

NOVA SCOTIA COURT OF APPEAL

Citation: *MacDougall v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 2010 NSCA 92

Date: 20101110

Docket: CA 312587

Registry: Halifax

Between:

Christina MacDougall

Appellant

- and -

Workers' Compensation Appeals Tribunal, Workers' Compensation Board, Attorney General of Nova Scotia, Rebecca Annie Getson, Holden William Slauenwhite Getson, Tammie Lee Slauenwhite, John Marvin Slauenwhite, Edson Marvin Slauenwhite and Christine Dorothy Slauenwhite, through the Estate of Richard John Edson Slauenwhite

Respondents

Judge: The Honourable Chief Justice Michael MacDonald

Appeal Heard: September 23, 2010

Subject: **Workers' Compensation; statutory interpretation; conflict of laws.**

Summary: This case involves what has been termed the “historic trade off” between most Canadian employees and their employers. Simply put, workers receive guaranteed no-fault benefits in lieu of their right to sue for damages flowing from their work-related injuries. While this basic structure exists throughout Canada, the details may vary by province and territory. A subtle but important difference between the systems in Nova Scotia and Newfoundland and Labrador (“Newfoundland”) is at the heart of this appeal.

Under Nova Scotia's regime, employees are barred from suing not only their employers but also their co-workers. Yet this is not always so in Newfoundland because there a worker can opt to sue a co-worker for injuries that flow from a motor vehicle accident. In this appeal, a Nova Scotia based worker, on the job in Newfoundland, was killed while a passenger in a car operated by his colleague (the appellant). His survivors (the respondents) sued the colleague in tort in the Nova Scotia Supreme Court thereby prompting this question. Is this action governed by that aspect of the Nova Scotia regime which would see it barred, or is it governed by the Newfoundland regime which would allow it to proceed?

The appellant asked the Nova Scotia Workers' Compensation Appeals Tribunal ("WCAT"), mandated to resolve such issues, to declare the action barred under Nova Scotia's regime. WCAT refused, prompting an appeal to this court.

Issue: This court granted leave on the following grounds of appeal:

- (a) Does the Nova Scotia Court of Appeal have jurisdiction to hear an appeal of a decision made pursuant to s. 29 of the *Workers' Compensation Act*?
- (b) Did the Workers' Compensation Appeals Tribunal err in law by failing to apply the law of contract, being the law of Nova Scotia?
- (c) Did the Workers' Compensation Appeals Tribunal err in law by failing to view the election provision in s. 27 of the *Workers' Compensation Act* as disjunctive from whether a legal action is statute-barred by the provisions in s. 28 of the *Workers' Compensation Act*?
- (d) Did the Workers' Compensation Appeals Tribunal err in law in finding that a worker's loss to a right of action was a matter of substantive law?

Result: Appeal dismissed.

1. This court has jurisdiction to hear the appeal.
2. This case did not involve the law of contract.

3. A proper interpretation of the relevant Nova Scotia provisions support WCAT's conclusion that the claim was not barred.
4. WCAT properly applied Nova Scotia law to conclude that the Newfoundland regime applied.

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 19 pages.