WCAT **Workers' Compensation Appeal Tribunal**

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WCAT Decision Number: **WCAT-2014-02484**
WCAT Decision Date: **August 22, 2014**

Panel: David Newell, Vice Chair

WCAT Reference Number: **131591-A**

Section 257 Determination
In the Supreme Court of British Columbia
Victoria Registry No. 120217
Anna Parkes v. Jason Leslie

Applicant: Jason Leslie
(the "defendant")

Respondent: Anna Parkes
(the "plaintiff")

Representatives:

For Applicant: Christian Wilson
Insurance Corporation of British Columbia
Litigation Department

For Respondent: Nick Bower
Legal Services Division
WorkSafeBC

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Introduction

[1] The plaintiff, Anna Parkes, was injured when she was riding her bicycle and struck the open door of the pickup truck driven by the defendant, Jason Leslie. The collision occurred on January 31, 2008 on Government Street in Victoria, British Columbia.

[2] The plaintiff was employed as a community health worker. She was riding her bicycle along Government Street, on her way from one client's home to her next client's home. The defendant is a real estate salesperson. He had parked his pickup on Government Street in preparation to showing a property to his clients, who were travelling with him.

[3] The plaintiff commenced an action against the defendant in the Supreme Court of British Columbia. The plaintiff also filed a claim for compensation with the Workers' Compensation Board (Board), operating as WorkSafeBC.

[4] Pursuant to section 257 of the *Workers Compensation Act* (Act), the defendant has applied to the Workers' Compensation Appeal Tribunal (WCAT) for determination and certification to the court of the status of the parties to the action.

Jurisdiction

[5] 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 (*Clapp v. Macro Industries Inc*., 2007 BCSC 840).

Issue(s)

[6] Determinations have been requested as to the status of Anna Parkes and Jason Leslie at the time of the accident on January 31, 2008.

Evidence Reasons and Findings

Status of the plaintiff, Anna Parkes

[7] The status of the plaintiff is not in dispute. On January 31, 2008, the plaintiff was employed by South Victoria Home Care Services (SVHCS) as a community health worker. The Board has confirmed that at that time SVHCS was registered with the Board as an employer and had an active account.

[8] Section 1 of the Act defines a "worker" as including "a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise. The defendant submitted that the plaintiff was a worker within the meaning of the Act. The plaintiff agreed.

[9] I find the plaintiff was a worker within the meaning of the Act at the time of the collision on January 31, 2008.

[10] Section 5(4) of the Act provides:

> 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.

[11] Section 1 of the Act defines "accident" to include a wilful and intentional act, not being the act of the worker, and also includes a fortuitous event occasioned by a physical or natural cause." Policy #14.10 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) applicable on January 31, 2008, states that the definition of "accident" in section 1 is not exclusive, and has been interpreted in its normal meaning of a traumatic incident.

[12] The essential facts are not in dispute. The plaintiff was riding her bicycle down Government Street. In his examination for discovery dated April 8, 2013, the defendant stated that he was driving his truck slowly, looking for a parking space. He passed the plaintiff. He pulled into a parking space and opened his door part way. The basket on the plaintiff's bicycle or the plaintiff herself struck the door, and the plaintiff fell off the

bicycle. I find the collision was an accident within the meaning of section 5(4) of the Act.

[13] The plaintiff filed a claim for compensation with the Board for injuries caused by the accident. In a memorandum dated February 21, 2008, a Board entitlement officer, summarized the plaintiff's activities at the time of the accident, noting she was en route from one client to the next. The plaintiff had only 10 minutes between appointments and was taking a direct route between her clients, with no deviations. SVHCS filed an employer's report of injury in which it confirmed that the plaintiff's actions at the time of the collision were for the purposes of its business.

[14] Policy #18.32 states:

> Another situation is where there is an injury occurring in the course of a journey between what might be called two working points. That is, where the worker terminates productive activity at one point and then has to travel to commence productive activity at another point. If that occurs in the course of a working day, then the travel is one of the requirements of the job. It is one of the functions that the worker has to perform as part of the employment whether or not the worker is paid for it. Where the worker terminates productive activity at one point and is required to commence productive activity at another point, travel between those points is part of the employment and is in the course of employment as long as the worker is travelling reasonably directly and is not making major deviations for personal reasons.

