DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT DECISION DATE: **May 11, 2017**

WCAT DECISION NUMBER: **A1603328**

WCAT PANEL: **Herb Morton**

Kulvir Dhillon v. Craig Alan Lamson, John Russell Walsh, Sarabjit Dhillon and Harbans Singh Dhillon, Defendants, and City of Abbotsford, Her Majesty the Queen in the Right of the Province of British Columbia and M. Van Noort & Sons Bulb Co. Ltd., Third Parties
Vancouver Registry No. M157235
WCAT No. A1603328

Jaswinder Dhillon v. Craig Alan Lamson, John Russell Walsh, Sabjit Dhillon, and Harbans Singh Dhillon, Defendants, and City of Abbotsford, Her Majesty the Queen in Right of the Province of British Columbia and M. Van Noort & Sons Bulb Co. Ltd., Third Parties
Vancouver Registry No. M155917
WCAT No. A1603347

Sarabjit Kaur Dhillon v. Craig A. Lamson also known as Craig Alan Lamson, John R. Walsh also known as John Russell Walsh and BC Teen Challenge, Defendants, and City of Abbotsford, Her Majesty the Queen in the Right of the Province of British Columbia and M. Van Noort & Sons Bulb Co. Ltd., Third Parties
Vancouver Registry No. M148222
WCAT No. A1603348

Sukhwinder Kaur Dhillon v. Sarbjit Kaur Dhillon, Harbans Singh Dhillon, John Russell Walsh, BC Teen Challenge and Craig Alan Lamson, Defendants, and City of Abbotsford, Her Majesty the Queen in Right of the Province of British Columbia and M. Van Noort & Sons Bulb Co. Ltd., Third Parties
Vancouver Registry No. M112365
WCAT No. A1603351

Leo Matthew Van Noort v. Craig Alan Lamson, Sarabjit Kaur Dhillon, Harbens Singh Dhillon, John Russell Walsh, and BC Teen Challenge, Defendants, and City of Abbotsford, Her Majesty the Queen in the Right of the Province of British Columbia and M. Van Noort & Sons Bulb Co. Ltd., Third Parties
Vancouver Registry No. M148223
WCAT No. A1603353

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Applicant:	M. Van Noort & Sons Bulb Co. Ltd. ("Third Party")
Respondents:	Craig Alan Lamson ("Defendant")
	John Russell Walsh ("Defendant")
	Sarabjit Kaur Dhillon / Sarabjit Dhillon ("Plaintiff" and "Defendant")
	Harbans Singh Dhillon ("Defendant")
	City of Abbotsford ("Third Party")
	Her Majesty the Queen in Right of the Province of British Columbia ("Third Party")
	M. Van Noort & Sons Bulb Co. Ltd. ("Third Party")
	Kulvir Dhillon ("Plaintiff")
	Jaswinder Dhillon ("Plaintiff")
	Sukhwinder Kaur Dhillon ("Plaintiff")
	Leo Matthew Van Noort ("Plaintiff")

Representatives:

For Applicant:	
M. Van Noort & Sons Bulb Co. Ltd	Lindsey C. Galvin / Daniel Shugarman WHITELAW TWINING
For Respondents:	
Craig Alan Lamson	Rick Killough HEATH LAW LLP

John Russell Walsh and BC Teen Challenge	Brendan D. Home McDonald & Company
Sarabjit Dhillon (Defendant) and Harbens Dhillon/Harbans Singh Dhillon	Jasroop S. Grewal PACIFIC LAW GROUP
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Her Majesty the Queen in Right of the Province of British Columbia	Anthony H. Dalmyn MINISTRY OF JUSTICE Province of British Columbia
Kulvir Dhillon and Jaswinder Dhillon	Thomas E.G. Murphy CAMPBELL, BURTON & MCMULLAN LLP
Sarabjit Kaur Dhillon (Plaintiff)	Eamonn Morris BRIJ MOHAN & ASSOCIATES
Sukhwinder Kaur Dhillon	Caterina Rizzo SIMPSON THOMAS & ASSOCIATES
Leo Matthew Van Noort	Scott L. Nicoll PANORAMA LEGAL LLP

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Introduction

[1] These applications concern two motor vehicle accidents which occurred consecutively on December 14, 2010 shortly after 4:30 p.m. on South Parallel Road in Abbotsford, British Columbia. The accidents occurred in front of the Abbotsford premises of the third party, M. Van Noort & Sons Bulb Co. Ltd. (Van Noort, or "the employer"), which was in the business of growing and selling bulbs and perennial plants. At this location, Van Noort had field operations where plants were grown and harvested, as well as warehouse operations where plants were processed.

[2] The plaintiff, Sarbjit Kaur Dhillon, also referred to as Sarabjit Kaur Dhillon, Sarabjit Dhillon, or Sabjit Dhillon, was employed by Van Noort. (In this decision, I will generally use the spelling Sarbjit Dhillon. For the purposes of certification, I will use the spelling used in the relevant pleadings.) She was leaving work from the parking lot, making a left turn onto South Parallel Road to travel west. Her vehicle was struck by a vehicle which was being driven by the defendant John Walsh eastbound on South Parallel Road. Sarbjit Dhillon remained in her vehicle, on the roadway, following the accident. John Walsh was towing an empty trailer owned by the defendant BC Teen Challenge.

[3] Several Van Noort employees came to the accident scene. It was dark. The defendant, Craig Alan Lamson, was driving westbound on South Parallel Road. His vehicle struck the side of Sarbjit Dhillon's vehicle as well as persons who were standing near her vehicle. The other plaintiffs, Kulvir Dhillon, Jaswinder Dhillon, Sukhwinder Kaur Dhillon, and Leo Matthew Van Noort, claim injuries as a result of this second accident (due to being struck, or due to taking evasive action to avoid being struck). Emergency vehicles were called following the first accident, but had not arrived by the time the second accident occurred.

[4] Negligence has been alleged on the part of Van Noort, in relation to such matters as its failure to provide lighting at the exit to its driveway, failure to properly delineate or identify the presence of its driveway, and the alleged direction through its employee, Leo Van Noort, that Sarbjit Dhillon remain in her vehicle on the roadway. Van Noort is also alleged to be vicariously liable for negligent conduct by its manager and/or its employees.

[5] Negligence has been alleged on the part of the third party, City of Abbotsford, and/or on the part of the third party, Her Majesty the Queen in the Right of the Province of British Columbia, in relation to the construction and maintenance of South Parallel Road and Highway 1, failure to install any or adequate artificial lighting, and providing for a speed limit of 80 kilometres per hour for South Parallel Road.

[6] 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

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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 third party, M. Van Noort & Sons Bulb Co. Ltd. on August 20, 2014. Transcripts have been provided of several examinations for discovery:

- John Russell Walsh, May 15, 2014 and July 22, 2016
- Sarbjit Dhillon, September 11, 2014 and November 19, 2014
- Craig Alan Lamson, September 12, 2014
- Sukhwinder Kaur Dhillon, October 5, 2015
- Carolus Van Noort (as a representative of Van Noort), October 7, 2015
- Jaswinder Dhillon, October 20, 2015
- Kulvir Dhillon, October 20, 2015
- Leo Matthew Van Noort, October 29, 2015

[7] No party submitted an application for workers' compensation benefits for injuries sustained in the December 14, 2010 accidents. Lovey (Gurjatinder) Gill, Amarjit Lidder, and Gurvinder Lidder[1] are not participating in these applications, although invited to do so as interested persons.

[8] Written submissions have been provided by the parties to the legal actions. The background facts relevant to these determinations are not in dispute. 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.

[9] Counsel for the defendant Craig Alan Lamson asks that WCAT not make findings of fact on matters pertaining to liability. The City and the Province agree that WCAT should not make findings of fact relating to liability. These matters concern the location of individuals at the scene of the accident, the location of vehicles, whether the vehicles had headlights, signal lights, or hazard lights activated, the speeds of the vehicles, resting points for vehicles following the collisions, whether all or some of the pedestrians were struck by the vehicle being driven by Lamson in the second collision, and whether any of the plaintiffs sustained injuries or disability as a result of the collisions. I find that it is largely unnecessary to my decision to make findings of fact concerning such matters. As set out below, a finding of fact which is necessary to my decision is that the vehicle being driven by the plaintiff, Sarbjit Kaur Dhillon, had fully entered onto South Parallel Road prior to the first collision on December 14, 2010.

[10] In this decision, I have not summarized all of the separate submissions and responses to submissions. I have taken these submissions into account in the analysis below, and have expressly cited some of the submissions on a selective basis to address key points.

[1] As set out in paragraph 101, a signed statement was provided on January 7, 2011 by Gurvinder Lidder. For consistency, I have used the spelling "Gurvinder" in this decision (in place of Gurwinder).

Issue(s)

[11] Determinations are requested concerning the status of seven of the parties to the legal actions, at the time of the December 14, 2010 motor vehicle accident(s): Sarbjit Dhillon, Jaswinder Dhillon, Kulvir Dhillon, Leo Van Noort, M. Van Noort & Sons Bulb Co. Ltd., City of Abbotsford, and Her Majesty the Queen in Right of the Province of British Columbia. Determinations have not been requested concerning the status of the defendants John Russell Walsh (a driver in the first accident), Craig Alan Lamson (a driver in the second accident), Harbans (Harbens) Singh Dhillon (husband of Sarbjit Dhillon and the registered owner of the vehicle being driven by her which was involved in both accidents), and BC Teen Challenge.

Jurisdiction

[12] 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 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.

1. Status of the Plaintiff, Sarbjit Kaur Dhillon / Sarabjit Kaur Dhillon

[13] In her examination for discovery on September 11, 2014, the plaintiff advised that her first name was spelled Sarbjit (Q 1). The first accident occurred at 4:38 p.m. (Q 10 to 11). The second accident occurred five or six minutes later (Q 12 to 13). She was driving a 2004 Honda Civic sedan (Q 43). The registered owner of the Honda Civic was her husband, Harbans Singh Dhillon (Q 46). She commenced employment at Van Noort in 1999 (Q 98 to 99). She performed labour, picking up trays and cutting roots (Q 100). She worked Monday to Friday, eight hours a day (Q 108 to 109). She usually worked from 7:45 a.m. until 4:30 p.m. (Q 112 to 117). She had two 15-minute coffee breaks, and a 30-minute lunch break, during the workday (Q 120 to 121). She was paid $12.86 per hour (Q 129). She was not paid for her time, mileage, or gas, in traveling to and from work (Q 132 134). All of her work duties were carried out at Van Noort during her working hours (Q 135). Her shift was scheduled to end at 4:30 p.m. on the day of the accident (Q 143). She punched a time clock at the commencement and end of her shift (Q 144 to 146). On the day of the accident, she punched out four or five minutes after 4:30 p.m. (Q 147 to 151). After punching out, she went to her car which was parked in the parking lot (Q 152 to 153). She intended to drive directly to her home in Abbotsford (Q 155 to 158).

[14] Her supervisor was Leo Matthew Van Noort (Q 161). At the time of the first accident, she was attempting to turn left onto South Parallel Road (Q 204). South Parallel Road had one lane in each direction (east and west), separated by a broken yellow line (Q 205 to 210). She was coming from the parking lot on the south side of South Parallel Road, and was going to drive west (Q 212 to 213). At the time of the accident, the driveway from the parking lot to the

roadway was made of gravel (Q 217 to 218). The driveway had room for two vehicles to pass through the driveway at the same time (one entering and one leaving) (Q 215 to 216). The gravel portion ended where it met the road (Q 220).

[15] Sarbjit Dhillon advised that as she was waiting to make her left turn, she could see quite a ways down to the left. She advised (Q 231):

> There's trees there in between but you can move your car forward and see.
> [all quotations are reproduced as written, except as noted]

[16] The trees were located a bit back from the road (Q 233). The trees were beyond the driveway to the property that was next door to the Van Noort property (Q 238). She advised that as she was waiting to turn left, she had a clear view of the eastbound lane extending beyond where the trees were situated (Q 245). A grassy area and ditch separated South Parallel Road from Highway 1 (Q 258).

[17] At the time of the first accident, the middle of her vehicle was on the yellow line on South Parallel Road (Q 324 to 328). Half of her vehicle was in the west bound lane, and half was in the east bound lane (Q 330). Her vehicle was completely on South Parallel Road (Q 326). The other vehicle was in the eastbound lane when it struck her vehicle (Q 331) in the area of the gas tank and rear window (Q 332). Her vehicle was on a bit of an angle as she had started to turn (Q 333).

[18] The time at which the accident occurred was considered rush hour (Q 338). The area in which the accident occurred was primarily a farm area (Q 339). The speed limit on South Parallel Road was 80 kilometres per hour (Q 343 to 344). The impact of the collision caused her car to spin until the front faced the Van Noort driveway (Q 367 to 371). Her vehicle stopped a few feet from the driveway (Q 373). Her door was stuck and she could not get out of her car (Q 429 to 431). She did not see the second vehicle before it struck her vehicle in the second accident (Q 600). It was fully dark by the time the first accident occurred (Q 645) and the odd raindrop was falling (Q 644). There were no street lights in that location (Q 650). The lights from the buildings on the Van Noort property did not provide illumination to the roadway (Q 651 to 654).

[19] The plaintiff, Sarbjit Dhillon, also gave evidence in an examination for discovery on November 19, 2014. This primarily concerned her circumstances following the accidents.

[20] Sarbjit Dhillon provided an affidavit on November 7, 2016. She stated that there was no doubt in her mind that at the time of the accident, her vehicle was off the Van Noort property and fully located on "Parallel Road." She attached photographs showing the Van Noort buildings, parking lot, driveway, and exit to South Parallel Road (as they currently exist with the addition of concrete barriers painted in orange to mark the edges of the driveway).

[21] Carolus Van Noort provided evidence at an examination for discovery on October 7, 2015, on behalf of Van Noort. He was the president of Van Noort (Q 13), and a shareholder and director of the family-run company (Q 15 to 16). Carolus Van Noort and two siblings worked at Van Noort's Langley location (the wholesale operation), and Leo Van Noort was in charge of the day-to-day affairs at the farm operation in Sumas (Q 48). Leo Van Noort was the manager of the

farm (Q 88). Leo Van Noort was an owner (Q 108). He was the only owner at the Sumas location (Q 110).

