

Appeal Tribunal of BC – WCATBC;) A. Lokan, Counsel for Workplace
Workers Compensation Board of) Safety and Insurance Appeals
Alberta – AWCB; Appeals Commission) Tribunal
of Alberta – AAC; Saskatchewan)
Workers Compensation Board –)
SWCB; Saskatchewan Board of)
Appeal Tribunal – SBAT; Workers)
Compensation Board of Manitoba –)
WCBM; The Appeal Commission of)
Manitoba – ACM; Workplace Safety &)
Insurance Board – WSIB, aka *Workers*)
Compensation Board of Ontario;)
Workplace Safety & Insurance)
Appeals Tribunal – WSIAT, aka)
Workers Compensation Board of)
Ontario; Commission des norms, de)
l’équite, de la sante de la securite du)
travail – CNESST; WorksafeNB, aka)
Workers Compensation Board of New)
Brunswick; New Brunswick Worker’s)
Compensation Appeals Tribunal –)
NBWCAT; Workers Compensation)
Board of PEI – WCBPEI; Workers’)
Compensation Appeal Tribunal of PEI)
– WCATPEI; Workers’ Compensation)
Board of Nova Scotia – WCBNS;)
Workers’ Compensation Appeal)
Tribunal of Nova Scotia – WCATNS;)
Workplace Health, Safety and)
Compensation Commission –)
WHSCC, aka *Workers Compensation*)
Board of Newfoundland & Labrador;)
Workplace Health, Safety &)
Compensation Review Division –)
WHSCRD; Yukon Workers’)
Compensation Health and Safety)
Board – YWCHSB, aka *Workers*)
Compensation Board of Yukon)
Territory; Yukon Workers’)
Compensation Appeal Tribunal –)

alternative, Mr. Taylor seeks an order permitting the lead plaintiffs of the proposed class action to represent the class members, which have yet to be defined.

[2] For their part, the defendants, the WSIB and Workplace Safety and Insurance Appeals Tribunal (“WSIAT”) bring a motion for an order dismissing the plaintiffs’ action for their failure to comply with *Rule 15* of the *Rules*, and in the alternative, an order dismissing or staying the action if within 30 days of the order of this court, Mr. Taylor does not pay the legal costs owed to the WSIB and WSIAT as ordered in previous litigation and in this proceeding.

[3] At a case management conference held on April 17, 2024, the plaintiffs were invited to bring a motion to request the appointment of legal counsel on their behalf to argue the defendants’ *Rule 15* motion, but they have not done so.

Nature of the Claim

[4] This putative class proceeding was commenced on August 16, 2021. Mr. Taylor is described as “the main contact for the Lead Plaintiffs”, and “the Lead Plaintiffs’ self-representative representative” in the statement of claim. Mr. Taylor lists himself as the author of the statement of claim.

[5] The plaintiffs’ claim challenges the workers’ compensation regimes in 13 different provinces and territories, seeking relief pursuant to s.24 of the *Canadian*

Charter of Rights and Freedoms (the “*Charter*”), s.7 part 1 of the *Constitution Act*, 1982 being Schedule B, and s.52 of the *Canada Act (UK)*, 1982, c. 11a. The statement of claim alleges amongst other matters that the defendants’ use of deeming statutory provisions, paid doctors, pre-existing conditions, intentional systemic delays, and unlawful use of age infringe the plaintiffs’ rights under the *Charter*, and specifically, ss.2(b), 7, 12, 14, and 15.

[6] Apart from seeking a declaration that the current workers compensation regimes are unconstitutional, and the regimes should be converted to a no-fault system, the statement of claim seeks damages of \$45 million.

[7] No steps have been taken by the plaintiffs to advance the claim since it was issued some three and a half years ago.

Rule 15.01(1) and the Jurisprudence

[8] *Rule 15.01(1)* mandates that a party who acts in a representative capacity shall be represented by a lawyer. Representative plaintiffs in a class action are no exception to the requirement.

[9] Cullity J. in *Fenn v. Ontario*, 2004 CanLII 28170 (ONSC) (“*Fenn*”), made clear that the requirement for representative plaintiffs in class proceedings to be represented by counsel is mandatory.