[15] I find that the plaintiff's injuries caused by the accident arose in the course of her employment. Pursuant to section 5(4) of the Act, it is presumed that her injuries also arose out of her employment. There is no evidence rebutting the presumption; therefore, I find the plaintiff's injuries caused by the accident arose out of and in the course of her employment.

Status of the defendant, Jason Leslie

[16] On January 31, 2008 the defendant was a real estate salesperson with RE/MAX Camosun of Victoria, British Columbia. The Board has confirmed that at that time RE/MAX Camosun was registered with the Board as an employer and had an active account. The precise nature of his relationship with RE/MAX Camosun is in dispute. The defendant was taking clients to view a property for sale. The defendant was not registered with the Board and did not have Personal Optional Protection coverage.

[17] The defendant submitted that at the time of the accident he was a worker within the meaning of the Act and was acting in the course and scope of his employment with RE/MAX Camosun. The plaintiff agrees that if the defendant is determined to have

been a worker within the meaning of the Act, then his conduct, which the plaintiff alleges caused her injuries, occurred in the course of his employment.

[18] As noted above "worker" is defined in section 1 of the Act. Detailed discussion of the meaning of "worker" is found in the Board's *Assessment Manual*. Policy #AP1-1-1 describes several categories of persons including the following:

- *Worker* – A worker is an individual who performs work under a contract with an employer and has no business existence under the contract independent of the employer. "Worker" is defined under section 1 for purposes of Part 1 of the *Act*. A worker cannot be an "independent firm".
- *Independent Operator* – "Independent operator" is not defined in the *Act*. The term is referred to in section 2(2) of the *Act* as being an individual "who is neither an employer nor a worker" and to whom the Board may direct that Part 1 applies as though the independent operator was a worker. An independent operator performs work under a contract, but has a business existence independent of the person or entity for whom that work is performed. An independent operator is an "independent firm".
- *Labour Contractor* – The Board has created the term "labour contractor" to assist it in determining whether an individual is an employer, worker or independent operator. A labour contractor who is a worker cannot be an "independent firm". For more information about "labour contractors", see Item AP1-1-7.
- *Firm* – A firm is any person or entity carrying on a business.
- *Independent Firm* – The Board has created the term "independent firm" to identify those persons who are either required by the *Act* to register with the Board as employers of workers, or from whom, as unincorporated employers or independent operators, the Board will accept a registration through the purchase of Personal Optional Protection for themselves. An independent firm performs work under a contract, but has a business existence under the contract independent of the person or entity for whom that work is performed. An independent firm may be an individual, a corporation or another type of legal entity. A worker cannot be an "independent firm". For more information about "independent firms", see Item AP1-1-3.

[19] Policy #AP1-1-3 provides the following general principles for distinguishing an employment relationship from a relationship between independent firms, noting that there is no single test that can be consistently applied. The factors considered include:

- whether the services to be performed are essentially services of labour;
- the degree of control exercised over the individual doing the work by the person or entity for whom the work is done;
- whether the individual doing the work might make a profit or loss;
- whether the individual doing the work or the person or entity for whom the work is done provides the major equipment;
- if the business enterprise is subject to regulatory licensing, who is the licensee;
- whether the terms of the contract are normal or expected for a contract between independent contractors;
- who is best able to fulfill the prevention and other obligations of an employer under the *Act*;
- whether the individual doing the work engages continually and indefinitely for one person or works intermittently and for different persons; and
- whether the individual doing the work is able or required to hire other persons.

[20] Practice Directive #1-1-3(A), published by the Board to provide guidance with respect to specific occupations, was in effect on January 31, 2008. It has since been replaced by Practice Directive #1-1-3(B), but I note the relevant portion is substantively similar to Practice Directive #1-1-3(A). Practice directives are not policy, and are not binding on WCAT; however, they provide useful guidance in applying law and policy. In noteworthy decision *WCAT-2007-01737*, a non-precedent, three-person panel discussed the measure of deference to be given to a non-binding practice directive when determining the status of an individual under the Act and policy. Although the panel was considering a different practice directive, its comments are equally valid here; indeed, they are cited in Practice Directive #1-1-3(B). The panel stated that it was evident from court decisions cited and the policies in the *Assessment Manual* that there was no single test to be applied in determining an individual's status. The panel then stated:

> In this context, the desirability of having policies and practices to promote a consistent approach is obvious, and long-standing practices are, in our view, deserving of some measure of deference. To conclude otherwise could lead to an unacceptable level of uncertainty regarding the status of such persons, with far-ranging consequences.

