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HSA appears at Supreme Court of Canada to fight for breast cancer survivors' claims for workers' compensation

January 14, 2016

HSA lawyers Tonie Beharrell and Randy Noonan and HEU's Kaity Cooper appeared in the Supreme Court of Canada today to challenge the decision of the BC Supreme Court and BC Court of Appeal to overturn a decision of the BC Workers' Compensation Appeal Tribunal (WCAT). The WCAT had recognized three cases of breast cancer contracted at Mission Memorial Hospital as being related to their occupation, and thus eligible for WorkSafe BC compensation.

HSA members, Katrina Hammer and Anne MacFarlane, and HEU member Patricia Schmidt, all worked in the laboratory at Mission Memorial Hospital. All three contracted breast cancer, and an investigation into the cancer identified there was a cancer cluster in the laboratory – where the incidence of breast cancer was eight times the rate of breast cancer in BC.

Their claims to WorkSafe BC for compensation for breast cancer as an occupational disease were initially denied in each case, but the WCAT reconsidered the decisions, and allowed the claims in every case. WCAT reviewed all of the evidence before it, including expert reports that did not rule out occupational factors as a contributor to the cancer. It found that it was *“sufficient to conclude it was as likely as not that some workplace exposure was of causative significance.”*

Fraser Health Authority, the employer, judicially reviewed the WCAT award and the BC Supreme Court and BC Court of Appeal sided with Fraser Health Authority, stating there was no evidence of work causation.

HSA sought, and received, leave from the Supreme Court of Canada to appeal the BC court decisions on the basis that the courts applied the wrong standard in their review of the WCAT decisions, and wrongly found that there was “no evidence” on which WCAT could have based its decision.

At issue is the role and authority of administrative tribunals like the WCAT, which have specialized expertise in their particular area, and whether the courts ought to be able to dismiss that expertise and reweigh the evidence that was before the Tribunal.

In its submission to the Supreme Court of Canada, HSA argued that:

“As noted by the original panel, the scientists and physicians were weighing the evidence against the standard required to reach “scientific conclusions” based on “scientific evidence.” That is a significantly higher test than that required in the administration of the workers' compensation scheme for the adjudication of workplace disease claims, and in fact requiring the Appellants to meet that test would fundamentally undermine the purpose of that scheme.”



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Jeanne Meyers, HSA's Executive Director of Legal Services and Labour Relations, said HSA's decision to pursue the case to the highest court in Canada was taken to support not just the members from Mission Memorial Hospital, but to uphold the integrity of the Workers' Compensation system, based on a historic compromise where employees gave up the right to sue employers, and in exchange employers provide a no-fault insurance scheme.

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