[10] Cullity J. in *Fenn* explained the policy rationale for *Rule 15* in this way at paras. 10 and 11:

The application of rule 15.01 is not confined to class proceedings...With class proceedings, however, the general policy reflected in the rule is reinforced by the need to ensure that a representative plaintiff does not consider his or her own interests to the exclusion of the interests of members of a class. The important and special role of class counsel in such proceedings was recognised in *Haney Iron Works v. Manufacturers Life Insurance Company* (1988), 1988 CanLII 3085 (BC SC), 169 D.L.R. (4th) 565 (B.C.S.C.), at para 30 where the court declined to attribute much weight to the representative plaintiff's limited knowledge of factors relevant to the court's approval of a settlement. Brenner J. stated:

While a court must be satisfied that the intended plaintiff is an appropriate individual to be court approved as a representative, the reality is that these actions are to a large extent driven by counsel and class counsel are the individuals who are in a position to provide the necessary evidentiary support for certification and settlement applications. (See, also Eizenga, Peerless and Wright, *Class Actions Law and Practice*, sections 3.82 – 3.84).

This is also illustrated by the cases in which the competence, and resources, of counsel have been recognized as relevant to the choice of a representative plaintiff: *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 (CanLII), [2001] 2 S.C.R. 534, at page 555; *Vitapharm v. Hoffman – La Roche*, [2000] O.J. No. 4594 (S.C.J.); *Ricardo v. Air Transat A T Inc.*, [2002] O.J. No. 2122 (S.C.J.).

[11] The two rationales examined by the court in *Fenn* – that counsel is bound by their fiduciary duty to act in the interests of the entire prospective class and that counsel plays an integral role in navigating the complexities of class proceedings

and sustaining the litigation – are the touchstone policy considerations that ground *Rule* 15.01(1).

[12] One procedural complexity in class proceedings highlighted by Cullity J. in *Fenn* is that the named plaintiff(s) must have regard to the interests of all putative class members and should take direction from the court prior to certification when their interests may be adversely affected by steps to be taken in the proceedings, or otherwise by the conduct of any of the parties (at para. 18). The only way of ensuring that the interests of all proposed class members are protected is through the engagement of legal counsel.

[13] In *Logan v. Canada (Minister of Health)*, 2003 CanLII 20308, Winkler J. (as he then was) stated that a proposed class proceeding “originates from the time of the issuance of the claim or notice of actions. It is not an individual action that metamorphosizes to a class proceeding when certified” (at para. 13).

[14] Winkler J.’s finding, in conjunction with Cullity J.’s reasoning in *Fenn*, leaves no doubt that legal counsel is required as soon as the proceeding is commenced.

[15] This court’s finding in *Fenn*, has been applied in other provinces. For example, in *Peets v. Alberta*, 2022 ABQB 482, a decision of the Alberta Queen’s

Bench, the court held that “self-represented litigants may not initiate a class action proceeding”. In *Sandhu v. Household Realty Corp.*, 2011 BCSC 897 (“*Sandhu*”), the British Columbia Supreme Court held that the findings in *Fenn* with respect to the requirement for counsel in class proceedings apply equally in that province.

[16] Burnyeat J. in *Sandhu* commented that there “might be cases where a non-lawyer or the plaintiff themselves could be suitable representatives” for class proceedings, but it is doubtful “whether any lay person could adequately or competently conduct proceedings...” which involve complex issues that require “considerable legal ability to identify the true issue, gather the necessary evidence and marshal the evidence to the issues” (at paras. 17-19).

[17] Cullity J. similarly commented in *Fenn* that while there may be cases where compliance with *Rule* 15.01(1) might be dispensed with in class proceedings, the case before him was not one such case. He found that “apart from anything else, the state of the plaintiff’s pleading cries out for professional advice and guidance” (at para. 19).