[21] In *WCAT-2005-01271*, the panel considered Practice Directive #1-1-3(A). The panel also considered the practices of the Board's Assessment Department prior to the publication of the practice directive, which were outlined in correspondence from the director of assessments to the real estate industry association in 1995, and which were specifically referred to in the practice directive. The panel wrote:

> As is apparent from the Appeal Division [former division of the Board] and WCAT decisions cited above, the determination of the status of real estate agents is in a grey area. In this context, I consider it appropriate to take into account the guidelines issued to the community by the Board's Assessment Department (contained in correspondence from the director, assessments, to the industry association in 1995, and documented in a practice directive in 2003). Presumably, realtors throughout the Province have arranged their affairs in reliance on these guidelines, provided by the Assessment Department and publicized by the industry association, thereby accepting the bundle of rights, risks and obligations associated with either being a worker under Part 1 of the Act, or operating as an independent operator without workers' compensation coverage. The values of predictability, consistency and certainty are important in this context. Parties' expectations, based on reliance on guidelines issued by the Board, are relevant factors to be taken into account. While this does not relieve WCAT from making its own determination under the Act, I find that regard may properly be had to the Board's practice guidelines (even though they do not constitute policy and are not binding on WCAT).

[22] Practice directive #1-1-3(A) gives the following guidance:

> OVERVIEW
>
> The real estate salesperson–agency relationship can vary between a clear employment relationship and a clear relationship of independence. A Board officer must therefore use discretion in determining and weighing the relevant factors to decide whether this relationship is one of employment or independence. If the relevant factors are evenly balanced a Board officer must decide in favour of an individual being a worker and therefore entitled to benefits under the Act, rather than being an independent operator having no right to benefits unless Personal Optional Protection has been purchased.
>
> REAL ESTATE SALESPERSONS
>
> The status of a real estate salesperson as a worker or independent operator is, in part, dependent on the contractual relationship between the real estate salesperson and the agency. A Board officer is, therefore, obliged to examine the particular status indicators of the relationship.

> While the Board officer may request a copy of an existing written contract to assist in this process, the Board's jurisdiction will not be excluded by a private agreement.
>
> A real estate salesperson will be considered an independent operator only if it is determined that the real estate salesperson:
>
> (1) must pay a fixed amount of not less than $100 per month to the agency for administrative and operating costs regardless of whether any sales are made or commissions are earned,
> (2) is responsible for his or her own expenses (such as spending on personal promotion or advertising or travel/vehicle expenses), and
> (3) is entitled to the full amount of the gross commissions earned.
>
> [footnotes omitted]

[23] The defendant provided a copy of the agreement (Agreement) between himself and RE/MAX Camosun. Although the Agreement describes the defendant as an "Independent Contractor," he submitted that the relationship described in the agreement was an employment relationship, and did not meet the test set out in Practice Directive #1-1-3(A).

[24] The plaintiff submitted that the Agreement indicated a clear intention that the defendant would be an independent operator, rather than an employee. The plaintiff acknowledged that the intentions of the parties are not conclusive, but, citing the noteworthy decision in *WCAT 2005-04895*, submitted they are a factor to be taken into account. The panel in that case stated:

> While the intentions of the parties are a factor to be taken into account, it is also necessary to evaluate "the terms of the contract and the operational routines of the relationship" to determine the nature of the relationship…

[25] The defendant submitted that *WCAT-2005-04895* was not relevant to the issue in this case because it concerned whether certain parties were volunteers, not whether they were independent operators. In my view, the point the panel in that case was making was that the status of parties under the Act will be determined by the true nature of their relationship, as evidenced by the terms of the contract between them and the way in which those terms are carried out in their operational routines, and the parties cannot by mere statement of intention, remove themselves from the compensation scheme established by the Act. That principle is applicable in this case. Consequently, it is necessary for me to consider the substance of the Agreement.

