# DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

**WCAT DECISION DATE:** **July 30, 2020**

**WCAT DECISION NUMBER:** **A1902754**

**WCAT PANEL:** **Guy Riecken**

RE: Tydel McGowan v. James M. Forster and Steven Lee Doane also known as Steven L. Doane
New Westminster Registry NEW-S-M-150540
Certification to Court
WCAT No. A1902754

| | |
|---|---|
| **Applicants**: | James Forster<br>("Defendant")<br><br>Steven Lee Doane also known as Steven L. Doan<br>("Defendant" |
| **Respondent**: | Tydel McGowan<br>(the "Plaintiff") |
| **Representatives**: | |
| For Applicants: | Oliver L. Wilson<br>Burns Fitzpatrick Rogers & Schwartz |
| For Respondent: | Eamonn P. Morris<br>Brij Mohan & Associates |

# DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

## Introduction

[1] On Thursday, June 30, 2011 the plaintiff, Tydel McGowan, was in a motor vehicle accident at the intersection of 24th Avenue and King George Boulevard in Surrey, British Columbia (the accident). Her vehicle was struck from behind by a vehicle driven by the defendant, James M. Forster.

[2] The plaintiff commenced a legal action against the defendants Forster and Steven Lee Doane, also known as Steven L. Doane, the registered owner of the vehicle driven by Forster, with respect to injuries sustained as a result of the accident.

[3] Under section 311 (previously section 257) of the *Workers Compensation Act* (Act), where an action is commenced based on a disability caused by occupational disease, a personal injury, or death, a party or the court may ask the Workers' Compensation Appeal Tribunal (WCAT) to make determinations and to certify those determinations to the court.

[4] On September 4, 2014, WCAT received a section 257 application from counsel for the defendants. The defendants seek determinations with respect to the status of the plaintiff and defendant McGowan at the time of the accident.

[5] On June 27, 2016 a WCAT panel made the status determinations and certified them to the Court (the WCAT original decision). The defendants applied for a judicial review of the original WCAT decision and it was set aside by the British Columbia Supreme Court on September 27, 2019 in *McGowan v. Forster*, 2019 BCSC 1647 (the judicial review decision). The Court referred the matter back to WCAT to reconsider the section 257 application in light of the Court's reasons. The defendants' application was assigned to me for reconsideration.

## Issue(s)

[6] The issues to be decided are:

1. Whether at the time of the accident the plaintiff, Tydel McGowan, was a worker within the meaning of the compensation provisions of the Act;



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2. Whether the any injuries suffered by the plaintiff as a result of the accident arose out of and in the course of her employment within the scope of the compensation provisions of the Act.
3. Whether at the time of accident, the defendant Forster was a worker within the meaning of the compensation provisions of the Act.
4. Whether the action or conduct of Forster, which caused the alleged breach duty of care, arose out of and in the course of his employment within the scope of the compensation provisions of the Act.

**Jurisdiction and Method of Hearing**

[7] References to section numbers in the Act are now different from those in place at the time of the defendant's application. Effective April 6, 2020 the Act was reorganized and renumbered under the *Statute Revision Act*, RSBC 1996, c. 440. The revisions also included some changes to the language of the Act, but did not result in changes to the legal effect of the Act. Generally, in this decision I refer to the applicable provisions of the *Workers Compensation Act* RSBC 2019, c. 1, and for clarity at times also refer to the previous numbering in the Act.

[8] Part 7 of the Act ("Appeals to Appeal Tribunal") applies to proceedings under section 311 (except that that no time frame applies to the making of the WCAT decision (section 311(3)).

[9] Pursuant to section 303(1) of the Act, WCAT is not bound by legal precedent. WCAT must make its decision based on the merits and justice of the case, but in doing so, must apply a policy of the board of directors of the Workers' Compensation Board (Board) that is applicable (section 303(2)).

[10] The applicable policies are set out in the *Assessment Manual* and the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II). Unless otherwise indicated, the policies referred to in this decision are those in effect at the time of accident.

[11] Section 308 gives WCAT 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 7 of the Act, including matters WCAT is requested to determine under section 311. The WCAT decision is final and conclusive and is not open to question or review in any court (section 309(1)). However, the court determines the effect of the section 311 certificate on the legal action.

[12] WCAT was provided with transcripts of the October 3, 2013 examinations for discovery of the plaintiff and of the defendant Forster. WCAT was also provided with a transcript of the deposition of the plaintiff on November 25, 2015 for the purposes of the

section 257 application (with examination by counsel for the defendants, and re-examination by plaintiff's counsel).

[13] Counsel for the defendants and for the plaintiff each provided written submissions.

[14] Geraldine Yousif, the plaintiff's putative employer, was invited to participate in the application as an interested person but she is not participating.

[15] Doane & Sons Renovations, the employer of the defendant Forster, was invited to participate as an interested person, but is not participating.

[16] WCAT was informed of another action related to the accident, namely an action under Part 7 of the *Insurance (Motor Vehicle) Act Regulations* (*McGowan v. ICBC*, New Westminster Registry NEW-S-M 150540). WCAT invited the Insurance Corporation of British Columbia (ICBC) to participate in the application as an interested person. Counsel for ICBC advised that other than to adopt the submissions of counsel for the defendants, ICBC would not participate.

[17] Section 311 applications generally proceed in writing, unless there are credibility issues or other factual issues that are better resolved through an oral hearing. In this case neither of the parties' counsel requested an oral hearing and the application is being considered on the basis of the examination for discovery evidence, documentary evidence, and the written submissions.

**Background and Evidence**

[18] In addition to the discovery and deposition transcripts referred to earlier, prior to the original decision WCAT was provided with a number of documents, and counsel rely on them in their submissions with respect to the current reconsideration of the application. The parties refer to the transcripts and the following:

- July 4, 2011 statement of Tydel Trask (also known as Tydel McGowan) given to ICBC on July 4, 2011
- August 19, 2014 affidavit of Pamela Maxwell
- August 28, 2014 affidavit of Tydel McGowan
- September 4, 2014 affidavit of Geraldine Yousif
- December 7, 2015 affidavit of James M. Forster
- December 7, 2015 affidavit of Steven Lee Doane

[19] The transcripts, other documents, and the written submissions include the following information which is not disputed.



