WCAT Workers' Compensation Appeal Tribunal

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DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT DECISION DATE: **June 27, 2016**

WCAT DECISION NUMBER: **A1603218**

WCAT PANEL: **Herb Morton**

Applicant and Section 257 Determination

Applicants' Names: James M. Forster and Steven Lee Doane also known as Steven L. Doane and Insurance Corporation of British Columbia
WCAT Nos. A1603218 and A1603221

WCAT DECISION DISTRIBUTION LIST

This decision is sent to the following parties:

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Geraldine Yousif
(Interested Party)

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

This decision was the subject of a BC Supreme Court decision. See 2019 BCSC 1647.

Introduction

[1] The plaintiff, Tydel McGowan, was injured in a motor vehicle accident on Thursday, June 30, 2011. At the time of the accident, she had one passenger, N, a special needs adult. The plaintiff was to start a new job for Geraldine Yousif in July 2011, which involved working with N and another adult (J) with special needs. The plaintiff's vehicle was struck from behind at the intersection of 24th Avenue and King George Boulevard in Surrey, B.C.

[2] The defendant, James M. Forster, was employed by Doane and Sons Renovations doing fire and flood restoration work. At the time of the accident, he was driving from a job site to a store to purchase paint. Forster was driving a van which was owned by the defendant Steven Lee Doane, also known as Steven L. Doane.

[3] Pursuant to section 257 of the *Workers Compensation Act* (Act), the Workers' Compensation Appeal Tribunal (WCAT) may be asked by a party or the court to make determinations and certify to the court concerning actions based on a disability caused by occupational disease, a personal injury, or death. These applications were initiated by counsel for the defendants on September 4, 2014. Transcripts have been provided of the October 3, 2013 examinations for discovery of the plaintiff and of the defendant Forster. A transcript was also provided of a deposition provided the plaintiff on November 25, 2015 for the purposes of WCAT's determination under section 257 of the Act (with examination by counsel for the defendants, and re-examination by plaintiff's counsel).

[4] Geraldine Yousif is not participating in these applications, although invited to do so as an interested person.

[5] Written submissions have been provided by the parties to the legal actions. The background facts are not in dispute, and these applications do not involve any significant issue of credibility. I find that these applications can be properly considered on the basis of the written evidence and submissions, without an oral hearing.

Issue(s)

[6] Determinations are requested concerning the status of the plaintiff McGowan, and the defendant Forster, at the time of the June 30, 2011 motor vehicle accident.

Jurisdiction

[7] Part 4 of the Act applies to proceedings under section 257, except that no time frame applies to the making of the WCAT decision (section 257(3)). WCAT is not bound by legal precedent (section 250(1)). WCAT must make its decision based on the merits and justice of the case, but

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in so doing must apply a published policy of the board of directors of the Workers' Compensation Board, operating as WorkSafeBC (Board), that is applicable (section 250(2)). Section 254(c) provides that WCAT has exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined under Part 4 of the Act, including all matters that WCAT is requested to determine under section 257. The WCAT decision is final and conclusive and is not open to question or review in any court (section 255(1)). The court determines the effect of the certificate on the legal action: *Clapp v. Macro Industries Inc.*, 2007 BCSC 840.

Status of the plaintiff, Tydel McGowan

[8] The plaintiff did not submit an application for workers' compensation benefits for injuries sustained in the June 30, 2011 accident.

[9] The plaintiff provided a signed statement to the Insurance Corporation of British Columbia (ICBC) on July 4, 2011 (under the name Tydel Trask). She stated:

> I had one passenger, my sons friend. [N] was sitting in the front passenger seat. He is 23 years old. He was my only passenger. His mom just bought a townhouse in Harrison so we were buying stuff for the house. I am friends with his mom and he was with me at the time. …my main concern is [N], he is special needs and I did not want him freaking out in traffic. …I was going to start today working with special needs kids for my friend. I was going to keep with my normal job, which is my contract and then start this new one. My friend knows about the accident and that I am at ICBC today.
>
> [all quotations are reproduced as written, except as noted; block capitalization removed]

[10] The plaintiff provided an affidavit on August 28, 2014. She advised that her statement to ICBC was incorrect in referring to N as her son's friend. She explained:

> 2. …This should have read "my friend's son" referring to Ms. Yousif's foster son. It would not be unusual for me to think or refer to Ms. Yousif as a "friend" **notwithstanding that our relationship is and has been primarily a business one.**
>
> [emphasis added]

[11] The plaintiff further advised:

> 5. …I was doing a favour for Ms. Yousif, nothing more and nothing less. There was no arrangement in place, express or implied, whereby I was to get paid for taking [N] to Safeway on the day in question. Further I was at no time subsequent to the day in question offered compensation nor did I seek compensation for this activity. At no time did I anticipate that this activity would indirectly further my financial interests in terms of my relationship with Ms. Yousif, or seek to do so.

[12] The plaintiff gave evidence in an examination for discovery on October 3, 2013. She was supposed to start a full-time position as a child support worker after July 1, 2011 (Q 91). The position would have involved working five days a week, eight hours a day (Q 93). Subsequent to the accident, she worked at the house owned by Ms. Yousif (Q 168).

[13] The plaintiff also gave evidence in a deposition. At the time of the accident, N was a passenger in her car (Q 6). N was a foster son of Ms. Yousif (Q 7). The plaintiff had been employed by Ms. Yousif or cared for her foster children in three different capacities in the past: as a childcare support worker, in providing respite care, and in providing autism related services through the Ministry of Children and Family Development (Q 8 to 9). The plaintiff had worked as a childcare support worker on and off since 2003 (Q 11).

[14] The position of a childcare support worker involved demonstrating and teaching life skills (Q 32). The plaintiff primarily worked with children or young adults in their own homes (Q 33). She would also take them off-site to go grocery shopping or to go for a walk (Q 34). She would use her own car for travel with children, and her employer would compensate her for parking or gas (Q 36). She obtained work through online postings and through word of mouth (Q 46 to 49). She was mainly paid in cash (Q 54).

[15] The plaintiff also contracted with the Ministry of Children and Family Development from time to time (Q 57 to 58). The Ministry would pay her directly (Q 59). She did fostering, and autism and emergency placement work (Q 60 to 61). She was not working for the Ministry on the day of the accident (Q 63).

