BRITISH COLUMBIA **WCAT** ***Workers' Compensation Appeal Tribunal***

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WCAT Decision Number: **WCAT-2007-03857**
WCAT Decision Date: **December 11, 2007**

Panel: Herb Morton, Vice Chair

WCAT Reference Number: 061643-A

Section 257 Determination
In the Supreme Court of British Columbia
Vancouver Registry No. S025092
Todd Baiden v. Officers Argent, Manji, Yamamoto, Fincham, Heard, Dave Pankratz, and John Doe #2, Vancouver Police Department, and the City of Vancouver, the Vancouver Police Board, Raj Aiyathurai and Monte Cristo Bakery and Café Ltd.

Applicants: Officers Argent, Manji, Yamamoto, Fincham, Heard, Dave Pankratz, Vancouver Police Department, the City of Vancouver, and the Vancouver Police Board
(the participating "defendants")

Respondent: Todd Baiden
(the "plaintiff")

Not Participating: Raj Aiyathurai and Monte Cristo Bakery and Café Ltd.
(the other "defendants")

Representatives:

For Applicants: Ben Parkin
LAW DEPARTMENT, CITY OF VANCOUVER

For Respondent: Vahan A. Ishkanian
VAHAN A. ISHKANIAN

A. Cameron Ward
A. CAMERON WARD & COMPANY

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Introduction

The plaintiff was employed to make coffee drinks and sauces at Le Petite Café (the café) on Smithe Street in Vancouver. Around 4:00 a.m. on March 7, 2002, the defendant Raj Aiyathurai (Anantharajah), who was employed by the defendant Monte Cristo Bakery and Café Ltd., was making a delivery to the café. Upon entering, Anantharajah discovered the plaintiff asleep on the counter. Mistaking the plaintiff for an intruder, Anantharajah called the police. The defendant officers of the Vancouver Police Department attended the café at approximately 4:30 a.m. The plaintiff did not awaken upon their arrival, and the police officers attempted to move him off the counter and place him in handcuffs. The plaintiff was injured in the course of the ensuing struggle.

Pursuant to section 257 of the *Workers Compensation Act* (Act), the Workers' Compensation Appeal Tribunal (WCAT) may be asked by a party or the court to make determinations and certify to the court concerning actions based on a disability caused by occupational disease, a personal injury or death. This application was initiated by counsel for the defendants on June 8, 2006. In oral reasons for judgment on August 10, 2006, Madam Justice Gray ordered that the September 25, 2006 trial date be adjourned and granted leave to the defendants to amend their statement of defence to plead section 10 of the Act.

Transcripts have been provided of the examinations for discovery of the plaintiff Todd Baiden, and of the defendant police officers Walter Argent, Brenda Burridge (previously Yamamoto), Shaif Manji, Randy Fincham, Philip Heard, and David Pankratz. Written submissions have been provided by the parties to the legal action.

The defendant Monte Cristo Bakery and Café Ltd. was invited to participate in this application, but did not respond. It did not file a notice of appearance in the legal action. The defendant Anantharajah filed a notice of appearance in the legal action on October 30, 2002, and provided an address for service. He was invited to participate in this application by letter dated April 26, 2007, sent by registered mail to his address for service. This package was returned to WCAT as unclaimed. I find that further efforts at serving Anantharajah with notice of this application are not required. As the café is no longer operating, it was not invited to participate in this application as an interested person.

Unless otherwise specified, references in this decision to the defendants mean the participating defendants, namely, the named police officers, the City of Vancouver and the Vancouver Police Board.

An oral hearing has not been requested, and this application does not involve any significant issue of credibility. I find that this application can be properly considered on the basis of the written evidence and submissions without an oral hearing.

Mr. Parkin provided a submission dated February 6, 2007, Mr. Ishkanian provided a submission dated July 30, 2007, and Mr. Parkin provided a rebuttal submission on August 8, 2007. Mr. Ishkanian sent an unsolicited surrebuttal on September 4, 2007. On September 13, 2007, Mr. Parkin objected to the provision of this surrebuttal. By letter of September 19, 2007, Mr. Ishkanian argued that the defendants have had two opportunities to file submissions, and in fairness the plaintiff should be afforded a like opportunity. He further submits that the defendants raised a new issue in rebuttal, and the plaintiff has the right to respond to this.

WCAT's usual practice in a section 257 application (as described in WCAT's *Manual of Rules of Practice and Procedure* at items #20.41 and #204.2), is to ask the applicant to provide the initial submission, to invite submissions by the other parties in response, and to then invite a rebuttal from the applicant. Submissions are normally considered closed at that point. A respondent does not normally have the right to provide surrebuttal. However, a WCAT panel has a discretion to receive (or invite) additional evidence and submissions after the close of submissions. I exercise my discretion to include Mr. Ishkanian's surrebuttal in my consideration. Among other things, the August 8, 2007 rebuttal included submissions regarding policy at item #14.00 of the *Rehabilitation Services and Claims Manual*, *Volume I* (RSCM I), which was not previously cited.

Unless otherwise specified, references in this decision to the Board mean the Workers' Compensation Board (currently operating as WorkSafeBC). Archived copies of the Board's policy manuals are accessible on the Board's website. In this decision, I will apply the policies which were in effect at the time of the March 7, 2002 incident.

Issue(s)

Determinations are requested concerning the status of the plaintiff, the defendant police officers, the defendant City of Vancouver, and the defendant Vancouver Police Board. Determinations are not requested concerning the status of the defendants Vancouver Police Department, Raj Aiyathurai and the Monte Cristo Bakery and Café Ltd.

Jurisdiction

Part 4 of the Act applies to proceedings under section 257, except that no time frame applies to the making of the WCAT decision (section 257(3)). WCAT is not bound by legal precedent (section 250(1)). WCAT must make its decision based on the merits and justice of the case, but in so doing must apply a published policy of the board of directors of the Board that is applicable (section 250(2)). Section 254(c) provides that WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under Part 4 of the Act, including all matters that WCAT is requested to determine under section 257. The WCAT decision is final and conclusive and is not open to question or review in any court (section 255(1)). The court determines the effect of the certificate on the legal action.