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[20] Ms. Geraldine Yousif was a foster mother who took in children in need of care as referred to her by the B.C. Ministry of Children and Families (the Ministry). These included mentally-handicapped individuals who were over the age of 18, but consistent with the plaintiff's evidence and counsel's submissions I will refer to them as children.

[21] At the time of the accident Ms. Yousif had six children in her care, two of whom lived semi-independently in their own home, N and J.

[22] The plaintiff worked as a support worker since about 2003. Her work included providing care and support for mentally-handicapped children and adults. For some years prior to the accident, the plaintiff had worked for Ms. Yousif. She worked in three capacities, namely: as a child care support worker to assist in the care of children; as a respite worker; and, providing services for autistic children. For her work with the autistic children, she was paid directly by the Ministry. For child care support work and respite work for Ms. Yousif, she was paid directly by Ms. Yousif.

[23] The plaintiff's work for Ms. Yousif prior to the day of the accident has been described as "on and off" and "as needed." The plaintiff's history also included working for other individuals caring for children. She had at one time been a foster mother herself.

[24] In June 2011 the plaintiff encountered Ms. Yousif (the exact date and location are not known, but the plaintiff said it could have been at a grocery store). Ms. Yousif told the plaintiff that she had a full-time position that would be available, and asked if the plaintiff would be interested. The plaintiff said she was interested in the job. Some details of the job such as the date of the first shift were not determined during that discussion.

[25] On June 30, 2011 the plaintiff phoned Ms. Yousif's business manager (Louisa Anderson) to find out the details of her work schedule. Ms. Anderson told her she was not sure and to ask Ms. Yousif. About an hour later, the plaintiff phoned Ms. Yousif at her home. The plaintiff, who planned to go out to do some shopping, heard N in the background bickering and offered to pick him up and take him out for a treat and then drop him at his home. She also asked if Ms. Yousif needed anything at the grocery store and agreed to pick up some items for her.

[26] The plaintiff picked N up at Ms. Yousif's home and was driving to a grocery store when her car was struck from behind by the vehicle driven by the defendant Forster.

[27] At the time of the accident, Forster worked full-time for Doane and Sons Renovation as a renovator. He was driving a vehicle owned by the defendant Doane. He had been working at a job site and ran out of paint. He was on his way to a paint store to pick up some paint.



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**Preliminary Matter – Scope of Redetermination**

[28] In its submissions with respect to WCAT's reconsideration of the application, the plaintiff's position is that, as a result of the Court's direction in the judicial review decision that WCAT reconsider its original decision in light of the Court's reasons, WCAT does not have a mandate to make new or different findings of fact from those contained in the original WCAT decision. In addition, in light of the Court's reasons, the plaintiff appears to suggest that it is now only possible to reach one conclusion, namely that the plaintiff's injuries did not arise out of or in the course of her employment.

[29] I note, however, that starting at paragraph 85 of the judicial review decision, the Court addressed the plaintiff's argument that the original WCAT decision should be quashed and substituted by a declaration by the Court that the plaintiff's injuries did not arise out of and in the course of her employment. After considering previous authorities, the Court declined to substitute its decision for the original WCAT decision, and, at paragraph 91, the Court found that it was most appropriate to "refer this matter back to [WCAT] to reconsider its decision in this case in light of these reasons."

[30] Section 5 and 6 of the *Judicial Review Procedure Act* provide that:

> **5** (1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.
>
> (2) In giving a direction under subsection (1), the court must
>
> (a) advise the tribunal of its reasons, and
>
> (b) give it any directions that the court thinks appropriate for the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.
>
> **6** In reconsidering a matter referred back to it under section 5, the tribunal must have regard to the court's reasons for giving the direction and to the court's directions.

[31] In its judicial review decision, the Court did not limit WCAT's reconsideration of "this matter" to a particular part of the defendant's section 311 application.

[32] Contrary to the plaintiff's argument, I understand that the effect of the judicial review decision is that I am required to reconsider the matter generally rather than to limit the reconsideration to specific parts of the original decision or to the facts as accepted by the original WCAT panel. Nothing in the judicial review decision would appear to limit

WCAT's jurisdiction to receive new evidence from the parties or to consider new arguments raised by the parties in the course of the reconsideration. I do not agree with the plaintiff's argument that I am bound by the findings of fact of the panel who made the original WCAT panel. Instead, I am considering the section 311 application as a whole, including the new submissions that have been provided by the parties which are based on the evidence they originally submitted to WCAT.

[33] At the same time, I am mindful that, pursuant to section 6 of the *Judicial Review Procedure Act* and the Court's direction in the judicial review decision, I must consider the matter in light of the Court's reasons.

**Act and Policy**

[34] Section 1 of the Act includes the following definitions:

> "employer" includes every person having in their service under a contract of hiring or apprenticeship, whether the contract is written or oral, express or implied, a person engaged in work in or about an industry;
> "worker" includes the following:
>
> > (a) a person **who has entered into or works under a contract of service** or apprenticeship, whether the contract is written or oral, express or implied, and whether by way of manual labour or otherwise;
> >
> > …
> > (e) an independent operator to whom the compensation provisions apply by the Board direction under section 4 (2) (a) [extending application: independent operator who is neither an employer nor a worker];
> >
> > ….

[35] Section 4(2) of the Act provides that:

> (2) The Board may direct that the compensation provisions apply on the terms specified in the Board's direction to
>
> > (a) an independent operator who is neither an employer nor a worker as if the independent operator were a worker, or
> >
> > (b) an employer as if the employer were a worker.

[36] RSCM II policy item #6.10 explains that where a person contracts with another to provide labour in an industry covered by the Act, the Board considers that the contract



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may create one of three types of relationship. The persons doing the work may be independent firms, labour contractors, or workers.