[22] The four siblings in the Van Noort family were equal in terms of decision-making (Q 92), and were almost equal shareholders (Q 26) although Carolus Van Noort had the greatest number of shares. The four siblings were the principal decision-makers and persons in charge in respect of the business of the company (Q 23).

[23] The Sumas property was approximately 60 acres in size (Q 52). The property was divided into three parcels (Q 53). They had permanent employees (Q 56) and also used workers supplied by labour contractors as well as "swap workers" (typically from Mexico) (Q 59). There was a system under which permanent employees would check in each day by using a thumbprint (Q 75). At the Sumas location, the work hours were generally from 7:30 a.m. until 4:30 p.m. (Q 96), with two 15-minute breaks and a 30-minute lunch break (Q 98).

[24] The driveway to the Sumas property had a double door gate which would swing open (Q 114). The gate was normally locked at the end of the workday (Q 115). From the driveway, the view to the left (in the direction leading to Abbotsford) of South Parallel Road was obstructed by trees on a neighbour's property. However, as a vehicle came further out on the driveway towards South Parallel Road to turn left, the driver would have an unobstructed view of South Parallel Road (Q 203). There was no lighting in place where the driveway came out onto South Parallel Road (Q 208). There was no signage in place where the driveway met the road (Q 385).

[25] The speed limit on South Parallel Road was 80 kilometres per hour (Q 209). Carolus Van Noort did not recall ever experiencing difficulty in getting enough traction, due to the tires on his vehicle slipping on gravel, while leaving the driveway to go onto South Parallel Road (Q 248 to 249). He estimated there would have been 10 to 15 cars parked in the parking lot around the end of the workday (Q 343).

[26] Carolus Van Noort confirmed there was a heavy volume of traffic on Highway 1 between 4:00 p.m. and 5:00 p.m. However, he never encountered problems with his vision due to headlights on vehicles on Highway 1 (Q 255). He acknowledged that some drivers went faster than the speed limit on South Parallel Road, but advised that he never found it difficult to exit from the Van Noort property (Q 260 to 263). He advised (Q 292):

> We've used that driveway for 20 years. It was never a problem. We never had any issues. That driveway is like any other driveway that is along South Parallel Road or any other driveway in any of the properties that belong to us that we enter and exit on a daily basis.
>
> After the accident, as I think as a prudent company, we would do everything in our measure, in our ability to do whatever we can do to potentially make that driveway better than what it is at that point in time. And that's what we set out to do.

[27] Carolus Van Noort was not aware of any safety concern being raised regarding the driveway prior to the December 14, 2010 accidents (Q 297 to 303). Subsequent to the accidents, several changes were made to the driveway (Q 304). The entrance to the driveway was paved, and

concrete barriers painted orange with reflectors were placed on the sides of the driveway (Q 305). In addition, a wheel was attached to the gate so that it would open and close more easily (Q 306). A request was made to the City of Abbotsford for lighting, but this was not approved (Q 313). They were told by the City of Abbotsford that the pole on which lighting would have been affixed did not belong to Van Noort and they were not allowed to attach anything to the pole (Q 404). The stand of trees on the neighbour's property was not cut down or trimmed (Q 314 to 315).

[28] An Abbotsford Police Collision Reconstruction Report dated December 14, 2010 by Cst. R. Vroom summarized the circumstances of the collision. The Abbotsford Police Department received a report of the collision at 4:38 p.m. The report stated:

> Vehicle 02, towing an empty car hauler trailer was travelling eastbound on South Parallel Road when it collided with Vehicle 01 which was exiting a driveway at 38724 South Parallel Road. Vehicle 01 was struck on the driver rear corner and came to a stop across both lanes of travel on South Parallel Road. Employees of the farm that Vehicle 01 was exiting, came out to assist the driver of Vehicle 01. Vehicle 03 was westbound on South Parallel Road and collided with Vehicle 01 striking two of the employees that were standing near the vehicle. Two of the struck pedestrians came to rest in the grass area that separated South Parallel Road and Highway #1….

[29] The police report stated that the roadway was flat, and the area consisted of rural agricultural properties. The police report stated that the posted speed limit was 60 kilometres per hour. However, the examination for discovery evidence of the parties was consistent in stating that the speed limit was 80 kilometres per hour. For the purposes of my decision, I accept the evidence of the parties that the speed limit was 80 kilometres per hour.

[30] Section 1 of the Act defines "worker" as including:

> (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;

[31] The plaintiff, Sarbjit Dhillon, acknowledges that on the day of the accident she came within the definition of the term "worker" and was a permanent employee of Van Noort. I find that she was a worker within the meaning of Part 1 of the Act. While submissions have been provided to the effect that Sarbjit Dhillon was not a worker at the time of the accident, I consider that these submissions conflate the determination of her status as a worker with the question as to whether any injuries suffered by her in the accidents arose out of and in the course of her employment (and have taken these submissions into account in addressing this latter issue). A contested issue is whether any injuries suffered by the plaintiff, Sarbjit Dhillon, arose out of and in the course of her employment within the scope of Part 1 of the Act.

[32] All references to policy in this decision refer to the policy in Chapter 3 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II), unless otherwise specified. At the time of the accidents on December 14, 2010, the policy at item #C3-14.00 included the following:[2]

> 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 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.

[33] Policy at item #C3-14.00 set out a non-exhaustive list of nine non-medical factors which may be used in making a decision as to whether an injury or death arose out of and in the course of the employment. The policy provided that all of these factors may be considered in making a decision, but no one of them may be used as an exclusive test. Other relevant factors may also be considered. Other policies in Chapter 3 may provide further guidance as to whether the injury or death arises out of and in the course of the employment in particular situations. The nine factors set out in item #C3-14.00 are: (1) On Employer's Premises; (2) For Employer's Benefit; (3) Instructions From the Employer; (4) Equipment Supplied by the Employer; (5) Receipt of Payment or Other Consideration from the Employer; (6) During a Time Period for which the Worker was Being Paid or Receiving Other Consideration; (7) Activity of the Employer, a Fellow Employee or the Worker; (8) Part of Job; and (9) Supervision.

[2] In this decision, I have applied the policies in effect at the time of the accidents on December 14, 2010. 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. Accordingly, the policies in the new Chapter 3 of the RSCM II are applicable.

[34] The employer submits that at the time of the first accident, the plaintiff was still in close proximity to the employer's premises. Her left turn was not complete when the impact occurred. She had not yet fully begun her journey home, and had not yet established herself in her proper lane on South Parallel Road.

[35] I accept Sarbjit Dhillon's evidence that her car was fully on the public roadway at the time of the first accident, although she was still beginning her turn at the time of the collision. This finding is not inconsistent with the employer's submission that Sarbjit Dhillon's vehicle had not yet established itself in the westbound lane on South Parallel Road.

[36] At the time of the accident, the plaintiff had left the employer's premises at the end of her workday, after punching out. At the time of the accident, her vehicle was completely on the public roadway and was no longer on her employer's driveway. I find that none of the nine factors in item #C3-14.00 supports a finding of employment connection at the time of the accident. The plaintiff's work was performed on her employer's premises, and she was not required to travel in her work. The accident occurred after she had left the employer's premises for the purpose of going home.

[37] Policy at item #C3-19.00 further provides that the general policy related to travel is that injuries or death occurring in the course of travel from the worker's home to the normal place of employment are not compensable. This policy states:

> **A. Regular Commute**
>
> An employment connection generally begins when the worker enters the employer's premises for the commencement of a shift, and terminates on the worker leaving the premises following the end of the shift.
>
> Therefore, a worker's regular commute between home and the normal, regular or fixed place of employment is not generally considered to have an employment connection.

[38] Pursuant to the policies set out above, it would normally be the case that workers' compensation coverage would not apply in connection with the travel undertaken by the plaintiff, Sarbjit Dhillon, after she had left her employer's premises following the end of her shift to drive to her home.

[39] Policy at item #C3-19.00 provides that it is the responsibility of an employer to provide a safe means of access to and egress from the place of work:

> **1. On Employer's Premises**
>
> Did the injury or death occur on the employer's premises? If so, this is a factor that favours coverage.
>
> **It is the responsibility of an employer to provide a safe means of access to and egress from the place of work. Thus, where a worker is traveling by public roadway to a place of work that is not adjacent to the public roadway, and must travel along a captive road or through a special hazard before reaching the employer's premises, the employment connection may**

> **begin at the point of departure from the public roadway rather than at the point of entry to the employer's premises.**
>
> It is not considered significant that an injury or death occurs while a worker is seeking to gain access to the employer's premises by a method that is different from that which the employer intends. However, it may be considered significant if the worker chooses a method that he or she has been advised is specifically forbidden by the employer, or if the worker chooses a route that is clearly dangerous.
>
> [emphasis added]

[40] The foregoing policy would support the provision of workers' compensation coverage in relation to an accident occurring on the employer's driveway, even if the accident occurred outside of the property owned by the employer. However, the reference to the point of departure from the public roadway supports a conclusion that workers' compensation coverage would generally not apply beyond that point in the case of workers who were not employed to travel.

[41] Policy at item #C3-19.00 sets out three exceptions to the general policy that workers' compensation coverage does not apply to commuting to and from the employer's premises, in relation to situations in which a finding of employment-connection may be made regarding accidents which occur near the employer's premises. These exceptions concern a captive road, special hazards of the access route, and an extension of the employer's premises. Item #C3-19.00 provides, in part:

> **b. Special Hazards of Access Route**
>
> Where a place of work is so located that for access and egress the worker must pass through special hazards beyond the ordinary risks of travel, an injury or death sustained from those hazards may be one arising out of and in the course of the employment.
>
> **A "special hazard" for the purpose of this policy is one that goes beyond those hazards normally encountered by the traveling public and which the worker would not normally encounter, but for the location of the employer's premises.**
>
> For a claim to succeed on the grounds of a special hazard, the hazard need not lie on the only route to the employer's premises. It is sufficient if it is on the worker's regular commute route.
>
> **c. Extension of the Employer's Premises**
>
> An injury or death that occurs to a worker in the immediate approaches to the place of work, though still on the public roadway, may be considered to arise out of and in the course of the employment if the hazard causing the injury or death is a spill-over from the employer's premises.
>
> As well, if an employer provides a specific vehicle, like a crew bus, to transport its workers to and from the employer's premises, injuries or death occurring while traveling in this employer-controlled vehicle may be considered to arise out of and in the course
>
> [emphasis added]

[42] Several photographs have been provided of the employer's driveway and surrounding area. A partial fence was built, possibly at the edge of the employer's property, with two sections on each side of the driveway to support a gate which could be closed and locked. At its narrowest point (at this opening), the driveway had room for two cars to pass in opposite directions. The driveway broadened considerably as it extended to the roadway, which would facilitate turning onto and off the roadway. On both sides of the driveway, there was a wide grassy area between the employer's property and the roadway, with no apparent visual obstructions such as trees close to the roadway. There was a fire hydrant and a tall wood pole supporting overhead wires. Sarbjit Dhillon's evidence was that the accident occurred during rush hour, and the speed limit on the roadway was 80 kilometres per hour.

[43] The employer acknowledges that Sarbjit Dhillon was off shift and was not being paid at the time of the accident. However, the employer notes that she sustained her injuries shortly after the end of her shift, and within a few feet of her employer's premises. The time gap was not significant.

[44] The third party notices allege negligence on the part of the employer in failing to provide any or adequate lighting at its driveway. The employer denies any such failure regarding lighting, and also denies any deficiencies with respect to the condition of the driveway. The employer submits, however, that in the event a court were to find that there was an issue with the lighting or the condition of the driveway, and that any such deficiency was of causative significance in the occurrence of the accidents, then it would follow that Sarbjit Dhillon's alleged injuries arose out of and in the course of her employment. The employer submits that if the driveway condition or lighting somehow affected Sarbjit Dhillon's course of conduct as she exited from the driveway, then the accident effectively occurred as a result of hazards spilling over or emanating from her employer's premises.

[45] Although the employer's property line may have been a short distance from the roadway, the employer exercised an element of control over the driveway to the point it connected with the public roadway. The employer levelled it with gravel each year before the accidents (and subsequently paved it).

[46] The employer cites *WCAT-2011-01262*, in support of its contention that departing from the employer's premises is not an activity that is primarily personal in nature. That decision concerned a motor vehicle accident between two co-workers, which occurred in the employer's parking lot. Both parties were found to be in the course of their employment at the time of the accident. However, the circumstances of that case are different, in that the accident occurred on the employer's premises.

[47] The plaintiff Leo Van Noort submits that Van Noort neither practically nor legally had any control over the public roadway. He submits there is no basis on which to find the public roadway involved an extension of the employer's premises.

[48] A number of decisions have involved accidents near the employer's premises, in relation to the policies regarding captive roads, special hazards of the access route, and extension of the employer's premises. *WCAT-2005-03693*, *Manz v. Sundher*, concerned a motor vehicle accident which occurred on the premises of the employer (BC Ferries), outside of the toll booths. The plaintiff in that case had left the employer's parking lot and was driving along a

publicly accessible egress from the ferry terminal. That decision found the plaintiff's accident arose out of and in the course of his employment, on the basis that the circumstances were analogous to the example provided in policy concerning congestion at the gates of the plant. The decision noted: "If anything, the particular facts of this case point more strongly to an employment relationship, as the hazard (the opening for a 'U' turn") was on land owned by the employer, and related to an aspect of the employer's operations (involving the movement of motor vehicles through its facilities)."[3]

[49] Other cases have found that a motor vehicle accident was employment-connected where the accident occurred on a driveway or roadway extending between the employer's premises and the public roadway, although the driveway was not part of the employer's premises. *WCAT-2016-00046*, *Sever v. Saroya*, concerned a motor vehicle accident between two vehicles being driven by co-workers, on a roadway extending between the employer's parking lot and the public roadway. The accident occurred near, but not on, the employer's premises. The roadway only led to the employer's premises. *WCAT-2016-00046* found that the accident occurred on a captive road, based on the normal usage of the road and its relationship to the operation of the employer's business.

