Workplace Psychological Claims – BC Supreme Court Narrows The "Labour Relations Exclusion"

Summary

On March 6, 2025, the BC Supreme Court released an important and lengthy decision regarding workplace psychological claims. This trial decision addresses the second part of James Pickering's action for benefits under the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 [*WCA*]. The first part of this proceeding, indexed as *Pickering v. School District No. 38 (Richmond)*, 2021 BCSC 1497, was a judicial review of a decision of the Workers' Compensation Appeal Tribunal ("WCAT").

At trial, Mr. Pickering argued that two provisions of the *WCA* infringe his rights under s. 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*]. He said that those provisions, in combination, led to the denial of his mental disorder claim for workers' compensation. In short, he argued that his claim was denied for reasons that are discriminatory.

The Court made following key findings based upon the evidence adduced at trial:

a) While the higher standard of predominant cause for establishing an entitlement to benefits for chronic mental disorders creates a distinction between those claims and physical claims, that distinction is justified given the evidence tendered in this trial. The higher standard is not arbitrary.

b) The "labour relations exclusion" which precludes the acceptance of chronic stress claims on the basis of employer decisions is overly broad in a manner that has a discriminatory effect on persons suffering chronic mental stress.

Thus, for now and subject to any appeal, the predominant cause standard remains the test for causation for chronic stress claims in British Columbia. In simple terms this means the workplace must be the largest factor among all the factors which caused the mental disorder.

However, the labour relations exclusion which is relied upon by employers in British Columbia to deny claims was found to be arbitrary because it does not distinguish between employers' actions that are taken in good faith and those that are not. The

Court determined that the statutory exclusion **should be narrowed and limited to management decisions on generic processes and actions taken in good faith.** The likely practical impact of narrowing the exclusion will result in more accepted psychological claims by WorkSafeBC. This finding is of great interest to the employer community, and is therefore, the focus of our case summary and comments below.

All readers should note that the decision is still within the appeal period and and there will be more to come with respect to its application to current claims within the system and new claims.

Background

Mr. Pickering filed a mental disorder claim with WorkSafeBC as a result of bullying and harassment that he says occurred in the workplace. Mr. Pickering repeatedly asked his manager to take action to stop the bullying and harassment he was experiencing at the hands of his co-worker, CW. Mr. Pickering's manager had suggested mediation between Mr. Pickering and CW and three mediations were undertaken. Further, Mr. Pickering's manager had clearly interviewed CW regarding a particular incident and CW denied being involved. However, Mr. Pickering says that the responses from his manager were dismissive, ineffective, and left him exposed to continued bullying and harassment.

The WCAT panel accepted Mr. Pickering's position on this issue, however:

a) the WCAT vice-chair characterized the manager's ineffective response as "a decision" relating to the plaintiff's employment; and

b) the WCAT vice-chair determined that the predominant cause of the plaintiff's Work-Related Mental Disorder was the manager's decision not to respond effectively to the workplace stressors, including the bullying and harassment, as opposed to the stressors themselves.

As a result, Mr. Pickering's chronic stress claim was precluded under s. 135(1)(c) of the *WCA.*

Mr. Pickering's Position at the BC Supreme Court

Section 135 of the *WCA* provides that a worker may receive compensation for a mental disorder where it is either a reaction to one or more traumatic events arising out of and in the course of a worker's employment, or predominantly caused by a significant work related stressor or a cumulative series of significant work-related stressors.

Policy Item C3-24.00, of the Rehabilitation Services and Claims Manual, Volume II, is the principal policy that sets out the decision-making principles for a worker's entitlement to compensation under section 135 of the *WCA.*

Policy Item C3-24.00 includes a labour relations exclusion, that is, a claim is excluded if it is caused by an employer's decision relating to the worker's employment. This exclusion is also captured within s. 135(1)(c) of the *WCA.*

The core of Mr. Pickering's claim is twofold. He says that the *WCA*:

a) applies a more stringent test to claims for *WCA*benefits caused by chronic mental disorders than it does to claims caused by physical disorders (i.e. a "predominant cause" test as opposed to "causative significance" standard with respect to physical disorders); and

b) includes the "labour relations exclusion" that applies to chronic mental

disorders, but not to physical injuries. Further, it applies whether or not the management decisions were made in good faith.

Mr. Pickering's position is that the higher and additional standards required for mental disorder claims are discriminatory and, thus, contrary to s. 15 of the *Charter*.

Decision on the Labour Relations Exclusion

The implications of the Court's decision on the labour relations exclusion in this case are significant for employers, workers, and the workers' compensation sector.

The provision at issue is s. 135(1)(c) which, as noted above, excludes compensation for mental disorders caused by "a decision of the worker's employer relating to the worker's employment". In the Court's view, the language under s. 135(1)(c) does not contain any element of good faith on the part of the employer. It appeared to the Court that the legislative intent was to have a blanket exclusion. In its opinion, the blanket exclusion for all management decisions is arbitrary, and further, because the labour relations exclusion only applies to mental disorders, a plain reading of s. 135 would disallow (otherwise) valid claims when there is no good policy reason for doing so.