[37] Detailed rules concerning independent firms, labour contractors, and workers are set out in a number of *Assessment Manual* policies, including:

- AP1-1-1, "Coverage under Act – Descriptions of Terms";
- AP1-1-2, "Coverage under Act – Types of Relationships";
- AP1-1-3, "Coverage under Act – Distinguishing Between Employment Relationships and Relationships Between Independent Firms";
- AP1-1-5, "Coverage under Act – Workers";
- AP1-1-6, "Coverage under Act – Independent Operators"; and,
- AP1-1-8, "Coverage under Act – Labour Contractors."

[38] Policy item AP1-1-2 of the *Assessment Manual* provides, in part, that to come under the definition of "worker" in the Act it is sufficient that the person have entered into a contract of service, and it is not a requirement that the person has begun working under the contract to be considered a worker.

[39] Policy item AP1-1-3(a), "General Principles," sets out a non-exhaustive list of nine factors and a major test for distinguishing an employment relationship from one between independent firms. The policy states that there is no single test that can be consistently applied. The major test, which largely encompasses the nine factors, is whether the individual doing the work exists as a business enterprise independently of the person or entity for whom the work is done.

[40] Section 134 of the Act provides that:

> **134** (1) If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.
>
> …
>
> (3) The following apply in relation to an injury caused by accident:
>
> (a) if the accident arose out of the worker's employment, unless the contrary is shown, it must be presumed that the injury occurred in the course of that employment;
>
> (b) if the accident occurred in the course of the worker's employment, unless the contrary is shown, it must be presumed that the injury arose out of that employment.



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[41] RSCM II policy item C3-12.20, "Commencement and Termination of the Employment Relationship," provides that the commencement and termination of an employment relationship is not limited to the commencement or termination of a contract of service nor determined solely by whether the worker has commenced productive work.

[42] Policy item C3-14.00 provides that "arising out of the course of employment" generally refers to the cause of the injury. "In the course of 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 worker's employment.

[43] Policy item C3-14.00 states that employment is a broader concept than work, and includes more than productive work activity. An injury or death that occurs outside a worker's productive work activities may still arise out of and in the course of the worker's employment.

[44] Policy item C3-14.00 sets out a list of three medical factors and nine a non-exhaustive list of nine factors that are considered when deciding whether an injury or death arose out of and in the course of employment. All of the non-medical factors may considered, but no one of them may be used an exclusive test. The nine factors are as follows:

1. Whether the injury or death occurred on the employer's premises;
2. Whether the injury or death occurred while the worker was doing something for the benefit of the employer's business;
3. Whether the injury or death occurred in the course of action taken in response to instructions from the employer;
4. Whether the injury or death occurred while the worker was using equipment or materials supplied by the employer;
5. Whether the injury or death occurred while the worker was in the process or receiving pay;
6. Whether the injury or death occurred during a time period in which the worker was paid a salary or other consideration;
7. Whether the injury or death was caused by an activity of the employer or of a fellow employee;
8. Whether the injury or death occurred while the worker was performing activities that were part of the worker's job; and,
9. Whether the injury or death occurred while the worker was being supervised by the employer or a representative of the employer with supervisory authority.

**Status of the Plaintiff, Tydel McGowan**

*Whether the plaintiff was a "worker"*

[45] Before addressing the arguments respecting the plaintiff's status, it is useful to set out the definitions of the terms which inform the analysis. *Assessment Manual* policy item AP1-1-1 provides the following general descriptions:

- *Employer* – An employer is a person or entity employing workers. The employer may be a sole proprietor, a partner in a partnership, a corporation, or another type of legal entity. "Employer" is defined under section 1 for purposes of the compensation provisions of the Act. An employer is an "independent firm".
- *Worker* – A worker is an individual who performs work under a contract with an employer and has no business existence under the contract independent of the employer. "Worker" is defined under section 1 for purposes of the compensation provisions of the Act. A worker cannot be an "independent firm".

[46] Policy at item AP1-1-2 of the *Assessment Manual* provides:

> 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]

[47] Similarly, at the time of the accident, RSCM II policy item C-12.20, "Commencement and Termination of the Employment Relationship," states:

> **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**



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> **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]

[48] The defendants submit that the plaintiff had an employment relationship with Ms. Yousif which had begun by June 30, 2011, notwithstanding that she was not scheduled to begin working for Ms. Yousif full time until July 1, 2011. The plaintiff had entered into an express oral contract with Ms. Yousif to provide full-time child care services, involving payment on an hourly basis for eight hours per day, five days per week. The defendants' position is that the plaintiff had begun productive work as of June 30, 2011. Having regard to the substance of the matter, although the full-time job had not started, an employment relationship had begun.

[49] The plaintiff submits that at the time of the accident she had not yet commenced working under the contract of service that was to begin in July 2011. She submits that the fact that she had been employed by Ms. Yousif in the past is not relevant to the question as to whether she had "entered into works" under her contract of employment at the time of the accident.

[50] In their submissions, the parties focus on the express contract of service for full-time work that was to commence in July, 2011 as the main source of evidence concerning the question of whether the plaintiff was a "worker" at the time of accident. It is disputed whether, given that contract for full-time work, the plaintiff's actions on June 30, 2011 were within the course of her employment notwithstanding that her first shift was not meant to be until July 2011. While the new contract for full-time work starting in July is

relevant to the worker's status at the time of June 30, 2011 accident, I do not consider it to be determinative of the issue of whether the contract under which she provided services to Ms. Yousif was an employment contract or a contract between independent contractors.

[51] Prior to Ms. Yousif's offer of the full-time position, the plaintiff had a history of working intermittently for Ms. Yousif on an as-needed basis providing child care support services and respite child care over the course of the years prior to the date of the accident. In particular, in her deposition the plaintiff gave evidence that during the two years prior to the accident, she had been caring for N and J on an "as needed" basis and that she was paid for her services by Ms. Yousif (Q 113 – 116, deposition of Tydel McGowan).

