NOVA SCOTIA COURT OF APPEAL
Citation: ***Drake v. Nova Scotia (Workers' Compensation Appeals Tribunal)***, 2012 NSCA 6

Date: 20120123
Docket: CA 341624
Registry: Halifax

Between:

Stephen John William Drake

Appellant

v.

Nova Scotia Workers' Compensation Appeals Tribunal,
Workers' Compensation Board of Nova Scotia and
Enterprise Cape Breton Corporation

Respondents

Judges:	Fichaud, Beveridge and Farrar, JJ.A.
Appeal Heard:	November 16, 2011, in Halifax, Nova Scotia
Held:	Appeal allowed in part per reasons for judgment of Farrar, J.A.; Fichaud and Beveridge, JJ.A. concurring.
Counsel:	Appellant in person Alexander MacIntosh, for the respondent Nova Scotia Workers' Compensation Appeals Tribunal Paula Arab, for the respondent Workers' Compensation Board of Nova Scotia Nancy Barteaux and Amy Bradbury, for the respondent Enterprise Cape Breton Corporation

Reasons for judgment:

Overview

[1] The appellant, Stephen Drake, a former underground mine industrial electrician, sustained a workplace injury on November 9th, 1987. At that time, while underground, he was struck in the back of the head (while wearing a hard hat) by a large stone resulting in an injury to his neck and cervical spine. Mr. Drake was off work for approximately 42 weeks following the accident but successfully returned to his full time duties. He continued to work underground, albeit with some difficulty, until about 1994 when he was able to obtain an office position.

[2] In December, 1998, Mr. Drake was assessed by a Workers' Compensation Board medical advisor for a permanent medical impairment (PMI) in connection with his cervical spine problems. He was awarded a 5% PMI rating made retroactive to September 5th, 1988.

[3] He appealed his 5% PMI rating to a hearing officer of the Board. His appeal was dismissed by decision dated April 29, 1999.

[4] Mr. Drake appealed the hearing officer's decision to the Nova Scotia Workers' Compensation Appeals Tribunal (WCAT). His appeal was dismissed by decision dated July 17, 2000.

[5] On December 16th, 2009, following a review of additional medical evidence showing Mr. Drake had more severe symptoms, including cervical radiculopathy, a Board medical advisor recommended that his PMI rating be increased to 20%. Mr. Drake also sought "reconsideration" of the original decision which set his PMI rating at 5% arguing that the new, additional, information established that his PMI in 1988 was greater than the 5% awarded.

[6] On February 3rd, 2010, a claims adjudicator determined that the final decision setting Mr. Drake's PMI at 5% would not be reconsidered. She found that the additional information submitted was not "new evidence" and, therefore, a reconsideration of the original decision to award a PMI of 5% was not available.

However, she awarded him a 20% PMI rating for his cervical spine condition as recommended by the Board Medical Advisor, retroactive to August 5th, 2008.

[7] The claims adjudicator's decision was appealed to a hearing officer on the basis the adjudicator erred in failing to consider the additional information as "new evidence".

[8] In a decision dated May 10, 2010, the hearing officer dismissed Mr. Drake's appeal. Mr. Drake appealed that decision to WCAT arguing that:

1. the additional information submitted was "new evidence" which entitled him to a reconsideration of his original 5% PMI;

2. he was entitled to a judgment rating for his PMI determined to be 20% in 2010; and

3. the effective date of August 5, 2008 for the commencement of the increase in his PMI to 20% had no basis in fact and should be retroactive to September 5, 1988 or some date earlier than August 5, 2008.

[9] By decision dated November 2nd, 2010, WCAT found:

1. The evidence submitted in support of Mr. Drake's request for reconsideration pursuant to s. 185(2) of the **Act** was "inconsequential" and not "new evidence" as required before a reconsideration could occur;

2. he was not entitled to a judgment rating in estimating his PMI rating in 2010; and

3. The Board's determination of August 5, 2008 as the effective date was reasonable and appropriate.

[10] Mr. Drake sought leave to appeal WCAT's decision to this Court. Leave to appeal was granted by this Court on June 14th, 2011.

[11] For the reasons that I will develop, I would allow the appeal, in part, and remit the matter to the Board to consider the new evidence submitted by the appellant in his request for reconsideration of his original PMI decision. I would dismiss the appellant's appeal from WCAT's determination a judgment rating was not warranted. Finally, I would leave the determination of the effective date of the increase to the appellant's PMI rating to the Board after it has properly considered the new evidence submitted by Mr. Drake.