Status of the Plaintiff

The plaintiff gave evidence at an examination for discovery on June 6, 2006 (continued on August 8, 2006). He was born in 1972, and was nearly 30 years of age at the time of the incident on March 7, 2002. He was employed at the café as a barrista-saucier. He advised: "Basically I made coffee and sauces, pastas, specials." (Q 54) He also worked as a bartender at another establishment, on a part-time basis. He had worked at the café for approximately one year, on a full-time basis. His understanding was that the café was owned by two people, Jina Ness and Rahim Jinan. The plaintiff did not have a written employment contract or job description. (Q 57-58) He was authorized by his employer to have a key for opening and closing the café. (Q 59-62) The normal business hours of the café were from 9 a.m. to 5 or 6 p.m. (Q 64) He was authorized by his employer to be at the café outside of those hours (Q 67), when he engaged in painting, cleaning and cooking. (Q 69) He would go to the café and prepare things ahead of time. (Q 71) However, he only did this on an occasional, and self-directed basis. (Q 74-75) It was unusual that he would go to the café outside of normal business hours. (Q 72) He did not need to request authorization in order to do this. (Q 76)

The plaintiff's employer(s), the owners of the café, had not registered with the Board. However, policy at item #5.0 of the RSCM I provides that a worker's claim is not prejudiced by the fact that the employer has not complied with the obligation to register with the Board.

Counsel agree that the plaintiff was a worker. I find that the plaintiff was a worker within the meaning of Part 1 of the Act. A central issue in this application concerns whether his injuries on March 7, 2002 arose out of and in the course of his employment.

On the previous evening (March 6, 2002), the plaintiff had gone with Jina Ness to an artist's workshop at the Ironworks Studio to see a series of skits. (Q 295-297, 301) Afterwards, the plaintiff went with some other friends to the Purple Onion on Water Street (near Gassy Jack Square), around 10 p.m. (Q 294, 319-320). He reported he was "Dancing, hanging out with friends." (Q 292) He had four or five beer at the Purple Onion. (Q 293) At that time, he lived at Beach and Bute. He was intending to go home afterwards, but changed his mind en route as he was walking home. (Q 315-317) The café was located on his route home. (Q 321) The plaintiff advised (Q 322):

> Q Okay. And what made you decide to go in there rather than going home?
> A It was cold. There was work to do. There's always work to do.

The plaintiff advised that he went to the café at approximately 1 or 2 a.m. to cook some pasta sauce. (Q 92, 101) Upon entering, he turned off the alarm. (Q 350) He began by peeling some garlic, and setting some pots of water to boil. (Q 103-104) The garlic was intended for use in a sauce. In terms of preparing the pasta sauce, the only step taken by the plaintiff was to peel some garlic. (Q 107) He was intending to mince the garlic with some onions and simmer down the sauce. He advised "a good sauce like that takes time." (Q 108) The pots of boiling water were for the purpose of heating the premises. (Q 106) The boiling water was not going to be used in the sauce. (Q 109)

After peeling the garlic, the plaintiff removed his shoes and stretched out on the counter of the café. (Q 104) He explained (Q 110):

> It was late, it was cold, and I just wanted to take a little nap before I finished up what I was doing.

The plaintiff further explained (Q 112-114):

> Q Okay. So your intention was you were going to get some shut-eye and then – for a brief nap and then get up and finish the sauce and so forth?
> A Exactly.
> Q And what was the plan of action? I mean, what were you planning to do for the rest of the night? Were you going to go home to bed after that, or were you up early to stay up?
> A I intended on getting up to stay up. It was just a quick nap type of thing, but…
> Q And then you were intending to finish the sauce and get the premises ready for the –

A Get the day underway.
Q Get ready for the morning, for opening up?
A Yeah.

The plaintiff advised that he began his nap sometime between 2 to 3 a.m. In response to a question as to whether he intended to nap for an hour or two, he replied "Approximately." (Q 117)

In response to a question concerning his sleep requirements, the plaintiff advised (Q 327):

> It varies. Sometimes I need very little sleep and sometimes I need a lot.

The counter on which the plaintiff fell asleep was pressboard and formed like a wood. (Q 347) He advised it was about waist height. (Q 356) The plaintiff advised that he had never encountered a delivery person at the café outside of business hours. (Q 474)

The plaintiff was paid approximately $10 an hour. (Q 120) He was paid for working approximately nine hours a day, five or six days a week. (Q 123) The plaintiff reported (Q 125):

> Usually I would just bill for the hours that the café was open. Extra time that I was putting in was because I wanted the café to succeed.

The plaintiff advised that "There were no formal claims for hours." (Q 127) He would advise how many hours he had worked and was paid in cash on a daily basis. (Q 129-130) If the incident had not happened, he would probably have gone on to do a regular day of work and just billed for the day. (Q 131) The plaintiff did not receive any benefits. (Q 136-143)

A transcript has been provided of a taped interview statement provided by the defendant Raj Aiyathurai. He advised that his family name is Anantharajah. He was making a delivery of two boxes of doughnuts to the café around 4:00 a.m. on March 7, 2002. The café premises were normally secured by a padlock and door lock. The padlock was missing. He unlocked the door and entered the café. He saw somebody (the plaintiff) lying face down on the counter. His evidence was that he shouted at the plaintiff to ask what he was doing, and did not obtain any response. He then came out and locked the door, and called the police. The police arrived in about 5 minutes, and he unlocked the door so that they could enter the café. Anantharajah's evidence was that the police put the lights on, but the plaintiff did not wake up.

Six police officers attended the café. Copies have been provided of the "Duty Reports" concerning the March 7, 2002 incident, prepared by each of the six officers at the direction of the Internal Investigations Section. In brief summary, they observed the plaintiff sleeping on the counter in the café. They attempted to push/pull the plaintiff's legs off the counter in order to stand him up to place him in handcuffs. The plaintiff struggled, and the officers then moved to place him on the ground in order to gain control of him. After handcuffing the plaintiff, the officers searched him and found a large set of keys which they determined fit the locks to the café. An officer then asked the plaintiff if the worked there and he said yes. This was the first time the plaintiff spoke during this incident.

An ambulance crew attended the café, but the plaintiff refused to go with them (Q 389-390). He underwent surgery on March 7, 2002 for a splenorrhaphy and exploratory laparotomy.

Excerpts from the police officers' Duty Reports include the following evidence:

> 7. …I approached the front door of the restaurant and observed a male lying on his side in the fetal position on the counter of the restaurant. I was able to observe that the male on the counter was wearing a black toque pulled down over his eyes, a dark hooded jacket, green camouflage style pants, and socks with no shoes…..
>
> 8. It is not uncommon for police to encounter break and enter suspects who have fallen asleep, passed out, or overdosed in premises which they have illegally entered. In some cases, the suspect has fallen asleep as a result of intoxication by drugs or alcohol or a combination thereof. In other cases, the suspect has illegally entered the premises with the intention of escaping the cold or seeking shelter. I believed the suspect was possibly seeking shelter inside the restaurant, as it was a very cold night and the suspect was wearing light clothing.
>
> Heard, pages 2-3

> Upon arrival, I observed a male, later identified as Mr. Todd Baiden, lying on the cashier counter through the front window of the premise. The coffee shop's lights were off, the front door was locked and the premise appeared to be closed. There appeared to be no overt signs of forced entry. I believed that the male was a street person inside the premise to stay warm as it was very cold outside….
>
> Upon entry, I turned on my flashlight and pointed it at Mr. Baiden lying on the counter. Mr. Baiden's back was towards the police members. PC Fincham went around to the employee side of the counter. I remained at the end of the counter. I observed two pots of boiling water on the

stove at the back counter. Thus, I believed Mr. Baiden might have been boiling water to stay warm.