[52] This is consistent with Ms. Yousif's affidavit evidence in which she stated that from time to time she employed the plaintiff as a respite care worker to assist in the care of her foster children N and J, both of whom have behavioural issues and who are in Ms. Yousif's care. Ms. Yousif stated that she paid the plaintiff directly for such respite services. Ms. Yousif stated that although N and J did not live with her, prior to June 2011 the plaintiff worked in Ms. Yousif's home from time to time. (Paragraphs 2, 3, and 6, affidavit of Geraldine Yousif).

[53] At some point in June 2011 Ms. Yousif offered the plaintiff a full-time (40 hours per week) position, but that employment was not to commence until July 2011. There is some conflicting evidence about the commencement date, with the plaintiff originally saying it was July 4 and Ms. Yousif saying it was July 1, 2011. The plaintiff later agreed she would have commenced working full time on July 1, 2011. I consider it likely that plaintiff's full-time work under the new contract would have started on July 1, 2011.

[54] My interpretation of the evidence is that prior to the date of the accident, the plaintiff and Ms. Yousif had an ongoing employment relationship, the terms of which were to change upon the commencement of the plaintiff's full-time employment on July 1, 2011. Up until then, the plaintiff was employed on a casual, on-call, part-time basis with irregular hours of work that depended on Ms. Yousif's need for the plaintiff's services. While the new full-time job that was to begin in July 2011 involved a significant change in the terms of employment, I do not view this changing the essential nature of the relationship between the parties in the sense that the plaintiff would continue to provide services as an employee, but would have regular full-time hours. Both before and upon the commencement of the full-time job, the relationship between them was not one between independent businesses, and was in the nature of an employment relationship. In reaching this conclusion I have considered the following nine factors from policy item AP1-1-3(a).



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- *Whether the services to be performed are essentially services of labour*

[55] The child care support services the plaintiff provided to Ms. Yousif were essentially services of labour. The plaintiff's duties as a child care support worker included cooking, cleaning, doing laundry, taking the children grocery shopping, teaching life skills to the children, and separating one of the children from the others if they were misbehaving. The plaintiff would also accompany the children to their jobs (EFD of the plaintiff, Q 49, 59; plaintiff's deposition Q 11-23, 32).

- *The degree of control exercised over the individual doing the work by the person or entity for whom the work is done*

[56] It does not appear from the evidence that Ms. Yousif exercised a great amount of control over the way in which the plaintiff provided her services, since the plaintiff was not closely supervised and was left on her own to carry out her child care support activities much of the time. The evidence is not clear on the issue, but it does not appear that the worker had meal or other breaks at fixed times determined by Ms. Yousif. However, Ms. Yousif determined which days she wanted the plaintiff to work and determined where the plaintiff would work (at the semi-independent children's home or at Ms. Yousif's home, for example). I consider the evidence concerning this factor to show that Ms. Yousif exercised significant control over the plaintiff with respect to her services. However, the degree of control involved could also to some extent be consistent with a relationship between independent contractors.

- *Whether the individual doing the work might make a profit or loss*

[57] The evidence does not indicate that the plaintiff might suffer a loss in providing her services to Ms. Yousif. She was paid an hourly wage, and there is no suggestion that she could arrange her work in a way so as to complete it more efficiently and thereby earn more for her time; she would be paid for her time regardless, and in that sense was ensured a profit. No evidence was provided that she had expenses that could result in a loss. I consider this factor to be more consistent with an employment relationship than a relationship between independent operators.

- *Whether the individual doing the work or the person or entity for whom the work is done provides the major equipment*

[58] There is no indication that major equipment was used in the child care support services. However, on occasions when the plaintiff had to take the children off site, for example, for grocery shopping, she would use her own car and would be reimbursed by her employer for the cost of gas, parking, and the cost of the groceries (Q 33 37, deposition of the plaintiff).

[59] This factor is relatively neutral in the sense that the use of the plaintiff's car and the reimbursement by Ms. Yousif for related expenses could be consistent with either an employment relationship or a relationship between independent operators.

- *If the business enterprise is subject to regulatory licensing, who is the licensee?*

[60] Although the plaintiff had received some training in previous years from the Ministry, there is no indication that the plaintiff required a license to provide her services to Ms. Yousif. Ms. Yousif, on the other hand, provided foster care services for a number of children as a business, as indicated by her employment of Ms. Anderson as a business manager and various staff. She would have been subject to approval by the Ministry in providing foster care. While the evidence does not indicate that Ms. Yousif was a "licensee" of the Ministry or another regulator, the arrangement under which she accepted children for care from the Ministry and hired others to provide some of the care services is more reflective of an employment relationship with the plaintiff.

- *Whether the terms of the contract are normal or expected for a contract between independent contractors*

[61] The terms of the contract between Ms. Yousif and the plaintiff are not entirely clear, but the evidence does not suggest that historically (prior to June 2011) there was an express written or oral contract. Instead, the arrangement was informal in the sense that the plaintiff worked part time on-call when Ms. Yousif needed her services, and that the plaintiff was paid an hourly wage. To the extent that they are known, the terms of the contract be consistent with an employment relationship.

- *Which party is best able to fulfill the prevention and other obligations of an employer under the Act?*

[62] As an employer with an account registered with the Board who employed several employees, Ms. Yousif would be in a better position to fulfill the prevention obligations under the Act.

- *Whether the individual doing the work engages continually and indefinitely for one person or works intermittently and for different persons*

[63] Prior to the date of the accident, the plaintiff did not work continually and indefinitely for one person. She worked intermittently for Ms. Yousif and she also received occasional calls to provide child care services to other individuals. I consider this to be consistent with her existence as an independent business. However, it does not preclude her being an employee of Ms. Yousif.

- *Whether the individual doing the work is able or required to hire other persons*

[64] There is no suggestion in the evidence that the plaintiff could have hired others to perform some or all of the work she was contracted to do by Ms. Yousif. She was engaged to do the work herself. There is no suggestion that she had employees or subcontractors. While not in itself definitive, I consider this to be more consistent with an employment relationship with Ms. Yousif than a relationship between independent operators.

