

NOVA SCOTIA COURT OF APPEAL

[Cite as: *Michelin North America (Canada) Inc. v. Nova Scotia (Workers' Compensation Board)*, 2002 NSCA 87]

Glube, C.J.N.S.; Freeman and Hamilton, J.J.A.

BETWEEN:

MICHELIN NORTH AMERICA (CANADA) INC.

Appellant

- and -

RICHARD ROSS, THE NOVA SCOTIA WORKERS'
COMPENSATION APPEALS TRIBUNAL, and THE
WORKERS' COMPENSATION BOARD OF NOVA
SCOTIA

Respondents

REASONS FOR JUDGMENT

Counsel: C. Peter McLellan, Q.C. and Kecia Podetz for the
appellant
Jane A. Spurr, Terrance Brown and Linda Zambolin for
the respondent, Richard Ross
Louanne Labelle for the respondent, Workers'
Compensation Appeals Tribunal
Madeleine F. Hearns for the respondent, Workers'
Compensation Board of Nova Scotia

Appeal Heard: June 17, 2002

Judgment Delivered: June 17, 2002

THE COURT: Leave to appeal granted in part per oral reasons for
judgment of Freeman, J.A.; Glube, C.J.N.S. and
Hamilton, J.A. concurring.

FREEMAN, J.A. (Orally):

- [1] This is an application for leave to appeal, pursuant to s. 256 of the *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, a decision by the Workers' Compensation Appeals Tribunal, that symptoms related to shiftwork maladaptation syndrome can constitute an injury as defined in s. 2 of the *Act*.
- [2] The appellant relies on two of the eight grounds of appeal submitted as issues, as revised in the course of the hearing, namely issues three and four. Issue number three is that the Tribunal exceeded its jurisdiction and committed an error of law in its interpretation and application of *Metropolitan Entertainment Group v. Durnford* (2000), 188 N.S.R. (2d) 318 (C.A.) by finding that a personal condition, shiftwork maladaptation syndrome, which is not caused or aggravated by work can be compensated under the *Act*; and number four, that the Tribunal committed an error of law in its interpretation and application of s. 187 of the *Act*.
- [3] The burden on an applicant for leave is to show that an arguable issue exists see: *Amirault v. Westminster Canada Ltd.*, [1993] N.S.J. No. 329 (C.A.). If an arguable issue is raised it is not for this court on a leave application to consider the merits or to speculate as to the outcome of the appeal.
- [4] We are satisfied that the grounds listed above namely grounds three and four raise arguable issues.
- [5] The decision with respect to which leave is sought raises a novel ground for awarding workers' compensation and may have far reaching consequences. We hereby grant leave to appeal with respect to the two listed grounds.

Freeman, J.A.

Concurred in:

Glube, C.J.N.S.

Hamilton, J.A.