Manji, page 1

We (the members on the scene) had a discussion as to how we were going to deal with the male person sleeping on the counter. I commented that I had a concern the male might "flip" when we woke him up and I also recall P.C. Fincham mentioning that the person might be an employee. Among us, it was agreed that the best course of action would be to quickly place this person on his feet before waking him up. We decided to proceed in this fashion because of a concern that, with him laying on the display case, if he was to thrash and flail about when wakened, as he well might do, there was a real likelihood that there would be breakage of the case and a real likelihood of serious injury from the broken glass.

Pankratz, pages 1-2

When we came upon this man sleeping on the counter, we were not certain of his status. While it was possible that he was a suspect in a break and enter, it seemed more likely that he was either a street person who was sleeping inside the restaurant to keep warm or possibly someone who had some connection with the place and who had had too much to drink and simply passed out on the counter. Care was taken to remove him from the counter and handcuff him until we were able to find out his circumstances. Problems arose when he continued to struggle so violently that we were not able to handcuff him in the standing position nor were we able to lower him to the floor as we were attempting to do.

Pankratz, page 4

My recollection is that, while we were dealing with this man, the lights in the cafe [*sic*] were not on and so the lighting inside was dim.

Fincham, page 4

By this point in time after several minutes had passed, the suspect had still not spoken to anyone. I then picked up a Police flashlight that had fallen on the floor and shine the light on the suspect. There it was very dark.

Argent, page 2

I remained at that scene until one of the owners of the restaurant attended and I spoke to her on the sidewalk at the front of the café. I gave her my business card. At that time, the suspect male said "I don't remember anything that happened."

Argent, page 2

> He was asked by someone why he did not say he was an employee when the police arrived and why he had struggled with the police. The man said that he did not have time to say anything because he was pushed off the counter, walked around it and dropped on the floor (that is my best recollection of the words that he spoke). I was struck by his answer because it indicated to me that he did not know what had actually happened; his description of the events was not accurate.
>
> Yamamoto, page 3.

In his examination for discovery, Sergeant Argent further explained (Q 208):

> …I have been stabbed four times in the vest because I didn't check somebody's hand, it was closed and tucked away. So I will always, for my own personal safety and the safety of my members, I will put the person in cuffs, right? It's detention, a form, yes, but it's investigative detention and that's all it is.

On March 12, 2002, Sergeant 1034 Serheniuk, Internal Investigation Section, attended the café and spoke to Jina Ness. He asked her if it was normal for the plaintiff to come in early and start cooking, and she said he did it on occasion.

In the plaintiff's examination for discovery, he explained his struggling with the police officers as follows (Q 517):

> The only struggling I remember doing was basically trying to hold onto my genitalia while someone was pulling my arms behind my back while I was face down on the floor.

In response to a further question as to why he was attempting to cover his genitalia with his hands, the plaintiff advised (Q 519): "I was in survival mode, I think."

In determining the plaintiff's status, I consider it appropriate to begin by addressing his circumstances as they existed while he was sleeping on the counter prior to the arrival of the police officers. I agree, in this regard, with the position taken in plaintiff's counsel's surrebuttal that the plaintiff's status must be determined without any consideration of the status of the officers.

The plaintiff was not directed or required by his employer to begin work prior to normal business hours beginning at 9 a.m. The plaintiff was not paid additional money for commencing work early. However, he had a discretion to do so. He had the keys to the café, and the alarm code, and was permitted to go in early if he wished. The plaintiff's evidence was that he only did this on an occasional basis. I infer from this evidence that going in early was not normally necessary to the performance of his work, and that there was sufficient time during the regular business hours to do his work.

It is unusual for a worker to suffer an injury while sleeping. However, it is easy to envision a variety of situations in which such an injury or death may occur, which might give rise to different conclusions as to whether the injury or death arose out of and in the course of the worker's employment. For example:

(a) While on a business trip in another city, a worker dies while sleeping as a result of a hotel fire. This situation would appear to come within the terms of the policy at RSCM I item #18.41, which provides:

> The basic principle followed by the Board is set out in Larson's *Workmen's Compensation Law* as follows:
>
> > "Employees whose work entails travel away from the employer's premises are held . . . to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown." (5)
>
> This principle covers the activities of travelling, eating in restaurants, and staying in hotels overnight where these are required by a person's employment.

(b) Two workers take alternate shifts in driving a tractor trailer truck across the country. While sleeping in the sleeper cab, a worker is injured when the truck is involved in an accident. This example would similarly be addressed by the policy at #18.41. Counsel for the defendants has provided two decisions of the Ontario WCAT concerning similar situations. In *Decision No. 298/95*, [1995] O.W.A.T.D. No. 527, the Ontario WCAT concluded:

> The fact that he was sleeping does not take him out of his employment because keeping the vehicle moving was a benefit to the employer.

A similar conclusion was reached in *Decision No. 369/00*, [2000] O.W.S.I.A.T.D No. 3177, 2000 ONWSIAT 3185.

(c) A factory worker leaves his station during working hours, and goes into the first aid room which has a cot to take a nap. On a prior occasion, another worker had done this, and had been disciplined for this. The employer had instructed all employees that it was forbidden to use this room for sleeping. The factory worker was injured when the cot collapsed as he was sleeping. This situation could be viewed as coming within the terms of the policy at #16.00, "Unauthorized Activities," which provides:

> The mere fact that a worker's action which leads to an injury was in breach of a regulation or order of the employer or for some other reason unauthorized by the employer does not mean that the injury did not arise out of and in the course of the employment. On the other hand, there will be situations where the unauthorized nature of the worker's conduct is sufficient to take the worker out of the course of employment or to prevent an injury from arising out of the employment.

This situation might well be viewed as having involved an abandonment of the employment. In *Appeal Division Decision #94-0563*, "The Course of Employment," 10(4) W.C.R. 645, a panel found as follows (in different circumstances):

> The panel concludes that the worker took himself out of the course of his employment when he invited his friends to the workplace, visited with them while drinking beer, removed his uniform and got into a hot tub. The panel concludes that none of these actions was a part of the worker's employment responsibilities and clearly he removed himself from the course of his employment.