[18] I reach the same conclusion as did Cullity J. and Burnyeat J. in the matter before them – this case is not one where compliance with *Rule* 15.01(1) ought to be waived notwithstanding the discretion afforded to me pursuant to *Rule* 2.03. I come to this conclusion not only because the lead plaintiffs have proffered no

evidentiary or legal basis for me to exercise my discretion in favour of their representing the putative class members but also because no lay person owes the fiduciary duty of counsel to the group of plaintiffs they purport to represent. Furthermore, no lay person's conduct is governed by the rules of an overseeing regulatory body and no lay person would be insured against claims that might be made against them for damages in negligence in the conduct of the proceeding (see: *Gitxsan House of YAL v. British Columbia (Minister of Forests)*, 2005 BCSC 994, at para. 92). In addition, I reach this conclusion on account of the number of *Charter* issues raised in the statement of claim, the complexity of the issues, and the deficiencies in the pleadings.

[19] I comment on the deficiencies for purposes only of illustrating the need for the intervention of counsel and without coming to any conclusions with respect to their consequences.

[20] For example, the statement of claim lacks specificity. It alleges the defendants' use of deeming, paid doctors, pre-existing conditions, intentional systemic delays, and unlawful use of age, are infringements of the plaintiffs' *Charter* rights. What the statement of claim does not do, however, is set out the elements of such claims against the defendants or any particulars to support the asserted claims. The Supreme Court in *Danson v. Ontario (Attorney General)*,

1990 CanLII 93, made very clear that *Charter* cases are not to be decided without an appropriate factual context; generalizations as to perceived unfairness and *Charter* breaches do not suffice.

[21] Therefore, for these reasons, I find, as Cullity J. did in *Fenn*, that in this instance the members of the proposed class require and are entitled to professional advice and guidance.

Lead Plaintiff – Mr. Taylor

[22] While it may be argued that Mr. Taylor, as a paralegal and the author of the statement of claim, is in a position to provide the required advice to which the proposed class members are entitled, I have concluded that he is unsuited to the task of bringing an orderly and responsible approach to the litigation.

[23] I reach this conclusion for a number of reasons.

[24] First, this putative class proceeding raises a number of issues that have been unsuccessfully litigated by Mr. Taylor in previous actions. To a large extent the only difference between the proceeding before me and earlier litigation initiated by Mr. Taylor is that in this proposed class action, Mr. Taylor has joined other parties and expanded the defendants to include not only the WSIB and WSIAT, but all such boards and tribunals across Canada.

[25] As early as 2014, Mr. Taylor raised before this province's courts the issue of the constitutionality of the actions of the WSIB and WSIAT as well as the legislative provisions in the *Workers' Compensation Act*, R.S.O. 1990, C.WII (and the *Workplace Safety and Insurance Act*, 1997 S.O. 1997, c.16 Sched. A ("*WSIA*") as infringements of ss. 7, 12 and 15 of the *Charter*.

[26] These arguments were unsuccessfully raised by Mr. Taylor by way of notice of constitutional question in action No. CV-14-794 between he, as plaintiff, and the WSIB and WSIAT, as defendants. The action was dismissed with costs by order of Price J., dated February 22, 2017. Mr. Taylor's appeal was also dismissed by the Court of Appeal with costs on February 6, 2018. The constitutional issues raised by Mr. Taylor in the 2014 Superior Court proceeding were ultimately resolved by the Supreme Court of Canada which denied Mr. Taylor's leave to appeal application on April 16, 2020.

[27] In the meantime, in Superior Court action No. 81/18 between Mr. Taylor, as plaintiff, the WSIB, as defendant, Mr. Taylor brought an urgent application for judicial review alleging that the WSIB had violated his *Charter* rights by requesting a medical report in support of his continued use of prescription drugs.

[28] In this same application, along with alleging an infringement of his section 7 *Charter* rights, Mr. Taylor sought an order that the WSIB and WSIAT hold

hearings and render decisions within a prescribed time. As the author of the statement of claim in this proceeding, Mr. Taylor, on behalf of the putative class, also seeks a speedy appeals process and to have decisions rendered within one week.

[29] Peterson J. dismissed Mr. Taylor's application with costs on March 20, 2018. The Court of Appeal subsequently dismissed Mr. Taylor's appeal of the decision of this court on September 21, 2018 as did the Supreme Court of Canada deny Mr. Taylor's leave application on December 20, 2010.

