IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hull v. Gregory,*
2024 BCSC 1865

Date: 20241009
Docket: S235325
Registry: Vancouver

Between:

Meghan Hull

Plaintiff

And

Brent Gregory and The Attorney General of Canada

Defendants

Before: The Honourable Justice Kent

Reasons for Judgment

Counsel for the Plaintiff:	S. Gibson
Counsel for the Defendant the Attorney General of Canada:	M. Bordeleau
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. September 10, 2024
Crown's Written Submission	September 26, 2024
Place and Date of Judgment:	Vancouver, B.C. October 9, 2024

Table of Contents

Introduction and Overview

[1] The Defendant the Attorney General of Canada ("the Crown") applies pursuant to R. 9-5(1)(a) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 ("SCCR") for an order that the plaintiff's Notice of Civil Claim filed July 7, 2023 be struck out on the grounds that it discloses no reasonable cause of action.

[2] The Defendant resists dismissal of the action on the grounds of prematurity and also argues that the Crown's claimed statutory immunity from liability can and will be circumvented on the unique facts of this case.

[3] The Co-Defendant, Mr. Gregory, took no part in the application even though he too below might have the benefit of statutory immunity.

[4] The hearing took place on September 10, 2024. During the course of submissions, the court raised with the parties whether the Plaintiff might have a cause of action against the Crown pursuant to British Columbia's *Occupiers Liability Act*, R.S.B.C. 1996, c. 337. Section 8 of that Act provides for its application to the Crown.

[5] In response to this query, counsel for the Crown raised s. 9(a) of the Act as a complete defence to any occupiers liability claim. On the other hand, counsel for the Plaintiff indicated he would be amending his client's pleading to specifically raise the O*ccupiers Liability Act* as an alternative basis of liability and, indeed, subsequently took advantage of the "one free amendment" rule to file such an Amended Notice of Civil Claim on September 18, 2024.

[6] At the conclusion of the hearing, I granted counsel liberty to file further written argument on the application within 30 days. Such additional argument was filed by counsel for the Crown on September 26, 2024. The Plaintiff, however, did not provide any further written submissions.

[7] An application to strike a Notice of Civil Claim is an attack on the pleading as it stands on the basis that, as a matter of law, the claim simply cannot succeed. The

test is whether it is “plain and obvious”, assuming the facts alleged in the pleading are true, that the claim has no prospect of success. The onus on the applicant is high. If there is some realistic chance that the cause of action might be saved by an amendment or by a future development in the law, it may no longer be obvious that the action cannot succeed and the court may allow it to proceed, whether on terms or otherwise. See *R. v. Imperial Tobacco Canada Ltd.,* 2011 SCC 42, *Nevsun Resources Ltd., v. Araya,* 2020 SCC five.

[8] Usually, an application to strike a pleading pursuant to R. 9-5(1)(a) is determined with reference to the pleadings alone. As noted, the facts alleged in the pleadings are assumed to be true. It is presumably for this reason that the Crown did not reply on additional evidence in support of its application.

[9] I do note that the present form of application represents a change in strategy by the Crown. It filed a similar application on May 3, 2024 that not only sought to strike out the Plaintiff's Notice of Civil Claim pursuant to rule 9-5(1)(a) but in the alternative, also sought summary dismissal of the Plaintiff's action pursuant to R. 9-6(4) of the SCCR. In support of that application, the Crown filed an affidavit sworn by a Senior Manager in the Claims Operation Unit of the Federal Workers’ Compensation Service explaining the process for compensation claims by federal employees and describing how the claim was received by the plaintiff, was accepted, and compensation was subsequently paid to her for both wage-loss and healthcare benefits.

[10] The Plaintiff relies on four affidavits in response to the present application, one sworn by the Plaintiff herself and the other three sworn by a paralegal at her counsel's law firm attaching various correspondence and documents concerning WorkSafeBC issues which, according to the plaintiff, support the rejection of the Crown’s application.

[11] For the reasons that follow, the Crown’s application is adjourned pending the outcome of certain WCAT proceedings and in the meantime the Crown is ordered to proceed with discovery.

The Pleadings

[12] Some of the background facts are not controversial.