(d) An employer has a "wellness room," equipped with sofas. Workers are permitted to use this room for short naps during breaks in the workday. While having a nap, a worker is injured when a second worker enters the room and trips and falls on him. While this incident did not occur at a regular break time, the employer had, in effect, turned a blind eye to workers taking such breaks as long as they maintained their productivity. This situation may, by analogy, be viewed as coming within the terms of the policy at #19.30 concerning lunchrooms. The policy provides:

> Claims for injuries occurring in lunchrooms are acceptable if the lunchroom is provided by the employer. Again coverage is limited to reasonable use of the premises….

Similarly, policy at #21.00, "Personal Acts," provides:

> Where the common practice of an employer or an industry permits some latitude to employees to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries occurring at those moments is not denied simply on the ground that the employee is not at the crucial moment in the course of production. This is within the scope of the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment.

(e) A downtown office worker occasionally does work on evenings or weekends. He has access to the employer's offices outside of normal working hours for this purpose. One Saturday evening, realizing he had had too much to drink and could not drive to his home in the suburbs, he walks to the employer's offices to spend the night sleeping in his office. He spends 15 minutes reading his work e-mail before falling asleep. Upon awakening during the night and walking to the washroom in the dark, he trips on a rug and is injured in a fall. In this situation, it would seem that the worker was using the employer's premises for predominantly personal reasons, and an injury resulting from such circumstances would not be compensable. Policy at #21.00, "Personal Acts," provides:

> There is a dilemma that is always inherent in workers' compensation. The difficulty, of course, is that the activities of workers are not neatly divisible into two clear categories, their employment functions and their personal lives. There is a broad area of intersection and overlap between work and personal affairs, and somewhere in that broad area the perimeter of workers' compensation must be mapped. An incidental intrusion of personal activity into the process of work will not require a claim, otherwise valid, to be denied…. Conversely, the intrusion of some aspect of work into the personal life of an employee at the moment an injury is suffered will not entitle the employee to compensation…. In the marginal cases, it is impossible to do better than weigh the employment features of the situation in balance with the personal features and reach a conclusion (which can never be devoid of intuitive judgment) about which should be treated as predominant.

(f) A cook is asked by his employer to commence work at 2 a.m., to begin preparations for a special event in the restaurant. After working for a few hours, and drinking some wine, he falls asleep while sitting on a stool and suffers a serious injury when he falls. Such an injury would likely be compensable, under the terms of the policy at #16.10 which provides:

> If the injury arose in the course of the employment, and something in the employment relationship had causative significance in producing the injury, it is still one arising out of and in the course of employment notwithstanding the impairment. Examples are where an intoxicated sailor fell into the water while attempting to board a vessel, and where a forest industry worker was run over by a logging truck. In these kind of cases, if the injury results in death or serious or permanent disablement, it is compensable.

Pursuant to section 5(3) of the Act, a claim for compensation may be barred on the basis of serious and wilful misconduct by a worker, which does not result in death or serious or permanent disablement. However, issues regarding the effect of section 5(3)

are not germane to the determination of the worker's status at the time of his injury. The question as to whether an injury is one for which compensation is payable under the Act must be distinguished from the question as to whether the injury is one which arises out of and in the course of the employment. A published Appeal Division decision (#92-0025, *Captive Road (No. 1) and Misconduct by Worker*, 9 WCR 543) explained the effect of subsection 5(3) of the Act as follows:

> The wording "compensation shall not be payable" in section 5(3) is significant. The section is phrased in terms of the payment of compensation, rather than in terms of the scope of the employment. It would be logically inconsistent to define the scope of the employment as being contingent on the consequences of the injury.
>
> The Governors' policy stated in #16.60 of the Rehabilitation Services and Claims Manual provides that if a disability is prolonged, it may be regarded as serious even though the initial injury appears minor. It would indeed be strange if it were necessary to ascertain the length of the period of disability, in order to determine whether the worker's injury arose out of and in the course of their employment. Section 5(3) merely constitutes a bar to the payment of compensation in some cases, rather than altering the worker's status at the time of their injury. Serious and wilful misconduct within the meaning of section 5(3) may preclude the payment of compensation where it is the sole cause of the injury, but it does not take a worker outside the scope of their employment.

A judicial review of *Appeal Division Decision #92-0025* was dismissed (*James Bourgeois v. Workers' Compensation Board*, (1994) 10 C.C.E.L. (2d) 61).

The examples provided above illustrate that different facts may give rise to different conclusions regarding whether a worker's injury is one arising out of and in the course of the employment. A worker may be in the course of their employment even though he is far away from the employer's premises, and another worker may be outside the course of his employment although physically on the employer's premises. My comments regarding these different situations are *obiter dicta* (comments which are not necessary to my decision). Nevertheless, I consider it helpful to examine the plaintiff's circumstances at the time of the March 7, 2002 incident within the broader context provided by these other hypothetical situations.

Counsel for the defendants has furnished copies of three American court decisions:

- In *Corrina v. De Barbieri*, 1928, 247 N.Y. 357, 160 N.E. 397, the Court of Appeals of New York considered a situation involving the death of a worker. He had driven a team of horses, hitched to a coal wagon, onto a ferry. He fell asleep lying full length on the seat of the wagon. When the ferry arrived, the team of horses started to

walk off the ferry and the worker was jolted from his seat and fell under the wagon. The Court of Appeals held that the worker had not abandoned his employment:

> Even where the driver chose to lie down, it is evident that he still expected to be able to perform his duty of driving when the occasion for driving arose, though he may have neglected an incidental duty to remain watchful in the interval.

- In *Spencer v. Chesapeake Paperboard Co*., 1946, 186 Md. 522, 47 A. 2d 385, the Court of Appeals of Maryland found that a trial judge erred in entering judgment in favour of the employer and its insurer, notwithstanding a jury verdict that the worker's injury arose out of and in the course of his employment. While resting in the drying room, the worker fell asleep and awoke with his pants on fire. It was uncertain whether the fire was due to an electric current, lighted cigarette, or a practical joke. The Court of Appeal found that the question as to whether the worker's injury arose out of and in the course of his employment had been properly submitted to the jury and the jury had the right to answer the question in favour of the worker (even though he rested at intervals while on duty at the employer's factory)

- In *Culberson v. Daniel Hamm Drayage Company*, 1956, 286 S.W. 2d 813, the Supreme Court of Missiouri considered the situation of a worker's accidental death. While employed as a helper to load and unload sacks of flour on a hot day, the worker fell asleep during his lunch hour in the shade under a trailer which was parked on a public street. At the end of the lunch hour, the trailer was moved and the worker was killed when he was run over by the trailer. The court reasoned that it was the general rule that an employee who has no immediate duties except to wait does not deviate from his employment by utilizing the idle interval for rest and sleep. The falling asleep during the lunch period, and the negligent failure to awake at the end of the lunch period, did not constitute an abandonment of the employment. The court held:

> When we take into consideration that the day was 'awful hot,' that the helpers had rested beneath the trailers during the previous summer on hot days, that the shade from the trailer was the nearest available shade, that while waiting it was all right for Joe Brown to rest and sleep, that he was violating no express orders or rules of his employer, that the employee had not gone off on a personal venture of his own and that the waiting was for the employer's benefit, we must reach the conclusion that Joe Brown, while admittedly negligent, had not abandoned his employment.

