

Does the WSIB bar lawsuits for employment related stress? Apparently (in some cases)

By Ryan J. Conlin and Erika M. Montisano

Historically, workers' compensation law placed a highly restrictive definition on traumatic mental stress injuries, which meant as a practical matter very few stress claims would ever be allowed. However, successful litigation advanced primarily by workers under the equality provisions of the Charter of Rights and Freedoms has altered the legal landscape with respect to the treatment of stress claims by the WSIB. It is now significantly easier for workers to get access to WSIB benefits for mental stress injuries.

However, this expansion of entitlement has opened the door for employers to argue that civil lawsuits relating to work related stress should be punted to the workers' compensation system.

The Workplace Safety and Insurance Appeals Tribunal (WSIAT) recently took up this issue in [**Morningstar v. Hospitality Fallsview Holdings Inc.**](#) In the decision, WSIAT found that actions for damages flowing from a workplace injury are barred by WSIA, when those damages flow from a work injury falling within the scope of the Act (even when the remedies sought are different from those compensated under the Act).

In **Morningstar**, the Respondent resigned from her employment with the Applicant and claimed damages for constructive dismissal due to the harassment, bullying and abuse she endured during the course of her employment, resulting in mental distress and the creation of a poisoned work environment. In response, the Applicant filed an application with the Tribunal seeking a declaration that the Respondent's action against it was statute-barred by WSIA.

The Tribunal found that the circumstances leading to the Respondent's claim for wrongful dismissal, in essence, constituted an injury that occurred within the scope of the Act, which was amended to provide for entitlement for chronic mental stress arising out of, and in the course of, the Respondent's employment. The circumstances of this case were exceptional – the mental distress she suffered at the hands of her co-workers and management was to such a degree that she was forced to take a sick leave and ultimately to resign. The Tribunal held that if proven, these facts were inextricably linked to a claim for injury that would be governed by the terms of WSIA.

In response, the Respondent argued that no accident had occurred within the meaning of WSIA. However, the Tribunal rejected this argument, noting that "accident" is defined broadly and inclusively in the legislation, and includes a wilful and intentional act that is not the act of the

worker, a chance event occasioned by a physical or natural cause, and a disablement arising out of and in the course of employment.

It is also worth noting that although the Respondent's Statement of Claim also included a claim for punitive, aggravated and moral damages, this did not prevent the Tribunal from finding that the Respondent's workplace injury fell within the scope of the Act. All of the damages flowed directly from the harassment and bullying alleged in the workplace, as well as the Applicant's response to these allegations.

Key Takeaways

Employers should know that a worker will generally be entitled to workplace insurance benefits for chronic mental stress under WSIA where a mental stress injury is caused by a substantial work-related stressor arising out of and in the course of the worker's employment. Not every wrongful dismissal action will be removed by WSIA, but only in those exceptional cases where the circumstances of the wrongful dismissal claim are linked to the work injury.

Employers should also be aware that in certain cases, they may have a defence to an employee's wrongful dismissal action where an employee suffers a personal injury as a result of a workplace accident. While the prior jurisprudence in Ontario was unclear, in **Morningstar**, the Tribunal does confirm that if the work injury underpins the employee's cause of action against the employer, on all fronts, the action will be statute-barred. Further, the manner in which the employee's action or claim is framed, is not determinative as to whether it is statute-barred. Rather, the determination is rooted in a consideration of the "fundamental nature of the action" and whether it arises in respect of a work injury.

This case is significant for employers as if they can demonstrate that a claim for wrongful dismissal is taken away by WSIA, they can avoid liability for large damages awards, including amounts for punitive, aggravated and moral damages, which are not recoverable under the Act. The employer is required to show that the circumstances surrounding the accident, if proven, bring the claim within the scope of WSIA. If an employer is successful, the employee's entire right of action is taken away.

This case will obviously get the attention of lawyers who act for plaintiffs and in our view future claims will be drafted in a manner to try and avoid the application of this decision. However, the Tribunal is not bound by the way employees set out their case and is required to determine the actual issue that is in dispute. This decision clearly makes it more difficult for employees to sue for serious incidents of mental stress.

It should be noted that this decision applies to lawsuits filed in Court and is not relevant to Human Rights Tribunal cases. Lastly, decisions of WSIAT are not "binding" on future WSIAT panels in

the same way that Appellate Court decisions are. Other Panels may take a different approach. It will take a number of cases before the general approach of WSIAT to this issue can be determined.

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