Issues

[12] I would summarize the grounds of appeal that are necessary to be considered for the disposition of this appeal as follows:

1. Did WCAT err in failing to apply the proper test for reconsideration?

2. Did WCAT err in finding that a judgment rating was not warranted for Mr. Drake's condition?

3. Did WCAT err in upholding the determination that the effective date of the increase to his PMI rating should be August 5th, 2008?

Standard of Review

[13] Section 256(1) of the **Act** provides as follows:

> **256 (1)** Any participant in a final order, ruling or decision of the Appeals Tribunal may appeal to the Nova Scotia Court of Appeal on any question as to the jurisdiction of the Appeals Tribunal or on any question of law but on no question of fact.

[14] The appellant argues that the first issue, whether WCAT applied the proper test in its consideration of whether the additional information constituted new evidence, attracts a correctness standard of review whereas the second and third issues attract a reasonable standard of review. In his factum he states:

> The determination of the proper test for the reception and consideration of "new evidence" is reliant upon the interpretation to relevant principles drawn from the case law, the *Act* and Policy and constitutes a question of law attracting a standard of correctness in the context of this Appeal. (Emphasis in original)

[15] With respect, I disagree. Simply characterizing the issue as a question of law does not automatically attract the correctness standard.

[16] Recently, in **Smith v. Alliance Pipeline Ltd.**, 2011 SCC 7, the Supreme Court of Canada held:

> [37] Characterizing the issue before the reviewing judge as a question of law is of no greater assistance to Alliance, since a tribunal's interpretation of its home statute, the issue here, normally attracts the standard of reasonableness (*Dunsmuir*, at para. 54), except where the question raised is constitutional, of central importance to the legal system, or where it demarcates the tribunal's authority from that of another specialized tribunal – which in this instance was clearly not the case.

[17] The determination of the proper test for the reception and consideration of "new evidence" is not of central importance to the legal system as a whole nor is it outside the adjudicator's specialized area of expertise (**Dunsmuir v. New Brunswick**, 2008 SCC 9, ¶ 67; **Toronto (City) v. CUPE, Local 79**, 2003 SCC 63.) I am satisfied that the appropriate standard of review for WCAT's determination of the proper test for the reception and consideration of "new evidence" is reasonableness.

[18] I agree with the appellant that the determination of whether he is entitled to reassessment of his PMI based on a judgment rating and the effective date of the increase in his PMI attract a reasonableness standard.

Analysis

1. Did WCAT err in failing to apply the proper test for reconsideration?

[19] Section 185(2) of the **Workers' Compensation Act**, S.N.S. 1994-95, c.10 provides:

> **185**(2) Notwithstanding subsection (1) but subject to Sections 71 to 73, the Board may
>
> (a) reconsider any decision, order or ruling made by it; and

(b) confirm, vary or reverse the decision, order or ruling.

[20] The Board, enacted Policy 8.1.7R1 which provides (with the unnecessary text omitted):

> ... Client Services ... may reconsider any final decision of the Board when a Worker or Employer provides the Workers' Compensation Board with new evidence in support of the request for a reconsideration pursuant to s. 185(2);
>
> 1.2 In order to conduct a s. 185(2) reconsideration the new evidence must satisfy the following two criteria:
>
> > i) It must truly be new evidence. It must not be a reiteration of the evidence already on file, or a new argument based on the same evidence, or evidence which is inconsequential and therefore, even if accepted, would not impact on the Workers' Compensation Board's final decision; and
> >
> > ii) the evidence could not have been presented by the worker or employer at the time the final decision was made.
>
> 2. When a request is made to reconsider a matter that is already the subject of a final decision of the Workers' Compensation Board, the Workers' Compensation Board shall determine the following issue(s) only:
>
> > a) whether the evidence presented satisfied the criteria for new evidence set out in subsection 1.2 above;
> >
> > and, if so,
> >
> > b) whether the new evidence presented to the Workers' Compensation Board is sufficient to persuade it to alter the final decision.