[30] In a second urgent judicial review application before this court, issued on March 13, 2020 in action No. CV-20-110, Mr. Taylor alleged, other matters, that the WSIAT had breached ss. 2, 7, 12 and 15 of the *Charter*. Although this judicial review application was abandoned by Mr. Taylor, soon thereafter he commenced a separate application in Divisional Court file No. 381/20 against his former employer, Pivotal Integrated HR Solutions, to have the decisions of the WSIAT which were the subject of the March, 2020 application reversed. The application against Mr. Taylor's former employer prompted the WSIAT to move to be added as a party. Ultimately the matter came before Favreau J. (as she then was) who observed that Mr. Taylor had raised the same *Charter* issues in a number of other proceedings (see: *Taylor v. Pivotal Integrated HR Solutions*, 2021 ONSC 7388

(“*Pivotal*”) at para. 15) before dismissing Mr. Taylor’s motion for interim relief and notice of constitutional question.

[31] While the parties to this class action are not the same as those in the prior litigation initiated by Mr. Taylor, by raising many of the same issues that have been raised in the past, the lead plaintiffs, and Mr. Taylor in particular, are attempting to circumvent previous decisions and to mount a collateral attack on them. This motivation of the lead plaintiffs militates against granting them, and Mr. Taylor in particular, the liberty of representing the putative class members.

[32] Secondly, it does not escape me that two motions instituted by Mr. Taylor in this proceeding have been dismissed as an abuse of process. Specifically, in an urgent motion against the WSIB, Mr. Taylor sought to have the WSIB found in contempt for having made a decision adverse to his interests regarding future healthcare entitlement. This court found that Mr. Taylor’s motion was fundamentally flawed because there was no order compelling the WSIB to pay healthcare benefits, and in the end, the motion was an abuse of process (see: *Toombs v. Worksafe BC*, 2024 ONSC 1532, at para. 20).

[33] This conduct on the part of Mr. Taylor causes me to pause and conclude that Mr. Taylor has a propensity to initiate abusive litigation. The proposed class members deserve better from their litigation representative.

[34] It is also relevant to this analysis that Mr. Taylor has failed to satisfy the outstanding cost orders of previous litigation, some of which I have referred to above, as well as the cost orders made in this proceeding. The undisputed amount owed to the WSIAT is \$15,750 and the evidence is that a like amount is owed the WSIB.

[35] This court stated in *Gyimah v. Reda*, 2016 ONSC 5550 13, at para. 49 that “a litigant, having asked the Court for its help, must follow its direction. The cost order is an order, not an invitation”. This principle applies equally to self-represented parties. “[R]espect and support for self-represented litigants does not mean that the interests of adverse parties to a fair process, or the court’s due process requirements, are to be ignored” (see: *Taylor v. Pivotal*, 2020 ONSC 5500, at para. 3). While self-represented litigants may be afforded latitude, deference and assistance, there are limits. One such limit is adherence to court orders and cost orders are no exception.

[36] Because there is no evidence to suggest that Mr. Taylor has made any effort to settle the outstanding cost awards against him, some of which have been outstanding for over ten years, I conclude that for this reason and the other reasons detailed above, that the only named plaintiff with any ability to protect the interests of all putative class members, navigate the procedural complexities of the

prevailing legislation and meet the requirements for certification is an unsuitable candidate to undertake this responsibility.

[37] In sum, I conclude that compliance with *Rule* 15.01(1) is mandatory based on the facts of this case.

[38] I also find, as Cullity J. found in *Fenn*, that where *Rule* 15.01(1) has been infringed, the court has jurisdiction to dismiss the action or stay the proceedings pending compliance with the *Rule*, and subsequently, to dismiss the action if the plaintiffs fail to retain counsel (see: *Fenn*, at para. 19).

Section 176 of the Workplace Safety and Insurance Act

[39] In the event of my reaching the conclusion that I have, the lead plaintiffs seek an order that *amicus curiae* be appointed to represent the proposed class members and that the WSIB pay the costs of *amicus curiae*, and in the alternative, that the WSIB be responsible to fund the legal costs of the proposed class members' lawyer of choice. The lead plaintiffs propose that the WSIB fund these costs from the insurance fund.

