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Psychological Stress and Workers' Compensation in Alberta

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Cases commented on: *Martin v Alberta (Workers' Compensation Board)*, 2012 ABCA 248, appeal heard December 10, 2013 (SCC); *Ashraf v SNC Lavalin ATP Inc*., 2013 ABQB 688

Earlier this week, the Supreme Court of Canada heard argument in an Alberta case involving the interplay between federal and provincial legislation providing for the compensation of workers injured in workplace activities. Workers' Compensation Commissions from British Columbia, Quebec and Nova Scotia intervened in the case. The Court, which reserved judgment after its hearing, offers the following description of the case on its website:

> Statutes – Statutory interpretation – Eligibility for compensation – Is a federal government or Crown corporation employee's eligibility for workers' compensation determined by the *Government Employees Compensation Act*, R.S.C. 1985, c. G 5 or by provincial legislation? – Can the definition of "accident" under the *Government Employees Compensation Act* be interpreted to require "excessive or unusual" events for psychological stress claims?
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> The Respondent Martin commenced a labour complaint against the Applicant, his employer. Parks Canada subsequently instructed the Respondent to disclose information relating to data on his work computer so that Parks Canada might comply with a request that it had received under the *Access to Information Act*. The Respondent claimed that this request triggered a psychological condition leading to his taking leave and, ultimately, to his making a claim for compensation for chronic stress. The Workers' Compensation Board found that the Respondent's chronic onset stress was ineligible for compensation because it failed to meet two of the criteria set out in the Workers' Compensation Board of Directors Policy 03 01 as the labour relations issues with Parks Canada were not excessive or unusual compared to the normal pressures and tensions of an average worker in a similar occupation. The Appeals Commission for Alberta Workers' Compensation also concluded that the Respondent had not satisfied two criteria of the Policy and was ineligible for the compensation.

The Alberta Court of appeal framed the issue as follows:

> whether the [Workers' Compensation] Board, in determining Martin's claim under the *Government Employees Compensation Act*, R.S.C. 1985, c. G-5 (*GECA*), is entitled to apply the policies that the Board has developed under the *Workers' Compensation Act*, R.S.A. 2000, c. W-15 (*WCA*) for determining eligibility for compensation arising from psychological/psychiatric injury arising in the case of any worker in a covered workplace activity within Alberta.

(2012 ABCA 248 at para 3)

A majority of the Court of Appeal (Watson JA and Fraser CJA) held that whether a reasonableness or correctness standard of review was applied, the result would be the same: "when properly interpreted, both statutes can apply harmoniously with the same result on the crucial issues here" (at para 31). The majority noted that constitutional and human rights arguments had not been directly raised in the case (at para 34), and perceived the case as involving "co-operative federalism" in that "interaction of federal and provincial legislation should be made workable by courts consistently with the intent of both levels of legislature" (at para 42). The fact that the WCB was given authority to decide on workers' compensation claims for federal workers covered by the *GECA* was a recognition that "federal workers reside within provincial economic circumstances, and that accordingly, the support provided to the workers in those jurisdictions who qualify should largely conform to those circumstances, and not to some nationalized standard oblivious to local reality" (at para 57). It followed that the conditions set out in Alberta's WCB policy for claims involving psychological / psychiatric stress applied to the adjudication of Martin's claim (at para 51). Martin could not meet the conditions that his injuries were the result of events that were "excessive or unusual", so the denial of his claim for compensation was upheld. Justice McDonald concurred in the result, but found that Martin had not met the threshold for compensation under the *GECA* either.

In Martin's factum to the Supreme Court, available here, he argues that the *GECA* should be interpreted in a way that ensures federal employees across Canada are subject to the same eligibility standards for workers' compensation (at para 3). He contends that the Court of Appeal "improperly relied on a policy concern that Alberta workers should not face differing eligibility standards, a consideration that finds no expression in *GECA*" (at para 4). He also argues that an interpretation of the *GECA* that incorporates Alberta's policy for psychological injuries "is inconsistent with the *Charter* rights of federal government employees with psychological disabilities, given that there are no analogous restrictions imposed on workers with physical injuries" (at para 5). In the alternative, if *GECA* employees do have to prove the presence of "excessive or unusual" events before psychological injuries will be compensated, such events were present in the circumstances of this case.

The *Martin* case was recently cited in a decision of Justice Bryan Mahoney of the Alberta Court of Queen's Bench. In *Ashraf v SNC Lavalin ATP Inc*., 2013 ABQB 688, the court considered an employer's application to strike a former employee's statement of claim for workplace related injuries on the basis that the Workers' Compensation Board has exclusive jurisdiction in this area. Ashraf was claiming damages for psychological and physical injuries sustained as a result of "an escalating and systematic campaign of abuse, harassment and bullying" against him (at para 4). Justice Mahoney held that this claim was barred by section 21 of the *WCA*. First of all, Ashraf's employment with SNC was covered by the *WCA*. Secondly, his injuries met the requirement that they were caused by an "accident", as defined in the *WCA* to include wilful and intentional acts (at para 39). Ashraf argued that WCB policies also required that the underlying events be unexpected, and that the campaign of abuse he suffered did not meet that criterion. Justice Mahoney found that the WCB policies did not assist Ashraf, as they were relevant to the merits of claims rather than the jurisdiction of the WCB (at para 37). Even if the "unexpected" requirement was applied, it could be satisfied in the case of ongoing or continuous events, based on previous cases interpreting this requirement (at para 38). Thirdly, Ashraf's injuries fell into categories that were compensable under the *WCA*. Justice Mahoney noted that while some

provinces exclude chronic stress from workers' compensation regimes, psychological injuries (including stress), are included in Alberta's *WCA* (though he acknowledged that these injuries are subject to particular eligibility requirements, citing *Martin* (at para 42)). As a result, "it is up to the Workers' Compensation Board to determine if compensation will be granted for psychological injuries, including stress, that arise out of workplace accidents" (at para 45).

Martin is the second case by that name involving workers' compensation issues to be considered by the Supreme Court. In *Nova Scotia (Workers' Compensation Board) v Martin; Nova Scotia (Workers' Compensation Board) v Laseur*, 2003 SCC 54, [2003] 2 SCR 504, the Court held that the exclusion of chronic pain injuries from Nova Scotia's workers' compensation legislation amounted to discrimination on the basis of disability that could not be justified under section 1 of the *Charter*. The current *Martin* appeal allows the Supreme Court to consider similar issues, albeit via a *Charter* values approach rather than a direct *Charter* challenge, and with an added federalism spin.

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