

## PLESNER V. BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

### Decision Summary

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|---------------------------|-------------------------------|
| Court                     | B.C. Court of Appeal          |
| Citation                  | 2009 BCCA 188                 |
| Result                    | Appeal Allowed                |
| Judge                     | <b>Prowse</b> , Frankel, Ryan |
| Date of Judgment          | April 30, 2009                |
| WCAT Decision(s) Reviewed | WCAT-2005-03861               |

#### **Keywords:**

*Mental stress - Section 5.1 of the Workers Compensation Act – Post traumatic stress disorder (PTSD) - Acute reaction to a sudden and unexpected traumatic event – Item #13.30 of Rehabilitation Services and Claims Manual, Volume II*

At issue before the Court was whether the mental stress provisions in section 5.1 of the *Workers Compensation Act* (Act) and item #13.30 of *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) were constitutional and whether the Workers' Compensation Appeal Tribunal decision denying compensation for mental stress was patently unreasonable.

There was an accident at the Petitioner's workplace, a generating plant, in which a natural gas pipe burst, causing a stream of natural gas to vent into the atmosphere. The employer evacuated the Petitioner with other employees away from the gas line location and emergency response teams closed off the line about an hour after the venting began. The Petitioner worked voluntary overtime on the same day of the accident. The Petitioner applied for compensation to the Workers' Compensation Board, operating as WorkSafeBC (Board) for stress and depression resulting from the accident, among other work incidents. The Board denied the Petitioner's claim for mental stress. He appealed to the Workers' Compensation Appeal Tribunal (WCAT). WCAT upheld the Board's decision, finding that the Petitioner's mental stress claim did not meet the requirements set out under section 5.1 of the Act and item #13.30 of the RSCM II. The B.C. Supreme Court allowed the judicial review and remitted the matter back to WCAT for rehearing, on the basis that the reasons were "internally inconsistent".

The Court of Appeal majority allowed the appeal and remitted the matter back to WCAT for rehearing. The Court declared that some of the provisions of item #13.30 contravene section 15(1) of the *Canadian Charter of Rights and Freedoms* (Charter) and cannot be saved under section 1. Section 15(1) of the Charter provides that every individual has the right to equal protection and benefit of the law without discrimination, including discrimination based on mental or physical disability. In dissent Madam Justice Ryan dismissed the challenge to section 5.1 of the Act and item #13.30 on the basis that they did not violate section 15(1) of the Charter.