[40] The lead plaintiffs seek this alternative relief pursuant to *Rule* 37. While I find that I have no authority to grant this relief pursuant to *Rule* 37, I conclude that I do have the inherent jurisdiction to consider the relief sought. I also find in the

case of the appointment of *amicus curiae*, *Rule 13* grants me the required authority and s.131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 affords me the jurisdiction to make an interim cost award.

[41] During the course of the lead plaintiffs' submissions, it became clear that they look to s.176 of the *WSIA* to fund the legal expenses they seek. Section 176 of the *WSIA* continues the office of the worker adviser and the office of the employer adviser from predecessor legislation. The respective functions of these two offices are to educate, advise and represent workers who are not members of a trade union and their survivors and to educate, advise and represent primarily those employers that have fewer than 100 employees. I find that there is no statutory authority in s. 176 of the *WSIA*, or in any other provision in the subject legislation, to fund litigation against the WSIB or any third party.

[42] The extent of the WSIB's obligation pursuant to s.176 is limited to funding the offices of the worker adviser and employer adviser. To suggest that s.176 of the *WSIA* supports payment of legal costs would be an untenable interpretation of the legislation and I reject that notion.

[43] Having reached this conclusion, the question remains whether in the circumstances of this case should *amicus curiae* be appointed to represent the

proposed plaintiff class, or in the further alternative, is the proposed class entitled to an interim advance cost award as the lead plaintiffs submit in their factum?

Appointment of *Amicus Curiae*

[44] In *Pivotal*, Mr. Taylor requested the appointment of *amicus curiae*. In dismissing this relief, Favreau J. succinctly described the circumstances in which *amicus* may be appropriate. At para. 19, Favreau J. stated:

The Court can appoint *amicus* in circumstances where it needs assistance with the presentation of a case; the purpose of *amicus* is not to help a self-represented litigant but to assist the court and is only to be ordered in exceptional circumstances where assistance is “essential to the adequate discharge of the judicial functions in the case” *Morwald – Benevides v. Benevides* 2019 ONCA 1023, [*Benevides*], at para. 27.

[45] Although the Court of Appeal in *Benevides* considered the issue of *amicus curiae* within the context of a family proceeding, I find, just as the Favreau J. found in *Pivotal*, that the Court’s guidance is instructive in any proceeding. In *Benevides*, the Court of Appeal emphasized that:

- i. The assistance of *amicus* must be essential to the adequate discharge of the judicial functions in the case. This is a circumstantial determination within the trial judge’s discretion.

- ii. While *amicus* may assist in the presentation of evidence, *amicus* cannot control a party's litigation strategy, and because *amicus* does not represent a party, the party may not discharge *amicus*.
- iii. The authority to appoint *amicus* should be used sparingly and with caution, in response to specific and exceptional circumstances.
- iv. That one or both parties are self-represented is not a sufficient reason to appoint *amicus*, in itself, nor is it sufficient based on the ideas that since one party is represented, *amicus* is necessary to level the playing field. (at paras. 27-32).

[46] In considering the direction provided by the Court of Appeal in *Benevides*, I decline to exercise my discretion to appoint *amicus curiae*. This case is not one of exceptional circumstances in which *amicus* is essential to adequately discharge the functions of the court at this stage of the proceedings. Equally important from the point of view of the lead plaintiffs, the appointment of *amicus* would not provide them with the legal assistance that they are seeking. This is because *amicus* does

not represent a party. Simply put, the role of *amicus* is not to help the self-represented party but rather to give assistance to the court.

[47] Having reached this conclusion, I do acknowledge that *amicus curiae* has been appointed in class action proceedings. The Court of Appeal in *Smith Estate v. National Money Mary Company*, 2011 ONCA 233 (“*Smith Estate*”), emphasized the benefits of appointing *amicus* to assist the court in the approval of settlements and class counsel fees. The Court of Appeal noted that the appointment of *amicus* is particularly relevant where the issues to be determined proceed on a consensual basis as is typically the case with respect to settlement and fee approval motions (at para. 23). The appointment of *amicus* in such instance is important to ensure that the disposition is fair and reasonable.