[13] The accident giving rise to the plaintiff's injuries occurred on the night of October 21, 2021. At that time both the plaintiff and the defendant Gregory were employed by the Federal Department of Fisheries and Oceans Canada (“DFO”). They were working on DFO's Chinook Mark-Recapture Project CMRP at the Lower Shuswap Camp which was located at Enderby, BC. The DFO had leased the lands on which the Camp was located and supplied recreational vehicles in which the employees stayed.

[14] After work that day, the plaintiff had dinner with some of her coworkers at the camp. A party took place. Alcohol was involved. Shortly after midnight in the early hours of October 22, 2021, Gregory poured gasoline on the ground in shape of a fish which he then set alight. The fire somehow spread in the plaintiff's direction, igniting her clothes and causing her significant burn injuries.

[15] The Amended Notice of Civil Claim includes the following allegations of fact which, as noted above, are assumed to be true for the purposes of this application:

> 18. Neither the Plaintiff nor the Defendant, Gregory were in the course of their employment when the Incident occurred.
> 19. Neither the plaintiff nor the defendant Gregory were performing any part of their job descriptions when the Incident occurred.
> 20. The plaintiff had the options of living in the nearby town of Enderby, BC or in Lumby, BC rather than staying at the Camp in a trailer.
> 21. The Defendant, DFO did not supply the alcohol that was consumed by the Defendant Gregory.
> 22. Neither the Plaintiff nor the Defendant Gregory were being paid when the incident occurred.
> 23. Neither the plaintiff nor the defendant Gregory were in the course of advancing the interests of the defendant DFO when the Incident occurred.
> 24. The Plaintiff and the Defendant Gregory were not acting on the instructions of the Defendant DFO when the Incident occurred.
> 25. The injuries that the plaintiff suffered were not caused by any aspect of the plaintiff's work as a fisheries technician.

> 26. The plaintiff was not utilizing a camp facility when her injuries occurred.

[16] The Legal Basis for the Plaintiff's causes of action are set out in Part 3 of the Amended Notice of Civil Claim and include allegations of negligence on the part of both Gregory and the Crown. Among other things, the particulars of negligence alleged against the Crown include:

- failing to have proper supervision of all employees at the Camp during off-work hours;
- permitting the use of gasoline in a dangerous, reckless manner…;
- failing to have or alternatively to utilize fire extinguishing or other safety equipment; and,
- failing to enforce Camp rules, procedures and any code of conduct during off-work hours.

[17] The Amended Notice of Civil Claim also pleads a cause of action under the *Occupiers Liability Act* and sets out 11 alleged breaches in that regard including:

- failing to keep the Plaintiff reasonably safe while at the Camp premises, contrary to s. 3 of the Act;
- failing to supervise unauthorized activities at the Camp, thereby causing serious and permanent injuries to the Plaintiff, and the like.

[18] In addition to the *Occupiers Liability Act*, the Plaintiff specifically pleads in her Amended Notice of Civil Claim the provisions of the G*overnment Employees Compensation Act,* R.S.C. 1985, c. G-5 (*GECA*) and the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (*CLPA*). The Plaintiff also expressly pleads that “the Defendant DFO is vicariously liable for the negligence of the Defendant Gregory”.

[19] On its face, then, the plaintiff's claim is a fairly ordinary claim for the tort of negligence on the part of both Gregory and DFO, for vicarious liability on the part of DFO for the negligent conduct of Gregory, and for occupiers liability pursuant to the *Occupiers Liability Act.*

[20] In its Response to Civil Claim, filed January 5, 2024, the Crown pleads its version of facts as it relates to the individual parties' employment history, the Lower Shuswap River Chinook Salmon Mark-Recapture Project and the October 21, 2021 incident. It pleads that the plaintiff had applied for, and had received, compensation under the *GECA*, as administered on the Crown's behalf by WorkSafeBC.