[21] When the Appeal Commissioner referenced the additional information relied upon by the worker, he set out what he considered to be the proper test at pp. 9-10 of his decision:

> ... New evidence is evidence which is not available for earlier presentation, not a reiteration of the evidence already on file or a new argument based on the same

> evidence. New evidence must not be "inconsequential". Evidence is inconsequential if it would not impact upon the final decision. If the foregoing criteria are satisfied, then the first stage is met.
>
> Once new evidence is found to exist, the Board must apply s. 2(b) of the Policy. A reconsideration is allowed where new evidence is sufficiently persuasive to alter the final decision of the Board. ....

[22] The Appeal Commissioner continued at p. 11 of his decision:

> I therefore find that the additional evidence relied upon by the Worker would not impact upon the final decision. Hence, such evidence is "inconsequential" and not "new evidence" as required by Board Policy 8.1.7R1. ...
>
> (Emphasis added)

[23] The Appeal Commissioner was of the view that if the additional information "would not" impact on the final decision it was inconsequential and, therefore, could not be new evidence. To put it another way, additional evidence cannot be "new evidence" unless it "would" alter the final decision. I will explain why this is an error by WCAT in its consideration of the "new evidence" criteria.

[24] To put the "new evidence" issue in context, it is necessary to look at the decisions of the claims adjudicator and the Hearing Officer. The Hearing Officer's decision under appeal to WCAT is dated May 10th, 2010, and puts the issue as follows:

> Is the Worker entitled to a reconsideration of the Board's original decision awarding a 5% Permanent Medical Impairment rating?

[25] The Hearing Officer concluded that the worker was not entitled to a reconsideration of the Board's original decision awarding a 5% PMI rating because there was no "new evidence" in support of the reconsideration. At p. 4 of the decision the Hearing Officer says:

> In order to establish that a reconsideration of a final decision of the Board is warranted, the Worker must provide new evidence in support of his request for reconsideration. Pursuant to Board Policy 8.1.7R1, two criteria must be satisfied in that regard. First, the information must truly be new evidence and not a reiteration of evidence already on file, and new argument based on the same evidence or information which is inconsequential and would therefore not impact

> on the Board's final decision. In addition, it must not be information that could have been presented at the time the Board's final decision was made.

[26] The Hearing Officer continued at p. 5 after referencing the new medical information submitted by the appellant and concluded:

> ... As such, I find that the new medical information added to the Worker's file is inconsequential in that it would not impact the Board's final decision awarding a 5% PMI effective September 5, 1988.
>
> (Emphasis added)

[27] The claims adjudicator also refused reconsideration on the basis that the evidence submitted did not constitute new evidence. Her decision dated February 3, 2010, is very brief on this point. She refers to the medical evidence to determine if it met the s. 1.2 test for new evidence. She found it did not and concluded:

> Section 185 of the Act allows the Board to revisit a final decision if "new evidence" is submitted. Policy 8.1.7R1 confirms that to be considered "new evidence" that evidence must not be a reiteration of evidence already on file, or a new argument based on the same evidence, or evidence which would not impact the decision on file. I do not find new evidence has been submitted which would allow revisiting the final decision on file with respect to the 5% rating.

[28] The claims adjudicator also says:

> ... The Board is provided the authority to revisit a final decision of the Board if "new evidence" is received that would alter the final decision on file. ...
>
> (Emphasis added)

[29] All three decision-makers misapplied the test for the introduction of new evidence as set out by this Court in **Cherubini Metal Works Ltd. v. Workers' Compensation Board (N.S.)**, 2001 NSCA 81. **Cherubini** makes it clear the test for the introduction of new evidence for the purposes of reconsideration is a two-part test. Paragraph 1.1 of the Policy provides that the Board, in this case Client Services, "may reconsider any final decision of the Board when a Worker or Employer provides the Workers' Compensation Board with new evidence in support of the request for reconsideration pursuant to s. 185(2)".

[30] When new evidence is presented to the Board it is to be scrutinized under the criteria set out in s. 1.2. **Cherubini** explained it this way:

> [19] ... If the new evidence is accepted as being truly new, not a reiteration of old evidence, capable of impacting on the original decision, and not available at the time of the original decision, the claims adjudicator moves on to the next step, the actual reconsideration, pursuant to ss. 2 of the Policy. ...
>
> (Emphasis added)

[31] The claims adjudicator, the Hearing Officer and WCAT looked at the introduction of the new evidence for the purposes of reconsideration to see if it would have changed the final decision rather than look at it through the lens, as directed by **Cherubini**; whether it would be "capable of impacting on the original decision". By this, the decision makers should have considered whether the new information had sufficient probative value such that it was capable of impacting the final fact-finding process of the Board. It was not necessary, at that stage of the analysis, to determine whether it would have changed the result.