[16] The plaintiff had also done work in respite care, providing short-term temporary relief for families of children or adults with mental disabilities (Q 65 to 67). The respite services were always on a weekend (Q 70). She had provided respite care for Ms. Yousif's children (Q 79 to 84). The plaintiff usually provided respite care in her own house, but also did this in the house where Ms. Yousif's boys lived (Q 83 to 84). The plaintiff had worked for Ms. Yousif for several years (Q 85). Ms. Yousif was the foster mother of six mentally handicapped children or young adults (Q 86 to 89). The plaintiff knew Ms. Yousif as an employer, rather than as a friend (Q 92). She did not consider Ms. Yousif a friend (Q 109). Their relationship was primarily a business one (Q 111). She stated (Q 112):

> Q Did you ever spend time with her one on one without the children present?
> A Yeah, I'd go in and talk about the kids and stuff.

[17] During the two years prior to the accident, the plaintiff was working for Ms. Yousif in caring for N and J on an as-needed basis (Q 114 to 115). She was paid for that time (Q 116).

[18] In June of 2011, the plaintiff met Ms. Yousif by chance (perhaps at a grocery store) and Ms. Yousif mentioned that a full-time position had become available (Q 117 to 123). Ms. Yousif offered the position to the plaintiff (Q 125). It was a day position (Q 128). The plaintiff more or less accepted the position on the spot (Q 113). The plaintiff had to telephone Ms. Anderson (business manager for Ms. Yousif) to get the details of the position (Q 132, 141). Her start date was July 1, 2011 (Q 136). The plaintiff telephoned Ms. Anderson on Thursday, June 30, 2011 to

get the details of the position (Q 140 to 141). Ms. Anderson told the plaintiff to call Ms. Yousif (Q 142). The plaintiff explained (Q 142):

> Q What did she [Ms. Anderson] tell you?
> A I said to – or I asked her what was going on and she said she wasn't sure, to give Geraldine [Yousif] a call. And so I called Geraldine and asked her, you know, what's going on? I said, have you decided? And she said she wasn't sure, and as I said before, [N] was bickering in the background. And then I said, well, I'm going to South Surrey, how about I just pick him up or whatever, take him for a Slurpee or whatever, cookie and then I'll take him home. She said perfect, and then she'd let me know.

[19] The plaintiff called Ms. Anderson around 10:30 or 11:00 a.m., and then called Ms. Yousif about one hour later (Q 143 to 146). Ms. Yousif did not give the plaintiff the details for her shift the following day as she was not sure yet (Q 147). The plaintiff would have taken N and J to Harrison or alternatively, would have taken them to a July 1st celebration in Surrey or Langley (Q 149 to 154). Either way, the plaintiff would have had a work shift on July 1 (Q 155, 162 to 163).

[20] On June 30, 2011, the plaintiff picked up N around 12:30 p.m. (Q 173). Prior to doing so, she had done her own grocery shopping at IGA (Q 177). She was also planning to go to Safeway to buy meat (Q 178). She appeared to indicate, by stating "Um-hmm" that this was for her own consumption (Q 179). The plaintiff further stated (Q 181 to 182):

> Q Okay. So in your statement to ICBC you referred to his mom, I take it that being Ms. Yousif, just bought a townhouse in Harrison so we were buying stuff for the house; can you explain what you meant by that?
> A Well, she had bought stuff for the house. That's why she had [N], was loading up stuff in her car. She had asked me – I was going to Safeway if I could pick her up a few things.
> Q What things?
> A I don't know. I remember feta she asked to pick up, because she had forgot feta and I just said, oh, yeah, I'll drop it on my way back home. But she had [N] there to pick and help load the car – her car.

[21] N and J lived in a semi-independent home by themselves, with two staff who also lived in the home (Q 225 to 239). Ms. Yousif lived in her own home at a different location (Q 223 to 225).

[22] Ms. Yousif would have reimbursed the plaintiff for the groceries (Q 184). The plaintiff had never offered to pick up any of the children[1] as a favour before (Q 185). The plaintiff had no expectation of being paid for picking up N and taking him to his home (Q 186). The plaintiff stated that she would take N for a Slurpee[2] and then drop him off at his house (Q 191). The plaintiff had years of experience in providing care for Ms. Yousif's children and Ms. Yousif trusted her ability to care for N (Q 193 to 196).

[1] The references to "children" include the N and J, who were disabled adults.
[2] A Slurpee is a slushy frozen carbonated beverage sold at 7-Eleven stores.

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[23] The accident occurred after the plaintiff had picked up N and when she was on her way to Safeway (Q 206). The plaintiff would not have offered to take care of N if she had not planned to accompany Ms. Yousif to Harrison (Q 209). The plaintiff denied that she was trying to make a good impression before starting a full-time job (Q 216). She would not have asked to be compensated for her time with N that day (Q 220), or for her gas (222).

[24] On the day of the accident, the plaintiff was scheduled to pick up her two-year-old granddaughter from a preschool in Langley later in the day (Q 252 to 256). The plaintiff's daughter and granddaughter lived with her, and her daughter was working (Q 257 to 265). The plaintiff picked her granddaughter up from preschool five days a week (Q 273 to 273).

[25] The plaintiff had no reason to believe that Ms. Yousif was dissatisfied with her work, as she would not have hired her otherwise (Q 288). The plaintiff was confident that Ms. Yousif would be pleased with her hire on this occasion (Q 289). When the plaintiff took N to the grocery store, she was not trying to make a good impression on Ms. Yousif (Q 290). It never occurred to the plaintiff that she was working on that day (Q 291).

[26] An affidavit was provided by Pamela Maxwell, a licensed adjuster. She interviewed Ms. Yousif on May 5, 2014. Ms. Yousif explained that she had taken into care six children, all of whom had severe mental disabilities. Ms. Yousif had employed the plaintiff approximately eight years earlier, following which the plaintiff left to work at another home. Ms. Yousif ran into the plaintiff in June of 2011, and offered her a full-time job. As part of her job, the plaintiff would have to be with the children at all times as they were severely handicapped and could not be left alone. Ms. Yousif did not know if the plaintiff was paid by cash or cheque. Ms. Yousif advised she is not friends with the plaintiff. She only knew the plaintiff because she looked after Ms. Yousif's children.