[50] *WCAT-2011-01148*, *Parker v. Frame*, concerned two truck drivers employed by the same employer. Following the completion of their work shifts on April 1, 2008, they were departing from a parking lot in their personal automobiles when they were involved in a motor vehicle accident. The plaintiff stopped and his car was rear-ended by the defendant's car, as they were attempting to turn right and merge onto Kingsway Avenue in Port Coquitlam. The parking lot was used by two companies which had common ownership. That decision noted, in paragraph 45:

> In this case, the parking area extended into an area traversed by overhead power lines. The accident occurred as the parties were departing from this area and entering onto Kingsway Avenue. Accordingly, the accident may have occurred on land owned by the municipality or a power company, or land which was subject to an easement for the power transmission lines (rather than on land leased by Fastfrate). However, for the purposes of Part 1 of the Act, I consider it is significant that the parties had still not merged with traffic on Kingsway Avenue when the accident occurred. Rather, they were, in effect, still exiting the parking area for the purpose of driving on Kingsway Avenue.

[51] *WCAT-2011-01148* reasoned:

> [47] Policy at #18.01 regarding entry to the employer's premises provides that it is a responsibility of the employer to provide a safe means of access to and egress from the place of work. Thus, where a worker is travelling by highway to a place of work that is not adjacent to the highway, and must cross other land before reaching the employer's premises, compensation coverage begins at the point of departure from the highway rather than the point of entry to the employer's premises. Given that workers' compensation coverage extends to the point of departure from the

[3] Petition for judicial review unsuccessful, *Manz v. Sunder*, 2009 BCCA 92, overturning 2007 BCSC 1945.

highway, I find that it may similarly extend to the point of entry to the highway (Kingsway Avenue) where the accident occurred (subject to consideration of the policy at RSCM II item #19.20.

[48] Policy at #18.12 concerning special hazards of the access route provides that an injury to a worker on the way home from work, even though on the only egress route from the employer's premises, is not compensable if it results from other normal risks of highway travel such as a collision between two automobiles. However, that policy further provides that if a worker is injured in the immediate approaches to the place of work, though still on the highway, that will be compensable if the hazard causing the injury is a spill-over from the employer's premises. The policy provides, as an example, that if an accident occurs through rush hour congestion right at the gates of the plant, that would be compensable. The policy states that the Board would certainly not measure by an exact line whether it occurred inside or just outside the gates. I infer that this policy is concerned with establishing employment-connectedness, rather than involving any question regarding fault on the part of the employer.

[52] *WCAT-2011-01148* found, however, that the fact the parking area was not controlled by the parties' employer was a significant factor which weighed heavily against a conclusion that the plaintiff's injuries by accident arose out of and in the course of his employment.

[53] *WCAT-2009-03130* concerned a teacher who was injured due to a slip and fall on a snowy/icy sidewalk on January 6, 2009. Her fall occurred on a short ramp leading from the public sidewalk towards the school courtyard. Her fall occurred outside the perimeter of the employer's premises, as marked by a fence. A short sidewalk or ramp, approximately four- or five-feet long, extended from the public sidewalk towards the entrance to the school property. The ramp had been constructed by the City, rather than the school, but only lead to the school property. The employer, and not the City, dealt with clearing snow from the sidewalk/ramp. *WCAT-2009-03130* reasoned:

[24] It is customary for many businesses and homeowners to have private sidewalks which extend from their front door to the City sidewalk. This may require that a short portion of the sidewalk be built onto the property of the City, where the main sidewalk is not immediately adjacent to the property line. A homeowner or business clearing their sidewalk of snow would likely clear the snow from the entire sidewalk, even though the last few feet were on the City's property. **In the case of a worker falling on a sidewalk which led only to the employer's premises, it would appear too fine a distinction to base the decision regarding the worker's eligibility for compensation on whether the small portion of the sidewalk (running perpendicular to the general public sidewalk) on which they fell in fact lay on City property or on the employer's property.**

[25] If the worker had fallen on the public sidewalk running parallel to the employer's premises, I would not consider that workers' compensation coverage would apply in those circumstances. **In this case, however,**

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> **the worker fell on a ramp which only led to the employer's premises (the opening in the chain link fence permitting entry to the front of the school). I consider that workers' compensation coverage applies in these circumstances, as the sole purpose of the ramp was to provide a means of access to and egress from the employer's premises.**
>
> [26] I find further reinforcement for this conclusion in the policy at item #18.11 concerning captive roads**. Policy at item #18.11 provides that a "captive road" is one which is technically a public highway but as a practical matter leads only to the premises of the particular employer and is for practical purposes under the control of that employer.** In this case, the ramp involved an extension to the public sidewalk. It lay on City property, and was constructed by the City. Technically, it was a public sidewalk, but as a practical matter lead only to the premises of the school. **The ramp extended perpendicularly from the public sidewalk, and would not be used by anyone except for the purpose of entering the school grounds. It is not comparable to a public sidewalk, which would be used both by persons going to and from the school, as well as persons merely passing by.** As well, the employer appears to have exercised some control in relation to the ramp, as any snow clearing on the ramp was performed by the employer rather than by the City.
>
> [emphasis added]

[54] *WCAT-2011-01148* and *WCAT-2009-03130* both concerned injuries which occurred prior to July 1, 2010, and were decided on the basis of the policies contained in the earlier *version* of Chapter 3 of the RSCM II.

[55] *WCAT-2014-02894 / WCAT-2014-02895*, *Olver v. Appleton*; *Olver v. ICBC*, concerned a motor vehicle accident which occurred at a security barrier on a public highway on a causeway leading to a port facility at which several employers were located. The plaintiff's employer had constructed the security barrier on the road, and engaged another company to provide security services at the barrier during daylight hours. That decision found that the security barrier involved an extension of the employer's premises or a special hazard of the access route:

> [62] …The hazard causing the injury was one associated with the employer's premises, given [the employer's] responsibilities in relation to the construction, maintenance, and operation of the security barrier. Just as a crew bus may be characterized as involving an extension of the employer's premises (even though it concerns travel away from the physical location of the employer's premises), so too may the security barrier be characterized as an extension of the employer's premises due to the employer's exercise of control at that location.
>
> …
>
> [64] …I similarly consider that the security barrier in this case represented a different sort of hazard than would normally be encountered on a public road, and was one associated with the industrial environment in which the

plaintiff and Appleton worked (which required [the employer] to maintain a security barrier to regulate access to the port facility). On either basis, therefore, I find that the accident was connected to the employment of both workers.

[56] The policy concerning special hazards of the access route was applied in *WCAT-2015-01822*, *Guci v. Starline Architectural Windows Ltd. et al*. In that case, the plaintiff was a tile installer. He parked his car in the public roadway in front of a high rise under construction, for the purpose of dropping off some tools in preparation for doing tiling work in the building. A large window fell from the 36th floor, landing next to the plaintiff who claimed a psychological injury. That decision reasoned:

> [92] In the plaintiff's case, the installation of windows in the high-rise which was under construction was a hazard of his work environment. This hazard went beyond the normal risks of highway travel. The fact that some other members of the public would also encounter that risk would not preclude workers' compensation coverage. *Decision #50* involved a type of railway crossing used in an industrial environment which differed from the type of railway crossing which would ordinarily be encountered by the travelling public. However, members of the general public who travelled to the industrial environment would also encounter such crossings, as this policy did not require that the industrial-type railway crossing be located in a captive-road setting. Accordingly, the special hazard need not be unique to workers.
>
> [93] I consider that the risks attendant on the installation of windows in a high-rise building under construction are sufficiently unusual as to amount to a hazard of the plaintiff's work environment. In this case, the plaintiff was employed at a high-rise construction site, and was required to approach that building (although still on a public road) to drop off his tools. There was a very close relationship between the plaintiff's employment at the high-rise construction site, and the risk of being struck by materials falling from the high-rise building (including tools or other debris which might fall by accident). The fact that the plaintiff was still on the public alley, rather than on the construction site itself, and the fact the hazard was not within the control of the plaintiff's employer, do not preclude workers' compensation coverage in such circumstances. I find that the circumstances of the plaintiff's accident are such as to come within the terms of the policy at item #C3-19.00 regarding special hazards of the access route.
>
> [94] I find that the plaintiff's place of work was so located that for access to the building site, the plaintiff had to pass through a special hazard beyond the ordinary risks of travel. The plaintiff would not normally encounter this hazard (of objects falling from an upper floor of a high-rise which was under construction), but for the location of the work site to which he had been assigned by his employer. I find that the requirements of the policy at item #C3-19.00 regarding special hazards of the access route are met.

[57] The plaintiff Sarbjit Dhillon cites *WCAT-2016-01208*, *Ok v. Gregory et al.*, which concerned a business owner who was struck by a vehicle while standing in front of his work premises to smoke a cigarette. That decision found the plaintiff's injuries were not related to a hazard due to a spill-over from the employer's premises. The defendant in that case was driving on the far side of the roadway, when she apparently suffered a seizure with the result that her vehicle crossed two lanes of oncoming traffic before going onto the sidewalk and striking the plaintiff. The accident was found to have been due to an intrusion from an external source unrelated to any hazard of the employer's premises.

[58] *Decision No. 50*, "Re the Coverage of Workers' Compensation," 1 W.C.R. 212, provides relevant background to the current policy concerning special hazards of the access route. Decisions of the Board in Volumes 1 to 6 of the *Workers' Compensation Reporter* were previously adopted as policies of the board of directors. However, in order to reduce the number of sources of policies, in 2000 the board of directors approved a strategy for consolidating *Decisions No. 1 - 423* into the various policy manuals and "retiring" the Decisions over time. While *Decision No. 50* was retired and no longer has the status of policy, the reasoning in that decision remains of interest. In that decision, the Board found that an accident suffered by a worker in an accident at a railway crossing which did not have any controls or warning lights involved a special hazard of the industrial environment which went beyond the ordinary hazards of highway travel. *Decision No. 50* began by setting out a number of general principles:

> It may be helpful to summarize the position relating to situations in which a worker is employed at a fixed place of employment on regular shifts.
>
> 1. Subject to the following exceptions, compensation coverage generally begins when a worker enters the employer's premises for the commencement of a shift, and terminates when he leaves the premises following the end of the shift. Thus where a worker is travelling to work by automobile, he is not covered for compensation from home to the point of entry to the employer's premises, but he is covered from there to his particular place of work.
>
> 2. It is a responsibility of the employer to provide a safe means of access to and egress from the place of work. Thus where a worker is travelling by highway to a place of work that is not: adjacent to the highway, so that he must cross other land before reaching the employer's premises, compensation coverage begins at the point of departure from the highway rather than the point of entry to the employer's premises.
>
> …
>
> 8. If a worker is injured in the immediate approaches to the place of work, though still on the highway, that will be compensable if the hazard causing the injury is a spill-over from the employer's premises. For example, if an accident occurs through rush hour congestion right at the gates of the plant, that would be compensable, and the Board would certainly not measure by an exact line whether it occurred just inside or just outside the gates.

[59] *Decision No. 50* applied another doctrine dealing with special hazards on an access route:

> Secondly, the doctrine that a worker is not covered for compensation while travelling to and from work is well-established and that doctrine excludes compensation for injuries resulting from the hazards of highway travel even though the highway approaching the place of work may be the only access route. **For the injury to be compensable, therefore, it must result from a hazard of the industrial environment going beyond the ordinary hazards of highway travel.** Thus if the railway crossing in this case were the same as other railway crossings in the city, we would regard it as an ordinary hazard of highway travel, not a special hazard of egress from the place of employment. Similarly an injury to a worker on the way home from work, even though on the only egress route from the employer's premises, is not compensable if it results from other normal risks of highway travel, such as a collision between two automobiles.
>
> [emphasis added]

[60] Accordingly, a worker might be exposed to hazards due to a railway crossing near the employer's premises, but this would not constitute a special hazard of the access route if the railway crossing was of the same type encountered in other railway crossings in the city rather than being of the different type typically found in an industrial environment (which lacked certain safety features).

[61] *Decision No. 126*, "Re Compensation Coverage and a Captive Road," 2 W.C.R. 123 (retired from policy), concerned a mine worker was killed in a motor vehicle accident approximately three miles outside of a mine site when he was leaving after completing a ten-day shift. The worker's vehicle went out of control, and no other vehicle was involved in the accident. The accident occurred on the mine road leading to the public highway. The Board rejected the argument that the accident resulted from a special hazard of the industrial environment. The Board reasoned (at page 124):

> The second ground argued was that the accident resulted from a special hazard of the industrial environment, and therefore a hazard of egress from the employer's premises. In this connection, reference was made to the bends in the road being sharper in the mountains than is normal for lowland highways, to falling rock on the road, to crosswinds, and to ice patches in winter. While we accept the evidence with regard to the existence of these conditions, we see them as hazards of mountain highways rather than a special hazard of egress from this kind of work-place.

[62] The death of the mine worker was found to be compensable on the basis of the captive road doctrine.

[63] Although it has been suggested that the visibility of the Van Noort entrance way and related factors created a hazard for drivers in either direction, the plaintiff Sarbjit Dhillon submits that there is no evidence that at the time of the accidents the entrance to the Van Noort property presented a hazard of the employer's premises. The sightlines have been improved since the accident as a matter of prudence or ordinary upkeep.

[64] Under section 146 of the *Motor Vehicle Act*, RSBC 1996, c. 318, a speed limit of 80 kilometres is generally applicable outside a municipality but may also apply within a municipality:

> **146** (1) Subject to this section, a person must not drive or operate a motor vehicle on a highway in a municipality or treaty lands at a greater rate of speed than 50 km/h, and a person must not drive or operate a motor vehicle on a highway outside a municipality at a greater rate of speed than 80 km/h.
>
> (2) The minister responsible for the administration of the *Transportation Act* may, by causing a sign to be erected or placed on a highway limiting the rate of speed of motor vehicles or a category of motor vehicles driven or operated on that portion of the highway, increase or decrease the rate of speed at which a person may drive or operate a motor vehicle or a category of motor vehicle on that portion of the highway.
>
> …
>
> (6) Subject to subsections (2) and (3), a municipality may by bylaw direct the rate of speed at which a person may drive or operate a motor vehicle on a highway in the municipality.

[65] The City of Abbotsford has admitted that South Parallel Road was a road that fell within its jurisdiction. Accordingly, the road was one within a municipality. Consequently, the posting of a speed limit of 80 kilometres per hour appears to have involved a decision of the City of Abbotsford, or of the minister responsible for the administration of the *Transportation Act*.

