAT issued a decision (the "WCAT Decision") finding that Mr. Campbell and Elliott were both workers, Bowden and Emcon were both employers, and that Mr. Campbell's injuries arose out of and in the course of his employment. As a result, Mr. Campbell was precluded from proceeding with a civil action against any of Emcon, Bowden, and Elliott.

[10] On April 8, 2020, Mr. Campbell filed a petition seeking judicial review of the WCAT decision. The petition was heard over three days from May 2–4, 2022, and the chambers judge issued reasons for judgment on May 26, 2022, indexed at 2022 BCSC 862, dismissing the petition.

[11] At the outset of the appeal, we were advised that Mr. Campbell had abandoned his claim against Emcon.

Legislative Framework

[12] Before turning to the decisions in issue, it is useful to highlight some of the relevant provisions of the *WCA* legislative scheme.

[13] Section 10(1) provides:

> **Limitation of actions, election and subrogation**
>
> **10** (1) The provisions of this Part are in lieu of any right and rights of action, statutory or otherwise, founded on a breach of duty of care or any other cause of action, whether that duty or cause of action is imposed by or arises by reason of law or contract, express or implied, to which a worker, dependant or member of the family of the worker is or may be entitled against

> the employer of the worker, or against any employer within the scope of this Part, or against any worker, in respect of any personal injury, disablement or death arising out of and in the course of employment and no action in respect of it lies. This provision applies only when the action or conduct of the employer, the employer's servant or agent, or the worker, which caused the breach of duty arose out of and in the course of employment within the scope of this Part.

[14] Section 257 provides a process for determining whether a party was an employer or employee at the time of an accident:

> **Certification to court**
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> **257** (1) Where an action is commenced based on
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> (a) a disability caused by occupational disease,
>
> (b) a personal injury, or
>
> (c) death,
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> the court or a party to the action may request the appeal tribunal to make a determination under subsection (2) and to certify that determination to the court.
>
> (2) For the purposes of subsection (1), the appeal tribunal may determine any matter that is relevant to the action and within the Board's jurisdiction under this Act, including determining whether
>
> (a) a person was, at the time the cause of action arose, a worker,
>
> (b) the injury, disability or death of a worker arose out of, and in the course of, the worker's employment,
>
> (c) an employer or the employer's servant or agent was, at the time the cause of action arose, employed by another employer, or
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> (d) an employer was, at the time the cause of action arose, engaged in an industry within the meaning of Part 1.

[15] A proceeding under s. 257 is treated as an appeal for procedural purposes, and WCAT has exclusive jurisdiction over all matters it is requested to determine under that provision: ss. 257(3), 254(c). WCAT also has broad discretion to "conduct an appeal in the manner it considers necessary": s. 246(1).

[16] WCAT is not bound by legal precedent but in making its decision, it "must apply a policy of the board of directors that is applicable in that case": ss. 250 (1) and (2).

[17] Under s. 234(2) and ss. 11–13 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*], WCAT may establish practices and procedures for the conduct of proceedings. In this regard, WCAT has produced a "Manual of Practices and Procedures" ("MRPP") which sets out various rules, practice directives, and guidelines, which are different in terms of their binding effect. Nothing turns on these differences for the purposes of this appeal.

[18] I will return to specific elements of the MRPP when addressing the issues that arise.

The WCAT Decision

[19] The WCAT panel, which was comprised of a single adjudicator, provided detailed reasons for its decision finding that Mr. Campbell's claims fell within the *WCA* regime. It is only necessary to highlight those aspects that are relevant to the issues on appeal.

[20] The first of those issues concerns WCAT's consideration of Bowden and Elliot's application for a s. 257 determination, which they again advanced in their response to Emcon's own s. 257 application rather than by way of a separate application. WCAT said the following:

> [60] Bowden requested a determination that it was an employer and that Mr. Elliott was its worker. Bowden is not the applicant but one of the respondents. The MRPP contemplates additional issues being raised by the respondent, as item 18.5.2 (Evidence and Written Submissions) of the MRPP specifies that respondents must identify the determinations requested. The MRPP also does not require separate applications for a section 257 determination except in situations where there are separate legal actions for which a second certificate is requested, which is not the case here. In this case there is a second legal action, but no certificate was requested in that action. I am satisfied that Emcon and the plaintiff had notice that Bowden and Mr. Elliott were seeking such a determination and it has not provided submissions that dispute this determination, or my ability to address it.