[27] On May 12, 2014, Ms. Maxwell spoke with Louisa Anderson, business manager for Ms. Yousif. Ms. Anderson advised she had been employed by Ms. Yousif for approximately ten years. Ms. Maxwell noted in her affidavit[3]:

> 12. Ms. Anderson confirmed that Ms. Yousif hired Ms. McGowan to care for Ms. Yousif's foster children. She recalled hiring Ms. McGowan before the June 30, 2011 car accident, but told me she could not recall exact dates….

[28] Ms. Maxwell subsequently received additional information from Ms. Anderson by email. This included the following question and answer:

> Question: Why was [N] with Tydel on the date of the accident?
>
> Answer: He was with Tydel as I am aware to give Geraldine a break for a couple of hours. He was giving her a hard time on the phone when

[3] Pursuant to section 246.1(1) of the Act and items #11.2 and #11.5.1 of WCAT's *Manual of Rules of Practice and Procedure*, WCAT is not precluded from admitting hearsay evidence although hearsay evidence is generally given less weight than direct evidence. Direct evidence is generally considered more reliable than indirect (hearsay or circumstantial) evidence.

> Tydel called to get details of her work schedule for the next day, which was Canada Day. I advised Tydel to call Geraldine because I was unaware of what was going on with the schedule for July 1st. That is when she offered to take him. I guess she was trying to show how flexible she was and being a team player.

[29] Ms. Yousif provided an affidavit on September 4, 2014. She described herself as a businessperson and foster parent. She was a foster mother who had for many years taken in children in need of care. The children were referred to her by the provincial Ministry for Children and Families. She had, from time to time, employed the claimant as a respite care worker to assist in the care of her foster children, N and J, both of whom had behavioural issues. The plaintiff also provided respite care for two other children in Ms. Yousif's care. Ms. Yousif paid the plaintiff directly for such respite care services. The plaintiff had also provided autism services from time to time with other children in Ms. Yousif's care. The plaintiff was paid directly by the Ministry for providing services with autistic children. Ms. Yousif further noted:

> 6. Not all of the children in my care reside with me. However prior to June 2011, Ms. McGowan worked in my home from time to time and I did get to know her on a personal basis.

[30] On or about June 2011, Ms. Yousif offered the plaintiff a full-time position at 40 hours weekly. That employment was to commence on July 1, 2011. Ms. Yousif advised:

> 8. On June 30 2011, I spoke to Ms. McGowan on the telephone, during the course of which conversation she volunteered to take [N] out for a Slurpee and for cookies at Safeway (the "Outing") as he was acting up and I was preparing to go to Harrison for the weekend. I accepted her offer.
>
> 9. I understand that during the Outing Ms. McGowan was involved in a motor vehicle accident.
>
> 10. Ms. McGowan was not paid or intended to be paid for the Outing, nor was she compensated in any way in lieu of payment, either at the date of the Outing or subsequently. The Outing was voluntary on her part and done as a favor to me.
>
> 11. Ms. McGowan did not begin her employment on July 1 2011 as scheduled, due to her accident.

[31] A signed statement was provided by the plaintiff's daughter, Chelsea McGowan, on March 17, 2016. She advised that on June 30, 2011, she was working in downtown Vancouver from 1:30 p.m. until 10:30 p.m. and could not pick up her daughter. Pursuant to their pre-existing arrangement, the plaintiff would pick up her granddaughter and take her home. The three of them resided together at that time.

Law and policy

[32] At the time of the accident on June 30, 2011, the policies in Chapter 3 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) concerned personal injury.[4]

[33] Policy at item #C3-12.20 concerned the "Commencement and Termination of the Employment Relationship." This stated:

> The commencement and termination of an employment relationship for compensation purposes is not limited to the commencement or termination of a contract of service. **A decision is made whether, having regard to the substance of the matter, an employment relationship had commenced or terminated for compensation purposes.**
>
> A person offering services to an employer will often be told to come back at a certain time in the future when work might be available. **A person may also be promised a specific job but the commencement date may be specified some weeks or months ahead. Such persons would not normally become workers under the Act until they actually returned to the employer's premises at the future date for the commencement of work.**
>
> **The fact that a worker has not commenced productive work is not a bar to compensation. For example, if an injury takes place while entering the employer's premises on the way to the first day of work, coverage may be extended before the necessary hiring formalities are complete or productive work commences.**
>
> Similarly, an employment relationship does not automatically terminate for compensation purposes when a contract of service is terminated by notice. Workers may be eligible for compensation coverage for a reasonable period while winding up their affairs and leaving the employer's premises.
>
> [emphasis added]

[34] Item #C3-14.00, "Arising Out of and In the Course of the Employment," was the principal policy used for determining whether the worker's personal injury or death arose out of and in the course of the employment. The policy referred to the questions from section 5(1) of the Act as being the two components of the test of employment connection:

> The test for determining if a worker's personal injury or death is compensable, is whether it arises out of and in the course of the employment. The two components of this test of employment connection are discussed below.
>
> In applying the test of employment connection, it is important to note that employment is a broader concept than work and includes more than just productive work activity. An injury or death that occurs outside a worker's

[4] In this decision, I have applied the policies in effect at the time of the accident on June 30, 2011. The board of directors of the Board approved a revision to the policies in Chapter 3 of the RSCM II, and the revised policies apply to injuries or accidents that occur on or after July 1, 2010.

productive work activities may still arise out of and in the course of the worker's employment.

A. Meaning of "Arising Out of the Employment"

"Arising out of the employment" generally refers to the cause of the injury or death. In considering causation, the focus is on whether the worker's employment was of causative significance in the occurrence of the injury or death. Both employment and non-employment factors may contribute to the injury or death. The employment factors need not be the sole cause. However, in order for the injury or death to be compensable, the employment has to be of causative significance, which means more than a trivial or insignificant aspect of the injury or death.