[21] The Legal Basis for denying liability reads as follows:

> …
>
> 27. the Notice of Civil Claim fails to disclose a reasonable cause of action against Canada.
>
> The Government Employees Compensation Act
>
> 28. Ms. Hull's claim is statute barred by virtue of section 12 of the GECA. Ms. Hull has received and/or continues to receive and/or is entitled to compensation under the GECA and has no claim against Canada and any officer, servant or agent of the Crown
>
> Crown Liability And Proceedings Act
>
> 29. Canada denies liability to Ms. Hall for any actions, or inactions, based on any causes of action or grounds off, or grounds of liability alleged in the Notice of Civil Claim.
>
> 30. In further answer to the whole of the Notice of Civil Claim, the Crown is only liable in British Columbia for the damages in respect of a tort committed by a servant of the Crown pursuant to section 3 and 10 of the CLPA provided the tort was committed in the course of their employment.
>
> 31. further and alternatively, Ms. Hull's claim is statute barred by virtue of section 9 of the CLPA. Ms. Hull received compensation paid out of the Consolidated Revenue Fund in respect of the October 21, 2021 incident.
>
> 32. further and alternatively, if Mr. Gregory was not acting in the course of his employment when the October 21, 2021 incident occurred, no sufficient connection existed between the work enterprise and Mr. Gregory's actions, and Canada cannot be held vicariously liable as per section 3 and 10 of the CLPA.

[22] The Defendant Gregory is self represented in this litigation although it certainly appears he had legal assistance in drafting his Response to Civil Claim, filed March 5, 2024. His pleaded version of facts is similar to the other parties, although he makes a point of alleging that he had received no supervisory training by the DFO nor any training respecting after working hours rules or practices at the Camp. He also alleges that approximately two weeks before the accident he had on another occasion drawn a fish on the ground of the camp with gasoline and lit it on fire in the presence of the other workers including "Senior DFO Officials", none of whom objected to or chided him for his (mis)conduct.

[23] In the Legal Basis part of his Response to Civil Claim, Gregory pleads the *GECA* and also that the plaintiff was guilty of contributory fault, before continuing:

> 4. If the defendant, Gregory, was on a lark acting outside the scope of his relationship with the defendant, the DFO, at any time material to this matter, which is not admitted and is strictly denied, the defendant, the DFO, owed the plaintiff an independent duty of care.
> 5. If the defendant, Gregory, was negligent, which is not admitted and is strictly denied, the defendant, the DFO is vicariously liable for the negligence of the defendant, Gregory.

Crown's Submissions

[24] The Crown's submissions are straightforward:

- historically, the Crown was completely immune from civil liability. However legislation (the *CLPA*) now prescribes limited forms of liability in tort i.e. (1) vicarious liability for torts committed by a Crown employee and (2) a form of occupier's liability arising from occupation or control of property;

- even then, s. 9 of the *CLPA* prohibits litigation against either the Crown or its employees if the plaintiff has been paid compensation by the Crown, whether directly or by way of a crown administered no-fault regime such as the Federal Worker's Compensation program (*GECA*);

- here, the Plaintiff has in fact applied for and been paid compensation under the *GECA* and hence both the s. 9 *CLPA* immunity and the s. 12 *GECA* immunity is triggered;

- in any event, neither the Plaintiff nor Gregory were "acting in the course of their employment" at the time of the accident and hence there can be no vicarious liability on the part of the Crown of a sort contemplated by the *CLPA*; and,

- there is no occupiers liability on the part of the Crown in this case because of s. 9(a) of the *Occupiers Liability Act* which provides that it does not apply to or affect the liability of an employer (here, the Crown) in respect of its duties to any employee (here, the Plaintiff).

[25] In short, no matter how artful the plaintiff may be in their pleading to circumvent the legislation, the Crown says the litigation is bound to fail and the claim against the Crown should be dismissed at this early stage.

[26] I will set out here the relevant legislative provisions.

> ***Crown Liability and Proceedings Act***
>
> *Liability*
>
> 3. The Crown is liable for the damages for which, if it were a person, it would be liable
>
> …
>
> (b) in any other province, in respect of
>
> (i) a tort committed by a servant of the Crown, or
>
> (ii) a breach of duty attaching to the ownership, occupation, possession or control of property.
>
> …
>
> *No proceedings lie where pension payable*
>
> 9. No proceedings lie against the Crown or a servant of the Crown in respect of a claim if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown in respect of the death, injury, damage or loss in respect of which the claim is made.

Liability for acts of servants

10. No proceedings lie against the Crown by virtue of subparagraph 3(a)(i) or (b)(i) in respect of any act or omission of a servant of the Crown unless the act or omission would, apart from the provisions of this Act, have given rise to a cause of action for liability against that servant or the servant's personal representative or succession.