[32] If the new information satisfies the first step in the reconsideration process, the claims adjudicator moves on to the next step, the actual reconsideration pursuant to s. 2 of the Policy. Referring again to **Cherubini**, **supra**, Freeman, J.A. explains:

> [24] The language of ss. 2 indicates that the ss. 1.2 stage must be repeated as the first of two issues in subparagraphs (a) and (b). To avoid this absurdity it is necessary to interpret ss. 2 to mean that on the reconsideration the new evidence already accepted under ss. 1.2, and found to be capable of impacting on the final decision under reconsideration, must be further scrutinized to determine whether its impact "is sufficient to persuade it to alter the final decision."

[33] On an appeal from a reconsideration under s. 185(2) of the **Act**, a hearing officer is limited to two issues under s. 4 of the Policy. Again, the process was made clear in **Cherubini**:

> [26] ... If the appeal is from a decision of a claims adjudicator refusing or (more rarely) merely permitting a reconsideration, the Hearing Officer or WCAT is limited to the issue stated in ss. 2(a) Policy 8.1.7R1, whether new evidence has been presented which meets the criteria set out in ss. 1.2 (i) and (ii). If the claims adjudicator has found the new evidence has met the ss. 1.2 criteria and has conducted a reconsideration which is the subject of the appeal to the Hearing

> Officer, the second issue to be determined is whether the new evidence is sufficiently persuasive to alter the original decision. There is no reason why the claims adjudicator cannot, in the same proceeding, both evaluate the evidence pursuant to ss. 1.2 (reiterated by ss. 2(a)) and move on to rule on whether it is sufficient to persuade it to alter the original decision pursuant to ss. 2(b). It would seem likely that most appeals would be either from refusal of a reconsideration on the basis of insufficiency of evidence pursuant to ss. 1.2, or from a decision following a reconsideration when the persuasiveness of the evidence has been considered pursuant to ss. 2(b). In the former situation an appeal is limited by ss. 4 to the issue of sufficiency of the new evidence (ss. 1.2 and 2(a)) and in the latter jurisdiction extends to both issues in ss. 2.
>
> (Emphasis added)

[34] All three levels, the Board, the Hearing Officer and WCAT determined whether the evidence was new evidence based on its actual impact on the final decision. This is precisely what Freeman, J.A. said was inappropriate in **Cherubini**. On the appeal from the claims adjudicator's decision, the Hearing Officer should have looked at the evidence to determine whether it constituted "new evidence" under the Policy as interpreted by **Cherubini**. If it was determined to be "new evidence" it would be incumbent upon the Hearing Officer to remit the matter to the Board to do the actual reconsideration. WCAT should have considered the Hearing Officer's decision in the same light, i.e., whether the new evidence was capable of impacting on the original decision. Again, if it made that determination, it would remit the matter to the Board for the determination of whether all the evidence was "sufficient" to alter the final decision. Freeman, J.A. put it succinctly in **Cherubini** as follows:

> [61] Reconsideration is available to modify final decisions of the Workers' Compensation Board to fit changing circumstances. Workers applying for reconsideration must submit new evidence. The claims adjudicator must determine pursuant to ss. 1.2 of Policy 8.1.7R1 whether the evidence is truly new, capable of justifying alteration of the decision, and unavailable at the time of the impugned decision. If it meets these criteria, the claim is reconsidered by determining whether the new evidence, combined with the old, justifies altering the decision. If it does, the old decision is set aside and the new decision is implemented by Client Services. If the evidence fails to meet the ss. 1.2 criteria, reconsideration is refused. The decision to refuse reconsideration may be appealed to a Hearing Officer or WCAT but only as to whether the new evidence meets the criteria. The decision resulting from a reconsideration may also be appealed on the issue whether the new evidence meets the criteria and, if so, on the further issue of whether it is sufficiently persuasive to justify altering the

> decision. Altered decisions may only be implemented by Client Services in accordance with the provisions of the **Workers' Compensation Act**.
>
> (Emphasis added)

[35] The underlined portion makes an important distinction. It is not only the new evidence that must be looked at to determine whether it would alter the original decision but rather the new evidence *combined* with the old evidence is to be considered to determine whether the original decision should be altered. To consider the new evidence in isolation to determine whether it would mpact the final decision runs afoul of **Cherubini**.