B. Meaning of "In the Course of the Employment"

"In the course of the employment" generally refers to whether the injury or death happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the employment. Time and place are not strictly limited to the normal hours of work or the employer's premises.

[35] Policy at item #C3-14.00 set out a list of nine non-medical factors to be considered in determining whether an injury or death arises out of and in the course of the employment. This is a non-exhaustive list, and no one factor may be used as an exclusive test. Other relevant factors not listed in policy may also be considered. Other policies in Chapter 3 may provide further guidance. I have considered the nine factors listed in item #C3-14.00 under the analysis section below.

[36] Policy at item #C3-18.00 concerning "Personal Acts" provided:

B. Acts for Personal Benefit of Principals of Business

An injury or death may be considered to arise out of and in the course of the employment if it occurs while a worker is in the process of doing something for the benefit of the employer's business generally, or for the employer personally.

[37] Relevant background to the policy at #C3-18.00 is contained in Decision #162, "Re Personal Acts for an Employer," 2 W.C.R. 222, a former policy decision which was retired[5]. That decision was summarized in the policy which was set out in the former version of Chapter 3 at item #21.40 as follows:

On the other hand, in another Board decision, the worker was employed by an auto body shop, a limited company of which Mr. "X" was President and part owner. After making a delivery to a customer with Mr. "X", the worker was requested to assist Mr. "X" to pick up a bed and deliver it to his mother. The worker injured his back while moving the bed. This took place within normal

[5] In order to reduce the number of sources of policies, the Board of Directors approved a strategy for consolidating *Decisions No. 1 - 423* into the various policy manuals and "retiring" the Decisions over time. *Decision No. 162* was retired from policy effective October 21, 2003.

> working hours. The claim was disallowed by the Adjudicator because moving the bed was not related to the employer's business as a body shop owner. This argument had merit vis-a-vis the fact that the worker's legal employer was a limited company. However, the board of review felt that for practical purposes Mr. "X" was the employer. Moving the bed was for the benefit of Mr. "X", and at the same time Mr. "X" asked the worker to assist him in moving the bed, he was being paid by him and was acting under his directions.

Other WCAT decisions

[38] WCAT is not bound by legal precedent. However, the reasoning in prior decisions may provide useful guidance.

[39] The parties have cited and provided submissions concerning *WCAT-2005-04895*, *WCAT-2005-05276*, *WCAT-2011-00426*, *WCAT-2012-02738*, *WCAT-2013-03082*, and *WCAT-2009-01034*.

[40] *WCAT-2009-01034*, *Gehman v. McHatten et al.*, April 16, 2009, concerned a case in which the defendant, Kevin McHatten, stated he was doing a favour for a friend, and not working, at the time of the accident. McHatten was driving his friend Jerry Rai's company vehicle. He had picked up an empty trailer for Rai and was delivering it to his yard at the time of the accident. He said that he was not working and was not being paid to deliver the trailer as he was doing a favour for a friend. Usually, he was on payroll. There was no work between March 2005 and June 15, 2005, the day of the accident, because of a container strike. Prior to the strike he had worked steadily for Accelrated (a company owned by Rai), five days a week, and he returned to a five-day work week in November, after the strike. The WCAT panel reasoned:

> [24] This case is also unusual in that the defendant had a formal employment relationship with Accelrated before and after the accident but not at the time of the accident. Furthermore, the defendant had a longstanding friendship with Jerry Rai, the owner of Accelrated. Accordingly, the defendant and Jerry Rai were friends and they also, intermittently, had a relationship of employment. When employed by Accelrated/Jerry Rai, the defendant worked full time and was on the payroll.
>
> [25] The defendant's evidence was that he was performing various odd jobs and, basically waiting out the container strike. Although he states that he expected to return to work for Accelrated once the strike was over, I find no basis for concluding that he would be remunerated for his activities on June 15, 2005 once he had become an employee again. Since the defendant was not an employee of Accelrated at the time of the accident and Jerry Rai was not his supervisor/employer, the factors in policy #14.00 have limited application. Had the accident occurred while the defendant was an employee of Accelrated, these factors would assist in determining whether the defendant's conduct in driving the tractor arose out of and in the course of his employment. But, that is not the case here.

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> [26] This does not exclude the possibility of an employment relationship between Jerry Rai and the defendant at the time of the accident, but such a finding would have to be based on evidence that the circumstances on the day of the accident created an employment relationship in relation to the defendant's proposed conduct of picking up the trailer. In that regard, other than the notation in the Dial-A-Claim record, the defendant's evidence has consistently been that he was not working and that he was doing a favour for a friend. **Since the question of whether an individual is "working" for the purposes of the Act is a question of fact and law, the defendant's statement that he was not working is not determinative of the issue. It does, however, provide evidence regarding his motivation for agreeing to pick up the trailer and whether an expectation of remuneration could reasonably be inferred from all of the circumstances.** I do not find that to be the case here.
>
> [27] **I found persuasive the defendant's discovery evidence that he felt compelled to pick up the trailer because of his longstanding friendship with Jerry Rai.** I find the evidence is, on the whole, consistent with this statement. **In this regard, I note the defendant's evidence that his friendship with Jerry Rai dates back to 1996. It is a sufficiently close relationship that Jerry Rai's children call him "uncle."** The defendant was not employed by Accelrated at the time of the accident. He was not promised and did not expect remuneration for picking up the tractor. **There is very little, if any, evidence to suggest the defendant agreed to pick up the tractor in order to maintain ties with Jerry Rai that would lead to his re-employment with Accelrated after the strike. In my view, all of this points to the defendant having acted out of friendship on the day of the accident. I do not find that there was a relationship of employment between Jerry Rai and the defendant with respect to the defendant's actions on the day of the accident.** Accordingly, the defendant was not a worker at the time of the accident. It follows that any action or conduct which allegedly caused a breach of duty did not arise out of and in the course of his employment.
>
> [emphasis added]

[41] Two additional decisions summarized below also concerned situations in which a plaintiff was injured while carrying out what was described as a personal favour in a work-related context. These decisions were made under the policies which were in effect prior to the adoption of the new Chapter 3 in relation to accidents occurring or after July 1, 2010.