The problem with the blanket nature of the exclusion, opined the Court, was evident from the facts of Mr. Pickering's case. In the Court's view, there was no doubt that Mr. Pickering was disabled and there was no doubt that his employer's ineffective actions (or inactions) were the cause of his disability. In the Court's determination, this was not a case where the employer exercised its power to discipline, fire, or change the working conditions (actions that are typically accepted as a decision of the worker's employer relating to the worker's employment). As a result, the Court found it was an ineffective set of management decisions which caused Mr. Pickering's mental disorder.

The Court accepted that there were, and are, good policy reasons for excluding Workers' Compensation Board (the "Board") claims arising from management decisions. It is entirely foreseeable that problematic claims would be submitted if workers were entitled to claim for mental distress caused by being disciplined or fired. However, here the exclusion was found to go too far, and results in a regime that denies benefits in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. Because the Court found that the labour relations exclusion excludes claims that arise from ineffective management decisions, it found that the provision is arbitrary because it is overly broad. This is a *Charter* infringement.

The Court went on to consider whether the infringement was justified under s. 1 of the *Charter.* The Court found it was not justified, for the following reasons:

- 135(1)(c), in its current form, does not serve a pressing and substantial objective. The Court framed this as, "there is no pressing and substantial need to protect employers from the consequences of management decisions that are not taken in good faith" (para. 383).
- There is no rational connection between the blanket nature of the labour relations exclusion and the legislative objective.
- The labour relations exclusion is not reasonably tailored to the pressing and substantial goal put forward to justify the limit.
- There was little reason to perform a "final balancing" as the Court did not accept any of the Province's submissions on this issue. While the Court noted that it was possible that the Board could develop policies that interpret the

> blanket exclusion under the labour relations exclusion, the Court could not find any wording in the WCA that suggested or warranted such a narrowing. The evidence in Mr. Pickering's case, as laid out in the underlying appeal decision, indicated that the blanket exclusion is interpreted literally. In the Court's analysis, it mattered not that the manager was simply *ineffective* in dealing with the bullying and harassment that Mr. Pickering suffered.

For remedy, as noted above, the Court accepted that there is a need for a labour relations exclusion. However, in this case, the labour relations exclusion, if given a broad interpretation, infringes on the *Charter* rights of persons with chronic mental stress. Hence, it should be given a narrow interpretation.

More specifically, in the Court's view, the labour relations exclusion (s. 135(1)(c)) should be limited to management decisions on generic processes and actions taken in good faith. In this way, the claims of persons with chronic mental stress will not be excluded when those problems derive from management decisions that are not generic or that are taken in bad faith.

The Court declined to direct the acceptance of Mr. Pickering's claim by the Board. Instead, the Court remitted the claim to the WCAT, or the appropriate level of Board decision-maker, for re-determination of his claim with the "read-down" version of the labour relations exclusion.

Comment on Implications

It is not immediately clear what the Court meant by "management decisions on generic processes" and that term is not defined within the Board's current policy or practice directives. However, it is likely the 2002 Core Services Review by Alan Winter (referred to by the Court) provides some guidance. In that review, Winter defined "generic work processes" to include labour relations issues, disciplinary actions, demotions, layoffs, termination or transfer, when done in good faith and in a lawful and non-discriminatory manner. What this list does not include is "ineffective management" of workplace issues including ineffective responses to harassment claims. The decision also makes no comment about whether an employer decision in fulfilling other legal obligations such as an accommodation under the *Human Rights Code* would be a generic process or fall within the category of labour relations issues as contemplated by Winter.

Ultimately, we cannot predict at this time how exactly this narrowed interpretation will be applied by adjudicators within British Columbia's Workers Compensation System or whether we will see a legislative amendment to the WCA to address this ruling. When considering this narrowed interpretation, we suggest further thought must be given to not only the inherit stress that arises from disciplinary processes undertaken by an employer but also from the decisions made to resolve workplace conflict between two employees which decisions are often never accepted by one or both sides. We query whether such decisions will truly be ineffective management from a labour relations perspective and/or should properly ground a psychological claim when considered in the individual context of each case.

In terms of the labour relations exclusion only applying to actions taken in good faith, we note that the Board's Interim Practice Directive, #C3-3, already contemplates the possibility there may be situations that fall outside "routine" employment issues that give rise to a compensable mental disorder, such as targeted harassment or another traumatic workplace event. WCAT Decisions have already considered within this exception whether the Employer's decision was made in *good faith* (serving a legitimate workplace purpose), provided that in doing so, the employer was not acting in a seriously hostile, intimidating, threatening, or abusive

manner.

This Supreme Court's decision is still within the appeal period, and there will be more to come with respect to its application to current claims within the system and new claims. However, employers should note that the manner is which supervisors and management are managing workplace conflict and employees is increasingly being scrutinized by adjudicators, and particularly WorkSafeBC. This decision raises the question of liability arising from ineffective management decision making, which some will say is a very low and ill-defined standard to be met. We will likely continue to see increasing oversight and review of management decisions and actions as employers' obligations with respect to a psychologically safe work environment are further defined and regulated. We welcome your questions and thoughts on these evolving and important topics for employers.

Pickering v Workers' Compensation Board, 2025 BCSC 376
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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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