[66] In considering whether Sarbjit Dhillon's first accident arose out of and in the course of her employment, I have taken into account the evidence of the other plaintiffs which is summarized in more detail below. Jaswinder Dhillon never noticed headlights from vehicles on Highway 1 pointing at him when he was making a left turn onto South Parallel Road. He never had a problem with his tires spinning due to the slope and gravel on the driveway. While Van Noort made improvements to its driveway after the accidents including affixing a photocell spotlight to a power pole, paving the driveway, and putting concrete blocks with reflective markers at the edges of the driveway, Leo Van Noort did not feel these changes were necessary. Sarbjit Dhillon, Carolus Van Noort and Jaswinder Dhillon indicated that the view to the west on South Parallel Road was not obstructed by trees by the time a vehicle reached the edge of the roadway while leaving the Van Noort driveway.

[67] There would appear to have been some element of risk or hazard associated with the need to exit from the employer's premises onto a road for which the posted speed limit was 80 kilometres per hour. In addition, the accident occurred after it was dark. However, Sarbjit Dhillon's evidence was that she saw the headlights of the oncoming vehicle prior to the occurrence of the accident. There was no obstruction to her vision which was particular to the exit from the employer's premises. Although other cars were leaving from the employer's premises, this does not appear to have been a factor in the occurrence of the accident. There was no congestion on the public roadway. While I recognize the risk faced by the workers in exiting onto a public roadway with a speed limit of 80 kilometres per hour, without lighting to mark the exit, I am not persuaded this involved a special hazard beyond the ordinary risks of travel which would normally be encountered by the traveling public. It appears the hazards to which Sarbjit Dhillon was exposed involved hazards of a similar nature to those addressed in

Decision No. 126, as being hazards of rural areas in general comparable to the hazards of mountain highways in general, rather than involving a special hazard of the industrial environment. In *Decision No. 126*, the fact the mine site was located in an area involving exposure to the hazards of mountain highways was not sufficient to establish that there was a special hazard of egress from the mine site. For similar reasons, I am not persuaded that the hazards to which Sarbjit Dhillon was exposed in leaving from her employer's premises involved a risk that she would not normally encounter but for the location of the employer's premises.

[68] There are some indications (particularly in the evidence of Craig Lamson) that the light coming from the headlights of vehicles traveling on Highway 1 might have played a role in affecting the vision of drivers using South Parallel Road. However, I find that the evidence on this point is insufficient to establish that this involved a special hazard of the access route to the Van Noort premises. Carolus Van Noort and Jaswinder Dhillon denied that light from vehicles using Highway 1 was a problem.

[69] The accident occurred after Sarbjit Dhillon's vehicle was completely off the driveway, so that the policy regarding captive roads would not apply. For the reasons set out above, I do not consider that the accidents on December 14, 2010 involved a special hazard of the access route to the employer's premises. This was not a situation in which the hazard causing the injuries involved a spill-over from the employer's premises, inasmuch as the hazard related to the movement of traffic on the South Parallel Road rather than being one emanating from the employer's premises. As none of the policy exceptions applies, I consider that the general policy applies, namely, that workers' compensation coverage is not applicable in relation to commuting between a worker's home and the point of entry to the employer's premises.

[70] I have taken into account the accident presumption contained in section 5(4) of the Act. This provides:

> In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment.

[71] I do not consider, however, that any injuries suffered by Sarbjit Dhillon in the December 14, 2010 accident occurred in the course of her employment, or that they arose out of her employment. I find that neither of the tests in section 5(1) of the Act are met, and that she did not have workers' compensation coverage for her commute home after she entered fully onto the public roadway (South Parallel Road). Accordingly, I find that any injuries suffered by the plaintiff Sarbjit Dhillon in the December 14, 2010 accidents did not arise out of and in the course of her employment.

[72] It necessarily follows that any action or conduct of the defendant, Sarbjit Dhillon, which caused the alleged breach(es) of duty of care (in relation to both of the December 14, 2010 accidents), did not arise out of and in the course of her employment within the scope of Part 1 of the Act.

2. Status of the Other Plaintiffs – Second Accident on December 14, 2010

A. Background and Evidence

(a) Plaintiff Kulvir Dhillon

[73] Kulvir Dhillon provided a signed statement on January 4, 2011. She advised:

> I am employed at Van Noort Nurseries located at #38724 South Parallel Road, Abbotsford…. On December 14, 2010 at just after 4:35 pm, we had finished work for the day. I believe it was Suki Dhillon that called up to the office and told Leo Van Noort (one of the business co-owners) that our employee Sabjit Dhillon had just been involved in an accident on the road in front of the nursery. Several of us ran out to the scene immediately – including Leo, myself, my husband [Jaswinder Dhillon], Gurvinder Lidder and Amarjit Lidder. Lovey Gill and Suki Dhillon were already at the scene. Sabjit was in her vehicle, in the driver[']s seat, not apparently seriously injured and she was able to talk to us but we couldn't get her driver[']s door open. Her vehicle was facing perpendicular to the road, facing toward the Van Noort Nursery driveway…. All I know is that a truck came along on South Parallel Road (from Chilliwack toward Abbotsford), there was screaming going on, Leo pushed myself and Lovey Gill into the ditch on the Highway #1 side of the roadway. I don't recall if I fell down. Leo was hit by the truck and seriously injured….

[74] Kulvir Dhillon gave evidence in an examination for discovery on October 20, 2015. She always went to work at Van Noort together with her husband, Jaswinder Dhillon, and her two brothers, Amarjit Lidder and Gurvinder Lidder (Q 14 to 15, 22 to 27) in a carpool arrangement (Q 29). She started working at Van Noort in 1994 (Q 33). She was an employee of Van Noort on the day of the accident, and was being paid an hourly wage (Q 36 to 37). She was employed as a supervisor in the cutting area (Q 39). She had been a supervisor for six or seven years, commencing before the accident (Q 40 to 41). She reported to, and received instructions from, Leo Van Noort, owner (Q 42 to 44). Sarbjit Dhillon worked in a splitting group, and was not part of the group of workers supervised by Kulvir Dhillon (Q 52).

[75] Kulvir Dhillon's shift was from 7:30 a.m. until 4:30 p.m. (Q 64 to 65). At the end of her shift, she would punch out (using a thumb impression, in the office) and then go to her car (Q 66 to 68). Sukwinder Dhillon was Kulvir Dhillon's supervisor until the December 14, 2010 accident, following which Kulvir Dhillon took over (Q 83 to 87).

[76] Employees finished work at 4:30 p.m. Kulvir Dhillon was never aware of a line-up forming of cars waiting to leave the parking lot (Q 97 to 98). There were no street lights at the exit of the driveway onto South Parallel Road (Q 104 to 105). The only lighting would be from a car's headlights (Q 106 to 107). There was a little bit of a hill on the driveway going up to South Parallel Road (Q 109). There was a gate on the driveway which would be locked after the workers left at the end of the day (Q 111). Jaswinder Dhillon and other employees had a key to the gate (Q 112 to 114).

[77] Kulvir Dhillon was in the office with Leo Van Noort when he received a telephone call about the accident (Q 136 to 137). She and Leo Van Noort ran out together (Q 141 to 142).

(b) Plaintiff Jaswinder Dhillon

[78] Jaswinder Dhillon gave evidence in an examination for discovery on October 20, 2015. He started working for Van Noort in April 1994, and was still working for Van Noort in 2015 (Q 28 to 29). He managed the production area. In the winter, this involved cutting or splitting plants (Q 32 to 35). He determined how many workers were required each day (who would be brought by labour contractors) (Q 7 to 58).

[79] Jaswinder Dhillon was a salaried employee (Q 74 to 75, 77). His regular work hours were 7:30 a.m. to 4:30 p.m. (Q 76). He reported directly to Leo Van Noort (Q 81).

[80] He normally traveled to work with his wife, Kulvir Dhillon, and her brothers Gurvinder Lidder and Amarjit Lidder (Q 93 to 103). They parked in Van Noort's gravel parking lot (Q 104 to 105). When he left, he would turn left on South Parallel Road to go to Abbotsford (Q 108 to 111). There was a slope from the parking lot up to the road level (Q 112). A load of gravel would be used each April to level out the parking lot and driveway (Q 116 to 119). When making a left turn, there was one BC Hydro pole in their line of sight, but no trees (Q 121 to 122). Jaswinder Dhillon explained (Q 122):

> No trees. Tree is like behind. Neighbour's tree, they are behind that so we have still enough room to see the road.

[81] On the Van Noort property, there were cedar trees behind the fence but the ditch and road area were all clear (Q 123). Between 4:00 p.m. and 5:00 p.m., there would be a steady stream of traffic on Highway 1, which was close to and parallel with the South Parallel Road (Q 127 to 128). Jaswinder Dhillon never noticed headlights from vehicles on Highway 1 pointing at him when he was making a left turn onto South Parallel Road (Q 130 to 131). He never had a problem with his tires spinning due to the slope and gravel on the driveway (Q 132 to 133). He did not experience problems making a left turn onto South Parallel Road (Q 136). He explained (Q 136):

> I had no problem because maybe I am used to left turn like so many times. Because we are watching, we – if we are driver, we know it's like – 80 speed, how fast other vehicle comes around, too.

[82] The Van Noort employees typically started work a little earlier than the labour contractor crew, and finished work a little later (Q137 to 138). Jaswinder Dhillon started work at 7:30 a.m., and had a half hour to plan the assignment of work to the labour contractor crew (Q 140).

[83] Jaswinder Dhillon was in the office when he heard that there had been an accident (Q 169 to 170). He overheard Leo Van Noort speaking on the telephone (Q 171 to 173). Leo Van Noort hung up the phone and told them that the accident had happened outside (Q 174, 180). Kulvir Dhillon, Gurvinder Lidder, and Amarjit Lidder were all present at that time (Q 175 to 178). Leo Van Noort started going downstairs, and they followed him (Q 182 to 183). Leo Van Noort did not say anything further at that time (Q 183 to 185). When they reached the parking lot they

could see the car in the middle of the road, and they went there (Q 187). They did not go together with Leo Van Noort to the accident scene (Q 193). Leo Van Noort went first, and they stopped to put their lunch bags in the car (Q 195). There were less than 10 cars in the parking lot at that time (Q 559 to 561).

[84] Jaswinder Dhillon advised that Leo Van Noort went directly to the accident scene, while they went to put things in their car (Q 196) and then went to the accident scene (Q 200). They did not engage in any discussion before going to the accident scene (Q 201 to 202). When they arrived at the accident scene, Sukwinder Dhillon, Lovey Gill, and Leo Van Noort were already there (Q 203 to 204). Leo Van Noort was trying to phone 911 and Sukhwinder Dhillon told him she had already done so (Q 268). They were all waiting for the ambulance to arrive (Q 269). Leo Van Noort did not say anything to them about whether to stay or go (Q 273). Jaswinder Dhillon stated that they could not have left in any event. He explained (Q 278):

> No. It's – like we are sympathy with the co-worker and was no room to turn left for us.

[85] He further advised (Q 337):

> Nobody in charge. Everybody like want to see what happened and nobody tell – told the other people just go there. Like everybody I think is humanity-wise and humanity like go looking our co-worker if something happened. That's why we are going to see what happened.

[86] Jaswinder Dhillon further stated (Q 340):

> Q And Leo Van Noort was the one that would typically tell you what to do and what not to do; right?
> A Right. I think he's a boss like – until 4:30, he can decide to us like what can do in the work time – what you can do, but after the work – we were standing on the road, so – he didn't say anything to anybody, do – do that, do that, so …

[87] They were waiting for the ambulance, and no one told them to stay or not to go (Q 344 to 346). They were all off the road, standing on the shoulder of the road closest to Highway 1 (Q 427 to 432). Gurvinder Gill started yelling and waving his arms when he saw a truck coming (Q 433 to 435, 456, 459 to 453). When Jaswinder Dhillon saw a truck coming which was not stopping, he jumped into the ditch (Q 440 to 442).

[88] Subsequent to the accidents, the Van Noort driveway was paved and concrete blocks with reflective devices were placed on both sides of the driveway (Q 582). The blocks were painted (Q 583).

(c) Plaintiff Sukhwinder Kaur Dhillon

[89] The plaintiff Sukhwinder Kaur Dhillon gave evidence in an examination for discovery on October 5, 2015. She was commonly referred to as Sukhi (Q 13 to 14). She had worked for Van Noort on a full-time basis for more than ten years (Q 50 to 53). She generally worked from 8 a.m. until

4:30 p.m. (Q 65 to 68). She worked as a plant propagator (Q 77 to 78). She was the supervisor for propagating plants (Q 85 to 87). Kulvir Dhillon worked under her supervision (Q 115). Jaswinder Dhillon was the supervisor for the splitting line.

[90] Leo Van Noort was her boss (Q 317). If he told her to do something, she would do it (Q 324).

[91] Sukhwinder Kaur Dhillon obtained her St. John Ambulance first aid certificate in 2009, at the request of Leo Van Noort (Q 334, 437). Her certificate was issued on September 18, 2009, and it had an expiry date of September 18, 2011 (Q 336 to 338). Gurvinder Lidder obtained a first aid certificate at the same time (Q 346 to 347). An email from Rachel Colyn, Human Resources, announced that Sukhwinder Kaur Dhillon and Gurvinder Lidder had successfully completed a seven-hour WorkSafeBC first aid course (Q 349). A notice to this effect was placed on the bulletin board at work (Q 353 to 355). As a first aid attendant, she would assess a situation and decide if an ambulance should be called (Q 358 to 360). First aid equipment was kept in a large box in the lunchroom (Q 444 to 449). The third first aid attendant was named John (Q 451).

[92] Sukhwinder Kaur Dhillon was leaving work, walking towards her car in the parking lot, when she saw that there had been an accident (Q 464). The collision had already occurred, and she did not hear it (Q 467 to 468). No one told her there had been an accident (Q 478 to 480). She walked to the car and spoke with Sarbjit Dhillon, and then called Leo Van Noort to let him know the accident had occurred (Q 482). She subsequently called 911 (Q 483). In response to a question as to whether she called Leo Van Noort because he was her boss, she explained (Q 488 to 490):

> A No, I called him to come outside and help.
> Q Why did he need to come out and help?
> A I wasn't too sure what to do.
> Q And he was your boss?
> A Yes.