[42] *WCAT-2009-00575*, *Thomas v. Lopez et al.*, February 26, 2009, concerned the situation in which a worker was injured while walking through the parking lot of an auto repair shop. The plaintiff had travelled from her home to pick up a company vehicle at the auto repair shop, when

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the accident occurred. The accident occurred on a Saturday. She was going to put in a few hours of work at the office after picking up the vehicle. The plaintiff had offered or volunteered to pick up the vehicle, rather than being directed or instructed to do so by her boss. The WCAT panel concluded that the plaintiff's injury arose out of and in the course of her employment. The panel reasoned, at paragraphs 56, 57, and 59:

> [56] The plaintiff and Mr. Lovig have stated the plaintiff volunteered to pick-up the vehicle because he had previously loaned her a company vehicle for her own use. This was not a case where the plaintiff and Mr. Lovig were primarily friends and only secondarily employer and employee. According to Mr. Lovig's statement of December 10, 2008 the relationship between him and the plaintiff was strictly a "professional employer/employee relationship." He stated the plaintiff was "not a personal friend." Other evidence does not contradict that. Accordingly, the personal element in this case is simply that the plaintiff wanted to repay her employer for a previous act of kindness.
>
> [57] I do not consider that the intention of repaying a personal favour affects the characterization of the plaintiff's act of picking up the company vehicle in such a way that it should be viewed as a purely personal action. If the plaintiff had volunteered to work an extra shift setting up scaffolding in order to repay her employer's previous kindness, this would not change the character of the activity she undertook to repay him. It would still be work, even though she was motivated to undertake the additional work by her desire to repay a favour. Similarly, the activity of picking up a company truck does not lose its connection to the employment because an employee undertakes to do it in repayment for a personal favour previously extended to her by her employer. Although the previous favour introduces a personal element, I do not consider that it provides an adequate basis for characterizing the plaintiff's actions as personal. If the plaintiff had offered to pick up dry cleaning for her employer on her way to work, this may well be viewed as a personal favour. However, she was picking up a company vehicle and driving it to her workplace.
>
> …
>
> [59] I find that the act of picking up the company truck introduced an employment element to what would otherwise be a commute to work. Although there were personal elements involved in that the plaintiff was motivated by the desire to return a favour to her employer, she undertook to make a trip to the auto repair shop to pick up a company vehicle on what would otherwise be her day off. She intended to drive this truck to work and then to put in a couple of hours of work at her workplace. I consider the employment features associated with picking up the company vehicle are predominant and outweigh the personal features.

> There are sufficient employment elements surrounding the accident to take it out of the realm of personal activities.

[43] *WCAT-2009-01812*, July 9, 2009, *Guild v. Guy et al.*, concerned a case in which a plaintiff, during his father's illness, was performing some of his father's work duties. The plaintiff was involved in an accident while taking a vehicle used by his father (and owned by the company) for servicing or repair. That decision found that the personal, rather than the employment features of the situation, were predominant:

> [38] While the circumstances of this case are in a grey area, I consider that the evidence is less than evenly balanced in favour of a work relationship. The plaintiff's evidence was that he had never performed such a task before (in taking the car used by his father for servicing or repair). He described his father as being in bad shape at that time due to his recent major surgery. As the plaintiff did not know the vehicle was owned by the company, his action of taking the car for repair was not motivated by an intention to maintain or repair the assets of the company (even if that was the effect of his actions). This was not a situation which the plaintiff was performing a task which he had previously done as part of his work duties, or in which he was carrying out an instruction from his employer or supervisor. While the plaintiff was assuming some of the work duties customarily performed by his father, this does not mean that any task performed on behalf of his father was necessarily a work duty. I accept that the request by the plaintiff's father for this assistance was framed as a request for a personal favour, rather than as involving a work-related instruction. While I consider that the performance of this task could be characterized as a work-related activity, I find that in the circumstances of this case the personal features were predominant. The fact that the plaintiff's father had just recently undergone open heart surgery, was evidently a significant event for the plaintiff's family. In this context, I consider that the plaintiff's action in assisting his father was more in the nature of providing assistance of a personal or family nature, rather than involving the assumption of a work-related task on behalf of his father. Given my conclusion that the plaintiff's actions were of a personal nature in assisting his father, I do not consider that the policy at #21.40 (concerning acts for the personal benefit of a principal) applies to the circumstances of this case.

Submissions

[44] The following is a selective summary of some of the key points in the parties' submissions.

[45] The defendants submit that the plaintiff's employment relationship had commenced by June 30, 2011, even if she was not scheduled to begin working until July 1, 2011. The defendants submit that she had commenced productive work as of June 30, 2011. The defendants liken the

plaintiff's situation to that of a worker making up a sample to prove their skill as described in Decision No. 26, "Re: The Coverage of Workers' Compensation," 1 W.C.R. 109 (retired from policy as of January 1, 2003).

[46] The defendants submit that having regard to the substance of the matter, an employment relationship had begun. The plaintiff was not a volunteer, as she was, apart from the day of the accident, always paid for her time with the children. She did not view Ms. Yousif as a friend. Her characterization of her work as a favour is not determinative.

[47] The defendants note the plaintiff's concession that Ms. Yousif had not made up her mind about the work schedule for the following day. The defendants submit that there was clearly a benefit to be derived from the plaintiff offering to take N on the date of the accident, even if that benefit was never explicitly stated. The plaintiff's supervisor, Luisa Anderson, was left with the impression that the plaintiff was trying to show how flexible she was, and that she was a team player.

[48] Counsel for ICBC adopted the submissions of the defendants.

[49] The plaintiff submits that at the time of the accident, she had not yet "entered into works" under the "contract of service or apprenticeship, written or oral, express or implied." The fact that the plaintiff had been employed by Ms. Yousif in the past is not relevant to the question as to whether she had "entered into works" at the material time.

[50] The plaintiff submits that her admission that she would not have made the offer to take N to the store but for the pending trip to Harrison is completely consistent with her evidence that she made the offer to get N "out of Ms. Yousif's hair" while she prepared for the trip to Harrison the next day. This admission is irrelevant to the question at issue. The fact that in taking N to Safeway, the plaintiff may have duplicated some of the types of everyday activities which might have been part of her duties under the pending employment contract is similarly irrelevant. These activities were too generic to be characterized as employment related. As well, the items were for Ms. Yousif's townhouse in Harrison, and their procurement would not be part of or related to the plaintiff's duties upon commencement of her contract. The plaintiff's duties would have been tied to the premises in South Surrey where N resided and was to be cared for.

