Court Quashes WSIAT Stress Decision and Allows Constructive Dismissal Case to Proceed



Historically, workers' compensation law placed a highly restrictive definition on traumatic mental stress injuries, which meant as a practical matter very few stress claims would ever be allowed. However, successful litigation advanced primarily by workers under the equality provisions of the *Charter of Rights and Freedoms* altered the legal landscape with respect to the treatment of stress claims by Ontario's Workplace Safety and Insurance Board ("WSIB"). Subsequent legislative and WSIB policy changes made it significantly easier for workers to get entitlement to WSIB benefits for mental stress injuries under the Workplace Safety and Insurance Act ("WSIA").

However, this expansion of entitlement opened the backdoor for employers to argue that civil lawsuits relating to work related stress should be punted to the workers' compensation system. The "historic tradeoff" that underpins that system in every province, is that workers give up their right to sue for damages for personal injury in exchange for access to an employer funded benefit scheme.

The legal question that arises from the broadening entitlement to WSIB benefits for stress is: to what extent are employees barred from pursuing stress claims in court? The Workplace Safety and Insurance Appeals Tribunal ("WSIAT") is the legal body in Ontario that determines whether the worker has a "right to sue" when a legal claim is potentially barred by the WSIA.

WSIAT Decision

In **Morningstar v. Hospitality Fallsview Holdings Inc.**, WSIAT found that actions for damages flowing from a workplace mental stress injury are barred by WSIA, when those damages flow from a work injury falling within the scope of WSIA (even when the remedies sought are different from those compensated under WSIA).

In **Morningstar**, the worker resigned from her employment and claimed damages for constructive dismissal due to the harassment, bullying and abuse she endured during the course of her employment, which harassment resulted in mental distress and the creation of a poisoned work environment. In response, the employer filed an application with WSIAT seeking a declaration that the worker's civil action against it was statute-barred by WSIA.

The term “constructive dismissal” describes situations where the employer has not directly fired the employee, but instead taken actions which fundamentally undermine the employment contract to the point that the employee has been forced to quit. Some examples of situations in which a constructive dismissal may occur, include where an employee’s wages have been reduced, an employee has been demoted, relocated, or had their hours of work substantially changed.

WSIAT found that the circumstances leading to the worker’s claim for constructive dismissal, in essence, constituted an injury that occurred within the scope of the Act, which was amended to provide for entitlement for chronic mental stress arising out of, and in the course of, the worker’s employment.

The circumstances of this case were exceptional – the mental distress she suffered at the hands of her co-workers and management was to such a degree that the worker was forced to take a sick leave and ultimately to resign. WSIAT held that if proven, these facts were inextricably linked to a claim for mental stress injury that would be governed by the terms of WSIA.

In response, the worker argued that no accident had occurred within the meaning of WSIA. However, WSIAT rejected this argument, noting that “accident” is defined broadly and inclusively in the legislation, and includes a willful and intentional act that is not the act of the worker, a chance event occasioned by a physical or natural cause, and a disablement arising out of and in the course of employment.

It is also worth noting that although the worker’s civil pleadings included a claim for punitive, aggravated and moral damages, which damages are not available within the scheme of the WSIA, this did not prevent WSIAT from finding that the worker’s workplace injury fell within the scope of the WSIA. All the damages flowed directly from the harassment and bullying alleged in the workplace, as well as the employer’s response to these allegations.

Divisional Court Decision

The worker brought an application for judicial review of WSIAT’s decision. It should be noted that any party bringing an application for judicial review of a WSIAT decision has historically faced an uphill battle. The courts almost never overturn WSIAT decisions. It should also be noted that most applications to quash WSIAT decision deal generally with legal decisions about a claim. This case is somewhat different, as it deals with the interaction between WSIB matters and civil claims relating to employment.