[26] The Agreement indicates that the defendant was free to devote as much or as little time to the real estate service business as he wished, without direction from RE/MAX Camosun, except as required by law and specific obligations set out in the Agreement. The Agreement required the defendant to act as a real estate agent exclusively on behalf of RE/MAX Camosun. RE/MAX Camosun was entitled to set commission rates and fees for the services of its own sales force, but the defendant was entitled to set his own commission rates or fees. The defendant was required to acquire and pay for general liability, automobile, and errors and omissions insurance.

[27] In his examination for discovery, the defendant stated that he paid all costs of business. The defendant submitted that his answers on the examination for discovery related to the date of the examination, not the date of the accident. However, I note the defendant stated in the examination that in 2008 he was an independent contractor, and he handled all his own income taxes (questions 95 to 98). The defendant did not provide evidence that in 2008 he was not responsible for his own business costs. RE/MAX Camosun provided the defendant access to administrative support and day-to-day management services, an office or desk space, a reception area, access to listings, forms, advertising, copying and fax machines, telephone, and other communication means. However, the defendant was required to pay for such additional services as long-distance telephone charges, copying and reproduction services, advertising and promotional brochures, postage, and yard signs. In his examination for discovery, the defendant stated that, at the time of the examination, he provided his own laptop computer.

[28] The defendant was required to pay fees of $225.00 per month towards the promotional activities of RE/MAX Camosun. The Agreement also required the defendant to pay an annual “management fee” to RE/MAX Camosun of 30% of his gross commissions “to a maximum of $50,000 gross commission.” The defendant was entitled to receive 100% of his gross commissions after he paid RE/MAX Camosun the amount it was entitled to. The defendant’s commissions were paid to RE/MAX Camosun, which then paid them to the defendant after deducting the amount it was entitled to.

[29] The plaintiff submitted that the agreement was structured to reflect an intention that the defendant would be an independent operator rather than an employee of RE/MAX Camosun. The plaintiff submitted that the defendant understood that he was an independent operator rather than an employee. The defendant submitted that there was no evidence to suggest he understood that he was an independent operator. However, I note that in his examination for discovery (at question 93 and 94) the worker responded “yes” to the following question: “*Now, your understanding is that with Re/Max you’re an independent contractor?*” I agree that the defendant was unlikely to be aware of the specifics of the definition of “independent operator” set out in policy #AP1-1-1, but it is clear that he believed his relationship with RE/MAX Camosun was that of an independent contractor, rather than an employee.

[30] Turning to the specific criteria in Practice Directive #1-1-3(A), the first question is whether the defendant was required to pay a fixed amount of not less than $100.00 per month to RE/MAX Camosun for administrative and operating costs regardless of whether he made any sales or earned any commissions.

[31] The plaintiff submitted that the annual fee of $225.00 met the first criterion. The defendant submitted that it did not, because the fee was for advertising and promotion, not for administrative and operating costs. Neither party referred to any previous decision which considered the meaning of "administrative and operating costs," nor have I found any.

[32] Taking a common sense approach, I consider that the intention of the practice directive was to distinguish between the costs of operating the business of a real estate agency, and the costs associated directly with real estate sales. While sales costs are directly linked to volume of sales, administrative and operating costs are less dependent on sales, in the sense they will be incurred in significant measure whether sales are made or not.

[33] It is clear from the terms of the Agreement that the advertising and promotional fees the worker was required to pay did not relate directly to specific real estate listings or sales but to institutional advertising and promotion. Of the $225.00 total, $92.50 was for an "Institutional Advertising Fee" which was paid to the "Regional Institutional Advertising Fund." A further $112.50 of the fees was paid towards the "[p]romotional [a]ctivities of RE/MAX, together with other RE/MAX franchises in a **multi-office marketing area**" [emphasis in original]. The remaining $20.00 was for the promotional activities of RE/MAX Camosun. In my view, the fees have some characteristics of administrative and operating costs, and some characteristics of sales costs. The obvious goal of institutional advertising and promotion is to increase sales for franchisees, but such activities are not linked to specific sales and would be incurred regardless of sales volume, and in that sense are more like operating costs.

[34] In my view, the fact that the defendant was required to pay the fees regardless of whether he made any sales or earned any commission is more important than whether they met a precise definition of "administrative and operating costs." I find the first practice directive criterion is met.