[21] WCAT then went on to find that Bowden was an employer and Elliott a worker within the meaning of s. 1 of the *WCA*.

[22] The other issue on appeal concerns Mr. Campbell's position that the Accident, and his resulting injuries, did not arise out of and in the course of his employment. While, as noted, Mr. Campbell had no recollection of the Accident, he believed that after leaving his work site at the end of his shift, he stopped at a nearby ski hill to have a drink, smoke marijuana, and change out of his work clothes before returning home. Mr. Campbell submitted that by taking a break from his commute home, and by ingesting intoxicants in violation of his employer's policy, he was not acting in the course of his employment at the time of the Accident.

[23] On this issue, WCAT said the following:

> [53] …even if Mr. Campbell did take a break that was more than an incidental meal break, that would not necessarily sever the relationship for the remainder of the journey. Once he resumed travel, the connection could be restored. …
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> [54] I acknowledge that Mr. Campbell has suggested he may have consumed alcohol or smoked marijuana. The employer has a policy against use of these substances. Policy item C3-17.00 specifically deals with alcohol and says that even if a worker undertakes unauthorized activities such as alcohol consumption, that does not automatically mean that an injury or death involving alcohol consumption did not arise out of and in the course of employment. Where the causative significance of the alcohol consumption is predominant in the resulting injury or death, and the employment factors are neutral or non-existent, this does not favour coverage. In my view, similar factors would apply for marijuana use. [Citations omitted]
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> [55] In this case, there is no reliable evidence that Mr. Campbell took a break to have a drink or a smoke, let alone that it played a predominant role in the accident. I appreciate that he now believes he did, but his belief is based on speculation since he has no memory of the event. He said he believed he had alcohol and marijuana in his system. Marijuana was found in the vehicle and Mr. Campbell had THC in his blood, according to medical records attached to his statutory declaration. However, the evidence before me does not show that having THC in [one's] system is evidence of impairment. According to *Workplace Strategies: Risk of Impairment from Cannabis* (3rd ed) published by the Canadian Centre for Occupational Health and Safety:
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> > While development of testing methods is underway, in many cases results of …current testing methods can often only determine if THC is present in a person (e.g., that person has used cannabis at some point). Unlike testing for blood alcohol levels, obtaining a positive test result that indicates the presence of cannabis is not necessarily a clear indication of the risk of impairment.
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> Further, the police reports indicate that Mr. Campbell was lucid at the time of the accident, and that he told the police officer that he had not used

> marijuana on the date of the incident. Even if he had not made that statement, there is no reliable evidence that he used marijuana on the day of the accident, other than his own theorizing many months later. …the evidence before me does not establish that his alcohol or marijuana use played a role in the accident.

[24] WCAT went on to determine that Mr. Campbell was a worker, that the Accident occurred during the course of his employment, and that the injuries he sustained during the Accident arose out of employment.

The Judicial Review Decision

[25] As the judge noted (at paras. 34–36), Mr. Campbell's petition identified numerous alleged errors in the WCAT decision, however his written submissions narrowed the grounds for judicial review to six points. For the purposes of the appeal, the relevant issues before the judge were issues of procedural fairness arising out of: (1) WCAT's determination of Bowden and Elliott's s. 257 application that was contained in their responding submissions; and (2) WCAT's reliance on a paper published by the Canadian Centre for Occupational Health and Safety, entitled *Workplace Strategies: Risk of Impairment from Cannabis* (3rd ed) (the "CCOHS Paper"), which WCAT obtained through its independent research and then failed to give Mr. Campbell an opportunity to address.