Counsel for the defendants submits that the worker's injuries arose out of and in the course of his employment. First, he was present in the café in order to prepare pasta sauce. He was authorized by his employers to be in the premises for such activities, but only for "restaurant-related" activities. At the time of the police intervention, the plaintiff had started the preparation of the pasta sauce, which he intended to finish when he got up from his nap. Second, the plaintiff intended when he got to the café to work continuously through the early morning hours and into the ordinary work day. He did not intend to leave the café. He did not attend the café in order to sleep. His apartment was not far away. If he simply wanted to sleep, he could have gone home. Falling asleep, or napping for a short period of time while otherwise engaged in one's work, does not remove one from the course of employment. He cites the text *Workers' Compensation in Canada*, Second Edition, Terence G. Ison, Butterworths, which provides at 3.3.18 under the heading "Refreshment Breaks":

> Where an injury occurs during a lunch break, coffee break, or other refreshment break, it is generally compensable if the worker is at the premises of the employment….
>
> Where a worker arrives early and is injured while taking refreshment in the factory cafeteria prior to the commencement of the shift, the injury is compensable.

Counsel for the defendants further cites *Decision No. 10*, "Re a Claim for Dependents Benefits," 1 W.C.R. 45. That decision was "retired" from policy effective February 24, 2004, but was part of the published policy of the governors at the time of the March 7, 2002 incident. Counsel cites this case as holding that even a lengthy intended period of sleep does not remove a worker from the course of his employment. That case concerned an intoxicated fisher, who drowned while attempting to board a boat that was tied up to a dock, to sleep there in preparation for sailing the following day. That decision was clear in holding that the activity of attempting to board the ship, with the hazards associated with that action, arose out of and in the course of the worker's employment. I do not read that decision as necessarily addressing the status of the worker during the following time period during which he would be sleeping, although it may be considered that the travelling worker policy would apply.

Counsel for the plaintiff concedes that the plaintiff placed himself in the course of his employment when he entered the café with the intention of making sauce. He states that the plaintiff was working when he sliced the garlic and started making the sauce. However, fatigue likely combined with alcohol must have gotten the better of him, and he made a conscious decision to get some sleep. He did not inadvertently fall asleep. Plaintiff's counsel submits that the plaintiff resumed his previous intention of going to sleep but instead of going home, he stayed in the café. Plaintiff's counsel submits that had the plaintiff left some burners on which caused a fire whereby he got burned, his injuries would likely have arisen in the course of his employment. A borderline situation might have arisen if he had fallen off the counter while he was sleeping and thereby

suffered injuries, since it could be argued (though a stretch) that the counter was a hazard of the employer's premises. Plaintiff's counsel submits that for the purpose of determining the plaintiff's status, the important fact is that he was engaged in a purely personal activity, having taken himself out of the course of his employment by choosing to sleep for a few hours in order to refresh himself.

In rebuttal, counsel for the defendants submits that no significance attaches to the fact that the plaintiff made a conscious decision to sleep in the restaurant rather than falling asleep inadvertently. He points out that most of the cases involving sleeping workers who are considered to be in the course of their employment while sleeping (cited above), involved workers who made a conscious decision to go to sleep. He submits that the worker's encounter with the police and his resulting injuries were caused by the fact that he was in the employer's premises at an unusual time. The entire incident was causally related to his presence in the restaurant for work purposes in the middle of the night.

In order to determine the plaintiff's status at the time of the March 2, 2002 incident, I consider it important to have close regard to the evidence concerning the nature of the plaintiff's activities in the early hours of March 7, 2002. Accordingly, I have carefully considered the plaintiff's evidence, and taken into account the additional evidence provided by the police officers. The plaintiff had been engaged in socializing and drinking at the Purple Onion in Gastown. Upon leaving, he was intending to go home to sleep. He had no work purpose in mind when he commenced his walk home. He had not been directed by his employer to go to work early, or to engage in a unusual work task requiring special preparations. The plaintiff only went into work early on an occasional basis. The evidence shows that the plaintiff was not warmly dressed, and it was a cold night. He was described as wearing a toque pulled down over his eyes and a hooded jacket. The defendant Heard observed that it was a very cold night and the plaintiff was wearing light clothing. Upon entering the café, the plaintiff put pots of water on to boil for the purpose of generating heat. The only work undertaken by him was to peel some garlic. He did not take other steps to commence preparation of a sauce. The boiling water was not intended for use in the sauce.

The café was located on Smithe, just east of Granville Street. It was a fair distance from Gastown to the plaintiff's apartment at Beach and Bute. The café was located at approximately the midway point. The plaintiff's evidence as to why he went to the café was that it was cold and there was work to do. However, the plaintiff arrived at the café at 1 or 2 a.m. The café did not open until 9 a.m., and he normally had sufficient time to do his work during regular business hours. I consider it likely that the factors of fatigue or tiredness, intoxication, and cold, contributed to the plaintiff's change of plans while he was walking home, so that he stopped at the café instead.

I accept the arguments by counsel for the defendants as establishing a basis on which it might be concluded that the plaintiff's injuries arose out of and in the course of his employment. On a factual basis, however, I am not persuaded that the plaintiff's

primary reasons for being at the café related to his intention of preparing a sauce. I consider that the weight of the evidence supports a conclusion that the plaintiff's primary purpose for stopping at the café was that this was for his personal convenience, and allowed him the opportunity to get out of the cold and to sleep. While I accept that the plaintiff also intended to prepare a sauce, and had in fact peeled some garlic, I do not consider that this was his primary reason for being asleep in the café at the time of the incident in question.