[36] The test for the introduction of new evidence may be summarized as follows:

1. The evidence submitted must be new evidence in the sense of not being a reiteration of old evidence, and not available at the time of the original decision and must be capable of impacting on the original decision. By this, the new information must be looked at to see if it has sufficient probative value in the fact-finding process to be capable of impacting the final fact-finding mission of the Board. It is not necessary at this stage of the analysis, to determine whether it would change the result.

2. If the new information fulfills the criteria in the first step, it then must be scrutinized, along with the evidence already on file, to determine whether the totality of the evidence justifies altering the original decision.

[37] WCAT's decision was unreasonable as it failed to follow this Court's clear direction in **Cherubini** on how new evidence is to be introduced and utilized. WCAT erred in:

1. considering whether the information would, in fact, impact the final decision in determining whether it was "new evidence"; and

2. failing to recognize that it is the new evidence combined with the old that must be considered when determining whether the original decision is impacted.

[38] I will now turn to what I consider to be the appropriate remedy on this ground of appeal.

[39] The appellant, as proposed new evidence, provided to the Board two MRI studies, one EMG study, and expert medical reports from Dr. Darren Strong, Dr. Ali Abbassian, Dr. Horacio Yepes, Dr. Mandat Maharaj and Dr. Thomas D. Loane. The MRI and EMG reports provided previously unavailable objective evidence of the structures involved in determining the extent of the appellant's chronic cervical disc problem. I am satisfied that the evidence is new evidence in the sense that it is not a reiteration of evidence already on file or a new argument based on the same evidence. As well, I am satisfied that the evidence of the three studies and five expert reports presented by the appellant are not inconsequential in the sense they have sufficient probative value that could impact on the final fact-finding process of the Board.

[40] I would make the decision that ought to have been made by WCAT. I find that the additional information provided by the appellant is new evidence within the meaning of s. 1.2 of Policy 8.1.7R1. I would remit the matter to the Workers' Compensation Board, Client Services for reconsideration pursuant to s. 2(b) of the Policy to scrutinize the new and old evidence to determine whether it "is sufficient to persuade the Board to alter the final decision".

2. Did WCAT err in finding that a judgment rating was not warranted for Mr. Drake's condition?

[41] Policy 3.3.2R1 provides that the "Guidelines for Assessment of Permanent Medical Impairment" (the "Guidelines") apply to injuries that occurred prior to January 1, 2000.

[42] With respect to Judgement Ratings, the Guidelines state that:

> "Judgement ratings are made to determine a percent of impairment when the impairment does not fit into a specific category of the schedule. ..."

[43] At the WCAT hearing, the appellant argued that his PMI should be calculated using a judgement rating because he has suffered a spinal cord injury and, therefore, did not fit into a specific category of the Schedule. WCAT properly

noted that judgement ratings only apply when the injury did not fit into a specific category of the Schedule.

[44] The Schedule for injuries to the cervical spine states as follows:

Cervical Spine	**Percentage**
SOFT TISSUE INJURY	
1. Ongoing subjective complaints with no significant objective abnormalities on examination	0%
2. Same as (1) but with persistent spasm and other objective abnormalities on examination	0-10%
3. Same as (2) but with gross degenerative changes on x-ray. Awards here are generally under Section 10(5) with only a portion of the total amount granted	5-20%
FRACTURE	
1. No fusion required but with persistent symptoms and some objective findings on physical examination	3-10%
2. Fusion required with symptoms and minimal objective findings on physical examination	5-15%
3. Fusion required with symptoms and significant objective findings on physical examination	10-20%
4. Spinal cord damage	up to 100%
CERVICAL DISC	

1.	Symptoms with minimal residual objective abnormalities on examination - surgery usually done	0-10%
2.	Same as (1) but with more significant objective abnormalities on examination	10-20%
3.	Same as (1) and (2) but with fusion	10-25%

(Spinal Injury Table, attached to the Guidelines, Policy Manual, Workers' Compensation Board, Policy No. 3.3.2R1)