[93] Sukhwinder Kaur Dhillon asked Sarbjit Dhillon if she was all right. She indicated this was partly because she was a first aid attendant and also "as a human, too" (Q 505). When she was on the phone with 911, they were asking for directions and she passed the phone to Leo Van Noort (Q 515). She noted (Q 596 to 598):

> Q Do you recall feeling relieved that Leo arrived because he could take over things?
> A Yes
> Q And so you were happy to hand over the phone?
> A Yes.
> Q And sort of let him take charge of the situation, were you?
> A Yes.

(d) Plaintiff Leo Matthew Van Noort

[94] Leo Van Noort's full name was Leonardus Matheus Van Noort (Q 1). He was one of four siblings who oversaw the operation of Van Noort (Q 19). He was a director and shareholder of the company (Q 20 to 21). His area of responsibility was to manage the location which was

known as the Sumas or Abbotsford location (Q 22), commencing from 1986 (Q 26). He received a salary (Q 32), and received a T4 from Van Noort for his employment income (Q 35). He managed the daily operation of the farm (Q 37). He normally worked from 8:00 a.m. until 5:00, 5:30, or 6:00 p.m. (Q 70). He was normally the last person to leave (Q 72).

[95] John Huisman was the designated first-aid attendant (Q 80 to 81). In his examination for discovery, Leo Van Noort did not initially recall if Sukhwinder Dhillon and Gurvinder Lidder still had valid first-aid certificates at that time (Q 82 to 83) but confirmed this was the case upon reviewing an email regarding this (Q 84 to 89).

[96] Leo Van Noort received a telephone call in the office from Sukwinder Dhillon, advising him that Sarbjit Dhillon had been in an accident (Q 170 to 172, 184). This was a shared office, used by whoever needed to do computer work (Q 174). He had his own desk devoted to his use (Q 177). He was alone at the time (Q 181). He did not know why Sukwinder Dhillon had called him. He went to try to find John Huisman, who was the primary first aid attendant (Q 190). He checked the time clock first, and saw that John Huisman had already clocked out (Q 192). He then looked around the warehouse to determine if John Huisman was still on the premises (Q 194 to 198). He then received a second telephone call from Sukwinder Dhillon, inquiring whether anyone was coming (Q 206). Leo Van Noort proceeded to attend the scene of the accident (Q 212, 224). He went out by himself (Q 225). Leo Van Noort did not send anyone else out to the accident scene (Q 418). Upon his arrival, Sukwinder Dhillon was talking with 911 and she handed the phone to him (Q 268 to 272). The nature of the discussion was that they required an ambulance and a fire truck as Sarbjit Dhillon could not get out of her car (Q 273 to 274).

[97] Leo Van Noort made the observation, which he communicated to the persons around him, that they should not try to pull Sukwinder Dhillon out through the passenger side door because they did not know the extent of her injuries (Q 288 to 294). He communicated to the persons around him that it was his assessment that they could not move Sukwinder Dhillon (Q 363 to 365). Sukwinder Dhillon and Gurvinder Lidder were standing nearby (Q 451 to 452).

[98] Subsequent to the accident, Van Noort made improvements to its driveway including affixing a photocell spotlight to a power pole (Q 510 to 526), paving the driveway, and putting concrete blocks with reflective markers at the edges of the driveway (Q 538). Leo Van Noort was not opposed to the changes but did not feel they were necessary (Q 534, 552 to 553).

(e) Other Witnesses

[99] A signed statement was provided on January 4, 2011 by Amarjit Lidder. He was a Van Noort employee, and was not injured in the accident. He advised:

> I had just finished work for the day on December 14, 2100 at about 4:35 p.m. when I heard from other employees that an accident had just taken place in front of the nursery on South Parallel Road. It involved our employee Sabjit Dhillon and another vehicle. Several of us employees ran out to the scene immediately – including my brother Gurvinder, Leo Van Noort, Jaswinder Dhillon, his wife Kulvir Dhillon and Sukhwinder Dhillon…. Someone called 911 and we were standing facing her car for a few minutes. It was dark out and raining….

[100] A signed statement was provided on January 4, 2011 by Lovey Gill. Jaswinder Dhillon advised that Lovey Gill's full name was Gurjatinder Gill (Q 68 to 73). She was next in line behind Sarbjit Dhillon on the driveway, and had some contract workers in her van (Q 205 to 212). The contract workers stayed in the van (Q 212). In her statement, Lovey Gill advised:

> My mom owns a contract labour company and I work for her – periodically for Van Noort Nurseries on South Parallel Road in Abbotsford. I was working in this capacity on December 14, 2010 when an accident occurred right in front of the nursery on South Parallel Road. It was a little after 4:30pm (dark and raining) and everyone was going home….

[101] A signed statement was provided on January 7, 2011 by Gurvinder Lidder. He was employed by Van Noort as a field production supervisor. On December 14, 210, just after 4:30 p.m., he was in the parking lot getting ready to leave when he saw a number of employees run out from the warehouse to the road. He went to the road as well and saw that Sarbjit Dhillon had had an accident. He advised:

> Actually, when I first ran out to the scene the guy from the SUV was standing in the driveway and on his phone to the 911 people. He was trying to find the address for the nursery to tell the 911 operator and I helped him with that…. A young fellow in a pickup had been traveling eastbound on South Parallel Road and he came to a stop - partly on the shoulder – just before the Van Noort driveway. Another vehicle travelling westbound stopped before reaching Sa[r]bjit's car. The driver got out and identified herself as a nurse. She asked me if she could help and I said yes and pointed to Sa[r]bjit. She checked on Sa[r]bjit through the passenger door and told us that she was perfectly fine physically, just shaken up…. The nurse at that point felt that she couldn't be of any further assistance and so she left. During those few minutes after I got out to the scene I would say that 4 to 5 vehicles came by. All of them stopped and then slowly moved around the front end of Sa[r]bjit's vehicle (there still was some room available in the eastbound lane and the Van Noort Nursery driveway) and carried on their way.

[102] Gurvinder Lidder advised that he saw an oncoming pickup and he waved his arms for the driver to stop. When the vehicle did not stop, he yelled to warn the others and he jumped into the ditch on the Highway 1 side of South Parallel Road.

[103] The defendant John Russell Walsh gave evidence in an examination for discovery on May 15, 2014. He was a driver in the first accident on December 14, 2010 (Q 11 to 13). At the time of the accident, he was coming from his home (Q 33) and was going to BC Teen Challenge to return their trailer (Q 38) which he had borrowed for the day (Q 52, 62, 68 to 69). BC Teen Challenge was a registered charity which operated a drug and alcohol recovery centre (Q 38, 51, 76 to 77). He was driving eastbound on South Parallel Road (Q 87). The speed limit was 80 kilometres an hour (Q 209). He advised that he was driving at 60 kilometres per hour as he was in the process of preparing to exit South Parallel Road 400 metres beyond the accident point onto No. 4. Road (Q 214). Walsh advised that the South Parallel Road was built up for flood reasons (Q 225) to be at a higher level. He advised that there were farms and businesses all along the right hand side of South Parallel Road (Q 226). He advised that bushes prevented him from seeing Sarbjit

Dhillon's vehicle when it was pulling out (Q 236). After the accident, he used his cell phone to call 911 (Q 276). He asked Sarbjit Dhillon if she needed an ambulance and she said no (Q 286). Walsh was concerned about a possible gasoline explosion and advised Sarbjit Dhillon to leave her car (Q 288). He went back to his car, got flashlights, and started directing traffic (Q 288). Most of the traffic managed to slow down and slowly move around her car (Q 288). Two to four vehicles passed prior to the second accident (Q 289 to 290). Thirteen minutes elapsed between the two accidents (Q 292), based on his cell phone records (Q 293). Walsh advised that he did say to the people that were coming out this was not a safe thing to do and they needed to get off the road (Q 371).

[104] The defendant Craig Alan Lamson gave evidence in an examination for discovery on September 12, 2014. He was a driver involved in the second accident on December 15, 2010 (Q 5 to 7). The accident occurred at approximately 5:00 p.m. (Q 11 to 12). He was driving a Dodge Ram pickup 350 (Q 32). On the day of the accident, he was working for K & R Excavating operating an excavator (Q 242). He was being paid by the hour (Q 256). He was operating an excavator which was provided by Kelly Medonka (Q 252, 283 to 285). He worked from approximately 7:30 a.m. until 4:30 p.m. (Q 288).

[105] At the time of the accident, he was driving home after work (Q 267). He was familiar with the area, as he had lived there all his life (Q 326). He had worked for Flora Farms, a neighbouring farm, about 35 years earlier (Q 354 to 355). He was aware of the Van Noort nursery and the location of its driveway (Q 336 to 345). He did not see anyone with a flashlight prior to the accident, but did see someone walking around with a flashlight after the accident (Q 406 to 411). He saw a vehicle with its side markers on, which appeared to be parked off to the side of the road. He pulled into the middle of the road, and then realized there was a grey car across the road. He advised that the persons standing in front of the grey car, wearing dark clothing, camouflaged the car. Until they started moving he did not know the car was there. (Q 305) The speed limit in the area was 80 kilometres an hour (Q 580).

B. Law and Policy

[106] Policy at item #C3-14.00 is set out above. Policy at item #C3-17.00, "Deviations from Employment," further provided:

> **A. Introduction**
>
> Item C3-14.00, *Arising Out of and In the Course of the Employment*, is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of the employment. **In some circumstances, evidence supporting one component of the employment-connection test may be clear, while evidence supporting the other component is questionable, because the worker did something that was unauthorized by the employer, the employer condoned an unsafe practice, or some emergency forced the worker to act.**
>
> In considering whether an injury or death arose out of and in the course of the employment, all relevant factors are taken into consideration including the causative significance of the worker's conduct in the occurrence of the injury or death and **whether the worker's conduct was such a substantial deviation**

from the reasonable expectations of employment as to take the worker out of the course of the employment. An insubstantial deviation does not prevent an injury or death from being held to have arisen out of and in the course of the employment.

…

B. Instructions of the Employer

It is clearly impossible for an employer to lay down fixed rules covering every detail of a worker's employment activity, so workers may be uncertain as to the limits of their work. Carelessness or exercising bad judgment are not bars to compensation where it is reasonable that a worker would exercise some discretion as part of the worker's employment. Thus an act that is done in good faith for the purpose of the employer's business may form part of a worker's employment, even if not specifically authorized by the employer.

On the other hand, a worker's injury or death may not be considered to arise out of and in the course of the employment if the worker's act is specifically prohibited by an employer or is known or should reasonably have been known to the worker to be unauthorized, or if the worker has been previously warned against doing it. This is so even if the act could legitimately benefit the employer.

C. For Employer's Benefit

A worker's injury or death may be considered to arise out of and in the course of the employment if the worker is acting to protect the employer's interests during an emergency. This may include protecting the employer's property or protecting an individual who is associated with the employment, such as a fellow worker or customer.

A worker's injury or death is not likely to be considered to arise out of and in the course of the employment if the emergency action is that of a public spirited citizen, where the worker was doing no more than anyone would do, whether or not working for an employer at the time.

The distinction can perhaps best be illustrated by an example. A worker's injury or death may be considered to arise out of and in the course of the employment where the worker receives a telephone call at work indicating that there is a fire in a portion of the employer's premises. The worker races from the office and, due only to haste, trips over his or her own feet, falls, and injures an arm. There is no doubt that in light of the relationship of the emergency to the employment, this injury would be compensable.

On the other hand, a worker's injury or death is not likely to be considered to arise out of and in the course of the employment where the worker receives a telephone call to the effect that a family member has been seriously injured in an accident. Once again the worker races from the office and, due only to haste, falls and injures an arm. The reason for the worker's departure is unrelated to the employment and nothing about the employment contributed to the injury. The fact that the employment places a worker in a position to observe an emergency cannot be of itself a determinative factor in granting compensation.

[emphasis added]

[107] Policy at item #C3-19.00 also provided:

> **b. Emergency Response**
>
> An employment connection may also be found where, because of an emergency, a worker is directed or required by the employer to make a special trip to and from home and the employer's premises or to some other place where the job has to be done.
>
> In cases of an emergency, if an injury or death results primarily from the activity associated with the urgency of the preparation for travel, it may be considered to arise out of and in the course of the employment. This is an exception to the policy that workers who are employed to travel are generally considered to be in the course of the employment only from the time the worker commences travel on the public roadway.

[108] *Decision No. 252*, "Re Scope of Employment," 3 W.C.R. 147 (retired from policy), provides relevant background to the current policy at item #C3-17.00. *Decision No. 252* concerned a worker who was employed at a marine supply company located close to an airport. While in his office, the worker saw a light plane crash into the Fraser River. He decided to attempt to rescue the occupants of the plane, and took the shortest route to the scene of the accident. He was descending the fire escape when one of the rungs on this ladder gave way and he suffered serious injuries in falling to the ground. His claim was initially denied on the basis that his injuries were precipitated solely by his concern as a private citizen with the welfare of the crash victims and not anything related to his employment. On appeal, a board of review found the worker's claim was acceptable under the Act. The case was further reviewed by the commissioners of the Board. In *Decision No. 252*, the Board reasoned (at pages 149 to 150):

> The question posed in this claim is whether the injury suffered by the claimant, while clearly occurring in the course of his employment, also arose out of his employment.
>
> **As was pointed out by the adjudicator it has generally been felt that, unless the emergency was one related to danger to fellow employees or to the employer's premises, it could not be said that injuries suffered in response to an emergency arose out of the employment.** However, this claim brings to light an exception to this general proposition which was alluded to but not emphasized by the board of review. Specifically, the Commissioners take particular note of the question of the presence of a hazard on the premises of the employer.
>
> The situation can perhaps best be illustrated by an example. Suppose a worker receives a telephone call at work indicating that there is a fire in a portion of his employer's premises. He races from his office and, due to his haste, trips over his own feet, falls and injures his arm. There is no doubt that in light of the relationship of the emergency to his employment this injury would be compensable. In other words, it would be found to have arisen out of the employment.
>
> Suppose, then, that the same worker receives a telephone call to the effect that a member of his family has been seriously injured in an accident. Once again he

races from his office and, due only to his haste, falls and injures his arm. In these circumstances there is no relationship to his employment. The reason for his departure is totally unrelated to his employment and nothing about his employment contributed to his injury. However, if he were to race from his office and trip over a poorly laid carpet or, as in the case in question, fall as a result of a faulty ladder, the relationship to the employment would be present. In other words, the injury would not have occurred had it not been for a hazardous condition on the employment premises.