[48] Following the Court of Appeal’s direction in *Smith Estate*, *amicus curiae* has been appointed in a number of cases by this court and the Federal Court to offer assistance to the court in determining the appropriateness of a class action settlement and counsel fees. See for example, *Waldman v. Thomson Reuters Canada Limited*, 2016 ONSC 2622 (Div. Ct); *Bozsik v. Livingston*, 2019 ONSC 2268; and *McLean v. Canada* 2019 FC 1077. I also recognize that *amicus* has been appointed in other instances in class action proceedings such as to assist the court determine the appropriateness of a litigation funding agreement (see:

Difederico v. Amazon.com, Inc., 2021 FC 311) as well as to help the court with respect to issues regarding a claims process (see: *Fontaine v. Canada (AG)* 2021 ONSC 2921).

[49] The one common thread in all of the class action cases where *amicus* has been appointed is that the role of *amicus* to assist the court. *Amicus curiae* is not appointed to represent the interests of the putative class members at this early stage of the proceedings.

Interim Advance Cost Award

[50] The discretionary power to grant interim advance cost awards in appropriate cases has been recognized in Canada for some time (see: *Organ v. Barnett* (1992), 1992 CanLII ONSC 7433) (“*Organ*”). An interim cost award is designed to forestall “the danger that a meritorious legal argument will be prevented from going forward merely because a party lacks the financial resources to proceed” (see: *British Columbia (Minter of Forests) v. Okanagan Indian Band*, 2003 SCC 71 (“*Okanagan*”), at para. 31). It is also well settled, however, that the discretionary power to award interim costs is “limited to very exceptional cases and ought to be narrowly applied” (see: *Organ* at para. 215).

[51] With these considerations in mind, the Supreme Court in *Okanagan* stipulated these conditions that must be met to justify an interim advance cost award. These conditions are:

1. The party seeking interim costs genuinely cannot afford to pay for the litigation, and no other realistic option exists for bringing the issues to trial – in short, the litigation could be unable to proceed if the order were not made.
2. The claim to be adjudicated is *prima facie* meritorious; that is, the claim is at least of sufficient merit that it is contrary to the interests of justice for the opportunity to pursue the case to be forfeited just because the litigant lacks financial means.
3. The issues raised transcend the individual interests of the particular litigant, are of public importance, and have not been resolved in a previous case (at para. 40).

[52] Mr. Taylor submits that the first condition particularized by the Supreme Court is irrelevant to this proceeding because pursuant to the prevailing workers compensation legislation, the financial status of the injured worker is not a factor

in awarding compensation. Apart from the clear direction from the Supreme Court, I cannot accept Mr. Taylor's submission. I find considerations for workers' compensation entitlement under the provincial legislation regimes are very different from entitlement for an interim advance cost award. The difference is one of apples and oranges.

[53] I also find that for purposes of this motion, I need not address the second and third conditions as stated in *Okanagan* as a prerequisite to the exercise of my discretion in favour of an advance cost award. I have reached this conclusion because the lead plaintiffs have failed to satisfy the first branch of the test.

[54] There is no evidence in the record of the financial means of any of the lead plaintiffs, including Mr. Taylor. Additionally, apart from not being satisfied that the lead plaintiffs cannot self fund the litigation, there is insufficient evidence in the record for me to conclude that no other realistic options are available to the lead plaintiffs to retain counsel. Attempts by certain lead plaintiffs to retain counsel to advance their individual claims against various worker compensation boards are irrelevant. Similarly, evidence of being referred by one law firm to another firm which may be interested in acting as class counsel without anything further is not enough.

[55] As an aside, I would comment that unlike in *Okanagan*, where the Supreme Court found based on the facts of that case, a contingency fee arrangement was unrealistic, such a fee arrangement may be a “realistic option” in the context of the proposed class proceeding before me. Indeed, contingency fee retainers are the norm in class proceedings.

[56] In any event, because on the record before me the lead plaintiffs have failed to satisfy the first prong of the *Okanagan* test, I decline to exercise my discretion in favour of granting the lead plaintiffs an interim advance cost award.