[65] While some of the foregoing factors are consistent with the plaintiff having an existence as an independent business separate from Ms. Yousif, the weight of the evidence concerning the plaintiff's historical relationship with Ms. Yousif and the evidence respecting the new contract for full-time work starting on July 1, 2011 draws me to the conclusion that at the time of the June 30. 2011 accident there was an employment relationship between them.

[66] I find that at the time of the accident the plaintiff was a worker within the meaning of the compensation provisions of the Act.

*Whether any injuries suffered by the plaintiff as a result of the accident arose out of and in the course of her employment*

[67] Policy item C3-14.00 is the principal policy providing guidance on whether a worker's injury arose out of an in the course of employment. While the policy sets out both medical and non-medical factors, neither of the defendants nor the plaintiff referred to the factors that are relevant to consideration of the medical evidence. I do not consider it necessary to address the medical factors, since the present section 311 application does not require an analysis of the medical cause of the plaintiff's injuries. I am not determining whether the plaintiff is entitled to compensation for her injuries under the Act. Instead, in the section 311 application, I am determining whether the injuries, that the plaintiff alleges in her civil claim resulted from the accident, arose out of and in the course of her employment.

[68] I turn to address the list of non-medical factors set out in policy item C3-14.00.

*1. On the Employer's Premises*

[69] The policy provides that if an injury occurs on the employer's premises, this factor favours workers' compensation coverage. An employer's premises include any land or buildings owned, leased, rented, or controlled for the purpose of carrying out the employer's business.

[70] The accident did not occur on Ms. Yousif's premises. This factor does not support workers' compensation coverage for the plaintiff at the time of the accident.

2. *For the Employer's Benefit*

[71] Policy item C3-14.00 states that if the worker was in the process of doing something for the benefit of the employer's business generally, or for the employer personally, this favours coverage. On the other hand, if the worker was doing something solely worker's own benefit, this factor does not favour coverage.

[72] In this case, the plaintiff's actions at the relevant time involved picking up N from Ms. Yousif's home to take him out to get a Slurpee or other treat, picking up some groceries for herself and for Ms. Yousif, and returning N and Ms. Yousif's groceries to Ms. Yousif's home.

[73] I consider these actions to have been of benefit more to Ms. Yousif personally than to the benefit of her business, although the two are not entirely different, since in either case Ms. Yousif had N in her care at the time.

[74] The context for the plaintiff's actions included the fact that Ms. Yousif had brought N from his own residence to her own home so he could help her load her car for a planned trip the following day to Ms. Yousif's townhouse at Harrison Lake. The plaintiff planned to go out to do some personal grocery shopping. While speaking to Ms. Yousif on the telephone about the plans for the next day, the plaintiff could hear N in the background acting up. To give Ms. Yousif a break, she offered to take N with her on her grocery shopping trip and get him a treat such as a Slurpee. Ms. Yousif accepted that offer and asked the plaintiff to pick up some groceries for Ms. Yousif. Clearly, both taking N for a few hours and picking up some groceries for Ms. Yousif were of benefit to Ms. Yousif, since this gave her some respite from caring for N and saved her from having to make her own trip to the grocery store.

[75] I find that this factor favours workers' compensation coverage for the plaintiff.

3. *Instructions From the Employer*

[76] I accept the plaintiff's evidence that the plaintiff made a spontaneous offer on the day of accident to pick up N and take him out for a treat as a favour to Ms. Yousif. I find that this did not involve any instructions by Ms. Yousif.

[77] Ms. Yousif's request that the plaintiff also pick up some groceries followed from the fact the plaintiff already planned to stop at a grocery store for her own shopping. This was not a separate request by Ms. Yousif that was made on its own, I do not consider it to have involved an instruction by Ms. Yousif to the plaintiff.

[78] I find that plaintiff was not acting on instructions from her employer and that evidence concerning this factor does not favour for the plaintiff at the time of the accident.

*4. Equipment Supplied by the Employer*

[79] At the time of the accident, the plaintiff was driving her own car and the accident did not involve any equipment or materials provided by Ms. Yousif. This factor does not favour coverage.

*5. Receipt of Payment or Other Consideration from the Employer*

[80] The plaintiff was not in the process of receiving payment or other consideration from Ms. Yousif, as might be the case if she had been picking up her paycheque or going to her bank to cash her paycheque. This factor does not favour coverage.

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

[81] The plaintiff had not yet started her full-time work for Ms. Yousif, and had not been called in by Ms. Yousif to provide respite or other child care support services on the day of the accident. I accept that she had no expectation of being paid when she offered to take N out and agreed to pick up some groceries for Ms. Yousif (other than being reimbursed for the cost of the groceries). I acknowledge the defendants' argument that given the nature of her relationship with Ms. Yousif and the nature of the services she was providing the plaintiff should have been compensated. However, the evidence of Ms. Yousif and the plaintiff is that the plaintiff was not paid and compensation was not anticipated for her actions on a day when she had not been called into work.

[82] I accept that the accident occurred at a time when the plaintiff was not receiving a wage or other consideration from Ms. Yousif and that this factor does not favour coverage.

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

[83] As described in the plaintiff's pleadings in the civil claim, and in the evidence and submissions provided to WCAT, there is no indication that the accident occurred as a result of the actions of the employer or a fellow employee. This factor does not favour coverage.

*8. Part of the Worker's Job*

[84] I accept that at the time of accident the plaintiff was carrying out activities (looking after N and taking him out for a treat) which in a generic sense would have been included as part of her regular job if she had been called in to work on the day of the accident. However, her full-time position had not yet started, and she had not been called in to

work for Ms. Yousif on June 30, 2011. The day, the day of the accident was not a work day for the plaintiff. Moreover, she had offered to take N out that day as a favour to Ms. Yousif during a period of time when the plaintiff would have gone out to do her own personal shopping in any event. I find that in these circumstances at the time of accident the plaintiff was not doing something that was part of her job and that this factor does not favour coverage.