[26] The judge cited *Aghili v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2022 BCSC 717 where Justice MacDonald provided a detailed summary of the principles governing the standard of review applicable to WCAT decisions. Justice MacDonald held that by virtue of s. 58 of the *ATA*:

> [27] A finding of fact, law, or an exercise of discretion is reviewed using the standard of patent unreasonableness. The patently unreasonable standard is highly deferential to the original tribunal. The decision must be "clearly irrational or evidently not in accordance with reason" before it will be disturbed…

[27] Justice MacDonald also noted (at para. 29) that pursuant to s. 58(2)(b) of the *ATA*, the standard of review of procedural fairness is whether, in all of the circumstances, the tribunal acted fairly.

[28] On the issue of WCAT's determination of the Bowden and Elliott s. 257 application, the judge found (at para. 48) that WCAT was correct in its interpretation of c. 18.5.2 of the MRPP in that it expressly requires respondents to identify the determinations they are requesting. The judge went on to find:

> [49] It is true that neither Emcon nor Mr. Campbell had any formal notice of the determination request made by Mr. Elliott and Bowden until they received the latter's formal written submissions. However, Mr. Campbell was well aware of the defence based on *WCA s.* 10, knew full well that Mr. Elliott's status as an employee in the course of employment with Bowden would be a critical issue in the proceedings, and was aware that the determination of Mr. Elliott and Bowden's employee/employer status could, and would, only be made by WCAT.
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> [50] While Mr. Campbell pleaded "direct liability" for negligence on the part of Bowden, he also expressly pleaded vicarious liability on its part arising from Mr. Elliott's employment as one of their truck drivers. Indeed, by invoking [the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318] *s.* 86, Mr. Campbell was effectively pleading in his Notice of Civil Claim that Mr. Elliott was "the agent or servant of, and employed as such by, [Bowden] and to be driving or operating the motor vehicle in the course of his or her employment with [Bowden]" (*MVA s.* 86).
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> [51] Mr. Campbell's submission that his written arguments "literally passed in the mail" with those of Mr. Elliot and Bowden is not accurate. His counsel had received the argument from Mr. Elliot and Bowden before Mr. Campbell's own submissions were filed. Mr. Campbell's submissions did not address the employment status of any of the defendants but were clearly, and in my view deliberately, focused on attempting to persuade the adjudicator that it was only Mr. Campbell who had stepped outside the course of his employment at the time of the accident.
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> [52] Lastly, I would observe that if Mr. Campbell genuinely intended to challenge the employment status of Mr. Elliot and Bowden, he could have sought permission from WCAT for leave to file submissions on the point at any time during the three months it took for the adjudicator to prepare her decision. He did not do so and having raised no objection in that regard, he cannot now challenge the adjudicator's decision to determine the matter as "unreasonable" or "unfair".

[29] With respect to WCAT's reference to the CCOHS Paper, the judge held (at paras. 65–66) that the prohibition against the undertaking of independent investigations by trial judges (as affirmed by this Court in *R. v. Bornyk*, 2015 BCCA 28) does not apply to WCAT which, pursuant to c. 9.3.2 of the MRPP, may obtain further evidence or information from external sources. The judge also noted

(at para. 21) that c. 9.3.2 provides that "WCAT will provide this new evidence or information to the parties and give them the opportunity to make submissions".

[30] The judge then concluded that WCAT's reliance on the CCOHS Paper did not result in procedural unfairness to Mr. Campbell:

> [67] It follows from the above that, while the adjudicator was permitted to make her own inquiries regarding positive THC tests as a measurement of impairment, she likely should have presented the information to the parties and requested submissions on the subject before factoring that information into her decision-making. Such a practice would accord not only with the rules of natural justice but would also accord with WCAT's own (admittedly non-binding) guidelines on the matter.
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> [68] This procedural misstep by the adjudicator, however, does not necessarily require that her decision be quashed on judicial review.
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> [69] The Court inquired of Mr. Campbell's counsel what their likely response would have been if the adjudicator had asked for submissions on THC testing as an indicator of impairment. The Court was told that additional evidence might have been adduced on the matter including, in particular, evidence concerning the combination of THC, alcohol and antidepressant medication which Mr. Campbell had also apparently been prescribed. With the greatest of respect, I consider this unlikely, given Mr. Campbell's litigation strategy before WCAT.
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> [70] The adjudicator correctly noted that alcohol or marijuana consumption does not necessarily lead to a conclusion that any subsequent injury was not employment related. She also correctly noted that such a conclusion may ensue if the consumption proved to be a significant or predominant cause of the injury, and particularly so where other "employment factors are neutral or non-existent".
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> [71] Mr. Campbell and his counsel were walking a very fine line in attempting to argue there had been a significant "deviation from employment" (a long break to drink and/or smoke marijuana) while at the same time urging that "drugs and alcohol were not a factor in the [accidents]" (Mr. Campbell's submissions to WCAT, para. 223). Having adopted such a stance at first instance, Mr. Campbell cannot now challenge the adjudicator's determination that there was no reliable evidence of either impairment on Mr. Campbell's part due to alcohol or marijuana consumption, or that alcohol or marijuana consumption played any role in the accident.
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> [72] If there was a case to be made that Mr. Campbell's ability to safely drive his vehicle was impaired by alcohol and marijuana consumption, and that such impairment was indeed a significant contributing cause to the accident and/or injuries, Mr. Campbell could have and should have taken that approach at first instance. Having failed to do so, a deliberate strategy decision on his part, I do not accept his submissions that he would have changed course on the point had the topic of impairment been expressly brought to his attention by the adjudicator at a later stage of the process.

> [73] I conclude that any perceived misstep on the adjudicator's part was inconsequential and did not result in any unfairness to Mr. Campbell.
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> [Emphasis in original.]

Issues on Appeal

[31] Mr. Campbell alleges that the judge erred:

(1) in finding that it was Mr. Campbell's obligation to seek leave from WCAT to respond to Bowden and Elliot's application for a s. 257 determination; and

(2) in characterizing WCAT's failure to invite submissions on the CCOHS Paper as a misstep that did not result in any unfairness to Mr. Campbell.

Standard of Review

[32] On an appeal from a judicial review, the role of the appellate court is to determine whether the reviewing judge correctly applied the appropriate standard of review. In this sense, the appellate court "steps into the shoes" of the reviewing judge and focusses its attention on the administrative decision in issue: *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 247; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45–46; *Cowichan Valley (Regional District) v. Wilson*, 2023 BCCA 25 at para. 69.

Discussion

(1) Determination of the Bowden and Elliott s. 257 application

[33] Mr. Campbell submits that the judge erred in holding that the onus was on him to seek leave to make submissions on the Bowden and Elliott s. 257 application. He further submits it was a breach of procedural fairness for WCAT to decide the s. 257 application without inviting responding submissions from him. In making this argument he submits that he was not given a fair opportunity to be heard, as required in accordance with c. 1.5.3.1. of the MRPP, which provides, in part:

> The right to be heard means that a person who may be directly affected by a decision has the right to receive notice that a decision may be made, the right to know what matters will be decided, and the right to be given a fair opportunity to state their case and to correct or contradict relevant statements or evidence with which they disagree.

[34] With respect to Mr. Campbell's first point, the judge did not, in my view, place the onus on Mr. Campbell to seek permission to address the Bowden and Elliott application. Rather, the judge simply observed that if Mr. Campbell had genuinely intended to challenge the employment status of Bowden and Elliott, he had the opportunity to seek leave to file additional submissions at any time during the three months that it took WCAT to prepare its decision (at para. 52). This observation followed upon the judge's finding (at para. 49) that Mr. Campbell received notice of the Bowden and Elliott application when he was served with their written submissions in response to the Emcon application.