Disposition

[57] For all of the above reasons, the following order will issue:

1. This action is stayed pending the lead plaintiffs’ compliance with *Rule 15.01(1)*.
2. In the event that the lead plaintiffs have not retained counsel within 120 days of the date of this Decision, the defendants are at liberty to bring a motion to have these proceedings dismissed.

3. Mr. Taylor's motion is dismissed.

Costs

[58] I encourage the parties to agree on the issue of costs. If, however, the parties are not able to agree, I will consider written cost submissions. The part(ies) seeking costs will have fourteen days from the date of this Decision to provide their submissions and the responding part(ies) will have fourteen days to respond from the date of receipt of the opposing part(ies') submissions. There will be no right of reply. All submissions are to be a maximum of three double spaced pages excluding offers to settle, cost outlines and authorities. If no submissions are received within this time frame, the parties will be deemed to have settled the issue of costs as between themselves. If I do not receive responding submissions within the specified time frame, I will consider that the responding part(ies) do not wish to make submissions and decide the matter on the basis of the material that I have. Submissions are to be sent to my judicial assistants at HamiltonSopinka.SCJJA@ontario.ca

Justice M. Valente

Released: March 5, 2025

CITATION: Toombs et al. v. Worksafe BC et al., 2025 ONSC 1379
COURT FILE NO.: CV-21-76781
DATE: 2025-03-05

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

GREGORY TOOMBS, NORM RYDER,
PATRICK JARDINE, DAVID HAMILTON,
CHRISTOPHER SUMMERS, TERRY
FEDORAK, ROD BARRETT, JENNIFER
BAKER, BRUCE JUNKER, BLAINE
GILBERTSON, KEN GRYSIUK, RICHARD
LAST, DARREN SCHLAMB, CHRIS
LAWSON, SARAH LAWSON, EUGENE
LAHO, NORMAN TRAVERSY, DAVID
CURTIS, PATRICIA O'CONNOR,
GIUSEPPE MARCELLINO, JAMES
ROLLO, ANDRE MARTIN, ARMAND
DURELLE, GILLES MARTIN, GORDON
WAYNNE SKINNER, AND PAUL TAYLOR

Lead Plaintiffs
(Moving/Responding Parties)

- and -

WorkSafeBC, aka *Workers Compensation Board of British Columbia*; Workers' Compensation Appeal Tribunal of BC – WCATBC; Workers Compensation Board of Alberta – AWCB; Appeals Commission of Alberta – AAC; Saskatchewan Workers Compensation Board – SWCB; Saskatchewan Board of Appeal Tribunal – SBAT; Workers Compensation Board of

Manitoba – WCBM; The Appeal Commission of Manitoba – ACM; Workplace Safety & Insurance Board – WSIB, aka *Workers Compensation Board of Ontario*; Workplace Safety & Insurance Appeals Tribunal – WSIAT, aka *Workers Compensation Board of Ontario*; Commission des normes, de l'équité, de la santé de la sécurité du travail – CNESST; WorksafeNB, aka *Workers Compensation Board of New Brunswick*; New Brunswick Worker's Compensation Appeals Tribunal – NBWCAT; Workers Compensation Board of PEI – WCBPEI; Workers' Compensation Appeal Tribunal of PEI – WCATPEI; Workers' Compensation Board of Nova Scotia – WCBNS; Workers' Compensation Appeal Tribunal of Nova Scotia – WCATNS; Workplace Health, Safety and Compensation Commission – WHSCC, aka *Workers Compensation Board of Newfoundland & Labrador*; Workplace Health, Safety & Compensation Review Division – WHSCRD; Yukon Workers' Compensation Health and Safety Board – YWCHSB, aka *Workers Compensation Board of Yukon Territory*; Yukon Workers' Compensation Appeal Tribunal – YWCAT; Northwest Territories Workers' Safety and Compensation Commission – NWTWSCC, aka *Workers Compensation Board of Northwest & Nunavut Territories*; AND the NWT and Nunavut Workers' Compensation Appeals Tribunal – NWTNWCAT

Defendants
(Workplace Safety and Insurance Appeals
Tribunal – Responding/Moving Parties)

REASONS FOR MOTION

Justice Valente

Released: March 5, 2025