[51] Given that the plaintiff had worked extensively for Ms. Yousif in the past, there was no question of a "sample" of her work being required. Ms. Anderson's speculation about the plaintiff wanting to be a team player should be given no weight. Even if that connection to prospective employment did exist in the mind of the plaintiff, consciously or subconsciously, it might spring simply from human behaviour and would not be analogous to the furniture factory example (or the commencement of productive work).

[52] The plaintiff submits she was a volunteer, who was not paid for her time with N on the day of the accident. This is a complete answer to the issue of her status.

Analysis

[53] Section 1 of the Act contains a non-exhaustive definition of the term "worker." It states, in part:

> **"worker"** includes
>
> (a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;

[54] The definition of the term worker includes a person who has entered into "or" works under a contract of service. The use of the term "or" rather than "and" indicates that it is not a requirement that the person have begun working under a contract of service in order to be considered a worker. It is sufficient that the person have entered into a contract of service.

[55] Policy at item #AP1-1-2 of the *Assessment Manual* provided:

> The definitions of "worker" and "employer" in the *Act* are not exhaustive, so that persons may be "workers" or "employers" even though they have not entered into or are not working under a contract of service or hiring.
>
> The definitions of "worker" and "employer" are treated as complementary. The question in each case is whether the relationship between two parties is to be classified as one of employment. The scope of the definitions must be determined in the context in which they appear and the overall purposes of the *Act*. The Board will not automatically attribute to each word or phrase the meaning that has been given by another tribunal for other purposes. **Coverage under the *Act* may commence for a worker even though by common law principles no contract of service yet exists**.
>
> [emphasis added]

[56] Policy at item #AP1-1-5 concerning workers states:

> Volunteers or other persons not receiving payment for their services are generally not workers.

[57] The defendants submit that prior to the accident, the plaintiff had entered into an express oral contract with her employer, Ms. Yousif, to provide full-time childcare services, involving payment on an hourly basis for eight hours a day, five days a week.

[58] The plaintiff did not pick up N on the day of the accident for the purpose of providing a sample of her work, as a pre-condition to being hired. Her work was well known to Ms. Yousif from the past. While the particulars of her schedule may not have been settled, the plaintiff had accepted N's offer of full-time employment.

[59] Policy at item #C3-12.20 states that the commencement and termination of an employment relationship for compensation purposes is not limited to the commencement or termination of a contract of service. A decision is made whether, having regard to the substance of the matter, an employment relationship had commenced or terminated for compensation purposes. A

person may also be promised a specific job but the commencement date may be specified some weeks or months ahead. Such persons would not normally become workers under the Act until they actually returned to the employer's premises at the future date for the commencement of work.

[60] In this case, the plaintiff's accident occurred prior to the date scheduled for the commencement of work. (For this purpose, it is not significant whether the date was July 1, 2011 or July 4, 2011, although the evidence points to the earlier date being correct). Under the policy, the plaintiff would not normally be a worker until she went to the employer's premises at the scheduled date in July 2011 for the commencement of work.

[61] In the circumstances of this case, I consider it appropriate to proceed to analyze the evidence regarding the plaintiff's activities on June 30, 2011 for the purpose of addressing both issues together (as to whether she was a worker, and whether her injuries in the accident arose out of and in the course of her employment). The fact she had entered into a contract of service provides a possible basis for finding that she was a worker, but this is subject to the policy providing that she would not normally be a worker until she went to the employer's premises at the scheduled date for the commencement of work.

[62] As noted above, item #C3-14.00 set out a list of nine non-medical factors to be considered in determining whether an injury or death arises out of and in the course of the employment.

1. On Employer's Premises

[63] The accident did not occur on the employer's premises. This factor does not favour coverage.

2. For Employer's Benefit

[64] The plaintiff's employment would have involved providing care for N. Her actions of picking up N, taking him for a Slurpee, and driving him home, were for the employer's benefit. In addition, her actions of picking up some grocery items and delivering them to Ms. Yousif, were for the personal benefit of Ms. Yousif. This factor favours coverage.

3. Instructions From the Employer

[65] The plaintiff made a spontaneous and voluntary offer to pick up N on the day of the accident. I accept the plaintiff's evidence that this offer was made as a favour, without any expectation that she would be compensated for her time or expenses.

[66] Ms. Yousif also asked the plaintiff to purchase certain grocery items. This latter task was more in the nature of a request. I accept, however, that this request was made in the context of the plaintiff's intention to purchase groceries for herself, and was in the nature of a request for an additional favour rather than amounting to an instruction. This factor does not favour coverage.

[67] However, the performance of such favours by the plaintiff must also be assessed in the context of her pending full-time employment for Ms. Yousif. This aspect is addressed further below.

4. Equipment Supplied by the Employer

[68] At the time of the accident, the plaintiff was not using equipment or materials supplied by the employer. This factor does not favour coverage.

[69] However, the plaintiff had assumed responsibility for N's care. This additional factor is addressed further below.

5. Receipt of Payment or Other Consideration from the Employer

[70] The plaintiff was not in the process of obtaining or receiving consideration at the time of the accident (such as being in the process of picking up or cashing a paycheque). This factor does not favour coverage.

6. During a Time Period for which the Worker was Being Paid or Receiving Other Consideration

[71] The plaintiff had not starting working for Ms. Yousif in her new full-time position. She had not been asked to provide respite or other child care services on June 30, 2011. She was not being paid or receiving other consideration on the day of the accident. This factor does not favour coverage.

7. Activity of the Employer, a Fellow Employee or the Worker

[72] The occurrence of the motor vehicle accident did not involve any activity of the employer, a fellow employee, or N. This factor does not favour coverage.

8. Part of Job

[73] At the time of the accident, the plaintiff was performing activities which would have been part of her job after she commenced her new position. However, she had not yet commenced that position, so her activities were not part of her job. This factor does not favour coverage.

