

**NOVA SCOTIA COURT OF APPEAL**

**[Cite as: Lingan Builders Ltd. v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2000 NSCA 62]**

**Roscoe, Chipman and Cromwell, JJ.A.**

**BETWEEN:**

LINGAN BUILDERS LIMITED

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: Frank L. Elman, Q.C.. for the appellant  
Sarah Bradfield for the respondent Tribunal  
Janet E. Curry and Paula Arab O'Leary for the respondent  
Board

Appeal Heard: May 9, 2000

Judgment Delivered: May 9, 2000

**THE COURT:** Appeal dismissed per oral reasons for judgment of Roscoe,  
J.A.; Chipman and Cromwell, JJ.A. concurring.

**Roscoe, J.A.:** (Orally)

[1] This is an appeal from a decision of the Workers' Compensation Appeals Tribunal, which determined that the appellant was liable for the payment of an assessment, initially assessed against Lingan Construction Limited, for a period of time prior to 1995.

[2] A Hearing Officer had previously applied s. 109 of the former **Workers' Compensation Act**, R.S.N.S., 1989, c. 508, in deciding that the appellant was a successor employer, and thus liable to pay the outstanding assessment. The Tribunal affirmed the liability of the appellant to pay the assessment, but concluded that s. 138 of the "new" or current **Act**, (S.N.S. 1994-1995, c.10, as amended) was applicable.

[3] The appellant submits that the Tribunal erred in finding that the current **Act** applied.

[4] The Hearing Officer, whose decision was appealed to WCAT, made findings of fact and applied them to the statutory language found in s.109 of the former **Act**. Although WCAT, on appeal, applied s. 138 of the current **Act**, the Tribunal's conclusions rested principally on a review of the Hearing Officer's findings of fact and not on differences in the wording of the two sections. It has not been shown, in the circumstances of this case, that there is any material difference in the two sections or that the difference in the wording of the two sections played any part in the result which the Tribunal arrived at. Assuming, without deciding, that s.109 of the former **Act** applies,

we do not think that WCAT erred in the result by affirming the conclusions of the Hearing Officer.

[5] The appeal is accordingly dismissed.

Roscoe, J.A.

Concurred in:

Chipman, J.A.

Cromwell, J.A.