[45] In Dr. Loane's IME report, he notes as follows:

> ... The degree of cord compression was described as minimal and **there is no mention of any signal change within the cord suggesting spinal cord injury or damage**.
>
> …
>
> There are disc bulges at C2-3 and C5-6 with cord compression but no thinning of the cord or change in cord signal.
>
> …
>
> 2. Ongoing neck, left shoulder and arm pain and left lower extremity radiation secondary to minor cervical spinal stenosis at C5-6 secondary to previous disc protrusion and recent degenerative changes causing cord and nerve root irritation **without evidence of cord compression**.
>
> …
>
> ... It is my belief that Mr. Drake has a congenitally small cervical canal and a disc protrusion at the C5-6 level, resulting from his injury in November of 1987, caused not only cervical root irritation affecting the arm and hand but also a degree of spinal cord irritation **without spinal cord damage**.
>
> …
>
> ... There is no evidence of corticospinal tract damage that would allow the use of PMI ratings for spinal injury or dysfunction.

[46] Dr. Loane assessed the appellant's PMI at between 15-18%. However, he mistakenly applied the Guidelines for injuries occurring after January 1, 2000, which are lower than those occurring before January 1, 2000.

[47] Dr. Janet Marche, the WCB Medical Advisor, was also asked to consider a PMI rating for the appellant. She recommended a 20% PMI based on "Spine Cervical Disc, category 2, cervical disc with significant objective abnormalities on examination 10-20%."

[48] WCAT commented on Dr. Marche's conclusion that a 20% PMI rating was appropriate:

> Dr. Marche would have been aware that the Worker's condition involved radiculopathy, stenosis, nerve root compression/irritation, osteoarthritic degeneration with the presence of osteophytes, disc protrusion, and perhaps other signs and symptoms. Dr. Marche was of the opinion that the Worker's signs and symptoms, as reported, came within the rubric of "significant objective abnormalities on examination." These signs and symptoms appear to justify the changes from category 1 to category 2 of the cervical disc injury portion of the PMI Guidelines."

[49] WCAT also noted Dr. Loane's findings that the appellant did not have spinal cord damage:

> If the Worker had sustained spinal cord damage, as the Worker submits, a judgement rating would have been required under the PMI Guidelines. However, Dr. Loane was of the clear opinion that the Worker had not sustained spinal cord damage. I accept his clear opinion evidence on this point. He offered his detailed opinion within the scope of his expertise as a physical medicine and rehabilitation specialist following an examination and detailed review of the medical record. By way of support, he noted that, in addition to a lack of clinical findings of cord damage, the MRI showed the degree of cord compression to be minimal, there was no thinning or distortion of the cord or change in cord signal to suggest cord damage. Absent spinal cord damage, there does not appear to be another factor making category 2 of the cervical disc injury section of the PMI Guidelines inappropriate to the Worker's circumstances. ...

[50] Therefore, WCAT applied the proper test for determining whether a judgement rating is appropriate and properly considered the medical opinion of Dr. Marche with respect to the appellant's PMI rating and the clear medical opinion of

Dr. Loane that there was no spinal cord damage or injury. WCAT's analysis shows clear reasoning from the evidence to the conclusion that a judgement rating is not warranted. It is justifiable, transparent and intelligible. Therefore, its decision is reasonable and cannot be disturbed by this Court.

3. Did WCAT err in upholding the determinination that the effective date of the increase to his PMI rating should be August 5th, 2008?

[51] The appellant argues WCAT erred in determining that the effective date of the increase to his PMI to 20% is August 5th, 2008.

[52] I have already determined that WCAT failed to apply the proper test to reconsideration of the appellant's new evidence and have ordered a reconsideration of the appellant's original claim based on the introduction of new evidence. The reconsideration will necessarily involve a determination of whether the original decision of the Board should be varied. Therefore, to decide this ground of appeal, I would have to assume that the original decision would not be varied on the reconsideration. I am not prepared to do so. The date of the appellant's increase in his PMI rating is a necessary part of the reconsideration exercise. As a result, I would decline to address this ground of appeal at this time. If the Board's determination of the effective date of his PMI increase does not change on the reconsideration, the appellant is at liberty to raise this ground of appeal again.

Farrar, J.A.

Concurred in:

Fichaud, J.A.
Beveridge, J.A.