9. Supervision

[74] The plaintiff was not being supervised at the time of the accident. This factor does not favour coverage.

[75] The defendants cite the factor "Risk is Same as Normal Course of Production." The defendants submit that the plaintiff's typical work duties as a childcare support worker included grocery shopping, caring for the children, and separating a violent or misbehaving child from the others. On the day of the accident, she was performing the same tasks she did in the normal course of her work and the risk she was exposed to was the same.

[76] The version of the policy at item #14.00 in the former Chapter 3 of the RSCM II set out a list of ten factors to be considered, which included:

> (f) whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;

[77] This factor is not contained in the revised Chapter 3 which applies in this case. However, inasmuch as the current policy stipulates that the list of factors is non-exhaustive and other factors may be considered, I accept that this factor may be taken into account even though it has been deleted from policy. This factor provides support for coverage.

[78] In summary, only one of the nine factors listed in item #C3-14.00 lends clear support for workers' compensation coverage (on the basis that the plaintiff's actions were for the employer's benefit). However, there are additional factors not listed in policy which are relevant in this case. The plaintiff had assumed responsibility for N's care. The provision of care for N had been part of the plaintiff's prior employment for N, and was central to her pending full-time employment for Ms. Yousif. The risks to which the plaintiff was exposed were the same as the risks to which she would exposed in the normal course of her job.

[79] The arrangements for the plaintiff's hiring were quite informal and casual. They sprang from a chance meeting between the plaintiff and Ms. Yousif. There was essentially an oral agreement between the plaintiff and Ms. Yousif that the plaintiff was being offered and wished to take the position. The plaintiff was to telephone Ms. Anderson for details. When the plaintiff telephoned Ms. Anderson, she was told to telephone Ms. Yousif as she did not know the details of the plaintiff's work schedule.

[80] The plaintiff had been performing part-time work. It is evident that the offer of full-time regular employment would be important to her. When she contacted Ms. Yousif regarding the details for her shift, Ms. Yousif indicated she was not yet sure. The plaintiff's offer to take N would have allowed Ms. Yousif greater opportunity to focus on providing direction to the plaintiff in relation to commencing her new position.

[81] In the plaintiff's initial statement to ICBC, the plaintiff described Ms. Yousif as a friend. In her deposition, however, she acknowledged that she knew Ms. Yousif as an employer rather than a friend. She did not consider Ms. Yousif a friend, and their relationship was primarily a business one. In the plaintiff's August 28, 2014 affidavit, she similarly advised that while she had referred to Ms. Yousif as a friend in her initial statement to ICBC, their relationship was primarily a business one. This is consistent with the hearsay evidence provided by Ms. Maxwell that she was told by Ms. Yousif that she was not friends with the plaintiff, and that she only knew the plaintiff because she looked after Ms. Yousif's children. The plaintiff acknowledged that if she had not planned to accompany Ms. Yousif to Harrison, she would not have offered to take care of N. She had always been paid for her time working with N and J on an as-needed basis during the prior two years.

[82] The plaintiff submits that the term "friend" means many different things to many people, so that weight should not be given to the semantics of this term. The plaintiff submits, in reference to *WCAT-2009-01034*, that the salient point of comparison is that in both cases the individuals had

a longstanding working relationship which led one to do a favour for the other. I consider, however, that the circumstances of this case differ from those addressed in *WCAT-2009-01034*. In that case, there was evidence of a longstanding friendship, involving a sufficiently close relationship that Jerry Rai's children called the defendant "uncle." Similarly, in *WCAT-2009-01812*, the plaintiff's performance of a favour was found to stem from the family relationship of a father and son. In this case, the plaintiff did not provide any factual particulars to support a finding that their relationship was one of personal friendship in addition to the business relationship. In terms of whether she ever spent time with Ms. Yousif without the children present, the plaintiff stated that she would "go in and talk about the kids and stuff." The absence of additional factual particulars to show that the plaintiff and Ms. Yousif had contact outside of the work setting (such as spending time socializing or having meals in each other's homes, or in socializing outside of work) supports a conclusion that their relationship was primarily a business one similar to the situation addressed in *WCAT-2009-00575*.

[83] This was not a situation involving the provision of a favour to a friend or family member, where there was evidence of a longstanding friendship or family relationship unconnected to the employment. The plaintiff's past employment involved working with N, and her future employment was to involve working with N. I consider it likely that it was more than a mere coincidence that the plaintiff's only offer to take care of N as a favour to Ms. Yousif was made at a time when Ms. Yousif was determining the details regarding the plaintiff's commencement of full-time employment. I infer that the plaintiff's offer to do this task as a favour was made in contemplation of her commencement of a position of full-time employment for Ms. Yousif.

[84] The circumstances of this case are in a grey area, as the plaintiff was not being paid and was taking N on an outing and driving him home, and picking up groceries for Ms. Yousif, as a favour. However, the general policy at item #C3-14.00 provides that in applying the test of employment connection, it is important to note that employment is a broader concept than work and includes more than just productive work activity.

[85] I consider that the circumstances of this case are somewhat similar to those addressed in *WCAT-2009-00575*. The circumstances differ in that the plaintiff in *WCAT-2009-00575* extended a favour in the context of an ongoing employment relationship, while the plaintiff in this case was on the verge of commencing full-time employment under an oral contract of service.

[86] This was not a case where Ms. Yousif and the plaintiff and were primarily friends and only secondarily employer and employee. I consider the employment features associated with picking up N, taking him for a Slurpee and/or a cookie, and driving him home, and picking up groceries for Ms. Yousif, were predominant and outweigh the personal features relating to the plaintiff's performance of these tasks as a favour to Ms. Yousif (particularly in the context of the plaintiff awaiting confirmation of the details regarding the commencement of her full-time employment for Ms. Yousif). Ms. Anderson's characterization of the plaintiff's actions as being intended to show how flexible she was, and that she was a team player, involved speculation on her part. Nevertheless, I consider it likely that the plaintiff's performance of the favours for Ms. Yousif on the day of the accident, were connected to her planned commencement of full-time work for Ms. Yousif. I find that her actions were connected to her employment, notwithstanding the fact that they involved a voluntary offer of unpaid services as a favour. I agree with the reasoning in *WCAT-2009-00575*.

