

NOVA SCOTIA COURT OF APPEAL

Citation: *Dale v. Nova Scotia (Workers' Compensation Appeals Tribunal)*,
2015 NSCA 71

Date: 20150724
Docket: CA 410753
Registry: Halifax

Between:

John Dale

Appellant

v.

Nova Scotia Workers' Compensation Appeals Tribunal,
The Workers' Compensation Board of Nova Scotia, The
Attorney General for the Province of Nova Scotia and the
Nova Scotia Department of Justice

Respondents

and

Office of the Employer Advisor Nova Scotia Group

Intervenor

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: December 5, 2014, in Halifax, Nova Scotia

Subject: **Workers' Compensation Law. Canadian Charter of Rights & Freedoms, s. 15(1). Definition of "accident" Workers' Compensation Act, s. 2.**

Summary: Mr. Dale says he suffers from gradual onset stress. Section 2(a) of the **Workers' Compensation Act**, S.N.S. 1994-95, c. 10 excludes claims for gradual onset stress (or chronic stress) as a compensable workplace injury. Mr. Dale argues the exclusion discriminates against him on the basis of disability, thereby infringing s. 15(1) of the **Canadian Charter of**

Rights and Freedoms.

The Workers' Compensation Appeals Tribunal rejected his argument. WCAT held, that although the impugned provision draws a distinction on an enumerated ground of discrimination, the distinction did not amount to discrimination under the **Charter**.

Issues:

- (1) Was there a sufficient factual foundation for consideration of whether the definition of "accident" in the **Act** violated s. 15(1) of the **Charter**?
- (2) If so, does the definition of "accident" insofar as it does not include stress other than an acute reaction to a traumatic event infringe s. 15(1) of the **Charter**?

Result:

Appeal dismissed for different reasons than WCAT. There was an insufficient factual basis to allow WCAT to embark on a **Charter** analysis. WCAT never found that Mr. Dale's condition constituted a disablement nor did it find that his injury arose out of and in the course of employment. These two findings were critical to allow it to embark on a **Charter** analysis. For this reason, the appeal was dismissed. As a result, it was not necessary to address the issue of whether the definition of "accident" violated s. 15(1) of the **Charter**.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 25 pages.