*9. Supervision by the Employer*

[85] The plaintiff was not being supervised by the employer or by a representative of her employer at the time of accident. This factor does not favour coverage.

[86] Only one of the non-medical factors in policy item C3-14.00 clearly favours worker's compensation coverage for the plaintiff at the time of the accident, namely that she was doing something of benefit to her employer. As the policy states (and the Court noted in the judicial review decision), no single one of the nine factors may be used as an exclusive test for deciding whether an injury arose out of and in the course of employment. If considering the matter only on the basis of the nine factors in policy item C3-14.00, I would conclude that the accident did not arise out of and in course of the plaintiff's employment.

[87] Policy item C3-14.00 states (as the Court recognized in the judicial review decision), that the list is not exhaustive and that other relevant factors may considered. In addition, other policies in Chapter 3 may provide guidance.

[88] The defendants argue that the plaintiff's typical work duties as a child care support worker included taking N out grocery shopping and separating a misbehaving child from others. The defendants argue that on the day of the accident, while driving with N to the grocery store, the plaintiff was performing some of the same tasks she would perform in her normal employment, and that this exposed her to same risks that she was exposed to her in normal employment.

[89] The predecessor to policy item policy item C3-14.00, which was RSCM II policy item #14.00, set out ten factors, including the following:

> (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.

[90] Item (f) from the predecessor policy is not included in policy item C3-14.00, which came into effect in 2010 and which was in effect at the time of the accident. In the judicial review decision, the Court agreed with the panel who made the original WCAT decision that in so far as the policy C3-14.00 allows other factors to be considered, it is open to WCAT to consider, as an additional factor, whether the risk the plaintiff was exposed to



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at the time of the accident was the same of the risk the plaintiff was exposed to when performing her regular employment activities.

[91] I accept that, to the extent that the plaintiff sometimes drove N to a grocery store as part of her normal employment activities, she was exposed to the same kinds of risks associated with driving on the public roads on the day of the accident. It is significant that there is no evidence indicating that N's behaviour was a factor in the occurrence of the accident. Rather, the risk to which the plaintiff was exposed at the time of the accident was the risk associated with other drivers while traveling on the public road. Given that this is a general risk to which the plaintiff would be exposed when driving on a public road whether traveling as part of her employment or for personal reasons, I do not consider this factor to provide significant support for compensation coverage at the time of the accident.

[92] The plaintiff would have been exposed to the risks associated with travel on a public roadway on the day of the accident whether or not she had offered to take N out for a treat or had agreed to pick up some groceries for Ms. Yousif. While the plaintiff altered her route to the grocery store in order to go by Ms. Yousif's home to pick up N, the evidence does not suggest that this exposed her to any greater risk than if she was on a purely personal drive to the grocery store.

[93] Policy item C3-18-00, "Personal Acts," provides guidance for differentiating between a worker's employment functions and a worker's personal actions. This policy states:

> … there is a broad intersection and overlap between employment and personal affairs. An incidental intrusion of personal activity into the process of employment is not a bar to compensation. Conversely, an incidental intrusion of some aspect of employment into the personal life of a worker at the moment of an injury or death does not automatically entitle the worker to compensation.
>
> In the marginal cases, it is impossible to do better than weigh the employment features of the situation against the personal features to reach a conclusion, which can never be devoid of intuitive judgment, as to whether the test of employment connection has been met.

[94] In this case, the plaintiff had planned to make a personal shopping trip on a non-work day. I view the plaintiff's journey to pick up N from Ms. Yousif's home to take him with her on her previously planned personal shopping trip to have involved an incidental intrusion of an aspect of her employment into her personal life. That she was exposed to the same risks of travel on a public road as she would be when taking N somewhere on a paid work day does not, in my view, enlarge the employment aspect of what was otherwise a personal activity.

[95] I appreciate that the plaintiff and Ms. Yousif were not primarily friends who secondarily had an employment relationship. Their relationship was predominantly an employment relationship. This was not a case in which the plaintiff offered to do something as a favour for a friend or a family member. In taking N out on June 30, 2011 she was doing something she was normally paid to do by her employer. I accept that in offering to take N out on the day before she was to begin a full-time job, the plaintiff might have had in mind a wish to please or make a good impression on Ms. Yousif at a time when Ms. Yousif was still in the process of deciding the terms of the plaintiff's full-time employment.

[96] I agree with the defendants' that the plaintiff's self-characterization of her outing with N on the day of the accident as a favour is not determinative. The defendants cite *WCAT-2005-04895*, which WCAT has identified as a noteworthy decision. The panel addressed a case in which a non-profit society provided crossing-guard services to a school district. The crossing guards were paid, and the society argued that the guards were volunteers and the payments were honoraria rather than wages or other compensation for their services. The panel referred to a number of previous decisions, one of which cited *Decision No. 32*, "Re The Employment Relationship," 1 W.C.R.[1], a published 1974 decision of the former commissioners of the Board. The decision concerned whether taxi drivers of a particular company were independent contractors or employees of the company. In finding that the drivers were "workmen" under the Act, the commissioners reasoned, in part, that the terms used in the contract between the drivers and the company were not determinative. The commissioners referred to a number of other factors related to the parties' relationship, which are now incorporated into the *Assessment Manual* policies referred to elsewhere in this decision.

[97] In *WCAT-2005-04895*, in finding that the crossing guards were workers rather than volunteers, the panel wrote that:

> The test for distinguishing between an honorarium and a wage, and between voluntary acts and employment, should be based on the actual nature of the activity and the resulting legal relationships, rather than on the motive or purpose of the Society or its members. While the intentions of the parties are a factor to be taken into account, it is also necessary to evaluate "the terms of the contract and the operational routines of the relationship" to determine the nature of the relationship (for the reasons set out in *Decision No. 32*).

[98] While the plaintiff's stated intention in offering to take N out with her during shopping was not determinative of whether her actions were within the scope of her employment,

[1] Decision No. 32 was retired as Board policy by the board of directors on January 1, 2003. It is not binding policy but is useful as historical background to the development of some current Board policies.

it is necessary to consider her evidence in the context of the other evidence concerning her relationship with Ms. Yousif.