Therefore, while it is incorrect to say that compensation will be payable when a worker is injured while leaving the premises of his employer for whatever reason, **it is correct to say that any injury will be compensable which was suffered in any emergency and which also arose out of a hazard on the employment premises.**

The issue of "positional risk" raised by the board of review is one which the Commissioners also feel requires some comment. There is no doubt that certain employees, in the ordinary course of their work, are situated in an environment which by its very nature may become the site of an emergency situation. An excellent example of this would be all employees in the various aspects of the operation of an airport. The Commissioners are of the understanding that, for example, at Vancouver International Airport groups or "teams" are formed to act in cases of emergency. The members of these groups will be drawn from various aspects of the operation and the nature of their specific employment may be totally unrelated to emergency rescue. Baggage handlers or concession operators could not be considered to have as part of their employment the need to react in the event of a crash of an aircraft. Nevertheless, their very presence as employees at the airport places them in the position of being the logical choices to become members of such teams. As such, the Board would have no hesitation in considering the application of "positional risk" to those circumstances.

However, the Board is not satisfied that the doctrine is applicable to the circumstances as they have arisen in this claim. **The fact that the employment places one in a position to observe an emergency cannot be of itself a determinative factor in granting compensation.**

The Commissioners therefore conclude that the board of review decision should be implemented but that the basis for accepting any future claims of this kind should be the principles set out above and not those set out in the board of review decision.

[emphasis added]

C. Other WCAT Decisions

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

[110] The employer has cited several WCAT decisions concerning questions as to whether a worker's actions in rendering assistance to another person were those of a public-spirited citizen or Good Samaritan, or were actions which arose out of and in the course of the worker's employment.

[111] *WCAT-2013-01142* concerned a truck driver who heard from other truckers on his radio that there was a fellow trucker on the side of the road in apparent medical distress. The other truckers had called an ambulance but did not stop. The worker stopped his truck at the scene, and after exiting his truck slipped on some ice and hurt his back. The WCAT panel found the worker was acting in good faith for the purpose of the employer's business when he stopped to assist a third party:

> [34] On the facts before me, **I accept the worker's evidence that the employer required the worker to have first aid training. I also accept the worker's evidence that the employer's reputation was important.** I find that there is insufficient evidence to indicate that the employer specifically prohibited its drivers from stopping to render assistance to other drivers, or that the worker should have reasonably known not to stop. It seems reasonable, given the test in *Faryna v. Chorny* [1952] 2 D.L.R. 354 at 357, that if a worker has first aid training they use it when presented with an emergency situation. The worker's testimony with respect to the employer's views with respect to the importance of reputation further supports my conclusion in this regard.
>
> [35] I am satisfied based upon the evidence before me that this worker was acting in good faith for the purpose of the employer's business when he stopped to assist a third party, for these reasons.
>
> [emphasis added]

[112] The WCAT panel further commented:

> [37] I also find as a fact that the worker was not acting as a public spirited citizen and "doing no more than anyone would do" when he stopped to assist the third party. This is clear from the facts before me which indicate that other truckers saw the third party in distress and called 911, but did not stop to assist the third party. I find as a fact that the worker went beyond what anyone else would do when he stopped to assist the third party.

[113] I note, at this juncture, that going beyond what would be done by any public-spirited citizen would not necessarily be indicative of an employment connection. However, it might be so in the circumstances of a particular case where the employment (rather than personal valour) was a factor in the undertaking of such additional measures.

[114] *WCAT-2010-00197* concerned a supermarket cashier who suffered an elbow injury while attempting to assist an unconscious person in the parking lot. In that case, a co-worker noticed the man slumped over in his car in the parking lot. The co-worker knew that the worker had received first aid training. The co-worker returned to the store and asked the worker for assistance. The worker exited the store and went to the man's vehicle in the parking lot. She attempted to rouse the man but was unsuccessful. The co-worker telephoned 911, and relayed to the worker the 911 operator's instructions to pull the man out of the vehicle immediately. The worker was unsuccessful in her attempts to remove the man from his vehicle. The co-worker returned to the store to get the assistant manager, and when they returned to the parking lot the

paramedics had arrived. Following their arrival, the paramedics pulled the man from the vehicle. At the request of the paramedics, the worker performed CPR on the man while the paramedics administered oxygen and prepared to use a defibrillator. The worker's claim was initially denied on the basis the worker had not been acting to protect a fellow worker or the employer's property.

[115] *WCAT-2010-00197* cited the reasoning set out in *Appeal Division*[4] *Decision #2003-0544*, which concerned a worker who was employed as a concession supervisor at a bingo hall. While he was about to start his lunch break, the worker noticed several elderly ladies standing just outside the door near the wheelchair ramp. He saw they were attempting to assist an elderly woman who had fallen. The worker went out to investigate and recognized the woman as a regular customer. He assisted the worker to her feet and carried her to her car next to the wheelchair ramp. The worker suffered a back strain as a result of his actions in assisting the customer. The Appeal Division panel cited the policy at item #16.50 of the *Rehabilitation Services and Claims Manual, Volume I* (RSCM I), and reasoned:

> This is the policy which seems most applicable to the situation in this case but it is not clear that it excludes the possibility of compensation where a worker is injured while assisting one of his employer's customers. **In other words, it is not clear that compensation is payable only where a worker injures himself while protecting a co-worker or the employer's property. Certainly, these are obvious examples of situations where there is a close connection between the employer and the person or item rescued and consequently, interactions between the worker and those items or persons would come within the course of employment.** A customer, however, although not a co-worker, is not entirely a stranger to the employer and the worker has a relationship to that person through his employment.
>
> …
>
> The evidence is that the injury occurred on the employer's premises and it occurred during a time period for which the employee was paid. Both of these factors speak to whether the injury occurred in the course of employment. I also consider that it occurred in the process of doing something for the benefit of the employer. In this regard, **I consider that it was to the employer's benefit for the worker to assist a customer in distress. Failing to do so would have left a very poor impression of the employer and its staff and, quite conceivably, the injured woman and others observing the situation could have decided to find another bingo hall in light of such indifference to the distress of a customer. So, at a minimum the worker's actions may be viewed as protecting the good will of the employer's customers**.
>
> **This is not as strong an employment connection as might exist in some other circumstances. Certainly, it is not as strong a connection as would exist if the worker had responded to a co-worker in distress, where the employer has an obligation to respond.** But, I do consider that there was a sufficient relationship between the employer and the elderly woman, by virtue of

[4] A former division of the Board.

her being [a] customer, to bring the emergency interaction between the worker and this elderly woman within the scope of his employment.

The issue of relationship to employment in an emergency situation is also discussed in Larson's Workers' Compensation, Desk Edition. Chapter 8 which is entitled "Acts in Emergency" sets out essentially the same rule as is found in item #15.60 of the policy but does so in terms of the applicable principles as opposed to providing specific examples. Section 28.01[1] describes the general rule as follows:

> Under familiar doctrines in the law relating to emergencies generally, **the scope of an employee's employment is impliedly extended in an emergency to include the performance of any act designed to save life or property in which the employer has an interest**.

This text reflects American jurisprudence and caution must be exercised in applying principles established in other jurisdictions to the interpretation of law and policy in this province. But, it is useful to consider whether other jurisdictions have similar rules and how those are interpreted when a situation does not fall directly within the circumstances described in the policy in the Manual. **The principle described in Larson's text is much the same as is derived from considering the policies at items #14.00 and #16.50 together**.

Given all of the above, I find that the back injury sustained by the worker when he assisted the customer arose out of and in the course of his employment.

[emphasis added]

[116] *WCAT-2010-00197* reasoned, in relation to the supermarket cashier:

> [31] I do not consider that the worker abandoned her employment by going to the parking lot to assist a customer in a medical emergency. I note, in this regard, that the assistant manager also came to the parking lot with the co-worker, shortly after the worker attempted to assist the customer. I would similarly not consider that the assistant manager abandoned his employment by coming out to the parking lot in connection with the customer's medical emergency.
>
> [32] In summary, the decisions of the entitlement officer and the review officer were reasonable, in the context of the literal wording of the policy at item #16.50. However, upon reading the policy at item #16.50 together with the other policies at items #14.00 and #16.40, I consider that the policy at item #16.50 is better interpreted as providing examples of two situations in which employment-connectedness may be found. These examples need not be read as being intended to be exhaustive. An assessment may be undertaken of other factors to ascertain the extent to which the worker's actions were connected to the worker's employment (consistent with the general guidance at item #14.00). In this case, the worker's actions which resulted in her injury occurred during a time period in which she was being paid, were undertaken in response to a request for assistance from a co-worker, and involved the provision of assistance

> to a known customer of the employer in the parking lot near the entrance to the employer's supermarket. I find that there was a sufficient degree of employment-connectedness to support a conclusion that the worker's actions in assisting the customer arose out of and in the course of her employment. Accordingly, I allow the worker's appeal.

[117] *WCAT-2011-01790* concerned a worker who sustained a back injury while intervening in a dispute between two co-workers. The WCAT panel found that the worker's injury arose out of and in the course of his employment, as he was injured while acting to protect fellow workers during an emergency. The WCAT panel commented:

> [165] The employer raised concerns as to whether it might have been more appropriate for the worker to have acted as "traffic control" rather than to have intervened between two co-workers.
>
> [166] It may indeed have been more appropriate; however, I consider the circumstances were such that the worker did not have a lengthy period of time during which to reflect with any degree of nicety on what might have been the most appropriate response. Further, that he did not act as "traffic control" does not provide a basis to disbelieve him when he indicated his primary concern was traffic or moving equipment in the vicinity of the co-workers. The evidence does not persuade me there was some other reason for the worker having intervened between the two co-workers other than his desire to reduce their risk of injury.

[118] *WCAT-2004-01349-AD* concerned a worker who was employed as a merchandise clerk. He suffered an injury while assisting a security guard who was tackling a shoplifter in *the* employer's parking lot. The WCAT panel found the worker's injury arose out of and in the course of his employment. The WCAT panel reasoned:

> It is clear from the file evidence that the worker went to the aid of the security guard, who was trying to control the suspect. Technically, he may have been performing unauthorized action. However, the reason for taking that action is critical in this case. The worker's representative argues that when the branch manager told the worker that the security guard "was in trouble with the suspect", she in fact instructed the worker to assist the security guard. The employer's representative argues the manager did not give any direction to the worker. Although the word "direction" does not appear in the manager's letter, from a careful reading of the letter, it becomes apparent that the manager was essentially implying that the worker should go to assist the security guard. Also, the manager, being in a position of authority, even a hint from her meant a lot to the worker. Furthermore, the worker viewed the security guard as a fellow employee and went out to help him. I accept the worker's statement, given the circumstances surrounding this case. In my view, it is likely the worker would not have gone out if the suspect had not assaulted the manager, and the manager had not told the worker that the security guard was in trouble. While the evidence in this regard is not as clear as it ought to have been, I am not satisfied that the

worker's unauthorized act was of such a nature as to remove him from his employment.

D. Analysis

[119] I find that at the time of the second accident on December 14, 2010, the plaintiffs Kulvir Dhillon, Jaswinder Dhillon, and Sukhwinder Kaur Dhillon, were each workers employed by Van Noort. There was an ongoing employment relationship.

[120] Leo Van Noort was a director and shareholder of the employer. Policy at item AP1-1-4 of the *Assessment Manual* provided:

> **(c) Principals of corporations or similar entities**
>
> As the incorporated entity is considered the employer, a director, shareholder or other principal of the company who is active in the operation of the company is generally considered to be a worker under the *Act*.

[121] Leo Van Noort acknowledges that he was a worker pursuant to this policy. I find that the plaintiff Leo Van Noort was also a worker at the time of the December 14, 2010 accidents.

[122] At issue is whether the plaintiffs' attendance at the scene of the first accident, and any injury suffered in relation to the occurrence of the second accident, arose out of and in the course of their employment.

[123] Kulvir Dhillon and Jaswinder Dhillon submit that their injuries did not arise out of and in the course of their employment. Their injuries occurred outside of the employer's premises; their injuries did not occur in the course of doing something for the benefit of the employer; their actions were not taken in response to instructions from Leo Van Noort; they were not using equipment or materials supplied by the employer; their injuries did not occur while they were in the course of receiving payment or other consideration; the risk to which they were exposed was not the same as the risk they were exposed to in the normal course of production[5]; their injuries occurred outside a time period for which they were being paid; and their injuries were not caused by some activity of the employer or a co-worker.

[124] Jaswinder Dhillon submits that he had completed his shift and was not being paid at the time of the accidents. Following the first accident, he exited the Van Noort premises to attend the accident scene as a Good Samaritan. He remained at the accident scene up to the time of the second accident. He did not provide any first aid to Sarbjit Dhillon.

[125] Sukhwinder Dillon submits that she had completed her shift and was not being paid at the time the accidents occurred. Following the first accident, she exited the Van Noort premises to attend

[5] Prior to July 1, 2010, the policy at RSCM II item #14.00 set out ten factors ((i) and (j) had been added effective June 1, 2004). One factor, (f), concerning "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", was deleted when the new Chapter 3 was adopted effective July 1, 2010.

the accident scene as a Good Samaritan. She did not bring any first aid equipment with her, nor did she provide any first aid to Sarbjit Dhillon.

[126] The City of Abbotsford submits that the nurse who stopped at the accident scene to check on the condition of Sarbjit Dhillon, and then moved on and left the scene (presumably once she was satisfied that Sarbjit Dhillon was not in any significant distress) is an example of a public-spirited citizen. The City of Abbotsford notes that Kulvir Dhillon, Jaswinder Singh Dhillon, Sukhwinder Dillon, and Leo Van Noort did more in that they stayed at the scene to be with Sarbjit Dhillon and to provide whatever assistance they could. In this way, they went beyond what a normal public-spirited citizen would do. The inference to be drawn is that they would be staying at the scene until emergency responders arrived, and that they were doing so because of their connection with Sarbjit Dhillon as one of their co-workers (an employee of Van Noort).