[35] The judge's findings also answer Mr. Campbell's second point, that he was denied the opportunity to make submissions on the Bowden and Elliott application. As the judge found (at para. 48), WCAT correctly interpreted c. 18.5.2 of the MRPP which expressly directs respondents (Bowden and Elliott in this case) to identify the determinations they are requesting. The only requirement for a separate application is found in c. 18.4.2, where there are additional lawsuits arising out of the same event. As WCAT found, that was not the case here. Mr. Campbell was therefore not denied an opportunity to make submissions on the s. 257 application.

[36] Further, as the judge found, Mr. Campbell was fully aware that Bowden and Elliott were advancing a defence in the civil action based upon s. 10 of the *WCA*. Indeed, three years earlier, they expressly pleaded that section in their response to civil claim. The parties conducted examinations for discovery, prior to the dates on which they provided their submissions to WCAT, that focussed primarily on the employment status of the parties. I agree with the judge's finding that Mr. Campbell's submissions to WCAT were clearly and deliberately focussed on establishing that he had stepped outside the course of his employment, rather than addressing the employment status of the other parties.

[37] In the circumstances, I am unable to find that the absence of submissions by Mr. Campbell in response to Bowden and Elliott's s. 257 application rendered the WCAT proceeding unfair, or that Mr. Campbell was not afforded a fair opportunity to be heard in response to the Bowden and Elliott application.

(2) Consideration of the CCOHS Paper

[38] Mr. Campbell submits that the content of the CCOHS Paper was "vital" to a central issue before WCAT and that the failure of WCAT to allow him to see and answer the CCOHS Paper constituted a violation of the rules of natural justice.

[39] Respectfully, I do not agree with this characterization of the significance and relevance of the CCOHS Paper.

[40] It was Mr. Campbell's position before WCAT that, although he had no memory of the events surrounding the Accident, he must have taken a break in his commute home to drink and smoke marijuana and that this constituted a substantial deviation from his employment. However, Mr. Campbell also took the position that alcohol and drugs were not a factor in the Accident, rather it was the fact that he delayed his travel to engage in drinking and smoking marijuana that contributed to the Accident.

[41] Central to Mr. Campbell's position was the issue of whether there was evidence that he in fact took a break to drink or smoke. As set out above at para. 23, WCAT found that there was no reliable evidence that Mr. Campbell did so, "let alone that it played a predominant role in the [Accident]". WCAT went on to find that there was no reliable evidence that Mr. Campbell used marijuana on the day of the Accident.

[42] The CCOHS Paper had no bearing on the key question of whether Mr. Campbell took a break from his commute and whether this amounted to a substantial deviation from his employment. While evidence that he did have THC in his system might have supported that he in fact took a break, the CCOHS Paper did

not provide any such evidence. Rather, it simply noted that even if THC is present in a person's blood stream, that is not necessarily an indication of impairment.

[43] Thus, the CCOHS Paper simply reinforced Mr. Campbell's own position that drugs and alcohol were not a causative factor in the Accident. The judge characterized Mr. Campbell's position before WCAT as "walking a very fine line" between arguing that there was a significant deviation from employment because of the alcohol and marijuana use while, at the same time, denying that any such use was a factor in the Accident (para. 71). I agree that this is an accurate assessment of Mr. Campbell's position.

[44] Further, having found that there was no reliable evidence establishing that Mr. Campbell had taken a break, WCAT went on to note that even if he had done so, it did not amount to a substantial deviation or personal act that took him out of the course of his employment, and, in any event, the employment connection was restored once he recommenced his drive home.

[45] The CCOHS Paper did not factor into these findings. As such, I am unable to find that the failure of WCAT to provide Mr. Campbell with an opportunity to consider and make submissions on the CCOHS Paper rendered the proceeding unfair.

[46] Given my conclusion on this point, it is not necessary to address Mr. Campbell's argument that the judge erred in asking counsel what submissions would have been made in response to the CCOHS Paper, had the opportunity been provided to do so, and by speculating about what the impact of those submissions might have been (citing *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at para. 23).

Disposition

[47] I would therefore dismiss the appeal.

"The Honourable Justice Skolrood"

I AGREE:

"The Honourable Mr. Justice Butler"

I AGREE:

"The Honourable Mr. Justice Abrioux"