I appreciate that it was the plaintiff's evidence, on his examination for discovery, that it "was just a quick nap type of thing" and that he then intended to get up and get ready for the morning. He replied "approximately," in relation to the question whether he intended to nap for an hour or two. I find, however, that regardless of what time he intended to get up to commence his work preparations, at the time the police arrived the plaintiff was sleeping based on a decision to take a nap. I find that the plaintiff was sleeping at the café as a matter of personal convenience, so that he could get out of the cold without walking home. I find it significant that whatever amount of sleep the plaintiff intended to have on the night of March 7, 2002, he intended to take this sleep at the café.

I find that the plaintiff's personal motivation was primary. I am not persuaded that the plaintiff's circumstances are analogous to an individual falling asleep or taking a nap during working hours. The plaintiff would likely not have been paid for being at the café during the night, and would have been required to continue to do his usual work during the day. I consider that the plaintiff intended to take his night's sleep (even if this would have been of short duration) at the café, and it was mainly for his personal convenience that he did not bother walking the additional distance to go to his home. I note that the plaintiff and the delivery driver had apparently never encountered one another before. It does not appear that the plaintiff's visits to the café on the other occasions when he did work outside of normal working hours had resulted in his being at the café at 4 a.m.

Counsel for the defendants is correct in pointing out that workers' compensation coverage will often apply in situations where a worker has made a deliberate decision to sleep (i.e. rather than falling asleep inadvertently while performing work activities). For example, such coverage applies in the case of travelling workers. In the circumstances of this case, I view the plaintiff's decision to use the café as a place to obtain whatever sleep he was going to have on the night of March 7, 2002, as involving a decision to use his employer's premises for a predominantly personal purpose (in respect of the period of time during which he would be sleeping). I view this as analogous to the example provided in policy at #21.10 of the RSCM I concerning a worker who, during a break in production, ran out to his car in the parking lot to get a package of cigarettes and twisted his ankle. The policy states:

> …the claimant during a break in production, ran out to his car in the parking lot to get a package of cigarettes and twisted his ankle. His claim was denied. A person is considered to be in the course of his employment

> while entering and leaving his employer's premises at the start and end of his shift and at other recognized coffee or lunch breaks. This may also extend to other times when a worker has to leave his employer's premises for good reason, for example, in emergencies. However, not all trips to and from the worker's place of work can be treated in this way. **There will be trips for personal reasons unrelated to the work and which cannot be said to be simply incidental to that work. There is no coverage in such cases**. The trip made in this case was of that kind.
>
> [emphasis added]

Accordingly, workers' compensation coverage may not apply, where the worker is pursuing an activity which is predominantly personal in nature.

In considering this matter, I have taken into account the criteria contained in policy at #14.00, "Arising Out of and in the Course of Employment." I appreciate that there are aspects of this case which would tend to support a conclusion that the worker's injuries arose out of and in the course of his employment. The fact that he was on the employer's premises, and had peeled some garlic with a view to preparing a sauce, support such a conclusion. As well, the presence of the glass display case was a factor in the police officers taking the actions that they did. Thus, a hazard of the employer's premises may be viewed as having played an indirect role in contributing to his injuries. Further, the fact that he was sleeping in the café rather than at home gave rise to his being discovered by the delivery driver (which gave rise to the sequence of events leading to his injuries). On balance, however, I find, upon weighing the employment features of the situation in balance with the personal features, that the personal features were predominant in respect of the plaintiff's circumstances at the time of his injuries. I find that the plaintiff's circumstances are most closely related to (e) in the hypothetical examples set out above.

While not necessary to my decision, I would further note that in considering the status of the plaintiff I attach no significance to his actions in struggling with the police and his resistance to being placed in handcuffs. The evidence shows that he was in a deep sleep, as he did not awaken with the arrival of the delivery person or the police officers. He was still asleep when he was abruptly placed upright and restrained by the police officers. While the police officers were in uniform, the café was in darkness apart from the flashlights being used by the police officers. (I prefer the evidence of the police officers on this point to that provided by Anantharajah.) It appears that the plaintiff was disoriented or in a state of semi-consciousness when he struggled with the police officers without speaking. This is supported by the evidence in Yamamoto's duty report, quoted above, which would support the conclusion that the plaintiff was initially not aware of what was happening. In his discovery, the plaintiff explained that he was

attempting to cover his genitalia, and that he was in "survival mode" (i.e. as to why he struggled to prevent his hands from being moved behind his back to be placed in handcuffs). It appears likely that the plaintiff's actions related to his having been in a state of disorientation or semi-consciousness at the time of the incident, so that the statements by the police initially did not register on his consciousness. This could reasonably have been the result of having been abruptly awakened from a deep sleep while being physically restrained by unknown persons, in semi-darkness.

The policy at item #14.10 of the RSCM I concerns the section 5(4) "accident presumption." The policy provided:

> Section 5(4) provides that "In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment." Thus for injuries resulting from an accident, evidence is only needed in the first instance to show either that the injury arose out of the employment or that it arose in the course of employment. The balance is presumed, unless there is evidence to the contrary. Generally speaking, "out of the employment" concerns the cause of injury and "in the course of the employment" its time and place. There are, however, some limitations on the use of this subsection. First, it is not a conclusive presumption. It is rebutted if opposing evidence shows that the contrary conclusion is the more likely. All reasonable efforts must be made to obtain all available evidence.
>
> Second, the presumption only operates when the injury results from an "accident". This term is defined in Section 1 to include a ". . . wilful and intentional act, not being the act of the worker . . .", and a ". . . fortuitous event occasioned by a physical or natural cause". This is not an exclusive definition of the term, but the word has been interpreted in its normal meaning of a traumatic incident. It has not, for example, been extended to cover injuries resulting from a routine work action or a series of such actions lasting over a period of time.

I accept that the plaintiff's injuries resulted from an accident as defined in section 1 of the Act. However, I do not consider that his injuries arose out of, or in the course of, his employment. As neither part of the test in section 5(1) of the Act is met, the section 5(4) presumption does not apply. Even if one test were met, and the presumption did apply, I consider that it is rebutted by the weight of the evidence in this case in relation to the second test.

I find that the plaintiff was a worker within the meaning of Part 1 of the Act, but his injuries on March 7, 2002 did not arise out of and in the course of his employment.

Status of the Defendants

By memorandum dated August 22, 2006, a research and evaluation analyst, Audit & Assessment Department of the Board, advised that the City of Vancouver was registered with the Board in 2002. I find that at the time of March 7, 2002 incident, the defendant City of Vancouver was an employer engaged in an industry within the meaning of Part 1 of the Act.