[127] The plaintiff Leo Van Noort submits that many of the parties were more than just co-workers. When Sukhwinder Dhillon called for assistance, Jaswinder Dhillon would have heard this as a call for help from his daughter-in-law and not just a co-worker. Kulvir Dhillon accompanied her husband, Jaswinder Dhillon, and Amarjit Dhillon accompanied his sister, Kulvir Dhillon.

[128] The plaintiff Leo Van Noort submits that he was not on Van Noort's premises when the second accident occurred. He was not acting for the benefit of the employer's business, and he was not performing the duties of his job. He was not at the scene of the accident as Sarbjit Dhillon's boss, but rather, just as a person helping (as stated in his examination for discovery). He had no job duties to complete in the public roadway. He did not bring any equipment or first aid supplies with him. He was not a first aid attendant and as a worker was not responsible for overseeing safety issues. Assisting injured workers and ensuring their safety was not part of his job duties as a grower and manager of growing operations. When he received the phone call from Sukhwinder Dhillon asking him to come out to the scene, he did not respond as a manager but as a friend.

[129] Van Noort submits that the actions of Sukhwinder Dhillon, Kulvir Dhillon, Jaswinder Dhillon, and Leo Van Noort can all be fairly characterized as the actions of individuals responding to a workplace emergency. Contact was established with a superior (Leo Van Noort). Sukhwinder Dhillon called the office twice. She called her boss before she called 911, which was not the conduct of an ordinary member of the public responding to an accident.

[130] Van Noort further submits that Leo Van Noort would have continued to work (in the office) if the first accident had not occurred. Upon learning of the accident, Leo Van Noort took steps to locate designated first aid personnel. At the time the second accident occurred, he was helping Sarbjit Dhillon, a fellow worker, in the aftermath of the first accident. He spoke with a 911 operator, and tried to prevent further injuries to Sarbjit Dhillon by advising others not to try to extract her out of the vehicle by the passenger door. His emergency response actions included staying at the accident scene to wait for an ambulance. His actions were directed towards helping an employee who reported to him. At the time of his injury, he was responding to the predicament of a co-worker and taking steps to enhance her safety. He effectively took charge of the situation by taking over the 911 call from Sukhwinder Dhillon, and by directing those at the scene to refrain from extracting Sarbjit Dhillon from her vehicle. The directions of Leo Van Noort not to move Sarbjit Dhillon were followed, and the directions of John Walsh (that Sarbjit

Dhillon exit her vehicle, and that the other persons leave the road) were ignored. Leo Van Noort was still working and being paid at the time he sustained his injuries.

[131] I have considered Kulvir Dhillon's circumstances with reference to the nine factors set out in item #C3-14.00. Three factors indicate some degree of employment-connection. These are (2) For Employer's Benefit; (7) Activity of the Employer, a Fellow Employee or the Worker; and (9) Supervision. Arguably, her actions of running to the accident scene were for the benefit of the employer, as being intended to protect an individual who was associated with the employment (a fellow worker). This was not a situation of attending at the scene of an accident involving a stranger. Her evidence is that she was in the same room with the manager, Leo Van Noort, when he received the call about the accident, and left the room together with him. While Leo Van Noort did not ask her to go to the scene of the accident, he also went to the scene. His presence at the scene may be viewed as involving the presence of a supervisor. In addition, it appears that Kulvir Dhillon's claim to have suffered a low back injury due to jumping into the roadside ditch to avoid being struck may have involved an action of the employer or fellow employee (based on her initial statement that Leo Van Noort pushed her into the ditch to save her from being struck). While the evidence does not clearly establish that Kulvir Dhillon had punched out prior to leaving the office, I will assume that she did so and that she was no longer being paid after her shift ended at 4:30 p.m.

[132] Jaswinder Dhillon's circumstances were similar to those of his wife, Kulvir Dhillon. His evidence was that he was also in the office and overheard Leo Van Noort speaking on the telephone when Leo Van Noort received the call concerning the accident. He also followed Leo Van Noort when he left the room and went downstairs. Jaswinder Dhillon's evidence was that Leo Van Noort went first to the accident scene and they went to the accident scene after putting their lunch bags in their car.

[133] Sukhwinder Kaur Dhillon was in the parking lot when she observed that an accident had occurred on South Parallel Road. She was one of Van Noort's first aid attendants at that time. Her evidence was that her attendance at the scene of the accident was partly due to the fact she was a first aid attendant. She was uncertain what to do when she arrived at the scene, and called Leo Van Noort to come outside to help.

[134] Leo Van Noort received a telephone call from Sukhwinder Kaur Dhillon, notifying him of the occurrence of the accident. His first action was to attempt to locate the primary first aid attendant, John Huisman. His second action (following a second telephone call from Sukhwinder Kaur Dhillon) was to attend the scene of the accident. He provided directions to the 911 operator. He also assessed the situation and concluded that they should not attempt to pull Sukwinder Dhillon out through the passenger side door because they did not know the extent of her injuries. He advised the persons around him of his assessment. Given his role as a manager/owner, I consider that this would have been interpreted by the Van Noort employees as an instruction not to move Sukwinder Dhillon. I consider that Leo Van Noort's attendance at the accident scene in front of the Van Noort premises and involving a Van Noort employee, and his provision of instructions to other Van Noort employees, were related to his employment.

[135] The policy at item #C3-17.00 provides:

> It is clearly impossible for an employer to lay down fixed rules covering every detail of a worker's employment activity, so workers may be uncertain as to the limits of their work. Carelessness or exercising bad judgment are not bars to compensation where it is reasonable that a worker would exercise some discretion as part of the worker's employment. **Thus an act that is done in good faith for the purpose of the employer's business may form part of a worker's employment, even if not specifically authorized by the employer.**
>
> [emphasis added]

[136] The policy at item #C3-17.00 provides that a worker's injury or death may be considered to arise out of and in the course of the employment if the worker is acting to protect the employer's interests during an emergency, and that this may include protecting the employer's property or protecting an individual who is associated with the employment, such as a fellow worker or customer. This is consistent with the former policy set out in *Decision No. 252* which indicated that if an emergency was one related to danger to fellow employees or to the employer's premises, it could be said that injuries suffered in response to the emergency arose out of the employment.

[137] Accordingly, an injury suffered in an accident while acting in an emergency may be covered for workers' compensation purposes if the emergency situation involves a danger to a fellow employee and the worker is acting to protect the co-worker. It may also be covered even where the emergency involves a stranger, if the injury resulted from a hazard of the employer's premises. Either factor may provide sufficient evidence of employment-connection to warrant a conclusion that the injury was one which arose out of and in the course of the employment.

[138] Upon consideration of the foregoing, I find that the actions of Kulvir Dhillon and Jaswinder Dhillon in going from the employer's office to the scene of the accident arose out of and in the course of their employment. Even if their shifts had ended and they were no longer being paid, this did not have the effect of terminating their coverage for workers' compensation purposes as such coverage would normally extend until the point of their departure from the employer's premises to begin their commute to their home. Even though they had left the employer's premises, Kulvir Dhillon and Jaswinder Dhillon were going to assist a co-worker, rather than a stranger, who had been involved in an accident in front of the employer's premises. They moved off the employer's premises for this temporary purpose in an emergency, prior to beginning their travel home. I find that their attendance at the scene of the accident was for the purpose of assisting and protecting a co-worker (Sarbjit Dhillon). Accordingly, I consider that any injury they suffered as a result of attending at the scene of the accident arose out of and in the course of their employment, as they were acting to protect the employer's interests during an emergency (which includes protecting an individual who is associated with the employment, such as a fellow worker or customer), pursuant to the policy at item #C3-17.00.

[139] I find that the conduct of Kulvir Dhillon and Jaswinder Dhillon did not involve such a substantial deviation from the reasonable expectations of employment as to take either of them outside the course of the employment. As stated in policy, an insubstantial deviation does not prevent an injury or death from being held to have arisen out of and in the course of the employment.

[140] I find, therefore, that any injury suffered by Kulvir Dhillon or Jaswinder Dhillon at the time of the second accident arose out of and in the course of their employment.

[141] The reasoning set out above in relation to Kulvir Dhillon or Jaswinder Dhillon similarly applies to the other plaintiffs, Sukhwinder Kaur Dhillon and Leo Van Noort. However, for both Sukhwinder Kaur Dhillon and Leo Van Noort, there is additional evidence that their actions were connected to their employment. Sukhwinder Kaur Dhillon acknowledged that one of the reasons for her attendance at the accident scene was that she was a designated first aid attendant. In addition, her actions in making two phone calls to Leo Van Noort, as the manager in charge, concerning the occurrence of an accident involving a Van Noort employee, in front of the employer's premises, are indicative of an employment connection.

[142] I find that Leo Van Noort's actions, in attempting to locate the primary first aid attendant, in attending to the scene of the accident in front of the Van Noort premises and involving a Van Noort employee, as well in conducting an assessment of the situation and providing direction to those at the scene that they should not attempt to pull Sarbjit Dhillon out through the passenger side door because they did not know the extent of her injuries, were employment-connected inasmuch as they involved assisting and protecting a Van Noort employee.

[143] In summary, I find that at the time of the second accident on December 14, 2010, the four plaintiffs, Kulvir Dhillon, Jaswinder Dhillon, Sukhwinder Kaur Dhillon, and Leo Van Noort, were workers within the meaning of Part 1 of the Act. I further find that any injuries suffered by the four plaintiffs, Kulvir Dhillon, Jaswinder Dhillon, Sukhwinder Kaur Dhillon, and Leo Van Noort, in the second accident on December 14, 2010, arose out of and in the course of their employment.

[144] It necessarily follows that any action or conduct of Leo Van Noort (as a servant or agent of Van Noort), at the time the cause of action arose, December 14, 2010, which caused any 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.

3. Status of the Defendants

(a) Defendants Craig Alan Lamson, John Russell Walsh, and Harbans Singh Dhillon

[145] Counsel for Sarbjit Dhillon notes that "for clarity if needed" she takes the position that John Walsh was not a worker or in the course of employment at the time of the first accident, and that Craig Lamson was not a worker or in the course of employment at the time of the second accident.

[146] Determinations have not been requested concerning the status of the defendants John Russell Walsh, Craig Alan Lamson, and Harbans Singh Dhillon. In the event that determinations are required of their status, a request may be made for a supplemental certificate.

(b) Status of the Defendant, Sarbjit Kaur Dhillon / Sarabjit Kaur Dhillon

[147] In the first part of this decision, I found that any injuries suffered by Sarbjit Dhillon in the two accidents on December 14, 2010 did not arise out of and in the course of her employment. The accidents occurred after she had left the employer's premises, and had commenced her travel

to her home which was in the nature of commuting. It necessarily follows that any action or conduct of the defendant, Sarbjit Dhillon, which caused the alleged breach(es) of duty of care in relation to the December 14, 2010 accidents, did not arise out of and in the course of her employment within the scope of Part 1 of the Act.

4. Status of the Third Parties

[148] Counsel for the defendants Sarbjit Dhillon and Harbans Singh Dhillon notes that the City of Abbotsford and Her Majesty the Queen in the Right of the Province of British Columbia have both sought declarations that they were employers at the time of the accident. The defendants Dhillon submit that if these third parties wish to have that determination, they ought to make separate applications to WCAT.

[149] Section 257 of the Act provides that where an action is commenced based on a disability caused by occupational disease, a personal injury, or death, the court or a party to the action may request WCAT to make a determination and to certify that determination to the court. Item 18.5.2. of WCAT's *Manual of Rules of Practice and Procedure* provides:

> The applicant **and respondent** must identify the determinations requested, set out the factual background, and provide all the evidence and argument necessary to WCAT's consideration of the issues.
>
> [emphasis added]

[150] The reference to both the applicant and the respondent implicitly indicates that it is open to parties other than the applicant to identify additional issues on which determinations are requested. Requiring separate applications in order to address additional issues beyond those raised in the original application would have the effect of adding further delay. WCAT's practice is to permit any party to a section 257 application to identify additional issues for determination (while ensuring that fair procedures are followed so that the parties have the opportunity to provide submissions in relation to any such additional issues). I find it appropriate to proceed to address the status of these third parties, as requested.

(a) Status of the Third Party, City of Abbotsford

[151] The third party, City of Abbotsford, requests determinations that it was an employer, and that the conduct on the part of the City which is alleged to have caused the breach of duty of care arose out of and in the course of the City's operations.

[152] By memorandum dated July 27, 2015, a research and evaluation analyst, Audit and Assessment Department of the Board, advised that the City of Abbotsford, account number 536065, was registered with the Board at the time of the December 14, 2010 accidents.

[153] The City of Abbotsford has admitted that South Parallel Road is a road that falls within its jurisdiction. The City submits that the allegations made with respect to the fault on the part of the City all relate to matters that fall within the City's operations relating to both construction and maintenance activities. The acts or omissions alleged as against the City would all fall within the employment duties of employees or officers of the City.

[154] I agree with the City's submissions concerning its status. Any actions taken by the City (including any failure to take an action) would necessarily have involved the performance by its employees of their work duties and functions.

[155] I find that at the time of the December 14, 2010 accidents, the City of Abbotsford was an employer engaged in an industry within the meaning of Part 1 of the Act. I further find that any action or conduct of the City of Abbotsford, or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act.

(b) Status of the Third Party, Her Majesty the Queen in the Right of the Province of British Columbia

[156] The third party, Her Majesty the Queen in the Right of the Province of British Columbia (the Province), requests a determination that it was an employer. The Province states that that its involvement was through officers and employees of the Ministry of Highways and the modern Ministry of Transportation and Infrastructure, in designing and building Highway 1 and South Parallel Road, and in recent years, in managing the maintenance of Highway 1. I interpret this latter reference as implicitly requesting a determination regarding the action or conduct of the Province, or its servant or agent.

[157] By memorandum dated July 27, 2015, the Audit and Assessment Department analyst advised that there was no registration with the Board in the name of Her Majesty the Queen in the Right of the Province of British Columbia. The analyst cited section 29 of the *Interpretation Act*, RSBC1996, c. 238, which provides the following definitions:

> **"government"** or **"government of British Columbia"** means Her Majesty in right of British Columbia;
>
> **"Her Majesty"**, **"His Majesty"**, **"the Queen"**, **"the King"**, **"the Crown"** or **"the Sovereign"** means the Sovereign of the United Kingdom, Canada, and Her other realms and territories, and Head of the Commonwealth;
>
> **"Province"** means the Province of British Columbia or Her Majesty in right of British Columbia as the context requires;

[158] The analyst further cited section 7 of the *Crown Proceeding Act*, RSBC 1996, c. 89, which provides:

> In proceedings under this Act, the government must be designated "Her Majesty the Queen in right of the Province of British Columbia".