In a clearly worded decision, the Divisional Court made categorically disagreed with the legal approach taken by WSIAT. The Court stressed that the “historic tradeoff” was meant to insulate employers from “tort” (*i.e.,* negligence) claims as opposed to cases alleging a breach of contract. The Court held that a claim for constructive dismissal is a claim related to a breach of the employment contract and WSIA does not ordinarily prevent employees with WSIB claims from pursuing wrongful dismissal actions.

The Divisional Court reviewed WSIAT caselaw and noted that wrongful dismissal claims are barred only in rare cases, “*…where the circumstances of the wrongful dismissal claim are inextricably linked to the work injury*.” WSIAT held in this case that the worker’s entire constructive dismissal case was based on the stress condition she developed in the workplace and thus the threshold for being “inextricably linked” to the claim was met and the action was barred. The Court disagreed.

The Divisional Court emphasized that wrongful dismissal claims were only barred by

WSIAT where a worker was attempting to "disguise" a personal injury action as a contractual claim for wrongful dismissal damages. It held that the worker in this case was not trying to engage in a scheme to get around the bar in the WSIA.

The heart of the Divisional Court's decision was that WSIAT made a critical legal error when it found that the underpinning of the constructive dismissal claim was the stress condition which arose in and of the course of employment. The Divisional Court noted that, under Ontario law, Plaintiffs may pursue different types of legal actions and damages based on the same facts. It was noted that workers who are advancing wrongful dismissal actions are seeking pay in lieu of notice (and in this aggravated and other damages) and not damages for lost income which are commonplace in personal injury cases.

The Divisional Court found that the WSIA was never intended to remove the right to sue for breach of an employment contract. It held that the correct approach was to determine whether a worker was advancing a legitimate claim for constructive dismissal or dressing up a WSIB claim as a claim for breach of contract.

What Does this Mean?

Unless subsequently overturned by a higher court, this decision will make it extremely difficult for an employer to assert that a constructive dismissal action is barred by the fact that the worker's stress condition arose in and of the course of employment. In essence, unless an employer can show that the constructive dismissal claim was made in bad faith, it will be allowed to proceed.

It is our view that this decision is unfortunate and fails to consider the principles expressed by the Supreme Court of Canada with respect to litigating the same issue in multiple forums. We appreciate that there is obviously a legal distinction between wrongful dismissal damages and tort damages. However, the worker in this case sought damages based on a claim that was, beyond dispute, entirely based on the facts arising from a compensable accident. Respectfully, the Divisional Court's emphasis on the legal framing of the litigation by the worker is misplaced. Careful framing in civil pleadings does not alter the fundamental reality that the worker here was seeking compensation for the consequences of an injury suffered at work, which WSIAT correctly found was inextricably linked to the basis for the constructive dismissal claim.

The employer may choose to seek further review of this decision in a higher court. In the meantime, it will be difficult for employers to challenge constructive dismissal cases on the basis they should be treated as WSIB claims.

Policymaking is about making choices when presented with competing interests and options. Fundamentally as a policy issue, Ontarians decided that mental stress claims, suffered in and of the course of employment, should be covered under the workers' compensation system (as found in previous *Charter* litigation – which led to legislative and WSIB policy amendments). Like all policy decisions, there are consequences to choosing one option over another. Despite that, once made, that legislative policy decision must be respected, subject only to valid *Charter* challenge.

Unfortunately, by permitting the worker in this case to proceed civilly absent an intention to dress up a claim for compensation otherwise, the Divisional Court's ruling arguably failed to defer to the Legislature's intent. Moreover, contrary to the Supreme Court's caution in *Figliola*, *supra,* it now seems the WSIB and the courts will have concurrent and potentially overlapping jurisdiction, which may lead to forum shopping, duplicative litigation and inconsistent findings.

Source: Stringer LLP

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To attend our webinar with speaker Ryan Conlin discussing **“To What Extent are Employees Barred From Pursuing Stress Claims in Court?”** Click here to register for November 18th webinar.