Counsel for the defendants submits that while the City of Vancouver is an employer, it is not the employer of police officers. Rather, police officers are employed by the Police Board. However, under section 20(1)(a) of the *Police Act*, R.S.B.C. 1996, c. 367, a municipality is jointly and severally liable for any tort that is committed by any of its municipal constables in the performance or intended performance of their duties. Accordingly, while the City of Vancouver may be liable for any tort committed by a police officer, this liability arises only as a result of section 20 of the *Police Act*, and does not arise through an employment relationship or as a result of any duty of care owed by the City of Vancouver itself to the plaintiff. Counsel for the defendants cites the decision in *Ribeiro v. Vancouver (City*), 2005 BCSC 395, [2005] B.C.J. No. 579, 41 B.C.L.R. (4th) 67. That decision was followed in *Ward v. Vancouver (City)*, [2007] B.C.J. No. 9, 2007 BCSC 3.

Section 26(3) of the *Police Act* provides:

> (3) Subject to a collective agreement as defined in the *Labour Relations Code,* the chief constable and every constable and employee of a municipal police department must be
>
> (a) employees of the municipal police board, …

Counsel for the defendants submits that the Vancouver Police Board was the employer of the defendant police officers. By submission of February 6, 2007, he advised that the Vancouver Police Board is registered with the Board under registration number 001770. However, that is the registration number for the City of Vancouver.

No other evidence has been provided to show that the Vancouver Police Board was registered as an employer with the Board. However, a determination of status is not dependent on registration with the Board (although it may impact a determination of the status of a principal of the unregistered firm, who shared responsibility for the failure to register).

I am aware of prior appeals that have come before WCAT on workers' compensation claims involving injuries to police officers, in which the relevant city or municipality has been listed as the employer. I find persuasive the analysis by counsel for the defendants as to why the City of Vancouver is not the employer of the defendant police officers. It may be that the Board's Assessment Department treats police officers as

though they were workers of the relevant municipality as a matter of administrative convenience.

I find that at the time of March 7, 2002 incident, the defendant Vancouver Police Board was an employer engaged in an industry within the meaning of Part 1 of the Act.

It is not contested that the defendant police officers were all workers of the Vancouver Police Board at the time of the March 7, 2002 incident. I find that they were all workers within the meaning of Part 1 of the Act. A contested issue is whether the action or conduct of each officer, which caused the alleged breach of duty of care, arose out of and in the course of his or her employment within the scope of Part 1 of the Act.

Counsel for the defendants submits that investigating a potential break and enter, and struggling with a suspect during the course of that investigation, are activities within the course of employment for police officers. The use of force in an investigation, or in an arrest, is also clearly within the scope of an officer's duties. He submits that the medical evidence suggests that the spleen injury suffered by the plaintiff was more likely caused by the heavy fall to the floor, rather than by any kick or punch to the abdomen. He argues that on balance the evidence shows that the level of force used to investigate the plaintiff was appropriate to the circumstances and would not constitute anything that would take any of the officers outside the scope of their duties. He submits that the officers were cleared of any wrongdoing by the Internal Investigation section of the Vancouver Police Department. A report dated June 18, 2002 by the Inspector John K. McKay, Operations Division District 2, Vancouver Police Department, concluded that the police officers' use of force fell within the training guidelines, and that they used reasonable force in their encounter with the plaintiff. The September 19, 2002 report of Sergeant Kim Serheniuk, Internal Investigations Section, Vancouver Police Department, concluded that "no default under the B.C. Police Act has been proven against any of the members involved."

Counsel for the plaintiff cites the policy at RSCM I item #16.30, which begins:

> In considering cases of assault, the first question is whether the claimant was the aggressor and therefore the agent which caused the injuries. The answer to this question is not always clear cut and may involve an evaluation of the degree to which a claimant is an aggressor in a given situation. However, the fact that a claimant is less than friendly with another employee and is at least equally responsible for ill feeling that may prevail between them is not, by itself, grounds for disallowing a claim for injury arising out of an assault by that other employee.

He submits that the police officers were the aggressors in an assault on the plaintiff, and that this constituted a substantial deviation from their employment. He submits that WCAT must determine whether the officers took themselves out of their employment when they became the aggressors.

In reply, counsel for the defendants submits that the use of varying degrees of force is an integral part of the job performed by police officers as part of their day to day activities. He submits that at common law, police officers are authorized to detain an individual for investigative purposes if there are reasonable grounds in all the circumstances to suspect the individual is connected to a particular crime and that such detention is necessary. He cites the decision of the Supreme Court of Canada in *R. v. Mann*, [2004] 3 S.C.R. 59, which reasoned:

> 34 The case law raises several guiding principles governing the use of a police power to detain for investigative purposes. The evolution of the *Waterfield* test, along with the *Simpson* articulable cause requirement, calls for investigative detentions to be premised upon reasonable grounds. The detention must be viewed as reasonably necessary on an objective view of the totality of the circumstances, informing the officer's suspicion that there is a clear nexus between the individual to be detained and a recent or on-going criminal offence. Reasonable grounds figures at the front-end of such an assessment, underlying the officer's reasonable suspicion that the particular individual is implicated in the criminal activity under investigation. The overall reasonableness of the decision to detain, however, must further be assessed against all of the circumstances, most notably the extent to which the [page77] interference with individual liberty is necessary to perform the officer's duty, the liberty interfered with, and the nature and extent of that interference, in order to meet the second prong of the *Waterfield* test.

In surrebuttal, plaintiff's counsel argues that this is a compensation matter, and whether the plaintiff can prove a case in criminal or civil court is irrelevant to WCAT's determination. He submits that the mere touching of another without consent is an assault and battery, and the plaintiff did not consent to being touched by the police officers. Plaintiff's counsel submits that the policy regarding aggressors in an assault must be applied in relation to the actions of police officers in the same fashion as it applies in relation to the actions of other workers.

I accept that it would be possible, on the basis of a particular set of facts, to conclude that a police officer had abandoned his or her employment by engaging in certain conduct. For example, if the employer had expressly prohibited conduct of a certain nature, and the police officer knowingly contravened that direction, it might be concluded that he or she had abandoned their employment. Consideration may also be given to whether, at a particular time and place, a police officer was engaged in a substantial deviation from his or her employment for personal reasons. A police officer may also be found to be an aggressor in an assault, such as in the case of a dispute between two police officers.

In connection with the facts of this case, however, I consider that the police officers were engaged in the performance of their work duties. For the purposes of my decision, I do not consider it necessary to determine whether the manner in which they performed their work duties was appropriate or negligent. It is a basic principle of workers' compensation that a worker will not be found to be outside the scope of his or employment because of negligence or fault in the performance of his or her work. Even misconduct, which falls short of an abandonment of the employment, does not affect a status determination (although it may affect eligibility for compensation under section 5(3) of the Act).

