

**NOVA SCOTIA COURT OF APPEAL**

[Cite as: Nova Scotia ( Workers' Compensation Board) v. McMaster, 2000 NSCA  
57]

**Pugsley, Flinn and Cromwell, JJ.A.**

**BETWEEN:**

WORKERS' COMPENSATION BOARD OF NOVA SCOTIA

Appellant

- and -

WORKERS' COMPENSATION APPEALS TRIBUNAL OF  
NOVA SCOTIA and KEVIN McMASTER

Respondents

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**REASONS FOR JUDGMENT**

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Counsel: David Farrar and John R. Ratchford for the appellant  
Sarah Bradfield and Patricia C. MacPhee for the respondent  
Tribunal  
Anne Clark for the respondent Kevin McMaster

Appeal Heard: February 2, 2000

Judgment Delivered: May 1<sup>st</sup>, 2000

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

**CROMWELL, J.A.:**

[1] Kevin McMaster suffered an injury to his right shoulder on April 10, 1993. A Hearing Officer under the **Workers Compensation Act** found that he was not entitled to a permanent partial disability benefit. Mr. McMaster's appeal to the Workers' Compensation Appeals Tribunal was successful and he was found by the Tribunal to be entitled to a permanent partial disability benefit calculated pursuant to s. 45 of the former **Act**. The Tribunal directed the Board to conduct a PMI examination and assign a PMI rating of greater than 0% in relation to Mr. McMaster's shoulder injury. The Board appeals.

[2] This appeal was argued on the same day and before the same panel as the appeal in **Worker's Compensation Board v. Ryan**, 2000 NSCA 56, (**Ryan No. 2**). The issue raised is the same: whether the "window" period benefit is to be calculated in accordance with the former **Act**.

[3] The judgment in **Ryan No. 2** is being released concurrently. In **Ryan No. 2** we hold that the deeming provision of s. 228 of the current **Act** has two effects. First, the former **Act** continues to apply to the determination of benefits in relation to permanent disability during the window period. Second, the practices of the Board pursuant to its policies at that time in relation to quantifying such awards are deemed to be in accordance with the former **Act**.

[4] In the present case, the Tribunal did not specify how the window period

award was to be calculated other than directing that it be done pursuant to s. 45 of the former **Act**. Provided that directive is understood and applied as set out in **Ryan No. 2**, there is no error of law or jurisdiction in the Tribunal's decision.

[5] I would accordingly dismiss the appeal without costs.

Cromwell, J.A.

Concurred in:

Pugsley, J.A.

Flinn, J.A.