[87] Having regard to the substance of the matter, I find that an employment relationship had commenced for compensation purposes (as contemplated by policy at item #C3-12.20) when the plaintiff picked up N, even though her contract of service was not scheduled to commence until a later date. The plaintiff's actions in performing a favour for Ms. Yousif on June 30, 2011 were predominantly employment-connected, rather than personal in nature. I find that her employment relationship began when she took N for a drive, even though this activity was being performed as an unpaid favour to Ms. Yousif. I find that the plaintiff was a worker within the meaning of Part 1 of the Act.

[88] I further find that the plaintiff was in the course of her employment at the time of the June 30, 2011 accident. The plaintiff was injured in the accident. Pursuant to section 5(4) of the Act, a rebuttable presumption arises that the plaintiff's injuries in the accident arose out her employment. This presumption is not rebutted by the evidence in this case.

[89] I find that at the time of the accident, the plaintiff was a worker within the meaning of Part 1 of the Act, and that her injuries arose out of and in the course of her employment.

Status of the defendant, James M. Forster

[90] The plaintiff takes no position with respect to the status of the defendant Forster.

[91] By memorandum dated August 28, 2015, a research and evaluation analyst, Audit and Assessment Department of the Board, advised that Steven L. Doane doing business as Doane & Sons Renovations, account number 763574, was registered with the Board at the time of the June 30, 2011 accident.

[92] The defendant Steven Lee Doane provided an affidavit on December 7, 2015. He advised that he was the owner and renovator of Doane and Sons Renovations. This was a company specializing in fire and flood restoration and renovation work. Forster had been employed as a renovator by the company since about 2009. (While Doane used the term "company," it does not appear that the business was incorporated). At the time of the accident on June 30, 2011, Forster was a full-time employee of the business and was paid on an hourly basis. His duties typically included purchasing supplies for the various job sites. Doane would typically give him cash in advance or lend him the firm's credit card to purchase these supplies. At the time of the accident, Forster was driving a vehicle owned by Doane and Sons Renovations, and was picking up paint for a job. Doane considered Forster to be working at the time. Forster was paid for his time driving and picking up the paint.

[93] Forster provided an affidavit on December 7, 2015. At the time of the accident on June 30, 2011, he was employed full time as a renovator by Doane and Sons Renovations. His typical work hours were from 9:00 a.m. to 5:00 p.m. He was paid on an hourly basis, including the time spent procuring supplies. On the day of the accident, he was working at a job site and he ran out of paint. He had to go to the paint store to pick up some more paint. He was driving a work vehicle registered in the name of his boss, Steven Lee Doane. The accident occurred as he was on his way to pick up supplies. After the accident, he continued to the paint store, purchased the supplies, and then returned to the job site.

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[94] Forster gave evidence in an examination for discovery on October 3, 2013. The accident on June 30, 2011 occurred in the afternoon (Q 14). He thought it occurred around 1:00 p.m. (Q 17). At the time of the accident, he was going to a paint store to pick up some more paint for a job (Q 19). The paint store was not far from the accident scene (Q 20). Forster was driving a 1993 Ford van (Q 25). The registered owner of the van was Steven Lee Doane (Q 26). Doane was Forster's boss (Q 28), and the vehicle was a work vehicle (Q 29).

[95] In summary, at the time of the accident, Forster was going to purchase paint for the purposes of his work. His actions were for his employer's benefit. He was driving a vehicle supplied by his employer. The accident occurred during his paid working hours. His actions of driving to purchase supplies were part of his job. He was travelling from a worksite to pick up supplies, and then returning to the worksite. There is no evidence of a deviation from his work route for personal reasons.

[96] I find that at the time of the accident, Forster was a worker within the meaning of Part 1 of the Act. I further find that his action or conduct, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act.

[97] A determination has not been requested concerning the status of the defendant Steven Lee Doane also known as Steven L. Doane.

Conclusion

[98] I find that at the time of the June 30, 2011 accident:

(a) the plaintiff, Tydel McGowan, was a worker within the meaning of Part of the Act;

(b) any injury suffered by the plaintiff, Tydel McGowan, arose out of and in the course of her employment within the scope of Part 1 of the Act;

(c) the defendant, James M. Forster, was a worker within the meaning of Part 1 of the Act; and,

(d) any action or conduct of the defendant, James M. Forster, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act.

Herb Morton
Vice Chair

NO. NEW-S-M-150540
NEW WESTMINSTER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

TYDEL MCGOWAN

PLAINTIFF

AND:

JAMES M. FORSTER
and STEVEN LEE DOANE also known as STEVEN L. DOANE

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Defendants, JAMES M. FORSTER and STEVEN LEE DOANE also known as STEVEN L. DOANE, in this action for a determination pursuant to section 257 of the *Workers Compensation Act*;

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT at the time the cause of action arose, June 30, 2011:

1. The Plaintiff, TYDEL MCGOWAN, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. Any injury suffered by the Plaintiff, TYDEL MCGOWAN, arose out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, JAMES M. FORSTER, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, JAMES M. FORSTER, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

CERTIFIED this 27th day of June, 2016.

Herb Morton
VICE CHAIR

NO. NEW-S-M-150540
NEW WESTMINSTER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

TYDEL MCGOWAN

PLAINTIFF

AND:

JAMES M. FORSTER and STEVEN LEE DOANE also known as STEVEN L. DOANE

DEFENDANTS

SECTION 257 CERTIFICATE

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NO. NEW-S-S-150541
NEW WESTMINSTER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

TYDEL MCGOWAN

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the Defendant, INSURANCE CORPORATION OF BRITISH COLUMBIA, in this action for a determination pursuant to section 257 of the *Workers Compensation Act*;

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT at the time the cause of action arose, June 30, 2011:

1. The Plaintiff, TYDEL MCGOWAN, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the Plaintiff, TYDEL MCGOWAN, arose out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act*.

CERTIFIED this 27th day of June, 2016.

Herb Morton
VICE CHAIR

NO. NEW-S-S-150541
NEW WESTMINSTER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

TYDEL MCGOWAN

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

SECTION 257 CERTIFICATE

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