I find that at the time of the March 7, 2002 incident, the police officers were engaged in the performance of their work activities. The use of force was a part of those work duties. I find that the policy at #16.30 of the RSCM I is inapplicable in relation to the use of force where this is required by the worker's employment. I find that all six police officers were working at the time of the March 7, 2002 incident, and had not embarked on a substantial deviation from, or abandonment of, their employment.

Accordingly, I conclude that the action or conduct of the six defendant police officers, which caused the alleged breaches of duties of care, arose out of and in the course of their employment within the scope of Part 1 of the Act.

Counsel for the defendants has also requested determinations with respect to the action or conduct of the City of Vancouver, and of the Vancouver Police Board, which caused the alleged breach of duty of care. Given the separation between the City of Vancouver and the Vancouver Police Board, it is unclear as to what action or conduct of the City of Vancouver is in question. With respect to the Vancouver Police Board, I note that section 23 of the *Police Act* provides:

> **23** (1) Subject to the minister's approval, the council of a municipality required to provide policing and law enforcement under section 15 may provide policing and law enforcement by means of a municipal police department governed by a municipal police board consisting of
>
> (a) the mayor of the council,
> (b) one person appointed by the council, and
> (c) not more than 5 persons appointed, after consultation with the director, by the Lieutenant Governor in Council.

At the time of the March 7, 2002 incident, policy at No. 20:10:30 of the former *Assessment Policy Manual* provided as follows:

Order in Council Appointments

Order in Council appointments are generally made to positions which operate autonomously and without the standard employer/employee relationship. Examples include judges and the Governors of the Board. Since the employer/employee relationship does not exist, these individuals are not considered workers and are not covered. Personal Optional Protection is not available for these individuals.

Elected Officials

Elected officials (e.g. provincial/municipal government, school or library boards, etc.) are not considered workers or employers and are therefore not covered under the *Workers Compensation Act* in their capacity as elected officials. Personal Optional Protection is not available to these individuals.

As a municipal police board is composed of an elected mayor, and persons appointed by order in council, this raises questions on which additional submissions may be helpful. I decline to address these issues in this decision. If certification on these issues remains necessary, a request may be made for a supplemental certificate.

Conclusion

I find that at the time of the March 7, 2002 incident:

(a) the plaintiff, Todd Baiden, was a worker within the meaning of Part 1 of the Act;

(b) the injuries suffered by the plaintiff, Todd Baiden, did not arise out of and in the course of his employment within the scope of Part 1 of the Act;

(c) the defendant, City of Vancouver, was an employer engaged in an industry within the meaning of Part 1 of the Act;

(d) the defendant, Vancouver Police Board, was an employer engaged in an industry within the meaning of Part 1 of the Act;

(e) the defendant, Officer Argent, was a worker within the meaning of Part 1 of the Act;

(f) any action or conduct of the defendant, Officer Argent, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act;

(g) the defendant, Officer Manji, was a worker within the meaning of Part 1 of the Act;

(h) any action or conduct of the defendant, Officer Manji, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act;

(i) the defendant, Officer Yamamoto, was a worker within the meaning of Part 1 of the Act;

(j) any action or conduct of the defendant, Officer Yamamoto, which caused the alleged breach of duty of care, arose out of and in the course of her employment within the scope of Part 1 of the Act;

(k) the defendant, Officer Fincham, was a worker within the meaning of Part 1 of the Act;

(l) any action or conduct of the defendant, Officer Fincham, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act;

(m) the defendant, Officer Heard, was a worker within the meaning of Part 1 of the Act;

(n) any action or conduct of the defendant, Officer Heard, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act;

(o) the defendant, Officer Dave Pankratz, was a worker within the meaning of Part 1 of the Act; and,

(p) any action or conduct of the defendant, Officer Dave Pankratz, which caused the alleged breach of duty of care, arose out of and in the course of his employment within the scope of Part 1 of the Act.

Herb Morton
Vice Chair

HM:gw

NO. S025092
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

TODD BAIDEN

PLAINTIFF

AND:

OFFICERS ARGENT, MANJI, YAMAMOTO, FINCHAM, HEARD,
DAVE PANKRATZ, AND JOHN DOE #2, VANCOUVER POLICE DEPARTMENT,
and THE CITY OF VANCOUVER, THE VANCOUVER POLICE BOARD,
RAJ AIYATHURAI and MONTE CRISTO BAKERY AND CAFÉ LTD.

DEFENDANTS

C E R T I F I C A T E

UPON APPLICATION of the Defendants, OFFICERS ARGENT, MANJI, YAMAMOTO, FINCHAM, HEARD, DAVE PANKRATZ, VANCOUVER POLICE DEPARTMENT, THE CITY OF VANCOUVER, and THE VANCOUVER POLICE BOARD, in this action for a determination pursuant to section 257 of the *Workers Compensation Act*;

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT at the time the cause of the action arose, March 7, 2002:

1. The Plaintiff, TODD BAIDEN, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the Plaintiff, TODD BAIDEN, did not arise out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The Defendant, THE CITY OF VANCOUVER, was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

4. The Defendant, VANCOUVER POLICE BOARD, was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

5. The Defendant, OFFICER ARGENT, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

6. Any action or conduct of the Defendant, OFFICER ARGENT, which caused the alleged breach of duty of care arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

7. The Defendant, OFFICER MANJI, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

8. Any action or conduct of the Defendant, OFFICER MANJI, which caused the alleged breach of duty of care arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

9. The Defendant, OFFICER YAMAMOTO, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

10. Any action or conduct of the Defendant, OFFICER YAMAMOTO, which caused the alleged breach of duty of care arose out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act.*

11. The Defendant, OFFICER FINCHAM, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

12. Any action or conduct of the Defendant, OFFICER FINCHAM, which caused the alleged breach of duty of care arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

13. The Defendant, OFFICER HEARD, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

14. Any action or conduct of the Defendant, OFFICER HEARD, which caused the alleged breach of duty of care arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

15. The Defendant, OFFICER DAVE PANKRATZ, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

16. Any action or conduct of the Defendant, OFFICER DAVE PANKRATZ, which caused the alleged breach of duty of care arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act.*

CERTIFIED this day of December, 2007.

_____

Herb Morton
VICE CHAIR

NO. S025092
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

TODD BAIDEN

PLAINTIFF

AND:

OFFICERS ARGENT, MANJI, YAMAMOTO, FINCHAM, HEARD,
DAVE PANKRATZ, AND JOHN DOE #2, VANCOUVER POLICE DEPARTMENT,
and THE CITY OF VANCOUVER, THE VANCOUVER POLICE BOARD,
RAJ AIYATHURAI and MONTE CRISTO BAKERY AND CAFÉ LTD.

DEFENDANTS

SECTION 257 CERTIFICATE

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