[35] I also find that the second criterion in the practice directive is met. The evidence establishes that the defendant was responsible for his own expenses, such as spending on personal promotion or advertising, vehicle expenses, and other expenses.

[36] The third criterion is whether the worker was entitled to the full amount of the gross commissions he earned. The plaintiff submitted that the form of the Agreement provided two ways for the defendant to pay "desk fees." One way was a fixed one-time

fee for the whole term of the Agreement. The other way was by payment of 30% of gross commissions up to a fixed maximum amount ($50,000.00 gross commissions). The defendant opted for the second method of payment. The plaintiff submitted that the defendant was entitled to the full amount of his commissions once the maximum amount was paid.

[37] I note that the Agreement is somewhat ambiguous with respect to the actual amount of desk fees the defendant was required to pay. The plaintiff interpreted the Agreement to mean that the defendant was required to pay 30% of his gross commissions until he had paid a total of $50,000.00. However, the Agreement refers to "30% of all gross commissions to a maximum of [$]50,000 - gross commission," which suggests that the maximum payment was 30% of $50,000.00 (i.e. $15,000.00). I do not need to resolve the ambiguity, nor is it within my authority to do so. In either case, the amount the defendant was required to pay as a desk fee was capped at a maximum amount, after which he was entitled to receive all of his gross commissions.

[38] The defendant submitted that Practice Directive #1-1-3(A) did not contain any qualification on the requirement that the real estate salesperson be "entitled to the full amount of the gross commissions earned." The defendant submitted that, put simply, he was not entitled to the full amount of gross commissions earned.

[39] As noted above, the panel in *WCAT-2005-01271* considered Practice Directive #1-1-3(A) and its practice origins. The panel also reviewed several earlier decisions of WCAT and the Appeal Division, and reached the following conclusion:

> Upon consideration of the published policies, the practice of the Assessment Department, and prior decisions of the former Appeal Division and WCAT, in connection with the particular facts of the plaintiff's relationship with HG [HomeLife / Glenayre Realty Co. Ltd.], I find that she was an independent operator. In general, the plaintiff was entitled to the full amount of any commissions. As well, she paid the costs of advertising. I agree with the submissions by plaintiff's counsel, concerning the fact that the plaintiff had significant control over her expenditures, was liable for fixed monthly fees, and had substantial autonomy and control in conducting herself as a realtor. While the plaintiff's entitlement to full commissions was diluted to a degree by transaction fees, and by the evidence of commission-sharing where the sale resulted from a referral from HG, I do not view those as sufficient to support a different decision regarding her status. No evidence has been provided to establish that such referrals, and resultant commission-sharing, constituted a significant part of the plaintiff's earnings. For the purposes of this decision, I need not consider whether a different conclusion would be warranted were the evidence to establish that a major part of the plaintiff's earnings derived

> from sales resulting from referrals by HG. I find that the plaintiff's circumstances fit within the three criteria identified in *Practice Directive 1-1-3 (A)*, "Real Estate Salespersons", so as to warrant her categorization as an independent operator.

[40] The "transaction fees" the panel referred to was a flat fee of $300.00 per transaction (reduced to $100.00 per transaction after the first 12 transactions). The realtor in that case was entitled to 100% of her commissions less the transaction fee.

[41] With respect to the third criterion in Practice Directive #1-1-3(A), the question comes down to whether the defendant's obligation to pay 30% of his commissions until a fixed amount was paid "diluted" his entitlement to 100% of his commissions to such a degree that he should be considered a worker under the Act. In that regard, one of the earlier decisions considered by the panel in *WCAT-2005-01271* is particularly instructive. The panel summarized *Appeal Division Decision #99-0252*, February 12, 1999, as follows:

> The provisions of the Sales Representative Agreement that are of particular interest may be summarized as follows:
>
> The recitals to the agreement indicate that the sales representative is engaged as an independent salesperson.
>
> The third paragraph sets out that the sales representative may determine the manner in which he or she conducts his or her business activity, exercise judgment as to the clients to be solicited, choose the place and manner for conducting the business activities, and choose the portion of time to be devoted to real estate activities. However, the sales representative is subject to the policies issued by Trend.
>
> Paragraph 4 sets out various matters that are dictated by the relevant legislation such as the fact that listings must be taken in the name of Trend and cash and cheques must be run through Trend's trust account.
>
> Paragraph 5 sets out that the sales representative is entitled to 100% of the real estate commissions received by Trend in respect to the sale or lease of listed properties.
>
> Paragraph 6 indicates that the sales representative is responsible for all expenses except those Trend agrees to pay.
>
> Paragraph 7 indicates that the sales representative will pay to Trend a percentage of all commissions payable to him or her as specified in a schedule "as compensation for services provided by [Trend] and access to facilities and equipment of [Trend]". The document entitled Commission Schedule A indicates that a self-employed sales representative with a desk at the office will pay 40% of his or her commissions to Trend until

> Trend has received $10,000. The schedule indicates that married sales representatives will each pay the fee. However, the fee payable by one spouse will be discounted by 50%.
>
> Paragraph 10 states that the sales representative is "a self-employed independent contractor" and is not, among other things, an employee of Trend.
>
> The Trend Realty Ltd. Policy Manual indicates that the expenses that a salesperson must pay are personal and automobile expenses and expenses related to advertising, business cards, signs, lock boxes, land title searches, errors and omissions insurance, long distance telephone, license fees, board fees, catalogue fees, photographs, and postage. Trend furnishes the support of a management team, desk space, stenographic services, local telephone services, a direct telephone line to Vancouver, photocopying, and faxing.
>
> Pursuant to the analysis of the director in the decision that was the subject of decision #95-0565, the plaintiff would be a worker under the Act because the payment of the $10,000 fee to Trend was contingent upon the commissions he earned. As stated previously, the panel upheld the director's decision. I adopt their analysis and find that, in this case, the plaintiff was a worker at the time of the November 14, 1994 accident.

[42] The relationship between the realtor and real estate agency in that case appears to be very similar to the situation in this case. Cast in the language of *WCAT-2005-01271*, the worker's entitlement to 100% of commissions was sufficiently diluted by the requirement to pay a percentage of his commissions until a fixed amount was paid that he was found to be a worker under the Act.

[43] Based on the reasoning in *WCAT-2005-01271*, I conclude that the third criterion in Practice Directive #1-1-3(A), that the realtor be entitled to the full amount of commissions, is not absolute. The "full amount" of commissions may be diluted by a requirement to pay a fixed dollar amount as a transaction fee on every deal. However, if the realtor is required to pay a substantial percentage of commissions to the agency until a fixed amount has been paid, then the realtor is not entitled to the "full amount" of commissions earned, and the third criterion is not met. It follows that, in this case, I find the third criterion is not met. Therefore, I conclude the defendant was not an independent operator at the time of the accident, but was a worker within the meaning of the Act.

[44] As noted above, the plaintiff agrees that if the defendant is determined to have been a worker within the meaning of the Act, then his conduct, which the plaintiff alleges caused her injuries, occurred in the course of his employment. It is clear to me that parking his truck and opening the door was an integral part of showing a property to his

clients, who were with him in the truck. There is no doubt in my mind that the defendant was acting within the course of his employment. I find that the defendant's action or conduct which cause the alleged breach of duty of care arose out of and in the course of his employment.

Conclusion

[45] I find that at the time of the accident on January 31, 2008:

1. The plaintiff, Anna Parkes, was a worker within the meaning of Part 1 of the Act.
2. The plaintiff's injuries sustained in the accident arose out of and in the course of her employment.
3. The defendant, Jason Leslie, was a worker within the meaning of the Act.
4. The defendant's, Jason Leslie, action or conduct which caused the alleged breach of duty arose out of and in the course of his employment.

David Newell
Vice Chair

DN:gw

NO. 120217
VICTORIA 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:

ANNA PARKES

PLAINTIFF

AND:

JASON LESLIE

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the defendant, JASON LESLIE, 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 action arose, January 31, 2008:

1. The plaintiff, ANNA PARKES, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the plaintiff, ANNA PARKES, arose out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act*.

3. The defendant, JASON LESLIE, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

4. Any action or conduct of the defendant, JASON LESLIE, which caused any 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 August, 2014.

_____

David Newell
VICE CHAIR

NO. 120217
VICTORIA 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:

ANNA PARKES

PLAINTIFF

AND:

JASON LESLIE

DEFENDANT

SECTION 257 CERTIFICATE

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