Government Employees Compensation Act

Interpretation

Definitions

2. In this Act,

"accident" includes a wilful and an intentional act, not being the act of the employee, and a fortuitous event occasioned by a physical or natural cause;

…

Compensation

Persons eligible for compensation

4. (1) Subject to this Act, compensation shall be paid to

(a) an employee who

(i) is caused personal injury by an accident arising out of and in the course of his employment, or

…

Determination of compensation

(3) Compensation under subsection (1) shall be determined by

(a) the same board, officers or authority as is or are established by the law of the province for determining compensation for workmen and dependants of deceased workmen employed by persons other than Her Majesty; or

…

Claims against third parties and compensation

Election of claims

9. (1) If an accident happens to an employee in the course of their employment under any circumstances that entitle the employee or their dependants to an action against a third party, the employee or their dependants, if they are entitled to compensation under this Act, may claim compensation under it or may make a claim against the third party.

Election is final

(2) The election made by the employee or their dependants is final.

…

No other claims against crown

No claim against Her Majesty

12. Where an accident happens to an employee in the course of his employment under such circumstances as entitle him or his dependants to compensation under this Act, neither the employee nor any dependant of the employee has any claim against Her Majesty, or any officer, servant or agent of Her Majesty, other than for compensation under this Act.

Occupiers Liability Act

Occupiers' duty of care

3 (1) An occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, and the person's property, on the premises, and property on the premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises.

(2) The duty of care referred to in subsection (1) applies in relation to the

(a) condition of the premises,

(b) activities on the premises, or

(c) conduct of third parties on the premises.

…

Application of Negligence Act

7 The Negligence Act applies to this Act.

Crown bound

8 (1) Except as otherwise provided in subsections (2) and (3), the Crown and its agencies are bound by this Act.

…

Act not to affect certain relationships

9 This Act does not apply to or affect the liability of

(a) an employer in respect of the employer's duties to an employee,

…

Plaintiff's Submissions

[27] Although she applied for compensation under the *GECA* shortly after the accident and has in fact received almost $75,000 for loss of earnings (approximately $28,000) and healthcare/MSP costs reimbursement (approximately $47,000), the Plaintiff is taking the position in her lawsuit and on this application that she was "never legally entitled to receive any [such] benefits". Her argument is that her

injuries were never “caused by an accident arising out of and in the course of her employment” and hence she did not qualify for compensation under s. 4(1)(a) of the *GECA*.

[28] The Plaintiff has not actually repaid any of the compensation she has received and to which she now says she was not entitled. Instead, she says in her affidavit, sworn May 16, 2024,

> Through my counsel, I have promised to repay or credit the value of any benefits that have been paid to date through the *GECA* and/or WorkSafe, if I am successful in my civil suit against the defendants.

[29] Notwithstanding the filing of her lawsuit in this matter on July 27, 2023, the *GECA* benefit statement included in her application materials indicates the Plaintiff continued to receive medical benefits (primarily counselling services) on numerous occasions through the balance of 2023 and up to June 23, 2024 (the benefit statement is dated July 2, 2024).

[30] In that same affidavit, the Plaintiff explains:

- very shortly after the accident she and the Program Head at DFO completed an application for compensation on a WorkSafeBC application form;
- no one explained to her that she “was entitled to make an election between seeking benefits pursuant to s. 9(1) of the *GECA* or proceeding with a civil claim in BC Supreme Court for my injuries”;
- instead, “the manner in which the WorkSafeBC application for benefits was presented to me” led her to believe that this was the only way she might receive compensation for her injury, something she now considers to be a “misrepresentation to me by the DFO from the very beginning after my accident”; and,
- had she been advised of this election, she would have obtained legal advice much sooner and would have proceeded with a civil action “given the procedural and economic advantages” available through that option.

[31] The Plaintiff goes much further in her Amended Notice of Civil Claim and is claiming aggravated damages against the Crown,

> due to the off-work hours abuse of their positions of authority in asking or suggesting to the plaintiff that she lie to investigators about how the incident happened, which compounded her psychological injuries.

