

## ***West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)***

### Decision Summary

Court	Supreme Court of Canada
Citation	2018 SCC 22
Result	Appeal Dismissed
Justices	<b>Chief Justice McLachlin</b> Justice Abella Justice Moldaver Justice Karakatsanis Justice Wagner Justice Gascon <b>Justice Côté</b> <b>Justice Brown</b> <b>Justice Rowe</b>
Date of Judgment	May 18, 2018
WCAT Decision(s) Reviewed	WCAT-2013-01952

### **Keywords:**

*Appeal – Judicial review – Jurisdiction – Standard of review – Occupational health and safety – Workers' Compensation Board's authority to make regulations – Section 225 of the Workers Compensation Act – Section 26.2(1) of the Occupational Health and Safety Regulation*

*Appeal – Judicial review – Occupational health and safety – Administrative penalty – Section 196 of the Workers Compensation Act – Basis for an employer's liability*

### **Summary:**

This appeal dealt with two issues concerning the authority of the Workers' Compensation Board in prevention matters. The first issue was whether the Board had the jurisdiction to make section 26.2(1) of the *Occupational Health and Safety Regulation*, which requires the owner of a forestry operation to ensure that all activities of the operation are both planned and conducted safely. The second issue concerned the decision of the Workers' Compensation Appeal Tribunal (WCAT) to confirm an administrative penalty issued by the Board under section 196(1) of the *Workers Compensation Act* against the appellant

pursuant to the same conduct upon which the Board found the appellant to have violated section 26.2(1) of the *Regulation*. The appellant asked the Supreme Court of Canada to find that the Board did not have the jurisdiction to make the regulation and that, in any event, WCAT's decision confirming the penalty should be set aside. The appeal was dismissed by a majority of the court.

The appellant operates a forest products business and contracted with an individual to fall some trees on a forest license owned by the appellant. The contractor hired another faller to help him with the work. Sadly, that other person was fatally injured while doing the work. The Board investigated and determined that the appellant was in violation of section 26.2 of the *Occupational Health and Safety Regulation*, which requires the owner of a forestry operation to ensure that all activities of the operation are both planned and conducted safely. The Board also levied an administrative penalty against the appellant. The appellant argued that section 26.2 of the *Regulation* purports to impose obligations on an owner independent of the obligations imposed on owners under section 119 of the *Act* and, therefore, the Board lacked the jurisdiction to pass that section of the *Regulation*. The appellant also objected to WCAT's confirmation of the administrative penalty on the basis that such penalties can only be imposed upon employers and it was not acting in its capacity as an employer when it was found to have contravened the *Regulation*.

In the opinion of the majority, because the *Workers Compensation Act* conferred a broad power on the Board to make regulations, the validity of any resulting regulation does not raise a question of *vires* in the traditional sense, but instead requires a reviewing court to consider whether the regulation represents a reasonable exercise of the power conferred by the *Act*, having regard to the statute's goal. The majority found that section 26.2(1) of the *Regulation* was clearly linked to the goal of workplace safety and therefore was a reasonable exercise of the Board's regulation-making authority.

There were three dissenting opinions in this appeal. Justice Côté said that the validity of the regulation should be a question of *vires*, reviewable on the standard of correctness. She would have found the Board to have exceeded its jurisdiction in making section 26.2(1) of the *Regulation*. Côté J. considered that the Board exceeded its mandate by conflating the duties of owners and employers in the context of the occupational health and safety provisions of the *Workers Compensation Act*, which set out separate obligations for owners and employers. Justices Brown and Rowe agreed with Justice Côté that review of the Board's regulation is fundamentally a true question of jurisdiction and the applicable standard of review should be correctness, but they agreed with the majority that section 26.2(1) was valid.

The majority also held that WCAT's decision confirming the administrative penalty was not patently unreasonable. It held that courts reviewing administrative decisions must consider not only the text of legislation "but also the consequences of interpreting a provision one way or the other and the reality of how the statutory scheme operates on the ground". The majority said that the tribunal had before it two competing plausible interpretations of section 196(1) of the *Workers Compensation Act* – one narrow that would undermine the objects of the statute and one broad, which would recognize the

complexity of overlapping and interacting roles on the worksite and would further the goals of the statute. The broad interpretation applied by WCAT extended the application of administrative penalties to employers, like the appellant, who employ people to fulfill their duties with respect to the worksite where the accident occurred even though it was not one of its own employees who was injured.

All three of the dissenting justices would have found WCAT's decision confirming the administrative penalty to be patently unreasonable. They considered that because the appellant was found to have violated its obligations as an owner, it was patently unreasonable for the tribunal to find that the Board could impose a section 196 penalty on the appellant when such penalties can only be levied against employers.