[159] Section 37 of the Act establishes various classes of industry for the purpose of assessment under the Act in order to maintain the accident fund. Section 37 specifies that the Government of British Columbia is included in Class 11.

[160] The analyst commented that it would appear that the Government of British Columbia is another name for Her Majesty the Queen in right of the Province of British Columbia. The analyst advised that the Government of British Columbia was registered with the Board at the time of the December 14, 2010 accidents.

[161] The Province provided the following chronology:

1963	Construction of Highway 1 near Abbotsford
1987	Construction and paving of South Parallel Road near 38724 South Parallel Road at the request of the City, at the Province's expense; City agrees to maintain South Parallel Road
1987-2016	Management of Highway 1 by Province; management and maintenance of South Parallel Road by the City

[162] I agree with the Province's submissions concerning its status. Any actions taken by the Province (including any failure to take actions) would have involved the performance by its employees of their work duties and functions.

[163] I find that at the time of the December 14, 2010 accidents, the Government of British Columbia was an employer engaged in an industry within the meaning of Part 1 of the Act. I further find that any action or conduct of the Government of British Columbia, or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act.

(c) Status of the Third Party, M. Van Noort & Sons Bulb Co. Ltd.

[164] Van Noort requests a determination that at the time of the accidents, it was an employer engaged in an industry within the meaning of Part 1 of the Act. Van Noort further requests a determination that any alleged action or conduct of Van Noort, or its employees, which caused the alleged breach of duty of care, arose out of and in the course of its operations or employment.

[165] Van Noort submits that there are no allegations against it which are independent of its business operations.

[166] By memorandum dated July 27, 2015, the Audit and Assessment Department analyst advised that Van Noort, account number 251689, was registered with the Board at the time of the December 14, 2010 accidents.

[167] I agree with Van Noort's submissions concerning its status. Any actions taken by Van Noort (including any failure to take actions) would have involved the performance by its employees (including Leo Van Noort) of their work duties and functions.

[168] I find that at the time of the December 14, 2010 accidents, Van Noort was an employer engaged in an industry within the meaning of Part 1 of the Act. I further find that any action or conduct of Van Noort, or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act.

Conclusion

[169] I find that at the time the cause of action arose on December 14, 2010:

(a) the plaintiff, Sarbjit Dhillon, was a worker within the meaning of Part 1 of the Act;

(b) any injuries suffered by the plaintiff, Sarbjit Dhillon, did not arise out of and in the course of her employment within the scope of Part 1 of the Act;

(c) the plaintiff, Kulvir Dhillon, was a worker within the meaning of Part 1 of the Act;

(d) any injuries suffered by the plaintiff, Kulvir Dhillon, arose out of and in the course of her employment within the scope of Part 1 of the Act;

(e) the plaintiff, Jaswinder Dhillon, was a worker within the meaning of Part 1 of the Act;

(f) any injuries suffered by the plaintiff, Jaswinder Dhillon, arose out of and in the course of his employment within the scope of Part 1 of the Act;

(g) the plaintiff, Sukhwinder Kaur Dhillon, was a worker within the meaning of Part 1 of the Act;

(h) any injuries suffered by the plaintiff, Sukhwinder Kaur Dhillon, arose out of and in the course of her employment within the scope of Part 1 of the Act;

(i) the plaintiff, Leo Matthew Van Noort, was a worker within the meaning of Part 1 of the Act;

(j) any injuries suffered by the plaintiff, Leo Matthew Van Noort, arose out of and in the course of his employment within the scope of Part 1 of the Act;

(k) the defendant, Sarabjit Kaur Dhillon, was a worker within the meaning of Part 1 of the Act;

(l) any action or conduct of the defendant, Sarabjit Kaur Dhillon, which caused the alleged breach of duty of care, did not arise out of and in the course of her employment within the scope of Part 1 of the Act;

(m) the third party, City of Abbotsford, was an employer engaged in an industry within the meaning of Part 1 of the Act;

(n) any action or conduct of the third party, City of Abbotsford, or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act;

(o) the third party, Her Majesty the Queen in the Right of the Province of British Columbia (Government of British Columbia), was an employer engaged in an industry within the meaning of Part 1 of the Act;

(p) any action or conduct of the third party, Her Majesty the Queen in the Right of the Province of British Columbia (Government of British Columbia), or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act;

(q) the third party, M. Van Noort & Sons Bulb Co. Ltd., was an employer engaged in an industry within the meaning of Part 1 of the Act; and,

(r) any action or conduct of the third party, M. Van Noort & Sons Bulb Co. Ltd., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act.

Herb Morton
Vice Chair

NO. M157235
VANCOUVER 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:

KULVIR DHILLON

PLAINTIFF

AND:

CRAIG ALAN LAMSON, JOHN RUSSELL WALSH, SARABJIT DHILLON
and HARBANS SINGH DHILLON

DEFENDANTS

AND:

CITY OF ABBOTSFORD, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and M. VAN NOORT & SONS BULB CO. LTD.

THIRD PARTIES

C E R T I F I C A T E

UPON APPLICATION of the Third Party, M. VAN NOORT & SONS BULB CO. LTD., 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, December 14, 2010:

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

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

3. The Defendant, SARABJIT DHILLON, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, SARABJIT DHILLON, which caused the alleged breach of duty of care, did not arise out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act.*

5. The Third Party, CITY OF ABBOTSFORD, was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Third Party, CITY OF ABBOTSFORD, or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

7. The Third Party, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (Government of British Columbia), was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

8. Any action or conduct of the Third Party, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (Government of British Columbia), or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

9. The Third Party, M. VAN NOORT & SONS BULB CO. LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

10. Any action or conduct of the Third Party, M. VAN NOORT & SONS BULB CO. LTD., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

CERTIFIED this 11th day of May, 2017.

_____

Herb Morton
VICE CHAIR

NO. M157235
VANCOUVER 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:

KULVIR DHILLON

PLAINTIFF

AND:

CRAIG ALAN LAMSON, JOHN RUSSELL WALSH, SARABJIT DHILLON
and HARBANS SINGH DHILLON

DEFENDANTS

AND:

CITY OF ABBOTSFORD, HER MAJESTY THE QUEEN IN THE RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA and M. VAN NOORT & SONS BULB CO. LTD.

THIRD PARTIES

SECTION 257 CERTIFICATE

WORKERS' COMPENSATION APPEAL TRIBUNAL
150-4600 Jacombs Road
Richmond, BC V6V 3B1
FAX 604-664-7898
TELEPHONE 604-664-7800

A1603328

NO. M155917
VANCOUVER 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:

JASWINDER DHILLON

PLAINTIFF

AND:

CRAIG ALAN LAMSON, JOHN RUSSELL WALSH, SARABJIT DHILLON AND HARBANS SINGH DHILLON

DEFENDANTS

CITY OF ABBOTSFORD, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and M. VAN NOORT & SONS BULB CO. LTD.

THIRD PARTIES

C E R T I F I C A T E

UPON APPLICATION of the Third Party, M. VAN NOORT & SONS BULB CO. LTD., 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, December 14, 2010:

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

2. Any injuries suffered by the Plaintiff, JASWINDER DHILLON, arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, SARABJIT DHILLON, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, SARABJIT DHILLON, which caused the alleged breach of duty of care, did not arise out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act.*

5. The Third Party, CITY OF ABBOTSFORD, was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Third Party, CITY OF ABBOTSFORD, or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

7. The Third Party, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (Government of British Columbia), was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

8. Any action or conduct of the Third Party, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (Government of British Columbia), or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

9. The Third Party, M. VAN NOORT & SONS BULB CO. LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

10. Any action or conduct of the Third Party, M. VAN NOORT & SONS BULB CO. LTD., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

CERTIFIED this 11th day of May, 2017.

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Herb Morton
Vice Chair

NO. M155917
VANCOUVER 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:

JASWINDER DHILLON

PLAINTIFF

AND:

CRAIG ALAN LAMSON, JOHN RUSSELL WALSH, SARABJIT DHILLON AND HARBANS SINGH DHILLON

DEFENDANTS

AND:

CITY OF ABBOTSFORD, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and M. VAN NOORT & SONS BULB CO. LTD.

THIRD PARTIES

SECTION 257 CERTIFICATE

WORKERS' COMPENSATION APPEAL TRIBUNAL
150-4600 Jacombs Road
Richmond, BC V6V 3B1
FAX 604-664-7898
TELEPHONE 604-664-7800

A1603347

NO. M148222
VANCOUVER 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:

SARABJIT KAUR DHILLON

PLAINTIFF

AND:

CRAIG A. LAMSON also known as CRAIG ALAN LAMSON,
JOHN R. WALSH also known as JOHN RUSSELL WALSH
and BC TEEN CHALLENGE

DEFENDANTS

AND:

CITY OF ABBOTSFORD, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and M. VAN NOORT & SONS BULB CO. LTD.

THIRD PARTIES

C E R T I F I C A T E

UPON APPLICATION of the Third Party, M. VAN NOORT & SONS BULB CO. LTD., 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, December 14, 2010:

1. The Plaintiff, SARABJIT KAUR DHILLON, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. Any injuries suffered by the Plaintiff, SARABJIT KAUR DHILLON, did not arise out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Third Party, CITY OF ABBOTSFORD, was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Third Party, CITY OF ABBOTSFORD, or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

5. The Third Party, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (Government of British Columbia), was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Third Party, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (Government of British Columbia), or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

7. The Third Party, M. VAN NOORT & SONS BULB CO. LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

8. Any action or conduct of the Third Party, M. VAN NOORT & SONS BULB CO. LTD., or its servant or agent (including Leo Van Noort), which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

CERTIFIED this 11th day of May, 2017.

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Herb Morton
Vice Chair

NO. M148222
VANCOUVER 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:

SARABJIT KAUR DHILLON

PLAINTIFF

AND:

CRAIG A. LAMSON also known as CRAIG ALAN LAMSON, JOHN R. WALSH also known as JOHN RUSSELL WALSH and BC TEEN CHALLENGE

DEFENDANTS

AND:

CITY OF ABBOTSFORD, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and M. VAN NOORT & SONS BULB CO. LTD.

THIRD PARTIES

SECTION 257 CERTIFICATE

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NO. M112365
VANCOUVER 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:

SUKHWINDER KAUR DHILLON

PLAINTIFF

AND:

SARBJIT KAUR DHILLON, HARBANS SINGH DHILLON, JOHN RUSSELL WALSH, BC TEEN CHALLENGE and CRAIG ALAN LAMSON

DEFENDANTS

CITY OF ABBOTSFORD, HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and M. VAN NOORT & SONS BULB CO. LTD.

THIRD PARTIES

C E R T I F I C A T E

UPON APPLICATION of the Third Party, M. VAN NOORT & SONS BULB CO. LTD., 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, December 14, 2010:

1. The Plaintiff, SUKHWINDER KAUR DHILLON, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. Any injuries suffered by the Plaintiff, SUKHWINDER KAUR DHILLON, arose out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, SARBJIT KAUR DHILLON, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, SARBJIT KAUR DHILLON, which caused the alleged breach of duty of care, did not arise out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act.*

5. The Third Party, CITY OF ABBOTSFORD, was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Third Party, CITY OF ABBOTSFORD, or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

7. The Third Party, HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (Government of British Columbia), was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

8. Any action or conduct of the Third Party, HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (Government of British Columbia), or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

9. The Third Party, M. VAN NOORT & SONS BULB CO. LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

10. Any action or conduct of the Third Party, M. VAN NOORT & SONS BULB CO. LTD., or its servant or agent (including Leo Van Noort), which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

CERTIFIED this 11th day of May, 2017.

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Herb Morton
Vice Chair

NO. M112365
VANCOUVER 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:

SUKHWINDER KAUR DHILLON

PLAINTIFF

AND:

SARBJIT KAUR DHILLON, HARBANS SINGH DHILLON, JOHN RUSSELL WALSH,
BC TEEN CHALLENGE and CRAIG ALAN LAMSON

DEFENDANTS

AND:

CITY OF ABBOTSFORD, HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
and M. VAN NOORT & SONS BULB CO. LTD.

THIRD PARTIES

SECTION 257 CERTIFICATE

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NO. M148223
VANCOUVER 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:

LEO MATTHEW VAN NOORT

PLAINTIFF

AND:

CRAIG ALAN LAMSON, SARABJIT KAUR DHILLON, HARBENS SINGH DHILLON, JOHN RUSSELL WALSH, and BC TEEN CHALLENGE

DEFENDANTS

AND:

CITY OF ABBOTSFORD, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and M. VAN NOORT & SONS BULB CO. LTD.

THIRD PARTIES

C E R T I F I C A T E

UPON APPLICATION of the Third Party, M. VAN NOORT & SONS BULB CO. LTD., 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, December 14, 2010:

1. The Plaintiff, LEO MATTHEW VAN NOORT, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. Any injuries suffered by the Plaintiff, LEO MATTHEW VAN NOORT, arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, SARABJIT KAUR DHILLON, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the Defendant, SARABJIT KAUR DHILLON, which caused the alleged breach of duty of care, did not arise out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act.*

5. The Third Party, CITY OF ABBOTSFORD, was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Third Party, CITY OF ABBOTSFORD, or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

7. The Third Party, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (Government of British Columbia), was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

8. Any action or conduct of the Third Party, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (Government of British Columbia), or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

9. The Third Party, M. VAN NOORT & SONS BULB CO. LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

10. Any action or conduct of the Third Party, M. VAN NOORT & SONS BULB CO. LTD., or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the *Workers Compensation Act*.

CERTIFIED this 11th day of May, 2017.

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Herb Morton
Vice Chair

NO. M148223
VANCOUVER 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:

LEO MATTHEW VAN NOORT

PLAINTIFF

AND:

CRAIG ALAN LAMSON, SARABJIT KAUR DHILLON, HARBENS SINGH DHILLON, JOHN RUSSELL WALSH, and BC TEEN CHALLENGE

DEFENDANTS

AND:

CITY OF ABBOTSFORD, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and M. VAN NOORT & SONS BULB CO. LTD.

THIRD PARTIES

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