[32] Under s. 9(1) of the *GECA*, the election between receiving compensation under the Act and alternatively suing any "third-party" for damages only arises (and indeed her entitlement to compensation under the act only arises) if the accident/personal injury occurs "*in the course of her employment*". This, according to counsel for the Plaintiff, is the critical issue in this case. If neither the Plaintiff nor Gregory were acting "in the course of their employment" at the time of the accident, then,

- the Plaintiff was not entitled to compensation and any Crown/employee immunity under s. 9 of the *CLPA* does not arise;
- similarly, no Crown/employee immunity under s. 12 of the *GECA* arises;
- the Plaintiff is therefore free to sue both the Crown and the employee (Gregory);
- the Crown "is liable for damages in respect of the tort committed by Gregory (or any other servant of the Crown)" within the meaning of s. 3(b)(i) of the *CLPA*; and,
- the Crown is also exposed to liability under s. 3 of the *Occupiers Liability Act* and 3(b)(ii) of the *CLPA.*

[33] The Plaintiff heavily relies on the case of *K.L.B. v. British Columbia*, 2003 SCC 51, both for its explanation of the law respecting vicarious liability (which was not established in that case) but also as an example of how the Crown can be held liable on the basis of "direct negligence" where it negligently fails to put in place

appropriate supervision procedures (in that case, related to foster children who were abused by their foster parents).

[34] The *K.L.B.* case elaborates upon the concept of vicarious liability previously established in *Bazley v. Curry,* [1999] 2 S.C.R. 534. That latter case dealt with vicarious liability for an intentional tort, namely, sexual abuse of a child in a residential care facility. The non-profit foundation which operated the facility was held to be vicariously liable for the torts committed by its employees. The traditional *Salmond* test for vicarious liability required the employees wrongful conduct to fall "within the course and scope of his/her employment" and had given rise to considerable "semantic discussions" respecting "scope of employment" in the context of unauthorized, intentional wrongdoing by employees (particularly in assault and/or abuse cases). The court adopted a policy-based approach to vicarious liability that captured such wrongdoing.

[35] The point counsel for the Plaintiff is attempting to make here is that an employer (the Crown) can be held vicariously liable for an employee's unauthorized and intentional wrongdoing (pouring gasoline on the ground and igniting it) even though that conduct might not technically be "in the course of his/her employment".

[36] In pursuit of this possible outcome, the Plaintiff has filed an Application with the British Columbia Workers' Compensation Appeal Tribunal ("WCAT") pursuant to s. 311 of this province's *Workers' Compensation Act,* R.S.B.C. 2019, c. 1 for a "Certification to Court" whether the actions of the Plaintiff/Gregory "arose out of and in the course of their employment". This certification process is available in British Columbia where a worker issues a lawsuit for personal injury and a question arises whether any statutory immunity for otherwise at-fault "employers" or "workers" arises within the meaning of s. 127 of the *Workers' Compensation Act*. If such immunity arises but the injured worker also has a viable cause of action against another person, a third party who is not immune under the Act, then, just as with the *GECA*, the injured worker can elect to decline compensation under the Act and instead bring a lawsuit for damages against that third-party.

[37] Under the British Columbia Act, the Workers' Compensation Board ("WCB") has exclusive jurisdiction to determine whether, among other things, a worker's injury "arose out of or in the course of an employment" (s. 122). As noted earlier, it is the WCB who administers the *GECA* compensation regime in British Columbia. In *Martin v. Alberta (Workers' Compensation Board)*, 2014 SCC 25, the Supreme Court of Canada confirmed that the determination of compensation under the *GECA* has been delegated to the WCBs of the various provinces and that "provincial institutions and laws thus provide the structure and boundaries necessary to determine whether and how much compensation is to be paid to federal employees" (para. 27).

[38] Counsel for the Plaintiff argues that, to the extent the WCB has already determined, albeit only implicitly, that the Plaintiff's personal injury was "caused by an accident arising out of and in the course of her employment" and thus that she was entitled to compensation under s. 4(1)(a) of the *GECA*, this is an incorrect determination which is subject to review and ultimately an appeal to WCAT. They say this includes the statutory procedure for certifying to the court whether the Plaintiff's injury "arose out of and in the course of her employment" (as per s. 311 of the *Workers' Compensation Act*). Because this falls within the exclusive jurisdiction of WCAT and not the court, and because the matter is still pending before WCAT, counsel argues that the Crown's application to strike out the Plaintiff's pleadings is premature and should either be dismissed or otherwise put on hold for the time being.