[99] In her examination for discovery, the plaintiff stated that she knew Ms. Yousif as an employer, rather than as a friend and that that their relationship was primarily a business one (Q 109 – 111). She was asked if she ever spent time with Ms. Yousif one-on-one without the foster children present (Q 112). She answered "Yeah, I'd go in and talk about the kids and stuff."

[100] During her examination for discovery, the plaintiff stated that she would not have offered to take care of N on June 30, 2011 if she had not planned to accompany Ms. Yousif to Harrison the following day, the first day of her full-time employment (Q 209). She also stated that she was not trying to make a good impression on Ms. Yousif before starting the full-time job (Q 216). She said she would not have asked to be compensated for her time with N on June 30, 2011 (Q 220), or for her gas (Q 222). The plaintiff repeated that when she took N to the grocery store she was not trying to make a good impression, and it never occurred to her that she was working on that day (Q 290 and 291).

[101] In her August 28, 2014 affidavit, the plaintiff addressed a reference in her earlier statement to ICBC in which she had referred to N as her son's friend. In her affidavit 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."

[102] In her affidavit the plaintiff went on to state:

> 5. … I was doing a favor 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 interests in terms of my relationship with Ms. Yousif, or seek to do so.

[103] In her September 4, 2014 affidavit, Ms. Yousif stated (at paragraph 10) that the plaintiff was not paid or intended to be paid for taking N out on June 30, 2011, and that she was not compensated in any way in lieu of payment, either at the date of the accident or subsequently. She stated that the plaintiff's outing with N was voluntary on her part and done as a favour to Ms. Yousif.

[104] There is some hearsay evidence from Ms. Yousif's business manager to the effect that the plaintiff was trying to make a good impression on Ms. Yousif. Pamela Maxwell, an insurance adjuster, provided an affidavit dated May 5, 2014. She recounted her interviews of both Ms. Yousif and Ms. Yousif's business manager, Louisa Anderson. Ms. Maxwell recounted Ms. Anderson telling her on May 12, 2014 that prior to the June 30, 2011 accident Ms. Yousif had hired the plaintiff to look after the children.

[105] Ms. Maxwell later received information by email from Ms. Anderson in response to questions posed by Ms. Maxwell. Ms. Anderson was asked why N was with the plaintiff on the day of the accident, and she responded:

> 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 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.**
>
> [emphasis added]

[106] I do not place much weight on Ms. Anderson's "guess" in the emphasized sentence above. Overall, her statement to the adjuster does not reflect a great deal of certainty about the circumstances of the plaintiff's offer to take N out for a few hours. She appears to be speculating after the event. I note that the evidence does not indicate that she was with either the plaintiff or Ms. Yousif at the time of their telephone conversation. I place more weight on the statements by the plaintiff that she made the offer as a favour to Ms. Yousif, that she did not anticipate being compensated, and that she was not trying to make a good impression on Ms. Yousif to secure the full-time job that had already been offered to her.

[107] While the plaintiff's evidence about her status under the Act is not determinative, I place significant weight on it.

[108] The defendants cite *Decision No. 26*, 1 W.C.R. 109[2], a 1974 decision of the former commissioners of the Board respecting the payment of compensation even though the contract of service has not yet commenced. The commissioners discussed a situation where a worker applies for a job and the employer invites the worker to go to the employer's workshop and make up a sample of his work, and tells him if it is good enough the employer will hire him starting the next day. The commissioners wrote that if the worker were injured on the employer's premises while making up the sample of his work, it is well-established that this type of accident is covered by the workers' compensation even though no contract of service had yet begun.

[2] Retired January 1, 2003.

[109] I note that the underlying principle from *Decision No. 26* is reflected in policies AP1-1-2 and C3-12.20 which I referred to earlier.

[110] The defendants also refer to *WCAT-2005-05276*, a case in which the defendant was in a motor vehicle accident while undergoing unpaid training or probationary work stipulated by the employer as a preliminary to the defendant's employment. The panel found that while the defendant was not yet under a contract of service, an employment relationship had been begun for the purpose of workers' compensation coverage.

[111] However, consistent with the plaintiff's submissions, I accept that because the plaintiff had worked intermittently for Ms. Yousif for a number of years, including looking after N, she did not need to demonstrate to Ms. Yousif her abilities in that regard. If Ms. Yousif was not yet satisfied with the plaintiff's abilities, she would not have offered her a full-time position. I do not accept that the plaintiff was trying to show that she was flexible and a team player. As seen her discovery evidence, On July 1, 2011 she would have either accompanied Ms. Yousif, N and J to Harrison Lake, or taken N and J for the day on her own, including a Canada Day outing in Surrey. In either case she had a work shift on July 1 (Q 155 and 162 – 163). I do not agree with the defendant's argument that in offering to take N out on June 30, 2011 the plaintiff was offering to provide a "sample" of her work during a trial period with N or that her outing with N that day was equivalent to the unpaid probationary work described in *WCAT-2005-05276*.

[112] The defendants also cite *WCAT-2011-00426*, a case in which Mr. Harris, a truck driver, was involved in an accident while driving a truck owned by H & O Holdings Ltd., from a repair shop to a company called Western Fibre, where he was to pick up a load of shavings to be taken to a berry farm. Mr. Harris described himself as a self-employed truck driver and stated that he was driving the truck as a favour out of friendship with the owner of the company. At the time, Mr. Harris worked three days per week for the company and was paid $40 per load. In finding that there was an implied contract of service, the panel found that an existing employment relationship undermined the argument that Mr. Harris was a volunteer at the time of the accident because he was performing a favour for a friend. As for the lack of payment, the panel cited item #18.32 (one of the predecessors in RSCM II to the current policy in Chapter 3 respecting travel between irregular starting points). The panel found that Mr. Harris was traveling between two work locations and that this meant that the lack of remuneration at the time of accident was not a significant factor.

