

Docket No.: CA 162350  
Date: 20010117

**NOVA SCOTIA COURT OF APPEAL**

Cite as: Walsh v. Nova Scotia (Workers' Compensation Board), 2001 NSCA 6

**Glube, C.J.N.S.; Flinn and Cromwell, JJ.A.**

**BETWEEN:**

DEBORAH L. WALSH

Appellant

- and -

THE NOVA SCOTIA WORKERS' COMPENSATION APPEALS  
TRIBUNAL and THE WORKERS' COMPENSATION BOARD OF  
NOVA SCOTIA

Respondents

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**REASONS FOR JUDGMENT**

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Counsel:	The appellant in person Louanne LaBelle, for the respondent, The Workers' Compensation Appeals Tribunal Janet E. Curry and Madeleine Hearn, for the respondent, Workers' Compensation Board of Nova Scotia
Appeal Heard:	January 12, 2001
Judgment Delivered:	January 17, 2001
THE COURT:	Appeal dismissed as per reasons for judgment of Flinn, J.A.; Glube, C.J.N.S. and Cromwell, J.A. concurring.

**FLINN, J.A.:**

[1] This appeal is from the decision of the Workers' Compensation Appeals Tribunal (WCAT), dated February 4<sup>th</sup>, 2000. WCAT denied the appellant's claim for compensation benefits because the appellant failed to make her claim within the time limitations imposed by the **Workers' Compensation Act**, 1994-95 c. 10 (the **Act**).

[2] The following facts are not in dispute:

(A) The appellant has a permanent partial impairment of her left ankle arising out of a work related injury which occurred on May 10<sup>th</sup>, 1977. The appellant was a truck driver for her father's business. She fractured her leg when the truck she was driving slipped on a patch of black ice and left the highway. Surgical procedures performed in 1977 and 1979 have not resolved her difficulties.

(B) The appellant's employer was advised of the accident on the day it happened. However, the appellant never filed a claim for compensation with the Workers' Compensation Board until March 30<sup>th</sup>, 1999 - almost 22 years after the accident. The appellant says in her factum "It was only upon the Appellant's recent reflection that there ought to be some remedy for her continuing work-related ankle disability that she thought to contact the Board."

[3] Notwithstanding the appellant's present, unfortunate, circumstances, her claim for workers' compensation benefits is, clearly, statute barred. Therefore, this appeal must fail.

[4] Section 83 of the **Act** provides as follows:

Notice of accident

83 (1) In the case of an injury that is not an occupational disease, the Board shall not pay compensation except where

(a) the worker has given the employer notice of the accident as soon as practicable after the happening of the accident and before the worker has voluntarily left the employment where the worker was injured; and

(b) the worker's claim for compensation is made within

twelve months of the happening of the accident.

#### Notice of injury

(2) In the case of an occupational disease, the Board shall not pay compensation except where

(a) the worker has given the employer notice of the injury as soon as practicable after the worker learns that the worker suffers from an occupational disease; and

(b) the worker's claim for compensation is made within twelve months after the worker learns that the worker suffers from the occupational disease for which the worker is claiming compensation.

#### Contents of notice

(3) The notice required pursuant to clause (1)(a) shall

(a) give the name and address of the worker; and

(b) state the cause of the accident and the place the accident happened.

#### Notice given to employer

(4) The notice required pursuant to clause (2)(a) shall contain the particulars set out in subsection (3) and is to be given to the employer who last employed the worker in the employment causing the disease.

#### Failure to give notice

(5) Failure to give notice pursuant to this Section bars the right to compensation unless, upon the application of the worker, the Board determines that

(a) any right of the worker's employer pursuant to this Part; and

(b) the subrogated interest of the Board,

has not been prejudiced by the failure, in which case the Board may extend the time for filing a claim.

#### Subsection (5) does not apply

(6) Subsection (5) does not apply where five years or more have elapsed from

(a) the happening of the accident; or

(b) the date when the worker learns that the worker suffers from an occupational disease.

[5] While the appellant gave notice to her employer under s. 83(1)(a), she did not make her claim for compensation within 12 months of the accident as required by s. 83(1)(b), nor was a report of her accident filed with the Board by her employer.

[6] The Board concedes that the failure of the appellant to make a claim for compensation under s. 83(1) (either by filing a claim herself, or by the failure of the employer to notify the Board of the accident) is a failure to give notice under s. 83(5). That being the case, the Board may extend the time for filing a claim. However, the discretion to extend the time does not apply where five years or more have elapsed since the accident. Since the appellant's claim was not filed until 22 years after the accident, there is no relief for her under s. 83.

[7] The appellant submits that s. 190 of the **Act** allows the Board the discretion to extend the time in this case. I do not agree. Section 190

provides as follows:

190 Subject to Section 83, the Board may, at any time, extend any time limit prescribed by this Part or the regulations where, in the opinion of the Board, an injustice would otherwise result.

[8] Clearly, the Board's discretion under s. 190 is subject to the provisions of s. 83. Since the appellant, in filing her claim, has exceeded the maximum allowable time extension provided for in s. 83, the provisions of s. 190 do not apply to her in this case.

[9] The appellant represented herself on the hearing of this appeal, and is to be commended for the candor with which she made her representations to the court both in writing and orally. Among other things, the appellant advised the court that she was only 19 years of age at the time of the accident, and, at that age, gave no thought to the fact that she might be entitled to compensation. Because there is no dispute about the accident, or her injuries, she claims that it is unjust, within the meaning of s. 190 of the **Act**, that she be denied compensation.

[10] The Board, however, is only permitted to act to prevent injustice

caused by delay in making a claim where the delay does not exceed five years. The claim here was not brought to the Board's attention until long after that period had passed, and, therefore, the Board had no power under the **Act** to award compensation.

[11] I would, therefore, dismiss this appeal.

Flinn, J.A.

Concurred in:

Glube, C.J.N.S.

Cromwell, J.A.