[39] The WCAT procedure respecting certification to the court usually involves submissions by plaintiffs, defendants and the WCB itself regarding the issues in dispute. Materials will usually include the pleadings in the litigation, whatever determinations may have been made by the board, and other evidence such as examination for discovery transcripts in the civil litigation. It is for this reason, that Plaintiff's counsel wishes to proceed with examinations for discovery of DOF personnel so that the relevant evidence can be placed before WCAT for any Certification to Court determination.

[40] They also wish the court to direct the Crown to forthwith provide its List of Documents in this matter.

Analysis and Determination

[41] One cannot help but admire the *chutzpah* of the Plaintiff in seeking a finding that she was not in fact or law entitled to compensation under the *GECA* while at the same time continuing to receive that compensation and declining to return the $75,000 she has received in that regard before first securing a judgment for personal injury damages against the defendants Crown and Gregory.

[42] It is arguable that the plaintiff is engaging in an abuse of process or, at the very least, is taking impermissibly inconsistent positions regarding entitlement to that compensation. She has to have been injured “in the course of her employment” in order to receive compensation under the *GECA*, yet she is at the same time alleging that neither she nor Mr. Gregory were “in the course of their employment” for the purposes of pursuing a claim for personal injury damages against both Mr. Gregory and the Crown.

[43] For sure, having already received (and perhaps continuing to receive) compensation under the *GECA*, s. 9 of the *CLPA* and s. 12 of the *GECA* are necessarily triggered and both defendants are ostensibly entitled to have the claim against them summarily dismissed. These statutory immunities would apply to all causes of action alleged in the Amended Notice of Civil Claim, including the newly-added claim for occupiers liability.

[44] On behalf of the Government of Canada, WorkSafeBC accepted the plaintiff's compensation claims under the *GECA* for both burn injuries and related mental health issues, however the acceptance letters do not expressly address the question whether the accident causing the injuries actually arose out of and in the course of her employment with DFO. This is so, even though the plaintiff in her October 26, 2021 Application for Compensation expressly stated that at the time of the injury incident she was not engaged in her “employer’s business”, she was not performing her regular work duties, and the incident did not occur during her normal shift.

[45] I also note that the plaintiff's Application for Compensation identified that the accident did “occur on her employer’s premises or an authorized worksite”, namely a work field camp at a facility being rented by DFO. It is thus possible that the work safe “adjudicator” and “case manager” who both accepted the plaintiff's claim for compensation considered that compensation was properly payable because of the DFO's occupation or use of an authorized worksite, ie. a form of occupiers liability contemplated by s. 3(b)(ii) of the *CLPA*.

[46] Whether it is even possible at law for the plaintiff to retroactively withdraw her claim for compensation under the *GECA* remains to be seen. Likewise, whether it is possible for the Crown to be vicariously liable even if the conduct of Mr. Gregory is found to be outside “the course of his employment” in the particular circumstances of this case also remains to be determined. So too with the claim for occupiers liability and, in particular, how s. 9(a) of the *Occupiers Liability Act* might be applied.

[47] It also remains to be determined whether the WCAT Certification to Court procedure even applies to *GECA* claims administered by British Columbia's WCB and, if so, whether WCAT will exercise any exclusive jurisdiction it may have to determine whether the actions of the plaintiff or Mr. Gregory “arose out of and in the course of their employment”. If such a determination/certification is made, that may inevitably result in dismissal of the civil litigation against both the Crown and Mr. Gregory, whether pursuant to one or both of s. 9 of the *CLPA* or s. 12 of the *GECA*.

[48] I prefer to let the proceedings before WCAT unfold before the court makes any determination on the merits of the Crown's claim for immunity in this case, whether in the context of any application to strike out the claim or for any other form of summary judgment.

[49] I therefore adjourn *sine die* the Crown's application to strike out the plaintiff's pleading pending a determination of the proceedings before WCAT. In that regard I consider it appropriate to also require the Crown to produce its list of documents in this matter without delay and to submit itself to the usual examination for discovery

procedure contemplated by the *Supreme Court Civil Rules*. I make an order to that effect.

[50] In all the circumstances, costs of this application will be in the cause.

"Kent J."