[113] Because the circumstances of the present case are substantially different from those in *WCAT-2011-00426*, I do not find the reasoning in that case to support the defendants' position. In this case, the fact that the plaintiff was driving her own vehicle between Ms. Yousif's home and a grocery store the plaintiff already planned to attend for personal reasons, and was not traveling between two work locations, distinguishes the cases from each other. The circumstances of this case do not provide a reason to disregard the fact that the plaintiff was not being paid.

[114] The defendants also cite *WCAT-2012-02738*, a case in which the plaintiff, a newspaper reporter, was assaulted by the police while standing outside a cemetery where a funeral was taking place. The public and the media were excluded from the funeral, but the plaintiff dropped off two attendees. She used her cell phone to take photographs of the police officers and got into an altercation with the police who attempted to remove her. In the process, she broke her leg. The incident did not occur during her normal working shift, she was not performing her regular work duties, and she was not being paid. However, in weighing the personal features and the employment features of the situation, the panel found that the employment features were predominant and that the plaintiff was in the course of her employment at the time of her injury.

[115] Because the circumstances of this case are significantly different than those in *WCAT-2012-02738*, in my view, the reasoning in that decision does not assist the defendants' argument here. I reach the same conclusion with respect to *WCAT*-2013-*03082*, another decision cited by the defendants, in which the defendant had started out as an unpaid volunteer helping out her mother with an elderly gentlemen with dementia. The panel found that the fact the defendant started to receive payment within a few days of starting to help with the gentleman was indicative of an oral contract of service.

[116] In considering the evidence concerning the plaintiff taking N on an outing for a few hours, I place significant weight on the fact that when the plaintiff phoned Ms. Yousif on the day of accident, she already planned to do her personal shopping. She had already done some of her own grocery shopping at an IGA store, and was planning on going to Safeway to buy meat (Q 178 and 179 of the plaintiff's EFD). When she heard N acting up while she speaking to Ms. Yousif on the phone, her offer to take N out for a treat did not involve a separate trip for that purpose. Rather, the offer to take N out involved including him in an already planned trip. This appears to be something that could more easily be done than if the plaintiff had made a special trip to Ms. Yousif's house to take him out. The journey may have included more of an employment connection if the plaintiff's travel at the time of accident had resulted solely from an arrangement to take N on an outing that involved the plaintiff making a special trip for that purpose. However, that was not the context in which the outing occurred.

[117] Having considered the evidence and submissions, I do not consider that there are sufficient employment factors to outweigh the personal elements in the plaintiff's outing with N at the time of accident. The fact that the plaintiff had N in the car with her as a result of offering to take him out for a few hours while she was on a previously planned trip to a grocery store, as a favour to her employer, does not have a sufficient employment connection to result in compensation coverage.

[118] I find that the weight of the evidence with respect to the relevant factors favours a finding that the plaintiff was not in the course of employment at the time of the accident. In particular, I place significant weight on the fact that the plaintiff was not scheduled to

work on the day of the accident, that the accident did not happen during a time when she was being paid a wage or any other form of compensation by her employer, and that in taking N out the plaintiff was not acting upon any instructions from her employer or attempting to impress or demonstrate her abilities to her employer. Instead she was doing her employer a favour. The fact that the employer benefited from the plaintiff taking N out for a few hours does not outweigh the other factors.

[119] I find that the accident did not arise in the course of the plaintiff's employment.

[120] The plaintiff alleges in her civil claim that the accident was caused by the conduct or actions of the defendant Forster (whose liability was admitted by the defendants in the civil action). The evidence provided to WCAT respecting the relevant policy factors does not show that the employment was of causative significance in the occurrence of the accident. I find the accident did not arise out of the plaintiff's employment.

[121] Because I have found that the accident arose neither arose out of nor in the course of the plaintiff's employment, a presumption under section 134(3) does not arise.

[122] I find that the injuries suffered by the plaintiff as a result of the accident did not arise out of and in the course of her employment.

**Status of the Defendant, James Forster**

[123] The defendants' position is that the defendant Forster was a worker and that the accident arose out of and in the course of his employment. The plaintiff takes no position on this issue.

[124] Based on the evidence of Forster and Doane, I find that Forster was an employee of Doane and Sons Renovations. At the time of the accident, he was driving between two work locations, the renovation site and a paint store. The purpose of his trip, which occurred during regular paid working hours, was to pick up paint that was needed for the work he was doing for his employer at the renovation site. His travel in his employer's truck, which was normally used to pick up supplies (among other uses), was part of the employment services that he provided to his employer. I find that his actions and conduct at the time of the accident arose out of and in the course of his employment.

[125] No determination of the status of the defendant, Steven Lee Doane, also known as Steven L. Doane, was requested and I have not certified as to his status at the time of accident. In the event that a further determination is required, a supplemental certification may be requested.




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**Conclusion**

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

(a) The plaintiff, Tydel McGowan, was a worker within the meaning of the compensation provisions of the Act.

(b) The injuries suffered by the plaintiff, Tydel McGowan, did not arise out of and in the course of her employment within the scope of the compensation provisions of the Act.

(c) The defendant, James M. Forster, was a worker within the meaning of the compensation provisions of the Act.

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

Guy Riecken
Vice Chair



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NO. M150540
NEW WESTMINSTER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 2019 CHAPTER 1, 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 311 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 11, 2014:

1. The Plaintiff, TYDEL McGOWAN, was a worker within the meaning of the compensation provisions of the *Workers Compensation Act*.

2. The injuries suffered by the Plaintiff, TYDEL McGOWAN, did not arise out of and in the course of her employment within the scope of the compensation provisions of the *Workers Compensation Act*.

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

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

CERTIFIED this 30th day of July, 2020.

Guy Riecken
VICE CHAIR

NO. NEW-S-M150540
NEW WESTMINSTER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 2019, CHAPTER 1, AS AMENDED

BETWEEN:

TYDEL McGOWAN

PLAINTIFF

AND:

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

DEFENDANTS

SECTION 311 CERTIFICATE

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